

# The Territories

By: Eli E. Hertz

## **Jews redeemed the Promised Land.**

“... we [The British] have no doubt that many Arab landowners have benefited financially from Jewish immigration. They have sold a large amount of land to Jews at a price far higher than its pre-war value. A member of the Arab Higher Committee admitted to us that ‘nowhere in the world were such uneconomic land-prices paid as by Jews in Palestine.’ Some of the Jewish money has been spent also on the products of Arab industry, such as stone and other building materials, on rent for Arab-owned houses and in wages for Arab labour ... It is true, much of the selling was done by Arab owners domiciled in Syria; but in recent transactions mainly Palestinian Arabs have been concerned, and those transactions have been considerable.”

**July 1937, Palestine Royal Report.**

## The Territories – Part I

# Legal Aspects of Controlling the Territories

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### **Terminology services deception.**

A UN coalition sought to rewrite history by labeling the Territories ‘Occupied Territories,’ thus endowing them with an aura of bogus statehood and a false history. They used capital letters for ‘Occupied Territories’ and then shifted to ‘Palestinian Occupied Territories’ and ‘Palestine,’ as if title or ownership could be assigned out of thin air.

No legal binding authority has empowered any UN organ, including the International Court of Justice (ICJ), to decide that the unallocated territories of the West Bank, known as Judea and Samaria, and the Gaza strip could be transformed into ‘Occupied Palestinian Territories’ or ‘Palestine.’ UN organs’ use of these dishonest, loaded terms empowers terrorism and the Palestinians with the right to use all measures to expel Israel. Kofi Annan’s use of the phrase ‘illegal occupation’ is a “perilous threat to the diplomatic search for peace,” says Professor George Fletcher, an expert in international law.<sup>1</sup>”

“The International Court of Justice (ICJ) has been insistent, not least as regards questions of territorial title, that the rules and concepts of international law have to be interpreted ‘by reference to the law in force’ and ‘the State practice’ at the relevant period.”<sup>2</sup>

### **The General Assembly attempts to *legislate* changes in the status of the Territories against Israel and the Rule of International Law.**

One can easily trace the General Assembly’s attempts to *legislate* changes in the status of the Territories, *doctoring* the definition of the status of the Territories. These attempts are well documented on the website of the Palestinian delegation to the United Nations that posts landmark pro-Palestinian decisions. Examination reveals how over the years in the UN General Assembly resolutions and the wording of resolutions by sub-committees moves from “territories” to “occupied territories” to “Occupied Territories” and “Arab territories” and from “occupied Palestinian territories” to “Occupied Palestinian Territory” and “Occupied Palestinian Territory, including Jerusalem”:

- Resolution 3236 (XXIX) passed in November 1974 speaks of “the question of Palestine”;
- Resolution 38/58 in December 1983 speaks of “Arab territories” and “occupied territories”;
- Resolution 43/176 passed in December 1988 expresses sentiments suggesting Palestinian entitlement – speaking of “the Palestinian people[‘s] right to exercise their sovereignty over their territory occupied since 1967”;
- Resolution 51/133 passed in December 1996 adds Jerusalem in particular – speaking of “occupied Palestinian territory, including Jerusalem, and the occupied Syrian Golan...”;
- Resolution 52/250 passed in July 1998 fully “assigns title” – speaking of “Occupied Palestinian Territory,” a designation that is frequently used in subsequent resolutions.

None of these terms have a legal foundation any more than declaring “The world is flat” makes it so. Yet the International Court of Justice cites these terms as if they were *legal* documents. Even junior jurists know better.

It should be noted: The coining of the term “Occupied Palestinian Territory” by the General Assembly, and all the more so its ‘adoption’ by the International Court of Justice, is contrary to, and *totally incompatible with*, Article 12 of the UN Charter which states:

“While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly *shall not* make any recommendation with regard to that dispute or situation unless the Security Council so requests.” (*emphasis added*)

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## **The artificiality of the historical Palestinian identity.**

Not until the late 1980s did the Arab Palestinians adopt ‘*Anthem of the Intifada*’ as their national anthem, two decades after Israel took over the West Bank. The use of the word ‘Palestine’ was adopted by the Arabs specifically for political gain, to brand Israelis as invaders and to claim the geographic area called Palestine as exclusively belonging to the Arabs.

The artificiality of a Palestinian identity is reflected in the attitudes and actions of neighboring Arabs who never established a Palestinian state or advocated one prior to the Six-Day War in 1967. What unites Palestinians has been their opposition to Jewish nationalism and the desire to stamp it out, not aspirations for their own state. Local patriotic feelings are generated only when a non-Islamic entity takes charge – such as Israel did in 1967 after the Six-Day War. It dissipates under Arab rule, no matter how distant or despotic, as it was under the rule of Jordan prior to 1967.

Culturally, Palestinians are not distinct from other Arabs. The sole contributions Palestinians can take credit for are the invention of skyjacking for political

purposes in the 1960s, and lately a special brand of suicidal terrorism that uses their own youth as delivery systems for bombing pizza parlors, discos, and public commuter buses.

Ironically, before local Jews began calling themselves Israelis in 1948 (the name Israel was chosen for the newly established Jewish state), the term ‘Palestine’ applied almost exclusively to Jews and the institutions founded by new Jewish immigrants in the first half of the 20<sup>th</sup> century, before independence. Some examples include:

- The *Jerusalem Post*, founded in 1932, was called the *Palestine Post* until 1948.<sup>3</sup>
- Bank Leumi L’Israel was called the “Anglo-Palestine Bank, a Jewish Company.”
- The Jewish Agency – an arm of the Zionist movement engaged in Jewish settlement since 1929 – was called the Jewish Agency for Palestine.
- The house organ of American Zionism in the 1930s was called *New Palestine*.
- Today’s Israel Philharmonic Orchestra, founded in 1936 by German Jewish refugees who fled Nazi Germany, was called the Palestine Symphony Orchestra, composed of some 70 Palestinian Jews.<sup>4</sup>
- The United Jewish Appeal (UJA) was established in 1939 as a merger of the United Palestine Appeal and the fundraising arm of the Joint Distribution Committee.

Princeton University professor of Semitic literature Philip Hitti (1886-1978), one of the greatest Arabic historians of the ninth century and author of ‘The History of the Arabs,’ testifying on behalf of the Arab cause, told the Anglo-American Committee of Inquiry on Palestine in 1946:<sup>5</sup> “There is no ‘Palestine’ in history, absolutely not.”

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**Nearly all International Territorial Conflicts are labeled ‘contested’ or ‘disputed territory’ but only the Territories occupied by Israel are branded ‘occupied territory.’**

The definition of the term “occupied territory” that appears in the U.S. Department of Defense’s *Dictionary of Military Terms*<sup>6</sup> demonstrates an awareness of the widespread misuse of the term ‘occupied territory’ and notes the inappropriateness of the term in situations such as in the West Bank. The definition says:

“Territory under the authority and effective control of a belligerent armed force. The term is not applicable to territory being administered pursuant to peace terms, treaty, or other agreement, express or implied, with the civil authority of the territory.”

