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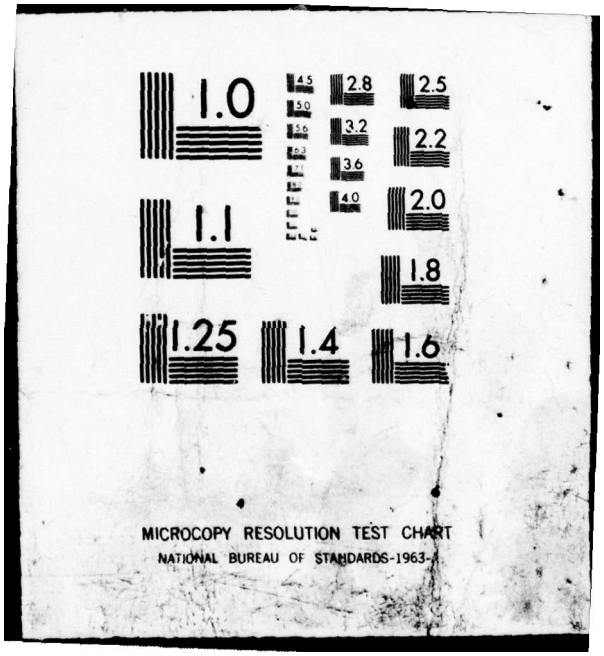
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THESIS

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OF A PALESTINIAN HOMELAND

by

William Allen Miner, III

June 1979

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This thesis is based on the presumption that a Palestinian Homeland exists. As such, it reviews some of the key legal documents which have formed the political and historical background of Palestine from the Balfour Declaration of 1917 to the present day. These documents are reviewed in light of basic principles of international law as viewed by European and American jurists and scholars relative to questions of sovereignty, title to territory and the implication of recognition

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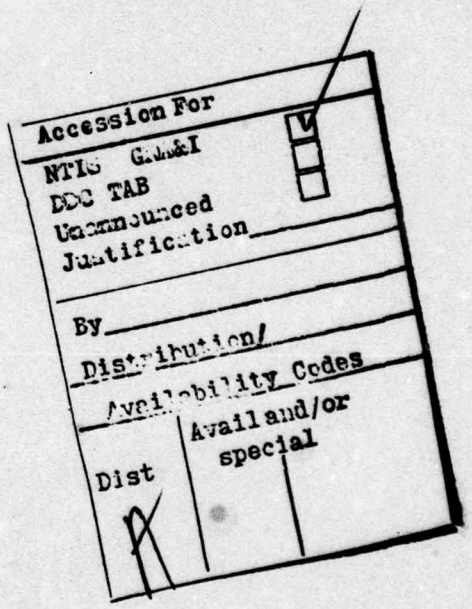

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The Legal Implications of a Palestinian Homeland

by

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Submitted in partial fulfillment of the
requirements for the degree of

MASTER OF ARTS IN NATIONAL SECURITY AFFAIRS

from the

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ABSTRACT

This thesis is based on the presumption that a Palestinian Homeland exists. As such, it reviews some of the key legal documents which have formed the political and historical background of Palestine from the Bal our Declaration of 1917 to the present day. These documents are reviewed in light of basic principles of international law as viewed by European and American jurists and scholars relative to questions of sovereighnty, title to territory and the implication of recognition by third states. Finally, this thesis briefly analyzes some of the immediate effects of Palestinian statehood.

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INTRODUCTION

In analyzing the legal implications of a Palestinian homeland one must look at a number of issues and events not only from an international legal framework but from an historical and political aspect as well. It is easily understood that the whole Middle East has been a volatile area in the international system for decades and one tends to become quickly overwhelmed by both the issues and the number of actors. Yet, it is important to realize that any discussionof a Palestinian homeland is not only a pivotal issue but that it is fraught with emotions which have not just clouded the problems but have, concomitantly, shaped the situations. Thus, any legal study of Palestine must look at not only the documents which have become an integral part of Palestinian-Israeli history but also the historical context in which these documents were derived. As such, it is virtually impossible to separate the legal questions from the political aspects of the issues.

The first chapter provides an historical background to the development of certain legal documents relating to the political situation in Palestine. These particular documents were chosen for two reasons; either because they had a significant legal effect on events in Palestine or they highlighted historical and political issues with regard to events in the area. Several of these documents fit both criteria.

The second chapter analyzes these legal documents in light of generally accepted principles of international law among European and American jurists and scholars. This chapter is based on the premise that a Palestinian state exists. Thus, questions of sovereignty and title to territory are scrutinized in light of these documents and principles of international law.

The third chapter looks at Israel as a "mandatory" government in the Occupied Territories. Since an emergent Palestinian state would most likely grow out of the Occupied Territories, it seemed valuable to look at Israeli policy as a military occupant. Israeli conduct in this area will certainly have an effect on the shape of a new Palestinian state.

Finally the last chapter looks at some of the legal arguments concerning an emerging Palestinian state and makes some observations about the issues which might arise as a result of such a state.

Of the legal documents discussed in the first chapter, the Balfour Declaration is of particular importance. It was the first policy statement by a world power, Great Britain, in support of a national home for Jews. It had as many antagonists as supporters. British legislators and policy-makers split over the document. So were the Jews themselves. In working out the final draft one can see the forces of Jewish assimilationists opposing political Zionists. The result was a vaguely worded declaration which satisfied no one. Be that as it may, the Balfour Declaration was incorporated into the League of Nations mandate for Palestine thus providing it with the force of international concensus.

The Palestine Mandate and the Palestine Order in Council of August 10, 1922, provided the necessary legal documents for the administration of Palestine under the League of Nations Mandate System. The link between the Mandate System under the League and the Trusteeship System administered by the United Nations is provided in a series of legal decisions under the heading of The South-West Africa Cases. These were concerned with the administration of South-West Africa by the Union of South Africa.

The reports of the various commissions sent to the area by the United States and Great Britain and the policy statements which resulted from these reports are a study in frustration. In each report one can see a rather accurate, straightforward reporting of the situation as it existed in Palestine at the time of the report. However, the policy statements generated by these reports reflect another reality; i.e., a British administration caught on the horns of a dilemma trying to placate both Arabs and Jews but succeeding only in fueling hostilities between the two groups and toward itself. This was largely a result of the perceptions of the Arabs and Jews concerning the legal implications of the policy statements and the expectations evoked by these perceptions.

At the end of World War II the center of focus shifted from Great Britain to the United States as Israel won independence and the United States became Israel's strongest ally in the international arena. Since that time the United States has become one of the most important protagonists in the legal issues which have revolved around the State of Israel and the Occupied Territories.

A major difficulty of studying the legal aspects of a Palestinian homeland is that there are as many or more legal arguments as there are interested parties. The result is a confusing maze of citations and legal principles used to support each protagonist. Therefore, this thesis was limited to a discussion of the legal principles of international law espoused by Western jurists and scholars. The purpose of this concentration was to narrow the field of study and to acquaint the Middle East area specialist with the international legal issues of a Palestinian homeland from a Western viewpoint.

Among jurists there are several contending philosophies concerning sovereignty and title to territory and the value of recognition by third parties in this process. What becomes apparent is that international law is perceived as a tool by different nations to support or vilify an existing political situation. Through this process international law is frequently changing to meet fluctuating world events and at the same time is trying constantly to formulate a set of principles grounded on past decisions by which future relations between nations can be regulated peacefully.

Finally, the United Nations and its predecessor, the League of Nations, and their respective judicial branches, the former Permanent Court of International Justice and the current Court of International Justice, have contributed significantly to the growth of international law, especially in the minds of many European and American jurists and scholars. As such, these international bodies have been referred to often in the arbitration of disputes in the last century and their decisions and

resolutions carry significant weight within the international community regardless of the origin of past differences. In fact, this has been incorporated into the Charter of the United Nations in Article 14:

> Subject to the provision of Article 12, the General Assembly may recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations, including situations resulting from a violation of the provisions of the present Charter setting forth the Purposes and Principles of the United Nations.[1] (emphasis added)

The logic of such a statement would seem to support the idea that what is legal is largely dependent upon what is accepted as permissible by a majority of the members of the United Nations. While it is true that jurists in the developed nations regard past principles of international behavior as the basis for most international law, they recognize that present and future requirements may dictate a new approach which is acceptable to the majority of nations throughout the world. In so doing they are, in effect, conferring legal status to political situations which might have been considered illegal in origin.

I. HISTORICAL BACKGROUND

A. THE BALFOUR DECLARATION

When Theodor Herzl wrote his book, The Jewish State, in 1896, religious Zionism had just begun to assume a political direction which was destined to clash head-on with Palestinian Arabs and ultimately threaten the stability of the modern world. Since the first Zionist Congress assembled in Basle, Switzerland in 1897, Jews and Arabs have fought over Palestine and the fighting, which has been both bitter and intense, has involved the major world powers and contributed to the weakening of the economic structure of the West.

The Zionist Movement's first major victory in terms of legal documents was the Balfour Declaration of November 2, 1917, in which Lord Arthur James Balfour, the British Foreign Secretary, communicated to Lord Rothschild, a prominant Jewish aristocrat in Great Britain, the cabinet's official recognition of Zionist aspirations for a Jewish homeland in Palestine. The final wording of the document was the result of an intensive struggle between numerous interest groups in Britain at the time and a short review of this historical document's growth from inception to final draft is important to understand its impact.

Although Jewish tradition and rituals are replete with references to the desire of returning to Palestine the actual number of Jews who returned to that area of the Middle East was but a trickle until political Zionism began to emerge. The

programs of Eastern Europe and Russia during the Nineteenth and early Twentieth Centuries produced the newly formed World Zionist Organization to seek aid in returning Jews to Palestine. At first, this group, through Hertzl, sought assistance or at least acquiescence from the Ottoman government in the form of a Jewish charter company in Palestine. Failing this they turned to the British government who offered that organization a homeland in East Africa[2], which Hertzl would have accepted on a temporary basis but which the Seventh Zionist Congress, led by a Russian majority, refused to accept. There was to be no alternative to Palestine.

Hertzl died in 1904 and Dr. Chaim Weizmann, a prominent British chemist, led the Zionist organizational request for assistance in Great Britain. It should be noted, that at this time, Zionism as a political movement was composed predominantly of Eastern European and Russian Jews who had felt the sting of anti-Semitism on many occasions and who lived a separate and distinct life from other Europeans in their respective nations. The ghetto typified this distinctness and contributed greatly to their isolation both physically and psychologically. On the other hand Western European, British and American Jews enjoyed a much greater degree of assimilation. For this reason political Zionism was viewed with ambivalence if not outright hostility by many of these Western Jews. If their Jewish religion had not been a serious impediment in their social and economic mobility to date, then any political movement which singled them out as inherently different from their fellow countrymen could create a wave of anti-Sematic feeling and jeopardize their position in

society. The difference between political Zionists and assimilationists can be seen as a difference in their respective socio-political environment. Thus, there were many prominent Jewish citizens in Great Britain and the United States who went to great lengths to repudiate the Zionist Movement. In addition, ultra-Orthodox Jews, believing that only through divine intervention would Palestine be restored to the Jews, opposed any political attempts to create a Jewish homeland in Palestine.[3] The Zionists who were nationalists, therefore, ran headlong into the assimilationists and Orthodox Jews who were unwilling to identify themselves with such a movement.

Among other things this confrontation led to several definitions of the essence of Jewishness. The assimilationists maintained that to be a Jew meant to belong to a particular religious belief which was no different than belonging to the Baptist Church, Catholic Church, et cetera and one could be both a Jew and a loyal citizen of the state in which he resided. The Zionists, claimed that Jews, by definition, were a distinct racial or national group and that history's treatment of the Jews has shown them to be a separate nation distinguished by blood. Renunciation, for whatever reason, could not change that character. With such a divergence of opinion, it is not surprising that there was little reconciliation between the two groups, nor is it surprising that the more prominent Jews were not eager to flock to the Zionist cause. Nevertheless, Zionism did grow, and with advent of World War I, British and Zionist aspirations began to converge.

As a result of developments in World War I, Britain found the need, for a variety of reasons, to encourage Zionism. The new Russian government under Kerensky was under a great deal of pressure to withdraw from the war. Britain saw the opportunity to placate Zionists as a means of encouraging Russian Jewish leaders to support that country's continued involvement in the war. Furthermore, the initial entry of the U.S. into the war had been singularly lackluster and by supporting Zionism Britain hoped to encourage American Jews to generate greater enthusiasm for U.S. efforts. At the same time Germany was bidding for Jewish support and Great Britain found the need to compete in the same arena. Finally and most significantly, the British government saw Palestine as a key area in the link between that nation and its interests in the Indian subcontinent. Their earlier secret agreement with France would internationalize Palestine and although Britain had acquiescenced in the Sykes-Picot Agreement, the fortunes of the day made a Jewish homeland in Palestine under British control eminently more palatable. Thus, the opportunity to show support for the Zionist Movement was directed not from humanitarian principles, but from the more pragmatic needs of the war.[4]

With these factors in mind it is easy to understand the British government's interest in negotiating with Dr. Weizmann and Nahum Sokolow of the World Zionist Organization with the goal of issuing some sort of declaration in support of Zionist claims which would, in turn, meet Britain's political needs. It seems fairly clear that the ultimate declaration was intended to be a quid pro quo arrangement and, as such, many prominent

British officials, Jews included, were opposed to the entire concept.[5]

During the negotiating phase, the anti-Zionist Jews of England were led by Dr. Edwin Montagu, the Secretary of State for India, and Mr. Claude Montefiore a prominent English Jew. The first draft of the declaration was written by the Zionists and presented to Lord Balfour. Its language was very strong in not only supporting a national home in Palestine but in the influence it gave to the Zionist Organization in terms of implementation. According to Professor W. T. Mallison, George Washington University, this draft was fundamental in outlining the three major objectives of the Zionists in their negotiations with the British Government.

> This draft contained three central Zionist objectives in the wording: "that Palestine should be reconstituted as the National Home of the Jewish people." The first objective was that the Zionist national home enterprise be "reconstituted," or established as a legal right, without regard to the existing rights of the Palestinian Arabs. The second objective was that all Jews (comprehensive claimed entity of "the Jewish people") be recognized in law as constituting a single nationality grouping. The third objective was that a juridical connection be recognized in law between "the National Home" and "the Jewish people."[6]

This draft was singularly unacceptable to anti-Zionists and Dr. Weizmann's opening gambit had to be diluted if he hoped to get any sort of declaration from the government.

However, the key change in the final wording was a result of efforts to meet both Jewish objections to Zionist claims to speak for all Jews and pro-Arab objections to British support for Zionist designs on Palestine without entirely negating support for the Zionist Organization. This draft, named after its author,

Lord Milner, included two key safeguards which Dr. Weizmann regarded as severely limiting to Zionist objectives. Essentially, it offered British support for a Jewish homeland in Palestine but insisted that such a homeland would neither jeopardize non-Jewish inhabitant's rights nor the rights of other Jews throughout the world who were satisfied with their current nationality. In fact, this draft not only seemed to preclude any concept of British support for a Jewish state vis-a-vis homeland in Palestine but also weakened the Zionist Organization's attempts to speak for all Jews throughout the world.

This was extremely important for several reasons. In the first place it admitted that Palestine was not an empty land, i.e. terra nullus, and that native Palestinians enjoyed certain protected rights. Secondly, by protecting non-Zionist Jews this declaration indicated that the political aspirations of Zionists were not supported by all Jews. Thus the tone of the document would seem to propose a religious or cultural home for Jews instead of a Jewish state. As such, it represented a victory for the assimilationists.

Dr. Weizmann and the Zionists were forced to live with this watered-down version when it was incorporated in the final draft because, in the face of strong anti-Zionist opposition, they knew they would obtain no further concessions and at least it constituted formal recognition of Zionist aims by a major world power.[7]

These two safeguard clauses which appeared in the final draft were to have singly important legal implications for the Palestinian Mandate.[8] Yet the Balfour Declaration as it stood at that time seemed to lack any legal force to make it an instrument of international law in two respects. On the one hand, the British Government lacked any judicial or political sovereignty in Palestine to make such a declaration and secondly, if it was intended to be a legally binding document upon all Palestine, it clearly violated the rights of the indigeneous population.[9] However, once the document was incorporated into the League of Nations Mandate for Palestine, it carried the weight of an international concensus regardless of the efficacy of such a document.

