Palestine and the legacy of Balfour

Edited by Hugh Humphries

Scottish Friends of Palestine

Photo: The plaque in Balfour's family church, Whittingehame, East Lothian.

Balfour Declaration

Dear Lord Rothschild,

I have much pleasure in conveying to you, on behalf of His Majesty's Government, the following declaration of sympathy with Jewish Zionist aspirations which has been submitted to, and approved by, the Cabinet.

"His Majesty's Government view with favour the establishment in Palestine of a national home for the Jewish people, and will use their best endeavours to facilitate the achievement of this object, it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine, or the rights and political status enjoyed by Jews in any other country"

I should be grateful if you would bring this declaration to the knowledge of the Zionist Federation.

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Haddington Declaration

We, who gathered here today in the home town of Arthur James Balfour and all those who accept this Declaration,

Cognizant of the inherent injustice of the infamous Balfour Declaration of 2 November 1917 and its utter disregard for the fundamental rights of the indigenous national Palestinian majority in Palestine,

Aware of the consequential tragedies of loss of life and property, destitution and dispersion of millions of people for over half a century in Palestine, Egypt, Syria, Lebanon and Jordan,

Distressed particularly at the execution of the largest, longest ethnic cleansing of Palestinians from hundreds of towns and villages in their homeland which resulted in the long exile of 6 million Palestinian refugees until today,

Mindful of the unforgivable failure of the British Mandate to fulfil its obligations towards the protection, welfare and self-government of the Palestinians and the territorial integrity of Palestine,

Hereby declare that,

The Balfour Declaration and its consequences are legally invalid and morally wrong and must be reversed,

The suffering of the Palestinians till this day is an evil, the continuation of which must be stopped and amends be made,

The restoration of Palestinian rights, particularly the Right of Return and Self-Determination and respect for human rights and international law must be implemented, this being the only basis for permanent peace,

We further call upon,

The British Government to atone for Balfour sins by adopting and implementing a clear and strong policy for the support of the Palestinians' Inalienable Rights and by making reparations for the suffering and damages to the Palestinians,

The European Union and the US to accept responsibility for the Palestinian catastrophe, support Palestinian rights, cease and desist from aiding Israel in all aspects and impose penalties on Israel as long as it continues in violation of international law

The international community, particularly Human Rights NGO's, to condemn Israel's racist and Apartheid policies, boycott dealing with it and fully support the Palestinians rights, particularly the Right of Return,

All human beings of free conscience to help end the century-long evil which befell the Palestinians, restore their rights in Palestine and establish in Palestine a free democratic country free from racism, Apartheid and discrimination on any grounds.

Haddington, East Lothian 12, 13 November 2005 In the 88th year after Balfour Declaration

On the 12 & 13 November 2005 Scottish Friends of Palestine held its international conference at Haddington, East Lothian. The subject of the conference was *Palestine and the legacy of Balfour,* in this, the 88th anniversary year of the Balfour Declaration. The proximity of Whittingehame, the family home of the then Foreign Secretary, Arthur J. Balfour, to Haddington made the latter the ideal venue for the conference.

Throughout the conference enthusiasm was expressed by many participants for the contributions from the various speakers to be put into print. This book represents an attempt to meet this request. At the outset, it has to be stressed that it does not do justice to some of the speakers and their contribution. Some spoke with no prepared paper. Others, because of time constraints, agreed to address the content of their paper through the question and answer session. In these cases alternatives have been used.

The one exception to this is Ghada Karmi where reference to her book *In Search of Fatima: A Palestinian Story* (Verso Press 2002) is recommended.

Leila Khaled was invited to speak but her request for a visa was turned down by the Home Office. She did provide a transcript of her contribution and this is included.

This book was finalised just as Israel was withdrawing its army of aggression and terror from Southern Lebanon at the end of August 2006. It left in its wake a civilian population (and infrastructure) devastated by the firepower of the Israeli armed forces.

However it did not leave a people cowed and humiliated by the destructive power of the Israeli state.

Could Balfour's legacy be entering a new phase? Or is it simply that an army which has honed its skills at checkpoints - forcing pregnant mothers to give birth in the open, forcing the old to wait in freezing cold, wet conditions, for hours on end and shooting at children – is now no match for a determined, motivated opponent?

Hugh Humphries
Secretary
Scottish Friends of Palestine

Speakers

Dr Salman Abu Sitta
Founder and President of the Palestine Land Society, General Coordinator of the Right of Return Congress, member of the PNC, Chair of Welfare/UNRWA Committee on Refugees

Omar Barghouti
Independent researcher

Mike Berry
Researcher at Glasgow University Media Group, co-author of *Bad News from Israel*

Prof Claudine Dauphin
1st Class Hons (Near-Eastern Archaeology) + Ph D at Univ. Of Edinburgh, Doctorat d'Etat es-Lettres (Sorbonne), Hon Prof of Theology and Archaeology at University of Wales

Alan Hart
Former ITN and BBC Panorama reporter, author of the two volume *ZIONISM the real enemy of the Jews*

Dr Sahar Huneidi
Independent researcher, graduate of American University of Beirut in Political Science,
Ph D from Manchester University (Middle Eastern Studies), Dip. in History of Art (Christies)

Dr Ghada Karmi
Academic and writer, Research Fellow at the Institute of Arab and Islamic Studies (University of Exeter), Vice-Chair of CAABU, author of *In search of Fatima*

Dr Noha Tadros Khalaf
Graduate of University of Cairo (Econ. & Political Science) and American University of Beirut (Political Studies), Ph D Institut National des Langues et des Civilisations Orientales (Paris), Head of Political Dept. & Director of European Division - PLO

Leila Khaled
Member of the Palestinian National Council

Professor Mushtaq Khan
Reader in Economics at School of Oriental and African Studies (Univ. of London),
Author of *State Formation in Palestine*

Dr Ilan Pappe
Senior lecturer Political Science, Chair, Emil Touma Inst for Palestinian Stud. (Haifa Univ.)

Professor John Quigley
President's Club Professor in Law at Ohio State University

Terry Rempel
Research Fellow and Ph D candidate at University of Exeter, researcher and founding member of BADIL – Resource Centre for Palestinian Residency & Refugee Rights

John Rose
Author of *The Myths of Zionism*

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A Secular, Democratic State in Historic Palestine

Overturning Balfour's Legacy of Relative Humanity

Omar Barghouti

There is a huge gap between us (Jews) and our enemies, not just in ability but in morality, culture, sanctity of life, and conscience. They are our neighbours here, but it seems as if at a distance of a few hundred metres away, there are people who do not belong to our continent, to our world, but actually belong to a different galaxy.

<div align="right">

Moshe Katsav, Israel's President[1]

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INTRODUCTION

More than a century and a half ago Edgar Allan Poe wrote "The Tell-Tale Heart," in which a young man decides to kill a kind old man who "never wronged" him simply because "he had the eye of a vulture." Whenever he looked at the eye, his "blood ran cold," as it "chilled the very marrow" in his bones. But in order to kill the old man, he had to shine a ray of light on his "pale blue eye" alone in the otherwise complete darkness, so as not to see anything else "of the man's face or person." If he saw the human in him, he could not hurt him. When he was about to commit the murder, he heard "a low, dull, quick sound"; it was the "beating of the [terrified] old man's heart." It only increased his fury, "as the beating of a drum stimulates the soldier into courage."

After suffocating the old man, he dismembered his corpse and carefully concealed the parts under the floor planks. The old man's last shriek before dying, however, alarmed the neighbours, who called the police. Upon their arrival, the young man received them with confidence, even inviting them to search the old man's room, bringing chairs for them, and "in the wild audacity of [his] perfect triumph, [he] placed [his] own seat upon the very spot beneath which reposed the corpse of the victim." He began to hear a ringing sound, which grew in intensity despite all his attempts to speak louder to cover it up. It grew louder by the minute, until he felt that he "must scream or die." "Anything was better than this agony," he thought, until he finally screamed, "I admit the deed! – tear up the planks! […] It is the beating of his hideous heart!" [2]

The second Palestinian *intifada* is to Israel the telltale heart of the old Palestine, which has obstinately refused to rest in peace, even 57 years after it was dismembered, entombed and shrouded in forgetfulness. The Nakba—

catastrophe—of 1948, in which more than 800,000 Palestinians were driven off their native land, has come to dominate the political discourse. In response, Israelis from across the political spectrum, stirring up a deep-rooted "victimology," as Rabbi Mayer Schiller calls it, [3] cry "existential threat!" The only thing being threatened, however, is Balfour's legacy of relative humanity, which accepted the founding principle of Zionism, namely its arrogation of the right to ethno-religious supremacy on a piece of land irrespective of the rights and wishes of the natives of this land, which have consistently been dismissed as irrelevant. Above everything else, what Palestinians are striving to achieve is their inalienable right to equal humanity.

RELATIVE HUMANITY

I define relative humanity as the belief that certain human beings, to the extent that they share a common religious, ethnic, cultural or other similarly substantial identity attribute, lack one or more of the necessary attributes of being human, and are therefore human only in the relative sense, not absolutely, and not unequivocally. Accordingly, such relative humans are entitled to only a subset of the otherwise inalienable rights that are due to "full" humans.

Subscribing to such a belief or committing acts that are motivated by it can be termed relative-humanization.

RELATIVE HUMANITY IN ZIONIST THOUGHT AND PRACTICE

To kill the children they fractured their heads with sticks. There was not one house without corpses. The men and women of the villages were pushed into houses without food or water. Then the saboteurs came to dynamite the houses. One commander ordered a soldier to bring two women into a house he was about to blow up. [. . .] Another soldier prided himself upon having raped an Arab woman before shooting her to death. Another Arab woman with her newborn baby was made to clean the place for a couple of days, and then they shot her and the baby. Educated and well-mannered commanders who were considered "good guys" [. . .] became base murderers, and this not in the storm of battle, but as a method of expulsion and extermination. The fewer the Arabs who remain, the better. [4]

This is part of a testimony of an Israeli soldier who witnessed a massacre in a Palestinian village in 1948.

Although massacres were only an extreme measure deployed to reach its ultimate objective of uprooting Palestinians, Israel's very existence has always been premised upon displacing as many natives of Palestine as possible, through various other means, to clear the land for Jewish settlers from all over the world. Since its creation on the ruins of Palestinian society

during the Nakba -- the catastrophe of Palestinian dispossession in 1947-48 -- Israel, through its army, justice system, parliament and government, and with general complicity from its media, its academic establishment and civil society at large, has obsessively and systematically striven to justify and perpetrate a gradual ethnic cleansing of Palestinians from their ancestral homeland.

At the very core of the rationalization of the expulsion of the Palestinians lies an entrenched belief in the insignificance, or altogether worthlessness, of their rights, needs and aspirations. The Balfour Declaration, which formalized British support for the establishment of a "national home for the Jewish people" in Palestine, was the classic example of relative-humanization. Balfour wrote:

The four Great Powers are committed to Zionism. And Zionism be it right or wrong, good or bad, is rooted in age-long traditions, in present needs, in future hopes, of far profounder import than the desires and prejudices of the 700,000 Arabs who now inhabit that ancient land.[5]

I shall give three specific cases of Zionist relative-humanization of Palestinians, corresponding to the three sectors of the people of Palestine: Palestinian refugees; Palestinians under occupation in the West Bank and Gaza; and Palestinian citizens of Israel.

Needless to say, Israel's perception and treatment of the Palestinians as lesser beings is not unique. An analysis of past colonial experiences in any other country will display more or less the same tendency. I shall focus on Israel here primarily since it is the last colonial fortress in today's world and because despite it being so it is still paraded in the Western mainstream as "the only democracy in the Middle East."

ISRAEL AND PALESTINIAN REFUGEE RIGHTS

Far from admitting its guilt in creating the world's oldest and largest refugee problem, Israel has systematically evaded any responsibility, by resorting to an array of evolving arguments. Most peculiar in the mainstream Israeli discourse about the "birth" of the state is the near total denial of any crime. Israelis regard their destruction of Palestinian society and dispossession of the Palestinian people as Israel's "independence." Even committed Israeli leftists often grieve over the loss of Israel's "moral superiority" after occupying the West Bank and Gaza in 1967, as if prior to that Israel was as civil and law-abiding as Finland! In a classic self-fulfilling prophecy, Israelis have yearned for being a normal state to the extent that they believed it is.[6]

Manipulating the dark legacy of the Holocaust, Israel has premised its rejection of Palestinian refugee rights on the theory that Jews are unsafe among Gentiles and must therefore live in a state with a dominant Jewish character that is to be sacredly maintained, regardless of international law and irrespective of the human and political rights of the displaced natives of the land on which this state was erected. No other country in the world today can get away with a similarly overt, racist attitude about its right to ethnic purity.

But why do Palestinians insist on unearthing the buried past, one might ask? Why can't they heed the impassioned plea of Amos Oz, a prominent intellectual on the Israeli left, who tells them: "This is time for compassion, not for historical accounting and not for blaming?" [7]

Ignoring for the moment the typical patronizing attitude betrayed by the likes of Oz, Palestinian refugees, like refugees the world over, simply desire to live in peace in their own land, the only place on earth they can call home. This profound attachment to a place is a distinctive human attribute that cannot be reduced to simple, rational daily life goods that every human cares to enjoy.

Another part of the answer to Amos Oz' disingenuous question can be found in the inspiring success of Jewish refugees in their struggle for restitution and repatriation to Germany, Poland and other countries from which Jews were expelled during World War II.

The following example reported in Ha'aretz is singularly indicative of moral inconsistency on the refugee rights issue:

More than five centuries after their ancestors were expelled from Spain, Jews of Spanish origin […] called on the Spanish government and parliament to grant them Spanish nationality... Spain should pass a law 'to recognize that the descendants of the expelled Jews belong to Spain and to rehabilitate them,' said Nessim Gaon, president of the World Sephardic Federation. […] Some Sephardic Jews have even preserved the keys to their forefathers' houses in Spain. [8]

Refusing to treat Palestinian refugees by the same standards has been the clearest indication of the moral collapse of all shades of the official Israeli left. When it comes to refugee rights, the left in Israel makes the xenophobic right in Europe sound as moral as Mother Teresa. And of course in our case, the refugees as the natives of the land, not some immigrants from remote, impoverished locations. In the early stages of the current *intifada*, self-proclaimed peaceniks, including Israel's top writers, upheld an unambiguous position on this matter in large advertisements placed in

several newspapers categorically rejecting the right of return because it would challenge the Jewish majority. [9]

Yossi Sarid of the leftist Meretz party termed it "suicidal." The relatively left-leaning former foreign minister, Shlomo Ben-Ami, acknowledged some justice in the Palestinian demand for this right, but quickly offered the Palestinian leadership a sobering choice between two options: "justice or peace."[10]

Faced with such manifest inconsistency, Israel and its apologists felt compelled to come up with creative solutions that undermine the rights of Palestinian refugees.

University of Maryland scholar Jerome Segal suggested controlling the "rate of returning refugees" so as to maintain "the character of Israel as a Jewish State." In language reminiscent of passé racialist ideology, Segal also proposed making a distinction between older and younger refugees, the former being "less threatening," mainly because they are "well past childbearing age." [11]

A more creative attempt was presented by Danny Rabinowitz, who suggested "dropping the definite article 'the' " before the phrase "right of return" in order to sway that right from the "maximalist" interpretation that is demanded by international law. [12]

Perhaps one of the most recent "creative" ideas on how to literally get around the problem comes from former US diplomat Robert Malley and former advisor to the Palestinian delegation to Camp David II, Hussein Agha, who admit that their primary objective is to avoid "calling into question Israel's Jewish identity." The way to do that, they argue, is to convince the Palestinians that their original homes and lands "either no longer exist or are now inhabited by Jews." Therefore, they had better accept to "return to the general area where they lived before 1948 […] among people who share their habits, language, religion and culture -- that is, among the current Arab citizens of Israel."

Then, according to this scheme, "Israel would settle the refugees in its Arab-populated territory along the 1967 boundaries. Those areas would then be included in a land swap and end up as part of a new Palestinian state."[13]

The mere graveness of the Palestinian dispossession experience, coupled with the majority percentage of refugees and their overwhelming insistence on exercising their right to return have made the issue of return the litmus test of morality for anyone suggesting a just and enduring solution to the Palestinian-Israeli conflict. Moral and legal rights aside, the rejection of that right guarantees the perpetuation of conflict.[14]

Despite the above, one must not deny that the right of return of Palestinian refugees does contradict the requirements of a negotiated two-state solution, since such a solution necessitates Israel's consent, and that will never come by.

It has nothing to do with the merits or skills of the Palestinian negotiators, as lacking as they may have been, but rather with a staggering imbalance of power that allows an ethnocentric and colonial state to safeguard its exclusivist nature by dictating conditions on a pathetically weaker interlocutor. This is precisely why the right of return cannot really be achieved except in a one-state solution, adopted by Palestinians and conscientious Israelis and imposed on Israel by the international community when conditions are ripe.

Advocating non-violent forms of resistance, such as boycott, divestment and sanctions, towards establishing a secular democratic state can gain crucial international backing, turning Palestinian weakness into strength and transforming the conflict into a non-dichotomous struggle for freedom, democracy, equality and unmitigated justice. South Africa's model has to be tapped into for inspiration in this regard.

ISRAEL AND PALESTINIANS UNDER ITS OCCUPATION

Perhaps nothing captures the immense injustice of the occupation as much as Israel's colonial Wall, built mostly on occupied territory, and condemned as illegal by the International Court of Justice at the Hague in July 2004. Despite the Wall's grave repercussions on Palestinian livelihood, environment, and political rights, a near total consensus[15] exists amongst Israeli Jews in its support.

Several Israeli official and non-governmental bodies, however, were overly concerned about the adverse effects this Wall might have on animals and plants. But since very few Israelis have made any fuss about their army's systematic and massive destruction of hundreds of thousands of Palestinian-owned olive trees, palm trees, groves and vineyards, [16] one must conclude, then, that the concern of those Israeli greens is restricted to Israeli plants.

The former Israeli environment minister, Yehudit Naot, protested the wall, saying:

The separation fence severs the continuity of open areas and is harmful to the landscape, the flora and fauna, the ecological corridors and the drainage of the creeks. The protective system will irreversibly affect the land resource and create enclaves of communities that are cut off from their surroundings. I certainly don't want to stop or delay the building of the fence, because it is essential and will save lives.... On the other hand, I am

disturbed by the environmental damage involved. Therefore, what remains is to do the maximum to save what can possibly be saved. [17]

Her ministry and the Israel Nature and National Parks Protection Authority mounted diligent rescue efforts to save an affected reserve of irises by moving it to an alternative protected area. They've also created passages for animals and enabled the continuation of the water flow in the creeks.

Still, the spokesperson for the parks authority complained:

The animals don't know that there is now a border. They are used to a certain living space, and what we are concerned about is that their genetic diversity will be affected because different population groups will not be able to mate and reproduce. Isolating the populations on two sides of a fence definitely creates a genetic problem. [18]

While so attuned to the welfare of wild flowers and foxes, Israel treated Palestinian children as dispensable creatures. Professionally-trained sharpshooters fatally targeted them in minor stone-throwing incidences. For instance, medical sources[19] and human rights organizations, including Physicians for Human Rights, have documented in the first stage of the current Palestinian *intifada* a pattern of targeting the eyes and knees of Palestinian children with "clear intention" to harm.[20] Tel Aviv University professor Tanya Reinhart writes, "A common practice [among sharpshooters] is shooting a rubber-coated metal bullet straight in the eye -- a little game of well-trained soldiers, which requires maximum precision." [21]

And when there was no stone-throwing incident to hide behind, Israeli soldiers had to provoke one. The veteran American journalist Chris Hedges exposed [22] how Israeli troops in Gaza had methodically provoked Palestinian children playing in the dunes of southern Gaza in order to shoot them. He writes:

Children have been shot in other conflicts I have covered -- death squads gunned them down in El Salvador and Guatemala, mothers with infants were lined up and massacred in Algeria, and Serb snipers put children in their sights and watched them crumple onto the pavement in Sarajevo -- but I have never before watched soldiers entice children like mice into a trap and murder them for sport.

Pregnant women did not fare any better than children in the treatment they received, particularly at the hundreds of roadblocks that litter the occupied West Bank. Rula, a Palestinian woman, was in the last stages of labour. Her husband, Daoud, could not convince the soldiers at a typical military checkpoint to let them through to meet the ambulance that was held up on the other side. After a long wait, Rula could no longer hold it. She started

screaming in pain, to the total apathy of the soldiers. Daoud described the traumatic experience to Ha'aretz's exceptionally conscientious reporter Gideon Levy, saying:

Next to the barbed wire there was a rock [… . My wife started to crawl toward the rock and she lay down on it. And I'm still talking with the soldiers. Only one of them paid any attention, the rest didn't even look. She tried to hide behind the rock. She didn't feel comfortable having them see her in her condition. She started to yell and yell. The soldiers said: `Pull her in our direction, don't let her get too far away.' And she was yelling more and more. It didn't move him. Suddenly, she shouted: `I gave birth, Daoud! I gave birth!' I started repeating what she said so the soldiers would hear. In Hebrew and Arabic. They heard. [23]

A moment later, Rula later shouted*: "The girl died! The girl died!"* Daoud, distraught and now fearing for his wife's own life, was forced to cut the umbilical cord with a rock. A spokesperson of the Israeli NGO Physicians for Human Rights called such treatment of pregnant women "routine terrorism."

ISRAEL AND ITS OWN ARAB – PALESTINIAN CITIZENS

Israel might not be unique in racially discriminating against its national minority. But it is certainly unique in its remarkable and sustained success -- so far -- in getting away with it, projecting a false image of enlightenment and democracy. At the core of Israel's distinct form of apartheid lies a deep-rooted view of the Palestinian citizens of the state not just as an undesirable reminder of the "original sin," [24] but also as less human.

Racial discrimination against them in every vital aspect of life, from education to health to land ownership, remains the rule. In fact, advocating comprehensive and unequivocal equality between Arabs and Jews in Israel has become tantamount to sedition, if not treason. Most Israeli Jews oppose full equality with the Palestinian citizens of Israel, and a staggering majority believes that Arabs should be "encouraged to emigrate." [25] Israelis of all walks of life are haunted by fear of the so-called "Arab demographic threat."

In a stark reflection of this racist obsession with demographic domination, the Israel Council for Demography was reconvened in 2002 to "*encourage the Jewish women of Israel -- and only them -- to increase their child bearing,*" writes Gideon Levy in Ha'aretz. This prestigious body, he further explains, which comprises top Israeli gynaecologists, public figures, lawyers, scientists and physicians, will mainly focus on how to increase the ratio of Jews to Palestinians (Muslim and Christian) in Israel, by employing "*methods to increase the Jewish fertility rate and prevent abortions*." [26]

One conscientious Israeli who is revolted by all this language of demographic control is Dr. Amnon Raz-Krakotzkin of Ben-Gurion University, who says: "*It's frightening when Jews talk about demography.*" [27]

Even in cancer research, [28] racial discrimination is strongly manifested. In June 2001, the Health Ministry published a map of the geographical distribution of malignant diseases in Israel during the years 1984-1999. The detailed report presents data about malignant diseases in communities with more than 10,000 residents. The report did not include a single Arab community in Israel, with the exception of Rahat. When asked why, Ministry official resorted to the ubiquitous excuse of "budgetary problems." But why is this research particularly important? Well, because in Israel only when a correlation is shown between the presence of polluting sites and the incidence of malignant disease is it possible to prevent installation of new hazards, or demand tighter environmental standards. By intentionally omitting Arab towns in its extensive cancer mapping, the Health Ministry has indirectly given a green light to polluters to relocate to Arab towns. The results of such health apartheid are ominous.

In the past three decades the rate of malignant diseases in the Arab population has risen by 97.8 percent among men, and 123 percent among women, as opposed to a rise of 39.8 percent for men and 24.4 percent for women in the Jewish population. A spokesperson for the NGO Centre Against Racism commented: "*The report has produced two different groups. One, an overprivileged group, whose lives are dear to the state and to the Health Ministry; a second, whose lives are of no importance to the state.*"

WHY ?

In order to be able to envision reconciliation and a shared, peaceful future in a single, democratic state we must first answer a key question: why do Israelis treat Palestinians the way they do? Ignorance can be ruled out at once since most Israelis serve in the occupation army and have unfettered access to news media. Israelis know exactly what is going on, but most either cheer the occupation army on, as many polls have shown, or at the very least turn their heads and minds the other way in utter apathy.

Zionist thinker Ahad Ha'am had one explanation for this relative humanization of Palestinians in the formative stage of the Zionist conquest of Palestine. He described the anti-Arab attitude of the Jewish settlers who came to Palestine to escape repression in Europe, long before Israel was created, as follows:

Serfs they were in the lands of the Diaspora, and suddenly they find themselves in freedom [in Palestine]; and this change has awakened in them an inclination to despotism. They treat the Arabs with hostility and cruelty, deprive them of their rights, offend them without cause, and even boast of these deeds; and nobody among us opposes this despicable and dangerous inclination. [29]

Psychology notwithstanding, two possible explanations -- not necessarily mutually exclusive -- may be put forth to explain the general Israeli acceptance of atrocities against Palestinians:

(1)   Such crimes are accepted as a legitimate weapon in the "demographic war." As the former far-right cabinet minister Benny Elon once advised the occupation army, "*make their life so bitter that they will transfer themselves willingly.*" [30]

(2)   They are based on an entrenched perception of Palestinians as less human, nourished by a racist colonial tradition and rising Jewish fundamentalism.

I shall focus now on the latter factor.

JEWISH FUNDAMENTALISM – PART OF THE REASON

It is commonplace to read about Islamic fundamentalism and its militancy, anachronism and intrinsic hate of "the other." We are also hearing much more now about the racist lunacy of some fundamentalist Christian sects in the American south. Jewish fundamentalism, however, is still a taboo issue that hardly ever gets mentioned at all in the west for reasons that are beyond the scope of this presentation. However, since Israel is becoming "*extremist by temperament, racist in practice, [and] increasingly fundamentalist in the ideology that drives it,*" [31] as the veteran British journalist David Hirst puts it, it is incumbent to scrutinize this ideology's influence over the conflict.

Israel Shahak has traced the roots of Israeli public justification for killing Palestinians, for instance, to the tenets of Jewish Law, or Halacha. As a case study, he examines the 1953 massacre of Qibya, [32] where innocent children, women and elderly were butchered. Qibya, which incidentally was committed by an elite Israeli military unit led by Ariel Sharon, was justified by authoritative religious figures in Israel as a Halachic "war of revenge." In such a war, explains Rabbi Shaul Israeli:

[T]here is absolutely no obligation to take precautions during warlike acts in order that non-combatants would not be hurt, because during a war both the righteous and wicked are killed. But the war of revenge is based on the example of the war against the Midianites in which small children were also executed, and we might wonder about this, for how they had sinned? But we

have already found in the sayings of our Sages, of blessed memory, that little children have to die because of the sin of their parents. […] Every calamity and hurt that happens to the enemies, their allies and their children from such actions is caused by them and is [merely] the reward of their sins. [33]

More recently, Rabbi Ginsburgh, [34] a prominent and outspoken leader of the powerful Lubavitch Hassidic sect, defended the 1994 massacre of Muslim worshippers in Al-Ibrahimi mosque in Hebron, saying:

"*Legally, if a Jew does kill a non-Jew, he's not called a murderer. He didn't transgress the Sixth Commandment: Thou shall not murder. This applies only to Jews killing Jews.*"

In an interview with Ha'aretz, Ginsburgh further explains this aspect of Jewish law, rhetorically asking: "*If a Jew needs a liver, can you take the liver of [an] innocent non-Jew passing by to save him?*" To which he responds: "*The Torah would probably permit that. […] There is something infinitely more holy and unique about Jewish life than non-Jewish life.*" When Ha'aretz approached Orthodox rabbis to challenge Ginsburgh's interpretation, none of them came forth.

Incidentally, it is common nowadays for Israeli army spokespeople to justify killing Palestinians by saying that they "threatened human life." [35] Not soldiers' lives, not Israeli lives, but human life. One cannot escape the implication that the alleged sources of the threat are not exactly eligible to be called human in the army's common diction.

IDENTITY, RIGHTS AND ETHICS

How then can we stop the cycle of victimization?

If a group of humans is viewed as only, or predominantly, possessing a group identity, this gives rise to a view of the world as a domain of separate, mutually-exclusive spheres, each representing a distinct identity with clear borders. In cases of oppressive conflicts between two ethnic, national or religious groups, a strict dichotomy often separates the respective collective identities. In such a state of opposition, whatever is common between the two dichotomous subjects may be ignored, marginalized, or simply forgotten.

Is the dichotomy, then, a cause or an effect of the oppression in question?

If the dichotomy is regarded strictly as a cause of the conflict, efforts are focused on challenging the prevailing or the established forms for defining identity. Exploring inter-group commonalities or attributes that are shared

across the subjective border lines becomes crucial. Precedence, in this case, is given to conceptual change.

If on the other hand the dichotomy is viewed exclusively as a result of the conflict, struggle to change the concrete reality on the ground -- i.e., the actual experiences of the subjects involved in the conflict -- is given priority, with the hope that it would affect a corresponding flux in intra-group awareness, hence in promoting the prospects for inter-group compromise.

The question can thus be reposed as follows: Which should take precedence: reflection or action, to use Paulo Freire's terminology?

The above arguments and the question raised, themselves, tend to dichotomize reality and conceptualization, presenting them as mutually-exclusive; a different approach is to examine the interaction between the two, their dialectical relation, which makes each of them cause and effect, simultaneously. What varies is the degree of relevance of each in a given time-space context. From this viewpoint, there is a need to explore a process of de-dichotomization that takes into account the corporal as well as the conceptual dimensions of the conflict between the two identities. However, there are ethical implications that should not be ignored even in such a dialectical approach.

In conflicts involving oppression and injustice, in particular, this notion of de-dichotomization is put to a crucial test of morality:
(A) If de-dichotomization takes place in perception alone, then it may be accused of complicity since, for all intents and purposes, it advocates a change in the "consciousness of the oppressed, not the situation which oppresses them", as Simone de Beauvoir perceptively remarks. The inherently contradictory identities of the oppressor and oppressed cannot find a moral middle ground. So long as the relation of oppression obtains, only coercion, submission and injustice are possible outcomes.
 (B) If de-dichotomization is sought only in action aimed at fighting the oppressive relation, without a corresponding conceptual change, it may lead to role interchange, or any other form of revenge. Once the oppressed decide to pursue the path of revenge, far from ending the relationship of oppression, they merely interchange roles with the oppressor, while maintaining a relationship of oppression. So long as the oppressed can only see the "other" as devoid of all attributes except being oppressor, they cannot possibly challenge the dichotomy of oppressor-oppressed; they can only reverse it.

Ethical de-dichotomization between Palestinians and Israelis, consequently, ought to be pursued in praxis. That is in reflection and action, conceptualizing the relations between Palestinian-Arabs and Israeli Jews in

the process of undoing the injustice and in the state after the causes and manifestations of oppression have been overcome. Human identity, in this case, is recognized not as a set of static properties, but rather as a domain of attributes that are ever in flux, with one particular attribute being constantly present: humanness.

NEW HORIZONS

Like any other people on Earth, the Palestinians do not accept injustice as fate. The entire master-slave relationship that has so far prevailed is morally intolerable and practically unsustainable. Israel, as an exclusivist and colonial state, has no hope of ever being accepted as a normal or legitimate state or forgiven by its victims.

On the other hand, and despite the pain, the loss and the anger which 57 years of oppression have undoubtedly engendered in them, Palestinians have an obligation to distinguish between justice and revenge, for one entails an essentially moral de-colonization, whereas the other descends into a vicious cycle of immorality and hopelessness. As the late Brazilian educator Paulo Freire writes:

Dehumanization, which marks not only those whose humanity has been stolen, but also (though in a different way) those who have stolen it, is a distortion of the vocation of becoming more fully human. [The] Struggle [for humanization] is possible only because dehumanization, although a concrete historical fact, is not a given destiny but the result of an unjust order that engenders violence in the oppressors, which in turn dehumanizes the oppressed. […] In order for this struggle to have meaning, the oppressed must not, in seeking to regain their humanity (which is a way to create it), become in turn oppressors of the oppressors, but rather restorers of the humanity of both. [36]

Rejecting relative humanity and insisting on ethical consistency, I believe that the most moral means of ending this oppression and restoring the humanity of both oppressed and oppressor is to establish a secular democratic state between the Jordan and the Mediterranean, where Palestinian-Arabs (both Muslim and Christian) and Israeli-Jews can enjoy equal citizenship as equal humans with equal human rights. Only such a state can reconcile the seemingly irreconcilable: the inalienable, UN-sanctioned rights of the indigenous people of Palestine to self-determination and the internationally accepted rights of Israeli Jews to live in peace and security after justice has prevailed and in accordance with international law.

A truth and reconciliation committee, along the lines of the South African model, will have to be formed to that end, not just to account for the injustices that occurred during and since the Nakba, and to impartially

arbitrate conflicting demands and claims, offering reasonable and morally sound solutions to resolve them, but also to transform what is bound to be an initial stage of mere resignation to the new reality to an active process of nourishing mutual understanding and common development and progress, anchored in equal humanity and, accordingly, equal rights.

The new Palestine should:
(1)   First and foremost allow and facilitate the return of and compensation for all the Palestinian refugees, as the only ethical restitution acceptable -- by the refugees themselves, as required by international law -- for the injustice they've endured for decades. Such a process must uphold at all times the moral imperative of avoiding the infliction of any unnecessary suffering on the Jewish community in Palestine. International law and universal moral principles ought to be scrupulously abided by in this regard. Historical precedents can also be a source of inspiration for such a complex and sensitive repatriation;
(2)   Grant full, equal and unequivocal citizenship rights to all the citizens, Jews or Arabs;
(3)   Recognize, legitimize and even nourish the cultural, religious and ethnic particularities and traditions of each respective community.

Israelis should recognize this moral Palestinian challenge to their colonial existence not as an existential threat to them but rather as an magnanimous invitation to dismantle the colonial character of the state, to allow the Jews in Palestine finally to enjoy normalcy, as equal humans and equal citizens of a secular democratic state -- a truly promising land, rather than a false Promised Land. Only then will Balfour's racist legacy be properly buried with him.

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BAD NEWS FROM ISRAEL: A SUMMARY

Mike Berry

TV news is the main source of information for about 80 per cent of the population. Yet the quality of what they see and hear is so confused and partial that it is impossible to have a sensible public debate about the reasons for the conflict or how it might be resolved. This is the conclusion of a major new study by the Glasgow University Media Group which for the first time brought journalists, academics and ordinary viewers together in research groups to study the influence of news on public understanding. Over 800 people were interviewed and questioned and the researchers examined around 200 news programmes. Senior journalists told researchers that they were instructed not to give explanations- the focus was to be on hot live action. As Paul Adams, the BBC defence correspondent, put it 'it's a constant procession of grief, its covered as if it's a very large blood feud, and unless there's a large amount of blood, it's not covered.' George Alagiah stressed the problem of ratings and the current belief in the BBC that the attention span of viewers is about twenty seconds:

In-depth it takes a long time but we're constantly being told that the attention span of our average viewer is about twenty seconds and if we don't grab people- and we've looked the figures- the number of people who shift channels around in my programme now at six o'clock, there's a movement of about three million people in that first minute coming in and out.

The result of this approach is that there is almost nothing on the news about the history or origins of the conflict and viewers are extraordinarily confused about this. Many believed that the Palestinians were occupying the occupied territories or that it was basically a border dispute between two countries who were trying to grab a piece of land which separated them. The great bulk of those we interviewed had no idea where the Palestinian refugees had come from and some suggested Afghanistan, Iraq or Kosovo. We also interviewed media and journalism students from the USA and less than a third of these knew that the Israelis were occupying the occupied territories and that the settlers were Israeli.

The history of the Palestinian refugees is contested but some prominent Israeli historians such as Professor Avi Shlaim have given documented accounts of how the Palestinians lost their homes and land. He argues that from April 1948 the military forces of what was to become Israel had embarked on a new offensive strategy which involved destroying Arab villages and the forced removal of civilians. The intention was to clear the interior of the future Israeli state of what were seen as potentially hostile 'Arab elements'. As he writes:

The novelty and audacity of the plan lay in the orders to capture Arab villages and cities, something [they] had never attempted before... Palestinian society disintegrated under the impact of the Jewish military offensive that got underway in April, and the exodus of the Palestinians was set in motion...by ordering the capture of Arab cities and the destruction of villages, it both permitted and justified the forcible expulsion of Arab civilians. (Shlaim, 2000: 30)

He also notes how the displacement of the Palestinians and its consequences were clearly acknowledged by Moshe Dayan, one of the most prominent of Israel's military leaders and politicians. Speaking in 1955 at the funeral of an Israeli, killed by Arab insurgents, Dayan commented:

What cause have we to complain about their fierce hatred for us? For eight years now they sit in their refugee camps in Gaza, and before their eyes we turn into our homestead the land and villages in which they and their forefathers have lived. (quoted in Shlaim, 2000: 101)

The Palestinian view was indeed that they had been forced from their land and homes in 1948. They had then to live as refugees in countries such as Lebanon, Syria, Jordan and on the West Bank (of the Jordan River) and the Gaza Strip. There followed a series of conflicts and at times, outright war between Israel and its Arab neighbours. The most significant of these conflicts was perhaps the 1967 (Six Day) War. In this, Israel occupied the West Bank and East Jerusalem (which had been under the control of Jordan), the Gaza Strip (which had been under the control of Egypt) and the Golan Heights (which were Syrian). This occupation brought many Palestinian refugees under Israeli military control and was

bitterly contested. Jerusalem as a religious centre for both Muslims and Jews became a major point of conflict.

The Israelis also built settlements in the newly occupied areas of Gaza and the West Bank and they exploited natural resources, in particular taking control of the vital resource of water. This is an interesting topic for media analysis since it clearly has an extraordinary visual impact on the areas in which Palestinians and Israelis live. This is described in a report by Suzanne Goldenberg in The Guardian. She notes of the Gaza Strip that it is the most densely populated place on Earth. As she writes:

One point one million Palestinians live in a mere two–thirds of Gaza's three hundred and sixty square kilometres, penned into wretched refugee camps or blocks of flats...all are hemmed into the claustrophobic Strip by an electric fence on one side and the settlements on the other. Meanwhile six thousand Jewish settlers and army installations occupy the rest – a full one-third of Gaza. That includes a fair chunk of the coastline and the underground aquifers in an area that is mostly sand dune and hard scrabble.

She then describes the visual difference that control of the water brings:

The contrast between the communities could not be crueller. Inside the Jewish settlements, residents live in red-roofed bungalows, surrounded by well watered land. There are community centres, swimming pools and hot houses producing cherry tomatoes and lettuce. The Palestinian world outside is bone-dry and dusty, narrow lanes crammed with donkey-carts, children and push-carts. (The Guardian, 16 June 2001)

If a print journalist can describe a scene so vividly, then how did the ultimate visual medium of television portray it? In practice we found it was virtually absent from the coverage. Although TV journalists often went to settlements there were no comparisons made as above, linking the disparity of resources to the Israeli occupation. The issue of water was in fact barely mentioned. On ITV, there was a brief reference to it in this account of the issues that were frustrating a peace settlement:

*And there are other seemingly mundane issues like **access to water** which are so important in the Middle East and that are still*

*eluding negotiators. (ITV early evening News, 2 October 2000 –
our emphasis)*

It is not surprising then, that in our audience research groups over
90% of the people in them had no idea that this was an important
issue. The perception which audiences had of Israeli settlers in the
occupied territories was also significant. On the news as we have
seen, the settlers were presented as vulnerable and under attack.
Yet the settlements have a key role in the occupation. As the
Israeli historian Avi Shlaim put it, they were part of a policy of
exerting strategic and military control, which for example involved
'surrounding the huge Greater Jerusalem area with two concentric
circles of settlements with access roads and military positions'
(Shlaim, 2000: 582) Many were built on hilltops to give them a
commanding position with the explicit encouragement of Ariel
Sharon. Established settlements were strongly fortified and their
occupants were often heavily armed. One of the very few people
in the focus groups who knew this actually wrote that: 'the word
settler is a euphemism' (male teacher, Paisley). But it was more
common to see the issue in the terms adopted by the news. The
'occupied territories' were not seen as having been subject to
military occupation and the settlements were not understood as
being part of this. The army was there simply to keep the
Palestinians back:

*Moderator: Do you get the impression watching the news that it is
a military occupation by Israel?*

*Male Speaker: A military occupation? No, it's to give the Israelis
land to work on, to live on and the army backs them up and keeps
back the Palestinians in my opinion. (Middle-class male group,
Glasgow)*

Another participant described his impression of TV news:

*I think you sometimes get the impression from the news that these
are people who happen to want to live there…and the military
backup is in pursuit of their peaceful wish to just go and live there,
and I think that's the impression I get from the news, rather than
that it is a military occupation. (Teachers' group, Paisley)*

With this perception of the conflict it is not hard to see how the Palestinians appear as the aggressors. As a Glasgow student put it:

I had no idea why they were fighting, I just thought it was the Palestinians trying to claim more land. I didn't know it was kind of like back [had a history]. I knew it was disputed but I didn't know the Israelis had taken land.

Two other students from Glasgow described the influence on their beliefs of seeing a documentary by John Pilger, which showed the power and reach of the settlements:

First Speaker (Male): The all-Jewish roads, I'd not seen that before.

Second Speaker (Female): It made it look much more like an invasion and not just a bunch of poor benighted people trying to find somewhere to live.

Even people who were sympathetic to the Palestinians had absorbed the message of the settlers as small embattled communities. A middle-class male from Glasgow described his surprise when he heard that the settlements controlled over 40 per cent of the West Bank:

I had absolutely no idea it was that percentage – I was gob-smacked when I heard it. I saw them as small, embattled and surrounded by hostile Palestinians – that's entirely thanks to watching the television news.

Without history or context, news reports tend to focus on day to day events and in reporting these, there is a strong emphasis on Israeli perspectives. The research found that Israelis were interviewed or reported over twice as much as Palestinians. There were also a large number of statements from US politicians who tend to support Israel. They were interviewed twice as much as even politicians from Britain. The language of the 'war on terror' is frequently featured and journalists sometimes endorse it in their own speech as in this example: 'that attack [by a Palestinian] only reinforced Israeli determination to drive further into the towns and camps where Palestinians live – ripping up roads around Bethlehem as part of the ongoing fight against terror.' (ITV, early evening news 8/3/2002). This report also illustrates a familiar

theme in news coverage whereby the Palestinians are seen to initiate the trouble or violence and the Israelis are then presented as 'responding' or 'retaliating'.

There are very distinct and different perspectives on this conflict which should be represented on the news. The Israeli authorities and much of the Israeli population see the issue in terms of their security and indeed the survival of the state in the face of threats from terrorists and hostile neighbours. They present their own actions as a response or retaliation to attacks. In contrast, the Palestinians see themselves as resisting or responding to a brutal military occupation by people who have taken their land, water and homes and who are denying them the possibility of their own state. The analysis of news content suggests that the first of these perspectives tends to dominate news reporting. Between October and December 2001 for example, on BBC 1 and ITV news, Israelis were said to be 'retaliating' or in some way responding to what had been done to them about six times as often as the Palestinians. Phrases such as 'Israel's retribution', 'Israel responded', 'Israel has hit back', and 'Israel's payback' were commonly used. This pattern of reporting clearly influenced how some viewers understood the conflict. As one young woman put it: 'you always think of the Palestinians as being really aggressive because of the stories you hear on the news…I always think the Israelis are fighting back against the bombings that have been done to them'. Another wrote 'the Palestinians trigger every incident which makes the Israelis retaliate'. It is interesting how closely this language parallels that of the news:

*Palestinian suicide attacks **trigger** more Israeli raids (BBC 1, late news 5/1/2002)*

*The **trigger** for the Israeli offensive was a massacre on the West Bank (ITV early evening news, 13/12/2001)*

There were other differences in the language used on the news to describe the two sides. The word 'terrorist' was used to describe Palestinians, but when an Israeli group was reported as trying to bomb a Palestinian school, they were referred to as 'extremists' or 'vigilantes' (ITV main news and BBC 1 lunchtime news, 5/3/2002). There were also differences in the language used for the casualties of both sides. Words such as 'mass murder', 'atrocity', 'brutal murder', 'lynching', and 'savage cold blooded killing' were

used only to describe the deaths of Israelis but not Palestinians. The study shows these differences in the use of language though detailed comparisons of press and television news coverage of specific events. For example, between the 8th and 11th October 2000, there were a series of reports in the press and on television of attacks on Israeli Arabs by Jewish Israelis, in Tel Aviv, Tiberius, Jaffa and Nazareth. Israeli Arabs make up 20 per cent of the population of Israel. Many believe that they are treated as second class citizens within Israel and in the early days of the intifada they had been reported as protesting / rioting in 'support for their Palestinian cousins' (BBC1 early evening News, 1 October 2000). On the 10th October 2000, the Guardian reported an attack on the Arab community in Nazareth as follows:

In Nazareth, in the heart of Israel, hundreds of Jewish extremists attacked an Israeli/Arab neighbourhood overnight. When the police arrived they fired rubber bullets at the local Arabs – not their assailants, killing two men. (The Guardian, 10 October 2000)

On the same day, the Independent reported attacks in Tel Aviv and Jaffa: 'in the seaside community of Bat Yam, just south of Tel Aviv, two Israeli Arabs were stabbed.' They also reported that 'in nearby Jaffa, three Arab-owned apartments were burned' and that some Jews were chanting 'death to the Arabs' (The Independent, 10 October 2000). On the following day the Guardian reported that: 'mosques and Arab businesses in Tel Aviv were besieged by Jewish mobs in a night of mayhem', and that 'on two consecutive nights this week, Jewish mobs attacked the two hundred-year-old Hassan Bek mosque in central Tel Aviv' and that those who did it were screaming 'death to Arabs' (The Guardian 11 October 2000). On the same day the Independent reported that:

A Jewish mob wrecked one of Israel's most famous restaurants and tried to kill its Arab waiters by blocking them inside and torching the place…outside a young man gazed happily at the mess. "We want to cut all the Arabs throats; we want to kill them all" he said. (The Independent 11 October 2000)

In all, thirteen Israeli/Arabs were reported to have been killed in these events. The Guardian reported that the clashes in Nazareth had been described as a pogrom by an Israeli peace group:

…what is happening in Nazareth today is a pogrom, bearing all the hallmarks which were well known to Jews in tsarist Russia, that is collusion between the racist attackers and police. (The Guardian, 10 October 2000).

The television news reporting of these events was rather muted by comparison. The following references were made within our sample:

Some Israeli civilians are taking matters into their own hands. Last night a Jewish mob attacked a mosque in the city of Tiberius. It seemed to be an act of revenge, following a Palestinian assault on a Jewish holy shrine on the West Bank. (BBC1 early evening News, 8 October 2000)

Some Israelis are taking it upon themselves to respond. In Tiberius on Saturday night a Jewish mob attacked a mosque and beat up Arabs. It seemed to be an act of revenge following a Palestinian assault on a Jewish shrine on the West Bank. Tonight Jews are again attacking Arabs, in the northern city of Nazareth. (BBC1 main News, 8 October 2000)

Inside Israel itself Jews have taken to the streets to show their anger. This is a mosque being attacked in Tiberius last night. (ITV main News, 8 October 2000)

A second Israeli Arab was killed in Nazareth and a Jewish settler died near Nablus in the West Bank. (BBC1 lunchtime News, 9 October 2000)

As the national mood in Israel darkens, these were the rare scenes in Tel Aviv, it may be far removed from the West Bank but even here the conflict is spilling out onto the streets. Two Israeli/Arabs were stabbed and Arab homes were set alight as Jews staged running battles with the police. (ITV lunchtime News, 10 October 2000)

Passions on all sides are still running high. Even in Tel Aviv violence has now hit the streets. These were angry Jews last night looking for Arab victims. (ITV early evening News, 10 October 2000)

Overnight violence flared again inside Israel. In Acre, Israeli/Arabs clashed with the police. (BBC1 lunchtime News, 11 October 2000)

On the following day, two Israeli soldiers were reported on TV news to have been killed by a crowd of Palestinians. According to these reports, four Israeli soldiers in a civilian car were arrested by Palestinian police in Ramallah. The Israelis stated that, they were simply reservists who had taken a wrong turning into the town. The Palestinians believed them to be part of the Israeli undercover units. A crowd gathered outside the police station where they were being held. Some of these Palestinians gained access to the station, where two of the soldiers were then killed and the body of one of these was thrown from a window. The other two soldiers who had survived were later handed over to the Israeli authorities. There are three points to be made about the TV news coverage of these events. The first is that the deaths of the two Israeli soldiers receive over five times as much coverage as that of the thirteen Arabs who had been killed in 'mob' violence. Second, the deaths of the Israeli soldiers are highlighted in the coverage, receiving headlines such as 'Swift retaliation after Israeli soldiers are lynched.' (ITV early evening News, 12 October 2000, quoted above). Third, there is a very clear different in the language used to describe the two sets of events. For example the headline, 'lynch-mob' is not used in relation to the Arab deaths. We can see these very sharp differences in the structure and tone of coverage if we consider the following accounts from our sample, of the deaths of the Israeli soldiers. In this BBC News from the 12th October 2000, a 'frenzied mob' is reported as 'baying for their blood':

*A **frenzied mob** of Palestinians besieging the police station in Ramallah. It was here that several Israeli soldiers had been arrested by Palestinian police and the mob were **baying for their blood**. Eventually they burst into the police station surging through the gates and clambering into the windows. Israel says the soldiers inside were just reservists who lost their way. The Palestinians insist they were members of a plain-clothes undercover unit. Whatever the truth, two of them were about to die. With cameras filming from the outside, young Palestinians could be seen in this window **savagely beating and stabbing soldiers to death**. Victory signs to indicate the deed had been done. The **frenzied crowd could hardly contain their glee**, especially when one of the bodies was thrown down to them from the window. Israel was outraged and promised vengeance. It was almost immediate. Just after noon prayers, Israeli helicopter gun-*

*ships swarmed over Ramallah. People ran for their lives for they knew what was coming. They had incurred the wrath of Israel. From a nearby rooftop we watched wave after wave of rockets rain down on Ramallah. First target the police station where the soldiers had been **so barbarically killed**. (BBC1 main News, 12 October 2000 – our emphasis)*

There are a number of words which were used specifically to describe the deaths of the Israeli soldiers, such as 'atrocity', 'murder', and as we have seen 'lynch-mob' and 'barbarically killed'. None of these were used in our samples for Arab/Palestinian deaths. The following examples are all from the first day on which the deaths of the two soldiers were reported:

*The [Israeli] attack is precise and repeated. Rocket after rocket slams into the police station destroying the very rooms where the **murders** took place... Israel said it would take drastic action and it has, for the **brutal murder** of its soldiers this morning it has now traded a direct assault on the heart of the Palestinian city... The Israelis are saying these are symbolic, if you like, pinprick attacks against, first of all the scene of this morning's **atrocity**.(BBC1 early evening News, 12 October 2000 – our emphasis)*

*Palestinian police seized four Israeli soldiers and took them to a police station, but two were apparently **lynched by a mob**. (ITV lunchtime News 12 October 2000 – our emphasis)*

*This was the trigger [for Israeli attacks]. The **murder** of two Israeli soldiers inside a Palestinian police station in Ramallah. The Palestinian security forces could not keep a **lynch-mob** of their own people at bay. In a first floor room the soldiers were beaten and stabbed to death. Their bodies were later dumped out of this window. (ITV early evening News, 12 October 2000 – our emphasis)*

There is also some discussion of the implications of the killings and a journalist refers to the Israeli view that they are a justification to 'abandon restraint':

*On Monday night Ehud Barak had withdrawn his ultimatum and threat of a crackdown but clearly he felt that the brutal killing of the two soldiers here was a step too far – **justification for***

abandoning restraint. *(ITV early evening New, 12 October 2000 – our emphasis)*

Some might question the uncritical use of the word 'restraint' – since as the previous bulletin had noted 'the violence has left about one hundred people, mainly Palestinians dead' (ITV lunchtime News, 12 October 2000). It is also noteworthy that while the Israeli attacks after the killing of the soldiers are consistently referred to as a 'retaliation' and 'a response', the same links are not made to Palestinian actions. In other words, the killing of the soldiers is not routinely described as a response to the large number of Palestinian deaths. In analysing such points we are not seeking to justify or legitimize any killings in the conflict. But as we will see, such linkages in the structure of coverage are very important in how viewers understand the origins and causes of violence.