Since the end of World War II, no border dispute in the world has been defined ‘occupied territories,’ except Israel. In virtually every other disagreement

concerning borders and territories,<sup>7</sup> the most common terms applied are ‘territorial disputes’ or ‘contested borders.’ This includes Bosnia-Herzegovina, East Timor, even the Western Sahara and Kashmir. U.S. Department of State documents speak of Kashmir as ‘disputed areas’ and describe clashes between Azerbaijan and Armenian separatists as an issue of ‘disputed areas’; Morocco’s military incursion into the Western Sahara is not commonly labeled an ‘occupation’ and Turkey’s presence in Northern Cyprus is not branded ‘occupied territory.’<sup>8</sup>

Indicative of this bias – which extends to academe, the compilers of a collection of documents and maps devoted to Palestine from 1946 to 1964<sup>9</sup> didn’t consider Jordan’s invasion, occupation and illegal annexation of the entire West Bank – 5,875 sq. kilometers – important enough to justify a mention in the overview. However the collection’s timeline notes “Israeli occupation of Jordanian territory, Jisr Majami,” a reference to control of a 4.5 acre island in the middle of the Jordan River, whose control under the 1949 armistice was subject to dispute and ballooned into a diplomatic crisis and a domestic crises in Jordan in September 1950.<sup>10</sup>

*The use of the term ‘occupied territories’ is a misleading, politically loaded pejorative – a red herring designed to rob Israel of any legal or moral rights and empower Palestinians with the right to “use all measures”<sup>11</sup> to expel Israel.*

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## **“Mandate for Palestine” - The legal system for *reconstituting* the Jewish Homeland in Palestine.**

“Palestine” is a geographic designation<sup>12</sup> – like the Great Plains; not a polity. In fact, Palestine has never been an independent state belonging to any people nor did a Palestinian people, distinct from other Arabs, appear during 1,300 years of Muslim hegemony in the “Palestine” under Arab and Ottoman rule. Local Arabs during that rule were actually considered part of and subject to the authority of Greater Syria (*Suriyya al-Kubra*).

Like a mantra, Arabs, the UN, its organs and now the International Court of Justice have claimed repeatedly that the Palestinians are a native people – so much so that almost everyone takes it for granted. The problem is that a stateless Palestinian people is a fabrication. The word ‘Palestine’ is not Arabic.

In a report by His Majesty's Government in the United Kingdom of Great Britain and Northern Ireland to the Council of the League of Nations, on the administration of Palestine and Trans-Jordan for the year 1938, the British made it clear - *Palestine is not a State but is the name of a geographical area.*

Below is a copy of the original document as filed at the British National Archive.

The delineation of the geographical area called Palestine:

## PALESTINE

### **INTRODUCTORY. POSITION, ETC.**

Palestine lies on the western edge of the continent of Asia between Latitude 30° N. and 33° N., Longitude 34° 30' E. and 35° 30' E.

On the North it is bounded by the French Mandated Territories of Syria and Lebanon, on the East by Syria and Trans-Jordan, on the South-west by the Egyptian province of Sinai, on the South-east by the Gulf of Aqaba and on the West by the Mediterranean. The frontier with Syria was laid down by the Anglo-French Convention of the 23rd December, 1920, and its delimitation was ratified in 1923. Briefly stated, the boundaries are as follows:

North.-From Ras en Naqura on the Mediterranean eastwards to a point west of Qadas, thence in a northerly direction to Metulla, thence east to a point west of Banias.

East.-From Banias in a southerly direction east of Lake Hula to Jisr Banat Ya'pub, thence along a line east of the Jordan and the Lake of Tiberias and on to El Hamme station on the Samakh-Deraa railway line, thence along the centre of the river Yarmuq to its confluence with the Jordan, thence along the centres of the Jordan, the Dead Sea and the Wadi Araba to a point on the Gulf of Aqaba two miles west of the town of Aqaba, thence along the shore of the Gulf of Aqaba to Ras Jaba.

South.-From Ras Jaba in a generally north-westerly direction to the junction of the Neki-Aqaba and Gaza Aqaba Roads, thence to a point west-north-west of Ain Maghara and thence to a point on the Mediterranean coast north-west of Rafa.

West.-The Mediterranean Sea.

Paragraph 1 of Article 22 of the Covenant of the “League of Nations” reads:<sup>13</sup>

“To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are *inhabited* by peoples *not yet able to stand by themselves* under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a *sacred trust* of civilization and that securities for the performance of this trust should be embodied in this Covenant.”

The Palestinian Royal Commission Report of July, 1937 addresses Arab claims that the creation of the Jewish National Home as directed by the Mandate for Palestine violated Article 22 of the Covenant of the League of Nations:<sup>14</sup>

“As to the claim, argued before us by Arab witnesses, that the Palestine Mandate violates Article 22 of the Covenant because it is not in accordance with paragraph 4 thereof, we would point out (a) that the provisional recognition of “certain communities formerly belonging to the Turkish Empire” as independent nations is permissive; the words are “*can* be provisionally recognised”, not “*will*” or “*shall*”: (b) that the penultimate paragraph of Article 22 prescribes that the degree of authority to be exercised by the Mandatory shall be defined, at need, by the Council of the League: (c) that the acceptance by the Allied Powers and the United States of the policy of the Balfour Declaration made it clear from the beginning that Palestine would have to be treated differently from Syria and Iraq, and that this difference of treatment was confirmed by the Supreme Council in the Treaty of Sevres and by the Council of the League in sanctioning the Mandate.

This particular question is of less practical importance than it might seem to be. For Article 2 of the Mandate requires “the development of self-governing institutions”; and, read in the light of the general intention of the Mandate System (of which something will be said presently), this requirement implies, in our judgment, the ultimate establishment of independence.

(3) The field [Territory] in which the Jewish National Home was to be established was understood, at the time of the Balfour Declaration, to be the whole of historic Palestine, and the Zionists were seriously disappointed when Trans-Jordan was cut away from that field [Territory] under Article 25.” (That excluded 76% of the original area - east of the Jordan River, what became later Trans-Jordan.)

The “inhabited ... peoples” of the territory for whom the Mandate for Palestine was created, who were “not yet able” to govern themselves and for whom self-determination was a “sacred trust,” were not Palestinians, or even Arabs. The Mandate for Palestine was created by the predecessor of the United Nations, the League of Nations, for the Jewish People.<sup>15</sup>

The second paragraph of the Mandate for Palestine therefore reads:

“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 favor 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 ... Recognition has thereby been given to *the historical connection of the Jewish people with Palestine* and to the grounds for *reconstituting* their national home in that country ...” (*emphasis added*).