> Whereas the Principal Allied Powers have also agreed that the Mandatory should be responsible for putting into effect the declaration originally made on November 2nd, 1917, by the Government of His Britannic Majesty, and adopted by the said Powers, in favour of the establishment in Palestine of a national home for the Jewish people, it being clearly understood that nothing should be done which might 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.[10]

Since the Balfour Declaration was incorporated into the Mandate for Palestine, it becomes important to examine both the wording of the Mandate and compare it to the broader purpose of the League of Nations Charter.

The wording in the first part of the Declaration is vague and knowing that Montagu and Montefiore opposed this document, in toto, it is clear that a distinction was made between Zionism per se and Jewish people in the minds of these anti-Zionists.

Thus, while Balfour's introductory paragraph mentions "Jewish Zionist aspirations, the Declaration says only "Jewish people" and is vague enough to be interpreted to suit one's desires. However, there is absolutely nothing vague about the two safeguard clauses, which purport to guarantee the "civil and religious rights of existing non-Jewish communities in Palestine" and in addition, guarantee the "rights and political status enjoyed by Jews in any other country."

There two very specific guarantees become the focal point of Palestinian Arab objections to the "solutions" which followed in the wake of the League of Nations Mandate for Palestine and the ensuing conflict between Zionists and Arabs in Palestine. It is also interesting to note that the philosophy of these safeguards was the product of considerable debate within Parliament in London and the net result was that the legislative body refused to adopt the Balfour Declaration as part of the Palestinian Mandate.

> It should be mentioned that the English House of Lords opposed the incorporation of the Balfour Declaration in the Palestine mandate. In a debate in the House of Lords on 21 June 1922, on a motion declaring the mandate to be unacceptable in its present form, Lord Islington said that it directly violated the pledges made by His Majesty's Government to the people of Palestine. Moreover, its provisions concerning the establishment of a Jewish national home were inconsistent with Article 22 of the Covenant of the League of Nations, which had laid down the fundamental principles of the mandatory system.[11]

Lord Islington continued:

> The mandate imposes on Great Britain the responsibility of trusteeship for a Zionist political predominance where 90 per cent of the population are non-Zionist and non-Jewish....In fact, very many orthodox Jews, not only in Palestine but all over the world, view with the deepest misapprehension, not to say dislike, this principle of a Zionist Home in Palestine....The scheme of a Zionish Home sought to make Zionist political predominance effective in Palestine by importing into the country extraneous and alien Jews from other parts of the world....This scheme of importing an alien race into the midst of a native local race is flying in the very face of the whole of the tendencies of the age. It is an unnatural experiment....It is literally inviting subsequent catastrophe....[12]

Lord Isling's objections seem particularly accurate as the course of history has demonstrated; however, more than simple visceral reactions to the program were in evidence at that time. By incorporating the Balfour Declaration into the Palestine Mandate, the League created a legal conflict between support for a Jewish homeland in Palestine and protection for the rights of native inhabitants.

B. THE PALESTINE MANDATE

President Wilson's program of Fourteen Points made the Paris Peace Conference an arena of bitter contention. While the Allies were drawing up the League of Nations Charter in Paris, it become obvious to Wilson that unless he took steps to protect the former colonies of the Central powers, the Mandate system would merely transfer control from one European nation to another. Thus, he proposed a joint commission with members from France, Great Britain and the United States be sent to the Middle East to

ascertain the wishes of the indigeneous population before drawing up the Mandates for Syria and Palestine. Naturally, Great Britain and France, both of whom had specific designs in the Middle East, objected and refused to cooperate. Therefore, President Wilson formed his own commission which was headed by Dr. Henry C. King, President of Oberlin College and Mr. Charles Crane, a prominent American businessman.

This commission spent six weeks in the Spring and Summer of 1919 touring the area and interviewing the inhabitants. The results of these interviews indicated that the Syrian and Palestinian Arabs desired independence and union with Syria, Palestine and Lebanon. Failing this, they would accept a temporary mandate under the auspices of the United States or Great Britain but, in no way did they want France to be the mandatory power. The inhabitants were also unanimous in their opposition to Zionism and its aims.[13] However, the Arabs hoped that the principles of self determination, upon which the covenant rested, would protect their rights and negate the aims of the Zionists as supported by Great Britain in the Balfour Declaration.[14] Unfortunately, the results of the King-Crane Commission were clearly in opposition to the French and the British desires and were, therefore, ignored when the Palestinian Mandate was drawn up.

Since the preponderant desires of the inhabitants were singularly ignored in this fashion, and since the Palestinian Mandate as it was written, was clearly in violation of the principles of the covenant of the League of Nations, it would appear that the findings of the King-Crane Commission, which

were not even made public until 1922, demonstrated that the legal grounds for incorporating the Balfour Declaration as part of the Palestinian Mandate were nonexistent. It is not surprising, therefore, that the Palestinian Arabs found this Mandate to be a legal nicety for control of their territory by a European colonial power, and another link in a long chain of what they perceived to be imperialist domination of Arab lands.

By the Palestine Order in Council of August 10, 1922, Great Britain established an administrative structure over the mandated territory which was to grow increasingly bitter, pitting Arabs against Jews and British against both, until May 14, 1948, when the British, frustrated and bitter, withdrew leaving the inhabitants to their own devices. Again, to demonstrate the impact of the Balfour Declaration, the wording of that document also found its way into the introduction to the British Order in Council of August 10, 1922, as part and parcel of the avowed purpose of the Order in Council and the British authority in Palestine.

> And whereas the Principal Allied Powers have also agreed that the Mandatory should be responsible for putting into effect the declaration originally made on November 2, 1917, by the Government of His Britannic Majesty, and adopted by the said Powers, in favour of the establishment in Palestine of a national home for the Jewish people, it being clearly understood that nothing should be done which might 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.[15]

C. THE CHURCHILL WHITE PAPER

Even before the Mandate was completed as a public document, Arab reaction to the Balfour Declaration and the direction the draft Mandate was taking prompted anti-Jewish disturbances and Arab protests. Concerned with Arab reactions, Mr. Winston Churchill, Secretary of State for the Colonies, issued a statement of British policy concerning Palestine which was to be known as the Churchill White Paper. The statement, issued on June 3, 1922, attempted to walk a tight line between Zionist aspirations and Arab fears. The first part of the memorandum dealt with the meaning of the wording of the Balfour Declaration and rumors that the Zionists planned to create a Jewish state in Palestine. In addition, it addressed the content of the draft Mandate particularly the relationship between the Mandate Government and the Jewish Agency.

The Palestinian Arabs were justifiably concerned that while the Jewish Agency was specifically mentioned in the Mandate, there was only a vague reference to the non-Jewish population and no provision which specifically identified that population and its interaction with the mandatory Government. Secretary Churchill assured the Arab Delegation, which had visited London concerning these fears, that they were unsubstantiated. He went on to identify the Jewish Agency as not a member of the Government with any specific powers but merely an organization to provide an interface between the Jewish population in Palestine and the Mandatory Government. In addition, he identified the fact that a Jewish National Home merely meant a home

"in Palestine" not a Jewish State. He even went so far as to quote the Zionist Congress and its resolution in September of the previous year to live in "unity and mutual respect" with the Arabs in Palestine, and create a thriving, growing community responsive to the national development goals of both.

Having addressed what he considered to be unfounded Arab fears about the meaning of the Balfour Declaration and the draft Mandate, Secretary Churchill went on to assure the Zionists that this statement in no way altered the intentions of his Majesty's Government concerning the policy of the Balfour Declaration. In so doing he addressed the need to provide protection for the Jewish community in Palestine as a religious and cultural home for Jews of the world and states that immigration was a necessary method of ensuring that this community would grow and remain healthy. The oft repeated phrase of "immigration not to exceed the economic capacity of the country" was used here to ensure that a policy of Jewish immigration would continue as part of the Mandate but also to assure the Arab community that they would not suffer economically as a result of this immigration. In this regard, Churchill also promised that when immigration numbers and policy became an issue between the different communities in Palestine, the Mandatory Government through the British Government would bring the issue before the League of Nations.

Finally, the statement addressed the Arab's demand for compliance with the McMahan-Hussein letter of October 24, 1915, in which the British High Commissioner in Egypt promised King Hussein an independent Arab nation upon the successful conclusion

of the First World War. The statement made it clear that Palestine was not part of that agreement and that while this was a verifiable fact, the British Government intended to aid Palestine in establishing a fully independent government but that this had to be accomplished in stages in cooperation with the Mandatory Government and a Legislative Council.[16]

The problems addressed in the Churchill White Paper continued to crop up time and again and yet the British's attempts to address them appeared disjointed and at cross purposes. The importance of this document was that it represented the earlier attempts immediately after the Balfour Declaration to deal with a workable interpretation of that document which would encourage both Arabs and Jews alike that both people could live harmoniously in Palestine.

In this document as in the report of the King-Crane Commission mentioned earlier, one can see the growing Arab resentment toward the British handling of problems between Arabs and Zionists in Palestine. One can also see in the wording of the document that the Zionist lobby in London had a much stronger influence in the British Government than did the Arab lobby.[17] While Churchill addressed Arab concerns, he was more explicit in spelling out the policy which the British would follow regarding the Jews. From the Balfour Declaration to the actual Mandate, the vagueness of the Declaration changed considerably. In fact, as Professor Khouri indicates in his book, The Arab-Israeli Dilemma, the transition from the vague policy statement of the Balfour Declaration to the binding pledge of the internationally

recognized Palestine Mandate provided strength and specific purpose to Zionist claims.

> Initially the Balfour Declaration was only a vaguely worded promise made in a letter to Lord Rothschild. However, when the Palestine Mandate Agreement between Britain and the League of Nations was signed with the Balfour Declaration incorporated into it, the Zionists acquired their first internationally binding pledge of support; consequently, their political claims to Palestine were greatly strengthened. In fact the mandatory agreement was framed largely in the interest of the Jews. For example, it provided for (1) the incorporation of the whole of the Balfour Declaration; (2) the recognition of the "historical connection of the Jewish people with Palestine;" (3) the establishment of a Jewish agency to be "recognized as a public body for the purpose of advising and cooperating with the Administration of Palestine in such economic, social, and other matters as may affect the establishment of the Jewish population in Palestine;" (4) the facilitation of Jewish immigration and the "close settlement by Jews on the land," provided that the mandatory insures "that the rights and position of other sections of the population are not prejudiced;" (5) the right of each community to maintain its own schools; and (6) the use of Hebrew, as well as Arabic and English, as official languages."[18]

Thus, documents such as the Churchill White Paper attempted to ameliorate Arab distrust of British intentions without incurring Zionist wrath over seeming British deviation from the promises initiated with the Balfour Declaration. Even so, neither side was satisfied with the White Paper and Zionists actually maintained that it was a step backwards from the promises of the Balfour Declaration.

D. PALESTINE FROM 1922 TO 1931

The period from 1922 until the outbreak of World War II saw an increasing level of violent activity between the Jewish and

Arab communities in Palestine and British efforts to administer the Mandate and reconcile both sides became progressively inept. Whenever trouble erupted in Palestine, the British government reacted by sending a royal commission to investigate the problem and provide recommendations for a peaceful solution. In each case, these commissions were able to provide a significantly detailed description of the problems and recommend seemingly perceptive solutions and in each case the colonial office issued statements of policy which angered both sides and served merely to enflame the issue. Furthermore, the Mandatory Government appeared particularly inept in implementing that policy thus exacerbating the conflict without arriving at a solution which would remotely please either side. This was the case in the Shaw and Hope-Simpson Royal Commissions which were sent to Palestine in 1929 and 1930 respectively as a result of violent clashes between Arabs and Jews.

The Shaw and the Hope-Simpson Commissions identified the basic Arab complaints which revolved around three issues. First, the policy of Jewish immigration coupled with land purchases created an atmosphere in which the Arabs saw themselves as slowly being removed from their own country and being made a minority in the process. Second, the Arabs feared the economic domination of the Jews, many of whom were better educated and more wealthy than the indigeneous Arab population. In addition, the Zionist policy of excluding Jewish lands from being sold to Arabs as well as discriminatory hiring practices contributed to Arab resentment. Finally, the Arab community felt that whenever the issues were brought

to London, the British Government showed a marked sensitivity to Jewish pressure and little inclination to produce anything more than lip service to Arab requests.[19] The reports which emanated from these two Royal Commissions produced a new policy statement in London called the British White Paper of 1930 or the Passfield White Paper.

The Passfield White Paper (1930) was the first serious attempt to address Arab problems in Palestine in that it attempted to solve the problems uncovered by the Commissions instead of merely placating the Arabs with vague assurances. It divided the problem into three areas and made detailed descriptions of these problems and proposed solutions. The three problem areas were security, constitutional development, and economic and social development.

In addressing the security problem, this paper was quite concise stating that the Mandatory Government would ensure the peace and would provide the necessary force level to accomplish that task.

Concerning constitutional development, the paper chided the Arab community for its adamant position of noncooperation and reiterated the Mandatory Government's intention to set up a Legislative Council to effect progress toward Palestinian self-government.

Finally, in the area of economic and social development the Passfield White Paper further subdivided this problem area by land, agriculatural development and immigration. The most telling part of this document addressed the incompatibility of certain Zionist policies with the terms of the Mandate. In

addition to stating that there was little or no cultivated land remaining to be purchased by Jewish organizations and that further attempt by Jewish agencies to purchase land would dispossess the indigenious Arabs, it specifically identified the constitution of the Jewish Agency as incompatible with the requirements of cooperation and fair treatment set forth in the Mandate.

> 19. Moreover, the effect of Jewish colonization on the existing population is very intimately affected by conditions on which the various Jewish bodies hold, utilize and lease their land....
>
> These stringent provisions are difficult to reconcile with the declaration at the Zionist Congress of 1921 of "the desire of the Jewish people to live with the Arab people in relations of friendship and mutual respect, and, together, with the Arab people, to develop the homeland common to both into a prosperous community which would ensure the growth of the peoples....
>
> However logical such arguments (Jewish Agency justification) may be from the point of view of a purely national movement, it must, nevertheless, be pointed out that they take no account of the provisions of Article 6 of the Mandate, which expressly requires that, in facilitating Jewish immigration and close settlement by Jews on the land, the Administration of Palestine must ensure that "the rights and position of other sections of the population are not prejudiced.[20]

In addition, the White Paper stated that in order to improve agricultural development further land transactions and development would come under the Palestinian Administration. Finally, the problem of unemployment in both the Jewish and Arab communities appeared to be directly related to unrestricted Jewish immigration and, in view of the fact that this unemployment problem indicated that the economic absorbative

capacity of the country had been temporarily exceeded, no further immigration certificates would be issued until the situation began to sort itself out.[21]

Needless to say, this document created an outcry in the Zionist organization and the resultant pressure in London forced the Prime Minister, James Ramsey MacDonald, to write a letter to Dr. Chaim Weizmann explaining the British Government's position. In this letter, the Prime Minister took pains to point out that the Passfield White Paper was not inconsistent with the requirements of the Mandate and that the Mandatory Government was acting within its authority. By stating that "His Majesty's Government did not prescribe and do not contemplate any stoppage or prohibition of Jewish immigration in any of its categories,"[22] Prime Minister MacDonald attempted to mitigate the effects of the statement in the Passfield White Paper concerning the suspension of immigration, which stated: "It may here be remarked that in the light of the examination to which immigration and unemployment problems have been subjected, His Majesty's Government regard their action in the suspension of immigration under the Labor Schedule last May as fully justified."[23]

Clearly the Prime Minister, under extreme pressure from the Zionist lobby in London, was trying to placate both sides and, in fact, satisfied neither. This attitude of vascillation concerning the British administration of the Palestinian Mandate was to create more problems than it attempted to solve.