The language of 'lynching', 'brutal murder', and 'slaughter' continues over the days which follow:

*This is the Ramallah police station where two Israeli soldiers were **brutally murdered**. (BBC1 lunchtime News, 13 October 2000 – our emphasis)*

*Today they buried one of the Israeli soldiers who was beaten and stabbed to death by a mob of Palestinians and whose **murder** triggered a wave of Israeli reprisals. (BBC1 late News, 13 October 2000 – our emphasis)*

On this BBC bulletin we are then given details of the personal and tragic circumstances of the victim. We are told that 'he married his sweetheart only last week. She is expecting his baby.' The Palestinians are then said to 'show no sign or remorse':

In Ramallah Palestinians have been marching past the police station where the two soldiers died such horrific deaths. It has now been reduced to a pile of rubble by Israeli gun-ships. But these Palestinians show no sign of remorse. Instead they chant Islamic revolutionary slogans and protest about the Israeli attacks on their town. (BBC1 late News, 13 October 2000)

On the same day ITV news describes the deaths of the soldiers using words such as 'brutal slaying' and 'slaughter' (ITV lunchtime News, 13 October 2000). A later bulletin also notes that:

It was here yesterday with the mob violence that the Israeli/Palestinian conflict reached its lowest moment, exposing a raw and brutal enmity. (ITV late News, 13 October 2000)

It is perhaps significant that the 'lowest moment' in the conflict is seen as with the mob violence which killed Israeli soldiers rather than with the killings of Israeli Arabs or with other Palestinian deaths. People on both sides of the conflict suffered terrible fates, but there were some clear differences in the manner in which these were described on the news.

The emphasis on the deaths of Israelis was very marked in the coverage. In March 2002, when the BBC had noted that the Palestinians had suffered the highest number of casualties in any single week since the beginning of the intifada there was actually more coverage on the news of Israeli deaths. This again apparently had a strong influence on the understanding of viewers and only a minority questioned in these samples knew that Palestinians had substantially higher casualties than the Israelis. This viewer believed that the Israelis had suffered around five times as many casualties as the Palestinians:

Well basically on the news coverage they do always seem to make the Palestinians out to be the ones who are the suicide bombers, so its like, I would imagine its going to be more casualties on the Israeli side, but its purely from television, that's where I'm getting my info from, that's how its been portrayed to me on television.

These differences in the consequences of the conflict for both sides and the actions and rationale of those involved can have measurable influences on public understanding. The 'gaps' in public knowledge closely parallel those in the news. The Palestinian perspective that they have lost their homes and land and were living under a military occupation was effectively absent. It is perhaps not surprising then that some viewers believed that they were simply 'around' the area, being aggressive and trying to take land from the Israelis. As one put it:

The impression I got was that the Palestinians had lived around that area and now they were trying to come back and get some more land for themselves...I didn't realise they had been driven out of places in wars previously.

In another focus group, a speaker commented:

I just thought it was disputed land, I wasn't under the impression that the Israeli borders had changed or that they had taken land from other people. I just had the impression it was a nice piece of land, that both, to put it simplistically, that they were fighting over and I thought it was more a Palestinian aggression than it was an Israeli aggression.

Moderator: Did anybody else see it this way? (Five out of ten people in this group assented)

One of the difficulties in giving historical background and context is simply that the area is contested and extremely controversial. Journalists spoke to us of the pressures that they were under and of the amount of hate mail and abuse that they received particularly if their reports were deemed to be critical of Israel. Lindsey Hilsum spoke of the difficulties of reporting in such a contested area:

With a conflict like this nearly every single fact is disputed...I think , 'Oh God, the Palestinians say this and the Israelis say that'...I know it's a question of interpretation so I have to say what both sides think and I think sometimes that stops us from giving the background we should be giving.

Another problem is the number of false and polemical claims that are made about the supposed content of media and the beliefs of audiences. Whilst criticising our work in the London Evening Standard (23/6/2004), Andrew Neil alleged that the population will 'naturally' sympathise with the Palestinians because they are using stones against tanks. If he had time to read the book, as well as to review it, he would have seen that this issue was discussed in the focus groups and the obvious point was made that in Northern Ireland, people with stones fought troops, but not everyone immediately sided with the stone throwers. In another group there was strong support for the idea that the Israeli-Palestinian conflict would be resolved if the parents kept their children in, and stopped

them going out and throwing stones. It all depends on how the conflict is explained and understood. There are more polemical claims about media coverage made in the Jewish Chronicle (25/6/2004) in Britain from Alex Brummer. 'Palestinian speakers' he says, 'have been brilliant at hammering home the message of Israeli occupation', which suggests a rather time challenged reading of our results. He also attacks Arab descriptions of 'massacres' in Jenin in 2002 and claims that 'almost as many Israeli troops perished as Palestinians'. For a city editor of the Daily Mail, he has a strange grasp of numbers. The UN report of 1 August 2002 stated that there were 52 confirmed Palestinian deaths. The number of Israelis was 23. In the Guardian in September 2002, Stephen Pollard claimed that the BBC had 'faithfully reported Palestinian claims of a massacre as fact' (repeated again in the New Statesman (28/06/2004) by Simon Sebag Montifiore and attributed to 'British news organisations'). Yet we found that the BBC had quoted the Palestinian claims alongside counter-claims of the Israelis. They didn't endorse the use of the word 'massacre' about Palestinians, but Israeli views were sometimes endorsed. For example while ITN referred to a Palestinian as coming from the 'beleaguered town of Jenin', the BBC referred to her as from 'Jenin, the target of Israel's most determined efforts to root out potential terrorists'. (12/4/2002). On the following day a suicide bomber who killed nine people was described on the BBC as a 'mass murderer'.

TV journalists are caught in a maelstrom of competing accounts, but they cannot turn away from their duty to inform and explain. There are serious issues raised by a news service which in the end leaves so many people confused and ill informed. The research shows that viewers simply turn away in despair from an endless sequence of violent images and this has the very damaging effect of limiting any serious public debate about how the conflict might eventually be resolved.

Land and Nation: Archaeology, the Rabbis and Zionism. Identity-building from the Myth of the Promised Land to the Reality of the Wall of Infamy

Claudine Dauphin

In memory of A.S., aged twenty-one, neither 'terrorist' nor activist, only a Palestinian,
murdered in cold blood on the doorstep of his village home by one of Sharon's death squads on 1ˢᵗ April 2002, during the siege of Jenin. And in solidarity with his siblings and friends, 'Claudine's boys', stuck without jobs or prospects behind Sharon's Wall of Infamy

Mystic Time: the Past revisited by the Present

In 1949, at the opening in Jerusalem of the Fifth Congress of the Society for the Exploration of Eretz Israel (which later became the Israel Exploration Society), a letter from Mordehai Bentov, Minister of Labour and Construction of the State of Israel, was read out:

'Under arms, the Muses are silent - but not the archaeologists. In the depths of the earth, they discover new paths, the roots which gave birth to the Nation, and they spin the thread of generations. From the ruins, the potsherds and the fragments of a hidden past, they extract the soul/the eternal spirit of Man, who alone can vanquish time',

to which echoed the final address by the Classical scholar Moshe Schwabe:

'The resurrected people derive their strength from their past, from this land on which they lived, and from what was hidden in the soil, in this earth that the people till as they conquer it'.

Taking in immigrants who by then were flocking massively, Israel found in archaeology the cement which was vital for its consolidation as a State with a collective history and a continuum from the election of Biblical Israel as the Chosen People to its last stand against the Romans during the Second Jewish Revolt led in AD 132-135 by Shimon Bar Kochba, 'prince of Israel'. By creating a hero, the kibbutznik Alon, who is also an amateur archaeologist, in his novel *The Murmurs of the Heart* which embodies in a masterly fashion the atmosphere of 1950s Israel, Yehoshua Kenaz emphasized the importance of archaeology at the apogee of the Ben Gurion era:

'At Nahal Hever, near En-Gedi, a cave. Nearby, the remains of the Roman camp. A cave full of skeletons. Apparently of women and children. They had died of hunger during the siege. And next to the skeletons, shoes. Fragments of clothes. Food remains. And a large sherd from a jug bearing an inscription in Hebrew. And all this, as though it had been waiting for us. Until we came to discover it. And now all this bursts out in its fullness. As though this earth, faithfully, had kept it for us. Our roots'.

Fig 1   Harvest Time (1936)

The Rape of the Land: Joshua, the Israelites and the War of Independence

From 1955 onwards, one of the most important centres of Southern Syria and Northern Palestine in the Middle and Late Bronze Ages, Tel Hazor in Northern Galilee, which had been discovered by the British archaeologist John Garstang in 1928, was excavated by Yigal Yadin on behalf of the

Hebrew University of Jerusalem. Yadin's original aim was to undertand better the Biblical period from its artefacts, but from the third and fourth excavation seasons, he focused on the problem of Joshua's territorial conquests. The destruction of the Canaanite city of Hazor in the mid-13th century BC apppeared to Yadin as the definitive proof of Joshua's Conquest (*Joshua* 10: 11-13), in keeping with the model propounded by the 'Father of Biblical archaeology', William Foxwell Albright[1] from the 1920s to his death in 1971, and by his protégé G. Ernest Wright.[2] Disregarding the contradictions of Joshua 11, 10-11 and Judges 4 and 5, Yadin affirmed:

'Archaeology largely confirms that at the end of the Late Bronze Age (13th century BC), the semi-nomadic Israelites destroyed a certain number of Canaanite cities; then, slowly and gradually, they built on the ruins their own sedentary settlements and they occupied the rest of the country'.[3]

This sealed the historical analogy between the Conquest of the Land of Canaan and that of Palestine, which Ben Gurion had been the first to attempt at establishing, Yadin (who had been the main planner of the military operations of the War of Independence, and subsequently Chief of Staff) appearing to Ben-Gourion as a modern Joshua. This parallel, which was naive both in Biblical and archaeological terms, was challenged by Yohanan Aharoni, whose surface surveys in Galilee in the early 1950s had confirmed the German 'peaceful infiltration' model developed in the 1920s and 30s on the basis of Biblical tradition (particularly the *Book of Genesis*, which describes the ancient Israelites as nomadic pastors living in tents), and according to ethnographic studies on the sedentarisation of nomadic pastors in the Middle East. Albrecht Alt established that the colonisation of the Israelite tribes had been a slow and peaceful process.[4] Members of these nomadic tribes who lived in the semi-arid regions of Transjordan had crossed the River Jordan in their quest for water and pastureland following a pattern of annual transhumance and had infiltrated little by little the Canaanite space, finally sedentarising on the better-watered and more fertile hills. It was only when they had become numerous and strong enough, that they attacked the Canaanite cities in order to conquer them.

In 1989, in a seminal article in German on 'Archaeology as a Determining Factor in Israeli Society and Culture' in the Swiss academic journal *Judaica*, the archaeologist and human rights activist, Aharon Kempinski, who until his untimely death in 1994 was the conscience of the Israeli archaeological community, pointed to the rival political concepts concealed behind the opposite approaches of Yadin (under Ben-Gourion's influence) and Aharoni. The latter represented the point of view of the workers' parties which advocated a step-by-step colonisation, a *kibbutz* here, a *moshav* there.[5] Contrarily, Vladimir Jabotinski and the Revisionnists had opted for a speedy conquest and control, a point of view that Ben-Gourion and the 'activists' around him had cynically defended even before 1948.[6]

As interpretation wrestled with tradition in Biblical studies in the heady and politicized 1960s and 1970s,[7] a third model, that of a revolution motivated by religion, internalized the question of the emergence of Ancient Israel. George Mendenhall of the University of Michigan, sought to explain this unique phenomenon by a socio-political process, a peasant revolt against the closely integrated network of Canaanite city-states.[8] His book, *The Tenth Generation: The Origins of the Biblical Tradition*, whose publication coincided with the Yom Kippur War, may also be read as an answer to the violent criticisms aimed at modern Israel, not least General de Gaulle's famous epitomization of a 'domineering and haughty people':

'It was chaos, conflict, war, but we can be certain of one thing: ancient Israel did not win thanks to the superiority of its army nor of its military organisation. Israel has neither expelled nor massively massacred entire populations. The gift of the land simply meant that the old political regimes and their claim to the ownership of the whole country, were transferred into the hand of God Himself' .[9]

A Marxist, liberal Christian and social activist, Norman Gottwald of the University of Berkeley, was the first to apply the sociological approach to the history and religion of Ancient Israel.[10] Animated by the liberating belief in a 'one and only', 'national' deity, Yahweh, and rebelling against a corrupt aristocracy, the Canaanite peasants of the Late Bronze Age and Early Iron Age succeeded in founding a new ethnic and social entity - Ancient Israel.

Fig 2 Maltese Cross & grapes   (5th century AD)

Modern Israel captured the West Bank (renamed 'Judaea-Samaria') in the Six Days' War, but for how long? Surface explorations were immediately launched and published in Hebrew in 1968.[11] The occupation stretching into the 1970s, regional surveys were renewed in 1978 coupled with the excavation of choice sites by the Institute of Archaeology of the University of Tel Aviv on behalf of the Israel Archaeological Survey, this resulting in the recording of 250 Iron Age sites in the central highlands of

Palestine.[12] Stimulated by the Mendenhall and Gottwald theories to seek the origin of the Israelites *within* the society of the country, rather than speculate on invasions, and having integrated the lessons of long term historical cycles demonstrated by Robert B. Coote and Keith W. Whitelam in *The Emergence of Early Israel in Historical Perspective*,[13] Israel Finkelstein traced the occupation of the central hill country from the Late Bronze Age 16th century BC disintegration of permanent settlements to the profit of major sites and the pushing of previously sedentarized peoples towards the 'frontier zones' suitable for pasturage (the Transjordanian plateau, the Jordan Valley, the desert fringe and the hill country) and their nomadization, until the sedentarisation of pastoralists at the end of the 13th century BC in the Early Iron Age I. The Egyptian military campaigns, the economic exploitation of Canaan by Egyptian overlords, the conflicts between Canaanite city-states, droughts, and the pressure exerted by the Sea Peoples, shook the foundations of the political and economic order of Canaan. The inability of farmers to produce grain surplus which they exchanged for animal products supplied by the nomads led the latter (whose specialization in herding was thus threatened) to farm and ultimately settle down at the end of the 13th century or early in the 12th century in the hill country devoid of Canaanites and suited to the combination of cereal crops and pasturage. By the early 10th century, Israelite settlement had reached the coastal plain and clashed with the Canaanite centres.

'As the Israelites became stronger and consolidated into tribal units, they also established...cultic centres, such as Shiloh. The need to join forces in the face of common adversaries...gradually created a sense of national, religious and ethnic awareness among the Israelite population, culminating in the inauguration of the Monarchy and the unification of most of the regions of the Land of Israel into a single sovereign state - for the first time in history'.[14] Archaeological reasoning and historical interpretation had been exchanged for an ideological dream.

Finkelstein's latest book (written with a journalist, Neil Asher Silberman), *The Bible Unearthed: Archaeology's New Vision of Ancient Israel and the Origin of Its Sacred Texts*,[15] was hailed both as revolutionary and iconoclastic - but it is neither. Niels Peter Lemche of the Copenhagen School of so-called 'Biblical Revisionism' (its British counterpart being the 'Sheffield School') rightly points out in a recent article:

'The exodus has a long time ago passed from history into fiction. It never happened. Neither did the conquest ever happen... The empire of David and Solomon believed to have existed in the 10th century BC. is evidently based on a fictional representation of the past. Many things speak in favour of this conclusion. One of them has to do with the status of Jerusalem in the 10th century BC. when Jerusalem was at most a village or a small town'.[16]

While the footlights were brought to bear on the mythical migration of

the Patriarchs (Abraham, Isaac and Jacob), on the epic of Exodus and the legendary conquest of Canaan, which debunked the Israeli claim of sole ownership of the Land by historical right, and thus provided the Palestinians with further counter-arguments, no archaeologist, Biblical scholar or journalist realized the potentially politically damaging implications for the Palestinians of the theory of the local origin of the 'Israelites'. An article in the Israeli newspaper *Ha'aretz* on 29th October 1999 in which Ze'ev Herzog of the Institute of Archaeology of the University of Tel-Aviv presented this theory which he and other colleagues including Finkelstein, had been sitting on silently for a decade, was greeted by shocked protests from the religious extreme right, in particular the West Bank settlers. But - and this is the other side of the coin - in December 1999, in one of the West Bank illegal colonies, Herzog delivered a lecture at the Herzog Teacher Training College of the religious Zionist movement, during which he declared:

'The Jews of Israel do not need the Bible any longer to justify their presence in the Middle East. We are here because we are here, full stop. We do not need excuses anymore: we are "indigenous"'.

Was Ze'ev Herzog aware that Ben Gurion's pet theory of an authentic Biblical people with strong Canaanite roots had finally been 'proven'? Anxious to construct a local history of a people without an Exodus in Egypt and without a Diaspora (*galut*), Ben-Gourion put forward to an assembly of Israeli archaeologists, Biblical scholars and Orientalists who had met at his home in the hope of founding a 'Biblical club', his fundamental hypothesis within the framework of a 'Canaanite' ideology which had developed in the late 1930s and according to which the 'New Israel would have to grow out of the Arab-Semitic ("Canaanite") Near-Eastern space'[17]:

'The people of Israel (or the Hebrews) were born in the country before the time of Abraham and grew amongst the other peoples of Canaan. Their various components were scattered in the south, in the central highlands and in the north. Their spiritual - and perhaps political - centre was in Sichem...To my view, only a few from the most eminent and important families went on exodus to Egypt. But the majority of the Israelites remained in the land, amongst the Canaanites; their language was Hebrew, like the languages of the other peoples of Canaan, Moab and Ammon. From the start, however, they were different from their neighbours: they believed in one only god, "most high God, possessor of heaven and earth" (Genesis 14: 19). The land of Canaan was poor in material and spiritual riches, but the fact that the people of Israel - with their particular belief in One God - lived in it, that fact alone turned this land into an exception' .[18]

The rooting of the 'Israelites' in the hill country between Jerusalem and Jenin, and conversely their absence in the southernmost part of the coastal plain, provide a dangerous justification for Sharon's unilateral pull-out from

the Gaza Strip in order to intensify the colonization of the West Bank, prior to his next step which is all too easily predictable - its annexation. This poses for us archaeologists the problem of the manipulation to political-ideological ends of the patterns which we read on geo-historical landscapes.

Ethnicity: Archaeological Traits and Markers of Separatism

Finkelstein acknowledges the lack of homogeneity of the Iron Age I settlers in the central hill country, a hotpotch of peoples consisting of locals emerging from a pendulum-process over three centuries of sedentarisation, nomadisation, and back to sedentarisaton, foreign elements 'perhaps from the south' (Finkelstein is extremely reluctant to forgo the origin of Israel in Egypt) and even 'from a desert background', and groups previously belonging to Canaanite society in the lowlands.[19] In a recent synthesis,[20] William Dever of the University of Arizona at Tucson, points out that in the Bronze and Iron Ages, Palestine was inhabited by a number of peoples including the ancestors of both the modern Palestinians and Israelis (conveniently glossing over the Khazars converted to Judaism in the 13th century AD, the forefathers of most Central and Eastern European Jews).[21] This scenario may appear as the blissful background to a future 'one state'.

Yet, neither Finkelstein nor Dever let go of the 'Israelites' or 'Proto-Israelites' (as Dever dubs them) as ancestors in a *direct* line of Biblical Israel. Although Finkelstein initially used the term 'Israelite' as a technical shorthand for 'hill country people in process of settling down', he emphasizes the fact that a group of people living in Canaan around 1210 BC was described in the Victory Stele of Pharaoh Merneptah,

Fig 3 Terraced olive groves

successor to Ramses II, as 'Israel'.[22] He enters a circular argument (the characteristics of Israelite settlements must be deduced from Iron Age I sites in the central hill country, especially the southern part, where the identity of the population in the Biblical text is not disputed), and finally retrieves the 'House of Joseph' as the core-group established along the spine of the central hill country, from which many groups fanned out to expand into the northern central hills, Judah, Lower Galilee, the uninhabited Beersheva Valley, Western Galilee and the forested heart of Upper Galilee, finally subduing the last Canaanite enclaves in the Jezreel Valley and repelling the Philistines from pockets in the Shephelah and southern coast. Diana Edelman has demolished one by one all the supposed ethnic markers of premonarchic Israelite culture,[23] of which three are cited here:

- the collared-rim storage jar which was not limited to the 'Israelite' heartland and, conversely, not found throughout 'Israelite' regions;

- four-room pillared houses typical of the new small Iron Age I settlements in the hill country on both sides of the Jordan, were uncovered

in urban centres such as Megiddo VIB, in Philistia and in the Negev, and are now interpreted as having grown out of the local Late Bronze Age Palestinian urban architectural tradition; and

- diet. Very few pig bones have been found on excavated sites in the central highlands, while these are collected in large numbers on lowland sites, this having been taken to imply that the 'Israelites' already adhered to the prohibition against the consumption of pork (*Leviticus* 11 and *Deuteronomy* 14: 8). The small size of the database and its incompleteness preclude any sweeping generalization. Moreover, the natural and preferred habitat for pigs is wet woodland, which is found in the lowland areas, but not in the highlands.

Whereas Finkelstein's 'Israelites' were predominantly 'sedentarized nomads', Dever's 'Proto-Israelites' were a mixed bunch of dissidents fleeing conscription, taxation, economic exploitation, bandits, refugees from Egypt, ruined farmers and nomadic pastors, whose common denominator was an 'ideological' rather than a 'biological' solidarity and an agrarian 'vision' of a communal sharing of the land and agricultural production (precursor of the 18th century American Shaker utopia), which ultimately failed as the tribes evolved into a State, but the memory of whose egalitarian agrarian traditions lived on in the outbursts of the 8th century BC Prophets (see *Amos* 6: 4-7).

In the end, little that is tangible or proven with certainty can be said about the ethnicity of pre-monarchic Israel.

Two major concepts loom large in Dever's reconstruction of this 'phantom people' as dubbed by Th. Thompson:[24] land (in the religious traits shared by Canaan and Israel under the Monarchy) and 'separation' in the dissidence of groups severing their links with lowland society and settling in a zone dubbed by the Israeli geographer David Amiran, 'the Pioneer Fringe'.[25]

'Chosen People', 'Promised Land'

Until the 19th century AD, the first five books of the Old Testament (*Genesis* to *Deuteronomy*), the Pentateuch or *Torah*, were seen as forming one unit. As a result of the tracing the sources of the Pentateuch into the Book of Joshua, this 'unit' was enlarged to form the Hexateuch (from the Greek *hexa*, six). The critical study of the Old Testament was revolutionized in 1943 by Martin Noth's suggestion that, constituting one unit, the first four books - or Tetrateuch - (*Genesis*, *Exodus*, *Leviticus*, *Numbers*) should be distinguished from *Deuteronomy*, *Joshua*, *Judges*, *Samuel*, and *Kings* forming a separate corpus characterized by a consistent ideology, which Noth labeled 'Deuteronomistic History'.[26] All books had been written by priests and scribes, largely during the Exile in Babylon and completed in post-exilic times. As a consequence of the Babylonian conquest of the Kingdom of Judah in 597-587 BC, the Judahites who had been deported to

Babylonia (part of the élite and wealthy landowners hostile to the Babylonians) and those who had remained in Judah clashed over the double stake of 'identity' and 'territory', each of the two communities claiming the name 'Israel' and ownership of the land. The conflict came to a head when after 538 BC and the supposed proclamation of an edict of the Persian King Cyrus allowing the 'deportees' of Babylonia to return to Palestine, some of these returned to or immigrated into Judah, asserting their claims on the vineyards and plots of land in which had settled the poor peasants, who formed the majority of the population which had stayed in Judah. Although a minority, the 'Sons of the Exile' (*bene haggolah*) took possession of the country thanks to the Persians who handed administrative power to them. They thus gained both a political and an ideological victory.[27] In order to justify the territorial claims of the *bene haggolah*, the scribes in their party cooked up the divine promise (*Num.* 32: 11, *Deut.* 1: 35, *Josh.* 5: 6) which had supposedly been given to Abraham, their ancestral father. Just as Abraham had once left Mesopotamia and wandered into Canaan, so the people of the Exile had left and re-entered the 'land of promise'.[28] Likewise, in order to single out the *bene*

Fig 4 Picking olives (1936)

hagollah as the 'right' people of Yahweh around whom religion had crystallized, the true community of Israel, the scribes branded the local population as 'foreigners'.

An identity was artificially created through markers of separatism, paramount among which were the dietary laws of *Lev*. 11 and *Deut*. 14: 13-21, forbidden foods being a way of differentiating between purity and impurity (*Lev*. 11: 46), in order to separate 'the holy people unto the Lord' (*Deut*. 14: 1) from other peoples grouped together under the appellation 'foreigner'. Thus, those who, even during the Exile, had continued to observe the dietary laws, were 'Israel':

'During the deportation to Assyria, when I was led away, I came to Niniveh; as for myself, I took care not to eat the food of the pagans' (*Tobias* 1: 10).

The Jewish method of slaughtering animals (*shehitah*) viewed as a religious rite, involved draining off the blood from the brain vessels and brain tissues, checking the animal, bird or fish for injuries or organic diseases, which would render it *trayf* ('torn', defective, forbidden, unclean), and *kashering* meat by soaking and salting it in order to drain it completely of blood, for *'...you must strictly refrain from eating the blood, because the blood is the life; you must not eat the life with the flesh'* (*Deut*. 12: 23). This fulfilled the injunction of *Lev*. 17: 10-14.

If Israel is the only holy people, it is solely by the will of God, the only source of holiness: *'I am the Lord your God; you shall make yourselves holy and keep yourselves holy, because I am holy'* (*Lev*. 11: 44). Yahweh's gift, which he may take back at any moment, implies a divine choice - the election of Israel - and, as a corollary, its separation from the other nations. Likewise, the territorial realization of the promise, the gift of the land of Canaan to Abraham's descendants (*Gen*. 12: 1, *Deut*. 28: 11) was conditional on Israel keeping the laws and commandments which accompanied the covenant between Yahweh and His people. The violation of divine prohibitions, notably the dietary laws, entailed the pollution of the 'Promised Land', the Lord's property which Israel held only on a life-tenancy (usufruct) in order to accomplish the Universal messianic mission with which God had entrusted His people.[29]

Dietary prohibitions - holy people - Promised Land, which became after Yahweh had led Israel out of Egypt, the Holy Land (*Za*. 2: 16, *2 M* 1: 7) owing to the presence in the First Temple of the thrice-holy God (*Is*. 6: 3): these three elements were linked within a system of pollution which drew, according to the anthropologist Mary Douglas, 'a boundary round the people of Israel against outsiders'[30]. This chain of limits (dietary prohibitions, separatism, territoriality) were the response, in a climate of dispute, to the necessity of legitimizing the exclusive appropriation of a land and political power by a minority.

After the destruction of the Second Temple in AD 70, the Rabbis who

had inherited the scribal methods of interpretation of the Law which Ezra freshly returned from Babylon had introduced to Jerusalem,[31]chose the return from Babylonian Exile and the re-appropriation of the Land, as the basis on which they built their affirmation of Israel's identity within a geo-historical framework. By drawing again ethno-historical borders and by adapting the dietary laws to a new situation of small Jewish communities scattered across pagan Roman and later Christian Byzantine Palestine, they attempted to guard against defections due to assimilation - a characteristic preoccupation of 'enclaves'.

The 'Lord's Land': Agricultural produce and Holiness

The Lord had not only chosen the Twelve Tribes 'out of all peoples on earth to be his special possession' (*Deut.* 14: 1). He had also chosen as His (*Hosea* 9: 3) a land of wheat and barley (Fig. 1), of vines (Fig. 2), fig-trees, pomegranates, olives (Figs 3, 4 and 5) and oil - dubbed the Seven Species (*Deut.* 8: 8) - and had endowed it with His holiness. The Rabbis of the Mishnah, Tosephta and Talmuds called it *Eres Israel* ('The Land of Israel'), or simply *ha-'ares* ('The Land'), all other countries being lumped together 'outside the Land' (Babylonian Talmud, *Gittin* 8a) in a further display of separatism.[32]

In the eyes of Byzantine Jewry, Palestine was a holy place (*maqom qadosh* in Hebrew) whose holiness attached itself to its agricultural produce. According to the Mishnah (*Kelim* 1: 6), 'There are ten degrees of holiness (*kedusha*). The Land of Israel is holier than any other land. Wherein lies its holiness? In that from it they may bring the *'Omer*, the Firstfruits, and the Two Loaves, which they may not bring from any other land'. According to *Leviticus* 23: 10, before the new harvest could be reaped, a 'Sheaf' of barley (*'Omer*) had first to be reaped and the flour offered as a Meal-offering in the Temple. Only after it had been offered was the produce of the new harvest permitted for common use. Likewise, the First Fruits of all the produce of the soil had to be gathered in a basket and brought to the altar of the Lord in the Temple (*Deut*. 26: 2). Fifty days after bringing the *'Omer*, a grain-offering from the new crop, two loaves baked with flour and leaven, seven perfect yearling sheep, one young bull

Fig 5 Jerusalem Friday market (1935)

and two rams had to be presented to the Lord (*Lev.* 23: 17). This privilege of the Land of Israel was abolished as a result of the destruction by the Romans of the Temple of Jerusalem in AD 70. However, the Land of Israel continued to be the seat of the divine majesty, Yahweh's *Shekinah*. The end put to meat sacrifices compelled the Rabbis, intellectual successors to the priests, to reajust the Law, emphasis being laid thereafter on agricultural produce. Meat and fish which were included in Mosaic Law among the 'forbidden foods', are manifestly absent from Rabbinic Law.[33]

'Land of Israel' - 'Promised Land': the Midrash explained:

'The Holy One, blessed be He, considered all lands, and found no land suitable to be given Israel other than the Land of Israel. This is what is meant by the verse 'He rose and measured the earth' [Habakkuk 3: 6]' (*Leviticus Rabbah* 13: 2).

That is why the second benediction of the Grace after Meals or *birkat*

ha-mazon thanks *'the Lord our God for having given a lovely and spacious land to our fathers as a heritage...'*,[34] the concepts of delimitation and extension being intimately associated with this very special space.

Ideology and Territory

Delimiting a territory

In Rabbinic law, the Land of Israel was defined as the territory subjected to the laws of *hallah* - the portion of dough set aside for the priests of the Jerusalem Temple according to the injunction of *Numbers* 15: 19-20 (or since the destruction of the Temple by Titus the obligation to cast it into the fire) - and of *shebi'it* - the Sabbatical Year prescribed by *Exodus* 23: 11. This was also the territory that had been 'occupied by those who returned from Babylon' in 539 BC, within natural borders such as the Kezib river. To the question: 'What is the Land of Israel ?', the Tosephta replied: 'From the river which is to the South of Akhzib, southwards' (Tosephta, *Shebi'it* 4: 6). The role of food was reduced to the minimum. Agricultural produce was limited to wheat for the dough of bread - the basic constituent of the Eastern Mediterranean diet.[35] *Hallah*, however, was also twinned with a temporal-religious concept, *Shebi'it ,* the last year of a cycle of seven in which lands must lie fallow.

The Mishna (*Shebi'it* 6: 1), followed by the Jerusalem Talmud (*Shebi'it* 6: 1) defined three categories of territories as regards the Sabbatical Year. Thus,

1. It was forbidden to eat the produce of the Seventh Year and to cultivate the soil in the territory defined as the Land of Israel (settled by the Jews who had been deported to Babylon after the destruction of Jerusalem in 586 BC by Nebuchednezzar and had returned to Palestine under Persian rule in 539 BC) whose northern boundary was Akhzib.

2. It was allowed to eat the produce of the seventh year but it was forbidden to till the soil in the lands called *Sourya* between Akhzib, the Amanus and the Euphrates which the Israelites had occupied after the Exodus from Egypt.

3. Finally, it was allowed to eat the produce of the seventh year and to till the soil in the lands beyond the Amanus and the Euphrates which the Israelites had not conquered after the Exodus from Egypt. The same territorial distinctions applied to the *hallah* (Jerusalem Talmud, *Hallah* 4: 8).

Thus, to *hallah* and *shebi'it* was attached a political-territorial concept, 'eating' coupled with 'tilling' reinforcing the notion of 'occupation of land and settling of a territory'.

The Borders of the Land of Israel

The boundaries of the Land of Israel were imaginary boundaries

which had been promised in *Deut.* 1: 6-8, but which in fact were never those of the land settled by the Hebrews. At the time of the compilation of the Mishnah, the Tosephta and the Talmuds (IInd-Vth centuries AD), the concept of the 'Land of Israel' had no geo-historical basis. The Rabbis of the Mishnah and of the Jerusalem Talmud were aware of this, but were compelled to follow tradition. The conflict between tradition and historical reality gave rise to discussions on the status of certain towns such as 'Akko (Akka, St John of Acre): was it outside or inside the Land of Israel? This was no gratuitous casuistry, for the diet and such aspects of daily life as divorce of the Jews
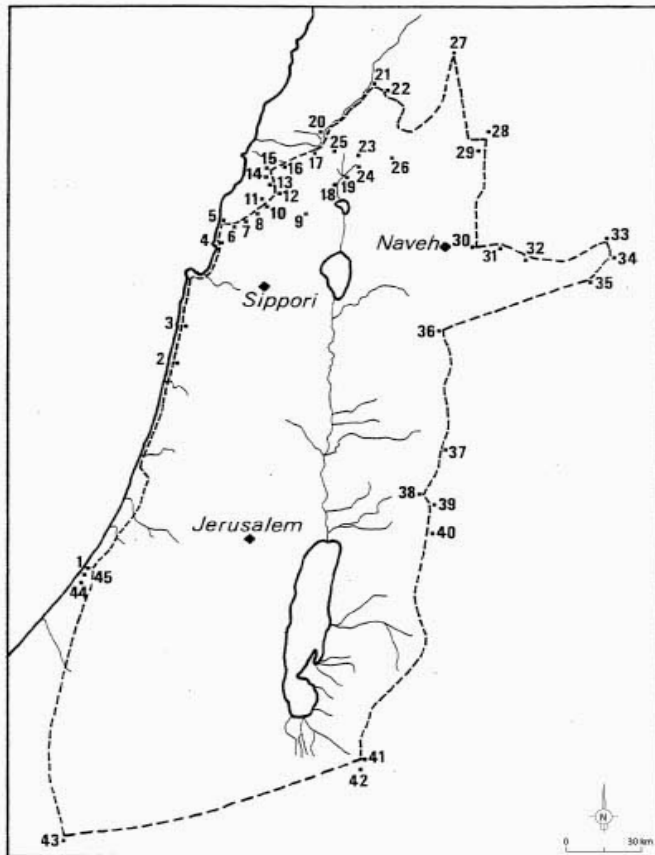

Fig 6 Rabbinical borders

of 'Akko depended on the solution to this problem. The Tosephta (*Shebi'it* 4: 11), the Palestinian Talmud (*Demai* 2; *Shebi'it* 6: 1) and tannaitic literature (Sifre Deuteronomy, *Ekeb* and Midrash Yalqut, *Ekeb*) listed forty-five border-towns, starting from the crossroads of Ashqelon, the city itself being deemed 'impure' and

outside the Land of Israel because its population was predominantly non-Jewish (Fig. 6).

Moving northwards, the border hit 'the wall of 'Akko' whose demographic make-up closely resembled that of Ashqelon, and then ran diagonally towards the North-East and Qîsarîon or Caesarea Philippi (Hellenistic Paneas; modern Banyas). The outlining of the borders of the Land of Israel in the Rabbinical texts progresses eastwards towards Bostra, then darts southwards to Rekem d-Gaia (Petra), and returns to the West and to the Mediterranean coast, having gone full circle upon reaching 'the gardens of Ashqelon' whence started the 'great road that leads to the desert' - the *Via Maris* which ran towards Egypt.

The Rabbinical boundaries of the Land of Israel had major repercussions on the economic life of the Jewish communities of Palestine. Despite being crushed by the post-AD 70 Roman and Byzantine imperial taxes which ceaselessly became more burdensome, the much-reduced Jewish communities who lived in the territory enclosed by these borders continued to observe the rules of tithing and the Sabbatical Year. They could not live, however, in total isolation from the pagan and later Christian majority. Problems naturally arose from interaction, notably through trade, and the Rabbinic authorities were consequently compelled to supply written rules.

A set of such rules was enshrined in Aramaic in the late sixth or early seventh century in a twenty nine-lined inscription on the mosaic pavement of a synagogue uncovered at Rehob in the orbit of Scythopolis-Bet She'an in the Central Jordan Valley. Beyond tracing the boundaries of the Land of Israel with variants and significant additions to the textual sources, it enumerates the agricultural produce which was forbidden for consumption by Jews during the Sabbatical Year and which was tithed during the other six years: marrows, melons, cucumbers, parsnips, mint, Egyptian beans, leeks, seeds, dried figs, sesame, mustard, rice, cummin, dry lupine, large peas, garlic, village onions, onions, pressed dates, wine and oil.

'These are the places which are permitted around Bet She'an: on the south which is the gate of the campus until the white field, on the west which is the gate of the [oil] press until the end of the pavement, on the north which is the gate of the watch-tower [or of Sekuta] until Kefar Karnos, and Kefar Karnos is as Bet She'an, and on the east which is the Dung gate until the tomb of Panoktayah and the gate of Kefar Zimrin and the gate of the uncleared field. Before the gate it is allowed and beyond it is forbidden'.[36]

Thus, the city itself was exempted as well as a certain area outside the

city walls, because it comprised fields and estates belonging to Gentiles. Beyond these limits, the rest of the province was not exempted, because it was thickly settled by Jews. Consequently, certain vegetables and fruits considered to be imported into Bet She'an from the areas liable to the Seventh Year and tithes, were also 'forbidden' for consumption by the Jews of Bet She'an *intra* and *extra muros* during the Sabbatical Year and had to be tithed during the six other years of the cycle. Conversely to exempting certain walled Gentile cities from the obligations of *hallah*, *shebi'it* and *terumah* (heave offering), the Rabbis extended these obligations to some settlements outside the Land's boundaries.

Sourya' and the 'Forbidden Towns'

Sourya

The area between Akhzib, the Amanus mountains and the Euphrates river were considered by the Mishnah and the Palestinian Talmud to be a buffer-zone between the Land of Israel and foreign lands. This area neighbouring Palestine on the North-East and covering modern Lebanon and Syria, was called *Sourya*. Its status in Rabbinic law was complex. According to the Mishnah (*Shebi'it* 6: 2), 'the like of whatsoever is permitted to be done in the Land of Israel may be done also in Syria'. However, as far as the fulfilling of religious obligations was concerned, the inhabitants of *Sourya* had to follow certain rules to which were subjected those living in the Land of Israel, but not other regulations (Babylonian Talmud, *Gittin* 8b).

'Forbidden' Towns in the Territory of Tyre

To the North of the border of the Land of Israel (Fig. 7), nine towns were 'forbidden' in the territory of Tyre according to the Jerusalem Talmud (*Demai* 2: 1). Three of these have been identified archaeologically: Beset at el-Bassa, Pî Masôbah at Khirbet Ma'sûb, and Hanôtah Tahtit at Hanita. In these forbidden towns, the only archaeological remains of perhaps Jewish origin is a small limestone funerary stela found at el-Bassa which was carved with geometric reliefs and was inscribed with the Greek translation of the Hebrew name *Meïr*. All other archaeological discoveries were of Christian remains.

Why is there a discrepancy between the textual sources and the archaeological evidence? At the end of the list of the nine forbidden towns, the mosaic inscription of the Rehob synagogue included this additional comment: 'and all the lands which Jews have purchased are forbidden'. On the one hand, this statement does not appear in the Tosephta (*Shebi'it* 4: 9) which was prior to the Rehob inscription. On the other hand, the Rehob inscription seems to reflect the teaching of Rabbi Manna in the Jerusalem Talmud: 'That was so at first, but now there are other towns held by the Jews which are forbidden' (*Demai* 2: 1). Thus, between the second century when Rabbis first compiled the list of forbidden towns in which Jews owned

property and Rabbi Manna's lifetime in the fourth century, Jews had settled in more places which consequently had become forbidden. The buying of land by Jews beyond the Rabbinical boundaries, in particular in the sixth and seventh centuries along the Ladder of Tyre - an uninterrupted chain of dazzling white chalk cliffs which form a natural East-West barrier between the Tyre Valley to the North and the 'Akko Plain to the South, required the extension of the strictest religious laws of the Land of Israel to a frontier-zone.
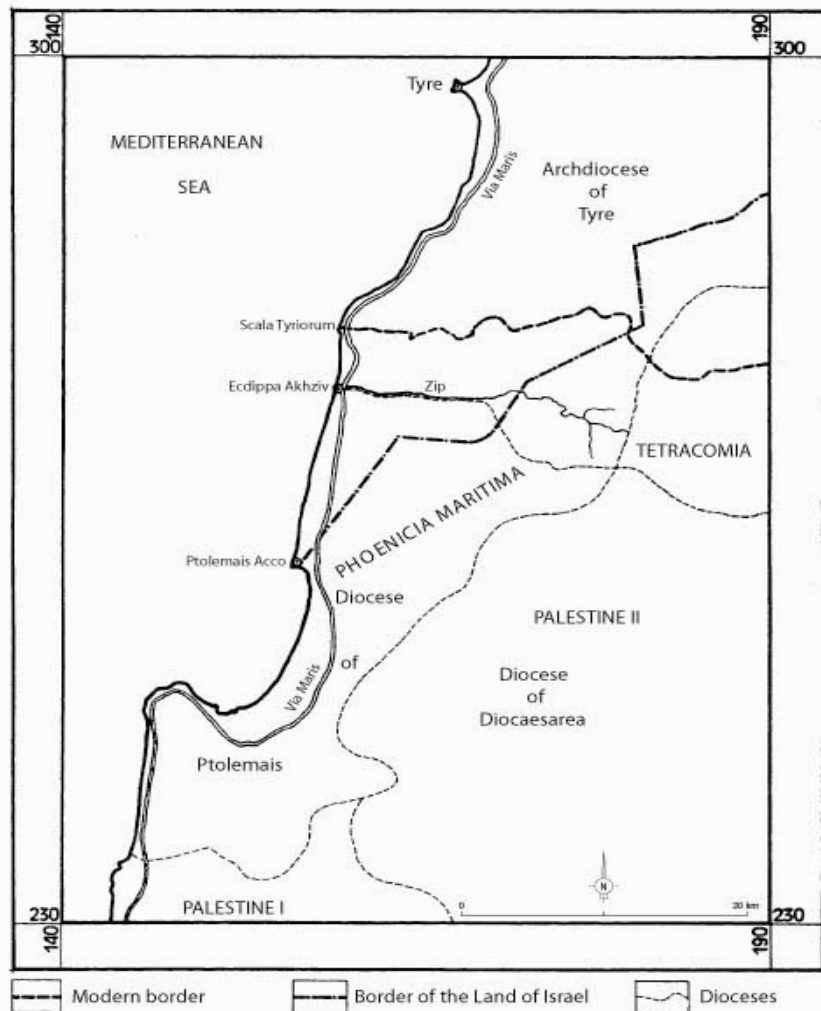

Fig 7 Border zone - Tyre & NW Galilee

Sharon's Wall of Infamy

From one barrier to another: 730 km in total length , the width of a six-lane motorway, strengthened by towers and steel hedges, capped by electrical cables, lacerating the landscape of uprooted olive groves, a 'separation wall', a 'security fence', an 'anti-terror fence', its appellations aiming to reassure the Israeli population as 'human bombs' increasingly circumvent it or ignore it. Sharon's decision to erect this monstrosity was neither sudden, nor improvised, but rooted in Jewish history (the Wailing Wall), founded on ideology and permeated with colonial reminiscences.

The Iron Wall

On 4th November 1923, Vladimir Jabotinski published an article in the Russian newspaper *Rasvet*, entitled: 'The Iron Wall. We and the Arabs', which - significantly - was translated into English for the *Jewish Herald* of South Africa of 26th November 1937.

'To imagine that the Arabs in the Land of Israel could today strike a deal with us of their free will is totally illusory and partakes of a dream, even in the near future...No people established itself on a land with the agreement of those who were born on it. The local inhabitants...have always ended up rebelling. To think that the Arabs would voluntarily contribute to the realization of Zionism in exchange for cultural and economic benefits which we may grant them, is childish...Zionist colonisation, however limited, must either cease, or pursue its course despite the will of the locals. This colonisation can continue and develop under the condition that it is undertaken under the cover and protection of forces independent of the local people - an iron wall that the local population would not be able to demolish. In short, such is our policy in relation to the Arabs. What do the Balfour Declaration and its mandate mean for us? It is the fact that a disinterested power pledges to create conditions of security such that the local population would find it impossible to interfere with our efforts. Each of us, without exception, ceaselessly demands that this power be strictly applied, while fulfilling its obligations. Some prefer an iron wall of Jewish bayonets, others suggest a wall of British bayonets, and a third group puts forward the proposal of an agreement with Baghdad - a strange taste for risk, but we all applaud, day and night, the iron wall'.

Founded in 1925, Jabotinski's World Union of Revisionist Zionists worked tirelessly to 're-educate' German Jews in order to awaken in them a new, national, Jewish identity. In 1933, the Zionist Federation of Germany published a memorandum in support of the National Socialist Party:

'Since the foundation of the new German State has proclaimed the principle of race, we wish to adapt our community to the new structures...We too are opposed to mixed marriages and wish to maintain the purity of the Jewish group'.

A few years earlier, Jabotinski had stated:

'We will not allow such things as mixed marriages for the preservation of our national integrity is impossible in any way other than by maintaining the purity of race, and for this, we will have this territory of which our people will constitute the racially pure population'.

At the Nazi Party Congress of September 1935, the Reichstag (Parliament) adopted the Nuremberg Racial Laws which notably forbade marriage and sexual relations between Jews and Germans, and proclaimed that the Jews were a foreign minority. While the bi-monthly newspaper of the Zionist Federation of Germany, *Jüdische Rundschau*, welcomed this legislation for stating that the Jews of Germany were a '*national* minority', the official SS weekly, *Das Schwarze Korps*, declared;

'The government is in perfect harmony with the great spiritual movement called Zionism within Judaism, with its recognition of Jewish solidarity in the world and with its rejection of all assimilationist concepts'

The racism of German Zionists, who were aspiring to 'the recognition of the Jewish nation and of the Jewish race'[37], and Nazi racism dovetailed into emigration to Palestine. The head of SS Security, Reinhart Heydrich, wrote in 1935 in *Das Schwarze Korps*:

'The Zionists profess a purely racial concept, and by way of emigration to Palestine, they help to build their own Jewish State'.

The efforts of the German Zionists were crowned by a massive increase in departures for the 'Promised Land', from a little over 5000 in 1930 to nearly 62000 in 1935. The 1936 Zionist Congress in Berlin was an enormous success.

Sixty years after Jabotinski's death (1888-1940), all the Israeli political parties adopted his concept of 'a wall to protect the civilised world'. His vision was planned and promoted by Ehud Barak's Labour-Likud coalition with the colonial determinism specific to Zionist ideology.

The Separation Wall

In his recent book, *Le Mur de Sharon [Sharon's Wall]*, which triggered a storm, the French journalist Alain Ménargues rightly emphasized that the peace negotiated in Oslo was in fact the promise of a very clear separation, although no wall was drawn on the maps attached as an Annex to the declaration of principles which included maximum limitation of contacts between the two peoples.[38] Ehud Barak's successor as head of the Labour Party, General (retired) Amran Mizna, considered to be a dovish candidate to the Knesset in the elections of 28th January 2003, promised at each rally:

'If I become Prime Minister, I will renew the negotiations with the Palestinians, and if they do not succeed, we will evacuate unilaterally the settlements in the Gaza Strip, some in the West Bank, and we will separate from the Palestinians. We must undertake this separation, as much in order to separate ourselves from the Illusion of a Greater Israel, as to separate ourselves from the terrorists' .[39]

One of the important consequences of the Biblical laws of purity enshrined in *Leviticus* was to drive observant Jews, 'a people of priests' (*Ex* 19: 6), into voluntarily living together, separate from their 'impure' environment, enclosing themselves within an imaginary continuous perimeter wall (or *erub*) physically expressed in IInd-VIth century Galilee and Golan by Jewish 'cities whose roofs are its walls' (Tosephta, *Arakhin* 5: 12) (Fig. 8), this being long before the Jews were forced into *ghettos*, *shtetls* or *mellahs*.

Fig 8 Roman and Byzantine settlement whose "roofs are its walls"

This apartness safeguarded them from the surrounding 'pollution' and gave them a sense of spiritual 'security'. *Leviticus* (18: 3, 24, 27; 20: 14, 23) insists heavily on spiritual contagion of intellectual and moral diseases: 'For all these abominations have the men of the land done, which were before you, and the land is defiled' (*Lev.* 18: 27). Deeply buried in the collective sub-consciousness, the pure/impure dichotomy has far-reaching effects for Israeli-Arab relations in Israel as well as in the Occupied Territories. Over and above their claim to the ownership of the Land of Israel, the Palestinians as descendants of the 'men of the Land of Canaan', are 'impure' and dangerous. Such are the Jerusalem Arabs peopling the nightmares of the heroine of the novel *My Michael* by perhaps the most famous and vocal peacenik of what Ilan Pappe calls the Zionist Left, Amos Oz.

In order to participate in the life and religious rites of the Jewish community, it is essential to separate and reject them. But, short of total exclusion by physical 'transfer', it is also of paramount importance to dominate them in a master-slave Hegelian and Colonial relationship by multiplying walls, in order to grind down their resistance in a war of attrition, bend them, break them until they leave of their own free will. Social barriers such as the status of non-Jews in Israel within the borders of the 1948 cease-fire, whose citizenship is Israeli, but whose 'nationality' is dependent on their 'religion'; cultural barriers between Jews and Moslem/Christian Palestinians (although Arabic is one of the official languages of the State of Israel, university teaching is solely in Hebrew); and even 'fences' between the Palestinians themselves, those who did not flee from their homes in 1948 and were 'trapped' in what became Israel, and those in the Occupied Territories and Jerusalem, hence the Legislation of 31st July 2003 forbidding marriages between Israeli Arabs and Palestinians from the Territories.

Fig 9 Wall and tower

Expansionism

Creating limits and implementing them on the ground are intimately bound with the notion of expansion beyond them (the dynamics of the latter negating the static essence of the former), as well as with a systematic policy of the *fait accompli*. Sharon's Wall (Fig. 9) recalls Ben Gourion's strategy of *Khoma ve Migdal* ('wall and tower') which consisted in erecting a protective wall of settlements and observation towers on the top of hills as deeply as possible in territory exclusively populated by Palestinians. The pattern was consistent: a group of armed colonists would pitch their tents, and if the British Mandatory authorities did not react to evict them, building in stone would commence immediately.

Sharon's Wall was described as a 'Green Line border fence' when it was discussed in the *Knesset* on 4th June 2002 and when its implementation was officially announced on 18th December 2003. A year later, the Hebrew newspaper *Yediot Aharonot* of 31st May 2003 called the bluff:

'The fence must be built in order to protect the greatest number of Israelis and to include a maximum amount of territory ahead of eventual negotiations on a final status'.

Hence it lies deep in the Occupied Territories and its pulling into Israel not only land, but a large part of the water-table: already twenty-eight wells have been transferred westwards. The appropriation by Israel of *miri* land in Ottoman Law, whereby agricultural lots were rented out to be farmed, but were owned by the Sultan (with the restriction that if this land was not cultivated for three consecutive years, it automatically returned to the Sultan, hence Israel's policy of systematically preventing farmers from gaining access to their land by not building the planned twenty-nine 'agricultural gates' in the Wall and by denying access through the already existing gates); the illegal application of the 1950 Absentee Property Law and the 1953 Land Acquisition Law to land (the most fertile in the country) between the Green Line and Sharon's Wall, all these 'definitive' steps for a supposedly 'temporary' barrier, partake of an ideology firmly rooted in Israel's Biblical and Rabbinical past.