**Addressing the Arab claim that Palestine was part of the territories promised to the Arabs in 1915 by Sir Henry McMahon, the British Government stated:<sup>16</sup>**

“We think it sufficient for the purposes of this Report to state that the British Government have *never accepted the Arab case*. When it was first formally presented by the Arab Delegation in London in 1922, the Secretary of State for the Colonies (Mr. Churchill) replied as follows:-

“That letter [Sir H. McMahon's letter of the 24th October, 1915] is quoted as conveying the promise to the Sherif of Mecca to recognize and support the independence of the Arabs within the territories proposed by him. But this promise was given subject to a reservation made in the same letter, which excluded from its scope, among other territories, the portions of Syria lying to the west of the district of Damascus. This reservation has always been regarded by His Majesty's Government as covering the vilayet of Beirut and the independent Sanjak of Jerusalem. *The whole of Palestine west of the Jordan was thus excluded from Sir H. McMahon's pledge.*

“It was in the highest degree unfortunate that, in the exigencies of war, the British Government was unable to make their intention clear to the Sherif. *Palestine*, it will have been noticed, *was not expressly mentioned* in Sir Henry McMahon's letter of the 24th October, 1915. Nor was any later reference made to it. In the further correspondence between Sir Henry McMahon and the Sherif the only areas relevant to the present discussion which were mentioned were the Vilayets of Aleppo and Beirut. The Sherif asserted that these Vilayets were purely Arab; and, when Sir Henry McMahon pointed out that French interests were involved, he replied that, while he did not recede from his full claims in the north, he did not wish to injure the alliance between Britain and France and would not ask ‘for what we now leave to France in Beirut and its coasts’ till after the War. There was no more bargaining over boundaries. It only remained for the British Government to supply the Sherif with the monthly subsidy in gold and the rifles, ammunition and foodstuffs he required for launching and sustaining the revolt.” [italics by author].

Because, Palestinians have been so successful in co-opting for themselves the term ‘Palestinian’ over the past few decades, the world appears to be ignorant of the fact that “Palestinian” was once a “Jewish” term.

The Mandate for Palestine clearly differentiates between *political* rights – referring to Jewish self-determination as an emerging polity, and *civil* rights – referring to guarantees of equal citizenship and personal freedoms to non-Jewish residents as individuals and within select communities. Not once are Arabs as a people mentioned in the Mandate for Palestine. At no point within the entire document is there any granting of political rights to non-Jewish entities (i.e. Arabs) because political rights to self-determination as a polity for Arabs were guaranteed in three other parallel ‘Class A’ mandates – in Lebanon, Syria, and Iraq. (Transjordan - today Jordan, became an independent Arab state in 1946, by a provision approved by the League of Nations under Article 25 of the Mandate for Palestine). Article 2 of the Mandate states explicitly that the Mandatory should create:

“... political, administrative and economic conditions as will secure the establishment of *the Jewish national home*, as laid down in the preamble, and the development of self-governing institutions, and also for safeguarding the civil and religious rights of all the inhabitants of Palestine, irrespective of race and religion.” (*emphasis added*)

Eleven times in the Mandate for Palestine, the League of Nations speaks specifically of Jews and the Jewish people, calling upon Great Britain to create a nationality law “to facilitate the acquisition of Palestinian citizenship by Jews who take up their permanent residence in Palestine,” to establish a parliament, and to develop economic and cultural institutions befitting a future nation-state (Article 7).



There is not one mention of the word “Palestinians” or the word “Palestinian Arabs,” as exploited today. Alas, the “non-Jewish communities” the Mandate speaks of were extensions (or in today’s parlance ‘diaspora communities’) of another Arab people for whom a *separate* mandate had been drawn up at the *same* time – the Syrians.<sup>17</sup> It is important to note that not only Britain and France were Mandators (e.g. official administrators and mentors), but also Belgium, New Zealand, South Africa and Japan elsewhere – mandates that created Cameroon, Rwanda, Samoa and New Guinea (today’s Papua New Guinea).

Consequently, it is not surprising that Auni Bey Abdul-Hadi, a local Arab leader, testified in 1937 before a British investigative body – the Peel Commission - saying:

“There is no such country [as Palestine]! Palestine is a term the Zionists invented! There is no Palestine in the Bible. Our country was for centuries, part of Syria.”<sup>18</sup>

The term ‘Palestinian’ had only been invented in the 1960s to paint Jews – who had adopted the term “Israelis” after the establishment of the State of Israel – as invaders now residing on Arab turf.

To the average reader lacking a profound historical knowledge of this conflict, the term ‘Mandate for Palestine,’ sound like an Arab trusteeship, but such expression changes neither the history nor the legal facts about Israel.

Arabs categorically rejected the Mandate for Palestine! In the July 22, 1947<sup>19</sup> testimony of the President of the Council of Lebanon, Hamid Frangie, the Lebanese Minister of Foreign Affairs, speaking on behalf of all the Arab countries, declared unequivocally:

“There is only one solution for the Palestinian problem, namely cessation of the Mandate [for the Jews]” and both the Balfour Declaration and the Mandate are “null and valueless.” All of Palestine, he claimed, “is in fact an integral part of this Arab world, which is organized into sovereign States bound together by the political and economic pact of 22 March 1945” [the Arab League] - with no mention of an Arab Palestinian state. Frangie warned: “The Governments of the Arab States will not under any circumstances agree to permit the establishment of Zionism as an autonomous State on Arab territory” ... “[the Arab countries] wish to state that they feel certain that the partition of Palestine and the creation of a Jewish State would result only in bloodshed and unrest throughout the entire Middle East.”<sup>20</sup>

Article 20 of the PLO Covenant, adopted by the Palestine National Council in July 1968, never legally revised<sup>21</sup> and proudly posted on the Palestinian delegation’s UN website<sup>22</sup> (which can be accessed via the UN’s main website<sup>23</sup>) states:

“The Balfour Declaration, the Mandate for Palestine, and everything that has been based upon them, are deemed null and void.”

The PLO’s Article adds that Jews do not meet the criteria of a nationality and therefore do not deserve statehood at all, clarifying this statement in Article 21 that Palestinians,

“... reject all solutions which are substitutes for the total liberation of Palestine.”

In a recent ruling by the ICJ in connection with a request for an advisory opinion,<sup>24</sup> the International Court of Justice (ICJ) figured it could talk of a ‘stand-alone’ Mandate for Palestine established in 1922 and assume that most readers – including jurists, journalists and policy makers reading the decision but not being historians - would believe “Mandate for Palestine” was the foundation for a Palestinian state, and never be the wiser. Or the learned judges simply didn’t do their homework and remained unaware that the Mandate for Palestine was earmarked specifically and exclusively *for the Jewish People*.

The ramifications of the ICJ’s citation in that case, fallaciously justified after examine an abridged version of the Mandate for Palestine are tremendous, effectively going beyond the ‘embarrassment’ of assuming the Mandate for Palestine was for present day Palestinians to actually creating a lie that can only contribute to deeper bias and incitement.

### **Jews irrevocable right to settle in the West Bank and the Gaza.**

International law, the UN Charter, and Article 80 of the UN Charter implicitly recognize the Mandate of the League of Nations. This Mandate granted Jews the irrevocable right to settle in the area of Palestine - anywhere between the Jordan River and the Mediterranean Sea.