E. PALESTINE FROM 1931 TO WORLD WAR II

Between 1931 and 1939 Arab fears of Zionist intentions greatly increased largely due to increased immigration patterns which were brought about as a result of Hitler's systematic persecution of Jews in Europe.

> The Arab majority opposed the steady influx of Jewish immigrants but did not react severely while their average annual number was below 10,000 persons. They became alarmed and provoked, however, during the early years of Nazi rule in Germany, when the numbers rose to 30,000 in 1933, 42,000 in 1934 and more than 62,000 in 1935. It was estimated that if this rate of immigration continued, the Jews would become the majority by 1947.[24]

Until 1936, the Arab majority in Palestine had proven to be politically inept for a variety of reasons. However, their primary inequality was due largely to their lack of higher education, technical expertise, wealth and political sophistication as compared to their Jewish counterparts who were, for the most part, new immigrants from the more advanced European nations. Furthermore, the Turkish millet system had created a socio-political structure which emphasized the differences among the indigeneous population and therefore, created a long tradition of ethno-religious separateness. Thus, the Arab Palestinians, often unable to unite in any concerted effort for an appreciable length of time, proved to be their own worst enemy.

It was not until 1936, primarily in response to rapidly increasing Jewish immigration, that the various Arab Factions joined to form the Supreme Arab Committee which later became

the Arab Higher Committee. This organization called a general strike of Arabs in Palestine and began a campaign of terror and guerrilla warfare. This period of fighting between Arabs and Jews, often referred to as the Arab Rebellion, was the primary impetus for the next Royal commission to investigate the rioting, the Peel Commission which arrived in late 1936 and departed in the Winter of 1937. In the meantime the fighting was bitter and well organized. The Jewish community, more well-prepared than during the 1929 riots, protected itself with a well-trained defense force, the Haganah. At the same time, the Arab community, for the first time, had the combined support of its neighboring Arab leaders.

The Peel Commission, in its report to the British Government, confirmed the Shaw and Hope-Simpson Commissions, in repeating that the source of the Arab Palestinian grievances was predominantly the fears that Jewish immigration and land purchases were driving the indigeneous Arab population into a minority situation if not out of the land.[25] However, the Peel Commission went a good distance farther in declaring that these differences were irreconcilable and recommending partition of Palestine into Arab and Jewish states as the best solution.[26] The Twentieth Zionist Congress meeting in August-September, 1937, rejected the Peel Commission Report and blamed the Palestine Administration for the difficulties between Arabs and Jews. However, it did empower the Executive to negotiate with the British Government concerning the establishment of a Jewish state.

Arab resistance continued and the Government took strong measures to curtail Arab activity including arrest and deportation of many of the Arab leaders. Though unified for the first time, this Arab Palestinian nationalist movement soon found itself leaderless and despondent, having been successfully crushed by British countermeasures.[27] It was during this time that His Majesty's Government dispatched another commission to provide a more thorough investigation of the possibility of partition as a solution to the problems in Palestine. In February and March, 1939, the British Government, in an attempt to bring the opposing sides together chaired a conference which was composed of American, British and European leaders as well as Zionists and Palestinians. However, not only were there difficulties in obtaining spokesmen for the Palestinian contingent since many of their leaders were jailed or in exile but the Palestinian delegates refused to sit in the same room with the Zionists. In any case, neither side would concede and the London Conference was stillborn.[28]

In May 17, 1939, the British Government issues a new Palestine Policy Statement referred to as the MacDonald White Paper. In this statement, His Majesty's Government acquiesced to a number of Arab demands concerning future self-government and Jewish immigration and land sales. Specifically, the government rejected the idea of partition as unworkable and stated its goal of an independent Palestine within ten years linked to Great Britain through treaties. Furthermore, the government limited Jewish immigration to 75,000 over the

following five years after which no further Jewish immigration will be allowed without Arab approval. Finally, the statement declared a policy of restricting land sales to Jews in some areas, and prohibiting the sale of land in other areas.[29]

Quite naturally, the Zionists vilified the British Government and the White Paper alienated the entire Jewish community and produced terrorist activity by Jewish militant groups.[30]

F. PALESTINE FROM WWII TO THE BIRTH OF ISRAEL

When war broke out in Europe in 1939, the Arabs and Jews were unreconciled but an informal truce was observed by all sides. The British tried to enforce the White Paper policy but the terrors of the holocaust greatly increased illegal immigration to such a degree that it more than equaled the legal quotas.[31] At the same time, even opposed to British policy as they were, the Zionists were forced into the allied camp by Hitler's excesses. Dr. Weizmann continually pressured the British to allow the Zionist to form a Jewish brigade but until 1944 His Majesty's overnment would allow Jews to be inducted into the British Army but not fight as separate units. Nevertheless, Palestinian Jews enlisted in large numbers. Equally, their Arab counterparts were less inclined to extend their truce to such a degree, inasmuch as their principle leader, the Grand Mufti of Jerusalem al-Haj Muhammad Amin al-Husseini, forced to flee Palestine by the British during the Arab Rebellion, arrived in Germany in the beginning of the war

pledging to end British imperialism.[32] However, two extremist Jewish groups the Stern Gang and Irgun Zvai Leumi continued harrassing terrorism against the Mandatory Government to a limited degree. By 1944 the Middle East was no longer under serious threat from the Axis powers and both sides began to prepare for the resumption of hostilities that the end of the war would inevitably bring. The Irgun and Stern Gang stepped up their terror of both the British Mandatory Government and the Arab community in Palestine.

During the war in 1942 the American Zionist Organization drafted a declaration at New York in the Biltmore Hotel which was ultimately adopted by the World Zionist Organization. Known as the Biltmore Program, it began by repudiating the White Paper of 1939 and called for increased Jewish immigration controlled by the Jewish Agency, the formation of a Jewish state and a Jewish Army.[33] This document was to be the basis for future Zionist activity in Palestine. The Biltmore Program coupled with the urgency of solving the problem of displaced persons, largely European Jews, in post-war Europe gave renewed vigor to Zionist ambitions and Jewish guerrilla activity increased against the British. Interestingly enough, American immigration policies at this time contributed significantly to the problem. President Truman was unwilling to revise the immigration quotas upward to relieve this pressure in Europe and David Ben-Gurion, the leader of the Jewish Agency, favored the President's policy since he was vitally concerned with increasing the Jewish population in Palestine. The United States was, by far, the first choice of most European refugees

and this restrictive policy made Palestine the only other logical choice for displaced Jews.[34]

Between October and December, 1945, a devastating series of guerrilla raids on British forces and communications facilities, coordinated between the Palmah (Haganah commandos the Irgun, led by Manahem Begin, and the Stern Gang, led by Nathan Friedman-Yellin, demonstrated the Zionist's determination to have their way in Palestine and the cost to the British Government, already suffering from the ravages of World War II.[35]

Arab pressure against Jewish immigration on the one hand and American insistence on a solution acceptable to Zionists on the other forced the British to request an Anglo-American Committee of Inquiry in an attempt to remedy a steadily deteriorating situation in Palestine. This committee met in London in 1946 and delivered ten recommendations which inter alia called for the issuance of 100,000 certificates of immigration for displaced Jews, stated that the concept of a partitioned Palestine was unworkable, that the Mandate be continued under U.N. Trusteeship and the current land sale policy be rescinded in favor of a free market policy without regard for race, community or creed.[36]

Increased violence in Palestine and Arab solidarity against these recommendations forced the Committee to propose a partition plan called the Morrison-Grady Plan. This was rejected by both sides but the Jewish Agency re-wrote the plan in an effort to gain acceptance of a Jewish state satisfactory to their needs. This plan, as all partition plans, proved unacceptable to the Arab leaders and as violence continued, the British, in desperation turned to the United Nations.

Foreign Minister Bevin indicated that Great Britain would follow any decision reached by the United Nations and indicated that the British Government would soon give up the mandate. The United Nations General Assembly organized the United Nations Special Committee on Palestine (UNSCOP) to investigate the problems and make recommendations. After visiting Palestine in the Summer of 1947 and witnessing numerous acts of violence and terrorism, largely by Jews against the British, UNSCOP returned to Geneva to draft its decisions. The Special Committee drew up two partition plans known as the Majority Plan and the Minority Plan.

The Majority Plan called for separate Jewish and Arab states with an economic union and an internationally supervised area of Jerusalem and Bethlehem. The Minority Plan proposed a single federated state divided into autonomous Jewish and Arab cantons. The Zionists favored the Majority Plan because it gave them an independent Jewish State while the Arabs opted for the Minority Plan since it would create a single state in which they would be the predominant influence in view of their larger population base.[37] In November 1947 the two plans were brought before the General Assembly for a vote. After significant debate and pressure exerted on all sides the Majority Plan was finally adopted.[38]

Soon after the Partition Plan of 1947 was adopted and the British Government was directed to implement it, serious fighting broke out. By early 1948, the fighting had escalated to full scale civil war and Haganah Irgun and Stern Gang activities against both Arabs and British reached frightening

proportions. By February 1948, it was rapidly becoming obvious that the levels of fighting were becoming a serious problem for British morale. At home, citizens began to clamour for the army to pull out and atrocities built upon atrocities. Typical of the excesses of the Jewish extremist Irgun was the massacre of 250 men, women and children in the Arab town of Deir Yassim as a means of frightening the Palestinian Arabs into fleeing the country.[39]

As early as February, 1947, the U.S. government recognized that the antagonism between Arabs and Jews, fostered by years of bitter fighting, would not allow the Partition Plan to succeed. Coupled with the fact that in mid-December, 1947, the British Government had announced its intention to pull out of Palestine by May 14, 1948, the American Ambassador to the U.N. proposed a U.N. trusteeship to oversee Palestine until a viable solution could be reached. The Jewish Agency decried this proposal as a "shocking reversal" of U.S. policy and even U.N. delegates supporting the Majority Plan on behalf of the U.S. were surprised.[40]

While the debate raged in Lake Success, N.Y., the fighting intensified to full scale war in Palestine and by May, 1948, over 150,000 Arab Palestinians had fled the area. As they had declared earlier, the British pulled out of Palestine on May 14th and at the same time the Provisional Government of Israel led by David Ben-Gurion declared the establishment of the State of Israel.[41] Within minutes President Truman gave de facto recognition of the new state and thereby destroyed his own delegation's support at the U.N. which was close to

establishing a U.N. trusteeship in Palestine. Furthermore, he severely weakened the U.S. delegation's position in the U.N. vis a vis other friendly nations.

> ...We said that it was our best estimate that the recognition of the provisional government of Israel last Friday evening had deeply undermined the confidence of other delegations in our integrity and the Department should keep that fact in mind. A large number of delegations believed that recognition constituted a reversal of United States policy for truce plus trusteeship as urged in the special session and, in later stages, our compromise plan for truce plus mediation. In our previous efforts to secure a truce both in the Security Council and in formal negotiations, the U.S. delegations had heavily emphasized that there should be no action of a political character that would alter the status quo or prejudice the rights, the claims, or the position of Arabs or Jews. This position of ours was generally understood to apply primarily to the establishment of the Jewish state.[42]

The political nature of President Truman's posture is clearly evident in Ellis' book, The Dilemma of Israel:

> President Truman asked for the diplomats' (American diplomats stationed in the Middle East) views on the effects of American policy in Palestine. The substance of what the diplomats said was that American relations with the Arabs would be gravely jeopardized by on-sided partiality to the Zionists. "Mr. Truman, 'wrote Colonel Eddy,' summed up his position with the utmost candor: 'I'm sorry, gentlemen, but I have to answer to hundreds of thousands who are anxious for the success of Zionism: I do not have hundred of thousands of Arabs among my constituents.'"[43]

Having thus lost any hope of support for the proposal of a U.N. Trusteeship with an international police force, the U.S. delegation continued to extol the need for a truce and a U.N. mediator and Count Folke Bernadotte was appointed to that position on May 20, 1948.[44]

In the meantime, intense fighting continued in Palestine and initially the military situation for Israel appeared grim especially on the eastern area where the Arab Legion had pushed within ten miles of the Mediterranean Sea threatening to cut the new state in two. A U.N. negotiated ceasefire scheduled to last for four weeks gave both sides breathing time but worked to Israel's advantage and against the Arabs. While Israel increase in military strength (in violation of the cease-fire) and political coordination, the Arab side's political front deteriorated as a result of contending views of King Abdullah of the Hashimite Kingdom of Transjordan and the Mufti.

Count Bernadote's proposals for a peaceful settlement met with sharp disagreement from the Zionist and Arab camps even though the major powers were able to reach a limited agreement in the U.N. The major striking point in the Arab world was the proposed annexation of Arab Palestine by Transjordan. King Abdullah favored this idea while the other Arab state wanted an independent Palestine. (In 1950, when the issue had quieted down somewhat, King Abdullah annexed the West Bank). The Zionists, on the other hand, claimed that the partition proposal did not leave them with enough land.[45]

Fighting broke out again at the end of the truce period but a second truce was quickly negotiated, however, violations continued as the Israelis became disenchanted with U.N. activities and decided that the only way to ensure U.N. recognition was to provide the world with a fait accompli.[46]

On September 17, Count Bernadotte was assassinated in Jerusalem by a member of the Stern Gang and the situation gradually degenerated into full scale fighting by mid October. Dr. Ralph Bunche was replaced as U.N. negotiator. Fighting continued with a marked change in the military situation as a result of the Zionist's recruitment and re-armament efforts during the truce. By January 1949, Egypt was suffering significant defeats at the hands of the Israelis and decided for a variety of reasons to enter into armistice negotiations. The other confrontation states realizing the futility of carrying on without Egypt soon entered into separate armistice negotiations with Israel and by April 13 a permanent ceasefire was in effect.[47]

In the meantime, Israel was greatly interested in achieving membership in the U.N. as a means of obtaining international recognition as a sovereign state within the family of nations. Philip Jessup takes pains to point out this fact in his book, The Birth of Nations.

> The question of recognition and eventually of admission to membership in the United Nations was considered very important by the new State of Israel."[48]

At the end of April 1949, Israel had significantly expanded her borders beyond those set forth in the Partition Plan of 1947. From 1949 on, hostilities between the Arab nations and Israel continued with another major war breaking out in 1956. However, nothing changed the face of the state of Israel as much as the June 1967 war which not only substantially increased the amount of territory in Israeli hands but, due to the apparent ease of victory, devastated the Arab self-image.

G. ARAB-ISRAELI WAR OF JUNE 1967

Through March and April of 1967, border tensions between Israel and Syria increased with both sides claiming border violations. The fighting excalated and on April 7, Israel claimed to have downed six Syrian Migs while Syria claimed to destroy five Israeli aircraft. Raids continued across the northern and western borders of Israel by fadayeen guerrillas and Israeli retaliatory strikes, while understandable, were far more severe and merely exacerbated the situation. By May 15, the UAR had put its forces on alert and Arab news agencies, by their reporting, forced the confrontation states into more militant action. For example, on the same day, the Syrian Arab News Agency reported that Israel and Jordan border guards and intelligence officers had an agreement of "hot pursuit" in which either side would penetrate the other's borders for up to three kilometers while chasing fadayeen guerrillas. Whether true or not at the time, it certainly put Jordan on the defensive within the Arab states. By May 17, the stage within the Arab World was set. The UAR requested that all U.N. Emergency Forces be evacuated and Syria and Jordan announced that all forces were on full alert. On May 20, the Arab League Council announced full Arab unity; an attack on any Arab state would be considered an attack on all Arab states. Thus, all that remained for war was an incident which Egypt provided by occupying Sharm el-Shaykh and closing the Gulf of Aqaba to all shipping bound for Israel carrying strategic goods. All

All attempts by U.N. and United States officials to ease tensions were to no avail.[49] By June 5, the inevitable happened. Israel, under increasing military pressure from all sides, launched a preemptive air attack which devastated the Egyptian Air Force. Within hours massive ground forces were engaged on all fronts. By June 8, Egypt accepted the U.N.'s call for a cease fire and on June 9, Syria also agreed. By June 11, almost all of the hostilities had ended and Israel now found itself occupying land almost four times the size of its original borders. Suddenly Israel's control extended from the Suez Canal to the Jordan River and north to the Golan Heights.[50]

After the initial flush of victory wore off, Israel settled down to some serious problems. With the increase of its borders came the concommitant problem of dealing with the Arab occupants, over one million people hostile to the occupying power. Thus, while the external security threat had been neutralized, albeit temporarily, the internal security threat increased with the border shift and sudden population growth. In addition, on November 22, the U.N. Security Council adopted U.N. Resolution 242 calling for Israel to withdraw from the Occupied Territories as a pre-requisite for peace in the embattled area. This resolution was accepted by the vast majority of U.N. members thus applying significant international pressure for Israel to return to its pre-war borders. As time wore on, this resoltuion had substantial influence on Israel, both internally and externally.