'The War of Independence has not ended. 1948 was only the first chapter. Each metre gained is a metre more for Israel. The Wall will continue as long as the struggle will not have enabled the ownership of the entire Israeli territory',

Sharon was reported in *Ha'aretz* of April 2001 to have declared. Against such a background, is a one-State solution a serious proposition? Let us return to Jabotinsky, the key to Sharon's strategy:

'The path which leads to an agreement is the Iron Wall, which implies

a strong government in Palestine without any form of Arab influence, that is a government against which the Arabs will fight. In other words, for us, the only path towards an agreement in the future is the absolute refusal of any attempt at an agreement now'.

The 'Cradle War'

Meanwhile, having absorbed the lessons of 1948, the Palestinians cling on to their towns, their villages, their lands with admirable courage and tenacity, and the demographic clock ticks away. Palestinian demographic growth is much sharper than that of the Israeli Jews. In 2000, the Arab population of the Occupied Territories was of 3.05 million to which should be added 950,000 Palestinians within the Green Line, thus a total of 4 million Palestinians on the territory of Mandatory Palestine West of the River Jordan. Despite the exodus and expulsions during the 1948 and 1967 Wars, the Palestinian population tripled in 52 years (1.6 million in 1948). Palestine fertility is exceptional (Fig. 11): 6 children per woman in the West Bank and Gaza, 4.2 in Israel, and much greater than that of the Jews of Israel (2.6 children per woman). In Sharon's Greater Israel, there are today some 5.1 million Jews and 4 million Palestinians.[40] Hence the urgency for the Jews to separate from the Palestinians, the only solution to escape from an Arab majority and to save the Jewish State.

Fig 10 The happy family (1935)

'What use is it for Tsahal [the Israeli army] to eliminate terrorists one after the other if, in the same time, 400 Arab children are born in the Land of Israel?', asks the demographer Arnon Sofer, Professor at the University of Haifa?[41]

Between 2007 and 2013, the Palestinians will have become the majority, 8.1 million against 6.7 million Jews. In 2020 there will be 58% Arabs and 42% Jews between the River Jordan and the Mediterranean. Thus Sofer advocated the immediate drawing of borders for Israel, as *'otherwise the Arabs will flood us, and there will not be any longer a Jewish entity'*. However, even within the pre-1967 borders, Arab Israelis constituted 17% of the population in 1998. They will be from between 21% and 26% in 2025, which theoretically should double the number of their representatives at the Knesset. Orthodox Jews exhibit the same fertility as the Palestinians (6 children per woman), but their number is too small to counterbalance Palestinian demographic weight. Israel has already lost the 'Cradle War'. If it continues to hang on to the Territories, Jewish Israelis will inevitably become a dominant minority as in apartheid South Africa. And the time will come when, by entirely natural and democratic means, the Palestinian majority will erase the Jewish State (Fig. 11).

Fig 11 Historical Palestine and the Palestinian olive tree

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Fig. 11: Historical Palestine and the Palestinian olive tree: two hangings embroidered under Israeli Occupation (By Courtesy of Palcrafts/Hadeel, Fair Trade Palestinian Products, Edinburgh: www.hadeel.org)

THE MONSTER OF ANTI-SEMITISM –

HOW TO DESTROY IT

Alan Hart

Nothing is more important for diaspora or non-Israeli Jews - the majority of Jews in the world - than stopping the monster of anti-Semitism from going on the rampage again in the mainly Gentile lands of which they are citizens. The question in desperate need of an honest answer is - Who can stop it and how?

In my view this question cannot be addressed seriously without an understanding of the difference between anti-Semitism and anti-Zionism; an understanding that requires knowledge of the difference between Judaism and Zionism.

The significance of the difference is impossible to exaggerate because (despite Zionism's assertion to the contrary) one can be profoundly and passionately anti-Zionist without being in any way, shape or form anti-Semitic, and without being anti-Israel as a state for some Jews inside its borders as they were on the eve of the 1967 war. In this context it is worth noting that the most perceptive and devastating critics of Zionism were and are Jews.

· It was one of them, the American writer Lenni Brenner, who in 1983 made the statement that "Zionism is not now, nor was it ever, co-extensive with either Judaism or the Jewish people."

· And it was another of them, the American diplomat Henry Morgenthau Senior, who said in 1921 that "Zionism is the most stupendous fallacy in Jewish history." He added, "I speak as a Jew!"

Judaism is usually described as "the religion of the Jews", by implication all Jews. In fact by no means all Jews subscribe to Judaism. It is the Jewish religion. And Zionism, what, actually, is it?

Zion, *tsiyon* in ancient Hebrew, was the name of one of the hills around Jerusalem in the time of biblical Israel. The life span of that Israel, the united Jewish kingdom of David and then Solomon, was not more than 70 years. In 1897, nearly 2,500 years after the end of institutional Jewish rule in Palestine and the dispersal of the Jews, Zionism came into existence as a political movement for the physical return of Jews to the land of biblical

Israel. Zionism can therefore be defined as Jewish nationalism as the creating and sustaining force of modern Israel.

In the paragraph above I emphasised physical return because all Jews everywhere who subscribe to Judaism could regard themselves as being spiritual Zionists, meaning that from the mainly Gentile lands of which they are citizens by choice, they look upon Jerusalem as the centre of their religion and spiritual capital. It would therefore be possible to argue that what could be called spiritual Zionism – spiritual return – is a part of the essence of Judaism, which Jewish nationalism as the creating and sustaining force of modern Israel (or what could be called political Zionism) most definitely is not. In other than the spiritual sense diaspora Jews, who have chosen not to live in Israel and by definition are not Jewish nationalists, are not Zionists.

At its birth in 1897 Zionism was a Jewish philosophy of doom. How so? Its founding fathers were driven by the belief that the Gentiles among whom most Jews lived in Europe and North America could never be trusted, and that it was only in a state of their own that Jews would be guaranteed security and freedom from persecution.

Before Zionism there was a Jewish philosophy of hope. It was given concrete expression by the coming into being of the Haskala (Enlightenment) movement of the 18th century. The Haskala solution to the problem of anti-Semitism – the persecution of Jews in their Eastern European (mainly Russian) homeland - was emigration and assimilation. This, the Haskala movement reasoned, was most likely to be the best form of protection for Jews. The giant of anti-Semitism would never die, but in the West he might well be encouraged to remain asleep if Jews contributed to Western societies and demonstrated their loyalty to the states of which they became citizens. In other words, if Jews made the effort, they would in time be accepted and permitted to lead fulfilling and secure lives in the Western nations of which they became citizens.

It is a matter of historical fact that prior to Hitler's unleashing of the demons of anti-Semitism, most informed and thoughtful Jews everywhere were anti-Zionists, meaning that, in addition to their preference for the philosophy of hope, they were opposed to Zionism and its colonial enterprise. And their opposition was rooted in three fears.

One was that the creation of a state for Jews would require the doing of an injustice to another people – the Arabs of Palestine – and would compromise the moral integrity of Judaism. Another was that the creation of a state for Jews in Palestine against the wishes of the entire Arab and wider Moslem world would lead to great and possibly unending conflict. The other and main fear was primordial in origin. It was that the creation of a state for

Jews would provoke anti-Semitism in the mainly Gentile lands of which the Jews were citizens. How so?

Between 1881 and 1915 about three million Jews left their Russian homeland (the biggest mass migration in history) in search of a more secure and better life in Western Europe and America. They were taking the Haskala route to salvation. Experience taught them that anti-Semitism was never far below the surface in all the Gentile nations of which they became citizens. That being so, and if a state for Jews was created, there was a danger that the Gentiles of the host nations among whom Jews lived would say something like: "We didn't want you Jews here. Now you have a state of your own there's no reason for you to be here. Go to your state." The most publicly prominent "Jewish Englishman" to put this fear into words (in a Secret memorandum to the British Cabinet) was Edwin Samuel Montagu, Secretary of State for India and the only Jew in Lloyd George's wartime coalition government. Montagu described Zionism as a "mischievous political creed."

Also a matter of fact, and as noted by Yehoshafat Harkabi in his seminal book *Israel's Fateful Hour*, is that Zionism - the physical return of Jews to the land of biblical Israel by the efforts of men - was "proscribed" by Judaism. According to one of three Talmudic oaths God required after the Jewish state of the ancient Hebrews had ceased to exist, there was to be no mass movement of the Jews from the lands of the diaspora to the land of Israel. As Harkabi put it, "the task of achieving statehood – the Redemption – was assigned to divine providence and to the Messiah." This law of Judaism was promulgated to prevent Jews taking an initiative of the kind Zionism eventually took.

More than 30 years before Hitler came to power, Zionism's founding fathers decided that waiting for the Messiah to come was not an option. In effect Zionism was to be the Messiah.

It can be said without fear of contradiction that Zionism would not have commanded sufficient Jewish support to achieve its aims but for the obscenity of the Nazi holocaust. It gave Zionism, for a while, the appearance of being right. But it did much more than that. The slaughter of six million Jews also closed down mainstream debate about the wisdom or folly of Zionism's enterprise throughout the whole of the Judeo-Christian world.

Because the Nazi holocaust was a Gentile crime, there was nothing any decent Gentile in publishing, the media in general and politics feared more than being accused of anti-Semitism. Zionism played on this fear by asserting that criticism of its child, Israel (a unilaterally declared state for some Jews but claiming to be the state of all Jews), was by definition a

manifestation of anti-Semitism - i.e. an attack on all Jews everywhere. This was, as it still is, propaganda nonsense, but it worked wonderfully well for Zionism. I mean that out of fear of being falsely accused of anti-Semitism, mainstream publishers, most media people and virtually all in public life shied away from truth-telling about Zionism and its contribution to catastrophe in-the-making.

It was to force the re-opening of informed and honest debate closed down by the Nazi holocaust that I spent more than five years of my life researching and writing *Zionism: The Real Enemy of the Jews*.

The underlying thesis of the book is that because American support for Zionism, right or wrong, has allowed facts to be created on the ground, in defiance of UN resolutions and international law, it's now too late for any U.S. administration to call and hold nuclear-armed Israel to account. Only the Jews of the diaspora have the influence to do it – cause Israel to change its ways and make peace on terms which almost all Palestinians and Arabs everywhere can accept. But…

I also say that it's unreasonable and unrealistic to expect the Jews of the diaspora to play their necessary part in bringing Israel to heel and averting a Clash of Civilisations (Judeo-Christian v Islamic), unless and until they receive the maximum possible in the way of reassurance about their security in the lands of the mainly Gentile world of which they are citizens. What, really, do I mean?

Though I am myself a goy (non-Jew), I know that deep down almost every diaspora Jew lives with the unspeakable fear of Holocaust II (shorthand for another great turning against Jews) and thus the perceived need, if only in the sub-consciousness, for Israel as an insurance policy - the refuge of last resort. And this is one of three related reasons why only a very few diaspora Jews are prepared even to criticise Israel's behaviour, let alone engage in activities to cause Israel to be serious about peace based on an acceptable minimum of justice for the Palestinians. Though they will never say so in public, the vast majority of diaspora Jews, because of the past, are too frightened to do or even say anything which they think would be interpreted as antipathy to Israel and could have the effect of undermining the wellbeing of Israel as the refuge of last resort for all Jews. The second reason for the silence of so many diaspora Jews on the matter of Israel's behaviour is the fear that if they speak out and appear to be divided, they will encourage anti-Semitism. The third reason is fear of the reactions of fellow Jews.

So what if anything can be done to encourage diaspora Jews to play their necessary part in calling and holding Israel to account?

In my Epilogue, *The Jews as the Light Unto Nations*, I call for a New Covenant, not between the Jews and their God but between the Jews and the Gentiles.

The New Covenant I propose is a deal between the two parties – the Gentiles who are the majority in the many lands of which most diaspora Jews are citizens and those Jewish citizens (Jewish Englishmen, Jewish Frenchmen, Jewish Germans, Jewish Americans and so on). And the essence of the deal is this. In return for diaspora Jews using their influence to cause Israel to be serious about peace on terms the overwhelming majority of Palestinians and all Arabs can accept, and actually accepted a long time ago, the Gentiles commit to destroying the monster of anti-Semitism. (I write that it will not be enough for us Gentiles to put the re-awakened sleeping giant back to sleep, and that we must drive a stake into the monster's heart, to kill it for all time).

What, actually, is required of diaspora Jews in terms of their New Covenant obligations?

They must begin by recognising modern Israel for what it is – a Zionist state, not a Jewish state. If it was a Jewish state – i.e. one governed in accordance with the moral principles of Judaism - Israel could not have behaved in the way it has since its unilateral declaration of independence in 1948; behaviour which can be described, objectively, as (at times) brutal and cruel, driven by self-righteousness of a most extraordinary kind, with contempt for UN resolutions, without regard for international law and which, all up, makes a mockery of the moral principles of Judaism.

Thereafter the main New Covenant obligation for diaspora Jews would be to make common cause with the forces of reason in Israel for the purpose of changing it from a Zionist state into a Jewish state.

Some Jewish anti-Zionists on the left of the political spectrum are, as they always have been, opposed to the idea of a Jewish state in any form. I take issue with them on the pragmatic grounds that a state for some Jews exists, and that the real post-Zionism question to be addressed is what sort of Jewish state – alongside a Palestinian state – it should be. In my view the Israel of a genuine two-state solution has to be one which guarantees equal rights for all of its non-Jewish citizens and which scraps the Law of Return that allows Jews from anywhere to become Israeli citizens.

Why should diaspora Jews commit themselves to such action?

Part of one answer is to be found in *Israel's Fateful Hour*. When the English edition of it was published in 1988, Harkabi was properly described as

having been "Israel's foremost authority on the Arab-Israeli conflict." (He was Israel's longest serving Director of Military Intelligence). He wrote:

Israel is the criterion according to which all Jews will tend to be judged. Israel as a Jewish state is an example of the Jewish character, which finds free and concentrated expression within it. Anti-Semitism has deep and historical roots. Nevertheless, any flaw in Israeli conduct, which is initially cited as anti-Israelism, is likely to be transformed into an empirical proof of the validity of anti-Semitism…. It would be a tragic irony if the Jewish state, which was intended to solve the problem of anti-Semitism, was to become a factor in the rise of anti-Semitism. Israelis must be aware that the price of their misconduct is paid not only by them but also Jews throughout the world.

 In the struggle against anti-Semitism, the front line begins in Israel*.* (Emphasis added).

The other part of one answer, confirmed by events since Harkabi wrote those words, is that the Zionist state's behaviour – its arrogance of power - has become a factor in the rise of anti-Semitism: in my view the prime factor.

The other answer is that provided by a very remarkable and most courageous Jewish lady, Cecile Surasky, director of Jewish Voices for Peace. An article by her for The Jordan Times under the headline *Speaking out about Israel to save the Jewish Soul* included the following.

"Remaining silent is no longer an option. We can no longer let our trauma, our deep fear of anti-Jewish hatred implanted in us through generations of persecution, make us quiet at the expense of truth. Our continued silence perpetuates the fiction that all Jews are of one mind when it comes to Israel – that we think it can do no wrong; that we believe the Israeli government is innocent of war crimes... Our silence puts us in more danger, not less. Through it we give our consent not only to the obliteration of the Palestinian people, but to the end of our own people. If not our bodies, then certainly our spirit. The truth is that if we don't "come out" about Israel now – speaking openly and clearly about our heartache and outrage, about the injustice we see, the unspeakable wrongness of Israel's pursuit of land over peace – then in the future there will not be a Jewish tradition left to defend... And Jews like me have to ask: If we can no longer stand up for moral courage and call injustice when we see it, regardless of who commits it, then what do we stand for?"

In the Epilogue of my forthcoming book I offer the following concluding observation of my own.

If the Jews of the diaspora can summon up the will and the courage to make common cause with the forces of reason in Israel before it is too late for us all, a very great prize awaits them. By demonstrating that right can triumph over might, and that there is a place for morality in politics, they would become the light unto nations. It is a prize available to no other people on earth because of the uniqueness of the suffering of the Jews. Perhaps that is the real point of the idea of the Jews as Chosen People… Chosen to endure unique suffering and, having endured it, to show the rest of us that creating a better and more just world is not a mission impossible.

Post script
I charged the media with being complicit, mainly out of fear of offending Zionism, in the suppression of the truth of history. And I backed this charge by telling how, over some months, prior to publication of Volume One of my book, I had written to the Literary Editors and/or Editors of every major newspaper, national and regional, throughout UK Plc and Ireland. In my letters with enclosures to them I drew their attention to the significance of the book, and asked if they would like advance copies to enable them to review it and play a part in facilitating the informed and honest debate the book was written to make possible. And, I told the audience, not one of them bothered to respond to my overtures. (Same story with the BBC and ITV).

I said my conclusion was that if Zionism was to be successfully confronted,

"We've got to make democracy work! Which means informing and educating citizens, in order to empower and energise them, in the hope that when they know the truth they will, enough of them, press their governments to take the necessary actions to call the Zionist state to account."

FACTS OF THE GROUND: HERBERT SAMUEL AND THE BALFOUR DECLARATION, 1914-1925

Sahar Huneidi

The twin issues of land and immigration are today, as they were in the early 1920s, the crux of the problem between Israel and the Palestinians. Herbert Samuel, first British High Commissioner in Palestine (1920-25), set the precedent of the policy of 'facts on the ground' by reshaping land ownership through a complex set of land laws, while Palestine was legally a British occupied territory bound by the Hague convention. These laws were passed to the Israeli state by which it later claimed public ownership of Palestine.

I will be looking into the events leading up to the Balfour Declaration, as well as the strategies and tactics pursued by Samuel in three distinct phases, each with its different objectives and challenges:

1914-1917: PREPARING THE GROUND FOR THE BALFOUR DECLARATION

The Balfour Declaration was a deliberately vague document. It contained two pledges that were later judged by the 1937 Peel Commission as incompatible. The first pledge, that the British government 'view[ed] with favour' the establishment of 'a Jewish national home in Palestine', was, according to the Peel report, ambiguous as to the character of that 'national home'. The national home, however, was to be established on condition that the civil and religious rights of 'existing non-Jewish communities' would be safeguarded. Moreover, this 'dual obligation' did not clarify how far the existing population could have a say in extent or character of the Jewish national home.

This inherent ambiguity allowed British officials to interpret the commitments given in the Balfour Declaration in different ways: Is it a state? Is it an exclusive state? Is it a cultural centre? A safe haven? It was ambiguous and it was meant to be ambiguous. It was precisely this ambiguity that gave enough room for a committed Zionist like Samuel to interpret the Balfour declaration in the most extreme Zionist sense, while a

much more reserved interpretation was also possible. Colonial Office (CO) officials dealing with Palestine each had his own understanding of the term. Indeed, the Colonial Secretary, the Duke of Devonshire, wrote in a secret memorandum on 17 February 1923: *'Prior to 1921, no authoritative explanation was ever given of what precisely was meant by a 'National Home' for the Jews.'*

When a new conservative government less sympathetic to Zionism came to power in 1922, it was decided to look into the origins of the Balfour Declaration. Curiously, colonial office officials discovered that the CO held no such records, and when Foreign Office files were searched, nothing was found in them either. The CO admitted that the relevant papers had been "unfortunately dispersed", and that "little referring to the Balfour Declaration has been found among such papers as have been preserved".
Although the Colonial Office in the end submitted a memorandum on the "History of the Negotiations leading up to the Balfour Declaration", it conceded that the memorandum was "very inadequate', and that the material available could not provide a 'complete and connected narrative". It was nevertheless submitted, to quote the head of the Middle East Department of the Colonial Office, Sir John Evelyn Shukburgh " *as a humble experiment in the art of making bricks without straw*".

It is peculiar that merely five years after the Balfour Declaration was issued, there was no record of its history in British archives. Were these documents deliberately concealed? Were they destroyed? It is difficult to answer, but tempting to speculate.

Following the outbreak of the First World War in November 1914, when Britain reversed its traditional eastern policy of maintaining the integrity of the Ottoman Empire, Samuel realised the opportunities that this new policy had opened for the Zionist movement. Although up to this point he had had no previous interest in Zionism, he submitted between January and March 1915, two memoranda: the first to PM Asquith and a second and revised one to the Cabinet. In these memos, Samuel advocated the establishment of a Jewish state in Palestine under British protection, claiming that this was fully recognised by the Zionist movement. He wrote in his memoirs:

'*The break-up of the Turkish Empire, long overdue, was now almost inevitable. The future of Palestine would raise a question of the greatest interest. It became plain at once that Zionism had acquired a new actuality - vivid, urgent… Events that were unexpected gave me a share in the writing of this chapter.*'

Although this effort produced no tangible results, it placed the Zionist agenda on the highest level for serious political discussion. Samuel saw himself as only the second Jew after Disraeli to have reached such a high

political level and seized the opportunity of making himself useful to the Jewish cause.

In 1915 Mark Sykes appeared on the political stage, and despite his little knowledge he came to be regarded as 'expert' on the Middle East (a term he coined) just because he had travelled in the area and had some first hand knowledge of it. Sometime after his secret agreement with the French in 1916 (Sykes-Picot Agreement), he initiated negotiations with leading Zionists, and got in touch with Herbert Samuel hoping to learn more about Zionism. This in spite of the conclusion of the de Bunsen Committee (30 June 1915) that Palestine and Zionism were of little concern to the imperial needs of Britain. Sykes was convinced of the power of world Jewry to sabotage the Allied cause and that they had to be pacified. However, it is important to mention that Sykes' vision of what Zionism implied seems to have been at variance with the more extreme Zionist interpretations. For instance, in February 1916 he wrote to Samuel saying: '*I imagine that the principal object of Zionism is the realization of the ideal of an existing centre of nationality rather than boundaries or extent of territory*'.

It was thus during 1916 that we get closer to the forces that drove the British government towards a more or less well defined pro-Zionist policy. The year 1916 was a near catastrophe for the Allies, and Lloyd George who came to power in December of that year was a pro-Zionist sympathiser.

1917- 1920: RELENTLESS ZIONISM

In January 1917, Weizmann, took the initiative, and mainly with the help of Norman Bentwich, (later to become Legal Advisor under Samuel in Palestine) submitted a memo to Mark Sykes entitled ' Outline of a programme for the Jewish Resettlement of Palestine in Accordance with the Aspirations of the Zionist Movement'.
According to Weizmann, this attempt was the '*first approach to the integration of Zionism with the complex of realities*'.
        The memorandum emphasised two points: first, it asked for the recognition of the Jewish nation, and second, for the right of this nation to settle in Palestine with full civic, national and political rights.   These objectives were similar to those advocated by Samuel in 1915.

As Sykes himself was getting more committed to the Zionist cause, it became clear to him that the Sykes–Picot agreement was an obstacle to Zionist aspirations.
During the course of 1917 the military situation of the Allies continued to deteriorate on all fronts. Britain was faced with a near starvation situation, and a War

Cabinet memo stated in February 1917 that the present stock of wheat in the UK was enough for only 12 weeks consumption. In March Russia ceased to be an effective ally when the Bolshevik revolution broke out, and the British offensive in Palestine and Mesopotamia had failed during the same month. To add to all this, German submarine warfare was inflicting heavier losses with each month.

Disasters on the Western Front made the Eastern Front especially crucial. A War Cabinet memorandum argued in April 1917 that Palestine and Mesopotamia under hostile control would pose a threat to Britain's lifeline eastward. Lloyd George took immediate steps and launched the great offensive in the East. He sought to secure Britain's aims in Palestine through every means available: military, diplomatic and political.

From then on, developments towards the issuance of the Balfour Declaration took a life of their own. It was believed that the Balfour Declaration would mobilise world Jewry east and west in favour of the Allied cause. The months from April to November 1917 witnessed frantic efforts both in Britain and across the ocean with leading American Zionists towards securing a pro-Zionist declaration. However, it was later admitted by British officials that no such benefit had ever been accrued from such effort.

All through this critical period in the few months preceding the Balfour Declaration , Samuel was busy giving Weizmann all the help he needed to further the Zionist cause.

Thus, on 25 April 1917, Weizmann met Herbert Samuel who apparently leaked to him the information that the Sykes-Picot agreement was now unacceptable from the British point of view. Samuel moreover advised Weizmann to see the Foreign Office and paved the way for him to see Lloyd George.

In October 1917, the British War Cabinet acted on the evidence that the Germans were about to make their own pro-Zionist declaration and decided to hear the views of 10 representative Zionist and non-Zionist Jews. In the meantime, the draft declaration under consideration was to be referred confidentially to President Wilson.

On 31 October, the question came once more before the War Cabinet, and a number of additional papers were presented at this meeting. Samuel wrote that if the Turks were left in control of Palestine, the country was likely to fall under German influence. He argued that Egypt would be exposed if Germany was left dominant there, and that the best safeguard would be the establishment of a large Jewish population under British protection, adding that this would be "*calculated to win for the British Empire the gratitude of Jews throughout the world*".

In the same meeting of 31 October 1917, seven variants of the proposed draft Balfour Declaration were presented. One of these drafts had

previously been submitted by Lord Milner to the war cabinet (on 4 October 1917). It was this draft, and the Zionist leaders' minor alterations to it that was finally approved by the War Cabinet which we all know as the Balfour Declaration of November 2nd.

In the final analysis, it was these short term political considerations, coupled with British imperial interests and the concept of the restoration of Jews to their promised land which combined to produce the Balfour Declaration.

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Following the defeat of the Turks and Allenby's victorious entry into Jerusalem in December 1917, a military administration under the name Occupied Enemy Territory Administration (OETA) was set up, and a Zionist Commission, headed by Chaim Weizmann, arrived in Palestine early in 1918. Its mission was to give effect to the Balfour Declaration and to form a link between the British authorities and the Jewish community. The arrival of Weizmann in Palestine as the head of the Zionist Commission cemented his role as the undisputed leader of the Zionist Organisation.

In 1919 the American King-Crane Commission of Inquiry determined that Zionism was the root of Arab hostility to the British administration, and strongly recommended to the League of Nations that the unity of Syria and Palestine should be maintained under one single mandate. The King-Crane commission also proposed serious modifications to the Zionist programme, and strongly recommended a constitutional monarchy with King Faisal - symbol of the emerging Arab nationalism- as its head. Samuel, however, saw the danger of such a move to Zionist aspirations.

He immediately telegraphed to Curzon that recognising Faisal as king of Syria and Palestine '…*would tend to take life out of Zionist movement*'. This had far reaching consequences to the future of the Middle East.

In spite of the findings and recommendations of the King-Crane commission, and as many scholars have noted, perhaps because of them, the findings of the King-Crane commission were kept from public knowledge for many years.

From January-March 1920 Samuel was sent on an official visit to Palestine to assess the administrative and financial situation in Palestine. Contrary to the facts that the military administration knew only too well, Samuel reported that there was no genuine Arab hostility to Zionism. He added that Palestine, under populated and underdeveloped, could support millions of Jewish immigrants. At the same time as he was misleading the British government, he warned Weizmann that the Zionist Commission had the effect of an '*alien body in living flesh*' and that he did not expect to convert Arabs.

1920-25: FACTS ON THE GROUND AND THE POLITICS OF *CHOSE JUGEE*

Samuel provided Zionists with the momentum with which they could make ultimate statehood possible, and gave the Balfour Declaration a concrete base on which legislation in the political, economic and demographic spheres were translated into realities and facts on the ground. Such measures were sometimes adopted without the knowledge or even approval of the government in London.

One example is a puzzling 1920 postage stamp issue that not many know about. The new stamp that Samuel had just issued soon after he took office, as expected, bore the name of Palestine in the three official languages: Arabic, English and Hebrew. But Samuel managed to sneak the letters 'Aliph and Yod' to signify the words 'Eretz Yisrael' next to the Hebrew letters only. Obviously, Samuel had no right to do this, and as expected, Foreign Office officials questioned his action, but the issue was quickly forgotten as responsibility for Palestine was passing from Foreign Office to Colonial Office control, so the subject was closed .

It was noted that this was the first official use of the title 'Eretz Yisrael' as applied to Palestine. Israel was thus first born on a postage stamp!

When it came to the arming of Jewish colonies, Samuel took no less deviant measures and went ahead with arming the colonies without the explicit approval of the government. Such measures, at many times expressly unacceptable to the government in London, paved the way for the Haganah, the nucleus of the Israeli armed forces.

When the controversial Jewish Community Ordinance was being drafted, he was no less adamant in furthering Zionist policies and in acting independently from the instructions of the colonial office. The Jewish Community Ordinance of 1925 gave the Jewish community autonomous political powers including the right to levy taxes, in effect, it was the Israeli Knesset in waiting.

As Samuel was implementing those measures, it is important to remember that the new civil administration remained a *de facto* administration, since the mandate only came into force as late as September 1923.

Nevertheless, the status quo of the country, still technically bound by wartime restrictions, was being inequitably prejudiced in favour of a small Jewish minority. Samuel passed laws in his first two years, not to mention the first two months, that would change the status quo of the country to the detriment of the Arabs.

As he created those facts, Samuel was fully aware that he was treading on precarious grounds. He kept pressing the Colonial Office for what he called a 'regularization' of the situation in Palestine, and repeatedly wrote that '*the*

circumstances of the country have called for considerable measures of legislation that go far beyond the powers of an ordinary military occupant'.

On the other hand, Samuel was well aware that legislation was needed in the political, economic and administrative spheres to turn the majority into a minority and vice versa. To achieve his goal, he appointed the staunch Zionist Norman Bentwich as Attorney General. It was Bentwich who kept the Zionist Organisation fully informed of new ordinances while being drafted. This greatly assisted Zionists on the vital issues of land legislation and purchase.

Between 1920-25, no less than ten Ordinances on land related issues were passed. The first Land Transfer Ordinance was issued in September 1920, and was the first step that ultimately allowed Zionists to gain control over large tracts of state land. Under these land laws, for the first time the notion of land use became distinct from land ownership. These land laws would also later result in the creation of a dispossessed class of Palestinian tenant farmers who had clear legal rights under Ottoman law, but became liable to eviction by court orders under Samuel's land policy.

His other most immediate priority was legislation in the field of immigration. Between 1919-1923 the size of Jewish settlers doubled and the number of colonies increased to about 100. These new immigrants were soon given the opportunity to participate in local elections by granting them provisional Palestinian citizenship, followed by full citizenship only after 2 years. The demographic balance in Palestine was being seriously altered.

Among the other measures in favour of the Jewish community was the setting up of the Department of Commerce and Industry, and the establishment of banks to grant long term loans to Jewish agriculturists and urban businessmen. Also, a large programme of public works, -including road construction- was immediately begun.

It was often pointed out by the Palestinian leadership that this road building scheme was mainly meant to connect Jewish settlements and was a major source of Jewish employment and not to the benefit of the country as whole. And to help Jewish building activities, Samuel reduced customs duty on building material from 11% to 3%.

Thus, between 1920-23, Samuel engaged in a development oriented policy of large public investment and infrastructure projects vital as a source of employment to Jewish immigrants. He went even further than this by laying the foundations of future vital projects such as Haifa harbour when he discussed it at length in his 1925 report under the heading 'Future Work'. !

On the political level, Samuel made the phrase 'self-governing institutions' in the mandate apply only to Jews, and prevented Palestinians from exercising their authority in the political and economic fields. When he fully recognised the Jewish National Assembly as the official elected

representative of the Jewish community, he denied the same to the Arabs. He thus prepared the Jews for political and economic ascendancy and gave them wide powers calculated to block the road to Palestinian self-determination.

What was Samuel's understanding of the Balfour Declaration?

Under pressure, Samuel made the first public attempt to interpret the Balfour Declaration in a speech on 3 June 1921, following the eruption of violence, in Jaffa, in May of that year. He claimed that there was 'an unhappy misunderstanding' about the declaration. 'It did not mean', he stated, that the country would be taken away from its Arab owners and given to Jews. It was also Samuel who drafted the first official and written interpretation of the Balfour Declaration in the 1922 White Paper. This remained the central document guiding British policy in Palestine until 1929 .The White Paper asserted that Jews were in Palestine 'as of right and not on sufferance', and added that the British government 'did not contemplate the subordination or disappearance of the Arab population, language or culture'. This confirmed the ambiguity of the Balfour Declaration, since it did not resolve the question as to how the Jews could be in Palestine by right, without infringing on the rights of the local inhabitants.

Throughout his five years in Palestine, Samuel never ceased to insist on the phrase that the Balfour Declaration was a *chose jugee*, a closed issue - he coined that phrase - and irreversible. By insisting that the Balfour Declaration was irreversible, he was hoping to make it so, while in fact this could not be further from the truth.

As already mentioned, it was during 1922-23, that doubts in British government circles that the Balfour declaration was a political mistake were expressed loudly. The possibility of reversing the whole Zionist policy was very real, following a House of Lords motion rejecting the mandate on grounds of inherent injustice to the Palestinians.

But Samuel again came to the rescue: he tipped the scale in favour of Zionists when he appeared before the Cabinet sub-committee in June 1923, - which met to review British policy in Palestine and was chaired by Lord Curzon - by insisting that the Zionist policy was not susceptible to change. He prevented Palestinian representatives from appearing before the committee and was the only one invited. Consequently, the subject was closed and no further revision of Zionist policy took place after 1923.

CONCLUSION

Within a decade, after Samuel first envisioned a Jewish state in Palestine in his 1915 Cabinet memorandum, the project was well under way by 1925.

He was heartily congratulated by the Zionist Organisation on the successful completion in 1925 of the first stage of the Jewish national home.

Since 1925, and up to the present day, further injustices were inflicted on the Palestinians as a result of the Balfour Declaration. Though it is important to revisit the root origins of the problem now, it is more important to right the wrongs.

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Balfour's Legacy: Between Past and Present

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Noha Tadros Khalaf

One of the most current strategies to interpret the present is by invoking the past , not only because we are in disagreement with what happened then, with what was the past, but because we ask ourselves whether the past was really past, dead and buried, or whether it is continuing, under a different form perhaps : that is of the resort of multiple debates –about the influences, the judgements, and the blames, the present realities and the future[1] .

Edward Said.

It is practically impossible for a historian to analyse the past without being influenced by the present, and without ultimately reflecting on the future, since the borderline between the different 'tenses' seems quite fragile, especially in an explosive area like the Middle East, where one keeps on hearing one of the most vulgarly common but a-historical sayings such as "history seems to be repeating itself ….".

Trying to assess Balfour's legacy in 2005, eighty eight years later, almost a century after the drafting of the infamous 'Balfour Declaration' referred to in the Middle East as 'Balfour's Promise', is a major historical task requiring the replacement of this 'text' in its historical context, and therefore analysing both the roots and consequences of such a declaration.
Obviously historical 'documents' and 'texts' are both a reflection of what is actually happening on the political scene at a particular point in history, and a prescription for what is about to happen later on the ground , whether these express a declaration of war or a declaration for peace after war. Most often they declare future intentions that are based on strategic assessments of the actual balance of forces at that specific moment. They do not therefore emerge in vacuum, and affect future developments to the extent that the required tools for their implementation are available and that the general political set-up is receptive.

By1917, the whole stage had been already set up for the drafting of Balfour's Declaration:
The Zionist movement had been actively organising itself and working for the establishment of a Jewish State in Palestine for at least twenty years since the first   Zionist Congress in Basle(1897), the Ottoman empire had been finally dismantled after the first World War, and the Middle East had fallen prey to the victorious European powers, namely France and Great Britain which divided the fragmented empire between them and legalised its division in 1916 through the notorious Sykes- Picot agreement. The Balfour Declaration of November 2nd 1917, was therefore drafted at one of the most crucial turning points of Middle Eastern history.
David Fromkin in his book , A Peace to End All Peace, identifies (1914-

1922) as the period which created 'the modern Middle East'[2] , while Nadine Picaudou the expert French historian referred to the period 1913-1924 as '*the decade that unsettled the Middle East.*'[3]

Since 1915, according to the Hussein–Mc Mahon correspondence, France had commissioned Georges Picot and Britain had asked Mark Sykes to define their respective zones of influence in the Middle East. Their joint work was ratified by the British Minister of Foreign Affairs Lord Grey and by France's Ambassador in London, Paul Cambon. Their agreement was then submitted to Russia for approval[4]

Three zones were defined in the Sykes- Picot accords, and were represented on a map: Zone A(blue) French zone of influence through the Independent Arab State , Zone B(red) Zone of British influence of the Arab state and the third Zone C (brown) which included Palestine and where it was mentioned that "an international administration would be established the shape of which would be decided after consultation with Russia, and later with the other allies and the representatives of the Sharif of Mecca" [5]

The 1916 Sykes Picot agreement delimiting Palestine as a zone to be under 'international administration' probably gave the Zionist movement the final push to go forward with the implementation of the idea of the Jewish state in Palestine , thus laying the groundwork for the Balfour declaration.

Writing in 1939, J.M.N. Jeffries, British author and Journalist, offers a brilliant 'Analysis of the Balfour Declaration' which he describes as

'*a pronouncement which was weighed to the last penny-weight before it was issued. There are but sixty seven words in it, and each of these, save perhaps the Government's title and a few innocent conjunctions, was considered at length before it was passed into the text*'

adding

'*drafts for it travelled back and forth, within England and over the Ocean, to be scrutinized by some two score draftsmen half cooperating, half competing with one another, who erased phrase or adopted that after much thought*'[6].

Jeffries concludes "*There never has been a proclamation longer prepared, more carefully produced, more consciously worded*". He refers to several authors who have witnessed the process of drafting this declaration such as Leonard Stein, who in his work on Zionism states: "*The Balfour Declaration was by no means a casual gesture. It was issued after prolonged deliberations as a statement of policy*", and Nahum Sokolov who in his History of Zionism stated "*every idea born in London was tested by the Zionist Organisation in America, and every suggestion in America received the most careful attention in London*", while Rabbi Wise

who had participated in the deliberations preceding the Balfour Declaration admitted that it "*was in a process of making for nearly two years*" and "*its authorship was not solitary but collective*".[7]

The Declaration officially released on the 2nd of November reached the public on the 9th of November, when it was falsely reproduced in the newspapers under the guise of an 'entirely British conception' though it had been equally conceived by the Zionist movement.[8]

Frank E. Manuel, reveals in his book, The Realities of American-Palestine Relations , the role that Zionist personalities in the United States such as Judge Brandeis played in supporting the drafting of the Balfour Declaration . He mentions a document describing 'high Zionist policy' in London which was transmitted to the U.S. State Department by Brandeis in may 1917 with a brief note which read "*I think you will be interested in enclosed formulation of the Zionist program by Weizmann and his associates and which we approve*". The attached document was written on stationery of the Provisional Executive Committee for General Zionist affairs, and contained most of the formulae which were later included in the Balfour Declaration.[9]

In fact during a trip to the United States in May 1917, Balfour had discussed his proposed Declaration with Brandeis, and had pledged his support for Zionism.[10]

On September 19th Chaim Weizmann cabled Brandeis a version of the Declaration, tentatively agreed upon by the British, along with a suggestion that it would be helpful if he and President Wilson supported the text. Since no specific written approval from Wilson was reached, Brandeis finally cabled Weizmann on September 24th, stating that on the basis of the opinions of Wilson's Advisors and on previous talks with the President, he believed "*the President was in entire sympathy*".[11]

Due to the opposition of British Jews to some of the wording of the first draft, Weizmann had to tone it down by October. The September version which had mentioned 'Palestine should be reconstituted as the national home for the Jewish people' was changed, and by October it referred only to 'the establishment in Palestine of a National Home for the Jewish people'.[12]

On October 13th, Wilson finally answered the note that had been sent to him a month earlier by Colonel House, saying

"*I find in my pocket the memorandum you gave me about the Zionist Movement. I am afraid I did not say to you that I concurred in the formula suggested from the other side. I do and would be obliged if you would let them know it*".

According to Manuel it would be

"*rather farfetched to consider Balfour one of the progenitors of the Balfour*

Declaration. The most that can be said is that he allowed it to happen". [13]

An Analysis of the Actual Wording of the Declaration:

"His Majesty's Government view with favour the establishment in Palestine of a national home for the Jewish people and will use their best endeavours to facilitate the achievement of this object it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine or the rights and political status enjoyed by Jews in any other country"

Undertaking a very interesting detailed analysis of the wording of the Balfour Declaration, Jeffries reveals that Balfour had used discreet lower case letters for the term National Home in the original version first reproduced in the Times. This was later substituted by capital initials in the declaration. The term National Home was of course, not of his invention, but had been coined thirty five years earlier by Leon Pinsker in Odessa in his book 'Autoemancipation' published in 1882, although it was not intended at the time to apply to Palestine.

According to Jeffries, the phrase 'national home' with or without capitals was a new phrase and had no established meaning. It simply meant that the British Government was committing itself to it without knowing exactly what it was committing itself to, and the same 'culpable lack of definition' was to be found in the preamble, where the declaration was described as "a declaration of Sympathy with Jewish Zionist aspirations" without identifying what 'Jewish National Aspirations' meant. [14] Also, according to Jeffries, these 'unfathomable' phrases were used because they were 'unfathomable' and could be interpreted at will. The Zionists understood it to mean a Zionist State in Palestine, and were '*probably disappointed that they did not receive full ruling rights immediately*'. The phrase "view with favour" was also ambiguous and could offer the British some kind of retreat in the face of any mounting opposition. As for the next phrase "Will use their best endeavours to facilitate the achievement of this object", it was also dubious, since to 'facilitate' might mean to lend a hand actively, or conversely, it may mean to put no hand in the way, passively.

The will to deceive in the next phrase was the most obvious, since through the description of the Palestinian Arabs as the "non Jewish Communities in Palestine" (at the time that the Arab population of Palestine numbered about 670,000 while the Jews were only 60,000, therefore around 90 percent Arab and 9 percent Jewish), the aim was 'to conceal the true ratio of Arabs to Jews'. [15]

Describing this particular phrase as 'fraudulent', Jeffries ironically engages in a hypothetical comparison between the status given to Palestinians according to the Declaration and what could have befallen the

Scots if the same logic had been applied to them:

"*It was as though in some declaration Highlanders and Lowlanders had been defined as the "existing non-Irish communities in Scotland 'in order that that the Irish colonies might be deemed the essential elements of the population North of the Tweed. The Scots themselves thus would appear to be nothing but sporadic groups dotted about the Caledonian soil .Upon which dispossessive action against the Scots could be attempted more easily*",

adding sarcastically

"*it was a pity indeed that Lord Balfour was not forced to try in Scotland what he and his Zionist friends carried through in Palestine, one airily disingenuous statesman the less would have been left in power.*" [16]

Not only did the declaration falsify the status of Arabs as the 'non - Jewish existing communities' who happened to be still there, but the next phrase "it being clearly understood that nothing shall prejudice the civil and religious rights" of the Palestinian Arab community seemed to avoid intentionally the term 'political rights' in order to deny the right of Palestinians to independence and self determination. Whereas the term 'religious rights' could be clearly understood, the term 'civil rights' was not defined and was placed there instead of 'political rights'. The word 'political status' however was conversely used in the case of Jews, since the declaration stated that nothing shall be done to prejudice 'the rights and political status enjoyed by Jews in other countries'. Even the word 'rights' was not defined in detail when pertaining to Jews so that it could also include 'political' and not only 'civil rights'. [17]

According to this declaration, Arabs would only be guaranteed ambiguous 'civil' rights while relegated to a minority status of simple "non-Jewish communities" in their own land. Jews would benefit doubly from a National Home in Palestine, while preserving their 'political status' and securing all their 'rights' in their countries of origin.

It is clear from the very wording of this declaration that more and more devious and unjust acts were to befall the Arab Palestinian population at the hands of such a sophisticated and crafty collusion between Britain, the colonial power and its allies in the Zionist Movement.

Following the announcement of the Balfour Declaration, in that same year, in December 1917, Allenby, British General, marched on Jerusalem, thus putting into practical application the first phase of the Balfour Declaration. However, John Marlowe, in his book 'Seat of Pilate', mentions that whereas the Balfour Declaration was made known to the Sharif Hussein through a simple message, Allenby, made no mention of it in Palestine. It was rendered public there only in May 1920. Marlowe explains

this silence by the fact that Allenby had not received any instructions from his government making clear its precise intentions concerning the practical applications of the Declaration. This was, according to Marlowe, most probably, due to the fact that the British Government had probably no idea of its precise intentions. [18]

During the interim period 1917-1920, the British, through their special envoy T.E. Lawrence along with their Zionist friends, exerted huge efforts to acquire the consent of the 'Arabs' as represented by the Hachemites, for the Balfour Declaration. After several attempts they succeeded in arranging for the signing of the Faysal –Weizman agreement on the 3rd of January 1919, an ambiguous accord which insisted on the racial affiliation between Jews and Arabs, and their collaboration in view of achieving their 'national aspirations' which were understood to be an Arab State for the Hachemites, while 'Palestine' was defined according to the terms of the Balfour Declaration.

According to article 22 of the Charter of the League of Nations, which the Paris Peace Conference adopted in April 1919, and incorporated in the Traité de Versailles, Arab territories detached from Turkey were to be administered by mandatory powers designated by the League of Nations, but it was only in April 1920 that the Supreme Council of the main and allied forces decided to grant Britain the mandate over Palestine. [19]

In the Peace Treaty with the Turks, known as the Traité de Sèvres of the 10th of August, 1920, Weizmann had insisted to include a 'clause' concerning the Balfour Declaration. In article 95 the treaty conveyed that the parties had decided, through the application of article 22 of the Charter of the League of Nations, to grant the administration of Palestine to a mandatory power which would be responsible to realise the declaration made by the British Government on the 2nd of November 1917 in favour of the establishment in Palestine of a National home for the Jewish people . Turkey refused to ratify the treaty and the clause concerning the Balfour Declaration was later omitted in the Traité de Lausanne of the 24th Of July 1923 which replaced the Traité de Sèvres. [20]

In 1920 Great Britain decided to remove Palestine from the hands of the military and in July of that year, General Bowls gave up his place to Sir Herbert Samuel who assumed the function of the first British High Commissioner in Palestine, heading a 'civil' government which was allotted the task of putting into practice British mandatory policy in Palestine. Sir Herbert Samuel was of Jewish origin and had given his full support to the Zionist cause. According to historians, not only were the Zionists pleased by his appointment, but they had actually played a major role to make it happen, as Weizmann admitted in 1921:

"*I have been mainly responsible for the nomination of Sir Herbert Samuel in Palestine. He is our friend. At our request, he accepted this difficult post. He is our Samuel*". [21]

Almost a century later, it would be very hazardous to analyse retrospectively whether the fate of Palestine could have been altered and how much of what actually happened to its people is due to that fateful Declaration. What seems obvious, however, today is that everything which could have been termed as 'Zionist aspirations' at that time, seems to have been achieved with the help of Britain, until the end of its mandate over Palestine and the Declaration of the State of Israel in 1948, and later through the continuous financial and moral support of the United States America and its powerful Zionist Lobby.

What we have today in Palestine, is a continuing Israeli repressive occupation of Palestinian lands, in violation of the Human Rights of an Arab Palestinian population subjected to second class citizenship and minority status behind the 'Green line' where it represents 20 percent of Israeli citizens , and with over five million Palestinians subjected to stateless refugee status, a majority of them confined in refugee camps in the surrounding Arab countries or inside Palestine, since 1948, while denied their right of return to their homeland. Over three million other Palestinians are subjected to one of the most blatant and inhuman forms of occupation and segregation in the Palestinian territories occupied in 1967. Today an overwhelming Apartheid wall cuts across the remaining parcels of historical Palestine denying its population of all their political and legitimate rights to statehood and independence, while a world-wide Jewish population benefits from the Jewish Law of Return at the expense of the Palestinian population at the same time that it enjoys full citizenship rights in its countries of origin, allowing them to exercise pressure over powerful countries like Great Britain and the United States of America and to lobby for their unconditional support of the Occupying Power, against an increasingly impoverished, marginalised and uprooted Palestinian population.

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A LETTER THAT CHANGED A LANDSCAPE

Leila Khaled

Revisiting the Balfour Declaration 88 years after it was issued, Palestinians view the essence of this document much as they did back in 1917. While the end of World War I was expected to lead to de-colonisation, quite the opposite occurred. By promising support for "the establishment in Palestine of a national home for Jewish people," the British government paved the way for the Zionist movement to realise its dream of a Jewish state, thus continuing colonialism in a new form.

The founding of this state meant the dispossession, expulsion and fragmentation of the Palestinian people, whom the Balfour Declaration had referred to only indirectly, stating that "nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine." By failing to recognise the native inhabitants of Palestine as a people with national-political rights, the Balfour Declaration's arrogant, colonial assumptions matched the Zionist movement's search for an area to colonise. The Zionist movement hardly found it necessary to heed this qualifying clause of the declaration.

Today, the legacy of the Balfour Declaration is painfully clear: a racist, militaristic settler-colonial regime in Palestine. A prolonged and brutal occupation, the entrenchment of an apartheid-like system in the form of "The Wall" and 4.5 million Palestinians still denied the right to live in their own country - all accomplished by brute force and flagrant disregard of successive UN resolutions.

Assured by the Balfour Declaration of support from the greatest colonial power of the time, the Zionist movement immediately stepped up efforts to increase Jewish immigration to Palestine, to acquire more land and build more settlements, as well as a political, military and economic infrastructure that could be transformed into a state.

Still, despite international backing, the Zionist plan had to be implemented by force for the Palestinian people resisted being deprived of their country as was expressed in a series of popular uprisings in 1919, 1929 and especially the prolonged general strike and armed revolt of 1936 – 39. Unlike later Israeli propaganda denying the existence of the Palestinians, the early Zionists were well aware that the land they wanted for their state was inhabited and that it would take a violent campaign to dislodge the Palestinians. Thus the settlements were conceived of as military outposts, manned with farmer-soldiers, and each Zionist party established its own militia – the Haganah, Irgun and Lehi. The Haganah, in particular, was intended as the nucleus of the future Israeli army, but all these militia coalesced to harass the Palestinians, drive them off their land and assist the British Mandate army in suppressing any resistance.

Thirty years after the Balfour Declaration, the UN Partition Plan (Resolution 181 of November 29, 1947) exhibited the same underlying racist assumptions by assigning over half of historical Palestine to the proposed Jewish state, although at that time, Jews were less than 1/3 of the population and owned only 6% of the land.

Again, the Zionist movement took this sign of international support as its cue. The Zionist militias began launching targeted attacks aimed to drive the Palestinians off their land and attain strategic positions. This caused the first wave of the Palestinian exodus. Roughly half of the 750 000 Palestinians, who became refugees as the result of the 1948-49 war, were actually expelled from their homes before the war officially started in May 1948 with the ending of the British Mandate.

Relying on a tactic of committing massacres against unsuspecting Palestinian villagers – Deir Yasin being the most famous, the Zionist forces took substantially more land than had been allotted them by the Partition Plan. This tactic was to become official Israeli policy with the massacres of Qibya and Kafr Qasem in the 1950s, and more recently in Jenin Camp when Sharon's army reoccupied the West Bank and Gaza Strip in 2002.

Before departing, the British Mandate authorities had handed control of Haifa's port, the oil refinery and other installations to the Zionist forces. In May 1948, Ben Gurion declared the State of Israel without fixed borders, pointing to plans for future expansions. To consolidate their hold on the land and prevent the return of the Palestinians, over 460 villages were razed to the ground during the 1948 war and its aftermath.

The 150 000 Palestinians who remained within the State of Israel lived under martial law for well over a decade, with severe restrictions on their movement, while much of their land was confiscated via newly declared laws.

During World War II, the Zionist movement had concentrated on gaining the support of the United States, which emerged as the strongest world power in the post-war period. Israel was admitted to the United Nations thanks to considerable American arm twisting and, even then, only on condition that it allow the return of the refugees as stipulated in Resolution 194 adopted in December 1948, a condition that it totally disregarded. The strategic US-Israeli alliance which has evolved since then has assured Israel of overwhelming military superiority in the Middle East region and also protected it from international censure.

Israel confirmed its commitment to serving colonial interests by joining the British-French attack on Nasser's Egypt in 1956, showing that it was a threat to any Arab state that gained strength and embarked on a path of independent development. By initiating war against Jordan, Syria and Egypt in June 1967, Israel confirmed its intention to press on to fulfil the original Zionist ideology of attaining more land and disposing of the people who lived on it. As a result of this aggression, Israel expanded its territory to encompass all of Palestine, conquering all of Jerusalem as well as occupying the Syrian Golan Heights and Egypt's Sinai Peninsula, and producing thousands more refugees. Like the West Bank and Gaza Strip, the Golan Heights are still occupied, in contravention of UN Resolution 242, while the Israeli army only ended its two-decade-long occupation of South Lebanon under the impact of protracted guerrilla warfare. Contrary to the 1948 exodus, the majority of Palestinians remained in the West Bank and Gaza Strip during the 1967 war, and have since lived under a brutal military regime where a maze of military decrees allows Israel to confiscate land, build settlements, demolish family homes and imprison people for opposing occupation.