The Jewish right to settle in the West Bank and the Gaza Strip remains intact, writes Professor Eugene V. Rostow, U.S. Undersecretary of State in 1967.<sup>25</sup>

“This right is protected by Article 80 of the United Nations Charter, which provides that unless a trusteeship agreement is agreed upon (which was not done for the Palestine Mandate), nothing in the chapter shall be construed in and of itself to alter in any manner the rights whatsoever of any states or any peoples or the terms of existing international instruments to which members of the United Nations may respectively be parties.

The Mandates of the League of Nations have a special status in international law. They are considered to be trusts, indeed ‘sacred trusts.’

Under international law, neither Jordan nor the Palestinian Arab ‘people’ of the West Bank and the Gaza Strip have a substantial claim to the sovereign possession of the occupied territories.

... the mandate implicitly denies Arab claims to national political rights in the area in favor of the Jews; the mandated territory was in effect reserved to the Jewish people for their self-determination and political development, in acknowledgment of the historic connection of the Jewish people to the land. Lord Curzon, who was then the British Foreign Minister, made this reading of the mandate explicit. There remains simply the theory that the Arab inhabitants of the West Bank and the Gaza Strip have an inherent ‘natural law’ claim to the area. Neither customary international law nor the United Nations Charter acknowledges that every group of people claiming to be a nation has the right to a state of its own.

... it is a rule essential to international peace that claims of national self-determination be asserted only through peaceful means. The international use of force to vindicate such claims is and must be strictly forbidden by the United Nations Charter.”

Why is it so important that neither option was acted on? One could simply stick to legalities and the binding nature of the Mandate. There is, however, another dimension: The failure to amend the Mandate demonstrates that the Mandate for Palestine was not a naive vision, briefly embraced by the international community in blissful unawareness of Arab opposition to the very notion of Jewish historical rights in Palestine. While the Mandate for a Jewish Homeland was, indeed, penned and adopted in 1922-3, it weathered the test of time: The League of Nation's Mandate for Palestine was adopted by the United Nations in 1945 'as is,' despite the option to revise it as a United Nation's trusteeship under new terms. Thus, in 1945, the international community, in essence, reaffirmed the validity of this international accord and reconfirmed that the terms for a Jewish Homeland were the will of the international community, even a "sacred trust" – despite the fact that by then it was patently clear that the Arabs opposed a Jewish homeland, no matter what the form (see the chapter "Rejectionism"). Again, in 1947 the idea of a trusteeship was briefly floated, but not acted on. (For more information on Article 80, see the chapter "Documents.")

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### **Jews self-determination, via the Mandate for Palestine, was internationally and widely supported.**

The British objectives in 'mentoring' a national home for the Jewish People' under the Mandate for Palestine were not based solely on the 1917 Balfour Declaration. While international support for the establishment of a Jewish homeland in Palestine was set in motion by this landmark British policy statement, international intent rested on a solid consensus, expressed in a series of accords and declarations that reflected the 'will' of the international community, hardly the product of a colonial empire with its own agenda.

The Mandate itself notes this intent when it cites that the Mandate is based on the agreement of "*the Principal Allied Powers*" and declares:

"Whereas recognition has therefore been given to the *historical connection* of the Jewish people with Palestine and to the grounds for reconstructing their national home in that country" (emphasis added).

A June 1922 letter from the British Secretary of State for the Colonies, Winston Churchill, reiterated that

"...the [Balfour] Declaration of 1917 [was] re-affirmed by the Conference of the Principle Allied Powers *at San Remo* and again in the *Treaty of Sevres*" ... "the Jewish people ... is in Palestine as a right and not on sufferance. That is the reason why it necessary that the existence of a Jewish National Home in Palestine *should be internationally guaranteed, and* that it should be formally recognized to rest upon ancient historical connection." (emphasis added)

In his first *Report of The High Commissioner on the Administration of Palestine 1920-1925 To the Secretary of State for the Colonies*, published in April 1925, the

most senior official of the Mandate for Palestine, the High Commissioner for Palestine, underscored how “international guarantee[s]” for the existence of a Jewish National Home in Palestine were achieved:

“The Declaration was endorsed at the time by several of the Allied Governments; it was reaffirmed by the Conference of the Principal Allied Powers at San Remo in 1920; it was subsequently endorsed by unanimous resolutions of both Houses of the Congress of the United States; it was embodied in the Mandate for Palestine approved by the League of Nations in 1922; it was declared, in a formal statement of policy issued by the Colonial Secretary in the same year, ‘not to be susceptible of change;’ and it has been the guiding principle in their direction of the affairs of Palestine of four successive British Governments. The policy was fixed and internationally guaranteed.”

It is remarkable to note the Report of The High Commissioner on the Administration of Palestine, addressed to the Right Honourable L. S. Amery, M.P., Secretary of State for the Colonies’ Government Offices in 22<sup>nd</sup> April, 1925, describing Jewish Peoplehood:

“During the last two or three generations the Jews have recreated in Palestine a community, now numbering 80,000, of whom about one-fourth are farmers or workers upon the land. This community has its own political organs, an elected assembly for the direction of its domestic concerns, elected councils in the towns, and an organisation for the control of its schools. It has its elected Chief Rabbinate and Rabbinical Council for the direction of its religious affairs. Its business is conducted in Hebrew as a vernacular language, and a Hebrew press serves its needs. It has its distinctive intellectual life and displays considerable economic activity. This community, then, with its town and country population, its political, religious and social organisations, its own language, its own customs, its own life, has in fact ‘*national characteristics*.’

When it is asked what is meant by the development of the Jewish National Home in Palestine, it may be answered that it is not the imposition of a Jewish nationality upon the inhabitants of Palestine as a whole, but the further development of the existing Jewish community, with the assistance of Jews in other parts of the world, in order that it may become a centre in which the Jewish people as a whole may take, on grounds of religion and race, an interest and a pride. But in order that this community should have the best prospect of free development and provide a full opportunity for the Jewish people to display its capacities, it is essential that it should know that it is in Palestine as of right and not on sufferance. That is the reason why it is necessary that the existence of a Jewish National Home in Palestine should be internationally guaranteed, and that *it should be formally recognised to rest upon ancient historic connection.*”

Far from the whim of this or that politician or party, 11 successive British governments, Labor and Conservative, from David Lloyd George (1916-1922) through Clement Attlee (1945-1952) viewed themselves as duty-bound to fulfill the “Mandate for Palestine” placed in the hands of Great Britain by the League of Nations.<sup>26</sup>

At no point in the “Mandate for Palestine” is there any granting of *political* rights to non-Jewish entities (i.e. Arabs), only *civil* rights, because political rights to self-determination as a polity for Arabs were guaranteed in four other parallel mandates for Arab peoples, initially in Lebanon, Syria, and Iraq and later in Transjordan.