H. CONCLUSIONS

Numerous events in the Arab World such as the rise of Nasir in Egypt and his subsequent death in 1970, the fall of the Hashimite Kingdom in Iraq in 1959, the Czech Arms deal with Egypt in 1956 and the bergoning influence of the Soviet Union in Syria, Iraq and Egypt, the switch in Egyptian foreign policy from Soviet influence to closer U.S. ties under President Sadat and the October 1973 War have all had significant influence in the domestic and foreign policies of Israel. However, the situation on the ground has changed little since June, 1967. Yet, the single most important event in recent times has been Egyptian President Sadat's visit to Jerusalem in November 1977. This face to face meeting between President Sadat and Prime Minister Begin, while vilified within the Arab World, has created the first real hope for peace in the Middle East in the last three decades. The subsequent talks initiated by President Carter at Camp David, Maryland, between Sadat and Begin have been both a source of hope and fear. While the issues between Egypt and Israel over the Sinai appear relatively easy to resolve the question of a Palestinian homeland on the West Bank and the Gaza Strip is proving to be particularly difficult. However, the fact that these discussions are taking place indicated that for the first time since Palestine was separated from the Ottoman Empire the concept of a separate Palestinian state and its legal implications can be realistically explored.

II. THE LEGAL IMPLICATIONS OF SELECTED DOCUMENTS IN THE PALESTINIAN SITUATION

A. FROM BALFOUR DECLARATION TO LEAGUE OF NATIONS MANDATE

Having provided a brief background of some of the more salient legal documents dealing with Palestine in their historical context, this chapter will now analyze the legal implications of these documents operating from the basic assumption that a Palestinian state exists. In so doing, the more pertinent questions such as the state's right to exist, the derivation of its sovereignty, the limits of its sovereignty and related questions concerning citizenship and ability to enter into international agreements will be addressed.

In dealing with the first document, the Balfour Declaration of November 2, 1917, which recognized Zionist interests in Palestine, there is little disagreement with the contention that it is not a legal paper designed to give the Jews sovereign title to any part or all of Palestine. It is merely a statement by the British Government of its intention to support the establishment of a Jewish homeland in Palestine. There is nothing within the text of that statement which indicates or obligates Great Britain to follow a particular course of action or, for that matter, to do anything other than provide moral support. To quote Nathan Feinberg in his essay, "Sovereignty Over Palestine:"

> ...The Balfour Declaration was never intended to determine the fate and future of Palestine. All that that document provided was that His Majesty's Government view with favor the establishment in Palestine of a national home for the Jewish people and will use its best endeavours to facilitate the achievement of this object...There was nothing at all wrong in giving such a promise. It was no more an infringement of international law than giving promises to the Arabs and other nations during the War.[51]

However, one item seems to be continually overlooked and that is the fact that in this document the British actually made several promises of an important nature. Not only did His Majesty's Government promise to facilitate the establishment of a national home for Jewish people in Palestine, but it also promised that in so doing it would not "prejudice the civil and religious rights of existing non-Jewish communities in Palestine...."[52] This is a key promise inasmuch as there is a question of execution under such circumstances.

As indicated in Chapter I of this paper, the farmers of the Balfour Declaration recognized that in making such a declaration they were walking a fine line between Zionist hopes and Arab aspirations for an independent state. Thus, the "safeguard clause" concerning the rights of non-Jews in Palestine was deemed necessary and perhaps, therein lies the basic difficulty. While the promise to support Zionist goals in Palestine is extremely vague in that nothing definitive is set down on paper in that declaration, the promise to refrain from prejudicing the rights of non-Jews is much sharper. By the time the British Government wrote the Balfour Declaration it had established a very clear idea of what constituted human rights. Therefore, any attempt to claim that this

safeguard clause is as vague as the promise to assist Zionist is not founded in legal reality. Oppenheim's International Law, Vol. I, states the case quite clearly:

> ...(T)he various treaties - such as those concluded at the Berlin Conference in 1878 or on the termination of the First World War - for the protection of religious and linguistic minorities signified the tendency to extend recognition, by means of international supervision and enforcement, to the elementary rights of at least some sections of the population of the State.[53]

It further states that:

> Since the Virginian Declaration of Rights of 1776, the American Declaration of Independence and the Bill of Rights in the form of the first ten Amendments to the Constitution, and the Declaration of the Rights of Man and the Citizen adopted in 1789 by the French National Assembly, the express recognition and the special protection of fundamental rights of man in the constitutions of various States have become a general principle of the constitutional law of civilized States. In Great Britain, where the system of a written constitution superior to the ordinary law of the land is unknown, the same result was achieved in a different way.[54]

The author goes on to point out that the British tradition of rights of the individual began with the Magna Charta in 1215 and continued with the Petition of Right in 1628 and the Bill of Rights and Act of Settlement in 1689. It would appear that the British Government had a reasonably clear and definitive idea of what was promised in safeguarding the civil and religious rights of non-Jews in Palestine.

Since this was the case at the time of the Balfour Declaration, it would seem that the options available to the British Government in assisting the Zionist Organization in establishing a national home for Jews in Palestine were limited by the safeguard clause and not the other way around.

However, as stated earlier, the Balfour Declaration was merely a policy statement and not necessarily a legal document in the sense that it bound the British Government to perform certain acts on behalf of the Zionist Organization. While there are several theories concerning the binding power of declarations, O'Connell in his book, International Law, states that two tests may be used to determine the legal commitment of a declaration. The first is the precision of language used and the second is the power of the negotiators to commit their countries to a stated purpose.[55] Oppenheim is more firm when he states that "(a) mere general statement of policy and principles cannot be regarded as intended to give rise to a contractual obligation in the strict sense of the word."[56]

Applying the above tests to the Balfour Declaration would seem to indicate that its vagueness negates any support for it as a legally binding document. Yet, it was vitally important to the Zionists in that, first, it gave formal recognition to the goals of that organization and second, it was incorporated into the wording of the Palestine Mandate and this did have a significant legal effect. Furthermore, it was also the basis for several other declarations in favor of a policy supporting a Jewish homeland in Palestine and finally it was incorporated into the preamble of the Palestine Order in Council of August 10, 1922, establishing the structure of the Mandatory Government. Thus, the British Government could not be legally required to comply with a mere policy statement, however, the Palestine Mandate and the Palestine Order in

Council of August 10, 1922, are two documents which impose much more stringent legal obligations.

The fact that the Palestinian Mandate is a law-making treaty is difficult to discredit. Again Oppenheim points out the distinction of treaties and their import.

> ...(T)here is one distinction to be made which, though theoretically faulty, is of practical importance, and according to which the whole body of treaties is to be divided into two classes. In one class are treaties concluded for the purpose of laying down general rules of conduct among a considerable number of states. Treaties of this kind may be termed law-making treaties...[57]

In the "South West Africa Cases" the International Court of Justice reaffirmed this position in its finding.

> ...(As to the objection that the Mandate had never been or was, since the dissolution of the League, no longer a treaty in force, the Court points out that) for its conformation, the Mandate for South West Africa took the form of a resolution of the Council of the League but...(i)t cannot be correctly regarded as embodying only an executive action in pursuance of the Covenant. The Mandate, in fact and in law, is an international agreement having the character of a treaty or convention. The Preamble of the Mandate itself shows this character.[58]

The Court also stated:

> The first-mentioned group of obligations are defined in Article 22...and in Articles 2-5 of the Mandate. The Union (of South Africa) undertook the general obligation to promote to the utmost the material and moral well-being and the social progress of the inhabitants...
>
> These obligations represent the very essence of the sacred trust of civilization. Their reason d'etre and original object remain. Since their fulfillment did not depend on the existence to the League of Nations, they could not be brought to an end merely because their supervisory organ ceased to exist. Nor could the right of the population to have the Territory administered in accordance with there rules depend thereon.[59]

Thus one can see that the transition from a mere declaratory policy to a law-making treaty was an enormous and far reaching step for the Zionist cause in Palestine. By accepting the Mandate for Palestine the British Government was now responsible by law to submit to the supervision of the Council of the League in administering the Mandate. Furthermore, this obligation did not end, as stated in the South West Africa Cases, with the dissolution of the League of Nations. The duties of the Mandate continued to bind His Majesty's Government and the supervisory role was adopted by the United Nations.

> The obligation incumbent upon a mandatory State to accept international supervision and to submit reports is an important part of the Mandates System. When the authors of the Covenant created this system, they considered that the effective performance of the sacred trust of civilization by the mandatory powers required that the administration of mandated territories should be subject to international supervision. The authors of the Charter had in mind the same necessity when they organized an International Trusteeship System. The necessity for supervision continues to exist despite the disappearance of the supervisory organ under the Mandates System. It cannot be admitted that the obligation to submit to supervision has disappeared merely because the supervisory organ has ceased to exist, when the United Nations has another international organ performing similar, though not identical supervisory functions.
>
> Those general considerations are confirmed by Article 80, paragraph 1, of the Charter, as this clause has been interpreted above. It purports to safeguard, not only the rights of States, but also the rights of the peoples of mandated territories until Trusteeship Agreements are concluded...
>
> The competence of the General Assembly of the United Nations to exercise such supervision and to receive and examine reports is derived from the provisions of Article 10 of the Charter, which authorizes the General Assembly to discuss any questions or any matters within the scope of the Charter and to make recommendations on these questions or matters to the members of the United Nations...

> For the above reasons, the Court has arrived at the conclusion that the General Assembly of the United Nations is legally qualified to exercise the supervisory functions previously exercised by the League of Nations with regard to the administration of the Territory....[60]

It then becomes clear that the Balfour Declaration as incorporated into the Palestine Mandate became effectively an instrument of international law and that the force of this law continued through the dissolution of the League of Nations and on into the Charter of the United Nations, and that the British Government, as the mandatory power, was bound by the articles of that mandate to comply with all the provisions set forth in the mandate. The question then becomes: How well did Great Britain, as the mandatory power, comply with the provisions of the Mandate?

There is little doubt that at the end of World War I President Wilson's ideas of peace and a new world order in which aggressive colonialism was to be subplanted by the concept of free peoples to determine their own national fate was the cornerstone of the League of Nations. His famous Fourteen Points Speech began the process of negotiations at Paris to determine the fate of colonial territories.

> The peace treaties concluded after the end of the first World War were under the ideological impact of Woodrow Wilson's 'principle of self-determination of nations;' under this inspiration new states were created, existing ones expanded and the Austro-Hungarian Monarchy dismembered....[61]

Furthermore, Article 22 of the Covenant of the League of Nations is clear in recognizing that:

> Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognized subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone. The wishes of these communities must be a principle consideration in the selection of the Mandatory.[62]

There is a substantial body of evidence that throughout the period from 1922 until 1948 the British Government, as the Mandatory power, ignored, in its various policies, the desires of the indigeneous population. From the beginning the major powers chose to disregard the findings of the King-Crane Commission which stated that the results of its interviews indicated a marked preference for the selection of the United States as a Mandatory power. In the ensuing years the finding of the Shaw, Hope-Simpson Commissions, and the Peel Commissions provided ample testimony to His Majesty's Government that British policies concerning Jewish immigrations were in direct contravention to the wishes of the Arab majority in Palestine.[63] In addition, the policy of the Jewish Agency concerning the refusal to sell Jewish owned land to Arabs and to hire Arab labourers also provided severe distress among the Arab community. As stated earlier, it was not until the issuance of the White Paper of 1939 that the British Government began to pay serious attention to the needs and wishes of the non-Jewish majority in Palestine.

Although hindsight has limited value in such cases it is unfortunate to note that it was possible through studious but firm policy decisions based on these reports for the Mandatory Government to comply with the spirit and letter of the Mandate,

that is, to facilitate the establishment of a Jewish national home in Palestine without prejudicing the rights of the Arab Palestinians. Thus, the noted writer Isador F. Stone in his book, Underground to Palestine, states:

> Four years after the Balfour Declaration was promulgated, Ahad Ha Am (a Russian Jewish intellectual) expanded his views on it in a preface to the Berlin edition of his book, At the Cross Ways. He wrote then that the historical right of the Jewish people to a national home in Palestine 'does not invalidate the right of the rest of the land's inhabitants.' He recognized that they had 'a genuine right to the land due to generations of residence and work upon it.' For them too, Ahad Ha Am went on, 'this country is a national home and they have the right to develop their national potentialities to the uttermost.' He felt that this 'makes Palestine into a common possession of different peoples.'
>
> This is why, Ahad Ha Am explained, the British Government 'promised to facilitate the establishment in Palestine of a National Home for the Jewish people and not, as was proposed to it, the reconstruction of Palestine as the National Home for the Jewish People.' Ahad Ha Am said the purpose of the Balfour Declaration was two-fold: (1) to establish a Jewish National Home there, but (2) also to deny 'any right to deprive the present inhabitants of their rights' and any intention 'of making the Jewish people the sole ruler of the country.[64]

Thus, had the British government followed a consistent and active policy of limiting immigration to those numbers which the nation could economically support and prohibited the land acquisition policies of the Jewish Agency, it is conceivable that the mandate could have been followed to a successful conclusion. However, what restraint the British did exhibit was too little, too late and by 1948, the area was in total, bloody chaos to the continued detriment of all parties.

B. SOVEREIGNTY AND TITLE IN PALESTINE AND THE EFFECTS OF INTERNATIONAL RECOGNITION

Accepting Oppenheim's statement that certain treaties are effectively international legislation and the decision of the International Court of Justice that the oblitations of the mandates remained in effect over in the absence of the League of Nations and that the United Nations was competent to supervise these mandates, what then was the status of sovereignty in Palestine and who held title to the land?

It is difficult to come to grips with a modern definition of sovereignty. Professor Quincy Wright in his book, Mandates Under the League of Nations, expressed this difficulty:

> The world 'sovereignty' has been used...to mean legal omnipotence except as limited by applicable international law and treaties or, conversely, freedom from limitation by municipal law. This definition, however, may not correspond to conceptions often implied by the term and may not be sufficiently precise to assist in classifying the diverse political structures of the day, particularly in the mandated territories.[65]

However, Wright further makes an important point between sovereignty in the realm of municipal law and in international law:

> ...From the standpoint of municipal law, the claim of a state through its organ with ultimate authority in the matter to a legal right, power, or interest is a legal right, power, or interest; but from the standpoint of international law, such a claim is valid only insofar as established through the appropriate international procedure.[66]

The Digest of International Law supports this and adds the definition of territorial sovereignty as quoted from Han Aufricht referring to the Island of Palmas Case.

> The right of a state to function within a certain territory, unimpeded by any interference from the outside, is called territorial sovereignty...
>
> The exclusive territorial jurisdiction of a state is, or may be restricted with respect to certain matters. Such limitations of territorial sovereighty are usually based upon customary international or treaty law.[67]

This brings us to an important point about territorial sovereignty and how it is acquired.

Although, as Oppenheim states, "No unaminity exists with regard to the modes of acquiring territory on the part of the international community.",[63] there is a general principle in international law which Wright states is akin to acquiring title to real property. "As a rule only he who has title can give title," or the law of succession.[69] However, both Oppenheim and Jennings discuss five modes or procedures of acquiring territorial sovereignty.