With the coming of the 21st century, there has been much talk of universal human rights and democracy, but the Israeli military occupation has become even more intolerable, as the policy of checkpoints and closures imposes economic strangulation on the occupied territories, pushing over half the Palestinian population under the poverty line. Gaza has been rendered a large prison, its population deprived of mobility and work opportunities. The situation on the West Bank is not much better especially in view of Israel building the

apartheid wall in violation of the World Court judgement that it is illegal. The intent is clearly to make life so unbearable that Palestinians will think of moving elsewhere.

After the 1967 war, Israel has refrained from enacting new mass transfers of Palestinians out of the occupied territories in order to avoid the international stir this would cause. But voices calling for a pure Jewish state are on the rise, and the policy of walling in the Palestinians, confiscating more land and cutting them off from their places of work and study, is intended to cause gradual transfer, whereby it would appear that the people are voluntarily leaving for Jordan or elsewhere. The policy of closure and restricting Palestinians' mobility has recently been further tightened by a new rule forbidding Palestinians from driving on highways connecting settlements in the West Bank.

In closing, the Balfour Declaration was not a mere piece of paper, but part of a plan that changed the geography and demography of Palestine in line with Zionism's racist ideology of conquering the land and banishing the people. Israel is a unique state formation created by war and UN resolutions. For this reason the international community bears a heavy responsibility for the Palestinian people's continued dispossession. While we see that some countries are severely punished for violating UN resolutions, as was the case of Iraq, Israel has suffered no consequences for its repeated violations of treaties and refusal to comply with scores of UN resolutions.

The Palestinian people have persistently rebelled against their dispossession and the negation of their national and political rights, through armed struggle, through broad popular uprisings like the ongoing *intifada*, through diplomacy and building alliances with progressive forces worldwide. But in view of Israel's overwhelming military might and firm alliance with the world's sole superpower, the Palestinians need an international campaign to support them in fulfilling their rights.

In truth, Israel should be dealt with as was the apartheid regime in South Africa.

I invite you to join me in exploring ways to mount a campaign for imposing sanctions against Israel for its illegal occupation, violations of international law and war crimes.

'SECURITY FIRST' AND ITS IMPLICATIONS FOR A VIABLE PALESTINIAN STATE

Mushtaq H. Khan

The international community's participation in the peace process since Oslo has been premised on the assumption that a two-state solution is a strategic objective of both Israel and the Palestinians. The prospect of Israel giving up the territory it has occupied since 1967 is perceived by the international community to be in Israel's strategic interest because it promises peace with its neighbours and compliance with international law. More significantly, the alternative, whereby Israel absorbs the populations of the West Bank and Gaza Strip, is presumed to result in it becoming a state with a non-Jewish majority, an apparently unthinkable prospect for the Zionist project.

For the Palestinians, the two-state solution based upon the pre-1967 war borders represents an important compromise because it would involve giving up the Palestinian territories occupied by Israel in 1948 and settling for 22 per cent of historical Palestine, together with a dilution of the right of return, whose details are yet to be negotiated.[1] While this was a significant dilution of Palestinian aspirations, it was expected that the Palestinian leadership would accept such a compromise given, the military realities on the ground and the fact that the land occupied in 1967 on which the future Palestinian state would ostensibly be created included East Jerusalem. These facts, together with the perception that the refugees have limited political power, led the international community to assume that the Palestinian leadership could hope to gain just enough internal support to achieve a viable and sovereign Palestinian state based on the 1967 borders. Thus, the international community had reason to believe that the two sides would converge on a two-state solution on 1967 borders, particularly given that anything less would almost certainly destroy the Palestinian coalition that was emerging for ending the conflict on this basis.

It is therefore not surprising that long after the failure of Camp David, ex-President Clinton continued to argue (in 2004) that only a Palestinian state on the occupied territory (OPT) with East Jerusalem as its capital can address the concerns of both sides. As he has put it, '*in private, we all know, within two or three degrees of difference, what the final peace agreement is going to look like, if there's ever going to be one.*'[2]

This apparently obvious endgame makes it very difficult to explain Israel's approach to creating new facts on the ground. Far from withdrawing from the OPT after the signing of the Oslo Agreements, Israel has only fitfully withdrawn from heavily populated parts while accelerating the construction

of settlements in other parts. At the same time, the 'matrix of control', in terms of roads, checkpoints and border controls, has been significantly tightened.[3]

The inconsistency between the two-state assumptions and the facts on the ground cannot be explained away in terms of missed opportunities, unfortunate accidents or even the power of minority groups such as the settler lobby in Israel. In fact, the Israeli conditions for engaging with the Palestinians during the period of disengagement defined by the Oslo Accords reveal significant strategic concerns that were not compatible with an intended withdrawal to pre-1967 borders or even to borders close to the pre-1967 ones. Israel's insistence on 'security first' was the most important of these conditions.

A dissection of Israel's security-first conditions reveals a number of possible underlying strategic concerns that may have justified Israel's insistence on these conditions. But when we compare the facts on the ground with the behaviour that would be consistent with each of these concerns, we find that Israeli actions (regardless of the party in power) were most consistent with strategic concerns that were likely to be undermined by the creation of a viable and sovereign Palestinian state. The erroneous assumption that is often made is that there is a widely shared perception within Israel that a withdrawal to pre-1967 borders and the creation of a sovereign Palestinian state on the vacated territories is necessary and sufficient to preserve the constitutional features of a Jewish state within Israel's pre-1967 borders.

If this were the case, the subsequent actions of Israeli policy-makers after 1994, for instance to expand settlements, would be impossible to explain. We would have to fall back on explanations based on the irrational attachment of critical Israeli policy makers across the party divide to hold on to biblical lands that ultimately damage the prospects of a viable Jewish state. We reject the latter explanation, and instead we argue that the apparently contradictory actions of Israel can be rationally explained by the inherent internal contradictions of trying to maintain a Jewish state in the ethno-demographic mix of contemporary Israel-Palestine.

It is clear that there is a broad-based Israeli recognition of the need for Palestinian 'self-government' and even for some form of 'state', since it is clear that the total absorption of the Palestinian population of the occupied territories into Israel on equal terms would immediately undermine the Jewish character of the state of Israel. However, the error of the international community (and many Palestinians) was to jump from this observation to the conclusion that full sovereignty for the West Bank and Gaza would strengthen Israel's position in maintaining the Jewish character of Israel. It is our contention that if we look carefully at the ethno-demographic distribution of populations and the implication of this for

Israel's attempt to ensure its Jewish nature, the creation of a sovereign Palestinian state on any set of borders simply does not address Israel's strategic concerns.

Wherever the borders of a future Palestinian state are drawn, a significant number of Palestinians will remain outside this state with Israeli citizenship and/or identity cards. Even if these Israeli Palestinians constitute as little as 20 percent or so of what remains of Israel's population, the operation of a Jewish constitution with inferior rights for this significant minority is not going to be easy. Secondly, the refugee issue cannot be settled simply by means of an agreement with the leadership of the Palestinian state. A programme of resettlement in the newly independent Palestinian state would be contested by many refugees and would in any case take years to complete. Both of these Palestinian groups have demands and aspirations that are not immediately addressed by the creation of a sovereign Palestinian state on pre-1967 borders, and yet their aspirations have to be managed if the Jewish constitution of Israel is to be protected. We describe this as the broader ethno-demographic challenge to Israel's Jewish constitution.

From this perspective, it becomes possible to explain how security measures that indefinitely delay the emergence of a sovereign Palestinian state can enhance Israel's capacity to manage Palestinian aspirations in areas outside the West Bank and Gaza Strip, which is critical for the sustainability of the Jewish quasi-constitution of Israel. This 'management' strategy is not neat; it has many dangers, and is clearly unacceptable to all Palestinians. But it may be the best strategy that Israel has from the perspective of sustaining its primary goal. If we understand this, both security first and the associated facts on the ground become explicable as part of an Israeli strategy of long-term management of its 'Palestinian problem' through conditional, partial, and reversible transfers of governance responsibilities in densely populated parts of the occupied territory.

If Israel's best strategy does not involve the creation of a sovereign Palestinian state, such a state is not going to emerge through a process of negotiation given Israel's military dominance. As a result, the conflict may be far more difficult to resolve than supporters of the two-state solution have assumed. Our analysis points not only to the futility of the external facilitation of a process that is not likely to lead to a truly sovereign Palestinian state (regardless of where the borders are drawn); it also points to the ultimately explosive nature of a conflict that has no obvious resolution.

We argue that the international discourse needs to move away from a discussion of security first conditions that cannot be met in a situation of permanent occupation and frequent Israeli military operations, to a

discussion of what Israeli strategic objectives may really be, and how viable they are.

In the context of Sharon's unilateral disengagement plan, the international community needs to ask if anything significant has changed in Israel's strategic calculations. To the extent that a significant change is very unlikely, the eventual outcome is likely to follow the pattern of previous Israeli withdrawals from Palestinian population centres. If the withdrawal does eventually happen, a period of possible calm is likely to be followed by increasing violations of security conditions and then by reversals and clampdowns by Israel, followed, if we are lucky, by the cycle beginning again.

'Security first'

'Security first' refers to the set of security conditions on which Israel insists over the 'interim period' prior to the establishment of a sovereign state. The uniqueness of these demands, and the insight they provide into Israel's underlying motivations, has not been sufficiently understood. Although the international community now recognizes the impact of security containment on Palestinian poverty and well-being, there is still no recognition of the likely endgames that are consistent with such an approach.[4] Israel's insistence upon 'security first' reveals important issues that explain why it may not make strategic sense for Israel to offer full sovereignty to the West Bank and Gaza Strip. If so, the gulf between the diplomatic discourse and Israel's actions on the ground become more explicable, but the prognosis of the prospects of real peace becomes very bleak.

'Security first' describes the specific terms under which Israel has sought to withdraw sequentially from the occupied territory. These conditions should not be confused with the very reasonable demand that violence should be renounced during any negotiations. But this is not what 'security first' means in the Israel–Palestine context.

Israel's security-first requirement, as recognized in the Oslo agreements and all subsequent discussions of Israeli disengagement, has been based on a unique set of conditions to the effect that withdrawals will be partial, phased and conditional, while the details of final borders (and indeed all significant issues) will be deferred. While all this is going on, Palestinians have to adhere to a strict code of nonaggression against Israel and Israeli settlements and settlers in the occupied territories, even if Israel continues to carry out security operations and targeted killings that it can argue are necessary for its survival. In practice, this has also meant that all withdrawals are reversible, because Palestinians have signally failed to show this degree of restraint.

Withdrawals would be partial because critical areas within the OPT would be kept under Israeli control, including in particular international borders, most internal roads, corridors necessary for military purposes, and key settlements. At the most optimistic stage of the Oslo interim period, Israel retained control of roughly 60 per cent of the West Bank and 25 per cent of the densely populated Gaza Strip. Further withdrawals were to be phased in a deliberately slow and open-ended way. During the interim period, Israel made no effort even to keep to the agreed timetable, signalling that the already laborious schedule could take years or even decades to complete. And these phased withdrawals would be conditional in that the ceding of more control over territories already handed over would depend on security being achieved for Israel, as judged by Israel. If security were judged unsatisfactory, for whatever reason, all or some of the withdrawals could be reversed and the process would begin again.

The uniqueness of this set of conditions compared to other examples of withdrawals from occupied territories or colonies should not be underestimated. These specific features of 'security first' create an open-ended period of limbo in which the disengaged territories are neither truly sovereign nor technically part of Israel. Nevertheless, authorities 'governing' these regions with very limited autonomy are to be held responsible for delivering security to the occupiers, whose direct occupation of significant areas continues, without enjoying sovereignty or controlling their internal economy. In fact, economic conditions for large parts of the occupied population actually worsened during Oslo as new, internal borders with Israel were set up without control over international borders being relinquished.

During this period, economic survival was based on specific 'interim' arrangements for economic transactions with Israel, whose economy now became 'external' to the Palestinians, thereby giving Israel enhanced powers of inflicting economic pain on the occupied population. The constrictive nature of these economic arrangements is critical for understanding the political and economic impasse during the Oslo period.[5]

Three possible motivations may help to explain why Israel insisted on this unique set of conditions for disengagement, each consistent with a different set of strategic goals that Israel may have been trying to achieve.

1]   The first possibility is that security first is necessary for ensuring Israeli security in the context of a strategic goal to withdraw from territories occupied in 1967. However, we will see that this claim turns out to be very difficult to justify on grounds of strategic logic if Israeli arguments are taken at face value.

2]   A second possibility is that Israel recognizes the strategic necessity of
        withdrawing its settlements from the occupied territories, but requires time to organize the withdrawal, and security first provides the framework for organizing the necessary withdrawal. However, we will see that this possibility is inconsistent with Israeli actions on the ground.

3]   A third, more worrying possibility is that 'security first' is part of a long-term Israeli strategy of managing 'self-governing' Palestinian territories that are not intended to have full sovereignty. While this appears to contradict Israel's perceived interest in a two-state solution, it is possible to understand the rationality of this strategy from an Israeli perspective once we look at Israel's broader ethno-demographic concerns, even though the long-term sustainability of the strategy remains questionable.

Achieving security

The difficulty of taking the first possibility at face value can be established by simply asking if the doctrine of 'security first' makes sense as a strategy for ensuring Israeli security in a context where it intends to withdraw from the occupied territories. It is a legitimate demand for both sides that violence should cease while negotiations over the details of the withdrawal and its implementation are taking place. But we know (as ex-president Clinton has pointed out) what the outcome of the negotiations have to be if the Palestinian state is to be politically and economically viable. It cannot take a great deal of time to work out the borders of the territory from which Israel has to withdraw if this was the major issue. So why insist on a partial, phased, conditional, and reversible set of withdrawals under the security-first rubric without publicly committing itself to the final borders of a sovereign Palestinian state? The only possible security reason that could justify why Israel should insist on security first before it publicly commits itself to a full withdrawal could be that Israel is unsure of the future intentions of a hostile Palestinian state on its border. 'Security first' could perhaps represent a test of the Palestinian will to ensure Israeli security after independence is granted before formally agreeing to its final shape.

This justification appears to be reasonable, but does not in fact make strategic sense. There can be no credible pre-commitment of their future intentions by the Palestinians because human beings can always change their minds. For Israel to be sure that future attacks will not take place, it needs to have conventional military forces deployed along an internationally recognized border. However, Israel already possesses overwhelming military superiority not only against any conceivable threat from a future Palestinian state but also against threats from more populous and militarily

advanced Arab neighbours. Given this, it is difficult to make a security case to delay a full withdrawal and transfer of sovereignty. And if a security case could be made, which argued that Israel does not have the military superiority to defend its pre-1967 borders, there would never be a time from a security perspective when sovereignty could be handed over. This is because there is no such thing as a credible commitment not to attack in the future by showing a willingness to refrain from attacking today. In either case, by unpacking the steps in the strategic logic we can see that the doctrine of security first makes no sense as part of a roadmap towards the creation of a sovereign Palestinian state on pre-1967 borders if Israel was really committed to a full withdrawal and the creation of a sovereign Palestinian state. If anything, by increasing Palestinian frustration and allowing the expansion of critical settlements, it makes the eventual creation of such a state less likely.

Allowing the withdrawal of settlers

A second, more credible Israeli justification for 'security first' is that even if Israel is committed to the creation of a sovereign Palestinian state by withdrawing to pre-1967 borders, it has to ensure the security of the settlements during an interim period when withdrawal was taking place. Since it may be politically difficult to make the security of the settlements a major public demand from the Israeli side, even as an interim measure, it may be easier to ensure their security by insisting on the more general demand of security first as a condition for proceeding with the withdrawal.

The difference with the previous argument is that although it cannot be explicitly stated, the aim here is to ensure the security of settlers now, rather than the security of the international borders of Israel in the future. The utility of the 'security first' approach would be to allow Israel to maintain effective sovereignty over parts of the occupied territory during an interim period in order to ensure the security of departing settlers. But to be plausible, this explanation needs to be substantiated by at least some observations of concerted efforts by Israel to prepare for the withdrawal of settlements, not just from selected population centres, but also across the board. Yet under Oslo, just the opposite occurred. Far from withdrawing settlers from settlements that were far from Palestinian population centres, the number of settlers roughly doubled between 1994 and 2000. It is particularly interesting that the rate of increase of settlers was just as high if not higher under Labour governments that were ostensibly more committed to the Oslo process. Although some settlers in 'unauthorized' settlements that could not be easily protected were occasionally removed, there was no political showdown based on a planned withdrawal of settlers in general. These facts on the ground suggest that 'security first' was not a strategy to facilitate the withdrawal of all settlers. If it had anything to do with settlers,

it was to offer critical settlements permanent protection, often on the most fertile land with access to water.

More to the point, the argument about the need to protect settlers while they prepare to leave does not explain why 'security first' conditions should continue to hold for the Gaza Strip after the settlers will ostensibly have left. According to Sharon's plan, Israel will continue to control parts of the Gaza Strip and to control access to it by land, sea, and air. It will thereby continue to contain the Gaza Strip economically while testing the Palestinian commitment to Israeli security conditions without any Israeli settlers being present in that specific territory. If these security conditions are not met by the Palestinians, which is the likely eventual outcome under conditions of economic hardship and political domination, reversals can be expected in the future. If 'security first' were really intended to protect settlers, it would be discontinued in the Gaza Strip under the Sharon disengagement plan, and the expansion of settlements in the West Bank would have ceased long ago.

The conclusion cannot be avoided that both the expansion of settlements in the West Bank and the proposed withdrawal of settlers from the Gaza Strip are more consistent with the well-established pattern of conditional, partial and reversible Israeli withdrawals from population centres and that they help to retain an overall 'matrix of control' over the occupied territory. A part of Israel's long-term management strategy. If the first justification for 'security first' is not strategically credible, the second is inconsistent with the facts on the ground. A third possible justification is consistent with the facts on the ground but appears to be inconsistent with Israel's long-term strategic interests. This argument is that 'security first' is part of a long-term Israeli management strategy that is not intended to lead to a sovereign Palestinian state but only to pockets of Palestinian self- government subject to Israeli re-occupation. This explanation appears to be inconsistent with the widespread assumption that Israel seeks a resolution to its ethno-demographic crisis by supporting a two-state solution on pre-1967 Israeli borders. But this is only because outsiders have taken a simplistic view of the ethno-demographic challenge facing Israel.

A closer look at the issues suggests that the creation of a sovereign Palestinian state based on the 1967 borders will not solve critical aspects of the ethno-demographic challenge that constitutes Israel's 'Palestinian problem'. Indeed, in some respects, the creation of such a state may make the management of some aspects of this 'problem' more difficult from an Israeli perspective. This could explain why an internal Israeli consensus on the two-state solution has never emerged. Even those Israeli policymakers who ostensibly support a two-state solution have had a very limited conception of what a "state" is, and ultimately colluded in the perpetuation of a 'management strategy'.

Outsiders have looked at the demographic implications of Israel trying to absorb the Palestinians in the occupied territory to conclude that Israel must support a two-state solution, and that to be politically and economically viable, the Palestinian state must be based on 1967 borders. But they have not adequately addressed two far less soluble facets of the same problem.

First, Israel already has a large internal Palestinian population with Israeli citizenship, amounting to 20 per cent of its population and growing. Wherever the final borders are drawn, Israel will continue to have a significant Palestinian minority. A serious potential challenge to Israel's Jewish constitution does not require a Palestinian majority. A significant minority that demands equal constitutional rights is just as damaging.

Second, Israel has to deal with a refugee Palestinian population in exile that is at least as big as Israel's current Jewish population. The Palestinian refugees in exile have rights that a Palestinian leadership in a West Bank state may not be legally capable of signing away, even if it were politically minded to do so. Nor are the refugees likely to give up their political fight regardless of the legality or the politics of any deal between Israel and the Palestinian leadership based in the occupied territories. When these two critical aspects of the broader ethno-demographic challenge are factored in, it becomes clear why many Israelis believe that there is no lasting and permanent solution to its 'Palestinian problem', wherever the borders with a Palestinian state are drawn.

There is a growing recognition across the Israeli political spectrum that this is indeed the case. Statements that have explicitly supported our interpretation have come from Benny Morris at one end of the Israeli political spectrum to Binyamin Netanyahu at the other. But outside observers have either ignored these internal Israeli discussions or believed that they represent the concerns of insignificant minorities.[6] The likelihood is that although many Israelis may support a Palestinian state, the type of state they support is a permanently 'non-sovereign' one. Indeed, from Israel's perspective, it is possible to see why a full withdrawal to the 1967 borders and the creation of a sovereign and viable Palestinian state may actually make the manage- ment of these other problems more rather than less difficult.

To begin with, consider the Israeli Palestinians. They now make up around 20 per cent of the Israeli population, and some Israelis have already identified them as the most serious threat to Zionism. Israeli Palestinians are beginning to argue that Israel will have to choose between its claim of being a democracy and maintaining the core characteristics of the Jewish state. This is because the Jewish nature of the state in Israel is not just about Judaism having a ceremonial role as the state religion (akin to Anglicanism in England) but about establishing a series of unequal and preferential legal

and constitutional rights for Jews. These include the right of return (denied to non-Jewish refugees and their descendants), significant formal and informal rights that flow from the responsibility of military service (that Palestinians are not 'required' to do), preferential access to land, unequal taxation, differential access to state services, different classes of citizenship with and without voting rights (the Arabs of annexed East Jerusalem have Israeli identity cards but no voting rights) and so on. By contrast, the constitutional recognition of democracy would entail equal legal rights and responsibilities for all Israeli citizens irrespective of their religious or racial affiliation.[7]

There are a number of ways in which the internal constitutional dilemma faced by Israel impacts on its strategy towards the West Bank and Gaza Strip. If Zionism requires the maintenance of inferior legal and constitutional rights for Israeli Palestinians in any case, why should Israel not extend the system of graduated rights and absorb the West Bank and Gaza entirely, or in large part? Indeed, some members of Likud openly advocate the complete absorption of the occupied territory into Israel by extending the partial citizenship system of East Jerusalem, namely Israeli identity cards without voting rights, to the rest of the OPT.[8]

Other unspoken considerations are even more serious. Most Israeli Palestinians have been restrained in their criticism of the limited and unique constitutional rights that apply to them. Their quiescence is not surprising when Palestinians in the occupied territory are contained in dependent Bantustans with vaguely defined borders. The fear of being converted into similar 'self-governing' areas and of their liberty being subjected to severe restrictions has kept Arab Jerusalemites and Israeli Palestinians from voicing constitutional demands with any vigour.

Were a sovereign Palestinian state with internationally recognized borders to be created, this would remove the ambiguity about the status of Israeli Palestinians, and it would be natural to expect these citizens of Israel to assert their claim for equal rights much more strongly. Further, for some Israelis the maintenance of Jewish enclaves in the occupied territory also keeps alive the possibility of 'resolving' the problem of the Israeli Palestinians in radical ways. For instance, it may be possible to put pressure on a client Palestinian state that remains territorially and economically unviable to accept the 'transfer' of Israeli Palestinians out of Israel in exchange for persuading some of the remaining settlers in the West Bank to return to Israel.

These dreams of a further round of ethnic cleansing are increasingly being discussed in Israel, but their limited plausibility would disappear entirely if a future Palestinian state has achieved full sovereignty and economic viability. Keeping outposts of settlers deep inside a disconnected set of Bantustans

and maintaining the Gaza Strip as an area subject to asymmetric containment, even if it is without any settlers, increases Israel's political flexibility to explore such options 15 to 20 years from now. A fully sovereign Palestinian state, on the other hand, would be far less likely to assist in resolving such problems.

As for the refugees and their descendants, there are legal questions as to whether their right to return, which is an individual right, can be signed away by the leader of a Palestinian state that would be based on territories from which most refugees did not originate. Quite apart from the fact that any Palestinian political leader in the West Bank-Gaza Strip would be committing political suicide by signing away these rights, it is not at all clear, as touched on above, that any Palestinian leader has the legal authority to sign these rights away. This means that regardless of any deal with a Palestinian state on the right of return, Israel would have to live with the demands of millions of Palestinian refugees in neighbouring countries who are unlikely to accept the legitimacy of any 'signing away' of their internationally recognized rights.

From an Israeli perspective, the creation of a sovereign and viable Palestinian state may well make the management of this problem more, not less, difficult. As long as there is no settlement, the status quo can continue and the hopeful Zionist may believe that eventually the refugees will disappear into their host communities. However, as soon as a Palestinian state is created, the refugee issue will come to the fore.

Even ignoring the issue of the Israeli Palestinians, a Zionist might support a two-state solution only if it were also possible to force this Palestinian state to accept large numbers of returning refugees. The latter are at least very likely to be indignant with a leadership that had colluded in what they would perceive as a 'sell-out'. Even if the Palestinian state had signed treaties to this effect, the 'return' of refugees to a place from which they do not originate may be very difficult to effect. International subsidies for absorbing refugees might not compensate a future Palestinian state for the potential political risk and cost of absorbing large numbers of disgruntled and disaffected citizens.

On the other hand, if the Palestinian 'state' remained weak and dependent on Israel, and security first conditions allowed Israel to maintain a presence and a say inside the territories, much more effective pressure may be put on this state to cooperate in absorbing, managing and containing the potential hostility of millions of returning Palestinians. Since the repatriation of refugees would take years and perhaps decades to complete, the management of this aspect of the 'Palestinian problem' is at least a very long term if not permanent strategic concern for Israel.

This brief discussion suggests why creating a viable and sovereign Palestinian state before other equally serious aspects of Israel's 'Palestinian problem' have been resolved may restrict Israel's perceived freedom of manoeuvre and even threaten the viability of Israel's Jewish quasi-constitution. Israel's goal, from this perspective, is therefore to manage the 'problem' by means of creating a series of reversible Bantustans. The problem is that these enclaves are by definition not viable and create more Palestinian anger and violence. From this perspective, 'security first' plays a critical role both in signalling Israel's long-term interest and presence in all of the Palestinian territories, and in justifying an ongoing response to the unrest that is likely to be a permanent feature of an endless 'transitional' phase.

This is the real strategic significance of 'security first', which makes no sense as a means of achieving security in the conventional sense or as a step towards achieving a viable and sovereign Palestinian state. Even though official Israeli policy documents do not make these connections for obvious reasons, it would be unfair to accuse Israel of any hidden agenda or conspiracy. Many of the discussions and debates on which this analysis is based are public – in the Israeli media, political parties, think tanks, and universities. The relevant documents are easily available, including on the Internet.

If there is a conspiracy, it is a conspiracy of silence on the part of the international community, which has refused to acknowledge what the Israelis have actually been saying. Members of the international community have preferred to rely upon what they think they know about Israel's real interests. In contrast, Israeli leaders, and not just Sharon, have often said that the 'Palestinian problem' is unlikely ever to be solved; it just has to be 'managed'.

Israel's strategic goal, the origins of which can be traced back to the very foundation of the state, has been to achieve the military and political capacity to manage the problem.[9] When considered in the context of the demographic facts, the constitutional, not just the territorial, claims of Zionists and Palestinians ultimately constitute a 'zero-sum' game. This reading of its options suggests that as its long-term strategy, Israel is at best likely to agree to the creation of a number of dependent Palestinian homelands.

The significance of 'security first' is that it is both invoked as the justification for not engaging in discussions of full withdrawal and the rapid creation of a sovereign Palestinian state, as well as providing the cover for the necessary military management of the inevitable Palestinian unrest.

This analysis suggests that the international community's focus on territory and territorial concessions has diverted attention from the real obstacles on the path to the two-state solution. Instead of asking, for example, why the Palestinians have been unwilling to concede two or three per cent more of their land, it would have been more pertinent to ask why Israel feels compelled to keep another two or three per cent or indeed a significantly higher percentage of Palestinian land; why it wishes to control Palestinian borders; and why it wants to maintain a presence deep inside ostensibly sovereign territories.

Why has Israel been so keen to maintain control over the political, ecological, and economic viability of the Palestinian entity or entities that it seeks to create? Further, does the justification of all this on the grounds of 'security first' actually make sense in terms of security? Might security first not make more sense in terms of Israel's perception of how it can deal with the broader range of ethno-demographic challenges it faces, and which it openly discusses within the country? Had these questions been asked sooner, it would have been apparent that the massive gap between the facts on the ground and the diplomatic discourse was no accident and that it did not reflect a failure of consistent strategic behaviour on the part of the Israelis.

However, although Israel's insistence on 'security first' makes sense in the sense that it is arguably the best strategy from the perspective of Zionist goals, this does not mean that these goals are achievable. It is important for the international community to understand what they are signing up to by not questioning the feasibility of these underlying goals. Israel's overwhelming military superiority and its alliance with the only remaining superpower may well have lulled it into believing that its management strategy can be a permanent one. But too many things can go wrong.

One possibility is that power in the occupied Palestinian territory may slip out of the hands of those Palestinians who hope against hope for a peaceful resolution into the hands of those who believe (as most Zionists already appear to believe), that the Palestinian conflict with Israel truly is a 'zero sum' game. If this happens, a very rapid deterioration can be expected, with the possibility of Israel attempting to carry out large-scale transfers of population and the involvement of neighbouring countries in a major conflict. It is not at all clear that the international community is prepared for this.

At the other extreme, another possibility is the emergence of a non-violent Palestinian movement to demand civil and political rights for all Palestinian constituencies. This too could present a new and perhaps even greater challenge to the permanent continuation of Israel's management strategy.

The disengagement plan

To many, the disengagement plan initiated by Sharon appears to be significantly different to the earlier Oslo process. It may appear to contradict the analysis presented so far. But in many key respects, it represents a minor modification of an established strategy.

An immediate difference appears to be an Israeli commitment to withdraw settlers from most or all of the Gaza Strip. But in fact, conditional withdrawal from population centres while maintaining the containment of these areas is precisely the old strategy. Indeed, for Israel this was a cornerstone of the Oslo process. The proposed withdrawal of settlers from Gaza has been combined with the intention of maintaining and even strengthening Israel's containment by enhancing border controls with Egypt and the Mediterranean while strengthening and extending settlements in the West Bank.

In this context, the plan to withdraw settlers from Gaza can be viewed as entirely consistent with a strategy of controlling and containing Palestinian territories while withdrawing from densely populated areas. Indeed, our argument has been that settlers have been used to justify 'security first' and the containment of Palestinian territories rather than that containment was imposed to protect the settlers. Settlements assist containment only if they can be cheaply maintained; otherwise, containment and limited sovereignty are less easy to justify, but our argument explains why they will continue.

Maintaining settlements is no longer inexpensive in the Gaza Strip, in isolated areas of the West Bank or deep inside Palestinian towns. But for most settlements and settlers, the Israeli intent to stay put remains unchanged for the foreseeable future. Indeed, settlements are being expanded in the West Bank.

These observations raise important questions about the role of the international community in facilitating the disengagement plan. The international community is caught between a rock and a hard place. There is no question of withdrawing, or possibly even reducing, aid to the Palestinian territories and to the Palestinian National Authority in the context of one of the steepest declines in living standards seen in recent history.[10] At the same time, subsidizing Israel's strategy of containment is not likely to lead to progress towards a viable two-state solution, as the Oslo experience has clearly demonstrated. It is not easy to dismiss out of hand the voices of those Palestinians who now argue that Oslo afforded Israel the opportunity to intensify and formalize containment in a way that may not have been possible during the pre-Oslo occupation. A similar and further intensification and formalization of containment may follow in Gaza, and

the international community may once again participate in giving this process legitimacy.

Far from disengagement being a step towards the creation of a viable Palestinian state, it may further the formalization of a system of control that can better be described as 'institutionalized containment' or 'bantustanization'.

Conclusion

The dilemma facing international donors should not preclude support for Palestinians in the context of Israeli plans for a unilateral disengagement from Gaza. But this should be truthfully described as relief and welfare, not as support for a state formation exercise that is not remotely realistic. Nor should it preclude a more transparent analysis of Israeli strategies.

In the long run, resolution of the conflict requires a frank debate within Israel and between it and its friends abroad about what, if anything, can be done to preserve Zionism given the demographic reality of modern Israel–Palestine. It is precisely because the creation of a sovereign Palestinian state does not provide a satisfactory solution to the constitutional crisis facing Zionism that Israel has refused to grab the apparent opportunity presented by Oslo. On the other hand, a bantustanization strategy posing as a two-state solution is unlikely to get the minimum Palestinian support required to achieve even a temporary resolution of the conflict. Palestinians on the ground can see the reality of what is happening. Their growing internal fragmentation and refusal to participate with any great enthusiasm in this 'state formation exercise' is evidence of this. But this should not be interpreted as signalling the absence of partners for peace on the Palestinian side. Instead, it should force the international community to reconsider some of its own assumptions about the strategic goals of the parties and the price that has to be paid if Israel's underlying strategic goal is not to be questioned.

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The Balfour Declaration and its Rectification

Ilan Pappe

This paper wishes to examine the Balfour Declaration as a first step in a peace charade that was termed as the 'Middle East Peace Process' – ostensibly a Western attempt to reconcile and pacify Palestine, but in reality an international backing for the Zionist movement and its aspirations in Palestine.

A revisit of the peace process from 1917 onwards should be part of the struggle for the relocation of the Palestine question at the centre of Western public attention and conscience. This struggle is as old as the conflict itself and went through some significant junctures ever since 1917. I will argue here that such a tour back in time can help us reconstruct the principles which were violated by the Balfour Declaration and these principles can serve us today as guidelines for a future solution in Palestine. In order to clarify the point, I will examine the peace efforts in Palestine since 1917 and until today as a move from a pro-Zionist perception of what 'peace' means, introduced by Balfour and compare it with an alternative view, I will present here, and which is voiced elsewhere inside and outside Palestine; a view that seeks not only a workable political solution for the country, but also a morally just one.

The Balfour Declaration granted a homeland for a community that hardly constituted 10% of the overall population. In fact within the 10%, the Jewish citizens of the Ottoman Palestine Britain occupied in 1917, more than half were veteran Jews who did not wish to be part of a future Jewish state. None the less, the British declaration assumed a conflict, which did not exist, and a solution, that robbed a country from its indigenous population. Once the Declaration was made, a conflict emerged.

The first juncture in the attempts to solve this conflict, was the late 1920s, when the Palestinian leadership was willing, despite its overall and categorical rejection of the Balfour Declaration, to share the land with the Jewish newcomers. The idea was to co-exist in a state based on the principle of parity (this was the decision of the 8th Palestinian national conference). But, Britain failed to grasp the moment and allowed the Zionist movement to foil this genuine Palestinian wish to reconcile to the presence of about 150,000 Jews in Palestine in a bi-national state.

The second juncture was met by both sides when Britain decided to leave Palestine. The basic Palestinian position was not that different from 1928 and was a wish to see in Palestine a state, the nature and identity of which

would be determined democratically by the country's majority. This was the basis for deciding the future of all the countries from which Britain withdrew in the Arab world. But instead, the UN opted for a Zionist plan of partitioning Palestine between the majority native population (two thirds majority in fact) who were offered 44% of the land and the community of newcomers, most of whom arriving only few years earlier, who were granted 56% of the land.

The imposition of this 'peace plan' allowed the Israelis to perpetrate ethnic cleansing operations first in the area allocated to them in the UN proposal (the UN General Assembly Resolution 181 from 29 November 1947) and then in additional 22% of the proposed Arab state. Peace here meant the destruction of 531 villages, 11 urban neighbourhoods and a large community of refugees (750,000).

The 1950s and the 1960s saw the emergence and activation of the Palestinian armed struggle as the principal means for trying to raise world public awareness. This struggle helped to generate a diplomatic process after the 1967 war, focusing on Palestine for the first time ever since 1948.

The third juncture was reached after Israel occupied the West Bank and the Gaza Strip in June 1967. The peace plan focused on the fate of these areas and was marred by an apparent gap between the aim of the Palestinian armed struggle – rectifying the 1948 catastrophe – and the objective of the diplomatic effort – focusing on the areas Israel occupied in the 1967 war. The result was a diplomatic endeavour that sidelined, if not obliterated totally, the root of the conflict: the 1948 destruction of Palestine. The Palestinians wished, but could not force, the peace makers to focus on the refugees' right of return, the future of Palestine as a whole and the fate of Jerusalem. This interpretation of the conflict's core was recognized by the UN General Assembly resolution 194 from 11 December 1948, but ignored by the peace brokers who came from Washington.

Instead, in the post-1967 period, the geographical parameters of a settlement covered 22% of Palestine and its demographic scope related only to one third of the Palestinian people. Again and again, the Palestinians were asked to accept these geographical and demographic dimensions as the only relevant ones for a future settlement. Even a fragile Arafat realized in the summer of 2000 that this framework was insufficient, to put it mildly, for concluding a stable peace and a viable reconciliation.

If the frustrating features of the pre-1967 period was the gap between the PLO's concepts and the ideas motivating the peace brokers, the dismay that surfaced in the post-1967 period, especially in the 1990s, was the depiction of the PLO perspective as terrorist and that of Israel as the only reasonable

way towards peace. This was the dichotomous view adopted by the outside peace negotiators, the majority of whom were Americans.

And yet after 1993, the Palestinian leadership in the occupied territories, the Palestine Authority, resigned to the new definition of Palestine – a mere 10% of the land with 2.5 million people out of 7 million Palestinians) and attempted to build an infrastructure for an independent state in the areas not coveted by the Jewish State.

Who was then struggling against this new concept of a shrunk Palestine – which I will call hereafter the 'lean' solution - since 1993 and what was offered as an alternative?

In the occupied territories, the Islamic movements offered an alternative and in 2006 they reaped the fruits when they won overwhelmingly the elections. It was clear what they fought against: the corruption of the PA, the occupation and the concept of a 'lean' Palestine. What are they fighting for is less clear: an Islamic state or a free Palestine? Time will tell, but at the moment this is not relevant as they are in a survival struggle for the sake of all the Palestinians and not an internal strife on the nature and character of a state which does not exist.

Additionally, the civil society in the occupied territories began to voice a clear opinion of its own. NGOs and individuals had to organize themselves not only vis-a-vis Israel, but also confront the ambiguous PA positions on the issue of solutions and peace. They developed a very complex set of relationship with the PA: on the one hand the rebuked it for its support for the 'lean' Palestine concept and on the other, try to empower in its struggle against the occupation.

Outside of Palestine, exilic communities and various representatives of the refugee camps joined the opposition forces within the PLO in rejecting the 'lean' Palestine option. Around the world this position was also supported by large segments of the Western civil society and progressive Jewish organizations.

All these forces offered, in one way or another, a 'thick' approach to peace in Palestine. They still do today. Their departure point in many ways is the Balfour Declaration or rather a revisit of the distorted reality predicted and imposed by Lord Balfour back then in November 1917.

The 'thick' approach is offered in three alternative ways as a counter plan to the 'lean' solution. The first is a wish to create all over Palestine an Arab nation state, the second envisages the founding of an Islamic state over all of Palestine and the third calls for a unitary, bi-national, secular state over the land of Palestine.

The third is the closest in adhering to principles lost and violated by the Balfour Declaration. It is a universalistic and a democratic vision. It takes a measured view on nationalism and it can have a strong or a weak inclination towards socialism. It recognizes nationalism as a liberating force that extracted the Arab peoples all over the Middle East from the yoke of colonialism. But it also acknowledges the oppressive nature of many of national governments in the post-independence period; allowing small elites to rule unchallenged at the expanse of their societies' welfare and wellbeing.

In 1917, nationalism was still in its more positive stage – a liberation movement and concept. At its heart stood the right of people to determine their collective identities and future. Had this rule being applied to Palestine (as it had been exercised, be it in a limited way, in other Arab countries), Palestine would have become an Arab state. It is anyone's guess what kind of an Arab state would have developed in Palestine: a more liberal or the less attractive model existing today, but Arab it would have been.

The right of self determination was protected then, as it is now, by the international community. This guarantee is granted regardless of how unsatisfactory the political development in the newly independent countries.

But when the right is denied, *a prior*i, it is a violation of both the national and the democratic rights of a given country. In this century and especially in the previous one, only military occupations and colonial oppression made such a denial possible. Even since the Balfour Declaration, this basic right was denied to the Palestinian people in their homeland through colonization, occupation, ethnic cleansing, Bantustanization and finally the institutionalization of an Apartheid system.

The 'thick' approach stands thus not only as an alternative to the 'lean' peace proposals that failed. It regards the 'lean' approach as means of perpetuating the violation and seeks means to end the oppressive mechanism the Balfour Declaration put in tact.

This can be done by reinstalling the basic human rights – cherished and then abused by Nationalism – in Palestine today. Refugees and exiled together with Jewish newcomers, guest workers and more veteran Jews can join the native Palestinians in building a new future. This to my mind can be best served by adhering to the rights the Balfour Declaration denied the indigenous people of Palestine. We should thus draft a new declaration – maybe the Haddington one, as concise as the original was, but diametrically opposed to it.

REPATRIATION OF THE DISPLACED ARABS OF PALESTINE

THE LEGAL REQUIREMENT AS SEEN FROM THE UNITED NATIONS

John Quigley

I. INTRODUCTION

In the anticipated negotiations for a settlement of the Israeli-Palestinian conflict, a central place is occupied by the issue of the Palestine Arabs displaced in 1948. Approximately three quarters of a million were displaced to locations outside the control of Israel and have been prevented by the Government of Israel from re-entering Israeli territory to occupy their homes. That the issue should be the subject of negotiation is itself controversial. The position of the major powers, and of the UN, heretofore, has been that repatriation is a matter of individual right, which Israel is obligated to implement.

Today four to five millions Palestine Arabs, those displaced and their descendants, live in a diaspora. Many are in neighbouring countries, within a journey of only several hours from the homes they are forbidden to occupy. Others have moved farther afield, to other continents.

By a quirk of late twentieth-century technological development, the displaced Palestine Arabs have established contact with each other that allows them to collaborate in asserting a right to be repatriated. Internet and electronic mail communication, as it developed in the 1990s, spawned a communication network among the displaced. Their communication was aimed at influencing the negotiations that commenced in 1999 between the Palestine Liberation Organization and Israel. Their communication was aimed primarily at the PLO, as a grassroots effort to make clear any PLO-Israel peace agreement must provide for repatriation[1].

In negotiations in July 2000 at Camp David, Maryland, the PLO did insist that a right to repatriation be recognized by Israel[2]. The Israeli government headed by Ehud Barak made no serious offer on repatriation, however[3]. Barak's position was that the 1948 displacement is water over the historical dam, and that it is unrealistic to reverse it[4].

Barak's predecessor as prime minister, Benjamin Netanyahu, took an even harder anti-repatriation position. Netanyahu said that the displaced Palestine Arabs should not be permitted to live even in an anticipated Palestine state, as he viewed such an influx as a threat to Israel[5].

In coming to terms with the Palestine Liberation Organization in 1993, Israel agreed to resolve key outstanding issues on the basis of UN Security Council Resolution 242, adopted in the aftermath of the 1967 Middle East war. Resolution 242 was devoted primarily to territorial issues, because Israel had just occupied additional Arab territory. But it also dealt with the displaced Arabs of Palestine, calling for "a just settlement of the refugee problem."

The Security Council's statement is not definitive in a legal sense. The Council in adopting Resolution 242 did not act under UN Charter Chapter VII, which gives it the power to deal with threats to the peace and to make determinations binding on states. Rather, it acted under UN Charter Chapter VI, which gives it the power to make recommendations for resolving disputes[6].

Nonetheless, the Council's pronouncement carries weight as reflecting the view of that body as to what is legally required. The Security Council is normally cognizant of legal requirements when it proposes solutions to conflict situations. Moreover, Resolution 242 carries additional weight for Israel and the PLO, since, as indicated, they have agreed to follow it.

The issue of the displaced has been viewed by the international community as one that should be resolved on the basis of legal principle. As will be suggested below, there is no discrepancy between what is legally required and what Resolution 242 contemplates. By Resolution 242, the Security Council:

> 1. Affirm[ed] that the fulfilment of Charter principles requires the establishment of a just and lasting peace in the Middle East which should include the application of both the following principles:
> (i) Withdrawal of Israel armed forces from territories occupied in the recent conflict;
> (ii) Termination of all claims or states of belligerency and respect for and acknowledgement of the sovereignty, territorial integrity and political independence of every State in the area and their right to live in peace within secure and recognized boundaries free form threats or acts of force;
>
> 2. Affirm[ed] further the necessity
> (a) For guaranteeing freedom of navigation through international waterways in the area;
> (b) For achieving a just settlement of the refugee problem;
> (c) For guaranteeing the territorial inviolability and political independence of every State in the area, through measures including the establishment of demilitarized zones[7].

Although Israel and the PLO agreed to use Resolution 242 as the basis for settling their conflict, they disagree on the meaning of its refugee clause. The PLO takes it to import an obligation on Israel's part to repatriate. Israel takes it to include a range of options, not necessarily repatriation. The PLO takes it to incorporate what the PLO views as a customary law obligation to repatriate. Israel denies that it is under an obligation to repatriate.

In an effort to find the meaning of Resolution 242's refugee provision, this Article examines the drafting process, as well as prior U.N. action on the issue of the displaced Palestine Arabs. The Article does not deal comprehensively with a right of return in international law as applied to the displaced Arabs of Palestine. This author has previously argued that a right of repatriation for displaced populations is found in customary international law, and that that norm imposes on Israel an obligation to repatriate the displaced Palestine Arabs[8].

II. THE SHAPING OF THE RESOLUTION 242 REFUGEE CLAUSE

In the debates immediately preceding the adoption of Resolution 242, the U.N. Security Council devoted little attention to the phrase "just settlement of the refugee problem." Primary attention was directed instead to an Israeli withdrawal from the Gaza Strip and West Bank. On that issue, the principal point in controversy was whether a resolution should simply call for a withdrawal, or whether a call for withdrawal should be linked to a call for an overall political solution as between Israel and the Arab states.

Withdrawal by Israel from the Gaza Strip and West Bank was the key issue and the reason the Security Council was meeting. Nonetheless, certain other issues were viewed as important to reducing the chance of future wars. These issues too, it was thought, needed to be mentioned in the anticipated resolution, the refugee question being one of them[9]. But these other questions were not debated in detail. The withdrawal issue was new, Israel having entered into occupation of the Gaza Strip and West Bank only a few months earlier. The other issues had been on the U.N. agenda previously and had been discussed at length. They required discussion only to determine whether to include them in the anticipated resolution.

The first draft of what became Resolution 242 was submitted to the Security Council on November 7, by the United States. Employing a structure that would be preserved when Resolution 242 was finalized, the US draft dealt in an initial paragraph with Israel's withdrawal and a political settlement with Arab states, and in a second paragraph with three other issues[10].

This second paragraph in the US draft read as would the comparable paragraph in the finalized Resolution 242, except that the United States included one more item in its draft, namely, the arms race in the Middle East. That reference would be deleted before final adoption. One of the paragraph two items was refugees, and the United States used the phrase that would appear in the final version: "just settlement of the refugee problem."[11]

When it introduced its draft, the United States did not explain the phrase "just settlement of the refugee problem." The same phrase, with slight variation, was used by Mali, Nigeria, and India in a draft they submitted two days later. Their draft called for a "just settlement of the question of Palestine refugees."[12] When they introduced this draft, these three states explained only that this phrase covered the Arabs displaced in 1948: "[I]n our view the question of refugees comprehends only the Palestinian refugees and not those who have acquired that status as a result of the conflict in June of this year. In our view, as soon as Israel withdraws from all the territories she has occupied as a result of that conflict, the problem of the so-called new refugees would automatically cease to exist." India apparently anticipated an early Israeli withdrawal that would resolve the issue of the Arabs displaced in 1967[13].

A week later, the UK introduced a draft resolution based closely on the US draft. The U.K. draft, which would, on November 22, be adopted as Resolution 242, retained from the U.S. draft[14] the phrase "just settlement of the refugee problem."

(a) The USSR draft

One more draft, ultimately unsuccessful, was introduced before Resolution 242 was adopted. On November 20, 1967, the USSR submitted a draft resolution that included the statement:

"*There must be a just settlement of the question of the Palestine refugees.*"[15] *Explaining this draft, the Soviet delegate said, "The Soviet Union is in favour of a peaceful and just settlement of the problem of the Arab refugees, based on their lawful rights and interests*."[16]

The USSR understood the phrase "just settlement" to require repatriation. When Mali, Nigeria, and India had submitted their draft on November 9, the Soviet delegate stated what the USSR understood to be required in regard to refugees:
the three-Power draft also proposes solutions to other questions which are awaiting settlement, namely, the question of Palestine refugees and the question of freedom of navigation in accordance with international law through international waterways. The Soviet Union, for its part, also considers that these questions must be settled provided, of course, that the main requirement is fulfilled - namely, that the withdrawal of Israel's forces

from the occupied Arab territories is ensured. In this connexion, we must say that, if Israel demands that the Arab and other States should recognize its rights, it must not at the same time refuse to recognize the lawful rights of that part of the Arab people of Palestine which is now living in exile, and it must respect the many United Nations General Assembly resolutions on that question[17].

The USSR view was that if Israel were to insist that the Arab states recognize as legitimate its territorial claims in Palestine, then Israel must recognize the right of the displaced Palestine Arabs to be repatriated. The Soviet reference to General Assembly resolutions was to resolutions adopted annually by the Assembly on the refugee issue, stemming from Resolution 194, adopted on December 11, 1948. In Resolution 194, the General Assembly [r]esolve[d] that the refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible.[18]

To press for a political settlement and to convince Israel to repatriate the displaced Arabs, the General Assembly, by this same resolution, set up a three-member Palestine Conciliation Commission, composed of representatives of Turkey, France, and the United States[19]. The Commission asked Israel to implement the General Assembly's call for the repatriation of displaced Palestinians. So too did the United States.[20] Israel admitted 8000 Palestinians on the basis of reuniting split families[21], and offered to admit 100,000 more, but when U.N. officials pressed Israel to admit a larger number it withdrew that offer.[22]

The understanding that repatriation for the displaced Palestine Arabs was a matter of right informed the General Assembly when it adopted Resolution 194. The right has two separate grounds. One is the right of an individual not to be displaced. The other is the lack of any obligation of the state where the displaced person finds refuge to allow the person to remain. By refusing to repatriate, the state from which displacement occurred thus violates the rights of the state of refuge.[23] Hence, a state that refuses to repatriate violates the rights both of the displaced individual and of the state of refuge.

(b) The US explanation

Like the USSR, the United States thought that the refugee question needed to be resolved on the basis of the rights involved. The US delegate, explaining the US position on what needed to be done to resolve the Middle East situation, relied on five principles:

"(1) *the recognition of national life, (2) justice for the refugees, (3) innocent maritime passage, (4) limits on the arms race, and (5) political independence and territorial integrity for all.*"[24]

The U.S. delegate added

"*I should like also to comment on the refugee problem, for it is far more than merely a political grievance: it is a profoundly humanitarian problem, and it must at long last be solved. Those who are homeless or displaced because of both the recent and the previous conflict have a desperate need for help and for justice. The nations of the area, with the help of the world community, must act with new determination and new energy to meet that end. And in the solution of the problem my government is prepared to do its share -- and to do more than its share - just as throughout the years it has been doing in relieving the distress of the refugees in the area.*"[25]

The five principles were taken by the US delegate from a 19 June 1967 speech by US President Lyndon Johnson. Johnson's second principle was about the refugees:

"*This last month shows us another basic requirement for settlement. It is a human requirement: justice for the refugees. A new conflict has brought new homelessness. The nations of the Middle East must at last address themselves to the plight of those who have been displaced by wars. In the past, both sides have resisted the best efforts of outside mediation to restore the victims of conflict to their homes or to find them other proper places to live and work. There will be no peace for any party in the Middle East unless this problem is attacked with new energy by all and, certainly, primarily by those who are immediately concerned.*"[26]

Shortly after Resolution 242 was adopted, the US delegate to the General Assembly's Special Political Committee referred to President Johnson's 1967 speech as he introduced on behalf of the United States a resolution on the U.N. Relief and Works Agency. The resolution, which was overwhelmingly adopted by the Committee,[27] and then by the General Assembly, as Resolution 2341(A), "[n]ot[ed] with deep regret that repatriation or compensation of the refugees as provided for in paragraph 11 of General Assembly resolution 194(III) has not been effected."[28] The US delegate said,

"*In June 1967, President Johnson had declared that the United States was firmly committed to the principle of justice for the refugees.*" *The fact that the US delegate cited this language of President Johnson about justice for the refugees[29] upon introducing a resolution calling for their repatriation per Resolution 194 shows that the United States viewed the term "just" as used in Resolution 242 as a call for repatriation.*"

(c) The Mali explanation

When the UK introduced its draft on November 16, the Mali delegate spoke in support of the Mali-Nigeria-India draft, which, as indicated, also used the phrase "just settlement." The Mali delegate characterized his view on the refugee issue as consistent with that espoused by other states during the debate:

"*There is another point of agreement which likewise cannot be denied in view of the clear and unambiguous way in which it has been expressed in the debates of recent months, namely, the necessity to do universal justice to the Arab people of Palestine. The wretched treatment meted out to this people over the last twenty years is the real source of the malady which has been ravaging the Middle East ever since the implementation of the plan for the partition of Palestine. The forcible expulsion of millions of human beings from their homes and homeland and the wholesale privations suffered by the Palestine Arabs as victims of a plan conceived without their participation are acts which provoke in every human being reactions as natural as that which prompts men to seek to return to their homeland, their home, their lands and the soil where their ancestors lie.*"

In his recent analysis of the international political situation, the Secretary-General very rightly recalled, as a perennial necessity, the natural right of every human being, wherever he may be, to live in his homeland and to establish a home and build a future there.