Professor Rostow, examining the claim for Arab Palestinian’s self-determination on the basis of law, concludes:

“... the mandate implicitly *denies Arab claims* to national political rights in the area *in favor of the Jews*; the mandated territory was in effect reserved to the Jewish people for their self-determination and political development, in acknowledgment of the historic connection of the Jewish people to the land. Lord Curzon, who was then the British Foreign Minister, made this reading of the mandate explicit. There remains simply the theory that the Arab inhabitants of the West Bank and the Gaza Strip have an inherent ‘natural law’ claim to the area. *Neither customary international law nor the United Nations Charter acknowledges that every group of people claiming to be a nation has the right to a state of its own.*”<sup>27</sup> (emphasis added)

Apart from the legal rights bestowed in the Mandate for Palestine, International Law, distinguished legal scholars and more recent history, confirm that based on Arab aggression in 1948, 1967 and 1973 Israelis have rights to the territories of the West Bank and Gaza.

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### **Israel has been fighting for its survival from the very day it declared the establishment of the modern Jewish state.**

Israel has fought four major wars in self-defence against unlawful acts of aggression committed by her Arab neighbors.

Throughout the history of Mandate Palestine, Jews were law-abiding, peaceful people defending themselves against Arab aggression. In a 1946 report, the Anglo-American Committee reported its observation regarding Jews living in the land of Palestine:

“The Jew had to train himself for self-defence, and to accustom himself to the life of a pioneer in an armed stockade. Throughout the Arab rising, the Jews in the National Home, despite every provocation, obeyed the orders of their leaders and exercised a remarkable self-discipline. They shot, but only in self-defence; they rarely took reprisals on the Arab.”<sup>28</sup>

### **Arab losses caused by their own unlawful acts of aggression in 1948.**

About six months before the War of Independence in 1948, Palestinian Arabs launched a series of riots, pillaging, and bloodletting. Then came the invasion of five Arab armies from neighboring states attempting to prevent the establishment of a Jewish state in accordance with the UN’s 1947 Partition Plan, a plan the Arabs rejected. (See “Resolution 181: Legitimizing Jewish statehood” in the chapter “United Nations Resolutions.”)<sup>29</sup>

The Jewish state not only survived; it came into possession of territories – land from which its adversaries launched their first attempt to destroy the newly created State of Israel.

In the first critical weeks after the British left the region and Israel declared its independence, the combined Arab armies had about 270 tanks, 150 field guns and 300 aircraft on four fronts<sup>30</sup> (Lebanon, Syria, Jordan, Egypt) aimed at a small

Jewish militia with three tanks and five artillery pieces. Israel had no air force, and until arms were rushed in from abroad<sup>31</sup> and a regular army could be organized, it relied on the only strength it had: 70 years worth of social solidarity inspired by the Zionist endeavor.

Israel's citizens understood that defeat meant the end of their Jewish state before it could even get off the ground. In the first critical weeks of battle, and against all odds, Israel prevailed on several fronts.

The metaphor of *Israel having her back to the sea* reflected the image crafted by Arab political and religious leaders' rhetoric and incitement. Several car bombs had killed Jews and massacres of Jewish civilians underscored Arab determination to wipe out the Jews and their state.

There were 6,000 Israeli dead as a result of that war, in a population of 600,000. One percent of the Jewish population was gone. In American terms, the equivalent is 2.8 million American civilians and soldiers killed over an 18-month period.<sup>32</sup>

Under the pressure of war, Palestinian society collapsed in disarray.<sup>33</sup> Both sides were left to cope with hundreds of thousands of refugees – Jewish and Arab. Yet the way the Arab world dealt with their refugees contrasts glaringly with the way Jews welcomed their own. This same contrast parallels how Jews and Arabs have approached the notion of compromise over the past 85 years (See the chapters “Rejectionism” and “The Refugees”).

The Israel War of Independence in 1948 was Israel war of self-defence as may be reflected in UN resolutions that named Israel a “peace loving State”<sup>34</sup> when it applied for membership at the United Nations. Both, the Security Council (4 March, 1949, S/RES/69) and the UN General Assembly (11 May, 1949, (A/RES/273 (III)) declared:

“[Security Council] *Decides* in its judgment that Israel is a peace-loving State and is able and willing to carry out the obligations contained in the Charter, ...”

“[General Assembly] *Decides* that Israel is a peace-loving State which accepts the obligations contained in the Charter and is able and willing to carry out those obligations;”

### **Arab losses caused by their own unlawful acts of aggression in 1967.**

In June 1967, the combined armies of Egypt, Syria, and Jordan attacked Israel with the clear purpose expressed by Egypt's President: “... Destruction of Israel.” At the end of what is now known as the Six-Day War, Israel, against all odds, was victorious and in possession of the territories of the West Bank, Sinai and the Golan Heights.

International law makes a clear distinction between defensive wars and wars of aggression. More than half a century after the 1948 War and nearly four decades since the 1967 Six-Day War, it is hard to imagine the dire circumstances Israel faced and the price it paid to fend off its neighbors' attacks.

A core issue leading to those wars are the borders, and one of the key questions is whether borders can be established that do not invite aggression.

In 1967, the combined Arab armies had approximately 465,000 troops, more than 2,880 tanks and 810 aircraft,<sup>35</sup> preparing to attack Israel at once. Israel, faced with the imminent threat of obliteration, was forced to invoke its right of Self-Defence, a basic tenet of international law, enshrined in Article 51<sup>36</sup> of the United Nations Charter. Israel launched a surprised pre-emptive air strike against Egypt on June 5, 1967.

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**Israel's wars with her neighbors are zero-sum games. The Arab objective in the 1948 War of Independence, the 1967 Six-Day War and the 1973 Yom Kippur War was to overrun and eradicate the Jewish state.**

That objective is very much in the minds of the majority of Palestinian Arabs – in the leadership and the general population, as well as in the minds of their brethren in other Arab countries - though their tactics may have changed.<sup>37</sup>

**1948:** Arab League Secretary-General Azzam Pasha exulted: “This will be a war of extermination and a momentous massacre which will be spoken of like the Mongolian massacres and the Crusades.”

**1954:** Saudi Arabian King Saud ibn Abdul Aziz: “The Arab nations should sacrifice up to 10 million of their 50 million people, if necessary, to wipe out Israel ... Israel to the Arab world is like a cancer to the human body, and the only way of remedy is to uproot it, just like a cancer.”

**1967:** Egyptian President Gamal Abdel Nasser: “Our basic objective will be the destruction of Israel.” (May 27, 1967, nine days before the start of the Six-Day War.)

**1973:** Libyan President Mohammar Qadaffi: “The battle with Israel must be such that, after it, Israel will cease to exist.” (al-Usbu al-Arrabi, Beirut. Quoted by Algiers Radio, Nov. 12, 1973.)

**1980:** PLO representative in Saudi Arabia Rafiq Najshah: “There has been no change whatsoever in the fundamental strategy of the PLO, which is based on the total liberation of Palestine and the destruction of the occupying country.... On no accounts will the Palestinians accept part of Palestine and call it the Palestinian state, while forfeiting the remaining areas which are called the State of Israel.”