> The books tell us there are five 'modes' by which territorial sovereignty can be acquired: (1) occupation, viz. of territory which is not under the sovereignty of anyone; (2) prescription by which title flows from an effective possession over a period of time; (3) cession, or the transfer of territory by a treaty provision; (4) accession or accretion, where the shapes of land is changed by the processes of nature; and finally (5), subjugation or, if you prefer the older terminology, conquest.[70]

In discussing Palestine three modes of the five modes come into play. However, Jennings refers to Oppenheim in adding a sixth mode in which a new state comes into existence and that is by "revolt." In the sense that both Arabs and Jews cooperated with the Allied Powers in fighting the Ottoman Empire the concept of revolt would apply to Palestine. However, in analyzing the territorial sovereignty of Palestine, numerous factors come into play.

In the first place, there is little argument with the fact that Turkey enjoyed territorial sovereignty over Palestine prior to World War I. By Article 16 of the Treaty of Lausanne, July 24, 1923, Turkey renounced all title to Palestine yet the question exists; did Turkey's sovereign title cease to exist when she ratified the Treaty of Lausanne or when she ceased to control the territory as a result of military defeat? Quincy Wright argues for the latter:

> In the case of the mandates of Palestine and Syria, there is merely the recital that the Principal Allied Powers have agreed to intrust the territory 'which formerly belonged to the Turkish Empire' to the mandatory in accord with which Turkey lost her sovereignty. The Treaty of Sevres by which she renounced them was never ratified, and the treaty of Lauanne by which she renounced them was not made at the time the mandates were assigned. It would thus appear that the transfer from Turkey at the time the mandates were assigned could be accounted for only on the principle of successful revolution or completed conquest. The United States argued for the latter....[71]

The next question follows then, assuming that by whatever mode Turkey renounced title to the area, who, then, acquired sovereign title? Again, Wright addresses this question:

> Thus a study of the transfers indicates that for all the mandated areas except Iraq title passed from Germany to Turkey to the Principal Powers, who, however, never had full sovereignty but merely a transitional title of which they divested themselves in transfering title to the regime set up by the Covenant.[72]

In the case of Palestine the British Government was selected as the mandatory and it, in turn, established a Palestine Administrative Government subject to the provisions of Article 22 and the Palestine Mandate. From this point Wright argues

that the only legal means of changing the status of Palestine was through an amendment to Article 22, without which the Mandatory had no authority to alter the status of the area, by admitting Palestine to membership in the League of Nations as an equal partner or by recognizing the independence of the nation.[73] In the case of the last two options the terms of the mandate would have been fulfilled.

Sir Arnold McNair makes another point concerning sovereignty in his separate opinion with regard to the "International Status of South-West Africa."

> Upon sovereignty a very few world will suffice. The Mandates System (and the 'corresponding principles' of the International Trusteeship System) is a new institution - a new relationships between territory and its inhabitants on the one hand and the government which represents them internationally on the other - a new species of international government, which does not fit into the old conception of sovereignty and which is alien to it. The doctrine of sovereignty has no application to this new system. Sovereignty over a Mandated Territory is in abeyance, if and when the inhabitants of the Territory obtain recognition as an independent State, as has already happened in the case of some of the Mandates, sovereignty will revive and vest in the new State.[74]

Although Wright talks about a limited sovereignty governed by the dictates of the Mandate System while McNair states that sovereignty is held in abeyance during the existence of the Mandate, both seem to agree that the inhabitants of the territory are the common factor and that the final determinant concerning sovereignty is the emergence of an independent state. In either case then it would seem that sovereignty ultimately resided within the inhabitants of Palestine from the time Britain conquered the area with the help of the Palestinians until she relinquished the mandate in 1948.

This situation changed in May 14, 1948, when Israel declared its independence. In so changing the status of Palestine did Israel acquire legal title to that portion of Palestine which she claimed as an independent state? Again quoting from Wright in Mandates Under the League of Nations the indications are that Israel did, in fact, acquire legal title to her territory. It is important to note that Wright's book was published in 1930 and yet seems to anticipate such an eventuality.

> ...Who is competent to recognize the achievement of that evolution? (independence) Admission of one of these communities to the League would imply that it had become 'fully self governing' (covenant, Art. I) and thus apparently beyond the stage contemplated in Article 22. This has been recognized in the case of Iraq. Such admission can be effected by a vote of two-thirds of the Assembly. In international law, however, political claims may always become legal rights through general recognition. Thus, if one of these communities asserted that it no longer needed tutelage and the states of the world expressly recognized that claim, the status of the community would seem to be legally changed. Such a general recognition, however, is hardly conceivable without formal action by the League. There is finally the possibility of annexation or other change of status of an area by the mandatory, conquest by some other power or revolution, and ousting of the mandatory by the inhabitants, any of which would be in violation of Article 22. Such violent changes might acquire de jure character through subsequent general recognition or long acquiescence in the changed situation.... [75]

The importance of this statement can be seen in light of later developments. On May 11, 1949, Israel, as it existed at that time, was admitted as a full member of the United Nations, thus, conferring recognition by that international body. The fact that Wright refers to the League of Nations would seem to be of little consequence as the later decision of the International Court of Justice concerning the South

West Africa Cases declared the United Nations competent to act in lieu of the dissolved League. Furthermore, Article 77 of the Charter specifically encompasses the mandated territories previously governed by Article 22 of the League Covenant. Oppenheim supports this last statement.

> Although, according to the wording, the charter imposes no clear legal obligation upon States which were mandatories by virtue of Article 22 of the Covenant to place the territories in question under the system of trusteeship, it is clear that an obligation to this effect, closely approaching a legal duty, follows from the principles of the Charter.[76]

This recognition is vitally important in determining Israel's legal title to territorial sovereignty as of May 11, 1949. As Oppenheim states:

> In recognizing a new State as a member of the international community the existing States declare that in their opinion the new State fulfills the conditions of statehood as required by International Law. In thus acting, the existing States perform, in the full exercise of their discretion, a quasi-judicial function....[77]

When one sees Oppenheim's definition of what constitutes a state as an international person, the ramifications of recognition become obvious. He lists the four elements of statehood as constituting (1) a people, (2) a territory, (3) a government, (4) and sovereignty.[78] Recognition does not confer sovereignty but accedes to the recognized states' territorial sovereignty regardless of how derived.[79] An important aspect of recognition in this case is further amplified by Oppenheim:

> ...Recognition being retroactive and dating back to the moment at which the newly recognized Government established itself in power, its effect is to preclude the courts of the recognizing State from questioning the legality or validity of such legislative and executive acts, past and future, of that Government as are not contrary to International Law; it therefore validates, so far as concerns those courts of law, certain transfers of property and other transactions which before recognition the courts would have treated as invalid.[80]

One last point should be made here. While the majority of the nations of the international community recognized Israel's sovereignty over her territory the Arab states refused to do so. While in itself this is not sufficient to deny such legal sovereignty certain events since that time provide a legal basis for complete agreement within the international community.

The concept of acquiring title to territory through prescription, i.e., effective possession over a long period of time, would seem to fit in this case. After the June 1967 War, the Arab states with the exception of Syria, accepted U.N. Resolution 242, which called for Israel to withdraw to her pre-1967 borders, as a basis for a peace settlement in the Middle East. By accepting U.N. Resolution 242 as the basis for a peaceful solution to the continuing Arab-Israeli conflict, the Arab states, in effect, acquiesced to Israel's effective control of her territory prior to the June 1967 War. In the Island of Palmas Case (1928) concerning a dispute between the United States and the Netherlands, the arbitrator, Dr. Huber stated:

> The title of continguity, understood as a basis of territorial sovereignty, has no basis in international law.
>
> The title of recognition by treaty does not apply...(T)he acquiescence of Spain in the situation created after 1677 would deprive her and her successors of the possibility of still invoking conventional rights at the present time.
>
> The Netherlands title of sovereignty, acquired by continuous and peaceful display of State authority during a long period of time going probably back beyond the year 1700, therefore holds good.[81]

While the period between 1949 and 1967 is relatively short, there is no specific time designated to constitute "continuous---display of State authority during a long period of time." However, the fact that the majority of nations within the international community recognize Israel's claim to title coupled with the Arab states' recognition of U.N. Resolution 242 as a basis for a peaceful settlement would indicate that Israel's claim to sovereignty within limits defined prior to 1967 is valid. However, that territory acquired as a result of belligerent action after the June 1967 War is another matter and in this case sovereignty would seem to rest in another principle of international law.

The principle in international law that a State cannot acquire title over territory as a result of war is clearly stated by Oppenheim.

> Insofar as these instruments prohibit war, they probably render invalid conquest on the part of that State which has resorted to war contrary to its obligations. An unlawful act cannot normally produce results beneficial to the law-breaker.

> ...(T)he so-called doctrine of non-recognition does not render such conquest illegal; it is an announcement of the intention, or the assumption of an obligation, not to validate by an act of recognition a claim to territorial title which originates in an illegal act and which is, accordingly, itself invalid.[82]

If such is the case, then it would seem to apply in both directions. This is, if Israel did not acquire title to the West Bank and the Gaza Strip through conquest in 1967, then neither did Jordan and Egypt, respectively, in 1949. This would seem to indicate that legal sovereignty and title to territory continued to remain in the indigeneous Palestinian population and that Jordan, Egypt and Israel enjoyed rights as military occupants and not sovereigns with regard to the Occupied Territories. The fact that U.N. Resolution 242 calls for Israel's withdrawal to her pre-1967 borders would seem to be clear indication that the international community does not recognize the acquisition of territory by Israel in the June 1967 War as conferring title to that territory. At the same time, discussions within the U.N. and articles, books and other publications as well as numerous electronic media events treat the West Bank and the Gaza strip as being Palestinian in nature as well as by demographic distribution and therefore subject to a solution within some sort of Palestinian context. This brings up an important point when dealing with the question of sovereignty and title in a newly created Palestinian state.

In dealing with the question of sovereignty, The Digest of International Law quotes Peaslee in determining the source of sovereignty in a modern state.

> In general there are two prevailing concepts regarding the source of sovereign power: (1) that sovereign power originates in the people themselves who elect their government institutions, and (2) that sovereignty is vested in a monarch or other supreme person, and stems downward as a grant to the people.
>
> 'Sovereign People'
>
> The language of the constitutions on this point shows a substantial preponderance of opinion favoring the concept that sovereignty rests in the people. In sixty-six nations, constituting about 71 percent of the total number of nations and comprehending about 80 percent of the world's total population, this concept appears in existing constitutional provisions...
>
> In still others the concept of sovereign power is that it rests more or less jointly in a sovereign and the people. Included in this group of nations are Afghanistan, Australia, Canada, Ceylon, Denmark, Netherlands, New Zealand, Norway, Pakistan, Sweden and the United Kingdom. If these nations are added to the 66, the list becomes 77 nations; the percentage of the world's total population who consider the people to be a source of sovereign power becomes over 95 percent.[83]

In those nations not included by Peaslee, perhaps the concept of popular sovereignty still applies inasmuch as a monarch cannot rule without the consent of the governed as the Shah of Iran has so recently discovered.

Taken from such a viewpoint then, it is possible to envision sovereign title to the West Bank and the Gaza Strip residing in the Palestinian people regardless of Israeli occupation. In such a case Israel's title, as was Jordan's and the United Kingdom before her, is merely transitory. In this manner, then, Israel's duties with regard to her conduct on the West Bank and Gaza are governed by the General Conventions concerning a belligerent occupant. In such a fashion Israel's position is very similar to Great Britain's during

the time of the Palestinian Mandate and in lieu of a peace treaty specifying otherwise Israel is not empowered to change the status of that territory. Again, Oppenheim states:

> ...The principle underlying these modern rules is that, although the occupant in no wise acquires sovereignty over such territory through the mere fact of having occupied it, he actually exercises for the time being military authority over it. As he thereby prevents the legitimate sovereign from exercising his authority, and claims obedience for himself from the inhabitants, he must administer the country, not only in the interest of his own military advantage, but also, at any rate so far as possible, for the public benefit of the inhabitants. Thus International Law not only gives rights to an occupant, but also imposes duties upon him.[84]

That this international policy is concident with United States' policy is clearly indicated in Ambassador Stevenson's comments to the General Assembly concerning the Status of Goa.

> ...(W)hat is at stake today is not colonialism, it is a bold violation of one of the most basic principles in the United Nation's Charter... We realize fully the depths of differences between India and Portugal concerning the future of Goa... But if our Charter means anything, it means that States are obliged to renounce the use of force, are obliged to seek a solution of their differences by peaceful means, are obliged to utilize the procedures of the United Nations when other peaceful means have failed.[85]

Again, when Israel attempted to annex the captured area of Jerusalem, the U.N. General Assembly condemned the action by a vote of 99 to 0 and called on Israel to desist from such activity.[86]

It must be remembered that sovereignty is independence to act on the part of duly constituted government title to territory is a function of the mode of acquisition of that territory. The two become entwined when one considers that the mode of acquisition of a given territory may be illegal

and thus while a form of sovereignty is exercised over that territory the international community of nations may not consider that exercise of sovereign authority as legally constituted. Thus, in the case of Israel, U.N. Resolution 242 indicates that Israel's exercise of sovereign authority over the West Bank is founded on an illegal mode of acquisition, conquest. As such Israel does not enjoy legal title to the West Bank and hence her exercise of sovereignty is considered illegal.

C. SOME POTENTIAL IMMEDIATE EFFECTS OF PALESTINIAN STATEHOOD

If sovereignty and title in the Occupied Territory can be traced from the Turkish Empire to the present day people of Palestine, that is the West Bank and the Gaza Strip, what would be the possible result of a peace settlement and an emerging nation of Palestine?

In the first place several important factors would accrue as a result of recognition by the international community and Oppenheim states that quite clearly.

> Among the more important consequences which flow from the recognition of a new Government or State are these: (1) it thereby acquires the capacity to enter into diplomatic relations with other States and to make treaties with them; (2) within limitations which are far from being clear, former treaties (if any) concluded between the two States, assuming it to be an old State and not a newly-born one, are automatically revived and come into force; (3) it thereby acquires the right, which, at any rate according to English law, it did not previously possess, of suing in the courts of law of the recognizing State; (4) it thereby acquires for itself and its property immunity from the jurisdiction of the courts of law of the State recognizing it and the ancillary rights which are discussed

> later - an immunity which, according to English law at any rate, it does not enjoy before recognition; (5) it also becomes entitled to demand and receive possession of property situated within the jurisdiction of a recognizing State, which formerly belonged to the preceeding Government at the time of its supersession. (6) Recognition being retroactive and dating back to the moment at which the newly recognized Government established itself in power, its effect is to preclude the courts of the recognizing State from questioning the legality or validity of such legislative and executive acts, past and future, of that Government as are not contrary to International Law, it therefore validates, so far as concerns those courts of law, certain transfers of property and other transactions which before recognition the courts would have treated as invalid.[87]

There are three important ramifications which come to mind as a direct result of the recognition of a Palestinian State as defined above by Oppenheim. The first is the legality of legislative or executive acts not contrary to International Law and the obvious effect of any legislative act which would define Palestinian citizenship. By enacting legislation defining Palestinian citizenship the new state could substantially increase the size of its population by using recognized international criteria for establishing immediate citizenship. Such a law would not have to go to the extremes established by Israel in her Law of the Return.

In analyzing the problems of dual nationality one can easily envision a large and legally inflated Palestinian nationality. The general concepts of acquiring nationality are stated by Oppenheim.

> Although it is at present for Municipal Law to determine who is, and who is not, a subject of a State, it is nevertheless of legal and practical interest to ascertain how nationality can be acquired according to the Minicipal Law of the different States. There are five possible modes of acquiring nationality, and, although no State

> is obliged to recognize all five, nevertheless all States in practice do so. They are birth, naturalization, reintegration, subjugation and cession.[88]

It is important to note here that in International Law the determination of nationality has been largely left to the discretion of the individual States as a manifestation of its sovereignty. For the purposes of this paper only acquisition by birth will be discussed inasmuch as by that means alone the largest number of citizens would acquire immediate Palestinian nationality. The situation in the United States is a clear example.