"*It is precisely the denial of this sacred right so far to the Arab people of Palestine that has been basically responsible for the episodes of violence upon violence which have engendered the law of 'an eye for an eye' and led to the state of belligerency that has prevailed in the Middle East for the last twenty years.*

If the Europe of a past era could find no better way of saving (sic) its conscience for the genocide perpetrated against the Jewish people in the course of history than by establishing a Jewish national home in Palestine, thus fulfilling the dreams of people like Theodor Herzl, we today find it intolerable that the bloodshed and suffering of that people should be paid for by reducing millions of other human beings to want, ruin and misery.

If, therefore, we wish to break the vicious circle of reprisals and counter-reprisals in the Middle East, we must start by finding a political and humane solution for the plight of the Arab refugees, which remains at the heart of the Middle East drama. The future of peace in the region will depend on the redress of that wrong."[30]

(d) The Secretary-General's view

The Mali delegate's reference to the Secretary-General was to UN Secretary-General U Thant's recent annual report, in which he described the basis on which the issue of the Palestine Arab refugees should be resolved:

"there are certain fundamental principles which have application to the issues of the Middle East and which no one would be disposed to dispute as to their intrinsic worth, soundness and justness . . . people everywhere, and this certainly applies to the Palestinian refugees, have a natural right to be in their homeland."[31]

The Secretary-General's statement was relevant, not only because he viewed repatriation as legally required, but because he used the term "just" to describe repatriation. If the Secretary-General understood "just" to equate in this situation with repatriation, then it was likely the general understanding both that repatriation was required, and that when one spoke of a just settlement one was speaking of repatriation. The Secretary-General had been heavily involved, working with the Security Council in 1967, to gather information and make recommendations on what the Council should do in the wake of the June 1967 war. By its Resolution 237, adopted shortly after the war ended, the Security Council had asked the Secretary-General to implement its call on Israel to facilitate the return of West Bank or Gaza inhabitants who fled during the June 1967 hostilities.[32]

Thus, there were three drafts before the Security Council that used the phrase "just settlement." Statements made by proponents indicate that the understanding was that this formulation called for a solution based on legal principle, and that legal principle required repatriation. On November 22, the Security Council adopted the UK draft resolution as Resolution 242.[33]

(e) Just settlement as the "Arab position"

The British delegate, Lord Caradon, was the architect of the compromise draft that the UK introduced and which became Resolution 242.   Lord Caradon characterized "just settlement" as language the Arab states wanted to see in a resolution.

"*The Arabs want not charity but justice. They seek a just settlement to end the long and bitter suffering of the refugees.*"[34]

Since 1948, the Arab states had strongly and consistently demanded that Israel offer repatriation to all the displaced Palestine Arabs.[35]

Two days before Resolution 242 was adopted, Lord Caradon reiterated this point:

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"*In the long discussions with the representatives of Arab countries they have made it clear that they seek no more than justice. . . . The issue of withdrawal is all important to them, and of course they seek a just settlement to end the long suffering of the refugees.*"[36]

The fact that Lord Caradon viewed "just settlement" as the Arab position indicates that he understood it to require repatriation.

(f) Views of other Security Council members

Importantly, no member of the Security Council said anything in the Security Council debates leading to Resolution 242 to suggest that "just settlement" did not require Israel to offer repatriation. Moreover, in the immediate aftermath of the 1967 war, the Security Council had asked Israel to repatriate the several hundred thousand Palestine Arabs displaced during those hostilities. Resolution 237 "call[ed] upon the Government of Israel . . . to facilitate the return of those inhabitants who have fled the areas since the outbreak of hostilities."[37] The fact that the Council had just called for the repatriation of those later displaced Arabs strongly suggests that in its view a "just settlement" required repatriation of those displaced in 1948.

III. DEBATE IN THE GENERAL ASSEMBLY, 1967

Although the refugee issue generated little debate in the Security Council, the issue had been discussed by the same states during summer 1967. The UN General Assembly had called an emergency special session to deal with the June 1967 hostilities. Although that session met for three months, the Assembly failed to reach consensus on a resolution about what should be done. Nonetheless, the debates elicited views about the key issues, including the refugee issue.

The General Assembly debate followed the lines of what would be discussed in the Security Council in November. The Security Council members came to the Council debate having just gone through the same issues in the General Assembly. The paucity of debate in the Security Council about the refugee clause may, in part, be explained by the fact that the issue had just been discussed in the General Assembly.

As it would transpire in the Security Council in November, so in the General Assembly in June it was the United States that submitted the first draft resolution, on June 20. Like the November draft in the Security Council, so too the June 20 draft in the General Assembly included a clause on the refugee issue and called for a solution by using the term "just." The US draft called for:

> "(*a*) *Mutual recognition of the political independence and territorial integrity of all countries in the area, encompassing recognized boundaries and other arrangements, including disengagement and withdrawal of forces, that will give them security against terror, destruction and war:*
> *(b) Freedom of innocent maritime passage;*
> *(c) A just and equitable solution of the refugee problem;*
> *(d) Registration and limitation of arms shipments into the area;*
> *(e) Recognition of the right of all sovereign nations to exist in peace and security.*"[38]

In floor debate, the US delegate used slightly different terminology, calling for "a just and permanent settlement of the refugee problem."[39] At the final meeting of the emergency special session, he called for "a just and final solution to the refugee problem." [40]

The only other draft in the General Assembly that mentioned the refugee issue was submitted June 30 by twenty Latin American states. The Latin draft called for an Israeli withdrawal and co-existence between Israel and Arab states. A second para- graph dealt with waterways, refugees, and demilitarized zones. A third paragraph dealt with Jerusalem. The refugee clause called for "an appropriate and full solution of the problem of the refugees."[41]

The rationale behind this formulation was explained by Trinidad and Tobago, which introduced the Latin draft. The phrase "appropriate and full," it explained, was chosen to convey the urgency of finding a solution:

"*Let us not wait until the parties concerned alone decide who will have what and who will do what. We are concerned with the human problem of refugees in the Middle East, and it is our bounden duty at this stage to take a firm hand in the solution of the problem. We could have made various detailed suggestions for solving this problem. But why should we? Some organization must be set up; some machinery must be set in motion; but these are details that can come later. We must accept the principle; we must accept the responsibility, and get on with the job. To debate the details here would merely delay a decision, one which has already been too long delayed.*"[42]

The Latin drafters thus thought that a detailed scheme was required, but that it could not be included in a resolution whose main purpose was to deal with the June 1967 hostilities.

The United States did not view the Latin approach as inconsistent with its own. The United States said,

"*On the refugee problem, the Latin American text calls unambiguously for 'an appropriate and full solution of the problem of the refugees.' My Government has taken the view that a fair and lasting solution of the refugee question is vitally necessary.*"[43]

Iraq was displeased that the Latin formulation did not indicate a basis on which the refugee issue should be resolved. It criticized the phrase "appropriate and full" as vague.[44]

Kuwait too was critical:

"*The Latin American draft resolution ignores the judgements already competently made because with regard to the question of refugees this draft only asks for what it calls 'an appropriate . . . solution.' What is 'an appropriate solution'? In the spirit of the Latin American draft resolution, 'an appropriate solution' can be nothing other than a euphemism for the sorry fate of life-long exile for the refugees. And yet a judgement on the fate of the refugees was made by the appropriate organs of the United Nations as early as eighteen and a half years ago. It was not a judgement made and forgotten, but a judgement which has been made and repeated every year since 11 December 1948. In fact, there were fourteen occasions on which this Assembly expressed 'regret' or 'concern,' or 'deep regret' or 'grave concern,' or 'deep regret and grave concern' because that judgement had not been put into effect. Yet the Latin American draft resolution completely ignores this judgement and asks only for a colourless 'appropriate solution' to the problem.*"[45]

The Security Council, when it met in November, did not take the Latin approach on the refugee issue. Rather, as indicated above, it took the US approach, which was to indicate, at least in general terms, the character of a solution.

IV. PRIOR GENERAL ASSEMBLY DEBATE

The consensus reflected in the General Assembly debates of Summer 1967 was not new. Since 1948, the UN had been consistent in its approach to the issue of the displaced Arabs of Palestine. The outlines of a solution were well understood. The General Assembly had called on Israel in its Resolution 194 of 1948 to repatriate, and the UN insistence on repatriation had never wavered.

This consensus was based on an understanding that when populations are displaced in wartime circumstances, they do not lose their right to inhabit the territory in question. The consensus was based as well on a sense that

the Arabs of Palestine had lost political sovereignty when the Jewish Agency's took the bulk of Palestine's territory in 1948, and that the least the Arabs deserved was to re-occupy their homes and lands. The General Assembly's 1947 recommendation of a partition of Palestine was, moreover, based on an obligation that the two anticipated states would respect the rights of the "other" population. Excluding the Arabs by refusing to repatriate them was inconsistent with that obligation.[46]

The Conciliation Commission for Palestine, established by the UN General Assembly to work towards a political settlement, tried to convince Israel to repatriate the displaced Arabs. The commission met with Israel's Prime Minister, David Ben Gurion, in Tel Aviv on April 7, 1950. It

"*asked if the Government of Israel accepted the principle established by the General Assembly's resolution, permitting the return to their homes of those refugees who expressed the desire to do so.*"

In reply, Ben Gurion disputed the CCP's reading of the resolution. He referred to the phrase "live at peace with their neighbours."

The CCP reported,

"*In Mr. Ben Gurion's view this passage made the possibility of a return of the refugees to their homes contingent, so to speak, on the establishment of peace: so long as the Arab States refused to make peace with the State of Israel, it was evident that Israel could not fully rely upon the declaration that Arab refugees might make concerning their intention to live at peace with their neighbours.*"[47]

V. REPATRIATION AND A POLITICAL SETTLEMENT

The commission had been arguing to Ben Gurion, unsuccessfully, that repatriation should precede a political settlement. As the US member of the commission reported to his government,

"*Commission members, particularly US Rep, have consistently pointed out to Prime Minister, Foreign Minister, and Israeli delegation that key to peace is some Israeli concession on refugees.*"[48]

Although the commission was tasked both with facilitating a political settlement and with securing a repatriation of the displaced Arabs, its view, and the view of UN member states, was that repatriation was required as a matter separate from a political settlement. A political settlement might take years. Repatriation, on the other hand, was a matter of right, and Israel's refusal created a severe humanitarian problem.

At the United Nations, Israel took the view that Ben Gurion had expressed to the conciliation commission. Abba Eban, representing Israel, tried to depict the UN position as being that the issues of repatriation and political settlement were to be resolved together:

United Nations policy explicitly recognized the interrelation between a solution of the refugee question and a restoration of normal relations among the States concerned. That United Nations view had been set forth in resolution 194 (III) adopted 11 December 1948 and in the report of the United Nations Conciliation Commission (A/1367, A/1367/Corr.1). The proposals of Egypt and Pakistan repudiated that view and attempted to separate what were in fact two facets of the same problem.[49]

Eban faulted the Arab states for not making peace. He placed the onus on them for the non-repatriation of the displaced Arabs. Resolution 194, he said attached the same degree of urgency to a general peaceful settlement and the solution of the refugee problem by repatriation, resettlement and the payment of compensation. The two processes were organically connected. Moreover, on the point of expatriation the resolution was not as general and unconditional as some people had wished to make out: it provided for repatriation, but only to the extent to which repatriation proved practicable and on condition that the refugees when repatriated should be prepared to live in peace in the State of Israel. Thus, by refusing to conclude peace, the Arabs were making repatriation impossible, for peace was an essential condition of repatriation.[50]

Further, Eban said,

"*Whatever the nature of resolution 194 (III) adopted 11 December 1948, the United Nations had not then or on any other occasion made any promise with regard to the repatriation or resettlement of the refugees except as part of the general restoration of peace and stability between Israel and the Arab States of the Middle East*."[51]

Israel was isolated in its view that repatriation might await a political settlement. Iraq said that the repatriation issue

"*was concerned solely with human rights and not with politics. It dealt with the right of human beings to live in their homes or to return to those homes, which had already been recognized in the Charter, in the Universal Declaration of Human Rights and by the [Ad Hoc Political] Committee [of the General Assembly] itself. It was for the Committee to see that human rights were respected, and to provide for implementation of the resolution [194] adopted on the subject in 1948*."[52]

When, in 1950, the General Assembly was deciding how to proceed to achieve both a political settlement and repatriation, France said:

"With regard to the connexion between the question of refugees and other questions still outstanding in Palestine, it was true that all those questions were inter-related. That interdependence could be interpreted in two different ways. It might be said that, if certain questions were interdependent, one question could not be solved before another; it might also be said that, when one of the questions was being solved, an attempt should also be made to solve the others. The joint draft resolution[53] *was based on the latter point of view. It gave priority to the question of refugees, but also provided for the solution of all the other outstanding questions."*[54]

The UK also viewed repatriation as a separate issue:

"There could be no question that refugees wishing to return and live at peace with their neighbours had the right to do so. The joint draft resolution contemplated progress both regarding the refugee question and regarding all other outstanding issues. It did not, however, directly link negotiations regarding other outstanding issues with the taking of urgent measures to alleviate the refugee problem."[55]

The United States expressed agreement with France and the UK.[56]

The Philippines said

"that the Arab refugees' right to return to their homes was a basic human right recognized by the General Assembly, which had thus become responsible for seeing that the right was implemented. It should not be made dependent on negotiations between the parties concerned, and, although it was admittedly part of the general problem, its solution could not be made contingent upon the settlement of larger issues."[57]

Ruth Lapidoth, tracking the position stated by Abba Eban, has argued that the General Assembly's view was that repatriation would occur only as part of an overall settlement, and therefore that Israel was under no obligation to repatriate prior to that time.[58] Lapidoth mis-reads the U.N. debates in arriving at this conclusion. Member states viewed Resolution 194 as imposing an obligation on Israel to repatriate separate and apart from a political settlement.

That fact is clear from the General Assembly's approach, in resolutions it adopted annually, of expressing regret at Israel's failure to comply with Resolution 194. These expressions of regret meant that the Assembly viewed Israel as being out of compliance with the repatriation requirement. As indicated above, even the United States, Israel's most consistent supporter at the U.N., not only voted for, but itself wrote and proposed this formulation for the General Assembly. As indicated, the month following

the adoption of Security Council Resolution 242, the United States drafted a resolution to say that the Assembly regretted Israel's failure to repatriate per Resolution 194.[59]

VI. UN EFFORTS TO IMPLEMENT REPATRIATION

The Palestine Conciliation Commission took implementation of repatriation as a priority issue. It tried to convince Israel to repatriate. It succeeded in organizing a meeting at Lausanne, Switzerland, in 1949, at which Israel said it would repatriate up to 100,000. Since that was only a fraction of the displaced, it gained no immediate acceptance, and Israel then retracted even that offer. The U.S. delegate to the Commission, frustrated at the failure of his efforts to convince Israel to repatriate, said that Israel's

"*attitude toward [the Palestinian] refugees is morally reprehensible . . . Her position as conqueror demanding more does not make for peace*."[60]

The United Nations made efforts in the early 1950s to encourage Arab states to agree to accept any of the refugees who might prefer to remain where they had found asylum rather than return to a homeland that was quite different from the one they had left. Israel used these efforts to argue that the U.N. did not view repatriation as the required solution. It made this argument as well in regard to the General Assembly's Resolution 194.

Moshe Sharett, who later would be prime minister of Israel, told a U.N. committee that paragraph 11 of Resolution 194 "did not indicate that repatriation was the sole solution of the refugee problem."[61] Resettlement abroad, in Sharett's view, would satisfy Resolution 194.

Sharett's statement drew criticism from Syria.[62] The UK too objected. It viewed resettlement abroad only as a partial solution, and only for refugees willing to remain where they were:

The United Kingdom delegation, which considered that there could be no question of the right of refugees to return to their homes if they wished to do so, welcomed the statement in paragraph 9 of the Conciliation Commission's supplementary report [UN Document A/1367/Rev.1, at p. 31] that that body had always been guided by that principle, as contained in resolution 194 (III). The United Kingdom had, however, given serious consideration to the Commission's statement that,

"*having in mind the best interests of the refugees, attention should in future be given to the resettlement of non-returning refugees in the Arab countries, with payment of compensation to them. It was doubtful whether it was in the interest of the refugees themselves to return en masse. It was questionable*

whether the refugees fully appreciated the conditions to which they would return and the implications of their return. Were they aware that they must be prepared to live as peaceful citizens of Israel, accepting all the obligations of citizenship? There was a grave danger that the legacy of mistrust and bitterness would make the task of mutual adjustment of populations extremely difficult. Moreover, it was probable that the Arabs of Palestine would have great difficulty in adjusting to the very highly organized economic structure of Israel, which ran counter to the economic outlook of the Arabs. It was unlikely that an Arab would wholeheartedly accept the regime of austerity, directed toward the achievement of goals for which at the best he had no enthusiasm and which might well arouse his active resentment. In the circumstances, it was the considered view of the United Kingdom delegation that the Arab refugees would have a happier and more stable future if the bulk of them were resettled in the Arab countries. A corollary was that non-returning refugees should as a matter of right receive early and adequate compensation for the property they had abandoned in Israel.”[63]

Paragraph 9 of the CCP supplementary report, to which the UK delegate referred, made the same point about resettlement, viewing it as a matter of option for a refugee:

“*The Commission has always been guided by the recommendation made by the General Assembly in resolution 194 (III) that the refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so. At the same time, the Commission believes that, having the interests of the refugees themselves in mind, attention should also be devoted in the future to the resettlement in the Arab countries of non-returning refugees, to their economic rehabilitation and to the payment of compensation, as also recommended by the above resolution. The Commission considers that the refugees should be afforded every opportunity to realize that the conditions which they would find on returning to their homes would differ greatly from those to which they were accustomed. As has been indicated in its previous report, the Commission believes that the refugees who decide not to return to their homes should receive, and be made aware of the fact that they will receive, just compensation for the loss of their property, as provided for by General Assembly resolution 194 (III).*[64]

Other Western states urged Arab states to offer resettlement to those willing to accept it. Australia said:

"*while the return of the refugees to Palestine was desirable from every point of view, it was very possible that in many cases such a return would not be wholly in the interests of the refugees themselves. It might perhaps be better*

if the refugees were compensated for the losses they had suffered and were permitted to settle in neighbouring Arab countries."[65]

It stressed that it shared the views of the UK on the matter,[66] and, as indicated, the UK viewed resettlement abroad as permissible only with consent of a refugee.

Denmark commented on the UK's idea and said that resettlement was without prejudice to a right to be repatriated:

"*It was possibly true, as the United Kingdom representative had said (61st meeting), that the refugees would be well advised to remain in the Arab countries, but that was a matter which only the individual refugee would decide.*"[67]

Denmark thought that compensation should be calculated and offered to refugees for their Palestine properties, so that they could make an informed choice whether to insist on repatriation or to take compensation and remain abroad, if another state would accept them:

As things stood, the refugees had no choice; as long as the question of compensation remained unsolved, at least in principle, they would have no other course than to claim their repatriation. From the practical point of view, therefore, the first step was to solve the question of compensation for the individual refugee so that each refugee could choose freely. Plainly there could be no question of granting all the compensation to one organ which would then distribute it; the matter was one of individual rights recognized by international law. He wondered whether it would not be possible to unfreeze the bank accounts of refugees immediately so as to enable them, if they so desired, to resettle in Arab countries.[68]

Belgium too stressed that schemes for resettlement elsewhere did not derogate from the right of return or from Israel's obligation to repatriate:

"*the decisions of principle which had been adopted in resolution 194 (III) with regard to the repatriation or re-establishment of the Arab refugees were based upon legal concepts of property and on certain human rights. The point at issue was not to re-open a debate on the legal principles, but to find a formula which would obtain the voluntary co-operation of a number of States.*"[69]

Arab states were unenthusiastic about resettlement in their territory. Syria thought that prospects were not favourable for resettling large numbers in Arab states.[70] U.N. efforts achieved little. No acceptance was gained for resettlement in Arab states. Despite annual calls on it by the General

Assembly to offer repatriation to the displaced Arabs, Israel declined to do so.

Eyal Benvenisti and Eyal Zamir read the U.N. efforts of the 1950s to encourage re-settlement abroad for the displaced Palestine Arabs as a repudiation of the need for repatriation by Israel. Thus, where Security Council Resolution 242 calls for "a just settlement of the refugee problem,"[71] they say that "just settlement" could include re-settlement elsewhere, even against the wishes of individual refugees.[72] The resettlement proposal, however, as the cited statements show, was not intended to derogate from Israel's obligation to repatriate. No state at the U.N., other than Israel, suggested that refugees could be forced to accept resettlement abroad.

UN efforts at integrating Palestine refugees in their countries of exile were pursued in this way, without prejudice to eventual repatriation. In 1951 the UN Relief and Works Agency recommended a program whereby "[t]he refugees should be helped to find employment, be offered training, or have the use of facilities which will make them self-supporting." Housing as well would be sought outside refugee camps. But UNRWA added the caveat that its proposal "not intrude into existing political issues between the Arab States and Israel or between refugees and Israel. Specifically, the refugee interests in repatriation and compensation must not be prejudiced by any Agency programme."[73]

VII. EXCLUSION FROM NATIONALITY

The right of inhabitants to remain in their territory, or to return if displaced, is intimately connected to a right to nationality. States have an obligation to allow entrance to their nationals.[74] If a state desires to exclude a person, it must find a way to avoid considering the person its national. For several years after its formation, Israel adopted no legislation on nationality, leaving unresolved the nationality status of any of its inhabitants, but particularly of the Arabs.

In 1950, Arab diplomats at the UN challenged Israel for delaying on nationality legislation and thereby failing to recognize the right to Israeli nationality of the displaced Palestine Arabs. Abba Eban responded:

"*He [Abba Eban] then came to the argument, invoked by a number of delegations, that the Arab refugees were entitled to Israel citizenship, and that therefore Israel was under a moral, if not legal, obligation to secure their immediate repatriation. In that connexion, he pointed out that under the provisional national law the only citizens of Israel were those who had been registered toward the end of 1948 for the first elections to the Knesset.*

Moreover, the idea of citizenship had a moral aspect which must be taken into account: a citizen did not only have rights, he also had duties; and one of the most important functions of government was to reconcile the rights and duties of citizens.[75] Eban went on to say that one could not expect Arabs to defend Israel militarily."[76]

When in 1952 Israel adopted a Nationality Law, it recognized nationality for those Arabs who had remained, but not for those displaced. The Nationality Law first stipulated that any Jew living in Israel was a national.[77] As to others, it provided that Israeli nationality was held by anyone who was a citizen of Palestine when an Israeli state was declared and who remained within Israel continuously until 1952, as well as any who were displaced during that period but returned lawfully by 1952.[78] Since few of those displaced in 1948 had managed to return lawfully, the Nationality Law denationalized the displaced Palestine Arabs.

VIII. NATIONALITY UPON STATE SUCCESSION

A state's obligation to allow entry to nationals applies equally when sovereignty in a state changes. A new sovereign assumes the obligation of the former sovereign. Were that not the case, third states in whose territory such inhabitants happen to sojourn would be forced to allow them to remain. A draft convention on nationality formulated in 1930 made the point that a new sovereign must extend its nationality to inhabitants of the territory.

The draft provision read: "those persons who were nationals of the first state become nationals of the successor state, unless in accordance with the provisions of its law they decline the nationality of the successor state."[79] It matters not whether the new sovereignty results from conquest, treaty cession, or any other means. The nationality of the new sovereign must be offered to the inhabitants. The specialists who drafted this language said that they were not devising any new obligation but rather that such an obligation already existed in customary international law.[80] By this time it had become routine in treaties ceding territory to allow the inhabitants to choose the nationality of either state.[81]

The minority rights treaties concluded to protect minorities in newly configured states after World War I required a state gaining territory to offer its nationality to the inhabitants.[82]

The rule is "that the population follows the change of sovereignty in matters of nationality."[83] This proposition was reiterated by the U.N. General Assembly in 2000, when it asked states to adhere to propositions of law drafted by the International Law Commission regarding the obligations of a successor state.[84] According to the Commission, a person with habitual

residence in territory affected by succession of states is presumed to acquire the nationality of the successor state.

Nationality upon state succession was, of course, precisely the circumstance involved in the issue of the nationality of the Palestine Arabs upon the demise of Mandate Palestine and the emergence in its territory of the State of Israel. As a new sovereign, Israel was obliged to offer its nationality to the inhabitants. The 1952 Nationality Law failed to do that and therefore constituted a violation of Israel's obligations under customary law.

IX. HISTORICAL PRECEDENTS

In the U.N. debates of 1950, Israel cited three other instances of population displacement to justify excluding the Palestine refugees:

Palestine was not the only country in which such vast changes had occurred. After the First World War there had been a mass migration of population between various countries, such as Greece and Bulgaria, Greece and Turkey. After the Second World War similar transfers had occurred from countries such as Poland and Czechoslovakia into Germany. When India and Pakistan had become independent, millions of men had moved from one country to the other. Migration had also affected China, in which it had assumed still greater dimensions. In none of those cases, in comparison with which the number of the Palestine refugees became relatively insignificant, had there ever been any attempt to restore the status quo ante.[85]

Analysts who support Israel's refusal to repatriate the Arabs displaced in 1948 continue to cite these instances as precedent.[86]

India and Pakistan

At the U.N., when Israel made this statement, no other state supported it in its use of these examples. Delegates of Pakistan and India were present and objected to Israel's invocation of their situation as a precedent. Pakistan pointed out that following the atrocities that led to population outflows, Pakistan and India allowed return: "*both had taken back a large number of refugees and rehabilitated them with government grants.*" It said that this had been done despite continuing hostilities between the two countries, and that refugee repatriation had been handled as a matter separate from a political settlement:

"*The Governments of Pakistan and India had never thought it proper to link the question of settlement of the refugee problem or their repatriation with any other issue outstanding between them. Both governments had agreed to rehabilitate returning refugees by driving out temporary occupants,* [87] *despite demonstrations by the temporary occupants.*"

India's delegate "*associated himself with Pakistan's analysis.*"[88]

The Pakistan-India example was unavailing for Israel, since it involved no refusal to repatriate and no refusal to recognize the nationality of those seeking to return. As Hindus fled Pakistan and Muslims fled India in alarming numbers, the two governments deplored the outflow and tried to stem it.[89] Hindus who fled from Pakistan to India, or Muslims who fled from India to Pakistan did not lose their original nationality by virtue of their flight. Many such persons intended permanently to remain in the state of refuge, and that migration did lose them their original nationality. However, after violence ceased, others returned to their place of origin.[90]

Some Muslims who fled their home areas near Delhi remained in adjacent areas without going to Pakistan and were able to return to their home areas in 1949, with the cooperation and assistance of the Government of India.[91]

To deal with migration by Hindus into India from East Pakistan, and of Muslims into East Pakistan from India, the two governments signed an agreement in April 1950 that guaranteed restoration of property to migrants who might choose to return, so long as they returned by the end of 1950. The agreement provided:

"*Rights of ownership in or occupancy of the immoveable property of a migrant shall not be disturbed. If, during his absence, such property is occupied by another person, it shall be returned to him, provided that he comes back by 31st December, 1950.*"[92]

Some migrants did return.[93] The vast majority opted against returning, due to ongoing tension, and to the fact that they were able to integrate readily, often with assistance from the government of the territory to which they migrated.[94] Each government settled the incoming on the lands or in the houses of those who had fled and were not endeavouring to return.[95] They also helped the incoming learn new trades to facilitate their economic integration.[96] Those opting to remain were afforded financial compensation for property they had abandoned.[97] Loans were made to traders to help them open a business anew.[98]

Indian courts, which heard cases in which persons involved in the 1947-48 migration claimed Indian citizenship, operated on the principle that persons native to the territory that became India were entitled to Indian citizenship unless they "migrated," meaning that they left with an intention to remain permanently.[99] A person who "migrated" from India to Pakistan in the immediate post-independence period was not deemed a national of India, but mere crossing of the frontier from India to Pakistan did not prove "migration."[100]

That position of the Indian courts stood in marked contrast to that of Israel, where legislation viewed Arabs who crossed the frontier out of Israel in 1948 as having no entitlement to nationality. [101] Israeli courts provided no redress for displaced Arabs. As indicated, Muslims who fled into Pakistan were allowed to return, as were Hindus who fled into India. The India-Pakistan example thus does not constitute a precedent for Israel's refusal to re-admit the displaced Arabs.

Greece, Turkey and Bulgaria

The population movements between Greece and Bulgaria, and between Greece and Turkey, which Eban held up as a model, hardly proved his point. In Greece and Bulgaria, ethnic minorities had suffered in the course of the hostilities of the second decade of the twentieth century. [102] As part of the settlement of World War I, Bulgaria and Greece, as recommended by the Allies, agreed that Greece would accept into its territory ethnic Greeks of Bulgaria who wished to immigrate, and that Bulgaria would accept ethnic Bulgars of Greece who wished to immigrate. [103] Persons opting to emigrate would lose the nationality of the state from which they departed and acquire that of the state to which they immigrated. [104] The agreement specified that no one would be compelled to leave. [105] The agreement thus involved no forced departure and no forced de-nationalization.[106] Given that it respected the free choice of the individual, it provided no precedent for Israel's refusal to repatriate the displaced Palestine Arabs.

As for Greece and Turkey, here an agreement had indeed been concluded that provided for forced mutual deportation, but the circumstances made it far from a model, or a reflection of what was legally permissible. The treaty was concluded in the context of an international conference to resolve various issues coming out of World War I and the demise of the Ottoman Empire. All the principal participants denied having generated the idea of a compulsory mutual deportation but attributed it to some other party. Turkey said the idea was that of Greece, whereas Greece said it was Turkey's.[107] Despite these expressions, both Turkey and Greece showed enough interest for the project to proceed.[108]

Turkey had expelled Greeks of Turkish nationality, apparently fearing they would aid Greece in taking over territory of Turkey. Greeks had fled in haste as the Greek army retreated from western Turkey.[109] As the project of a mutual exchange was discussed, Greece stressed that it "wanted to abandon the idea, if the Turkish government will allow the Greeks expelled from Turkey to go back." [110] It said it regarded a compulsory transfer "with great antipathy." [111] It wanted the exchange to be voluntary on the part of each individual.[112] Turkey declared that it would not repatriate the Greeks and demanded the departure of those Greeks that remained.[113]

Unable to convince Turkey to repatriate, Greece was concerned that it would be unable to find land for additional incoming Greeks.[114] The expulsion of ethnic Turks would free agricultural land for their use. Turkey and Greece agreed on a treaty calling for mutual expulsion, although from the Turkish side the expulsion had already occurred.[115] Under the treaty, the deportees lost their original nationality and acquired that of the state that was accepting them.[116]

Lord Curzon, British foreign secretary, called the Greek-Turkish treaty "a thoroughly bad and vicious solution."[117] The major powers viewed it as a poor solution to a humanitarian crisis.[118] The treaty was widely condemned as violative of rights. C.G. Ténékidès called it a "negation" of the principle espoused by the League of Nations that minorities should be protected,[119] an "injustice,"[120] "odious."[121] It would have been better, said Ténékidès, to leave matters as they stood "rather than to give them an imprint of legality" by concluding a treaty.[122]

André Mandelstam opined that from the standpoint of international law, the 1923 treaty was "a regrettable step backward." He wrote, "It is to be hoped in any case that the Greek-Turkish treaty of Lausanne will remain an isolated precedent in the history of minority rights."[123] Mandelstam found forced exchange to be "absolutely inconsistent with the spirit of the minority treaties" that were concluded after World War I with new and newly configured states.[124]

The minority treaties gave inhabitants, in territory being transferred to a new sovereign, an option to take the nationality of the new sovereign, or to depart and retain their prior nationality.[125] These provisions implied a right of the individual to choose whether to remain at a place of abode.

Stelio Séfériadès also found the 1923 treaty to violate the minority treaties. He wrote that "to agree on the exchange of people against their will by a treaty in due form, in the twentieth century and in the middle of Europe, after the proclamations of the rights of minorities, . . . is a concept that a legal conscience refuses to understand or accept."[126]

Séfériadès even viewed the 1923 treaty as legally invalid. Séfériadès analogized to private law, in which a contract <u>contra bonos</u> mores is voidable.[127] He found in public international law a rule comparable to the more recent rule that holds a treaty invalid if violative of a <u>jus cogens</u> principle[128] and said that the rule applied to the 1923 treaty.[129] He said that any treaty providing for a forced exchange of population was subject to being declared void, and was contrary to the Covenant of the League of Nations.[130]

The abortive first treaty of peace between the Allies and Turkey (Treaty of Sèvres) required Turkey to "facilitate to the greatest possible extent the return to their homes and re-establishment in their business of the Turkish subjects of non-Turkish race who have been forcibly driven from their homes by fear of massacre or any other form of pressure." [131] This provision related to the many Armenians who had been forced from their home areas. This draft treaty was not ratified but was replaced by another that imposed fewer obligations on Turkey on many issues, and that did not include the repatriation provision. [132] However, the fact that the repatriation provision was included in the Sèvres draft treaty reflected the view of the major powers of the day that repatriation was required for persons who had involuntarily left their places of abode.

Germany

Nor was any U.N. delegate willing to support Eban's reference to Germans expelled after World War II as precedent for excluding the Palestine Arabs from Israel. Ethnic Germans were compelled to migrate to Germany from countries where they held nationality, not only Czechoslovakia and Poland, but Romania, Yugoslavia, and Hungary as well. The post-war governments of these countries began to expel resident Germans, often with little regard to their safety. Several million were forced out. [133]

Then at Potsdam, the United Kingdom, United States, and U.S.S.R. approved additional compulsory transfers, on condition that they be organized in a humane fashion: "The Three Governments, having considered the question in all its aspects, recognize that the transfer to Germany of German populations, or elements thereof, remaining in Poland, Czechoslovakia and Hungary, will have to be undertaken. They agree that any transfers that take place should be effected in an orderly and humane manner." [134]

The Potsdam agreement was signed while unilateral expulsions were in progress, and being undertaken in a manner that threatened the lives of the deportees. The Allies were not in a position to stop the expulsions, hence the approach was to provide some measure of security for the expellees. The new authorities in the various sectors of Germany were unprepared to receive incoming Germans in an orderly fashion and therefore asked the governments in Czechoslovakia, Poland, and Hungary temporarily "to suspend further expulsions." [135]

The expulsion of Germans was viewed, moreover, as an exceptional situation in light of the harm caused by Germany and the collaboration of many German nationals with German occupying forces in the countries Germany occupied. [136] The Czechoslovak government said that if the Germans remained, the prospect of civil war loomed. [137]

Expulsion was hardly being understood as lawful activity, given that at this same time prosecutors representing the Allies were drafting indictments of Third Reich figures that included counts for deportations as a crime against humanity. Giorgio Balladore Pallieri wrote,

"*the Potsdam decision deals with an exceptional and particular case. In the aftermath of the last war, the general principles of the international community were not applied to the Germans. It was necessary to make amends for the wrongs that they had caused and, to this end, it was necessary to act against them by the same methods that they had used. Thus one cannot argue on the basis of this example and deduce from it consequences applicable to other cases*." [138]

Germany, understandably, never took up the cause of the displaced Germans, as it was trying to live down what had been done by the Third Reich. Raising the issue would have complicated Germany's re-entry into the community of states. Nonetheless, far from being an example of a lawful fact, the expulsion of the Germans was condemned as unlawful by specialists in this area of the law. [139]

None of the instances cited by Eban gave an indication that forcible population exchanges were viewed by the international community as an advisable or acceptable practice. Eban depicted the international community as having taken the posture that once mass displacement occurs, no effort should be made to reverse it. The reality was that repatriation was viewed as the appropriate solution. For the Greek-Turkish situation, the international community was unable to convince Turkey to repatriate. For the Pakistan-India situation, the continuing fears of the displaced inclined them away from trying to return.

X. REPATRIATION AND CUSTOMARY INTERNATIONAL LAW

By this time, of course, expulsion of population came to be regarded as a crime against humanity when the latter concept entered the international law lexicon with the Nuremberg proceedings. Forced deportation was one of the more serious charges levelled against Nazi officials. Israel did not acknowledge having expelled the Arabs of Palestine. Nonetheless, it sought to use the Greek-Turkish expulsions as precedent for the absence of an obligation to repatriate the displaced.

The obligation, upon state succession, to recognize the nationality of inhabitants applied to those temporarily displaced and applied whether the inhabitants had been forced out or left on their own, for whatever reason.

Thus, when the U.N. General Assembly, in December 1948, addressed the issue of the displaced Palestine Arabs, it acted against a body of practice that supported the right of a minority to inhabit its territory. When, in Resolution 194, it called on Israel to repatriate the displaced Palestine Arabs, it was applying established principle. Eban, and later by other Israeli analysts, asserted that the international community was inventing a new rule to apply against Israel.

Far from being ill disposed to Israel, the U.N. at that juncture, prior to de-colonization, was dominated by European states and by the states of the Americas, which were populated by European emigres. Those states stood by as the Jewish Agency took the bulk of Palestine's territory in 1948 and then admitted Israel to U.N. membership. The only major stand the U.N. took that was not to Israel's liking was on the question of repatriation.

The U.N. undertook no inquiry to assess the charge of the Arab states that Israel had engaged in forcible expulsion. For purposes of dealing with the repatriation issue, it did not need to do so. The right of a displaced population to repatriation was not dependent on having been forcibly expelled. The right adhered regardless of the reasons for the departure. The Palestine Arabs who were displaced in 1948 were, in the main, forced out, leaving either under direct compulsion or out of fear.[140] That fact is not necessary, however, for the displaced to enjoy a right of return.

XI. CONSEQUENCES FOR THE FUTURE

In the interwar period the international community dealt with minority rights as a group matter, but with protection for individuals. In the post-war period, the approach has been the protection of individuals. Under either perspective, the right of Palestine Arabs displaced from Israel to be repatriated by it holds firm. The issue remains the most critical of those to be resolved if an overall Palestinian-Israeli peace is to be achieved.

As Resolution 194 was being debated in 1948, Dean Rusk, representing the United States, said:

"*These unfortunate people [the displaced Arabs] should not be made pawns in the negotiations for a final settlement.*" [141]

It is unfortunate that the issue is being dealt with in that context. It should be handled immediately and separately from other issues. The international community should be at the forefront of implementing the repatriation called for in Resolution 194.

Repatriation as called for in Resolution 194 is what was contemplated by the "just settlement" phrase in Resolution 242. The conclusion reached some

years ago by the Mallisons on this point is borne out by the evidence, as recounted above, of U.N. activity on the issue. They noted that

"*[t]here are no elements of such a just settlement stated in the resolution [242] and the only authoritative principles adopted by the United Nations on this subject remain the General Assembly resolutions*." [142]

Repatriation of displaced persons was an obligation upon states under customary law and that norm was the basis for the General Assembly's call on Israel in Resolution 194 in 1948 to repatriate, and then the Assembly's later calls on Israel to comply with Resolution 194. A peace settlement based on Resolution 242 means, on the refugee issue, a peace settlement based on repatriation.

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THE REFUGEE QUESTION AND ITS SOLUTION IN THE CONTEXT OF HOUSING, LAND AND PROPERTY

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INTRODUCTION

The 1917 Balfour Declaration has been described as a document where one nation solemnly promised to a second nation the country of a third.

The short one-page letter from British Secretary of Foreign Affairs, Arthur Balfour, to Lord Rothschild, head of the British Zionist Federation, which expressed support for the creation of a national home in Palestine for the Jewish people, seemingly achieved one of the four goals the Zionist movement set out two decades earlier at the first Zionist Congress in Basle, Switzerland – i.e. obtaining government consent for the aims of Zionism.[1]

But in order to establish a Jewish state in Palestine, the Zionist movement would also need land.[2] The territorial base for the state was created partly through land acquisition, but primarily through conquest and expropriation under a legal system that one prominent Zionist official subsequently characterized as a "*legal fiction*".[3] Fact or fiction, the Zionist movement and Israel have been so successful that since Balfour Palestinian Arab ownership and access to land has shrunk from more than 90 percent to a mere 10 percent of their historic homeland.

Land is thus central to the conflict, not only because it affects all sectors of the Palestinian community – those inside Israel, in the occupied Palestinian territories, and those in exile – but also because of the scope of losses, applicable principles of international law, and, not least because of the international community and Israel's principled stand regarding housing, property and land rights elsewhere. But did the Balfour Declaration really give the Zionist movement license to displace and then expropriate the land of the indigenous Arab Palestinian population?

The late Tom Mallison, in his 1971 study of the legal implications of the Balfour Declaration says no.[4] His conclusion is based on an analysis of the drafting history of the Declaration and the criteria applicable to interpreting multilateral international agreements. In Mallison's view,

"*The [British] Cabinet, after careful consideration of six drafts and both Jewish and Zionist memoranda, issued a declaration which met [anti-*

Zionist] Jewish objectives, including the protection of the Palestinians, and repudiated Zionist ones."[5]

Mallison draws particular attention to the 'safeguard' clauses in the final Declaration.

In a juridical interpretation of the first safeguard protecting the "civil and religious rights" of the Palestinians, it must be recognized that it was asserted by the British cabinet over the express objections of the Zionist negotiators. In this context, it appears that subsequent Zionist attempts to narrow the content of "civil and religious rights" are not very persuasive. The most reasonable interpretation is that the clause protected the rights which were possessed by the Palestinians when Palestine was part of the Ottoman Empire. In addition to freedom of religion, such rights included a measure of local political autonomy, the rights to livelihood, to own land, and to have an individual home as well as maintain the integrity of the Palestinian community as a political entity.[6] [Emphasis added]

Moreover, Mallison goes on to write that,

[I]t is clear that the safeguard clauses are of a highly specific character and protect the stated 'rights'. When the safeguards are compared with the favour clause, the absence of any legal obligation in the favour clause becomes even more obvious. This leads to the conclusion that the safeguards set forth a legal requirement which must be given juridical priority over the favour clause since the latter lacks obligatory character.[7]

Having failed to secure desired language in the Declaration the Zionist movement opted for the next best option – give the Declaration the meaning they desired and continue with Zionist objectives based on that option.

According to Chaim Weizmann, *"[Balfour] would mean exactly what we would make it mean – neither more nor less*."[8] As Ariel Sharon told the United Nations more than fifty years later, while Palestinians may have rights in the land, it is the Jewish people that have a right <u>to</u> the land.[9] Weizmann's advice to the Zionist movement in 1917 was "*to continue to build the Jewish national home step by step, immigrant by immigrant, settlement by settlement*."[10] The most recent symbol of this strategy is the Wall that Israel is building in the occupied West Bank.

When Palestinian refugees talk about the right of return they speak about return to a specific place – a village, a piece of land and a home. While the process of returning homes, properties and lands to refugees is never easy, all around the world refugees are given the option to recover their belongings when they return home. Palestinian refugees should also have this same opportunity. The Balfour Declaration did not grant the Zionist movement any right to expropriate Palestinian Arab homes, land and

properties en masse. This paper first provides an overview of the scope of Palestinian losses since Balfour. It also reviews applicable legal instruments government a solution and international practice elsewhere. The conclusion provides some suggestions for ways forward.

SCOPE OF LOSSES AND DAMAGES[11]

Three primary means of obtaining land for the creation of a Jewish state in Palestine have been *purchase, conquest* and *expropriation*.[12] The primary means of acquiring Palestinian land have been conquest and expropriation. One can look at the scope of land loss in at least two ways, by sector (i.e. Palestinians inside Israel, the OPTs, and outside Palestine) or chronologically. Either way the end result is dramatic.

(a) British Mandate

During the period of the British Mandate (1922-1948) an estimated 100-150,000 Palestinian Arabs were displaced either within or beyond the borders of Palestine.[13] Jewish ownership of land in Palestine increased from 1,020 km^2 to 1,734 km^2.[14] While the majority of Palestinian land sales to Zionist colonization associations during the period of the British mandate were by large absentee property owners, Palestinian peasant farmers, especially in areas targeted by the Zionist movement for intensive Jewish colonization, nonetheless lost a disproportionate amount of good to medium quality land. This included the fertile lowlands of the coast plain, Marj Ibn Amr (Jezreel Valley), and the eastern Galilee encompassing the sub-districts of Jaffa, Haifa, Beisan, Tiberias, and Nazareth.[15] In the 5 sub-districts mentioned above where land was predominantly of good to medium quality, Jewish ownership ranged from 28-39 percent. In those sub-districts where land was of medium to poor quality Jewish ownership was less than 1 percent.[16]

By the early 1940s the average Palestinian peasant family had less than half of the agricultural land required for their subsistence.[17] Crisis in the world economy in the 1930s, combined with the liquidation of the Ottoman Agricultural Bank, led to the financial insolvency of many peasant farmers and exacerbated insecurity surrounding land rights. The situation was further exacerbated by a severe housing shortage in Palestine. British authorities estimated that by 1946 there was a shortage of some 201,500 room-units, primarily in rural areas, in the Palestinian Arab sector.[18] Moreover, the British had demolished thousands of Palestinian homes as part of a series of emergency measures adopted to quell indigenous uprisings against British rule and Zionist colonization.

(b) Nakba

Approximately 750,000 Palestinians became refugees during the civil unrest and war that enveloped Palestine between late 1947 and mid 1949.[19] The majority of the refugees (65 percent) were displaced to those parts of Palestine (22 percent of the total area) not under the control of Israeli military forces following the cessation of hostilities. If the number of persons who lost their livelihood but not their homes is added (approximately 100 'border' villages where the 1949 armistice line separated villagers from their lands) the total number of refugees reaches around 900,000. Eighty-five percent of the indigenous Palestinian population living in the territory that became the state of Israel was displaced. According to demographic projections by Abu Lughod for 1948, between 890,000 and 904,000 Palestinians would have been living in the territories that became the state of Israel if no displacement had taken place.[20] This was roughly equal to the size of the Jewish population at the end of 1948.

Approximately three-quarters of those Palestinian villages located in this area were destroyed affecting over half the total number of Palestinian villages in mandatory Palestine. In the 9 districts of mandatory Palestine wholly incorporated into Israel, Palestinians comprised 73 percent of the population – 77 percent of the villages were destroyed. In the area of the five districts partially incorporated into Israel, Palestinians comprised 88 percent of the population – 74 percent of the villages were destroyed.[21] In several of the sub-districts that were wholly incorporated into Israel – Jaffa, Ramla, and Beersheba – not one Palestinian village was left standing.[22] In total 531 Palestinian villages with a land base of 17,178 km^2 were depopulated and destroyed during this period.[23]

This area also included vast tracts of land in the southern Naqab region. Significant areas of land in the Bir Saba' sub-district were held under traditional or customary ownership by nomadic Bedouin. The entire sub-district comprised some 12,000 km^2 or approximately 60 percent of the land incorporated into the state of Israel in 1948. It also included 77 border villages where the built-up area of the village remained in Arab-held territory (i.e., West Bank and Gaza Strip) but had 1,255 km^2 of inaccessible land located in Israeli-held territory and 3 villages located in 'no mans' land of which 18 km^2 was located in Israeli-held territory.[24]

As a result of the 1948 conflict and war, Jewish 'acquisition' of land in historic Mandate Palestine increased to over 70 percent, primarily through mass expropriation.[25] Inside the borders of the new state of Israel, Jewish 'acquisition' of land increased from approximately 11 percent to over 90 percent. Under the 1947 UN Partition Plan, Jews owned approximately 10 percent of the land in the proposed Jewish state. Inside Israel, which was

nearly twice as large as the Jewish state delineated under the Partition Plan, Jews had acquired control of 90 percent of the land. The process of acquisition, moreover, was accompanied by secondary occupation of Palestinian refugee homes in urban centres not destroyed during the conflict. Between May 1948 and April 1949, for example, 110,000 of 190,000 new Jewish immigrants were settled in the homes of displaced Palestinians.[26]

An estimated 65 percent of the Palestinian housing stock inside the territory that became the state of Israel was destroyed while an estimated 32 percent of the remaining housing was expropriated and occupied by Jews. Benvenisti estimates that 125,000 Palestinian homes were destroyed in 1948 based on the number of Palestinian homes in the destroyed villages according to the last complete British census in 1931. The figure is then upgraded based on an average of 4,000 new units per year in the Palestinian housing sector of which 55 percent were in the destroyed villages.[27] The estimate for 1948, however, probably underestimates the total amount of destroyed housing stock as Benvenisti does not include the total number of destroyed villages. Sayigh estimates the total housing stock expropriated from Palestinians at 150,000 homes, including 90,000 houses in rural areas and 60,000 houses in urban areas.[28] As of September 1950, the UNCCP estimated that 73,000 Palestinian houses and 7,800 premises, such as warehouses, workshops, shops and offices, were under the control of the Israeli Custodian of Absentees' Property.[29]

(c) Inter-war Period

The cessation of hostilities in 1949, however, did not bring about a cessation of the cycle of Palestinian displacement and dispossession. Between the end of the first Arab-Israeli war in 1948 and the beginning of the second war in 1967 tens of thousands of Palestinians who remained inside the territory that became the state of Israel were transferred internally, forced across armistice lines[30] and deprived of access to their land.[31] Israel expropriated over half of the land owned by Palestinian citizens.[32] According to a survey of 79 selected villages, it is estimated that by the early 1960s Israel had expropriated some 700 km^2 of land from Palestinians who remained within the territory that became the state of Israel.[33] Several Palestinian villages whose residents were displaced inside Israel were also destroyed including the villages of Iqrit, Bir'am, al-Faluja, Iraq al-Manshiya, Farraddiya, 'Inan, Saffurriya, al-Khisa, Qeitiya, Khirbet Muntar, Ghabsiyya and al-Hamma, with a combined land area of 162 square km.[34]

(d) Naksa

Some 400,000 Palestinians were displaced – half for a second time – during the second Arab-Israeli war.[35] While few Palestinian villages, relative to previous periods of displacement, were depopulated during the 1967 war,

Israel acquired immediate control of more than 400 km^2 of land owned by displaced Palestinians.[36] Approximately 2 percent of Palestinian villages were destroyed.[37] Depopulated Palestinian villages include Imwas, Yalu and Beit Nuba in the Latrun salient northwest of Jerusalem, the entire Moroccan quarter inside the Old City of Jerusalem, adjacent to the Western Wall, and the villages of Beit Marsam, Beit Awa, Jiftlik, and al-Burj as well as half the city of Qalqilya. The population of the three villages depopulated in the Latrun salient was estimated at 12,500 persons.[38] If state land registered in the name of the Jordanian government, which annexed the West Bank in April 1950 is included, it is estimated that Israel immediately possessed 730 km^2 of Palestinian owned land in the West Bank and 119 km2 of Palestinian owned land in the Gaza Strip.[39]

Following Israel's military occupation of the West Bank, eastern Jerusalem, and the Gaza Strip in 1967, Jewish 'acquisition' of land in the occupied Palestinian territories increased from less than 1 percent to over 12 percent eventually rising to around 65 percent by 2001.[40] In the Old City of Jerusalem Israel has settled Jews in more than 1,000 apartments expropriated from displaced Palestinians.[41]

It is estimated that more than 5 percent of the housing stock was destroyed in 1967. The total housing stock of around 280,000 homes is calculated based on the total estimated Palestinian population of the West Bank and Gaza Strip as of June 1967 and a conservative estimate of 5 persons per household. The estimated total housing stock is probably high given the tendency towards multiple family dwellings. Destruction of housing stock included 375 homes in Imwas, 535 homes in Yalu, 550 homes in Beit Nuba, an estimated 135 homes in the Moroccan quarter of the Old City of Jerusalem, 1,000 homes in Qalqilya, in addition to thousands of homes of Beit Marsam, Beit Awa, Jiftlik, and al-Burj as well as refugee camps in the Jericho area and the Gaza Strip. In addition, Israel expropriated some 11,000 buildings owned by refugees in the West Bank.[42]

(e) Occupation

Throughout the post-1967 period Palestinians remaining in areas of their historic homeland (i.e., including Israel, the West Bank and Gaza Strip) have been subject to continued displacement and dispossession.[43] It is estimated that Israel has demolished more than 20,000 Palestinian homes in the West Bank, including eastern Jerusalem, and the Gaza Strip since 1967.[44] Israel has expropriated or acquired control of an additional 300 km^2 of Palestinian owned land inside Israel, and more than 3,000 km^2 of Palestinian owned land in the 1967 occupied Palestinian territories.[45] It is estimated that as of the beginning of 2001 Israel had acquired control of 79 percent of the land in the 1967 occupied Palestinian territories. Inside Israel

it is estimated that Israel has confiscated nearly 80 percent of the land owned by Palestinian citizens.[46]

It is further estimated that as of June 2005 some 350,000 dunums of land had been lost to the construction of the Wall in the West Bank. This includes 310,122 dunums isolated between the Wall and the Green Line and a further 47,921 dunums expropriated to build the Wall.[47] A month after the International Court of Justice issued its ground-breaking opinion on the legal consequences of the construction of the Wall, the UN General Assembly adopted Resolution ES-10/15, 2 August 2004, directing the UN Secretary-General to set up a "register of damaged caused to all the natural and legal persons concerned in connection with the advisory opinion." In early 2005 the Secretary-General forwarded a letter to the Assembly setting out a framework and the next moves for the creation of such a register. The Register has yet to be established. According to UN Special Rapporteur on Human Rights in the OPTs, "*This process ... appears to have been lost in the bureaucracy of the United Nations.*" It appears that the process may have stalled over Israeli objections to granting the register full privileges and immunities of the United Nations.