**1996:** Palestinian Chairman Yasser Arafat: “[Our aim is] to eliminate the State of Israel and establish a purely Palestinian one.” (In a closed meeting with Arab diplomats in Europe, quoted in the Middle East Digest, March 7, 1996.)

**1996:** PLO spokesperson Bassam abu-Sharif: “The struggle against the Zionist enemy is not a matter of borders but relates to the mere existence of the Zionist entity.” (In an interview with the Kuwait News Agency, May 31, 1996.)

**2001:** PA Minister for Jerusalem Affairs, Faisal al-Husseini: “The strategic goal is the liberation of Palestine from the Jordanian [*sic*] River to the Mediterranean Sea, even if this means that the conflict will last for another thousand years or for many generations.” (In an interview with the Egyptian paper *al-Arabi*, June 24, 2001.)

**2003:** The late Dr. Abdel Aziz Rantisi, the key leader of Hamas: “By God, we will not leave one Jew in Palestine. We will fight them with all the strength we have. This is our land, not the Jews.” (In a telephone interview with Al Jazeera television. Reported in the Jerusalem Times, June 10, 2003.)

**2005:** “Among those to whom Mahmoud Abbas’s [EH, The elected Palestinian President] victory in Sunday’s PA leadership election was dedicated were the ‘Palestinian’ homicide bombers who have taken the lives of hundreds of Israeli men, women and children, and permanently maimed thousands more. (Reported by Jerusalem Newswire Editorial Staff. January 11, 2005)

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## **Who Starts Wars Does Matter - 1948, 1957, 1967, 1973 and Article 51<sup>38</sup>**

UN Charter Article 51 clearly recognizes “the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations” by *anyone*.

The suggestion that a small country such as Israel should be expected to absorb the shock of a first strike against horrendous odds or be branded an aggressor abridges both the spirit and intention of Article 51. It also is untenable in practice, as demonstrated in the existential threat and horrific cost in human life that Israel suffered in the 1973 Yom Kippur War.

Recall that Israel decided against a preemptive air strike just hours before the outbreak of the Yom Kippur War in 1973, choosing not to jeopardize her support from Washington, after the Nixon Administration warned Israel to allow the Arabs to fire the first shot<sup>39</sup> and not make “provocative moves.” The results for Israel’s “good” behavior: 2,222 Israeli dead and 5,596 wounded.<sup>40</sup>

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## **Arabs would like the world to believe that in 1967, Israel simply woke-up one morning and invaded them, and therefore Israel’s control of the West Bank and Sinai is the illicit fruit of an illegal act - like Iraq’s invasion of Kuwait in 1991.**

Arab leaders ‘bundle’ the countries who fought Israel in the 1967 Six-Day War into one ‘entity’ in order to cloud the issues. They point to Israel’s surprise preemptive attack on Egypt as an act of unlawful aggression, and add that this



“unlawful aggression” prevents Israel from claiming the Territories under international law.

Professor, Judge Stephen M. Schwebel<sup>41</sup> states the following facts:

“The facts of the June 1967 ‘Six Day War’ demonstrate that Israel reacted defensively against the threat and use of force against her by her Arab neighbors. This is indicated by the fact that Israel responded to Egypt's prior closure of the Straits of Tiran, its proclamation of a blockade of the Israeli port of Eilat, and the manifest threat of the UAR's use of force inherent in its massing of troops in Sinai, coupled with its ejection of UNEF. It is indicated by the fact that, upon Israeli responsive action against the UAR, Jordan initiated hostilities against Israel. It is suggested as well by the fact that, despite the most intense efforts by the Arab States and their supporters, led by the Premier of the Soviet Union, to gain condemnation of Israel as an aggressor by the hospitable organs of the United Nations, those efforts were decisively defeated. The conclusion to which these facts lead is that the Israeli conquest of Arab and Arab-held territory was defensive rather than aggressive conquest.”

### **Egypt in 1957 and 1967**

Before Israel's pre-emptive and surprise attack on the Egyptian air force, a series of belligerent acts by the Arab state justified Israel's resort to arms in self-defence, as justified by the Law of Nations (see UN General Assembly Resolution 3314 in the chapter “Definition of Aggression”). The Egyptians were responsible for:

- The expulsion of UN peacekeepers from Sinai – stationed there since 1956 to act as a buffer when Israel withdrew from Sinai;
- The closure of Israel's outlet from the Red Sea in defiance of the Geneva Conference of 1958 on free navigation “through straits used for international navigation between one part of the high seas and ... the territorial sea of a foreign nation” (For 16 years Egypt illegally blocked Israeli use of the Suez Canal);
- the failure of the international community to break the blockade; and
- the massing of Egyptian forces in Sinai and moving them toward Israel's border.<sup>42</sup>

In 1957, when Egypt provoked Israel by blockading the Red Sea - crippling her ability to conduct sea trade with Africa and the Far East - the major Western powers negotiated Israel's withdrawal from the Sinai Peninsula, and agreed that Israel's rights would be reserved under Article 51 if Egypt staged future raids and blockades against Israel.<sup>43</sup>

In 1967, Egypt's closing of the Straits of Tiran to Israeli ships before June 5, was an unlawful act of aggression. The Israeli response was a *lawful* act of self-defence under Article 51 and Resolution 3314. (*emphasis added*)

Israel's enemies and critics ignore or conveniently forget the facts, as Arabs and their sympathizers continue to blame Israel for ‘starting’ the 1967 war.

Were the acts by Egyptian President Gamal Abdel Nasser in 1967 against Israel aggressive enough to warrant Israel's exercise of her right to self-defence?

The answer can be found on the official website of the Jordanian Government<sup>44</sup> under the heading ‘The Disaster of 1967.’ It describes the events of the days prior to June 5, 1967 and clearly indicates that Jordan, at least, expected Egypt to launch the offensive war against Israel:

“On May 16, Nasser shocked the world by asking the United Nations to withdraw its forces from Sinai. To the surprise of many, his request was honored two days later. Moreover, the Egyptian president closed the Straits of Tiran on May 22. *Sensing that war was now likely.* ... In response to the Israeli attack [on Egypt], *Jordanian forces launched an offensive* into Israel, but were soon driven back as the Israeli forces counterattacked into the West Bank and Arab East Jerusalem.” (*emphasis added*)

**Jordan was an illegal occupier of the West Bank and an undisputable aggressor in the Six-Day War of 1967.**

Jordan initiated a first strike against Israel in 1967. Thus, Israel acted lawfully by exercising its right of self-defence when it redeemed and legally occupied the West Bank known as Judea and Samaria.

Israel did not enter the West Bank until it was attacked. This fact is admitted on the official website of the Jordanian Government under the heading ‘The Disaster of 1967’ that they attacked Israel first:<sup>45</sup>

“Sensing that war was now likely, King Hussein aligned Jordan firmly with Egypt, suggesting an Egyptian-Jordanian Mutual Defense Treaty ... [The treaty] stipulated that Jordan’s forces were to be placed under the command of Egyptian General Abdul Moneim Riad ... In response to the Israeli attack [on the Egyptian air force], Jordanian forces launched an offensive into Israel, but were soon driven back as the Israeli forces counterattacked into the West Bank and Arab East Jerusalem.”