> By reason of differences between nationality laws of various countries there are many persons whose allegiance is claimed by two or more states, or conversely, on whom the benefits of nationality are conferred by two or more countries. These conflicts arise principally by reason of the fact that in some countries nationality is governed by jus soli, i.e., it originates by birth within the country; in others, it is based on jus sanguinis, i.e., the child inherits the nationality of his parents irrespective of the place of birth; and in still others, like the United States, it may be predicated on either jus soli or jus sanguinis.[89]

In determining how this principle could effect Palestinian citizenship, it must be remembered that in the case of class 'A' mandates, no new nationality was conferred. The inhabitants retained their own nationality by virtue of the fact that they were considered to be on the verge of independence. This was confirmed, in the case of Palestine, by the British mandatory government when the British Order in Council of July 24, 1925, declared Palestinian citizenship.[90] In fact Palestinian citizenship continued to exist in Israel until July 14, 1952,

when the State of Israel finally put her nationality law into effect.[91]

Thus, there are thousands of people living throughout the world who were either born in Palestine and thus could be called Palestinian citizens as a result of the principle of jus soli or who were born outside of Palestine of Palestinian parents and who could, therefore, be awarded citizenship under the principle of jus sangeinis. Another variation of this principle would be the case where a minor, born in Palestine, was taken from that country due to hostitilities and elected to return after attaining majority. Acquiring another nationality would not prevent the individual from claiming Palestinian citizenship. This was clearly pointed out in the Elg Case where the Supreme Court of the United States ruled that in the case of minor children the child still retains the right of election upon achieving majority.[92]

Probably one of the more far-reaching aspects of the emergence and international recognition of a Palestinian State would be the right to sue in the courts of the recognizing State as mentioned earlier. Assuming that, as part of a peace settlement, Israel and Palestine would exchange recognition, there is a substantial claim which still exists concerning the loss of Palestinian property and just compensation for the same as a result of hostilities in 1948-49 and the occupation of the West Bank and Gaza Strip after 1967.

It is clear under Article 46 of the Hague Regulations of 1907 that immovable private property may not be confiscated or sold by the belligerent force and further states

in Article 53 that movable private property which is lawfully confiscated as material which has military application must either be returned or compensation provided.[93] One would expect this to be a normal part of any peace treaty between Israel and Palestine. However, inasmuch as the conflict has continued for decades and not all claims can be anticipated it is reasonable to expect a substantial volume of litigation in Israeli courts as a result of any peace settlement. If, on the other hand, the new state arose as a result of general revolt or some other means in which a peace settlement is not achieved, then one could expect the new Palestinian government to use international organizations as a means of obtaining compensation for property lost to Israel. In either case U.N. General Assembly Resolutions 194 (III) of 11 December 1948 and 302 (IV) of 8 December 1949 are but two of the many such resolutions calling for Israel to repatriate and compensate Palestinian refugees for damages and property lost or confiscated.[94]

Finally, a third important effect of a newly recognized Palestinian state would be the right through executive agreements to exchange diplomats and enter in a regional organization such as the Arab League. This is well within the perogative of a state as is clearly indicated in Chapter VIII Article 52 of the Charter:

> Chapter VIII Regional Arrangements, Article 52
>
> 1. Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations.[95]

In fact, one should expect the Palestinians to take such action as a full and equal member of the Arab League. However, it cannot be expected that the Israeli government would be enthralled at such a development.

In summary it can be seen that an emergent Palestinian state would have full claim to sovereignty and legal title to her territory from the Turkish Empire through the Mandate System and Israeli occupation to the present time. It is also clear that numerous benefits not now available to Palestinians would accrue as a result of independence and that those benefits which would have the most immediate impact on an international scale would be nationality laws, claims for compensation as a result of years of hostility with Israel and alliance formation with other Arab nations in the Middle East.

III. ISRAEL AS A "MANDATORY" GOVERNMENT

A. BACKGROUND

Ever since the Palestinian Mandate was issued to Great Britain in 1922, that area or portions of that area have been under foreign domination. As mentioned previously, just prior to the British evacuation of Palestine the United States had introduced the concept of a U.N. trusteeship in Palestine to replace the British. After the 1948-49 War, Jordan annexed the West Bank and administered the area until it was lost to the Israelis in 1967. Since then the heart of any peace settlement has been who would administer the West Bank until a Palestinian entity could assume a role as leader of its own destiny. In discussions today, the Israelis insist on administering this area until some form of autonomy can be established, yet, Palestinians, most especially the Palestinian Liberation Organization, are vociferous in their rejection of Israeli proposals.

Perhaps the crux of the issue has two important facets. In the first place, the Israelis claim the need for secure borders for their own self-protection and indicate that only they can ensure this. The Palestinians, on the other hand, chafe under Israeli control. The issue has also had repercussions within Israel itself both in terms of what is necessary to achieve a lasting peace and the manner in which

this occupied territory has been administered by the government.

To see if an Israeli "trusteeship" is really a viable concept, one must look at past Israeli policy in the Occupied Territories and the best example of this is the Administration of the West Bank, for as the British experience taught in the early years, if the inhabitants are adamantly opposed to the mandatory power, then self-government, if achieved at all, is brought about only after long years of protracted bloodshed and the result is often less than satisfactory.

B. ISRAELI ADMINISTRATION OF THE WEST BANK

As soon as the cease fire was established, the Israelis turned to the administration of the newly captured territories. Since they gained the West Bank through military conquest, Israel established a military administration which accepted as its goal the rapid normalization of the West Bank keeping in mind the twin objectives of providing security for the area and yet, ensuring minimal interference in the daily lives of the Palestinian inhabitants.[96]

In rapid succession the Military Government of the West Bank, responsible to the Central Command of the Israel Defense Force (IDF), set about to reactivate basic health and welfare services. Water and power were quickly restored and telephones were operating within four months. The Israelis not only re-established postal services but vastly improved the system. This was true of all other utilities.[97]

In compliance with the Geneva Convention, the Military Government, through the ministries of Health and Social Welfare, provided services to the Palestinians in the West Bank. Within a few months hospitals and clinics were seeing patients and the government aided international relief agencies in organizing assistance to the war-torn area.[98]

The Military Government found that re-establishing the educational system and providing legal services were hampered by Arab teachers and lawyers who organized a strike in protest of the occupation and the Israeli government's control of the educational and judicial systems. The government responded by allowing the teachers more authority in the administration of the Jordanian school system on the West Bank. However, the Arab lawyers refused to plead cases before the courts and the government, therefore, permitted Israeli lawyers to plead cases in Arab courts. Two Arab judges unsuccessfully challenged this order and it continued to be a point of friction between the occupied Arab community and the government.[99]

Finally, the local police force had to be created from whole cloth since most of the Arab policemen fled in advance of the Israeli Army and refused to return. Therefore, the Military Government recruited and trained a force of almost 300 West Bank Arabs to provide police services. This force was augmented by the same number of Arab-speaking Israeli policemen.[100]

The structure for administering the West Bank begins with the West Bank Military Commander who exercises control through the six district offices. The key civilian sections are

Administration and Services, and Economic Affairs. The levels below the Military Commander are a mix of military, civilian and Arab officials with local mayors exercising more authority than they had under Jordanian rule. The whole structure is backed by the Israeli Army.

In administrative matters the local inhabitants have relatively little difficulty with the occupying powers. In general, the Israeli administration is more efficient than the previous Jordanian rule and difficulties which arise in this area are usually a result of national pride.

> Such changes (administrative streamlining), although increasing the system's efficiency, could well be resented by the Arab residents, who might view the Israeli officials as meddlers exercising arbitrary powers and damaging the Arabs' national dignity and self-confidence. To the degree that Israelis were able to offer advice and make changes with regard for Arab sensibilities, such resentment was avoided.[101]

Regarding the Israeli government's policy concerning settlements and the Military Government's actions in dealing with security problems there is a serious conflict between the local Arab inhabitants and the Jewish state. There have been countless books, newpaper articles and essays in periodicals concerning the Israeli government's handling of security problems and its alleged violations of human rights in the West Bank.

C. HUMAN RIGHTS VIOLATIONS IN OCCUPIED TERRITORIES

In general, the documents which provide specific guidance and intent in the area of human rights are Article 56 of the United Nations Charter, the Universal Declaration of Human Rights adopted in 1948, and the Fourth Geneva Convention of 1949

regarding the status of civilians and prisoners of war. Although the Universal Declaration of Human Rights is a statement of policy, the following three conventions provide treaty status to that document: the International Covenant on Civil and Political Rights, the International Convention on the Elimination of all Forms of Racial Discrimination and the Convention on the Prevention and Punishment of the Crime of Genocide.[102]

Specific violations of these rights by Israeli occupying forces were indicated in the first report of a special committee established by the U.N. General Assembly to investigate these alleged human rights violations.

> After reviewing the Special Committee's first report, the General Assembly called upon Israel on December 20, 1971 to 'desist from all practices and policies such as:'
>
> (a) The annexation of any part of the occupied Arab territories;
>
> (b) The establishment of Israeli settlements on those territories and the transfer of parts of its civilian population into the occupied territory;
>
> (c) The destruction and demolition of villages, quarters and houses and the confiscation and expropriation of property;
>
> (d) The evacuation, transfer, deportation and expulsion of the inhabitants of the occupied territories;
>
> (e) The denial of the right of the refugees and displaced persons to return to their homes;
>
> (f) The ill treatment and torture of prisoners and detainees;
>
> (g) Collective punishment.[103]

That these violations are widely accepted as true is readily apparent when reading even Israeli newspapers.[104] However, several key issues are extremely inflamatory and seen as very detrimental to Israel's international position.

Jewish settlements in the Occupied Territories and especially the West Bank continue to strain relations with Israel and her only true ally, the United States.[105] Yet, Israeli leaders insist that they will not give up the West Bank to a Palestinian homeland.[106] These settlements, established through confiscation of Arab lands, are a continuing problem for Arabs and Israelis alike.[107] However, other violations of human rights are equally deplorable.

Administrative detection, the policy of holding suspected Arab activists for up to six months without trial (detention can be extended, and often is, for longer periods with approval from higher authority) is considered to be a growing problem in the West Bank. In a report submitted to the Senate Subcommittee on Foreign Assistance the U.S. State Department wrote:

> There are two aspects of incarceration of the local inhabitants by the Israeli occupation authorities that are important from the human rights viewpoint: the relatively high number of cases of imprisonment on security charges, a situation arising from the political conflict caused by the occupation; and the use of administrative detention.[108]

That report goes on to list six specific violations of the Geneva Convention which are characteristic of the Military Government's administration of the West Bank. Such violations as collective punishment, deportation of suspected terrorists and instances of summary proceedings against potential Arab activists appear to be commonplace in the West Bank.[109]

D. ISRAELI ATTITUDES TOWARD PALESTINIAN INHABITANTS

Michael Goldstein, writing in the Middle East Journal, defines the problem in legal and moral terms.

> Administrative detention, along with demolition of homes, is one of the more controversial Israeli security measures employed in the Occupied Territories. It is controversial not only among the Palestinian Arabs against whom detention is used, but also among Israeli Jews. The major reason for this controversy is that administrative detention violates one of the most basic safeguards of the individual which makes it illegal to arrest and imprison people on 'the speculation that an individual may be dangerous in the future.'[110]

It is easy to identify the impact of such activity on the Palestinian Arabs. Instead of pacifying the Arab population or increasing the security of the area, it only recruits new members into the Palestinian Liberation Organization and generally incites the population against the occupying power. An even cursory review of American involvement in Vietnam supports this point.

This repressive activity has an even more detrimental effect on Israelis. As an example, last May 3rd, 1978 Israeli Defense Minister Weizman was forced to fire Brig. Gen. David Hagoel and discipline several other officials for using tear gas in a locked classroom of an Arab girls' school.[111] Such conduct forces more sensitive Israelis to disavow knowledge of such affairs.

> 'You won't believe me,' said an Israeli official in Jerusalem, unconnected with military government, 'when I tell you that we often don't have any idea of what goes on just five or six miles from here. But it's true.'[112]

If such activity offends many Israeli Jews and their American supporters (and it does), then why does the government persist in such an unpopular posture? Seymore M. Lipset, in his essay, "The Israeli Dilemma," addresses part of the problem.

> The depressed situation of the Palestinian Arabs, the limited participation of Israeli Arabs in the cultural, economic and political activities of the state, and the military weaknesses displayed by the Arab states and their guerrillas, combine to reinforce the negative stereotypes of Arabs held by most Jewish Israelis. Opinion polls by local organizations, and by the Louis Harris survey conducted by NEWSWEEK earlier this year, indicate clearly that the majority of the Jews regard the Arabs as an inferior people.[113]

That this negative stereotype, as discussed by Lipset, exists even among intellectual Jewish writers is clearly evident in the last paragraph of Raphael Patai's essay "Western and Oriental Culture in Israel" which appears in the same publication.

> Looking forward to, say, the year 2000, I can foresee an Israeli population which will be genetically largely Sephardi-Oriental while culturally largely Western. Within the general Middle Eastern context this will mean that in the very midst of the Arab sea there will be a tiny island, Israel, which while genetically not too different from the Arab-Muslin world, will be a bastion of modern Western culture in the middle of a world area which at that time will foreseeably still be struggling to modernize, industrialize and democratize.[114]

If this attitude is held by most Jews, then is it reasonable to assume that such a mide-set is the basis for current government policy on the West Bank? How does this square with the growing peace movement, and certainly there is a growing clamour for peace within Israel which involves some sort of radical departure from Prime Minister Begin's policy vis a vis

the West Bank? Undoubtedly, President Sadat's visit to Israel has had a monumental effect on the peace movement in the Jewish state.[115]

Perhaps, there is an even deeper issue which goes to the heart of every Jew in Israel. Isaac states in her book that the growth of ideology in Israeli politics has served to focus the basic issues of that state's formation and the future shape of Israel as a nation.

> Thus, almost all of the parties could easily break asunder under the stress of coming to basic decisions on the national issue. For ultimately, although the issue of policy toward the Arabs and the territories could be called one of 'foreign policy,' it was a national issue-one which involve the definition of the state of Israel, the nature of its tasks as a nation, and the goals of its existence.[116]

Thus the Land of Israel Movement and the peace movement represent opposite sides of the same issue. Since Likud and the National Religious Party form the heart of the present coalition government which opposes withdrawal from the West Bank is repressive towards Arabs and encourages Jewish settlements, even in the face of negative world opinion, one must draw the conclusion that under the Begin government an Arab state acceptable to Palestinians would not be acceptable to the Israeli government. However, given the strength of external pressure from the super powers, continued Arab guerrilla activity, the military and economic burden of administering the West Bank, and the maintenance of Anwar Sadat's conciliatory stance, the peace movement may grow stronger as Israelis become disenchanted with Begin's intransigent stance.

Whatever the outcome one can't help but see that Israelis are wrestling with the ideological problems of their future course of history and events on the West Bank will continue to reflect this struggle.

E. CONCLUSIONS

Perhaps the important point is that the Israelis are too close to the problem to provide an effective administration of the area. The issues are too real, the contending philosophies within the country are somewhat reminiscent of the British predicament in which policy decisions tended to wax between pro-Jewish and pro-Arab contingents or in this case between a hardline policy of Israeli control or a more conciliatory attitude. Added to this is the tendency of a large number of Israelis to view Arabs as ethnically inferior. In short, it would appear that, all other things being equal, the past policy of the Israeli government concerning administration of the West Bank, would seem to obviate the necessity for selecting a neutral government or a joint body under the auspices of the United Nations to act as trustee until a Palestinian state could be established.

Be that as it may, by U.N. Resolution 242 the international community has indicated that it considers Israel's title to the Occupied Territories and exercise of sovereign authority to be illegal. Furthermore, the various investigating committees sent by the U.N. have analyzed the plight of Palestinians with regard to various conventions on human rights and the

Geneva Convention regarding the status of citizens and prisoners of war. This further supports the contention that Israel is a military occupant and not a legally constituted government in the Occupied Territories. As such her rights in that area are restricted and violations of Palestinian rights only exacerbate the situation. Long and continuous exercise of authority, in itself, does not constitute legal title. U.N. Resolution 242 has not been rescinded and unless the international community changes its attitude toward Israel's occupation of the West Bank and the Gaza Strip, Israel's claims to that area are null and void. Therefore, her rights and duties in the area are those of a military occupant and nothing more.