This past summer, however, Israel redeployed its forces and evacuated Jewish colonies in the Gaza Strip and small areas of the northern West Bank. This included 21 Jewish colonies, some 8,000 settlers, and more than 55 km^2 of land. In early 2005 the Palestinian Authority issued a Presidential Decree Regarding the Areas to be Evacuated by the Israeli Occupation Forces. The Palestinian Legislative Council has also issued a draft law for dealing with Palestinian land claims to these areas. All persons having a right in movable and immovable assets may submit a claim for restitution, except persons who acquired land through illegal means. However, the draft PLC law empowers the Ministry of Planning, in coordination with the concerned ministries and entities, to appropriate private immovable property for public purposes compatible with the Palestinian development plan. The amount of land expropriated for construction of the Wall in the West Bank, including in and around Jerusalem, however, exceeded the amount of land returned to Palestinians in the Gaza Strip.

(f) Summary

At the beginning of the British mandate, the indigenous Palestinian Arab population comprised approximately 87 percent of the total population of Palestine.[49] By the end of 1948 war, 35 percent of the Palestinian people were displaced outside the borders of their historic homeland.[50] Half the Palestinian population was displaced either inside or outside their homeland.[51] Less than two decades later, following low intensity transfer and a second wave of mass displacement, nearly half of the Palestinian population was displaced outside their homeland and two-thirds of the

Palestinian people were displaced.[52] Today, it is estimated that more than half of the Palestinian people are displaced outside the borders of their historic homeland. The total number of displaced Palestinians, including internally displaced, comprise around three-quarters of the Palestinian people worldwide.

At the beginning of the British mandate Palestinians owned approximately 93 percent of the land.[53] By the end of 1948 Palestinians had been dispossessed of some 70 percent of their land. Following two decades of low intensity transfer and mass displacement Palestinians had been dispossessed of an additional 16 percent of their land. Today, the indigenous Palestinian population has access to just 10 percent of the land in their historic homeland.[54]

APPLICABLE PRINCIPLES OF INTERNATIONAL LAW

The right of refugees and displaced persons to housing and property restitution – which is the logical corollary of its "sister" right to own property – is grounded in several bodies of international law, including the law of nations, international humanitarian law, international human rights law, and international refugee law.[55]

Under the law of nations private property rights are respected to an extraordinarily high degree. Under the international law of expropriation, private property may not be confiscated by governments unless:

(1) the expropriation is being done for a valid (non-discriminatory) purpose

(2) adequate due process safeguards are employed (allowing the property owner to protest the proposed confiscation if it is not being done for a valid purpose)

(3) full compensation (or substitute property of equal value) is paid to the owner in exchange for the property so confiscated.

In the specific context of state succession, the Doctrine of Acquired Rights requires that private property of individuals in the territory undergoing the change in sovereignty be respected by the successor state in all cases.

Under humanitarian law private property is also accorded a very high degree of respect. The Hague Regulations annexed to the 1907 Hague Convention (IV) Respecting the Laws and Customs of War on Land contains at least sixteen articles, which contain rules requiring combatants to respect private property. Similarly, the Fourth (Civilians) Geneva Convention incorporated the private property protections from the Hague Regulations, and included a

particularly strong prohibition against *"extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly"* in its famous Article 147, defining "grave breaches" of humanitarian law.

Human rights law also contains a *"right to own property free from arbitrary governmental interference."* This right is found in the Universal Declaration of Human Rights; in the International Covenant on Economic, Social and Cultural Rights; in the International Covenant on Civil and Political Rights; and in all three of the regional human rights conventions (i.e., African, inter-American and European). The right of restitution – which is the logical corollary of its "sister" right to own property – exists as the applicable remedy whenever property has been taken illegally (as determined by international law standards) by a government or with official governmental sanction. Commenting on Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination, the UN Committee, emphasizes that

"refugees and displaced persons have the right freely to return to their homes of origin under conditions of safety."[56]
Furthermore, they have

"the right to have restored to them property of which they were deprived in the course of the conflict and to be compensated appropriately for any such property that cannot be restored to them. Any commitments or statements relating to such property made under duress are null and void."[57]

In August 2005 the UN Sub-Commission on the Promotion and Protection of Human Rights adopted the Principles on Housing and Property Restitution for Refugees and Displaced Persons.[58] The Principles delineate the right to housing and property restitution, the right to voluntary return in safety and dignity, legal, policy, procedural and institutional implementation mechanisms, and the role of the international community, including international organizations.

Finally, refugee law also contains the right of restitution. Under refugee law, the principle of the refugees' absolute right to return, on a voluntary basis, to their place of origin – including, specifically, to their homes of origin – is central to the implementation of durable solutions designed by the international community to address refugee flows. Some of the most well-known examples of restitution laws were those implemented at the conclusion of World War II, both by the Allied Powers (including the U.S. and Great Britain) but also by individual European countries (including France, Romania, Italy, Bulgaria, Czechoslovakia, the Netherlands and Yugoslavia). Restitution of housing, land, and property is considered to be

an essential part of the reconstruction, peace-building and national reconciliation processes.

Housing and property restitution has been a central element of the framework for durable solutions for Palestinian refugees since 1948 when the United Nations first affirmed the right of refugees to return to their homes without restriction and regain possession of their property.[59] In December 1948 the General Assembly adopted Resolution 194(III). Paragraph 11 addresses the situation of all persons displaced during the 1948 war in Palestine. The Resolution was adopted with the support of all major powers. According to paragraph 11, the General Assembly

Resolves that the refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible;

Instructs the Conciliation Commission to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation, and to maintain close relations with the Director of the United Nations Relief for Palestine Refugees and, through him, with the appropriate organs and agencies of the United Nations;

It is clear from the phrasing of UN General Assembly Resolution 194, which affirms the right of refugee to return "to their homes" that the United Nations General Assembly intended to affirm the right of Palestinian refugees to housing and property restitution. The Assembly rejected two separate amendments that referred in more general terms to the return of refugees to "the areas from which they have come."[60]

The right to housing and property restitution in Resolution 194 should also be read in light of the UN Mediator's earlier communiqués to the UN Security Council. In June 1948, for example, the Mediator wrote that the residents of Palestine should be permitted both to return to their homes without restriction, and to regain possession of their property.[61] According to the UN Mediator in Palestine,

The liability of the Provisional Government of Israel to restore private property to its Arab owners and to indemnify those owners for property wantonly destroyed is clear, irrespective of any indemnities which the Provisional Government may claim from the Arab states.[62]

In a working paper on historical precedent for restitution, the UN Conciliation Commission for Palestine Secretariat observed that

"[The] underlying principle of paragraph 11, sub-paragraph 1, ... is that the Palestine refugees shall be permitted ... to return to their <u>homes and be reinstated in the possession of the property </u>which they previously held."[63] [Emphasis added]

According to the Legal Advisor of the Economic Survey Mission (ESM), a subsidiary body established by the UNCCP,

"Whenever it is established that, under international law, the property of a refugee has been wrongfully seized, sequestered, requisitioned, confiscated, or detained by the Israeli Government, the claimant is entitled to restitution of the property, if it is still in existence, plus indemnity for damages."[64]

Paragraph 11 was also consistent with the vision of the international community in Resolution 181. While the issue of land regulation was devolved to the Provisional Councils of Government of each state to be set up during the transitional period,[65] the Declaration to be issued by the Provisional Government of each state as the fundamental law of the state,[66] and as a condition for admission into membership of the UN, included express protections for the right to property. According to Chapter 2 of the Declaration on Religious and Minority Rights,

"No expropriation of land owned by an Arab in the Jewish state (by a Jew in the Arab State) shall be allowed except for public purposes. In all cases of expropriation full compensation as fixed by the Supreme Court shall be paid previous to dispossession."[67]

Subsequent UN resolutions, recalling the Universal Declaration of Human Rights and principles of international law, affirm,

"Palestinian Arab refugees are entitled to their property and to the income derived from their property in conformity with the principles of justice and equity."[68]

In July 2004 the International Court of Justice delivered an advisory opinion on the legal consequences of the construction of the Wall in the 1967 occupied Palestinian territories. In its opinion the ICJ said that Israel has an obligation to make reparation for the damage caused to all persons concerned. It must return the land, orchards, olive groves and other immovable property seized from any natural or legal person to build the wall in the Occupied Palestinian Territory. If such restitution is materially impossible, Israel has an obligation to compensate the persons in question for the damage suffered. According to paragraph 152 of the ruling:

The essential principle contained in the actual notion of an illegal act - a principle which seems to be established by international practice and in particular by the decisions of arbitral tribunals - is that reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed. Restitution in kind, or, if this is not possible, payment of a sum corresponding to the value which a restitution in kind would bear; the award, if need be, of damages for loss sustained which would not be covered by restitution in kind or payment in place of it ¾ such are the principles which should serve to determine the amount of compensation due for an act contrary to international law. (Factory at Chorzów, Merits, Judgment No. 13, 1928, P.C.I.J., Series A, No. 17, p. 47.) 153. Israel is accordingly under an obligation to return the land, orchards, olive groves and other immovable property seized from any natural or legal person for purposes of construction of the wall in the Occupied Palestinian Territory. In the event that such restitution should prove to be materially impossible, Israel has an obligation to compensate the persons in question for the damage suffered. The Court considers that Israel also has an obligation to compensate, in accordance with the applicable rules of international law, all natural or legal persons having suffered any form of material damage as a result of the wall s construction.

UN Human Rights Treaty Bodies have also affirmed the right of Palestinian refugees to restitution. In 1998, for example, the Committee on Economic, Social and Cultural Rights noted with grave concern that:

The Status Law of 1952 authorizes the World Zionist Organization/ Jewish Agency and its subsidiaries including the Jewish the land in Israel, since these institutions are chartered to benefit Jews exclusively. Despite the fact that the institutions are chartered under private law, the State of Israel nevertheless has a decisive influence on their policies and thus remains responsible for their activities. A State Party cannot divest itself of its obligations under the Covenant by privatizing governmental functions. The Committee takes the view that large-scale and systematic confiscation of Palestinian land and property by the State and the transfer of that property to these agencies, constitute an institutionalized form of discrimination because these agencies by definition would deny the use of these properties by non-Jews. Thus, these practices constitute a breach of Israel's obligations under the Covenant.[69]

The Committee urged Israel

"*to review the status of its relationship with the World Zionist Organization/ Jewish Agency and its subsidiaries including the Jewish National Fund with a view to remedy problems identified.*"[70]

Likewise, the Committee on the Elimination of Racial Discrimination said in 1998

"The right of many Palestinians to return and possess their homes in Israel is currently denied. The State Party should give high priority to remedying this situation. Those who cannot re-possess their homes should be entitled to compensation."[71]

INTERNATIONAL PRACTICE ON HOUSING AND PROPERTY RESTITUTION FOR REFUGEES

Precedents derived from other refugee cases, Jewish restitution claims in particular,[72] add further legal but also political dimensions to the Palestinian case. From a legal perspective, they provide a set of precedents and procedures for overcoming many of the obstacles raised against restitution in the Palestinian case. These 'obstacles' include the impact of state succession on housing and property claims due to lack of citizenship or domicile in the successor state where claims are being made, the passage of time, secondary occupation of refugee properties, domestic legislation that militates against housing and property restitution, and the destruction of homes and properties. The conformity of UN General Resolution 194(III) with international legal principles and precedents lends further weight to its value as a normative framework for durable solutions for Palestinian refugees today.

Politically, the response of Israel and members of the international community, led by the United States and its European allies, highlights the overt discrimination based on ethnic, national and religious origins concerning housing and property restitution for Palestinian refugees, particularly in light of the fact that political support for restitution in other cases is often couched in a legal and moral framework.
Israel and the Jewish community have progressively participated in the development of the law on property restitution. Israel, therefore, cannot use the 'persistent objector' defence to argue against Palestinian restitution claims. In fact, Israel has been both a 'persistent advocate' of the law of restitution and a persistent beneficiary of the law of restitution.[73]

"[Restitution] is a human right which every man deserves," stated Secretary General of the World Jewish Congress and co-chairman of the World Jewish Restitution Organization Israel Singer before the US Congressional Subcommittee on International Organizations and Human Rights in February 1994. *"The return of that which was his, and that which belonged to his and her community."*[74] Former US Deputy Secretary of the Treasury Department, Stuart Eizenstat, who headed up a special US office to support Jewish restitution claims, declared that the willingness of countries to

correct the injustices of the past by restoring property to its rightful owners is

"*a measure of the extent to which they have successfully adopted democratic institutions, [and] the rule of law with respect to property rights.*"[75]

Neither Israel nor prominent members of the international community have provided adequate political explanations as to why the right to housing and property restitution does not apply to Palestinian refugees and displaced persons.

Palestinian refugees themselves are not unaware of the similarities (as well as differences) between their situation and the plight of other refugees. The onset of the refugee crisis in the former Yugoslavia in the 1990's, for example, elicited comments such as: "*It's like the tape of our life is being replayed day after day. They [Kosovar refugees] are fooling themselves if they think they will go back. We were told we would go back and here we are in this camp 50 years later.*"[76]

But the Kosovar Albanian refugees did go home, as have tens of millions of other refugees. Speaking to the Kosovar people in May 1999, former US President Clinton recollected

"*stories of innocent people beaten and brutalized for no reason but their ethnicity and faith – people rounded up in the middle of the night, forced to board trains for unknown destinations, separated from their families. Stories of people arriving in refugee camps with nothing but their fierce determination to find their loved ones and return to their villages with their culture intact.*"

"*But you have not been defeated,*" Clinton continued in his message to Kosovar refugees. "*You have not given in to despair. And you have not allowed the horror you have seen to harden your hearts or destroy your faith in a better life in the land of your birth. You left Kosovo with one goal: to return in safety. … [W]ith your strength and our determination, there is no doubt what the outcome will be. The campaign of ethnic cleansing in Kosovo will end. You will return.*"[77]

Numerous UN resolutions reaffirm the right of refugees and displaced persons to housing and property restitution. The UN Security Council, for example, has called upon parties to conflicts in Cyprus,[78] the former Yugoslavia,[79] Azerbaijan,[80] Georgia,[81] and Tajikistan,[82] to permit refugees and displaced persons to return to their homes. Several resolutions also reaffirm the principle that property transactions made under duress are considered to be null and void,[83] and call upon governments to lift time

restrictions on repossession of property and other obstacles to restitution.[84] These resolutions are consistent with the language in UN General Assembly Resolution 194(III) pertaining to the Palestinian refugee case.

Numerous peace agreements also provide for housing and property restitution for refugees and displaced persons.[85] This includes, among others, the 1993 Protocol of Agreement Between the Government of Rwanda and the Rwandese Patriotic Front on the Repatriation of Rwandese Refugees and the Resettlement of Displaced Persons,[86] the 1995 Dayton Peace Agreement,[87] Protocol III of the 1992 Comprehensive Peace Agreement in Mozambique,[88] the 1995 Erdut Agreement on The Region of Eastern Slavonia, Baranja, and Western Sirmium,[89] the 1994 Agreement on Resettlement of the Population Groups Uprooted by the Armed Conflict in Guatemala,[90] and the 1999 Interim Agreement for Peace and Self-Government in Kosovo.[91] Several agreements, such as the 1995 Dayton agreement, include provisions for legal reform or repeal of property legislation that is discriminatory, either intent or in effect, towards refugees and displaced persons. No provisions for housing and property restitution of Palestinian refugees are included in the Oslo agreements or the framework proposals presented by Israel during final status negotiations with the PLO in July 2000 and January 2001.[92]

In a study of 10 refugee cases, the Washington-based Public Law International Policy Group notes that the Rights of Displaced Persons Drafters should establish the rights that must be respected. Generally, the four rights of displaced persons are: 1) the right to voluntary return; 2) the right to citizenship, identity and participation; 3) the right to property; and 4) the right to have their human rights respected.[93] The Group suggests the following draft language:

All displaced persons have the right to return to their homes, land, and property. If return to their homes, land, and property proves impossible, they shall be justly compensated for their losses. A property commission will be established to adjudicate property disputes and assist in returning property to its rightful owners. Distribution of aid resources and property will take place without regard to the proposed Recipient's gender, language, ethnic identity, racial identity, religion, party affiliation, geographical location, status as a displaced or formerly displaced person, or any other discriminatory basis. The Parties shall establish a national fund to ensure that the resettlement and redistribution programs can be financed and implemented.[94]

Relevant precedents for housing and property restitution in the Palestinian case include administrative procedures for real property restitution of Jewish residents and citizens of Israel, the more expansive range of Jewish restitution claims in Europe, a large body of declaratory law that has

developed through UN resolutions affirming and calling upon states to facilitate housing and property restitution, and principles and procedures set forth in numerous peace agreements in more recent refugee cases.

Following the 1967 war, for example, Israel adopted legal and administrative measures to facilitate the restitution of Jewish-owned properties in the eastern areas of Jerusalem that had been under Jordanian administration following the end of the 1948 war. Section 5 of the 1970 Legal and Administrative Matters [Regulation] Law [Consolidated Version], dealing with the implementation of Israeli law in the eastern areas of Jerusalem occupied by Israel in 1967, enabled Jewish property owners to reclaim homes and property lost in 1948.[95] Interestingly, Section 3 of the law limited the right of Palestinians to repossess absentee property to eastern Jerusalem. Palestinian refugees, many of who live in the eastern areas of Jerusalem, owned vast tracts of land, villas, and commercial properties in the western areas of Jerusalem before the 1948 war.[96] In 1969 the Israeli government set up a special department at the Justice Ministry to document housing and property claims of Jews from Iraq, Syria, Egypt and Yemen who had immigrated to Israel. In early March 2001 the Israeli cabinet decided to expand procedures set in place in 1969 to cover property claims of Jews who left all Arab states as well as Iran.[97] The cabinet decision emphasized that the proprietary and legal rights of Jews originating from Arab countries are not affected by the fact that they left their places of origin. In November 2001 the Israeli Justice Ministry set up a special unit to seek and locate the Jewish heirs of bank accounts and absentees' property in Israel belonging to holocaust victims.[98] No such unit has ever been established to search for Palestinian owners and heirs of absentees' property in Israel, despite the fact that they constitute the vast majority of absentee property owners. The Israeli government has repeatedly rejected requests to release information on the status of Palestinian refugee homes and properties on the grounds that an exorbitant amount of time and resources would be required to comply with the request and, obviously, because the information might damage Israel's foreign relations.[99]

The more expansive range of Jewish claims in Europe in the period immediately after WWII and again following the collapse of the former Soviet Union and communist regimes across Eastern Europe also provides numerous precedents relevant to the Palestinian refugee case.[100] In fact, as early as 1950, UN officials involved with the Palestinian refugee case noted, as far as housing and property restitution was concerned, that

"*[i]t would perhaps be useful to assembly documentation on measures taken concerning German property in Israel, and on the way in which the Israeli Government has obtained reparations and compensation from the German government for Jews who were victims of persecution in the Reich.[101] Relevant precedents include the right of individuals or heirs to repossess homes and properties 'abandoned' during periods of conflict,[102] the right of*

individuals to repossess housing and property regardless of the passage of time,[103] *the right of organizations to receive communal and heirless assets,*[104] *the role of non-governmental organizations as a party to negotiations concerning housing and property restitution,*[105] *and the right of individuals to housing and property restitution in states where they are not domicile or do not hold citizenship."* [106]

CONCLUSION

Since the initial mass displacement and dispossession of Palestinians in 1948, Palestinian refugees have continually demanded the right to return home and receive real restitution like all other refugees.

Every day I say tomorrow will be better, and a hundred times I tell myself we will go back home. As you want to live in your house, with your family, so I want to live in mine.[107]

According to the Commissioner-General of the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA),

"the refugee, individually and collectively, is tired of his present condition. Above all, he wishes to return to his former home and means of livelihood."[108]

"The refugees say that they have lost faith in the United Nations action since, after more than thirty months, the General Assembly Resolution recommending their return home [Resolution 194(III)], although not revoked, has never been implemented and no progress has been made towards compensation. The desire to go back to their homes is general among all classes; it is proclaimed orally at all meetings and organized demonstrations, and, in writing, in all letters address to the Agency and all complaints handed in to the area officers."[109]

In meetings in Beirut, the UN Conciliation Commission (UNCCP), established to facilitate the implementation of UN Resolution 194, found that the representatives of the refugees *"expressed [their] unanimous desire [to] return to [their] homes"* in accordance with the UN resolution, and *"express[ed] confidence they [could] live at peace with the Jews."*[110]

The Commission was impressed by expressions of these spokesmen for the return of refugees to their homes to live there in peace with their neighbours. The import of those statements was that a majority of Arab refugees wish to return to the homes.[111]

The demand for real property restitution was part and parcel of the demand to return home. In some cases special refugee committees were formed with

the express aim of lobbying for real property restitution. In November 1949, for example, Palestinian property owners formed the "Committee for the Arab Property Owners in Jerusalem" at a meeting held at the headquarters of the Arab Chamber of Commerce in the Old City of Jerusalem. The aim of the Committee was

"To demand restitution of the Arab properties and allow their rightful owners to take possession of them; To demand compensation for the loss of movable property that was left in their homes by the Arab owners, and for the proceeds of rents accumulated on account of the Jewish unlawful use of these properties."[112]

In a telegram sent to the UN Secretary General Trygve Lie, the Committee wrote:

Owners of Arab properties formerly accommodating more than 70,000 Arabs in Jewish occupied area of Jerusalem strongly demand the return of same to their owners stop *complete Arab quarters including Qatamon, Talbieh, Mamillah, Upper and Lower Baka's, Musara, Deir Abu Tor and Nikiphoria and many other quarters embracing holy places such as Nebi Daoud continue to be under Jewish control without lawful ground* stop *we strongly object to any settlement of the Jerusalem case which will not include the return of these Arab quarters to their owners stop kindly circulate our demand to all member states of UN pointing out that forceful control and occupation of these properties by the Jews is contrary to justice and equality.*

Fifty years later the demands remain unchanged.

This camp is called Aida, surely you are familiar with the name Aida, the opera by Verdi, you remember it, the tragedy. Aida camp is a tragedy of another type. Aida can also mean 'one who would return.' And it is the dream of all the people here to return to their villages of origin, to return to the lands they were forced to leave.[113]

We do not mind living with our Jewish neighbours. In one interview we were asked, if there were a settlement built on a Palestinian village, what would you like to do with it. The answer is simple: we will live next to the Israelis.[114]

The problem facing Palestinian refugees regarding access to their homes, lands and properties is not a technical nor a legal problem. Despite having been displaced more than five decades ago, Palestinians have some of the best documentation for restitution among all refugees worldwide. Moreover, since the UN first reaffirmed the right of Palestinian refugees to return to their homes international law on the right of refugees to housing, land and

property restitution has developed in a manner consistent with paragraph 11 of Resolution 194(III). The primary problem is political. In a preface to one of the few international reports that bothered to ask Palestinian refugees themselves how they envision a solution to their plight, American professor of international law Richard Falk writes:

The clarity of international law and morality, as pertaining to Palestinian refugees, is beyond any serious question. It needs to be appreciated that the obstacles to implementation are <u>exclusively</u> political – the resistance of Israel, and the unwillingness of the international community, especially the Western liberal democracies, to exert significant pressure in support of these Palestinian refugee rights. It is important to grasp the depth of Israeli resistance, which is formulated in apocalyptic language by those in the mainstream, and even by those within the dwindling Israeli peace camp. ... How to overcome this abyss is a challenge that should haunt the political imagination of all those genuinely committed to finding a just and sustainable reconciliation between Israel and Palestine.[115]

One of the first steps forward in addressing the refugee question is to bring refugees themselves into the process. After all, Balfour, at least in the mind of the Foreign Secretary himself, was all about excluding Palestinian Arabs from determining their future. Since the beginning of the Madrid-Oslo process in the 1990s the refugees themselves have been excluded from the very process to determine their future. Moreover, as evident in the findings of the 2000 British Commission of Inquiry on Palestinian refugees, refugees have many creative ideas about how to solve their situation in a manner that is consistent with universal standards and practices.

Recent comparative research of peace processes, moreover, suggests that public participation strengthens democratic principles and structures, expands the range of solutions to complex issues, lends greater legitimacy to agreements, engenders broad public ownership of the agreement and contributes to its long-term durability. *Where a peace process enables broad-based participation and public debate, intensely conflictual issues can be reclaimed as the normal subjects of political dialogue, problem-solving and constructive action.*"[116] This creates an environment where antagonists can more effectively resolve root causes of the conflict and ultimately take steps towards reconciliation rather than just conflict management.

Mallison, in his study of the Balfour Declaration, suggests two additional ways forward. First, "*a widespread educational process to include an understanding of the facts and law concerning Palestine.*"[117] Oslo was built on the assumption that everyone agreed what the conflict was about – i.e. ending the 1967 occupation. But if ending the occupation is synonymous

with ending the conflict where do the refugees fit? Most refugees were displaced long before 1967. As Ilan Pappe observes,

"*the exclusion of the refugees has ... effectively de-historicized the conflict, which no longer has an origin, and thus no longer the necessary means and mechanisms to resolve it*."[118]

In 2004-2005 Palestinian civil society organizations held a series of consultations to re-examine their message to global civil society. They concluded that the single most dramatic event that determines Israeli-Palestinian relations until this day is the 1948 Palestinian Nakba. The conflict is not driven by ethnicity or religion but by a political ideology that Israelis and Arabs in the region call Zionism. Palestinians are struggling for liberation and freedom from Israel's discriminatory and colonial regime which denies return to the refugees and continues to forcefully displace, dispossess, occupy and fragment the Palestinian people. Palestinians in exile, those living under occupation in the West Bank and Gaza Strip, and the discriminated Palestinian citizens of Israel are the core actors in the struggle.

Mallison also called for an educational process about the law. Since the time of Balfour, the Israeli-Palestinian conflict has been plagued by the absence of law. While other conflicts around the world share a tension between implementation of international law and the demands of realpolitik in no other place has this meant that law is completely excluded from the peacemaking process. In 1947, when the UN was considering partitioning Palestine into two states, a step that was covered neither by the Mandate system nor under the UN Trusteeship system, a number of states requested that the UN obtain an advisory opinion from the International Court of Justice. The General Assembly rejected this option at the time, arguing that bringing law into the question of Palestine would only delay a solution to the conflict. After more than fifty years and no solution it is about time that the international community try a rights based solution. Of course, a rights-based process will also be less contested if there is a common understanding of the conflict and law is seen as a tool to craft a solution rather than a weapon used by the weak about those that wield political and military power.

And finally, Mallison suggests that the way forward also

"*involves the development and application of an adequate sanctioning process by the organized world community to compel compliance with the law*."[119]

In July 2004 nearly two hundred Palestinian civil society organizations called for a campaign of boycotts, divestment and sanctions against Israel

until it complies with international law. This includes ending the occupation and the construction of the Wall, recognizing the fundamental rights of Arab-Palestinian citizens of Israel to full equality, and, respecting, protecting and promoting the rights of Palestinian refugees to return to their homes and properties as stipulated in UN Resolution 194.[120]

2008 marks the 60th anniversary of the Nakba. It also marks 60 years of ongoing Nakba. Since 1948 more than two-thirds of the Palestinian Arab people have been displaced and dispossessed of their homes, properties and lands. And it may well be the last major anniversary when eyewitnesses from the 1948 catastrophe are still living. 2008 thus provides an important date to focus resources, energies, campaigns and activities for a rights-based solution for Palestinian refugees, in particular, and to the Israeli-Palestinian conflict in general. Ideas already being talked about include: an international commission on the Nakba; books, documentaries and movies; a Nakba museum; a Nakba study center; global concerts on Palestine; art exhibits; theatre; sports events; and creative media and advertising.

Starting now gives us all time to work towards 2008.

References

(1) According to the Basle Declaration of 1897, the aim of Zionism is to create for the Jewish people a home in Palestine secured by public law. The Zionist Congress contemplated the following means to the attainment of this end:
1.   The promotion, on suitable lines, of the colonization of Palestine.
2.   The organization and binding together of the whole of Jewry by means appropriate institutions, local and international, in accordance with the laws of each country.
3.   The strengthening and fostering of Jewish national sentiment and consciousness.
4.   Preparatory steps towards obtaining government consent, where necessary, to the attainment of the aim of Zionism.

(2) It is one of the criteria of statehood: a permanent population, a defined territory, government, and the capacity to enter into relations with other states. See, Article 1, 1993 Montevideo Convention on the Rights and Duties of States. Text: 165 LNTS 19; also 28 AJIL supp. 75 (1934).
(3) A. Granott, Agrarian Reform and the Record of Israel. London: Eyre & Spottiswoode, 1952, at 102.
 (4) W.T. Mallison, "The Balfour Declaration: An Appraisal in International Law," in Transformation of Palestine. Ibrahim Abu Lughod, ed. Evanston: Northwestern University Press, 1971.
(5) As Mallison observes: The Zionist objective was to obtain public law authority for their territorial ambitions. The Zionist national home enterprise must be reconstituted in order to give a semblance of reality to the Zionist claim of historic title to Palestine, and it was regarded as essential that the British government make an unequivocal commitment to carry out the Zionist territorial objective in Palestine. Mallison, supra note 4, at 69-70. See the Zionist Preliminary draft of 12 July 1917 and the draft of 18 July. Balfour's own first draft of August 1917 basically mirrored language in the 18 July Zionist draft. Ibid at 71-72.
(6) Ibid, at 92.
(7) Ibid, at 95.

(8) Chaim Weizmann, Trial and Error. London: H. Hamilton, 1949 at 302. On the interpretation of the Zionist movement see, Jewish Agency for Palestine, Book of Documents Submitted to the General Assembly of the United Nations. Abraham Tulin (ed.). New York, 1947. Also see Israel's Declaration of Independence. "In the year 5657 (1897), at the summons of the spiritual father of the Jewish State, Theodore Herzl, the First Zionist Congress convened and proclaimed the right of the Jewish people to national rebirth in its own country. ... This right was recognized in the Balfour Declaration of the 2nd November, 1917, and re-affirmed in the Mandate of the League of Nations which, in particular, gave international sanction to the historic connection between the Jewish people and Eretz-Israel and to the right of the Jewish people to rebuild its National Home." "On the 29th November, 1947, the United Nations General Assembly passed a resolution calling for the establishment of a Jewish State in Eretz-Israel; the General Assembly required the inhabitants of Eretz-Israel to take such steps as were necessary on their part for the implementation of that resolution. This recognition by the United Nations of the right of the Jewish people to establish their State is irrevocable."

(9) Address by Prime Minister Ariel Sharon to the High Level Plenary Meeting of the 60th Session of the General Assembly of the United Nations, 15 September 2005. Available at, http://www.mfa.gov.il/MFA/Peace+Process/Key+Speeches/PM+Sharon+addresses+the+U N+General+Assembly+15-Sep-2005.htm. In an interview in the Israeli daily Ha'aretz, Sharon comments that he learned this doctrine from his parents. "When I was a child, people used to discuss serious subjects with their parents. I remember that the question once came up of what would happen if the Jews were not the majority here. I remember that my parents told me not to ever get confused on these matters, that the idea should always be that all the rights over the land are Jewish rights. But rights must be given to everyone who lives in the land. They would say, if you can distinguish between the 'over' and the 'in,' you won't get confused and you won't have any problem." Aluf Benn and Yossi Verter, "Even King Solomon ceded territories," Ha'aretz, 22 April 2005.

(10) Avi Shlaim, The Iron Wall, Israel and the Arab World. New York: W.W. Norton & Company, 2000, at 10.

(11) The following sections are based on Terry Rempel, "Housing and Property Restitution: The Palestinian Case," in Returning Home: Housing and Property Restitution Rights of Refugees and Displaced Persons. Scott Leckie (ed.) New York: Transnational Publishers, 2003, at 275-316.

(12) It is important to note that regardless of the Declaration the traditional system of land holding in Palestine at the end of the 19th century rendered small Palestinian landowners, in particular, especially vulnerable to loss of land. Irregularities in the land registration system and "cultural biases" of the legal system constructed first by the British and then by the Zionist movement contributed, in Kedar's words, to a "conceptual framework constructed to legitimize the various methods used to dispossess indigenous and other non-settler "alien" populations and expropriate their lands, territories and resources." Sandy Kedar, "The Jewish State and the Arab Possessor: 1948-1967," The History of Law in a Multicultural Society, Dartmouth: Ashgate, 2002, at 312. For example, on 5 percent of land was registered in official property records by the time the British occupied Palestine at the end of WWI, 25 percent on the eve of the 1948 war, and 37 percent in the West Bank and Gaza Strip on the eve of the 1967 war. Records were often in disarray, small landowners sometimes evaded registration to avoid payment of taxes and conscription, and transactions and inheritances were frequently not recorded. And, during periods of conflict, records were sometimes destroyed or lost.

(13) For details see, Survey of Palestinian Refugees and Displaced Persons 2003. Bethlehem: BADIL Resource Center for Palestinian Residency & Refugee Rights, 2005, at 21-23.

(14) Walter Lehn, The Jewish National Fund. London: Kegan Paul, 1988, at 74.

(15) By 1931 Jews comprised between 11 and 28 percent of the population of these sub-districts. In other sub-districts where land was of poor quality Jewish comprised less than 1 percent of the population. Population figures cited in Janet Abu Lughod, "The

Demographic Transformation of Palestine," The Transformation of Palestine. Ibrahim Abu Lughod (ed.). Evanston, IL: Northwestern University Press, 1971, at 147.

(16) Lehn, supra note 14, at 85.

(17) Arab Office, The Problem in Palestine, at 277. Submitted for the Consideration of the Anglo-American Commission of Inquiry, Memo C-29, "The Land Question: Arab Land Hunger," Vol. II, at 9-10, cited in Toward the De-Arabization of Palestine/Israel 1945-1977. Basheer K. Nijim (ed.), Dubuque IO: Kendal Hunt Publishing Company, 1984, at 10.

(18) 1 A Survey of Palestine, Washington, DC: Institute of Palestine Studies, 1991, at 100.

(19) Final Report of the United Nations Survey Mission for the Middle East (Part I). UN Doc. A/AC.25/6. Also see, demographic calculations in Abu Lughod, supra note 15, at 139-163.

(20) Abu Lughod, supra note 15, at 159. Israel Central Bureau of Statistics, Statistical Abstract of Israel, No. 52 (2001), Table 2.1, 'The Population by Religion and Population Group,' at 2-9.

(21) Figures based on research in Toward the De-Arabization of Palestine/Israel, supra note 17. Of the total number of Palestinian villages destroyed, 20 percent were completely obliterated, 33 percent were destroyed but rubble can be identified, 14 percent were demolished but walls remain standing, 18 percent were mostly destroyed but 1 home remains standing, 4 percent were mostly destroyed but up to two Jewish families live in the village, 8 percent have more than 2 Jewish families occupying homes, and 3 percent are inaccessible. Table 6, 'Level of Destruction of Villages,' Salman Abu Sitta, The Palestinian Nakba 1948, The Register of Depopulated Localities in Palestine. London: The Palestinian Return Centre, 2000, at 20. The table is based on research by Ghazi Falah, "The 1948 Israeli-Palestinian War and its Aftermath: The Transformation and De-Signification of Palestine's Cultural Landscape," 86 Annals of the Association of American Geographers 2 (June 1996). The figures do not include the Bir Saba' sub district.

(22) Figures based on research in Toward the De-Arabization of Palestine/Israel, supra 17. Few Jewish settlements and neighborhoods were depopulated and destroyed. Depopulated Jewish neighborhoods and settlements included the Jewish quarter of the Old City of Jerusalem and the three Jewish settlements located in the Jerusalem sub district: Atarot (0.5 km2), Neve Yaaqov (0.48 km2), and Ramat Rahel (0.15 km2). Additional Jewish owned land was located between Beit Ummar and Nahhalin north of Hebron along with a smaller tract of land near Qalandiya north of Jerusalem. Total Jewish ownership in the West Bank amounted to no more than 30 km2. Lehn, supra note 14; and, Sami Hadawi, Palestinian Rights and Losses in 1948, A Comprehensive Study. London: Saqi Books, 1988, Appendix V, 'Arab Town and Village Lands outside the Territory occupied by Israel under the General Armistice Agreements of 1949,' at 226.

(23) For a detailed list of the villages, the date of depopulation, reasons for depopulation, estimated population in 1948, land ownership, level of destruction and current number of refugees, see, Abu Sitta, supra note 21.

(24) Appendix V, 'Palestine Arab Town and Village Lands outside the Territory occupied by Israel under the General Armistice Agreements of 1949,' in Sami Hadawi, Palestinian Rights and Losses in 1948, A Comprehensive Study. London: Saqi Books, 1988, at 224-229.

(25) During the period of the British mandate, by contrast, Jewish acquisition of Palestinian land increased only incrementally. In 1922, Jews owned approximately 2.5 percent of the total lands in Palestine. By 1945 total Jewish ownership had increased to approximately 6 percent. Lehn, supra note 14, at 69-71.

(26) Benny Morris, The Birth of the Palestinian Refugee Problem, Cambridge: Cambridge University Press, 1987, at 195. Also see, UN Doc. A/AC.25/W.52, 7 September 1950, Operations of the Custodian of Absentee Property and Estimation of the Compensation Due to Arab Refugees not Returning to their Homes. Working Paper prepared by the Secretariat of the Commission at Jerusalem. In 1954 alone, nearly one-third of new immigrants were settled in urban refugee property. Don Peretz, Israel and the Palestine Arabs. Washington, DC: The Middle East Institute, 1959, at 143.

(27) Meron Benvenisti, Sacred Landscape, The Buried History of the Holy Land. Berkeley: The University of California Press, 2000 , at 311.

(28) Yusif A. Sayigh, The Israeli Economy. Beirut, PLO Research Centre, 1967, at 92-113.

(29) UN Doc. A/AC.25/W.52. United Nations Conciliation Commission for Palestine, Operations of the Custodian of Absentee Property and Estimation of the Compensation due to Arab Refugees not Returning to their Homes. Working Paper Prepared by the Secretariat, 7 September 1950.

(30) Available sources from Israeli and UN archives and oral history accounts paint of picture of widespread expulsion. During late May and early June 1949, for example, some 4,000 internally displaced Palestinians were expelled into the West Bank. Nur Masalha, A Land without a People, Israel, Transfer and the Palestinians. London: Faber & Faber Ltd., 1997, at 12. In the summer of 1950, the remaining 2,500 Palestinian residents of the city of Majdal (Ashqelon) were expelled into the Gaza Strip. Benny Morris, 1948 and After: Israel and the Palestinians. Oxford: Clarendon Press, 1990, at 258-59. According to UN observers, some 7,000 Palestinians residing west of the southern armistice lines near the Palestinian village of Dura were expelled from Israeli-held territory in March 1949. 'Investigation Report', Simon and Vermeersch, UNA DAG-13/3.3.1-18, id, at cited in Benny Morris, Israel's Border Wars, 1949-56. Oxford: Clarendon Press, 1993, at 152. Some 17,000 Bedouin from the Naqab (Negev) were expelled between 1949 and 1953. Id, at 157. Up to 5,000 Bedouin were expelled into Syria in October 1956. Tom Segev, 1949: The First Israelis. New York: The Free Press, 1986, at 97.

(31) By the mid-1950s, for example, the number of Palestinians expelled by Israeli authorities comprised some 15 percent of the total Palestinian population inside Israel. At least 30,000 Palestinians were expelled from Israel between 1949 and 1956. By 1955 there were around 195,000 Palestinians living inside Israel. Statistical Abstract of Israel, supra 20, Table 2.1, 'The Population by Religion and Population Group,' at 2-9.

(32) Total Palestinian land ownership inside Israel after 1948 is estimated at 1.4 million km2. Salman Abu Sitta, Palestinian Right to Return, Sacred, Legal and Possible. Second Revised Edition. London: Palestinian Return Centre, 1999, at 17. A 1988 study discovered that 58 percent of all Palestinians in Israel and 75 percent of land-owning Palestinians in Israel had land expropriated. Sammy Smooha, 2 Arabs and Jews in Israel: Change and Continuity in Mutual Intolerance. Boulder, 1992, at 157-58.

(33) Table 5, 'Land Lost by Some Arab Villages in Israel, 1945-1962 (in dunums)' in Sabri Jiryis, The Arabs in Israel. London: Monthly Review Press, 1976, at 292-296. Also see, B. Abu Kishk, "Arab Land and Israeli Policy," 11 Journal of Palestine Studies 1 (Autumn 1981). Also see, Jack Cano, The Question of Land in the National Conflict between Jews and Arabs 1917-1990. Poalim Library, 1992, at 79; Don Peretz, Israel and the Palestine Arabs. Washington, DC: The Middle East Institute, 1959, at 142; and, I. Lustick, Arabs in the Jewish State. University of Texas Press, 1980, at 179.

(34) Total land area derived from Salman Abu Sitta, The End of the Palestinian-Israeli Conflict, From Refugees to Citizens at Home, London: Palestinian Return Centre, 2001. The remaining inhabitants of the villages were evicted and the villages razed as part of a government campaign to render Israel's de facto borders clean [naki] and empty [reik]. The terms were used by Israel's first Prime Minister David Ben Gurion during a Cabinet meeting on 26 September 1948. Morris, supra note 30, at 218.

(35) Report of the Secretary General under General Assembly Resolution 2252 (ES-V) and Security Council Resolution 237 (1967). UN Doc. A/6797. 15 September 1967; Table 5, "Palestinian Estimates of Displaced Persons and Refugees During the 1967 War," Tayseer Amro, "Displaced Persons: Categories and Numbers Used by the Palestinian Delegation [to the Quadripartite Committee] (not including spouses and descendants)." Article 74, No. 14 (1995). Jerusalem: Alternative Information Centre for Palestinian Residency and Refugee Rights. The table appears in Elia Zureik, Palestinian Refugees and the Peace Process. Washington, DC: Institute for Palestine Studies, at 12-13; and, Lex Takkenberg, The Status of Palestinian Refugees in International Law. Oxford: Oxford University Press, 1998, at 81-

82. Displacement affected approximately 35-40 percent of the Palestinian population of the West Bank and Gaza Strip.

(36) A 1987 Israeli State Comptroller, Annual Report 37 lists a total of 430 km2 of Palestinian refugee land in the West Bank expropriated by Israel. Yehezkel Lein, Land Grab, Israel's Settlement Policy in the West Bank. Jerusalem: B'tselem, The Israeli Information Center for Human Rights in the Occupied Territories (May 2002), at 45. Also see, Financial Times, 29 October 1979 cited in Lehn, supra 14, at 183.

(37) There were 328 Palestinian villages in the West Bank and Gaza Strip in 1967. Sabri Jiryis, "The Legal Structure for the Expropriation and Absorption of Arab Lands in Israel," 2 Journal of Palestine Studies 4 (Summer 1973), at 84.

(38) Table 5, 'Palestinian Estimates of Displaced Persons and Refugees During the 1967 War,' supra 35.

(39) Ester Cohen, Human Rights in the Israeli-Occupied Territories, 1967-1982, pp. 152-153 (1985), cited in Bisharat, infra note 43, at 525, note 334.

(40) The figures are based on Jewish-owned land in the West Bank and Gaza Strip prior to 1948, the estimated total area of land 'acquired' by Israel as absentees' property and 'state' land immediately after the 1967 war, and the estimated total area of land acquired by Israel as of 2001.

(41) G. Dib and F. Jabber, Israel's Violation of Human Rights in the Occupied Territories: A Documented Report. Beirut (1970), at 176, cited in Michael Dumper, "Israeli Settlement in the Old City," 21 Journal of Palestine Studies 4 (1992), at 38. Israel has continued to settle Jews in homes expropriated from Palestinians in various neighborhoods of occupied eastern Jerusalem.

(42) State Comptroller Report, Annual Report 37, cited in Lein, supra note 36, at 45.

(43) According to official Palestinian statistics, 6,660 Palestinians were deported between 1967 and 1991 (including 4,000 to Egypt in 1967). Table 5, 'Palestinian Estimate of Displaced Persons and Refugees During the 1967 War,' supra note 35. The figure roughly coincides with Israeli figures if Palestinians deported to Egypt during the 1967 war are not included. See, e.g., Deportation of Palestinians from the Occupied Territories and the Mass Deportation of December 1992. Jerusalem: B'tselem, The Israeli Information Center for Human Rights in the Occupied Territories (June 1993). Between 1967 and 1994 Israel revoked the residency status of some 100,000 Palestinian residents of the occupied territories. John Quigley, "Family Reunion and the Right to Return to Occupied Territory," 6 Georgetown Immigration Law Journal, 1992. Between 1967 and 1999, Israel revoked the residency rights of 6,185 Palestinians living in Jerusalem affecting some 25,000 people. Table III, 'Confiscation of Jerusalem ID Cards, 1967-1998,' Eviction from Jerusalem, Restitution and the Protection of Palestinian Rights. Bethlehem: BADIL Resource Center (April 1999), at 19. The table is updated through the end of 1999 with available statistics from the Israeli Interior Ministry.

(44) The figure includes homes demolished for administrative and punitive reasons as well as thousands of refugee shelters demolished in the Gaza Strip for alleged security considerations. See al-Haq – Law in the Service of Man available at http://www.alhaq.org (last visited Feb. 15th, 2002); B'tselem – The Israeli Center for Human Rights in the Occupied Territories available at http://www.btselem.org (last visited May 20th, 2002); and Norma Masriyeh Hazboun, Israeli Resettlement Schemes for Palestinian Refugees in the West Bank and Gaza Strip Since 1967, Ramallah: Shaml, at 32.

(45) A report commissioned by the civil administration in the West Bank in 1991 stated that 3,470 of 5,300 km2 or two-thirds of the West Bank were under Israeli control. Land Expropriation, Human Rights Update (PHRIC, Washington, DC), April 1991 at 55. Cited in Bisharat, supra note 43, at 526, no. 342; Passia Diary 2001, Jerusalem: PASSIA, Palestinian Academic Society for the Study of International Affairs, 2001, at 257. Also see, Land Grab, supra note 36.

(46) Abu Sitta, supra 38, at 13.

(47) Survey on the Impact of the Expansion and Annexation Wall on the Socio-Economic Conditions of Palestinian Localities which the Wall Passes Through, June 2005. Ramallah: Palestinian Central Bureau of Statistics, 2005.

(48) UN Doc. A/60/271, 18 August 2005.

(49) Table 2.18 'The Population of Palestine by Religion, 1870 to 1946,' Justin McCarthy, The Population of Palestine, Population History and Statistics of the Late Ottoman Period and the Mandate. New York: Columbia University Press and Institute for Palestine Studies, 1990, at 37; and, Abu Lughod, supra 15, at 155-56.

(50) This included an estimated 100,000 refugees in Lebanon, 75,000 refugees in Syria, 70,000 refugees in Jordan, 7,000 refugees in Egypt, and 4,000 refugees in Iraq. Final Report of the United Nations Economic Survey Mission, supra note 19, at 23.

(51) In addition to the refugees displaced outside their homeland there were an estimated 280,000 refugees in the West Bank, 190,000 refugees in the Gaza Strip, and 31,000 refugees inside Israel. Id.

(52) Out of an estimated Palestinian population of 2.7 million, approximately 1.25 million were living within the borders of their historic homeland as of September 1967. Abu Lughod, supra 15, at 162.

(53) The figure for Palestinian ownership of land is obtained by subtracting the total amount of Jewish-owned land, and land considered as state land from the total area of Palestine. For a list of private Jewish owned land and public land by settlement or village, see, Appendix VI, "Palestine, Jewish-owned Land in the Territory Occupied by Israel under the Terms of the General Armistice Agreements," in Hadawi, supra 22, at 230-241.

(54) Total Palestinian land ownership in Palestine on the eve of the 1948 war amounted to 23,292 km2, including a small area of land occupied under tenures from the Turkish regime, and state land occupied under both long and short-term lease. Total Jewish owned land was 1,992 km2, including a small amount of state land occupied under long and short term lease. Table 15.1, 'The Occupation of State Domain,' in Hadawi, supra 22, at 108. It is estimated that Israel has either expropriated or controls approximately 21,500 km2 of Palestinian-owned land.

(55) For a detailed legal analysis applicable to the Palestinian refugee case, see, Gail J. Boling, "Israel's Use of 'Absentees' Property' Laws to Confiscate Private Property inside the Green Line from 1948 Displaced Palestinians: A Violation of UN General Assembly Resolution 194 and International Law," 11 Palestine Yearbook of International Law, 2000/2001 (forthcoming). For a discussion of each legal doctrine and system of law, see, Scott Leckie, "Housing and Property Issues for Refugees and Internally Displaced Persons in the Context of Return: Key Considerations for UNHCR Policy and Practice," 19 Refugee Survey Quarterly 3 (2000), pp. 38-41. For a compilation of legal resources, see, e.g., Housing and Property Restitution for Refugees and Internally Displaced Persons: International, Regional and National Legal Resources. Geneva: COHRE - Centre on Housing Rights and Evictions (May 2001).

(56) General Recommendation XXII, Article 5 of the Convention on the Elimination of All Forms of Racial Discrimination and Refugees and Displaced Persons, (Fortyninth session, 1996), para. 2(a).

(57) Ibid, para. 2(c).

(58) Housing and Property Restitution in the Context of the Return of Refugees and Internally Displaced Persons, UN Doc. E/CN.4/Sub.2/2005/17, 28 June 2005. [Advanced Copy]

(59) See G.A. Res. 194(III), U.N. Doc. A/810, at 21 (1948).

(60) UNCCP, Analysis of Paragraph 11 of the General Assembly's Resolution of 11 December 1948, Working Paper Prepared by the Secretariat, UN Doc. W/45, 15 May 1950.

(61) Text of Suggestions Presented by the United Nations Mediator on Palestine to the Two Parties on 28 June 1948, Security Council Doc. S/863, 3 July 1948.

(62) Progress Report of the United Nations Mediator on Palestine, submitted to the Secretary General for Transmission to the Members of the United Nations. UN GAOR, 3rd Sess., Supp. No. 11, UN Doc. A/648, 16 September 1948, V. Refugees, para. 7.

(63) UNCCP, Historical Precedents for Restitution of Property of Payment of Compensation to Refugees. Working Paper Prepared by the Secretariat. UN Doc. W/41, 18 March 1950.