Israel had clarified to Jordan through UN diplomatic channels that it should stay out of the war. It stated simply: “We shall not attack any country unless it opens war on us.”<sup>46</sup> King Hussein of Jordan sent a reply via the UN envoy that “since Israel had attacked Egypt, [Israel] would receive his reply by air”<sup>47</sup> – a ‘message’ that came in the form of Jordanian air raids on civilian and military targets: Shelling Jewish Jerusalem with mortars and long-range artillery on Ben-Gurion Airport and then extending the front to shelling Israel’s ‘narrow hips’ under the mistaken belief that the Arabs were winning. Had Jordan heeded Israel’s message of peace instead of Egypt’s lies that the Arabs were winning the war, the Hashemite Kingdom could have remained neutral in the conflict, and Eastern Jerusalem and the West Bank would have remained in Jordan’s possession. Jordan was far from a ‘minor player’ in the Arabs’ war of aggression as their narrative implies; Israel lost 183 soldiers in battle with Jordanian forces, including a furious and costly tank battle, five kilometers from the Green Line at Israel’s ‘narrow hips.’

Judge Sir Elihu Lauterpacht wrote in 1968, just one year after the 1967 Six-Day War:

“On 5th June, 1967, Jordan deliberately overthrew the Armistice Agreement by attacking the Israeli-held part of Jerusalem. There was no question of this Jordanian action being a reaction to any Israeli attack. It took place notwithstanding explicit Israeli assurances, conveyed to King Hussein through the U.N. Commander, that if Jordan did not attack Israel, Israel would not attack Jordan. Although the charge of aggression is freely made against Israel in relation to the Six-Days War the fact remains that the two attempts made in the General Assembly in June-July 1967 to secure the condemnation of Israel as an aggressor failed. A clear and striking majority of the members of the U.N. voted against the proposition that Israel was an aggressor.”

Professor, Judge Schwebel’s writing leads to the conclusion that under international law, Israel is permitted to stay in the West Bank as long as it is necessary to her self-defence.

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**International law makes a clear distinction between defensive wars and wars of aggression. All of Israel’s wars with its Arab neighbors were carried out in self-defence.**

Professor, Judge Schwebel, wrote in *What Weight to Conquest*:<sup>48</sup>

“(a) a state [Israel] acting in lawful exercise of its right of self-defense may seize and occupy foreign territory as long as such seizure and occupation are necessary to its self-defense;

(b) as a condition of its withdrawal from such territory, that State may require the institution of security measures reasonably designed to ensure that that territory shall not again be used to mount a threat or use of force against it of such a nature as to justify exercise of self-defense;

(c) Where the prior holder of territory had seized that territory unlawfully, the state which subsequently takes that territory in the lawful exercise of self-defense has, against that prior holder, better title.”

... as between Israel, acting defensively in 1948 and 1967, on the one hand, and her Arab neighbors, acting aggressively, in 1948 and 1967, on the other, Israel has the better title in the territory of what was Palestine, including the whole of Jerusalem, than do Jordan and Egypt.”

Most UN General Assembly Resolutions regarding Israel read at the start:

“Aware of the established principle of international law on the inadmissibility of the acquisition of territory by force.”

The use of this statement in connection with Israel holding to the Territories is disingenuous, to say the least.

Professor, Judge Schwebel explains that the principle of “acquisition of territory by war is inadmissible”<sup>49</sup>

“that principle must be read in particular cases together with other general principles, among them the still more general principle of which it is an application, namely, that no

legal right shall spring from a wrong, and the Charter principle that the Members of the United Nations shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State. So read, the distinctions between aggressive conquest and defensive conquest, between the taking of territory legally held and the taking of territory illegally held, become no less vital and correct than the central principle itself.”

Simply stated: Arab illegal aggression against the territorial integrity and political independence of Israel, can not and should not be reworded.

Judge Sir Elihu Lauterpacht, Judge ad hoc of the International Court of Justice, argued in 1968 that:<sup>50</sup>

“... territorial change cannot properly take place as a result of the ‘unlawful’ use of force. But to omit the word ‘unlawful’ is to change the substantive content of the rule and to turn an important safeguard of legal principle into an aggressor’s charter. For if force can never be used to effect lawful territory change, then, if territory has once changed hands as a result of the unlawful use of force, the illegitimacy of the position thus established is sterilized by the prohibition upon the use of force to restore the lawful sovereign. This cannot be regarded as reasonable or correct.”

Professor Julius Stone, a leading authority on the Law of Nations, stated:<sup>51</sup>

“Territorial Rights Under International Law. ... By their [Arab countries] armed attacks against the State of Israel in 1948, 1967, and 1973, and by various acts of belligerency throughout this period, these Arab states flouted their basic obligations as United Nations members to refrain from threat or use of force against Israel’s territorial integrity and political independence. These acts were in flagrant violation inter alia of Article 2(4) and paragraphs (1), (2), and (3) of the same article.”

Because the Arabs were clearly the aggressors, nowhere in UN Security Council Resolutions 242 or 338 – the cornerstones of a peace settlement – is Israel branded as an invader or occupier of the Territories and there is no call for Israel to withdraw from all the Territories. Palestinians’ allegations that the wording of 242 was ‘deliberately ambiguous’ or misconstrued are unfounded.

Columbia University Law Professor George Fletcher further clarified those points, after UN Secretary-General Kofi Annan called Israel’s occupation of lands acquired in the 1967 Six-Day War “illegal.”<sup>52</sup>

Annan, Fletcher suggested, is trying to redefine the Middle East conflict by calling Israel’s occupation of lands acquired in the 1967 Six-Day War ‘illegal.’<sup>53</sup> “A new and provocative label of ‘illegality’ is now out of the chute and running loose, ready to wreak damage.” The worst prospect is that Palestinians will dig in with a new feeling of righteousness and believe that the international community will force Israel to withdraw from its ‘illegal occupation.’... Israel’s presence in the occupied territories is consistent with international law. In this context, the choice of the words ‘illegal occupation’ is a perilous threat to the diplomatic search for peace.”

Kofi Annan became victim to the ‘Occupation’ mantra his own organization has repeated over and over in its propagandist campaign to legitimize the Arab position.

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## UN Security Council Resolutions 242 or 338

Because the Arabs were clearly the aggressors, nowhere in UN Security Council Resolutions 242 or 338 – the cornerstones of a peace settlement – is Israel branded as an invader or occupier of the Territories and there is no call for Israel to withdraw from all the Territories.

Resolutions 242 and 338 both rest on the concept of *lawful occupations* and acknowledge the current legal status of western Palestine as one unit by its reference to the lack of “recognized and secure boundaries.” (For the actual resolutions, details on the wording, drafting history and intent of 242 and 338, see further discussion in the chapter “United Nations Resolutions”. Other aspects are discussed in the chapter on “Jerusalem.”)