IV. CONCLUDING REMARKS

The previous chapters of this thesis have looked briefly at some of the key documents in the light of their historical context that have been influential in the division of the former mandated territory of Palestine and the formation of the smaller State of Israel within that territory. In addition, the legal background of many of these documents and the validity in international law of certain events concerning the history of Palestine and Israel have been analyzed to determine the basis for Israel's existence in international law and the justification for a new Palestinian State in the West Bank and the Gaza Strip. Concomitant with this analysis has been the discussion of certain important and immediate effects resulting from an emerging Palestinian State. Finally, a brief glimpse of Israeli administrative procedures in the West Bank, as the military occupant, seems to indicate that there are serious questions as to the wisdom of Israel's policies in the Occupied Territories and her actual capacity as transitory sovereign to preside over the emergence of a Palestinian State. What, then, are the conclusions one might reasonably draw from such an analysis?

In reviewing the legal history of Palestine in the preceding pages, it appears that the arguments for the basis of sovereign authority and legal title to the territory go hand in hand. Turkey exercised sovereign authority and enjoyed legal title

to the area until the end of WWI at which time Great Britain acquired limited sovereignty and title as a result of completed conquest. Initially her authority was limited due to her status as a military occupant. After the establishment of the League of Nations her authority was limited by that international body and the terms of the Palestine Mandate. From the end of WWII until she relinquished her responsibilities for the area, her sovereign authority was limited by the United Nations which assumed responsibility for the administration of the mandates territories. That the U.N. enjoyed this right is supported by the various decisions arising out of the South-West Africa Cases.

Although Israel acquired a portion of Palestine through conquest, her legal exercise of sovereign authority and title to territory results both from recognition through the international community collectively when she was admitted as a member-nation into the U.N. and individually through recognition by the majority of nations throughout the world. Concomitantly, Arab Palestinians, as a group, lost sovereign title to that portion of Palestine conquered by the Jews in 1948-49.

However, Palestinians appear to have retained legal title to that area of Palestine now occupied by the Israelis as a result of the 1967 War. This is due to the fact that the U.N. does not recognize Israel's claim to the area and continues to insist that U.N. Resolution 242 must be the basis for a peaceful settlement between Arabs and Israelis. Unless the international community changes its attitude and recognizes

Israel as the legal sovereign of the Occupied Territories, Israeli claims based on historical title or long and continuous exercise of authority cannot be accorded any legal status. In the absence of such international recognition for Israel, a Palestinian state would, thereby, be able to claim legal sovereignty and title to territory.

Another of the insights that seems to emerge from the preceding pages is that the contending parties have been and continue to operate from emotionally charged and diametrically opposed philosophical bases. The Jews of Israel, as well as many Jews throughout the world, view that nation as their birthright, their land as promised to them by God. The Arabs, and most especially the Palestinian Arabs, view the area as traditionally theirs and view themselves as the indigeneous native population and conversely see the Jews as colonial invaders imposed on the Palestinians by Western super-powers. Thus, the whole issue is so emotionally charged that legal niceties, while very often are of substantial importance, are viewed as just that by the Palestinians, especially and by many Israelis as well when the justification of a Palestinian state in the Occupied Territories is mentioned.

What is seen here is a classic conflict of cultures. Israeli Jews represent modern, Western colonial interference from outside. This Arab perception is somewhat understandable when viewed in the light of the Palestinian Mandate's history. Certainly the rhetoric of self-determination for emerging peoples which followed the First World War seems to have been merely that, rhetoric. It is not difficult to comprehend that

Arabs might feel deceived by Western powers when such documents such as the King-Crane Commission report and the various Royal Commission reports clearly delineated the desires of the indigeneous population yet were virtually ignored by the Mandatory Power.

Although the responsibility for the unfolding of administrative policy in Palestine lies with the Mandatory power, Great Britain and her allies to some degree, the immediate benefactors, the Jewish community, both within and outside Palestine, bears equal responsibility by cooperating with such policies. As such, the Israelis are reaping the seeds of this cooperation by carrying on with the same types of discriminatory practices as mentioned earlier and the harvest of such activity is continued strife. Perhaps, no case so clearly indicated this clash of cultures as the case of the Status of Goa and the contending philosophies between the Western nations and the Third World.

Mr. Jha, the Indian Ambassador to the U.N., contended that Indian military occupation of Goa was not illegal and that Portugal's 450 years occupation of that area was a result of colonial imperialism and, therefore, subject to redress by India.

> That is the situation we have to face. If any narrow-minded legalistic considerations--considerations arising from international law as written by European law writers--should arise, these writers were, after all, brought up in the atmosphere of colonialism. I pay all respect due to Grotius, who is supposed to be the father of international law, and we accept many tenets of international law. They are certainly regulating international life today. But the tenet which...

> is quoted in support of Colonial Powers having sovereign rights over territories which they won by conquest in Asia and Africa is no longer acceptable. It is the European concept and it must die. It is time, in the twentieth century, that it died....[117]

Mr. Garin, the Portuguese Ambassador to the U.N., responded:

> ...Indian attempts to annex the territories of the other sovereignties in the neighborhood cannot find any legal justification. Such attempts could be legitimized only by the other sovereignties concerned, if they agreed to a formal transfer of their territories, but only if the transfer could be voluntary, never compulsory, much less by means of an armed aggression. It matters little whether those other sovereignties are held by white or coloured people...It likewise matters little if the territories belonging to those other sovereignties are large or small in size. The principle of sovereignty ought to be respected. The Indian Union has not done this in respect of the Portuguese State of India and is, therefore, guilty of a base breach of international law.
>
> It has been said that international law in its present form was made by Europeans. I submit that, so long as it is not replaced, it must be accepted and followed by civilized nations, and I am not aware that international law relating to sovereignty has been changed so far...[118]

Thus, the philosophical differences cannot be ignored and, in general, the conflict between Third World nations and Western nations is seen in a colonial setting in which international law is a construct of the European culture designed to justify its colonial ambitions. In the particular, the Arab-Israeli conflict is seen in this light by the Arabs. Events of history have only served to reinforce this attitude among Palestinian Arabs and the conduct of the Israeli administration in the Occupied Territories merely exacerbates Palestinian alienation.

Nevertheless, in the absence of any other form of international law acceptable to all parties, the rules that govern the conduct of modern nations must be applied whenever and wherever possible. Thus, in the introduction to the third volume of The Arab-Israeli Conflict Documents, Professor Moore writes:

> ...One of the most important principles of the United Nations Charter is that past grievances, no matter how deeply felt, may not be the basis for unilateral coercion to right the perceived wrong. Lawful unilateral coercion is restricted to individual and collective defense. The Charter thus rightly incorporates the present behavioral understanding that perceptions usually differ about the justice or injustice of particular events. The Charter also embodies the judgment that war always has been a destructive mode of change but that in the present international system it flirts with global catastrophe. Accordingly, the Charter principle that force should not be used as an instrument of national policy except in defense must be considered in any thoughtful appraisal of international disputes.[119]

If such is the case then, in the absence of international acceptance, Israel cannot claim sovereign title to the Occupied Territories either through conquest or an historical connection. By the same rule, then, neither can Palestinians, no matter how unfairly grieved in the past, claim title to the State of Israel. As stated previously, it's existence has been approved, albeit reluctantly in some instances, by the international community of nations and its status is, therefore, not legally subject to change except through pacific means.

By this principle then, Israel is obliged to facilitate her evacuation of the Occupied Territories as soon as practicable, having provided in some manner for the effective self-government of the Palestinian people. This may be accomplished

in various ways; however, in light of the psychological alienation of the contending parties as a result of present and past interaction between Palestinians and Israelis, it would seem judicious if the mechanism for self-government be accomplished by a third party under the direct supervision of the United Nations. Applying the identical concept to an emergent Palestinian State would require that State to accept Israel's title to that territory now recognized by the United Nations.

One final but most important area must be addressed when discussing recognition and sovereignty concerning both Israel and Palestine. In the previous chapters "areas" of territory were discussed in dealing with sovereignty and territorial acquisition, not delineated boundaries. This was done purposely to avoid mixing the question of boundaries with the basic concept of sovereignty and recognition thereof. This is an important distinction in that the question of sovereignty may be discussed in the main while boundary disputes may be treated as an appurtenance to the central issue. Thus Jennings writes in his book, Acquisition of Territory in International Law:

> It is not surprising that we find, therefore, that a large part of territory is about frontier or boundary questions; and though these clearly involve title yet it is also a problem on its own, with its own special rules and conventions. In private law everybody readily recognizes the difference between the type of case where X and Y are in dispute over the ownership of Whiteacre, and the type of dispute where the undoubted owner of Whiteacre is in dispute with the undoubted owner of Blackacre over the line of the boundary between them. But in international law the distinction has not always been so clear, though as early as the Mosul Boundary case, the P.C.I.J. showed that a principal title may be determined even before the territorial boundaries are precisely established.[120]

In the case of the United States' recognition of Israel exception was stated concerning Israel's title to Jerusalem and this principle continues to apply. This reservation is a result of the U.N. General Assembly's decision in the form of three resolutions to create a corpus separatum in the case of Jerusalem, making it an international territory under the administration of the United Nations.[121] The fact that the United States Government supports this position is clear in a Department of State press release (576) dated July 22, 1952.

> The Government of the United States has noted with concern the decision and announcement of the Israel Government on May 4, 1952, to move the Foreign Office to Jerusalem. The Government of the United States has adhered and continues to adhere to the policy that there should be a special international regime for Jerusalem which will not only provide protection for the holy places but which will be acceptable to Israel and Jordan as well as the world community.
>
> Since the question of Jerusalem is still of international importance the U.S. Government believes that the United Nations should have an opportunity to reconsider the matter with a view of devising a status for Jerusalem which will satisfactorily preserve the interests of the world community and the states directly concerned. Consequently, the U.S. Government would not view favorably the transfer of the Foreign Office to Jerusalem. The Government of the United States also wishes to convey that in view of its attitude on the Jerusalem question, it has no present intention of transferring the Ambassador of the United States and his staff to Jerusalem.[122]

Therefore, it is legally possible, in principles as well as fact, for the United States to recognize an emergant Palestinian State and withhold recognition of title to certain areas previously deemed to be under the auspices of the United Nations. This would be of critical importance if Israel and

Palestine reached a formal agreement concerning Jerusalem which was not in consonance with the wishes of the other member states of the United Nations. According to the wording of the U.N. resolutions previously mentioned and the policy of the United States, the status of Jerusalem is subject to international determination and not merely a bilateral treaty between Israel and Palestine. However, the principle of recognizing a state in spite of the fact that her borders are in dispute is important in that the new state is presumed to be equal to all other states in the international community and is, therefore, fully competent to participate in any decisions regarding its common border with another state.[122]

As discussed earlier, the evacuation of the Occupied Territories by the Government of Israel in favor of a more disinterested third nation under the supervision of the United Nations would seem to have substantial benefits for the belligerent parties as well as the international community in general. The Israeli Government has been understandably reluctant to deal with the Palestinian Liberation Organization (PLO) for a variety of reasons not the least of which is the fact that such dealings could grant the PLO the legal status of belligerent and thus the concomitant rights of a belligerent.[124] It is much more advantageous for Israel to treat the PLO as a terrorist organization.

However, although the United Nations has not formally recognized the PLO as a belligerent in the legal sense, it has granted U.N. observer status to that organization and permitted

the PLO to send a non-voting representative (observer) to the United Nations. As such, the U.N. has direct links with PLO while Israel does not. Inasmuch as the PLO represents a substantial number of Palestinians and it is a primary source of armed resistance to Israeli administration of the Occupied Territories, its importance cannot be ignored.

By allowing a "trustee" nation and the United Nation to deal with all Palestinians, including Yasir Arafat of the PLO, a new Palestinian State could be formed through direct elections reflecting the Jeffersonian principle of the will of the people, substantially declared. At the same time the "trustee" nation would be responsible for ensuring the security of Israeli borders in cooperation with the United Nations.

This has several advantages. In the first place it would remove the direct confrontation of Arabs and Israelis in the administrative process of the Occupied Territories. The animosity between these two groups has such a long history, as briefly described in earlier pages, that it is unlikely that any transition can take place peacefully without the use of a third party.

In the second place, it allows the Israeli Government to continue in its policy of refusing to deal with the PLO. If, on the other hand, the claims of the PLO to unanimous support of Palestinians is substantiated by the election of Yasir Arafat as the head of the new government, then any dealings between Israel's Prime Minister and Yasir Arafat would be as equals. This has obvious advantages for the Palestinian

Government but it also allows the Israelis the face-saving posture of dealing with a legitimate head of government and not a terrorist leader. It also effectively co-opts the PLO. Any agreement reached between Palestinians which would exclude the PLO is not only unlikely but could be expected to continue the war inasmuch as the PLO could not be expected to stand by while a separate agreement is concluded which ignores the only organized resistance to Israeli occupation.

In summation, it can be seen through the modern history of Jews and Palestinian Arabs that this contest and its legal documents are a reflection of two contending views of international law or more aptly, the view held by a large number of Third World nations that modern international law is merely a device used by the industrialized West to practice and justify a modern form of colonialism. Going beyond that perception, however, one can see that the process of tracing legal, sovereign title to a territory has been made difficult by the shape of Twentieth Century events.

FOOTNOTES

[1]Dan Brownlie, ed., Basic Documents In International Law, (London: Oxford University Press, 1972), p. 7.

[2]George Lenczowski, The Middle East in World Affairs, (Ithaca: Cornell University Press, 1962), p. 373. See also Fred J. Khouri, The Arab-Israeli Dilemma (Syracuse: Syracuse University Press, 1968), p. 4. Lenczowski refers to the proffered country as Uganda. Khouri states that this is in error and that actually the country was Kenya.

[3]Lenczowski, The Middle East in World Affairs, pp. 374-5.

[4]Khouri, The Arab-Israeli Dilemma, p. 5

[5]W. T. Mallison, "The Zionist-Israel Juridicial Claims to Constitute 'The Jewish People' Nationality Entity and to Confer Membership in It: Appraisal in Public International Law," ed. John Norton Moore, The Arab-Israeli Conflict, 3 vols. (Princeton: Princeton University Press, 1974), 1:106-8. See also Khouri, The Arab-Israeli Dilemma, p. 5.

[6]Mallison, "Claims to Constitute 'The Jewish People,' ed. Moore, 1:115.

[7]Ibid, 1:111. Mallison states "In spite of his contemporary concern, Dr. Weizmann subsequently developed a method of interpreting the Declaration which satisfied him: 'It would mean exactly what we would make it mean - neither more or less.'"

[8]The Balfour Declaration, November 2, 1917, ed. Moore, The Arab-Israeli Conflict, 3:31.

[9]Henry Cattan, Palestine and International Law, (London: Longman Group Ltd., 1976), pp. 58-9.

[10]"The Mandate for Palestine Confirmed by the Council of the League of Nations on July 24, 1922, and the Memorandum by the British Government Relating to Its Application to Transjordan approved by the Council of the League on September 16, 1922," ed. Moore, The Arab-Israeli Conflict, 3:75. It is also interesting to note that on September 21, 1922, the U.S. Congress passed a resolution "Favoring the Establishment in Palestine of a National Home for the Jewish People."

> Resolved by the Senate and House of Representatives of the United States of American favors the establishment in Palestine of a national home for Jewish people, it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of Christian and all other non-Jewish communities in Palestine, and that

the holy places and religious buildings and sites in Palestine shall be adequately protected. Approved, September 21, 1922. (Ibid., 3:107)

Note the similarity of this with the Balfour Declaration. It is also interesting to note that the political safeguard clause for the non-Jews of Palestine was adopted but the safeguard clause protecting non-Zionists was not.