(64) UNCCP, Letter and Memorandum dated 22 November 1949. Concerning Compensation, received by the Chairman of the Conciliation Commission from Mr. Gordon R. Clapp, Chairman, United Nations Economic Survey Mission for the Middle East. UN Doc. W/32, 19 January 1950.

(65) Part I, B. Steps Preparatory to Independence, para. 5.

(66) Part II, D. Declaration.

(67) Para. 8.

(68) G.A. Resolution 36/146 (C), 16 December 1981. The resolution was adopted by a recorded vote of 117 to 2 with 26 abstentions. Israel, which voted against the resolution, said the right of a State to regulate and dispose of property within its territory was beyond question, and the United nations had no competence to intervene. The US which also voted against the resolution said that while compensation could be applicable in the context of an agreement among the parties, the outcome should not be prejudiced by the Assembly; the actions called for in the text were premature, unworkable and one-sided. The United States blocked earlier attempts to adopt a similar resolution. See discussion in UNCCP, Historical Survey of Efforts of the United Nations Conciliation Commission for Palestine to Secure the Implementation of Paragraph 11 of General Assembly Resolution 194(III), Question of Compensation, Working Paper Prepared by the Secretariat, UN Doc., AC.25/W.81/Rev.2, 2 October 1961, at paras. 165, 170, 172.

(69) Concluding observations of the Committee on Economic, Social and Cultural Rights: Israel. 04/12/98, UN Doc. E/C.12/1/Add.27, para. 11.

(70) Ibid, para. 35.

(71) Concluding observations of the Committee on the Elimination of Racial Discrimination: Israel. 30/03/98, UN Doc. CERD/C/304/Add.45, para. 18.

(72) See Atif Kibursi, "German Reparation Payments and Restitution of Property to Jews," in Sami Hadawi, Palestinian Rights & Losses in 1948. London: Saqi Books, 1988, at 139-146 for a brief overview of legal precedents. Concerning political aspects see, e.g., Secretary General of the World Jewish Congress and co-chairman of the World Jewish Restitution Organization Israel Singer before the US Congressional Subcommittee on International Organizations and Human Rights in February 1994 stating, "[Restitution] is a human right which every man deserves," stated "The return of that which was his, and that which belonged to his and her community." Laurence Weinbaum, Righting an Historic Wrong, Restitution of Jewish Property in Central and East Europe. Policy Study No. 1. Jerusalem: Institute of the World Jewish Congress, 1995, at 13. Speaking in reply, Subcommittee Chairman Tom Lantos remarked: "speaking for myself as Chairman of the Subcommittee … we are totally committed to securing that right and we will take all necessary and appropriate legislative steps to bring it about." Congressional leaders noted that the issue of housing and property restitution was a "matter of law and justice", international law, human rights and respect for private property. Id, at 14. Key congressional leaders, including Senators Gingrich, Dole, Gephardt, Daschle, Gilman, Helms, Hamilton and Pell subsequently sent a letter to then Secretary of State Warren Christopher (10 April 1995) calling upon the United States to support restitution claims as a basic human right.

(73) Gail J. Boling, "Restitution in International Law and Applicability to the Palestinian Case," Presentation to "Housing and Property Restitution in Durable Solutions for Palestinian Refugees," BADIL Expert Seminar 2, Summary of Proceedings, Graduate Institute of Development Studies, Geneva, 2-4 October 2003.

(74) Weinbaum, supra 170, p. 13. Speaking in reply, Subcommittee Chairman Tom Lantos remarked: "speaking for myself as Chairman of the Subcommittee … we are totally committed to securing that right and we will take all necessary and appropriate legislative steps to bring it about." Congressional leaders noted that the issue of housing and property restitution was a "matter of law and justice", international law, human rights and respect for

private property. Weinbaum, supra 170, p. 14. Key congressional leaders, including Senators Gingrich, Dole, Gephardt, Daschle, Gilman, Helms, Hamilton and Pell subsequently sent a letter to then Secretary of State Warren Christopher (10 April 1995) calling upon the United States to support restitution claims as a basic human right. Descriptions of Jewish restitution claims could easily describe the Palestinian case with the mere substitution of Muslim and Christian holy sites for Jewish holy sites – e.g., "the wholesale plunder of the victims' property, moveable and immoveable, communal and individual, public and private: innumerable synagogues, houses, apartments, yeshivot, schools, hospitals, mikvaot, factories, orphanages, workshops, old-age homes, stores, land … books, pictures, clothing, animals, furniture, jewelry, religious articles … hundreds of Jewish cemeteries were laid waste and in some instances built upon; Jewish communal buildings, large and small, were put to use as schools, libraries, discotheques, cinemas, stalls, art galleries, garages, warehouses …. And for countless other purposes." Ibid, p. 5.

(75) Cited in Hussein Ibish and Ali Abunimah, The Palestinian Right of Return. ADC Issue Paper No. 30, 2001, p. 10. Eizenstat further elaborated a set of principles: owners or their heirs should be eligible to claim personal property on a non-discriminatory basis, without citizenship or residence requirements; governments should make provisions for the present occupants of restituted property. In most cases, those using the property now had no hand in the expropriation. If no compensation or alternative accommodations are found for the occupants, the restitution tends to be delayed, sometimes indefinitely; restitution of property should result in a clear title to the property, generally including the right of resale, not simply the right to use property, which could be revoked at a later time; and, generally, communal property should be eligible for restitution or compensation without regard to whether it had a religious or secular use." Ibid, p. 26.

(76) Samiha Abu Rahda, Jalazon refugee camp (West Bank), in response to a reporter's question about the situation of Kosovar refugees. Associated Press, 13 April 1999.

(77) The White House, Office of the Press Secretary, Remarks by President Clinton in a Radio Message to the Kosovar People, 27 May 1999.

(78) S.C. Res. 361, 20 August 1974.

(79) S.C. Res. 752, 15 May 1992; 779, 6 October 1992; 787, 16 November 1992; 820, 17 April 1993; 836, 4 June 1993; 859, 24 August 1993; 941, 23 September 1994; 947, 30 September 1994; S.C. Res. 1009, 10 August 1995; 1079, 15 November 1996; 1088, 12 December 1996; 1120, 14 July 1997; 1150, 30 January 1998; 1199, 23 September 1998; 1203, 24 October 1998; 1239, 14 May 1999;

(80) S.C. Res. 853, 29 July 1993; 874, 14 October 1993; 884, 12 November 1993;

(81) S.C. Res. 876, 19 October 1993; 892, 22 December 1993; 896, 31 January 1994; 906, 25 March 1994; 937, 21 July 1994; 971, 12 January 1995; 993, 12 May 1995; 1036, 12 January 1996; 1065, 12 July 1996; 1124, 31 July 1997; 1187, 30 July 1998; 1225, 28 January 1999; 1255, 30 July 1999; 1287, 31 January 2000; 1311, 28 July 2000.

(82) S.C. Res. 999, 16 June 1995; 1096, 20 January 1997.

(83) S.C. Res. 947, 20 September 1994 (former Yugoslavia).

(84) S.C. Res. 1019, 9 November 1995 (Croatia); 1120, 14 July 1997 (Croatia).

(85) In agreements where the right of restitution was not affirmed, such as Cambodia, provisions were included to ensure access to property. Some agreements have been criticized for including restrictive clauses limiting the rights of refugees, the absence of measures for restitution of land under customary ownership, and for not including independent implementing mechanisms. In Cambodia, the Comprehensive Plan of Action (CPA) did not provide for restitution of land in those specific terms, however, the plan did acknowledge the importance of access to land and the right of refugees to return to their places of origin. Office of the United Nations High Commissioner for Refugees, The Problem of Access to Land and Ownership in Repatriation Operations 14 (May 1998).

(86) In the Arusha Accords and the Protocol on repatriation of refugees and the resettlement of displaced persons of 9 June 1993, provisions were included for the restitution of land and housing on condition that they had been abandoned for less than ten years.

(87) Dayton Peace Agreement, Annex 7: Agreement on Refugees and Displaced Persons, 14 December 1995, Article 1(1) "[Refugees] shall have the right to have the right to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any property that cannot be restored to them."

(88) General Peace Agreement for Mozambique, Protocol III, 12 March 1992, IV Return of Mozambican Refugees and Displaced Persons and their Social Reintegration (e) "Mozambican refugees and displaced persons shall be guaranteed restitution of property owned by them which is still in existence and the right to take legal action to secure the return of such property from individuals in possession of it."

(89) Erdut Agreement, Basic Agreement on The Region of Eastern Slavonia, Baranja, and Western Slavonia, 12 November 1995, Para. 8. "All persons shall have the right to have restored to them any property that was taken from them by unlawful acts or that they were forced to abandon and to just compensation for property that cannot be restored to them." Para. 9. "The right to recover property, to receive compensation for property that cannot be returned, and to receive assistance in reconstruction of damaged property shall be equally available to all persons without regard to ethnicity."

(90) Agreement on Resettlement of the Population Groups Uprooted by the Armed Conflict in Guatemala, 17 June 1994. 9. "In the particular case of abandonment of land as a result of armed conflict, the Government undertakes to revise and promote legal provisions to ensure that such an act is not considered to be voluntary abandonment, and to ratify the inalienable nature of landholding rights. In this context, it shall promote the return of land to the original holders and/or shall seek adequate compensatory solutions."

(91) Interim Agreement for Peace and Self-Government in Kosovo, 23 February 1999. Framework, Article II: Confidence-Building Measures. Para. 3 "All persons shall have the right to reoccupy their real property, assert their occupancy rights in state-owned property, and recover their other property and personal possessions."

(92) Framework proposals for an agreement on durable solutions for Palestinian refugees presented by the Israeli and Palestinian delegations to final status talks in 2000-2001 are reprinted in BADIL Occasional Bulletin No. 10 (Annex), Principles and Mechanisms for a Durable Solution for Palestinian Refugees: The "Taba Proposals" (November 2001). See, http://www.badil.org/Publications/Bulletins/B_10a.htm. Unfortunately, the Oslo agreements effectively entrenched the status quo concerning property in all areas of historic Palestine (i.e., Israel, the West Bank and Gaza Strip). Property claims for refugees displaced in 1948 were relegated to final status talks between the PLO and Israel. No progress was made on this issue when talks collapsed in early 2001. The 1993 Declaration of Principles and the subsequent interim accords effectively froze the existing land regime in the 1967 occupied Palestinian territories. While Palestinian cities, towns, villages and most refugee camps were transferred to the Palestinian Authority, the majority of the surrounding land (60 percent in the West Bank and 40 percent in the Gaza Strip) remains under full Israeli administrative and military control. Palestinian property claims in these areas, which are designated for Jewish settlements, are effectively suspended under Article V of the DoP until the close of final status negotiations. The only reference in the agreements to "legal rights" concerns "Government and Absentee property" that was "acquired" by Israelis in the occupied territories (Interim Agreement, Annex III, Appendix I, Article 16(3) and Article 22(3). Palestinians are obliged under the agreement to respect these rights.

(93) Prepared by: Jesse T. Travis Sukhman Dhami, Nathan P. Kirschner, Roger Lin, Alexis McGinness (Public International Law & Policy Group) RESETTLEMENT OF REFUGEES AND INTERNALLY DISPLACED PERSONS

(94) Ibid.

(95) Combined with the 30 km2 owned by Jews in the West Bank prior to the 1948 war, part of which was comprised of small tracts of land in and near Jerusalem, Jews owned approximately 5 dunums of land in the Old City of Jerusalem.

(96) Palestinians individually owned as much as 40 percent of the property in western Jerusalem on the eve of the 1948 war, compared to 26 percent owned by individual Jews.

The remainder was held by religious communities or was classified as state land. Schedule of Area Ownership Map from Palestine Survey Maps and Taxation Records. Unlike many of the refugee villages in rural areas, which Israel razed during and after the 1948 war, many refugee homes in western areas of Jerusalem remain intact and are regarded as valuable real estate due to their spaciousness and traditional design. Palestinian refugee property owners still living in Jerusalem are able to walk by their homes but unable to return to them. It is estimated that Palestinian refugees with property claims in the western neighborhoods of Jerusalem comprise more than one quarter of the population of eastern Jerusalem. Unlike many of the refugee villages in rural areas, which Israel razed during and after the 1948 war, many refugee homes in western areas of Jerusalem remain intact and are regarded as valuable real estate due to their spaciousness and traditional design. Palestinian refugee property owners still living in Jerusalem are able to walk by their homes but unable to return to them.

(97) Cabinet Communique, Sunday, 3 March 2002, Jerusalem. The claims process includes printing and distribution of claims forms, advertisements in the media, computerization of data and development of internet sites in multiple languages.

(98) Ha'aretz, 20 November 2001. In 1998 the Jewish National Fund announced that it would publish a list of 1,836 unclaimed parcels of land in Israel purchased before WWII by presumed victims of the holocaust. Agence France-Presse, 26 April 1998. Also see, Iris Milner, "Claims in Israel's own backyard," Ha'aretz, 12 November 1999.

(99) See, e.g., Adalah Press Release, 28 January 2002. Adalah, the Legal Center for Arab Minority Rights in Israel has approached the Israeli Attorney General's office 15 times requesting information on the status of Palestinian refugee moveable property.

(100) On the applicability of German reparations to the Palestinian refugee case, see, "German Reparation Payments and Restitution of Property to Jews," and, "The Typology of Palestinian Losses: a Re-evaluation," in Hadawi, supra 13, pp. 139-160. Generally, see, Ronald W. Zweig, "Restitution of Property and Refugee Rehabilitation," 6 Journal of Refugee Studies 1, 1993.

(101) UN Doc. A/AC.25/W.53, United Nations Conciliation Commission for Palestine, Note on the Problem of compensation. Working paper drafted by the Secretariat of the Commission at Jerusalem, 13 September 1950; and, UN Doc. A/AC.25/W.81/Rev.2, Historical Precedents for Restitution of Property of Payment of Compensation to Refugees. Working Paper prepared by the Secretariat, March 1950.

(102) See, e.g., the General Claims Law, 10 August 1949, adopted in the United States occupied zone of Germany, and Law No. 59, Restitution of Identifiable Property to Victims of Nazi Oppression, 12 May 1949 in the British zone of occupation. Also see, laws adopted in France, Romania, Italy, Bulgaria, Czechoslovakia, Holland, and Yugoslavia, cited in Historical Precedents for Restitution of Property of Payment of Compensation to Refugees, supra 164.

(103) Ongoing housing and property claims in Europe deal with claims that date back to the middle part of the 20th century.

(104) This includes, for example, the World Jewish Restitution Organization, established in 1992, in cooperation with the state of Israel, to coordinate Jewish communal claims in eastern Europe.

(105) This includes the Jewish Restitution Successor Organization, established in 1947, the World Restitution Organization established in 1948, the Conference on Material Claims Against Germany representing the interests of 24 international Jewish organizations, and the World Jewish Restitution Organization. For more details, see, Stephen A. Denburg, "Reclaiming their Past: A Survey of Jewish Efforts to Restitute European Property," Boston College Third World Law Journal.

(106) As the World Jewish Congress has noted, "linking domicile or citizenship to restoration of property would effectively wipe out the vast majority of Jewish claims [in Europe]." Lawrence Weinbaum, Righting an Historic Wrong: Restitution of Jewish Property in Central and East Europe. Policy Study No. 1. Jerusalem: Institute of the World Jewish Congress, 1995, p. 4.

(107) Mohammad Saidan, age 24 from Nuseirat camp. "Background material on Nuseirat," 15 March 1949, American Friends Service Committee Archives (AFSC), Philadelphia.

(108) Interim Report of UNRWA Commissioner-General (October 1950), at 28.

(109) Annual UNRWA Report (June 1951) at 37-38. See also, UNRWA Annual Report (June 1956), at 7; UNRWA Annual Report (June 1956), at 101.

(110) Neil Caplan, The Lausanne Conference, 1949, A Case Study in Middle East Peacemaking. Occasional Papers 113, The Moshe Dayan Center for Middle Eastern and African Studies, Tel Aviv University, 1993, at 32.

(111) Press Release PAL/475, 25 March 1949, "Palestinian Conciliation Commission Hears of Arabs Refugees' Desire to Return to their Homes."

(112) Statement dated 14 February 1950 of the Committee for the Arab Property Owners in Jerusalem," t/519, 7 March 1950. UN Trusteeship Council, Sixth Session, Item 19 on the Agenda.

(113) Abd al-Fattah Abu Surur from 'Aida refugee camp to the Joint Parliamentary Middle East Councils Commission of Enquiry, September 2000. Joint Parliamentary Middle East Councils Commission of Enquiry – Palestinian Refugees, Right of Return. London: Labor Middle East Council, Conservative Middle East Council, Liberal Democrat Middle East Council, 2001.

(114) Suleiman al-Fahmawi, internally displaced Palestinian, to the Joint Parliamentary Middle East Councils Commission of Enquiry, September 2000. Ibid.

(115) Joint Parliamentary Middle East Councils Commission of Enquiry – Palestinian Refugees, Right of Return, supra 191, at 9.

(116) Catherine Barnes. Owning the Process: Mechanisms for Political Participation of the Public in Peacemaking. Joint Analysis Workshop Report, Conciliation Resources 2002.

(117) Mallison, supra note 4 at 111.

(118) Ilan Pappe, "Were they expelled? The History, Historiography and Relevant of the Palestinian Refugee Problem," in Ghada Karmi and Eugene Cotran (eds.), The Palestinian Exodus 1948-1998. London: Ithaca Press, 1999, at 37-62.

(119) Mallison, supra note 4 at 111.

(120) Contacts include: OPGAI c/o: info@badil.org, Anti Apartheid Wall Campaign: Mobilize@stopthewall.org, TIJAH: ittijah@ittijah.org, and, PACBI: info@boycottisrael.ps.

How Britain declared for Zionism: the Balfour Declaration

John Rose

Herzl had always argued that creating a Zionist colony in Palestine needed the backing of a Great Power. At a critical point during the First World War, England's rulers persuaded themselves that this was a cause for them; indeed a cause of the highest order of nobility and honour, both politically and even spiritually. A cause entirely in keeping with those who aspired to rule the greatest empire the world had ever seen. It also had the additional merit that it might simultaneously assist the allied war effort as well as secure Palestine for the British Empire once the war was over.

Some of them, the most famous names in early twentieth century English imperial history, Lloyd George, Churchill, Balfour, even declared themselves converts to Zionism. Curiously, though, these same gentlemen were also known to harbour some extremely peculiar, if not downright hostile, attitudes towards Jews.

How do we explain this bizarre development?

We need to fully comprehend the English imperial tradition, or at least capture its mood. No-one has come closer to doing just that than the English poet, Shelley. A hundred years earlier he had penned the *Mask of Anarchy* about some famous names of statesmen in early nineteenth century English imperial history.

I met Murder on the way
He had a face like Castlereagh
Very smooth he looked yet grim:
Seven bloodhounds followed him

Next came Fraud, and he had on,
Like Eldon, an ermined gown;
His big tears, for he wept well,
Turned to millstones as they fell;

Clothed with the Bible, as with light,
And the shadows of the night,
like Sidmouth next, Hypocrisy
On a crocodile rode by

And many more Destructions played
In this ghastly masquerade,
All disguised, even to the eyes,
Like Bishops, lawyers, peers or spies

One of the most notorious minor imperial players, a Destruction if ever there was one, during the first world war was Mark Sykes, aristocrat, High Tory, Roman Catholic, roving diplomat, vulgar anti-Semite. Together with Georges Picot, his opposite number in France, Great Britain's principal ally in the 'machine for massacre', Hobsbawm's apt description of the First World War, he had cast his greedy eyes on the 'Levant', the Middle East, including, of course, Palestine. The Ottoman Empire was crumbling; soon it would be up for grabs. In 1916, on behalf of their respective imperial masters, Sykes and Picot met to reflect on its downfall and to consider the distribution of the spoils of war. As Sykes put it:

"*it was clear that an Arab rising was sooner or later to take place, and that the French and ourselves ought to be on better terms if the rising was not be a curse instead of a blessing*".

Sykes also became a Zionist. Within a year the entire Imperial War Cabinet would commit itself to Zionism and publish the famous Balfour Declaration, Arthur Balfour's statement, on behalf of the British Government, which guaranteed a national home for the Jewish people in Palestine.

We have one very special witness to this strange metamorphosis: Chaim Weizmann. Weizmann was de facto, Herzl's successor, at least as far as the promotion of the Zionist cause in Britain was concerned. A Jewish migrant from Russia and trained scientist, when war broke out Weizmann was working as an explosives expert for British government. Is it not highly appropriate that the man who would help convert the Imperial War Cabinet to Zionism was also hired to improve the efficiency of its death machine? Indeed Lloyd George once quipped that the Balfour Declaration was his gift to Weizmann in return for his services to the war effort. Weizmann's real role, though, was to pander to the prejudices of the Imperial War Cabinet and the ugly way it judged what is sometimes called the Jewish Question.

WHAT A GANG!   THE BRITISH IMPERIAL ZIONISTS

NO 1: LLOYD GEORGE

When Lloyd George became prime minister at the end of 1916, he reaffirmed the disruption of the Ottoman Empire as a 'major war aim'. He also insisted that the British occupy Palestine. This was in flagrant breach of the Sykes-Picot agreement which had promised France a major stake in

Palestine. He had the backing of C.P.Scott, Editor of the Manchester Guardian, one of Lloyd George's staunchest supporters.

Just before Lloyd George took office, the paper's military correspondent had written, '*the whole future of the British Empire as a Sea Empire*', depended upon Palestine becoming a buffer state inhabited '*by an intensely patriotic race*'. This concurred precisely with Weizmann's view: 'a Jewish Palestine would be a safeguard to England, in particular in respect to the Suez Canal'. Scott had learned about Zionism and its alleged possibilities from Weizmann.

Sentimental accounts of Lloyd George's Zionism always stress his biblical affiliations. It was said that he was a true believer in restoring Jews to Zion in that curious tradition of Protestant philo-semitism. Yet there was also a darker and more ominous attitude. He had a grotesquely inflated view of 'Jewish power'. To such an extent that it led him to the view that the Jews of Russia could prevent that country breaking ranks with the allied war effort in the year of the Russian Revolution, 1917.

There is a plausible argument, which we will examine later, that this determined the timing if not the actuality of the Balfour Declaration. Lloyd George referred to the 'Jewish race', 'world Jewry' and the 'Zionists' as if they were the same. Weizmann worked hard to encourage such a view. Asquith, the British prime minister immediately prior to Lloyd George, had probably the truest view of his successor. Asquith noted:

'*Lloyd George does not care a damn for the Jews or their past or their future*.'

But he did care about Palestine ?

NO 2: BALFOUR

Balfour, the statesman who signed the famous declaration was also Prime Minister at the time of the infamous Aliens Act of 1905. This legislation deliberately slammed the door in the face of Eastern European Jewish migrants fleeing fresh waves of pogroms in the Russian Empire. Balfour had personally piloted the bill through the House of Commons. He insisted, nevertheless, that he was a vigorous opponent of anti-Semitism. Even the Jewish Chronicle, as today a very conservative commentator on public affairs, expressed surprise at this breathtaking display of hypocrisy. That splendid acronym, NIMBY, Not In My Back Yard, had yet to be invented, but it fits perfectly with Balfour's attitude.

Jews were not welcome in Britain's backyard, but Britain would welcome them in the front garden of the Palestinian Arabs, with or without their approval.

In fact Balfour had admitted anti-Semitic sympathies to no lesser personage than Weizmann himself. He had told Weizmann of conversations with Cosima Wagner, widow of the great, albeit notoriously anti-Semitic, German composer. But the Zionists also subscribed to '*cultural anti-Semitism*', Weizmann re-assured Balfour. Zionists also believed that those German Jews who had identified themselves as Germans '*of the Mosaic faith*', ie Germans in terms of nationality and Jewish in terms of religion, were '*an undesirable, demoralizing phenomenon*'.

Balfour epitomized this anti-Semitic strand in British Imperial thought now allied to Zionism. It didn't like the real Jews that it saw, and in many ways neither did the Zionist leaders. British imperialism bought into the Zionist conception of re-ordering Jewish life to fit a crude blueprint of reviving the Old Testament Jew in modern guise. Here was a really exciting, romantic experiment for the British Empire to revive continuity in Western civilization, after all rooted in the Judeo-Christian tradition, and strengthen its presence at the same time in the Arab world. It had about it a unique moral and spiritual quality on a plane simply not accessible to the Arab mentality.

Georges Antonius, a prominent Jerusalem-based, Palestinian Christian Arab, shrewdly observed that Balfour saw Palestine as 'a historico-intellectual exercise and diversion'. Balfour himself would say,

'*Zionism, be it right or wrong…is of far profounder import than the desires and prejudices of the 700,000 Arabs who now inhabit that ancient land.*'.

NO 3: CHURCHILL

The idea that Zionism might re-order Jewish life had particular appeal to Winston Churchill, who became Colonial Secretary after the war and hence the minister directly responsible for the implementation of the Balfour Declaration. Churchill had been profoundly disturbed by the Russian Revolution and he was convinced that the 'International Jew' was behind it. He called the Bolsheviks 'a bacillus', an expression frequently applied to Jews in anti-Semitic publications. This reinforced his Zionist convictions. He believed that the Zionists '*would provide the antidote to this sinister conspiracy and bestow stability instead of chaos on the Western world.*'

Churchill seems to have believed that there were three types of politically active Jews; those who participated in the political life of the country in which they lived, and of whom he wholeheartedly approved and was ready

to encourage their immigrant co-religionists, (in 1905 he had opposed Balfour's Aliens Act); those who became subversives, especially in the Russian Empire where a majority of the world's Jews lived; and those who became Zionists.

Britain could do the world a favour and stem the subversive tendencies of the Jews of Russia by offering them their own national home in Palestine, now part of the British Empire. As he wrote, just before taking office as Colonial Secretary in 1920

"*If, as well may happen, there should be created in our own life time by the banks of the Jordan a Jewish State under the protection of the British Crown...an event will have occurred in the history of the world which from every point of view would be beneficial and would be especially in harmony with the interests of the British Empire.*"

Even Weizmann was amazed at Churchill's readiness to encourage the Zionists. Weizmann once admitted to the new Colonial Secretary that the Zionists were smuggling arms into Palestine in response to rising Arab hostility. Churchill told him, "*we don't mind, but don't speak of it.*"

NO 4: SYKES

The transformation of Mark Sykes from anti-Semite into Zionist is a crystal clear case study of this perverse phenomenon. Sykes loathed the Jews. The Jew was

'*the archetype of the cosmopolitan financier...rootless moneygrubbers, all the more contemptible when they tried to disguise themselves as something else*.'

In his youth he had even drawn 'hideous Jewish types'. And yet Sykes too would become hooked on Zionism. He also saw it a grand social experiment. He told the Pope in 1917 that it would raise '*the racial self-respect of the Jewish people*' and produce a '*virtuous and simple agrarian population*' in Palestine .

However this did not mean that Sykes was any less an anti-Semite. On the contrary, he saw Zionism as a counterweight to international Jewish finance, which, he believed, was backing the German war effort! And like Churchill he also viewed Zionism as a counterweight to those international Jewish subversives who saw 'Karl Marx as the only prophet of Israel'. These subversives could also damage the allied war effort because they could pull Russia out of the war.

Sykes represented in concentrated form, the British Imperial view that Zionism could firstly, reform the behaviour of 'international Jewry', secondly, secure the support of 'international Jewry' for the allied war effort and thirdly, secure Palestine for the British Empire after the war.

In reality, it was the last two assumptions that mattered most. And it was upon these assumptions that Lloyd George would encourage Sykes to sabotage the agreement he had reached with Picot, his French opposite number. Sykes would play the 'Zionist card' to intimidate the French to drop their claims on Palestine. But before turning to the despicable antics of Lloyd George and Sykes…we must first briefly give voice to a rather more honourable and forgotten view, that of British Jewish Anti-Zionism.

'THE ANTI-SEMITISM OF THE PRESENT GOVERNMENT'

This was the title of a Cabinet paper written by Edwin Montagu in August 1917 . Just appointed Secretary of State for India, Montagu could hardly be accused of not having the interests of the British Empire at heart. However, though he was the only Jew in the British Cabinet and hence his views had to be taken rather seriously, by an odd quirk of fate, his cousin Herbert Samuel, the first professing Jew ever to serve in a British Cabinet, was only recently out of office. Samuel was a staunch Zionist and so undermined any claims that Montagu might make that he, rather than the Zionists, represented the true interests of Britain's Jewish community.

Nevertheless the force of Montagu's argument touched a raw nerve. Wouldn't Zionism create two national identities for Jews? Wouldn't this encourage anti-Semites everywhere to call for Jews to be deported to Palestine? Didn't this mean that Palestine would become a modern Jewish ghetto? Wouldn't Zionism itself, far from alleviating anti-Semitism, inadvertently promote it?

As Tom Segev has noted this is precisely what the Zionists wanted. In his diary Herzl observed:

'The anti-Semites will become our most loyal friends, the anti-Semitic nations will become our allies,'

What is remarkable is how sophisticated was the response of the War Cabinet, now fully committed to the Zionist cause. They went to great lengths to convince Montagu that he was mistaken. A special Foreign Office paper was commissioned to refute Montagu point by point. Balfour, of all people, led the War Cabinet discussions, insisting that the assimilation of Jews in Britain or elsewhere wouldn't be affected. It was a measure of just

how committed the War Cabinet now was to Zionism, and Montagu's challenge was seen off.

KEEPING FRANCE OUT OF PALESTINE: THE LLOYD GEORGE – SYKES 'ZIONIST PLOT'

That the 'Zionists might be useful allies in the effort to overturn the Anglo-French Agreement was certainly the chief cause of the re-appearance of the Palestine idea on the Government's agenda' in the early months of 1917. The pro-Zionist historian, David Vital, who has paid scrupulous attention to this phase of the War Cabinet's attachment to Zionism, chooses his words with care.

'To employ the Zionists in this way made good sense to people (among them Curzon…) who had no particular sympathy for their cause or for Jews in general'.

Here we see the precise relation between the rulers of the British Empire and Zionism. Shorn of sentimentality, Zionism was to be a tool, useful and worthy, to enhance British interests.

Indeed as the Zionist leaders were drawn into the plot to break up the Anglo-French Agreement, they were kept in the dark about its true intentions. The agreement was, after all, a war time secret, to divide the spoils of war long before the war had actually been won. In any case, Zionist considerations hadn't figured in it all, not something that either Sykes or Lloyd George would care to let the Zionists realize. But now the situation was completely different.

Not only were Zionist aspirations suddenly useful, they were to be actively encouraged. Sykes had Lloyd George's full support as he began, in his words, to get the Zionists 'fired up'. This was a critical moment for the Zionists in Britain. Overnight their status was transformed. Now they were the favoured ones, in the eyes of the government. The traditional leaders of the Anglo-Jewry, skeptical, to say the least about the Zionists plans, had to take a back seat. The Zionists were now, according to Weizmann, closer to the 'heart of the matter' than ever before.

They were called to special meeting where Sykes lectured the Zionists on French policy. He expressed his own sympathies with the idea of a 'Jewish Palestine', but said the French were putting obstacles in the way. They needed to be convinced about the merits of Zionism and who better to do that than the Zionists themselves.

It was agreed that Sokolov, a Zionist leader from Russia, should put the case to the French. Thus the trap was laid for the French, without the Zionists

fully understanding its true intent. The French were impressed with the Zionists' case. Sokolov met Picot and other high ranking French officials over a period of weeks. But when the French made the obvious offer that they, the French, might be ready to sponsor a Zionist colony in the event of France occupying Palestine, Sokolov explained that that British sponsorship was preferred.

In other words it began to dawn on the French that Zionism came as part of a wider package, its British sponsors already in place. Given that it would be the British rather than the French that actually seized Palestine militarily, the French were in a weak position. Sykes then met again with Picot to stress 'the importance of meeting Jewish demands' and to realize the implications of the Zionists favouring 'British suzerainty'.
Sykes was understandably well pleased with himself. He wrote to Balfour,

'*As regards Zionism...the French are beginning to realize they are up against a big thing and they cannot close their eyes to it*'.

Yet why did both the British and the French see Zionism as a 'big thing'? At one point in the discussions between Picot and Sokolov, Picot had urged:

'*It would be of great use to their cause if the Jews would make their devotion to the Entente (Britain and France as allied powers in the war) more evident...*'

It seems that Zionism carried something rather more in the eyes of the allies than just its claim on Palestine.

ZIONISM; THE 'BIG THING'

In his War Memoirs, Lloyd George wrote that

'*Russian Jews had become the chief agents of German pacifist propaganda in Russia. By 1917, the Russian Jews had done much in preparing for the general disintegration of Russian society...It was believed that if Great Britain declared for the fulfilment of Zionist aims in Palestine...the effect would be to bring Russian Jewry to the cause of the Entente*' .

The fall of the Russian Tsar in February 1917 had indeed raised the possibility that Russia might pull out of the allied war effort. But the idea that Russia's Jews were ultimately responsible and that they might be persuaded to keep Russia in the war if Zionist aims were conceded is perverse in the extreme. Yet we have already seen that some of these sentiments were shared by Lloyd George's war time colleagues. It was also a view endorsed by sections of the British military establishment. Lt.General

Sir George Macmunn and Captain Cyril Falls in their history of the First World War claimed that

'*the imperative pressure of allied needs, and the international power of the Jewish race, had made desirable the recognition of Jewish aspirations for a 'National Home' in Palestine*'.

Weizmann had worked overtime to encourage such a view. He pieced together a political fantasy about the Jews in the Russian Revolution and the impact they could have on both the allied and the German war effort. It was a fantasy that played directly on those anti-Semitic prejudices in the Imperial War Cabinet which were pre-occupied with 'Jewish power'.

According to Weizmann, Russian Jews were now turning to the Zionist cause. He made this claim despite the fact that the overthrow of the Tsar regime now meant that, for the first time in Russia's history, full Jewish emancipation was a serious possibility, sealed with a clear commitment from all of Russia's revolutionary parties.

Again, Weizmann claimed that Russia's Zionists had the power to pull Russia's Jews behind the allied war efforts, despite admitting privately the difficulty he was having persuading Russia's Zionists to give up their policy of neutrality towards the war. Finally, Weizmann talked wildly about how a declaration for Zionism would make for

'*friendship with the Jews of the world…not a thing to be blown upon…a thing that matters a great deal, even for a mighty empire like the British*'.

Weizmann was playing on a very specific fear. Germany was occupying Poland and parts of Lithuania, parts of the old Pale of Settlement. Germany was beginning to make promises about a Jewish Palestine. Britain had better get in first.

History itself would very quickly burst the bubble of fantasy about Jewish power to affect Jewish support for the allied war effort. By wonderful irony, the very same week that the Balfour Declaration was published in October 1917, the Bolsheviks took power in Russia and pulled the country out of the war. The Jewish conspiracy theorists everywhere were confounded. After all, the Jews were supposed to keep Russia in the war, now that the allies had promised them a Jewish home in Palestine.

Still, our satisfaction at seeing the conspiracy theorists so easily mocked and routed in this way should be tempered by the sheer depths of the underlying anti-Semitism that has been exposed. Mark Levene has pointed to remarks at the beginning of Volume IV of the book by Leon Poliakov, The History of Anti-Semitism, that early twentieth century European high society's

obsession with Jews has now been largely forgotten. Yet this obsession played a part in imposing the Zionist colony on the Palestinians: an obsession, anti-Semitic at its core, which the Jewish Zionist leaders had no desire whatsoever to challenge.

BRITAIN, ZIONISM & THE 1936-39 PALESTINIAN ARAB ANTI-COLONIAL REVOLT

Another very famous British name, who would also become a Second World War hero, followed Churchill into Palestine - Monty, Field Marshall Montgomery. In 1938 he arrived in Palestine to crush the Arab revolt against British rule and to defend British backing for the rapidly expanding Zionist colony. Monty's attitude to Arabs more than matched Churchill's. He gave his men simple orders on how to handle the rebels: kill them, especially as they were, he said, just 'gangs of professional bandits'. Monty was hung up on how the British had lost control of most of Ireland. He thought far too many concessions had been made to Sinn Fein. Ruthless obliteration of nationalist identity was the order of the day.

Thus he ordered any Arab caught wearing the peasant kufiya, the celebrated Palestinian headscarf owes its origins as a symbol of resistance to this revolt, to be 'caged'. The British political authorities had to restrain him…

Caging the Arabs was one idea. Chaining their legs was another. Sir Ronald Storrs, a former British Governor of Jerusalem, has left us this gem of an insight into the British colonial mentality from his autobiography. Storrs was playing tennis when the Arab ball boy

'*emitted a curious clank. Looking closer I discovered that he and his colleagues at the other end of the court were long term criminals, heavily chained by the ankles, whom the local police officer had sent up from the jail to act as ball boys*' .

One senior British army officer in Palestine was sometimes known as the 'Lawrence of the Jews', Orde Wingate. He organised Jews for military service; more than any other leading figure, he stepped across the invisible line allegedly separating British and Zionist interests. The Israeli Ministry of Defence, many years after his death, proclaimed him as a role model, underlining his influence on the Israeli army's 'combat doctrine'.

He had set up what was virtually a private army, mostly Jews, which pursued 'terrorists' at night. These 'Special Night Squads' had one absolutely vital and highly symbolic duty: protecting the railways and the oil pipeline, which ran from Kirkuk in Iraq to the Palestinian port of Haifa. Wingate was unambiguous about his wider political aims. He was, he said 'establishing the foundations of the Army of Zion'.

There are many appalling stories about the Special Night Squads which do indeed read like the activities of the Israeli army today on the West Bank and Gaza. Random killings and beatings in Arab villages suddenly entered without warning. Phoney 'trials' and 'courts' set up at whim in the villages followed by executions. Many of Wingate's own troops thought he was mad. It's not difficult to see why. He had a penchant for crackpot schemes of provocation. On one occasion he wanted his Jewish soldiers to dress up as Arabs, go the Arab market in Haifa, and start shooting….

However it is difficult to separate Wingate's excesses from the wider British apparatus of repression of the revolt. Torture of suspected rebels was routine. Thousands were held in administrative detention without trial in overcrowded camps with inadequate sanitation. Between 1938 and 1939 at least one Arab was sentenced to death every week. Furthermore the principle of collective punishment imposed on entire villages, so beloved by the Israeli army, was pioneered by the British.

A British doctor named Elliot Forster documented in his diary an operation in Halhoul, a village near Hebron, in May 1939. Villagers had been herded into open air pens, one for men and one for women, during a heat wave, deprived of food and drink. The women were allowed to leave the pen after two days but many of the men were kept for much longer and at least ten died. Dr Forster concluded that the British could probably teach Hitler a thing or two about running concentration camps.

Nor should we see Wingate as exceptional in the way he integrated the British soldiers and armed Zionist settlers in the same military units. The British authorities were compelled by the Arab revolt to expand massively the colonial police force. Thousands of Jewish settlers enlisted. Zionist leader Moshe Shertok was not slow to draw the conclusion that the future Jewish army was dependent on their success. In fact the British even asked the Zionist leaders to share the burden of the policemen's salaries and pay for the uniforms! The construction company, Solel Boneh, specifically set up by the Histradut to facilitate Zionist colonization, was commissioned to build a barbed wire fence along the northern border as well as build new police stations.

THE REVOLT

Ted Swedenburg's book of outstanding interviews, in the 1980's, with surviving participants of the revolt is a superb example of the genre. And whilst we cannot do it justice here, we can at least confirm that the *al-thawra al-kubra*, the great revolt, was the '*most significant anti-colonial insurgency in the Arab East in the interwar period*'.

The revolt was inevitable and its ultimate cause lay with British protection for the expansion of Jewish immigration which had increased almost six times from the date of the Balfour Declaration, growing particularly rapidly in the 1930's. Jews were almost a third of the total Palestinian population at the outbreak of the revolt. (65,000 Jews in 1917, 384,078 in 1936).

It took Ted Swedenburg a long time to persuade Ali Husayn Baytam to talk to him. The old fighter put a condition on the interview. Ted would have to publish the names of his comrades killed by the British after nine soldiers had been blown up in a land mine planted by a peasant militia. Ali then described the massacre as the British army took revenge on an entire village. Ali had kept the list of names for forty years. He had been waiting that long to finally achieve recognition for unknown fallen martyrs.

It was a principle and a mood that Swedenburg encountered time after time amongst the old peasant fighters. They knew something really important had happened. But somehow it had missed its official place in that means of memorising called written history.

Ali described himself as both Moslem and communist and insisted that there was no contradiction. Moreover whilst Ali was one of the most sophisticated of the former local peasant leaders that Ted interviewed, his insistence that the villages formed the backbone of the resistance, with improvised and daring military initiative and leadership, overwhelms all the accounts. The untold story is that the British, let alone the Zionists, were in danger of actually losing control of the Palestinian countryside. Or at least a very violent military stalemate ensued which could only be broken by serious political concessions from the ruling power. As an official British archive put it:

'the heavily booted British soldiers are no match for lightly clad natives who, at any moment, can drop their weapons and become peaceful ploughmen and goatherds'.

Remarkably, Swedenburg even reports on a virtual peasant-Palestinian-state-in-waiting. Perhaps this is an exaggeration, and it certainly begs all kinds of questions about the palpable tensions, etched very deep in the old peasant mind, even after forty years, between the rebel villages and the deeply divided upper class Palestinian leadership in the towns and cities. That subject is way beyond the remit of this book. Still, there are just too many examples of a court and justice system emerging, (as well as printed stamps, receipts on taxes collected), for this notion to be too easily dismissed. In any case there are one or two independent witnesses. Dr. Forster, who we met earlier, observed the rebel courts and recorded:

'*their justice and common sense does not appear to me to be inferior and their expedition is demonstrably superior to that of H.M.G.*'

Ali Husayn Baytam had another list of names in his head; cousins, uncles, other relatives killed over forty years later during the Israeli-backed massacre of unarmed Palestinians at the refugee camps at Sabra and Shatila in Beirut in 1982. Swedenburg reports how he and a Palestinian colleague

'*felt in awe of the fierce spirit burning so brightly in the diminutive man who repeated the names of the dead, as if that act could arrest the storm of progress...*'

A quotation suddenly came into Swedenburg's mind:

'*one single catastrophe which keeps piling wreckage upon wreckage and hurls it front of his feet*'.

It was so appropriate for Ali, and yet the quotation is from that mysterious Jewish philosopher, Walter Benjamin, as he was anticipating the Holocaust…

BALFOUR'S ODYSSEY

From Betrayal to Expulsion and Quest for Return

Salman Abu Sitta

In my day dreams, I often imagine sitting among the audience in a huge court-room, watching Balfour in the dock, hearing a recital of a long list of charges against him. Indeed for almost a century, eighty-eight years to be exact, Palestine and beyond have been the scene of 5 major wars and hundreds of air, land and sea raids. It had witnessed destruction of its towns and villages, untold suffering by 6 million Palestinian refugees, at least half a million killed or injured, many millions outside Palestine dispersed in war years in Sinai, Suez Canal, Golan and Lebanon. All this is topped by the longest and most brutal occupation in the world today.

Above all, Balfour has the dubious distinction of being the first to set the policy for what became the biggest planned ethnic cleansing operation in modern history.

How else can you describe Balfour's Legacy? Of course, there have been many instances in history, particularly European, when foreign settlers descended upon a far away territory, killed or enslaved its hapless inhabitants. But never before, as in Palestine, a carefully considered policy was established and approved, even by the so-called League of Nations, to implant new people in another territory and replace the rightful inhabitants of the Holy Land.

The great British philosopher, Bertrand Russell, said 35 years ago,

The tragedy of the people of Palestine is that their country was 'given' by a foreign power to another people for the creation of a new state. The result was that many hundreds of thousands of innocent people were made permanently homeless...It is abundantly clear that the refugees have every right to the homeland from which they were driven, and the denial of this right is at the heart of the continuing conflict. No people anywhere in the world would accept being expelled en masse from their country; how can anyone require the people of Palestine to accept a punishment which nobody else would tolerate?

This ethnic cleansing policy was implemented relentlessly for about 30 years, the total life of British occupation of Palestine and the British

Mandate. Thereafter, it was followed openly through Israeli occupation of all of Palestine.

This then is neither an accident of war, nor the excess of a racist 19th century Europe. It was a deliberate plan to destroy a nation and its people and replace them with foreign European immigrants.

Balfour was fully aware of this outcome. When challenged in November 1918 about the injustice of his declaration, he said:

For in Palestine, we do not propose even to go through the form of consulting the wishes of the present inhabitants of the country...The four great powers are committed to Zionism and Zionism, be it right or wrong, good or bad, is rooted in age-old tradition, in present needs, in future hopes, of far profounder impact than the desires and prejudices [not the rights] of the 700,000 Arabs who now inhabit this ancient land.

On another occasion he described these Arabs as,

 "*wholly barbarous, undeveloped and unorganized black tribes*".

In saying so, Balfour learnt well the teachings of his tutor and friend, Chaim Weizmann. Here in the Scottish Record Office in Edinburgh, you will find a letter from Weizmann to Balfour telling him on 30 May 1918 that,

The Arab is treacherous...superficially clever, worships one thing only: power and success...dishonest, uneducated, greedy, inefficient, shifty…

These racist remarks are the stuff which made people like Balfour and Weizmann.

Balfour himself is not free from a hint of anti-Semitic feelings, not only towards the Arabs, but towards the Jews too. He wrote in the Introduction to Sokolov's History of Zionism,

[It is] a serious endeavour to mitigate the age-long miseries created for Western civilization by the presence in its midst...of an alien and hostile Body [i.e. Jews], [it is] unable to expel or absorb.

Those who wished to get rid of European Jews found a solution. They conspired to plant them in Palestine and make the Palestinians pay dearly for this case of double anti-Semitism.

George Bush: take notice, Palestinians are ahead of you. 88 years before your fancy campaign the Palestinians sent petitions and delegations since 1917 and thereafter demanding democracy and people's presentation.

Here is what Weizmann told Balfour about democracy in his letter,

The brutal numbers operate against us, for there are five Arabs to one Jew [a lie. True 9:1]...This system does not take account of the fact there is a fundamental qualitative difference between Arab and Jew.

This is the same Weizmann who went round meeting Arab leaders preaching co-existence and bountiful goods coming out of Jewish industry and wealth, if only they were allowed in Palestine. He told them, *...not a hair on the Arabs' heads will be touched...never it is our objective to turn anyone out of his property...*

Churchill, the Colonial Secretary, told the Zionist first High Commissioner to Palestine, Herbert Samuel, when the latter reported the Palestinian agitation for freedom and democracy,

Tell them what you like...but never mention the word: presentation or representative council...

Churchill told a Palestinian delegation in Jerusalem in 1921 when they asked for democratic institutions,

Step by step we shall develop representative institutions leading to full self-government but our children's children will have passed away before that is accomplished...

Ironically Sharon is carrying on with the same false mission today. He says he is trying hard to build a democratic Palestinian state, presumably behind the Apartheid wall and within the Palestinian concentration camps he created in the West Bank.

On this bed of racism and cynical disregard for human values, was the British policy based, as initiated by Balfour and followed thereafter by others. Not much has changed today, only lip service by politicians here and there. Palestinians, the victims of this policy, are asked to accept this as their fate. They will never do that. Here is why.

A BRIEF REVIEW.

This is Palestine as Allenby found it in 1917, at the same month Balfour issued his infamous letter.

The Jews were only 9% of the population. Their land ownership was only 1.7% of Palestine.

1917
British Occupation and Mandate

Palestinian Arab
Jewish

POPULATON   LAND

Fig 1: Land Ownership and Population Composition in 1917.

When Balfour's declaration became known and the British Mandate appointed a Zionist as High Commissioner of Palestine in 1920, the Palestinian population agitated and revolted against the intrusion of foreign immigrants.

But it is within the tenure of Herbert Samuel (1920-1925) that the foundation for the state of Israel was established.

During Samuel's tenure, a pseudo government in the name of the Jewish Agency was established. Hebrew language was introduced as one of three official languages. Ministries nuclei were formed: Rutenberg for power, Mekorot for water, Histadrut for labour. Separate Jewish education and banking systems were authorized. Most importantly a new Jewish army, with the innocent name of 'settlement watchmen' was trained and armed.

Over 100 ordinances were hurriedly promulgated to facilitate the acquisition of Palestinian land by Jewish immigrants. It was a virtual take over of Palestine.

The Palestinians revolted in 1921, 1929, but the biggest revolt was in 1936-1939. The last was triggered off by a massive Jewish immigration from Europe in the mid 1930's. By 1939, Jewish immigrants increased 8 times from 1917, the year of British occupation of Palestine. In 1939 they constituted 30% of the total population (445,000 out of a total of 1,501,000).
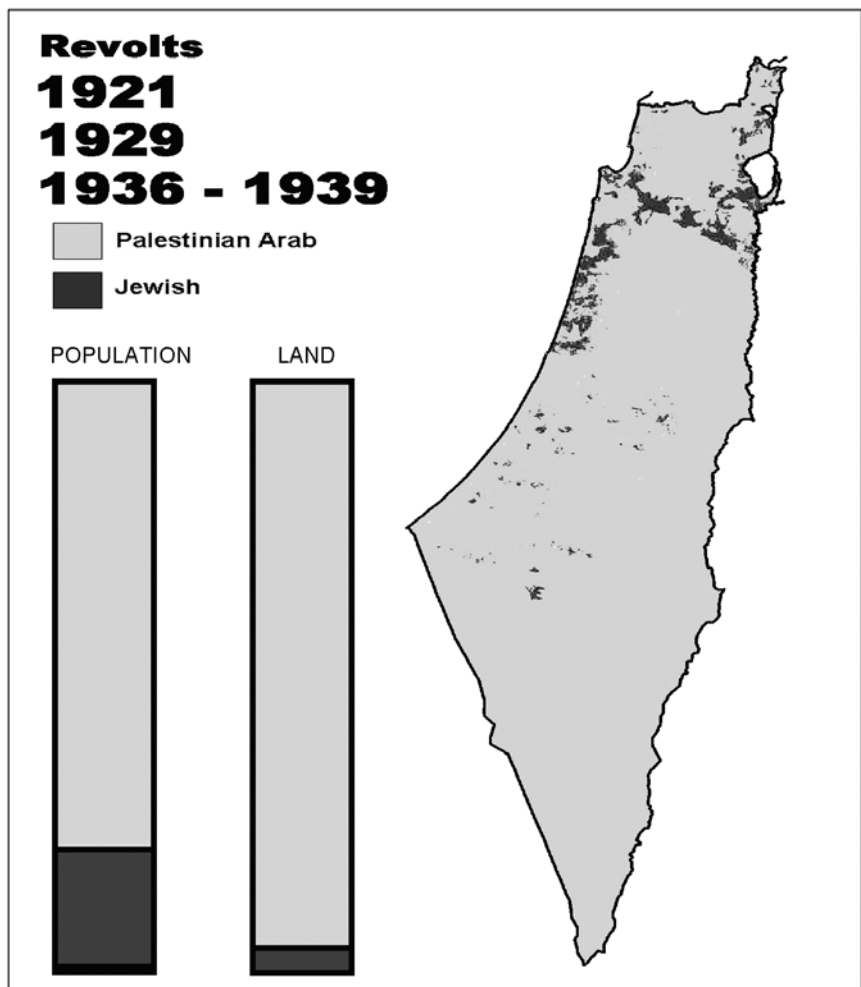
Fig 2: Land Ownership and Population in the early 1940's.

It is in this period, just before WWII, that the British Mandate government physically destroyed the fabric of the Palestinian society, and made it an easy prey for the Israeli conquest of Palestine that was to come in 1948. It dissolved all Palestinian political parties. Its leaders were either imprisoned or fled the country. New British army reinforcements were brought in. The

RAF showered bombs on villages. Collective punishment was applied. Houses were demolished. Provisions were destroyed. Able-bodied men were rounded up and put in cages. Summary trials led to quick execution. Possession of a simple pistol led to death sentence and possession of a knife led to life imprisonment. Palestinian society was utterly devastated. All the while, the Zionists were watching the British do their bidding while they were building their army to 20,000 soldiers, soon to increase 5 times. The scene for *al Nakba* was set. The Zionists were ready to bounce.

During WW II, Palestine was quiet. Britain retracted some of its hostile policies towards the Arabs. The Jews strongly objected. In Biltmore conference, they planned to take over all of Palestine.

By 1946 the Jewish immigrants acquired 5.3% of Palestine area. The Jewish immigrants were still 30% of the population at a total of 600,000 Jewish immigrants.
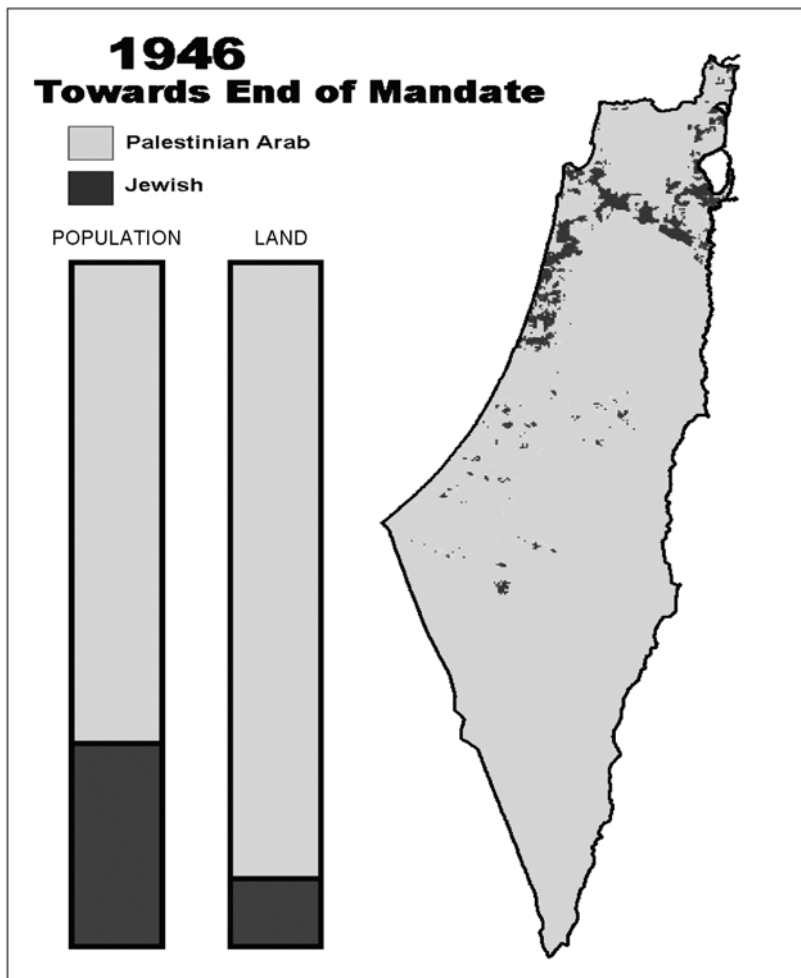
Fig 3: Land Ownership and Population in 1946.

Then Britain dumped Palestine into the lap of the UN, the successor to the League of Nations.

The 'Sacred Trust of Civilization' which was handed over to Britain, according to article 22 of the League of Nations Covenant, to assist Palestinians to obtain their freedom and self-government, was translated by Balfour and his successors into transforming Palestinian Palestine to a Jewish-dominated Israel with the Palestinian national majority shattered and defenceless.

Britain betrayed the very Mandate clauses which it drafted. Contrary to Clause 10 of the Mandate, it did not "safeguard the interest of the community". It decimated Palestinian society by brutal military action. Land laws were promulgated which were against the interests of the community. In the last 6 months of the Mandate the British did not interfere to protect civilians when Israeli terrorists committed massacres in Palestinian villages. Dayr Yassin was within 2 miles from the High Commissioner's office. His chief of Police said

"*it is not my business*".

Two hundred and fifty villages were depopulated by Zionist forces while the British were looking on. That is half of the total refugees today. Under the Mandate, the British were obliged to protect them.

Contrary to Clause 5 of the Mandate, the integrity of Palestine territory was not respected. It was devoured by the wolves, the Israeli wolf chief among them.

Contrary to the practice in other Mandates, as in Cyprus for example, the Palestinians were not handed over their government offices, their infrastructure, their cultural and religious places, their records of health, education and land registry. There was nothing of the customary colonial decorum of handing over the trust held by Palestine's British warden. They slipped away at night, unceremoniously, leaving the civilian population to fend for themselves.

By default, frequently by design and occasionally by corrupt practices, the British abandoned, or handed over, the property of the Palestinian people to the Zionists: a complete infrastructure they needed to build an instant state: 1700 public buildings, 497 police and post offices, hospitals and schools, 3000 km first class roads, 1000 km railway lines, 41 railway stations, 2 ports, 31 airfields and 37 stacked military camps.

Balfour issued the birth certificate for Israel and the death certificate for Palestine. Samuel created the laws for it and imported immigrants to be the new citizens for the state. The British Mandate saw the young baby to adulthood and supplied it with the necessary physical infrastructure.

The 'Palestine Question' was put before the UN in order to give a legal fig-leaf to this insidious dismembering of Palestine by the international i.e. Western community at the UN, exactly as Balfour sought European blessings in the League of Nations for his declaration 30 years ago. Hence, partition of Palestine was put to vote in the UN.
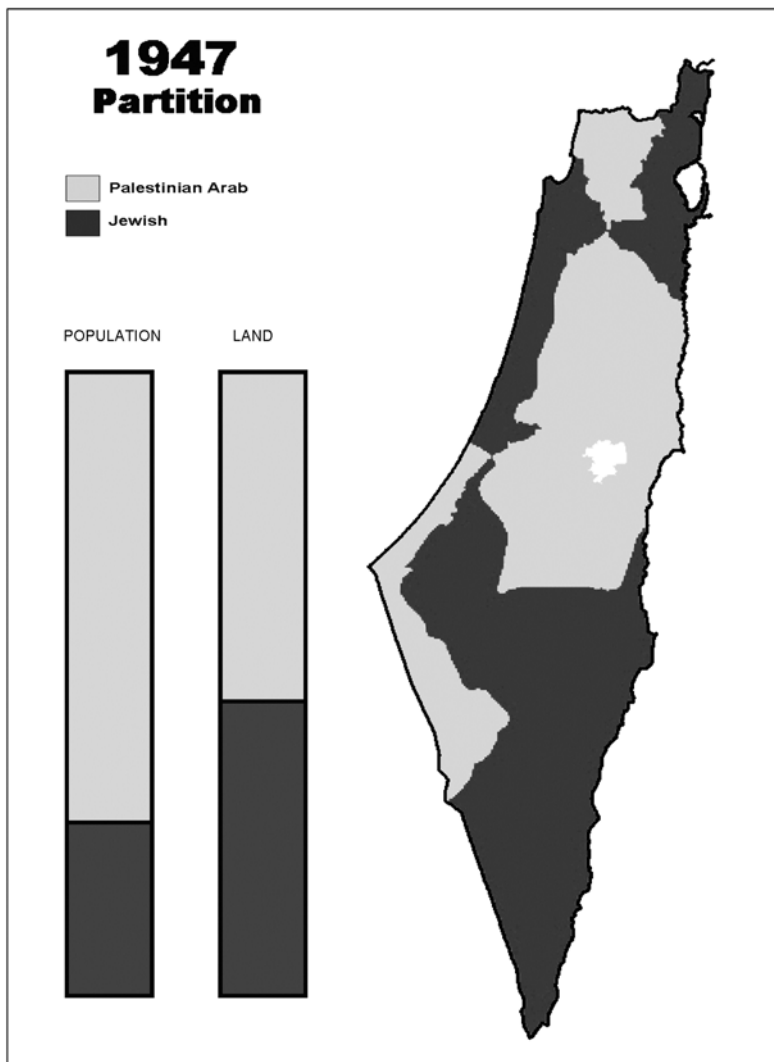
Fig 4: Partition Plan of 1947

The proposed Partition by the UN was a farce, a thinly-disguised plan to give respectability to the Jewish take over of Palestine. Jewish immigrants who controlled 5% of Palestine were allocated 54% of the country. Half of

the population in this would-be Jewish state were Palestinians who suddenly found themselves under the sovereignty of foreign immigrants.

The consequences were predictable. The Palestinians were not ready to give up over half of their country. Ben Gurion knew this. He set his Plan Dalet in motion. Over 65,000 trained Zionist soldiers, later increased to 120,000, moved to conquer Palestine.

From March 1948, the onset of Plan Dalet to April 1949, when Jordan signed the Armistice Agreement, *al Nakba* was to overtake the Palestinian people.

Throughout this period there was the rising count of depopulated villages, the expelled refugees and the occupied land.

The main observation is that, until 15 May 1948, while Palestine was under the British Mandate, half the total refugees were expelled and 41 massacres were committed.

On that date Israel was declared on 13% of Palestine.

At the end of the Mandate, Arab regular forces came to rescue what was left of Palestine but failed.

Israel broke two Truces and occupied southern and northern Palestine and established a bridge heading to Jerusalem contrary to the Partition Plan.

After signing Armistice Agreement with Egypt, Israel occupied all Negev and reached the Gulf of Aqaba. The Zionists conquered 78% of Palestine and called it Israel.

Thus life was snuffed out of 675 towns and villages. 85% of the Palestinians in the part of Palestine that became Israel became refugees.
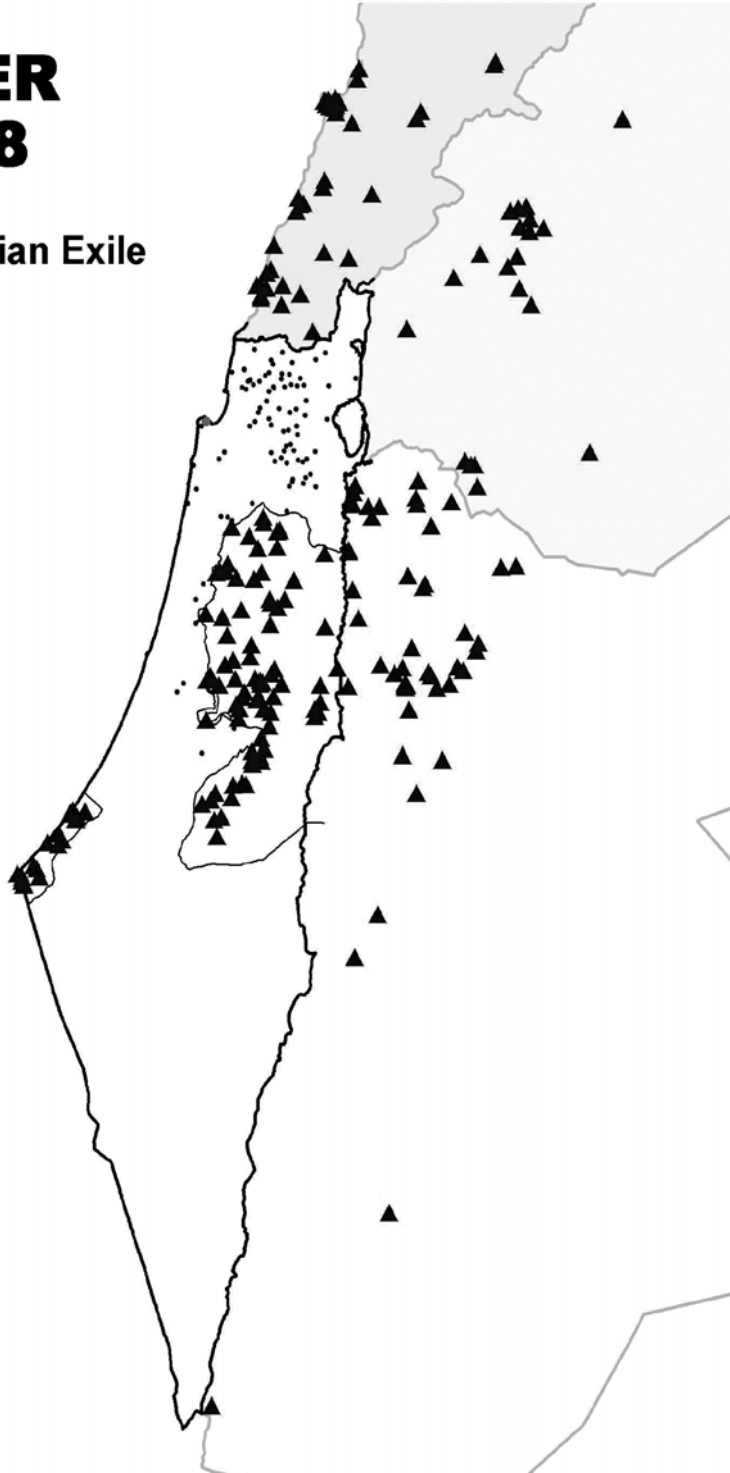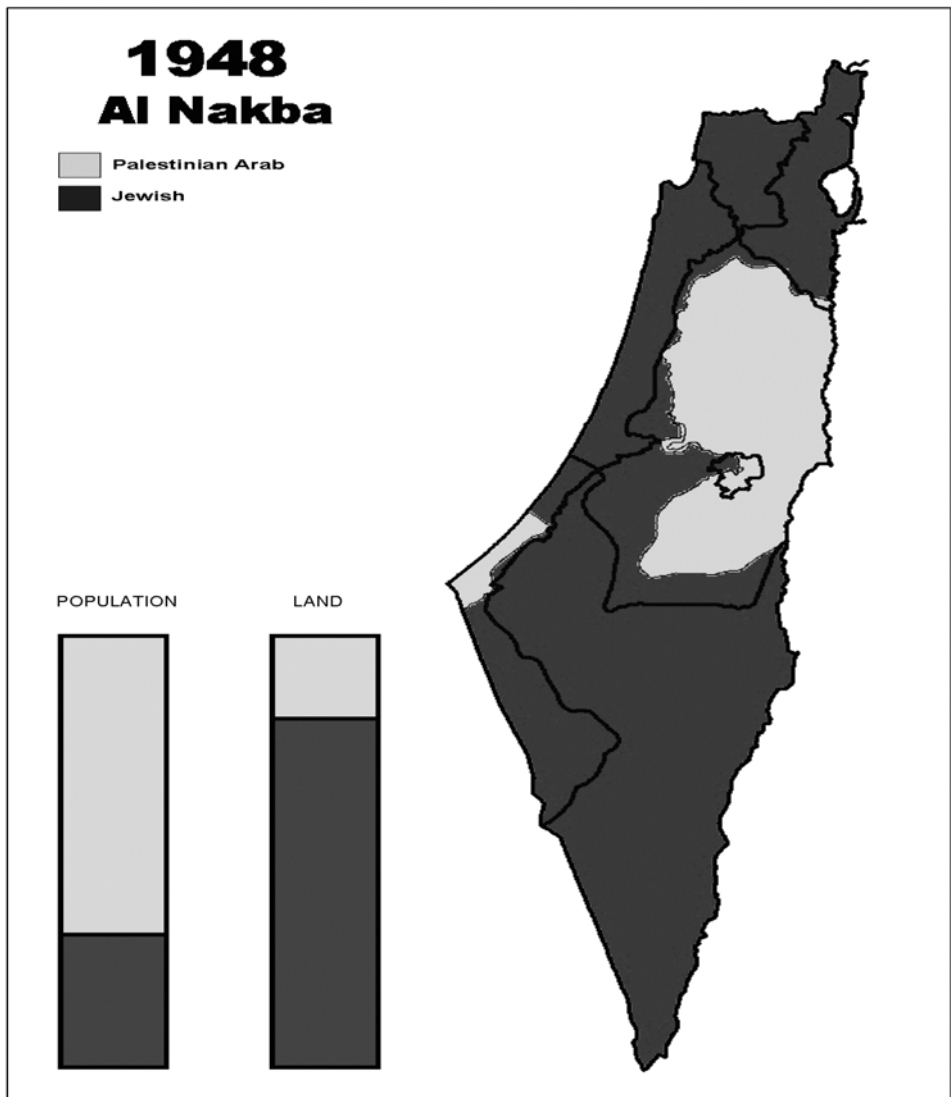
AFTER 1948

▲ Palestinian Exile

Fig 5: The Locations of Refugee exile.

1948
Al Nakba

Palestinian Arab
Jewish

POPULATION   LAND

They went into exile in 602 locations in the West Bank and Gaza, Jordan, Syria and Lebanon.

- 85% of the Palestinians in the land that became Israel were expelled.

- 900 000 refugees

Thus Palestine, which was promised free self-government by the British and by the League of Nations was reduced to this.   Balfour, bear witness.

Israel's appetite for colonial expansion was not satisfied. In 1967 and after, Israel occupied 100% of all Palestine, parts of Jordan, Syria, Lebanon and Egypt. Palestinians were besieged in isolated cantons, treated like concentration camps.
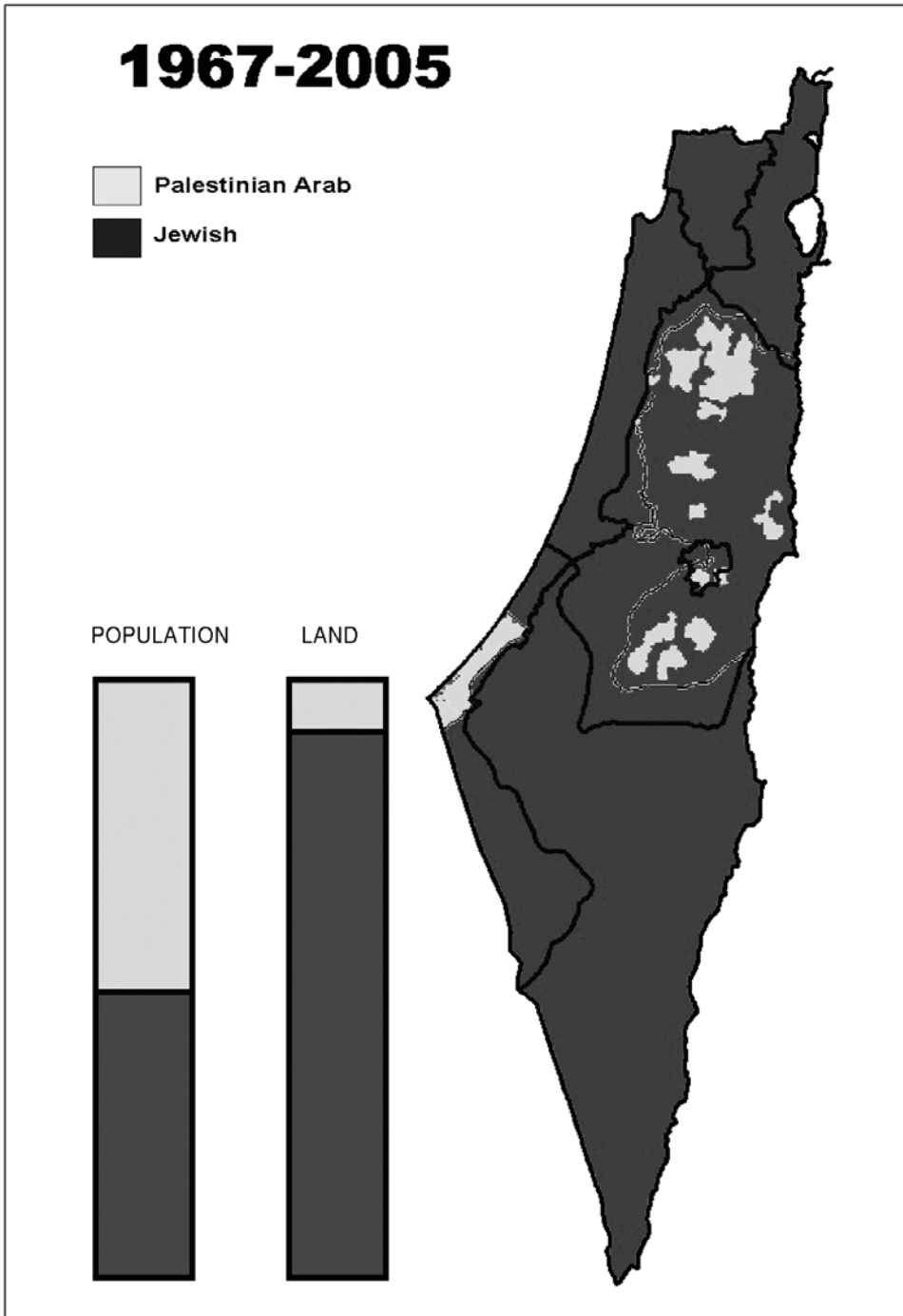
Fig 7: Occupied Land and population in 2005.

Sharon envisaged a few Palestinian cantons whose land, air, water, economy, entry and exit he controls. He has no problem calling it a Palestinian state.

Fig 8a: The Progression of Apartheid Wall:
Areas allocated for Palestinians

To make sure the cantons are Palestinian ghettos, he invented and built the Apartheid wall. This image shows what was accomplished till a year ago.

Fig 8b: The Progression of Apartheid Wall: Completed Apartheid Wall.

Sharon plans to encircle all Palestinian towns and dissect Jerusalem. In July 2004 the International Court of Justice gave an Advisory Opinion that the Apartheid Wall is illegal and that the West Bank and Gaza Strip are Occupied Palestinian Territory.
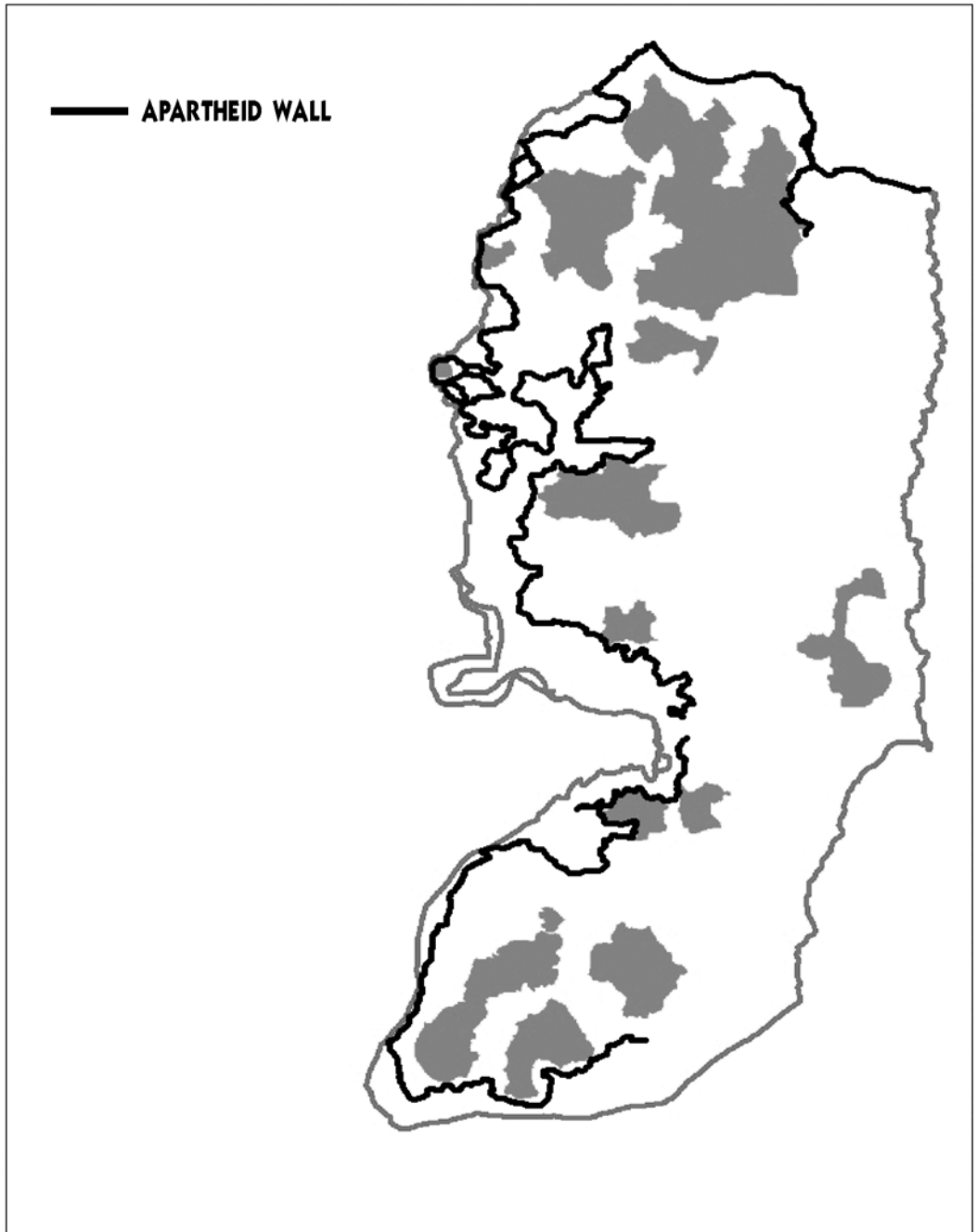
Fig 8c: The Progression of Apartheid Wall:
Apartheid Wall under construction.

If Sharon built this wall to separate Israel in the west from Palestinians, why then does he plan to extend the wall on the east side?
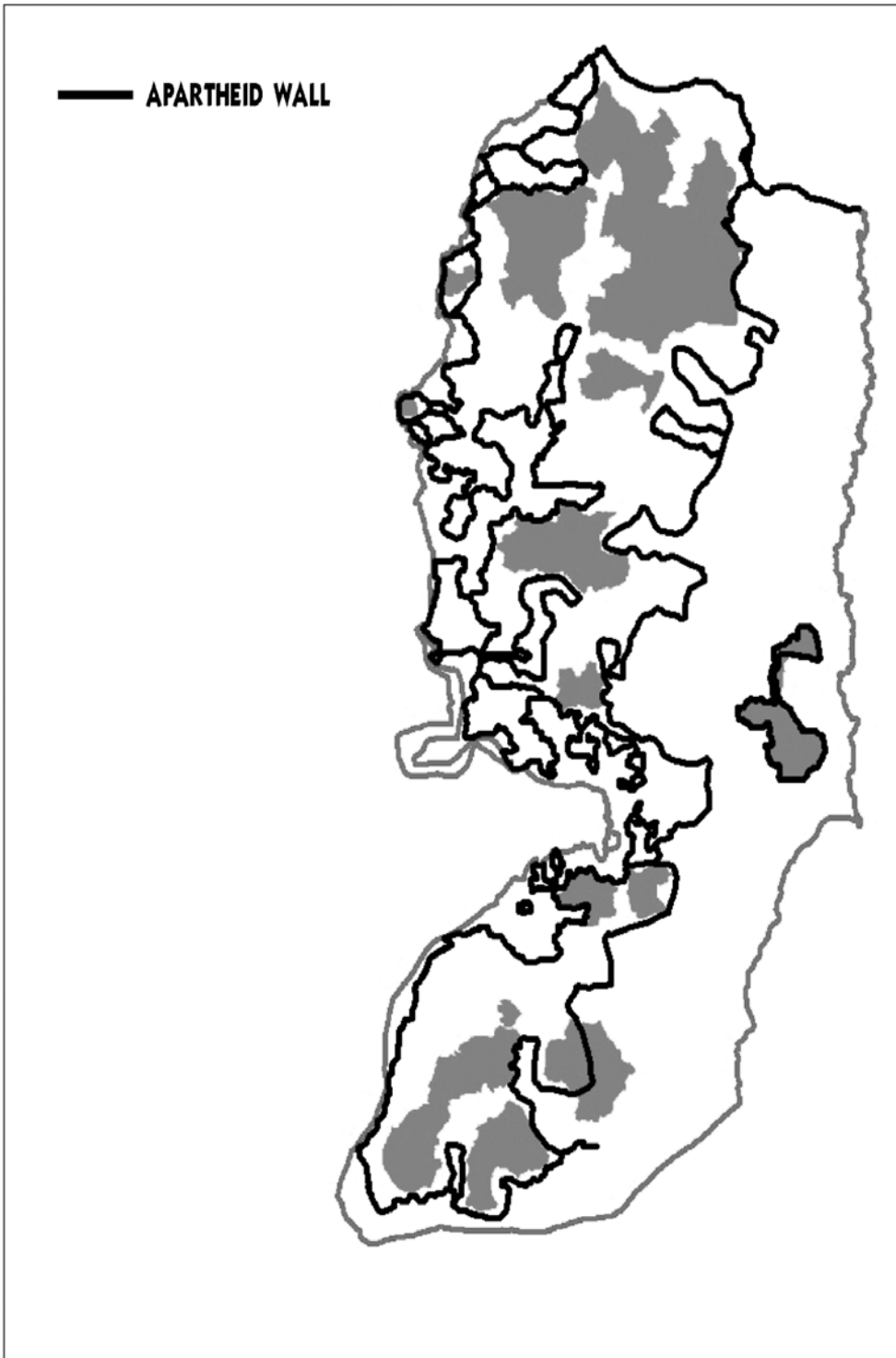
Fig 8d: The Progression of Apartheid Wall:
     Projected Apartheid Wall.

The more sinister motive of course is to siphon off the West Bank aquifer and leave the Palestinians thirsty.

90% of the western aquifer is siphoned-off by Israel. The small northern aquifer is to be shared. The negligible eastern aquifer is to be left to the Palestinians.

This is the Odyssey of Balfour's original sin. But we cannot just blame Balfour himself for every evil. His legacy, his policy, his colonial mentality still pervades halls of power in America and Europe.

There is only one way to atone for these sins, to alleviate the endless suffering. It is to restore rights and apply justice.

RIGHT OF RETURN, Sacred, Legal and Possible

We know that the Right of Return has been enshrined in international law, supported by the international community over 130 times.

But Zionist myths and fabrications are still being propagated. They say the return is not feasible, not possible. Even if it were, that is no reason to deny justice. But these claims are entirely false.

97% of the refugees are within a hundred kilometres from their homes.
50% of the refugees are within 40 km from their homes, a mere bus ride.
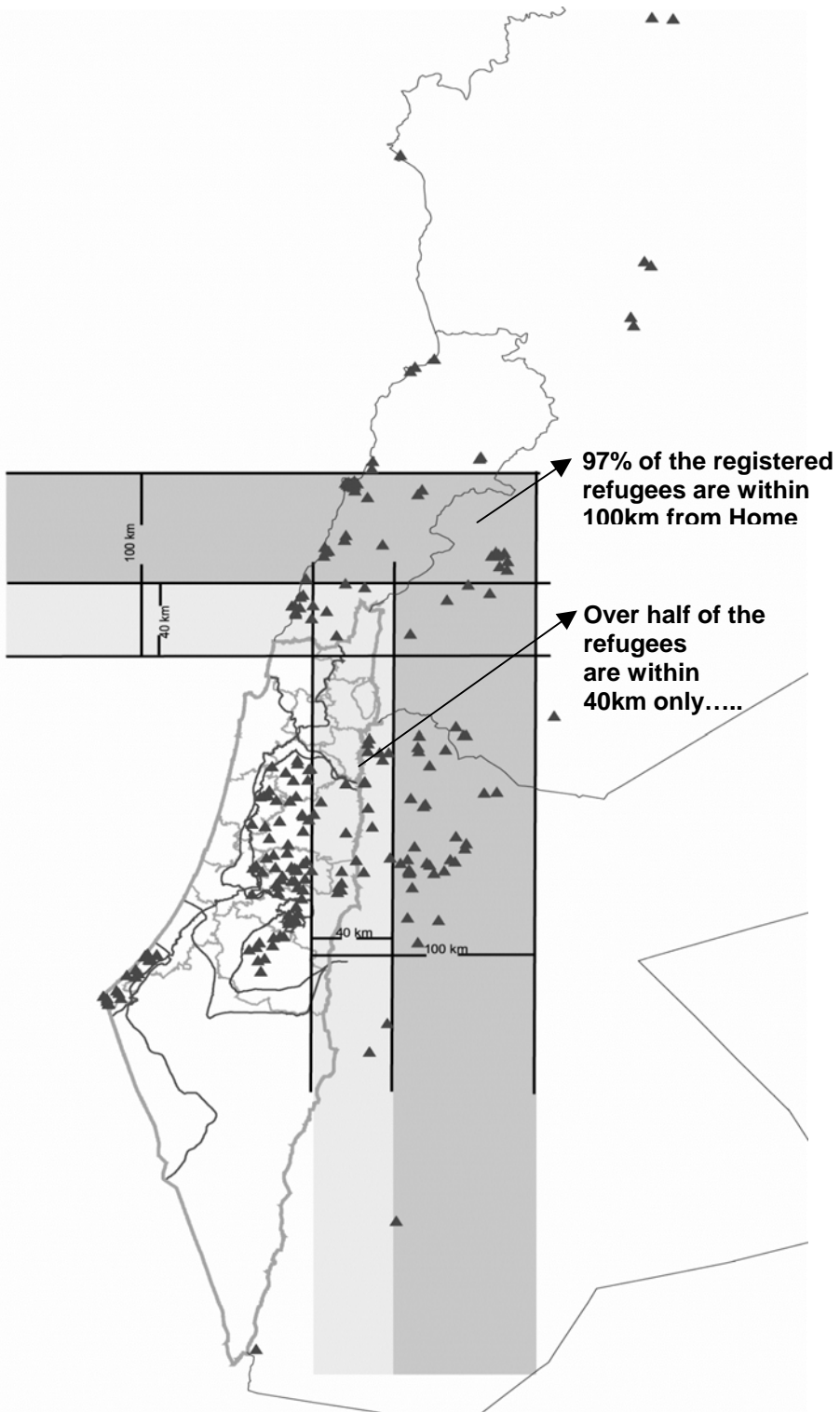Many can see their homes.

Fig 9: The Proximity of the Refugees to Their Homes.

Another myth: there is no room for returning refugees. Wrong. The truth is 80% of the Israeli Jews live in 14% of Israel. The rest is refugee land inhabited by the Kibbutz and the army. It seems Israel finds room only for one million Russians, equal in number to all refugees in Gaza and Lebanon.
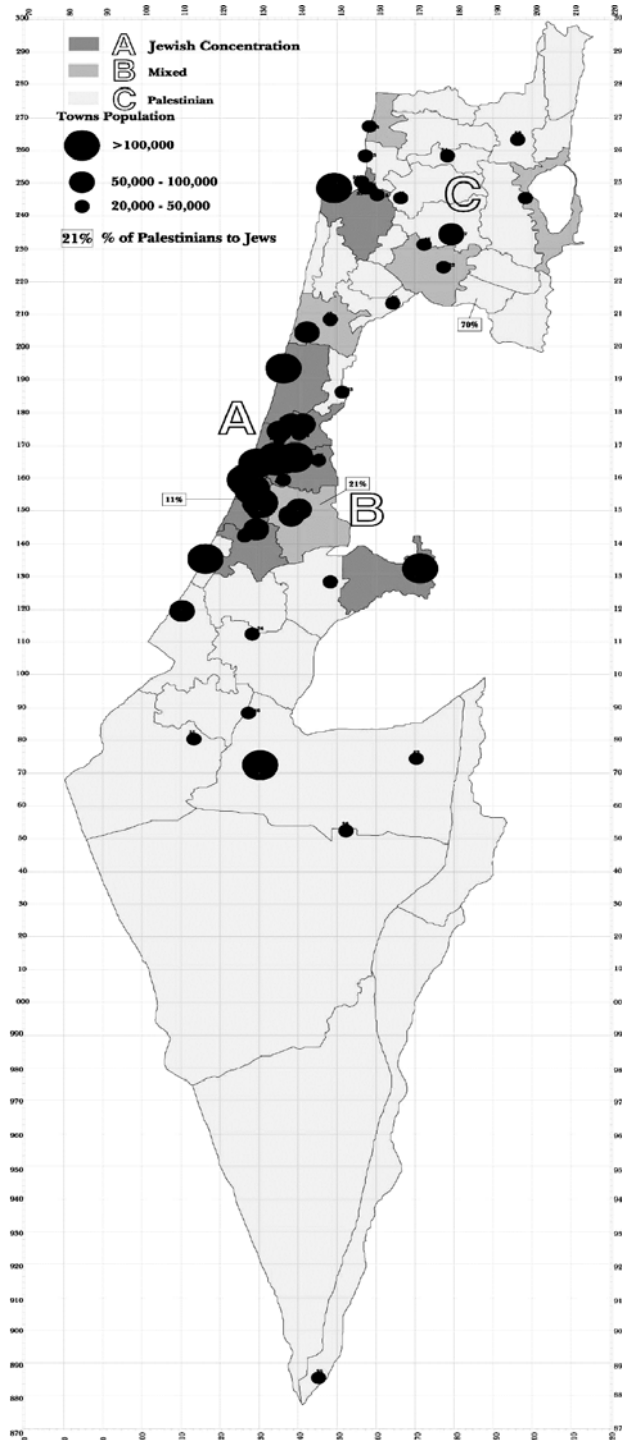

Fig10: Eighty Percent of Israeli Jews live in 14% of Israel.

Another myth: villages are built over. Wrong. 90% of the village sites are vacant. The built-over areas are around Tel Aviv, Haifa and West Jerusalem.

Fig 11: Ninety Percent of Village Sites are still Vacant.

They tell us we must maintain Israel's Jewish character. There is no moral or legal obligation for the Palestinians to remain in exile in order for Israel to import immigrants. But what is the meaning of the Jewish character?

Is it religious?
The Jews always practised their religion freely in Arab and Islamic countries.

Is it social?
The Jews in Israel come from over 100 countries, speak a Babel of languages. How can the Palestinian be the odd party in their country?

Is it demographic?
Preventing the Palestinians from increasing in number is racist and practically futile.

Is it legal?
Yes it is. Racism and Apartheid are institutionalized by law in Israel. This has been condemned by the UN and human rights groups. For example, the UN Economic and Social Council Committee in its meeting of 23rd May 2003 (E/C.12/1/Add.90) resolved the following:

The Committee is particularly concerned about the status of "Jewish nationality", which is a ground for exclusive preferential treatment for persons of Jewish nationality... resulting in practice in discriminatory treatment against non-Jews...

Thus there is no moral, legal, physical or geographical reason why the refugees cannot return home. Here is a plan in seven phases.

Phase No	Phase Description	Number
1	Syria+Lebanon: Registered Villagers	499,403
2	Gaza: Registered Villagers	686,670
3	West Bank: Registered Villagers	378,037
4	Jordan: Registered Villagers	1,134,116
5	Cities:G2 All+UnRegistered Villagers	540,898
6	Cities: G1 Registered	653,245
7	Cities: G1 UnRegistered	907,804
	TOTAL	4,800,174

• **Fig 12: Phases of Repatriation**
Seven phases are proposed, all around 0.5 million each, except two. Preference is given to registered village refugees, followed by smaller cities. Coastal cities are last.

In the northern district, there is no problem. All village sites are vacant with very few exceptions.
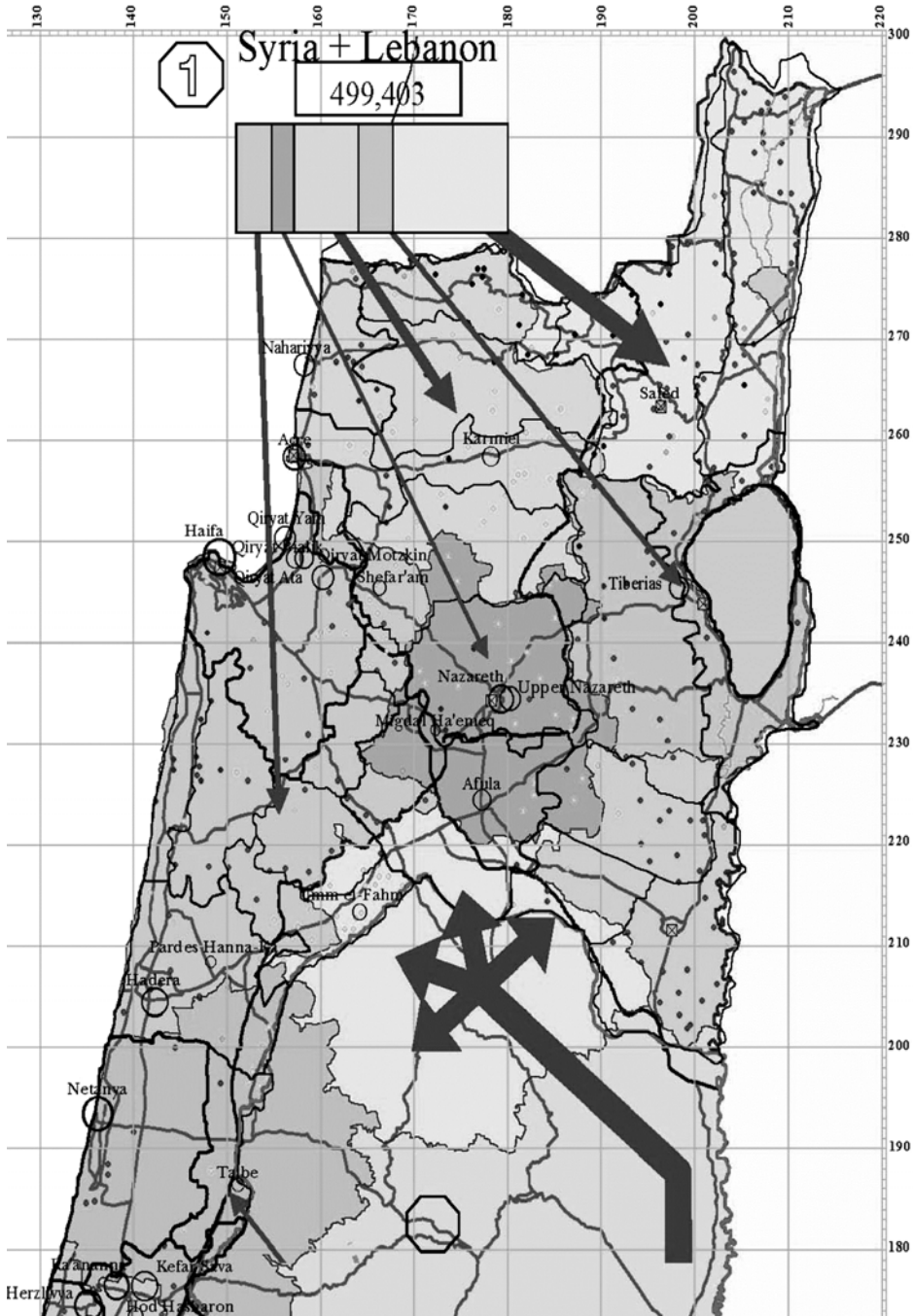

Fig 13: The Return to the northern District.

The demographic picture confirms that town by town.
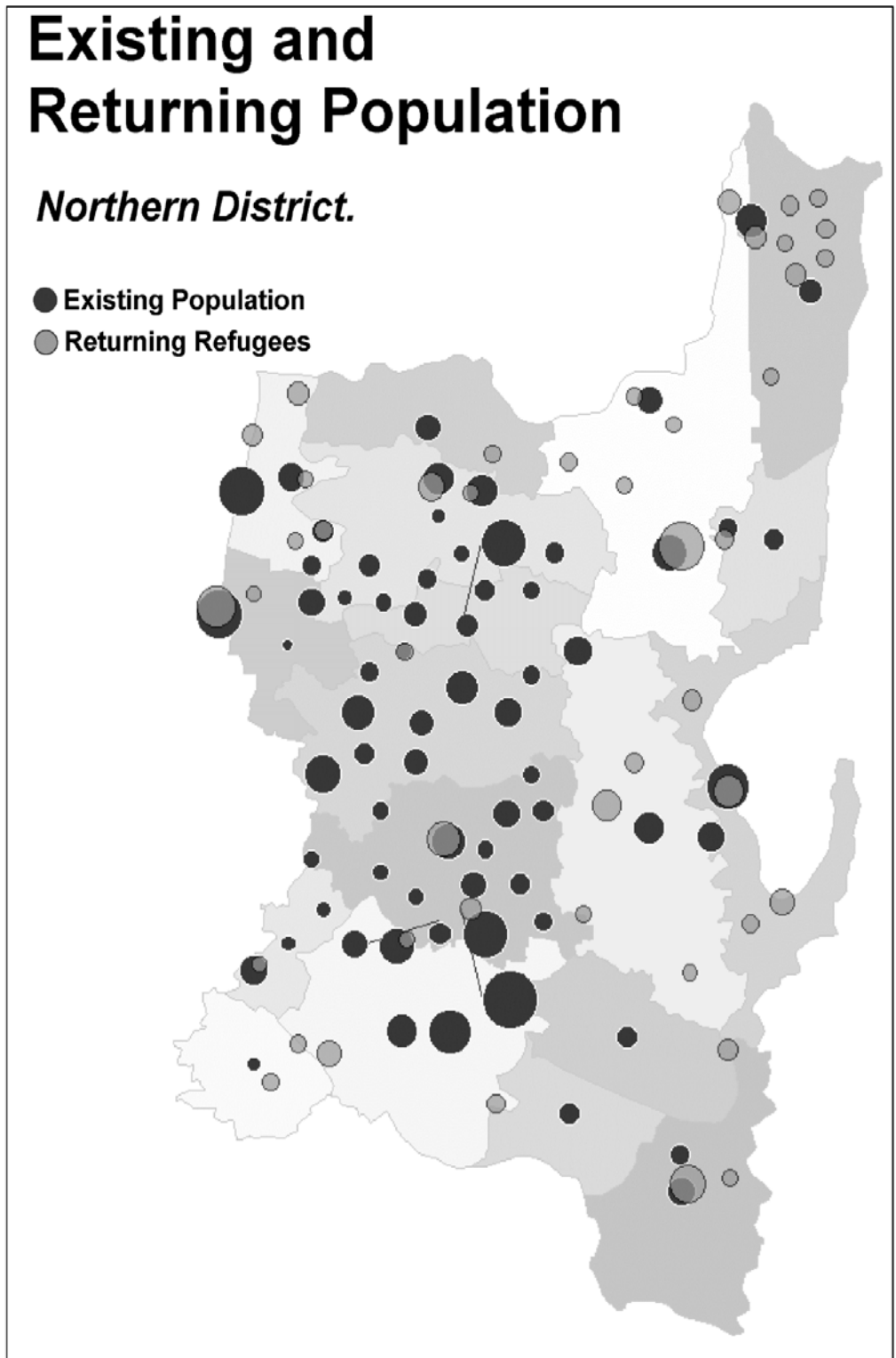

Fig 14: The Existing and the Returning Population can Live together.

The southern district is even easier. The number of rural Jews in the southern district is less than a single refugee camp in Gaza. The area of this district is 40 times the size of Gaza Strip. True half of it is desert but with the billions of dollars Israel receives, it could revive the fertile part.

Fig 15: The Return to the Southern District.

The towns can easily accommodate population.

Existing and Returning Population

Upper Southern District.

● Existing Population
○ Returning Refugees

Fig 16: The Existing and the Returning Population can Live together.

The central region has somewhat more difficult problems, especially around Tel Aviv and Jerusalem but they can be solved as in similar cases in Bosnia and Kosovo under the UN supervision.
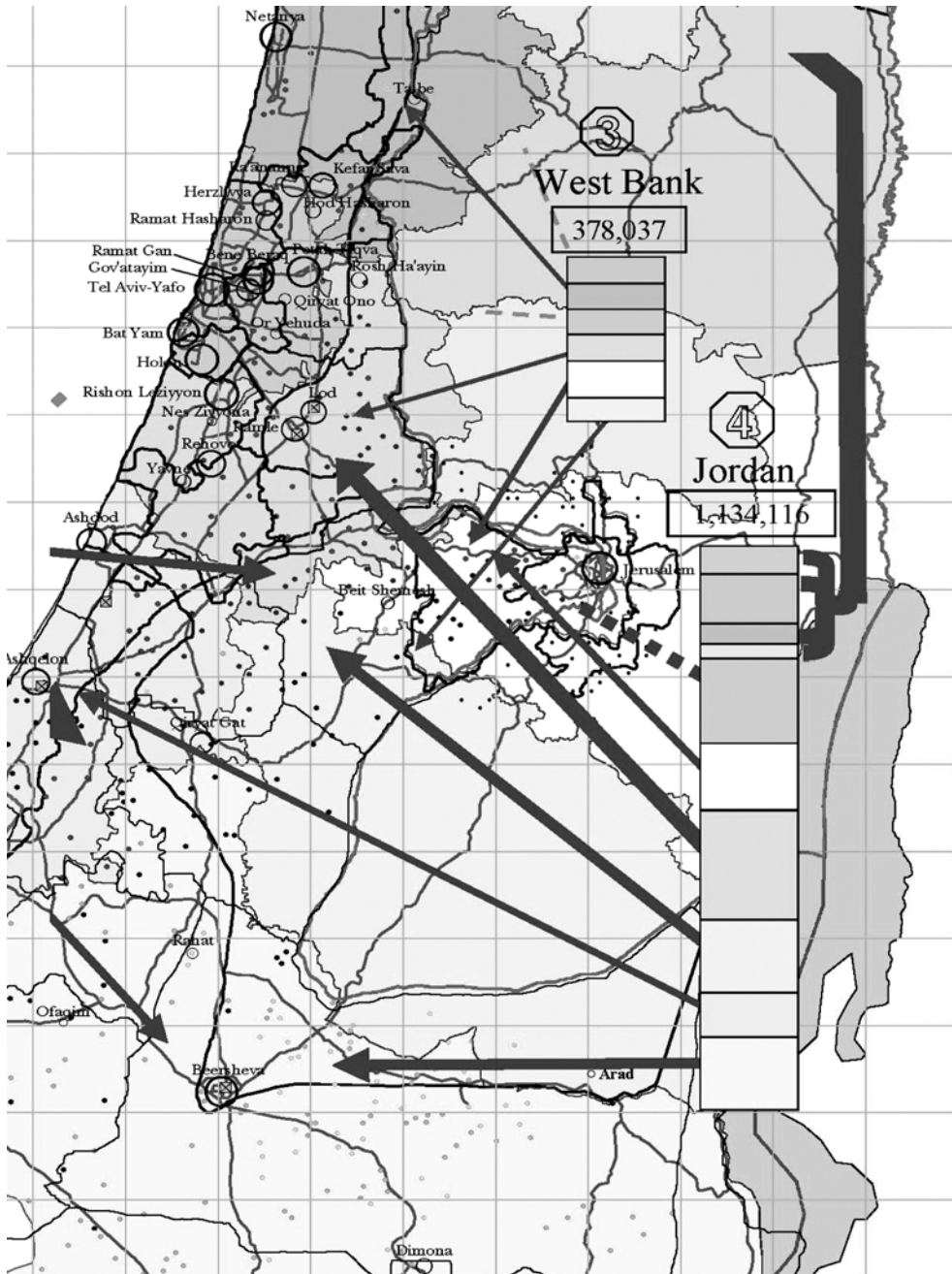

Fig 17: The Return to the Central Region.

Thus Return is not only just
it is *inevitable*

This presentation before you reveals, I hope, several facts:

First, starting with Balfour, continuing on today with Sharon, the Palestinians have been subjected to the largest, longest ethnic cleansing operation in modern history. It has come about through an unholy alliance between Western colonialism and anachronistic racist Zionist ideology. This evil must be reversed. It is a shame for all of us today to condone it or do nothing to eliminate it.

Second, the universal rise in the awareness of upholding human rights the world over and the efficiency of electronic communications created a genuine people's voice, parallel to, sometimes better than, elected parliaments. This voice is increasingly gaining importance in making political decisions. Witness the great show of people's voice against racism in Durban, against pollution in Seattle and against the war in Iraq and for the support of Palestinians in many cities in Europe. Here in Britain, the voice of the people transcended the political turn-speak and became a force to be reckoned with.

Third, refugees have returned home in Kosovo, Bosnia, East Timor, Rwanda, Guatemala, Abkhazia, Afghanistan and Iraq. They returned everywhere on the strength of international law, enforced by the Security Council and at times by NATO soldiers. Everywhere except in Palestine. Why? Because US supports Israel unconditionally in every field – politically, economically, militarily, even to the detriment of US interests.

Fourth, international law is solidly behind Palestinian rights. The international consensus, barring the rogue states, is solidly behind them. So are the Treaty-Based Human Rights Committees. So are practically all human rights groups in the world. But there is an anomaly. Compare the extent and strength of people's support for the Palestinian rights with the strength and persistence of Western governments' to support Israel and to undermine Palestinian rights. Tolerating Israel's policies today means that no Western politician has learnt anything from Balfour's shameful legacy.

Last but not the least, in spite of 88 years of continuous struggle, the Palestinians did not surrender or give up their rights. They never will.

It behoves every man and woman in the world with a free conscience to support them.

For peace has only one road leading to it. That is justice. Let us follow that road.

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Palestine and the legacy of Balfour

Scottish Friends of Palestine