[11]Cattan, Palestine and International Law, pp. 53-4.

[12]Ibid.

[13]Lenczowski, The Middle East in World Affairs, pp. 88-9.

[14]Khouri, The Arab-Israeli Dilemma, pp. 12-3.

[15]"The Palestine Order in Council, August 10, 1922," ed. Moore, The Arab-Israeli Conflict, 3:86.

[16]"Statement of British Policy in Palestine from Mr. Churchill to the Zionist Organization (The Churchill White Paper), June 3, 1922," ed. Moore, The Arab-Israeli Conflict, 3:64-70.

[17]Khouri, The Arab-Israeli Dilemma, p. 19, 23.

[18]Ibid., pp. 16-17. See also Lenczowski, The Middle East in World Affairs, pp. 376-7. See below Chapter 2, p.44, for a discussion concerning the legal issues of the Balfour Declaration and the Palestine Mandate.

[19]Khouri, The Arab-Israeli Dilemma, pp. 22-3. See also Lenczowski, The Middle East in World Affairs, pp. 382-3.

[20]"Excerpt from the British White Paper of 1930 (The Passfield White Paper)," ed. Moore, The Arab-Israeli Conflict, 3:135-6.

[21]Ibid., pp. 129-141.

[22]"Letter from Prime Minister James Ramsey MacDonald to Dr. Chaim Weizmann, February 13, 1931," ed. Moore, The Arab-Israeli Conflict, 3:148.

[23]"The Passfield White Paper," ed. Moore, The Arab-Israeli Conflict, 3:139.

[24]George M. Haddad, "Arab Peace Efforts and the Solution of the Arab-Israeli Problem," ed. Malcolm H. Kerr, The Elusive Peace in the Middle East, (Albany: State University of New York, 1975), p. 176. See also Janet L. Abu-Lughod, "The Demographic

Transformation of Palestine," ed. Ibrahim Abu-Lughod, The Transformation of Palestine, (Evanston: Northwestern University Press, 1971), p. 150. "But the early escape of the prescient, the lucky and the wealthy from Germany, which began in 1932, brought a stream of refugees to England, to the United States and Canada - and to Palestine. Between the beginning of 1932 and the end of 1936, close to 174,000 Jews immigrated to Palestine."

[25]"Excerpts from the Report of the Palestine Royal Commissio (The Peel Commission), June 22, 1937," ed. Moore, The Arab-Israeli Conflict, 3:153. The following excerpt from that report lists the major Arab grievances:

> 8. The Arab grievances may be summarized en bloc as a repudiation of the Mandate and all that it implies, from which the following main grievances arise:
>
> (1) The failure to develop self-governing institutions.
> (2) The acquisition of land by the Jews.
> (3) Jewish immigration.
> (4) The use of Hebrew and English as official languages.
> (5) The employment of British and Jewish officers, and exclusion of Arabs from higher posts.
> (6) The creation of a large class of landless Arabs, and the refusal of Jews to employ Arab labourers.
> (7) Inadequate funds for Arab education.

[26]Ibid., pp. 150-183.

[27]David Waines, "The Failure of the Nationalist Resistance," ed. Abu-Lughod, The Transformation of Palestine, pp. 233-4.

[28]Lenczowski, The Middle East in World Affairs, p. 384.

[29]"Palestine Statement of Policy: The British White Paper of May 17, 1939 (The MacDonald White Paper)," ed. Moore, The Arab-Israeli Conflict, 3:210-221.

[30]Khouri, The Arab-Israeli Dilemma, p. 27.

[31]Haddad, "Arab Peace Efforts and the Solution of the Arab-Israeli Problem," p. 178. See also Khouri, The Arab-Israeli Dilemma, p. 28 and Lenczowski, The Middle East in World Affairs, p. 386.

[32]Lenczowski, The Middle East in World Affairs, p. 386 and Khouri, The Arab Israeli-Dilemma, pp. 27-8.

[33]"Declaration Adopted by the Extraordinary Zionist Conference, Biltmore Hotel, New York City, May 11, 1942," ed. Moore, The Arab-Israeli Conflict, 3:230-2.

[34]Sydney Nettleton Fisher, The Middle East: A History (New York: Alfred A. Knopf, 1969), p. 641.

[35]Ibid., pp. 642-3.

[36]"Excerpt from the Report of the Anglo-American Committee of Enquiry Regarding the Problems of European Jewry and Palestine, April 20, 1946," ed. Moore, The Arab-Israeli Conflict, 3:243-53. See also Lenczowski, The Middle East in World Affairs, p. 391, Fisher, The Middle East: A History, pp. 643-5, and Khouri, The Arab-Israeli Dilemma, p. 34.

[37]Harry B. Ellis, The Dilemma of Israel (Washington, DC: American Enterprise Institute for Public Policy Research, 1970) pp. 26-7. See also Fisher, The Middle East: A History, pp. 645-6.

[38]Ellis, The Dilemma of Israel, p. 27. For an interesting account of the political pressure exerted by the American Zionist Movement on this issue, see Richard P. Stevens, American Zionism and U.S. Foreign Policy (1942-1947) (New York: Pageant Press, 1964), pp. 175-185. See also Alfred M. Lilienthal, The Zionist Connection: What Price Peace? (New York: Dodd, Mead and Co., 1978), pp. 62-69

[39]Erskine B. Childers, "The Wordless Wish: From Citizens to Refugees," ed. Abu-Lughod, The Transformation of Palestine, p. 185.

[40]Fisher, The Middle East: A History, p. 648. For an interesting account of the proceedings in the U.S. concerning this matter by a member of the U.S. delegation to the U.N., see Phillip C. Jessup, The Birth of Nations (New York: Columbia University Press, 1974), pp. 255-303. See also Aharon Cohen, Israel and the Arab World (New York: Funk and Wagnalls, 1970), pp. 412-21.

[41]"Declaration of the Establishment of the State of Israel, May 14, 1948," ed. Moore, The Arab-Israeli Conflict, 3:348-51.

[42]Jessup, The Birth of Nations, pp. 283-4.

[43]Ellis, The Dilemma of Israel, p. 52.

[44]Jessup, The Birth of Nations, pp. 282-3.

[45]Khouri, The Arab-Israeli Dilemma, pp. 73-95.

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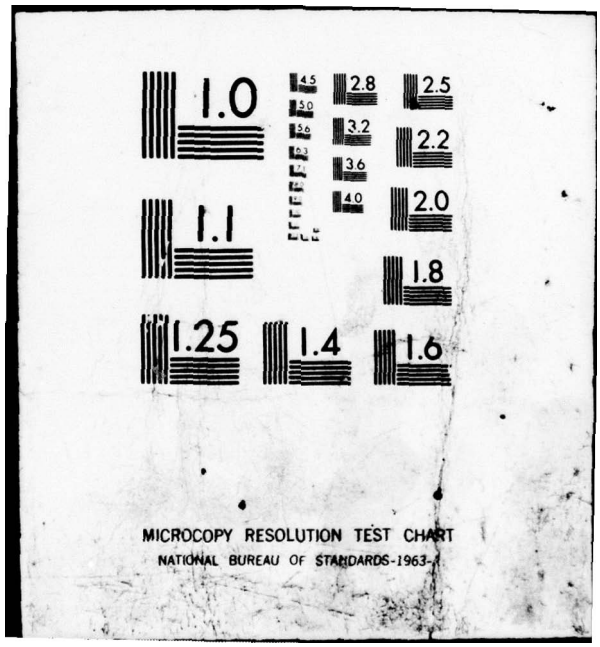
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[46]Ibid., p. 86.

[47]Ibid., pp. 95-8

[48]Jessup, The Birth of Nations, pp. 257-8. For a discussion on the legal effects of the international recognition of a state, see below Chapter 2, subpara. B.

[49]"Chronologies," The Middle East Journal, 21 (Summer 1967): pp. 381-93.

[50]"Chronologies," The Middle East Journal 21 (Fall 1967): pp. 503-11.

[51]Nathan Feinberg, "The Question of Sovereignty over Palestine," ed. Moore, The Arab-Israeli Conflict, 1:241-2.

[52]"The Balfour Declaration," ed. Moore, The Arab-Israeli Conflict, 3:32.

[53]L. Oppenheim, International Law: A Treatise, 2 vols., ed. H. Lauterpacht (London: Longmans, Green and Co. Ltd., 1955), 1:641.

[54]Ibid., 1:736.

[55]D. P. O'Connel, International Law, 2 vols. (London: Stevens and Sons Ltd., 1965), 1:216.

[56]Oppenheim, International Law: A Treatise, 1:873.

[57]Ibid., 1:878-9. In his first footnote on p. 879 Oppenheim specifically mentions the covenant of the League of Nations as such a treaty.

[58]Leslie C. Green, International Law Through the Cases (London: Stevens and Sons Ltd., 1970), p. 86.

[59]Ibid., p. 73.

[60]Ibid., pp. 74-5.

[61]Kunz, "The Present Status of International Law for the Protection of Minorities," ed. Marjorie M. Whiteman, Digest of International Law, 15 vols. (Washington, DC: Department of State Publication 8367, 1968), 5:43.

[62]"Article 22 of the Covenant of the League of Nations," ed. Moore, The Arab-Israeli Conflict, 3:72-3.

[63]Janet L. Abu-Lughod, "The Demographic Transformation of Palestine," pp. 141, 152-3. That the Arab population constituted a majority of the population there can be no question. A Turkish census in 1914 showed that the Jews composed only 60,000 of approximately 689,272 inhabitants. By 1946 there were still only 583,327 Jews among a total population of 1,887,214.

[64]I. F. Stone, Underground to Palestine (New York: Pantheon Books, 1978), pp. 241-2.

[65]Quincy Wright, Mandates Under the League of Nations (Chicago: University of Chicago Press, 1930), p. 277.

[66]Ibid., p. 284.

[67]Hans Aufricht, "On Relative Sovereignty," ed. Whiteman, Digest of International Law, 1:241-2.

[68]Oppenheim, International Law: A Treatise, 1:545.

[69]Wright, Mandates Under the League of Nations, p. 277.

[70]R. Y. Jennings, The Acquisition of Territory in International Law (Manchester; Manchester University Press, 1963), pp. 6-7. See also Oppenheim, International Law: A Treatise, 1:544-78. Jennings also points out that these five modes do not cover the case of a new state coming into existence.

[71]Wright, Mandates Under the League of Nations, p. 502.

[72]Ibid., p. 503.

[73]Ibid., pp. 505-6.

[74]Sir Arnold McNair, "International Status of South-West Africa, ed. Whiteman, Digest of International Law, 1:636.

[75]Wright, Mandates Under the League of Nations, p. 505.

[76]Oppenheim, International Law: A Treatise, 1:224.

[77]Ibid., 1:127.

[78]Ibid., 1:118-9.

[79]Ibid., 1:131-3.

[80]Ibid, 1:138-9.

[81]Green, International Law Through the Cases, p. 452.

[82]Oppenheim, International Law: A Treatise, 1:574.

[83]I. Peaslee, Constitutions of Nations, ed. Whiteman, Digest of International Law, 1:233-4.

[84]Oppenheim, International Law: A Treatise, 2:433-4.

[85]Wolfgang G. Friendman et al., Cases and Materials on International Law (St. Paul: West Publishing Co., 1969), p. 468.

[86]Ibid, p. 469.

[87]Oppenheim, International Law: A Treatise, 1:137-9.

[88]Ibid., 1:650.

[89]Tomasicchio v. Acheson, Secretary of State (1951), ed. Whiteman, Digest of International Law, 8:65.

[90]Oppenheim, International Law: A Treatise, 1:221-2.

[91]Oscar Kraines, Government and Politics in Israel (Boston: Houghton Mifflin Co., 1961), p. 162.

[92]Perkins, Secretary of Labor et al. v. Elg (1939), ed. Whiteman, Digest of International Law, 8:163-4.

[93]Oppenheim, International Law: A Treatise, 2:402-3. See also Whiteman ed., Digest of International Law, 10:540-89 concerning belligerent occupation. See also Brice M. Clagett and O. Thomas Johnson, Jr., "May Israel as a Belligerent Occupant Lawfully Exploit Previously Unexploited Oil Resources of the Gulf of Suez?", The American Journal of International Law 72 (July, 1978): 558-85. The specific case which applies in this matter is N. V. de Battafsche Petroleum Maatschappij v. The War Damage Commission (1956).

[94]"General Assembly Resolution 2452 (XXIII) Concerning the Palestine Refugees, December 19, 1968," ed. Moore, The Arab-Israeli Conflict, 3:836-7.

[95]Charter of the United Nations, ed. Ian Brownlie, Basic Documents in International Law (London: Oxford University Press, 1972), p. 16.

[96]Ann Mosely Lesch, Israel's Occupation of the West Bank: The First Two Years (Santa Monica: Rand, 1970), p. 1, 8.

[97]Ibid., pp. 5-20.

[98]Ibid., pp. 9-10.

[99]Ibid, pp. 16-20.

[100]Ibid., p. 16.

[101]Ibid., p. 12.

[102]Abdeen Jubara, Israel's Violation of Human Rights in Arab Territories Occupied in June, 1967 (Detroit: Association of Arab-American University Graduates, Inc., 1976), pp. 1-3.

[103]Ibid., p. 3.

[104]"Reactions to Koenig Memorandum in MA 'ARIV and Jerusalem Post," translated and reprinted by SWASIA: North Africa, 22 October 1976.

[105]New York Times, 19 August 1977.

[106]New York Times, 10 August 1977.

[107]Christian Science Monitor, 25 May 1978.

[108]U.S. Congress Senate, Subcommittee on Foreign Assistance of the Committee on Foreign Relations, Human Rights Reports, prepared by the Department of State, Committee Print, 95th Congress, 1st Session, Washington, DC: Government Printing Office, March 1977, p. 4.

[109]Ibid., pp. 5-6. See also "Excerpts from the Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories, October 5, 1970,: and "Excerpts from the Second Report of the Special Committee, September 17, 1971," ed. Moore, The Arab-Israeli Conflict, 3:848-68, 896-927.

[110]Michael Goldstein, "Israeli Security Measures in the Occupied Territories: Administrative Detection," The Middle East Journal 32 (Winter 1978), p. 35.

[111]Christian Science Monitor, 23 May 1978, p. 4.

[112]Ibid, p. 4.

[113]Seymore M. Lipset, "The Israeli Dilemma," ed. Michael Curtis and Mordecai S. Chertoff, Israel Social Structure and Change (New Brunswick: Transactions Books, 1974), p. 358.

[114]Raphael Patai, "Western and Oriental Culture in Israel," ed. Curtis and Chertoff, p. 311.

[115]"Israel: Songs of Peace," Newsweek, 8 May 1978, p. 50.

[116]Rael Jean Issac, Israel Divided: Ideological Politics in the Jewish State (Baltimore: Johns Hopkins University Press, 1974), p. 147.

[117]Friedmann et al., International Law: Cases and Materials, p. 467.

[118]Ibid., p. 468.

[119]Moore ed., The Arab-Israeli Conflict, 3:vi-vii.

[120]Jennings, The Acquisition of Territory in International Law, p. 14. See also S. Whittemore Boggs, International Boundaries (New York: Columbia University Press, 1940) for an interesting discussion of boundary problems.

[121]"Corpus Separatum: Jerusalem," ed. Whiteman, Digest of International Law, 1:593-8.

[122]Ibid., 1:594-5.

[123]Robert W. Tucker, The Inequality of Nations, "Although inqualities of status have not altogether disappeared, they remain as no more than vestiges of an order than has today lost almost any semblance of legitimacy. Even if it is argued thatin a number of respects a de facto colonialism persists, the point remains - and it is an all important one - that as a de jure institution colonialism has passed into history...Despite the continued strictures of many international jurists that legal equality is not to be identified with an equal capacity for rights, the thrust of contemporary international law has plainly been in the direction of the negation of status." (pp. 19-20), (New York: Basic Books, Inc., 1977), pp. 19-21.

[124]Oppenheim, International Law: A Treatise, 2:212-6.

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