**Historically, Palestinian Arabs have used the West Bank for decades to repeatedly attack Jews even before there was an Israeli state.**

Such hostile acts beg the question whether the Palestinian Authority, a semi-autonomous political body, also has responsibilities to respect international law.

Strategically, the West Bank juts into Israel’s densely populated coastal plain (see the chapter “A Secured Israel”), inviting aggression. Consequently, the Palestinians’ guerilla war on Israel is not an isolated case. Palestinian forces repeatedly attacked Jews from Arab-dominated areas of the West Bank before Israel ‘occupied’ the West Bank in 1967: Jenin and Nablus on the West Bank were the heart of the 1936-39 Arab Revolt that targeted both British authorities and Zionist settlements. West Bank villagers played a key role in this first stage of the 1948 war, when organized armed gangs based on geographic and familial affinity cut off or overran isolated Jewish settlements and laid siege to Jerusalem by attacking Jewish convoys with food and other essentials. This stage of the war was also marked by several horrific war crimes,<sup>54</sup> including the April 1948 massacre of a convoy of 78 doctors, nurses, patients, and their guards on their way to Hadassah Hospital on Mount Scopus and the murder of 127 men and women from the beleaguered village of Kfar Etzion near Bethlehem in May 1948 by a lynch mob of thousands of local Palestinian Arabs, after the defenders surrendered to the Jordanian Arab Legion.<sup>55</sup> And during the early 1950s the West Bank served as a safe haven for Palestinian infiltrators in a series of cross-border terrorist attacks.<sup>56</sup>

Nearly all of the above legal commentary cited in this chapter regarding ‘wars of aggression’ were written long before the Palestinian Authority, a semi-autonomous political entity, launched a vicious guerilla war against Israel in October 2000, but the insights and opinions voiced beg the question: Should Palestinians, be considered accountable for their repeated aggression when it comes to setting “secure and recognized borders”?

## IN A NUTSHELL

- Use of the term ‘occupied territories’ is misleading and inappropriate.
- According to international law, the West Bank is unallocated territory ‘left over’ from the British Mandate and, therefore, is contested or disputed territory that was ‘ethnically cleansed’ of Jews in 1948. Its future must be decided between the two claimants.
- The Mandate for Palestine (1923), a legally-binding international accord that designates all of western Palestine (Israel, the West Bank and Gaza today) is open to Jewish settlement, has never been amended. Therefore, Jewish settlement in these territories are legal under international law.
- Neither Resolution 181 nor the 1949 Armistice Line (the Green Line) alters the legal status of western Palestine as one unit.
- In addition to historic and religious ties – and security needs, Israel has a legally sound and legitimate claim in the contested territory called the West Bank, having been repeatedly attacked from there and having taken this territory in a war of self-defense.

## The Territories – Part II

# Israeli Settlers in the West Bank and Gaza Do Not Impede the Peace Process

**When Jews began resettling in parts of the West Bank and Gaza after the 1967 Six-Day War, they also reestablished their legal right to settle anywhere in western Palestine – an entitlement unaltered by international law since 1922, and a right that is valid and protected by Article 80 of the United Nations Charter.**

**Jewish settlements are not illegal as some claim – not from a moral or historical standpoint, nor from a legal one.**

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Jews in Palestine are there to "... further development of the existing Jewish community" and they "should know that it is in Palestine as of right and not on sufferance."

*Winston Churchill, 1922.*

"The Administration of Palestine ... shall encourage, in co-operation with the Jewish agency referred to in Article 4, close *settlement* by Jews on the land, including State lands and waste lands not required for public purposes."  
*(emphasis added)*

*Article 6  
Mandate for Palestine, December, 1922.*

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**Israeli settlements, carried out on unutilized Public Land, do not displace Arabs.**

Examination of the Oslo Accords and evaluation of the actual size and scope of the settlements demonstrate they do not constitute an obstacle to final status agreements.

Jewish settlements are located on public land that does not jeopardize the lives and property of Arabs and occupy only a small portion of the landmass of the

West Bank. A balanced look at the settlers shows they are not the violent extremists they are portrayed to be.

Fifty percent of the West Bank is public land.<sup>57</sup> This reflects the land system inherited from centuries of Ottoman rule when individual ownership was severely limited and one of the main land categories was *meri* – land belonging to the Emir. Indeed, figures cited in the British *Survey of Palestine* study prepared for the Anglo-American Committee of Inquiry in 1945-46 reported that under the Ottomans, at least 65% of the country was state land.<sup>58</sup> The large percentage of public land Israel ‘inherited’ reflects Jordan’s continuation of this land tenure system up until 1967 and the stagnation that characterized Jordan’s control of the West Bank. Overall, during 19 years of Jordanian rule, little was done to develop the West Bank. When Israel gained control, for instance, only 56.7% of the inhabitants had running water, compared to 80.3% of their brethren living in Israel.<sup>59</sup> A 1968 Tel Aviv University study<sup>60</sup> that paired and compared adjacent Arab villages that had been separated by the 1949 Armistice line found stark disparities in development of educational skills and economic opportunities on the Jordanian and the Israeli sides of the Green Line.

The amount of public land also heavily reflects topography and human geography. Much of the landmass of the West Bank has been barren rock-strewn hillsides and deserts for centuries, after the fragile ecology collapsed under the pressure of nomadic tribes and civil disarray in the wake of the Arab conquest in the 7<sup>th</sup> century.<sup>61</sup> According to the writings of the historian Josephus Flavius, the population of the Land of Israel at the beginning of the Second Temple period was three million inhabitants. In 1914 on the eve of the First World War (which further decimated local society – Jewish and Arab) there were approximately 500,000 Arabs in Western Palestine.<sup>62</sup> The population had been denuded parallel to desertification of the land. This, together with heavy taxing of farmers by ruthless Muslim leaders, devastated large parts of the coastal plain and the foothills that had been permanently inhabited for thousands of years. Signs of abandoned terrace agriculture can still be seen on the landscape. These once-farmed foothills which encompass the western slope of the West Bank along the Green Line are where 80% of all Jewish settlers reside. In 1967 this was still largely uninhabited, denuded, and eroded public land abandoned due to the collapse of the agricultural system in the 10<sup>th</sup> and 11<sup>th</sup> centuries.

**Ninety percent of all Jewish settlements were established on barren undeveloped land throughout the West Bank.**

This is evident even in photos taken by anti-settlement advocacy groups such as *Peace Now* and *B'tselem*.<sup>63</sup> Since 1980, all settlement activity has been on public land. The process of establishing that settlement land is not private land owned by Arabs is “an exhaustive investigation process” monitored by the Israel Supreme Court.<sup>64</sup> West Bank Arab residents who feel wronged when their private land is acquired (with compensation) for public purposes (such as new roads, public



services, military installations, etc.) have the right of appeal directly to the Supreme Court.<sup>65</sup>

### **Israel settlements occupy a minuscule part of the landmass of the West Bank.**

Eighty percent of the settlers reside adjacent to the Green Line along Israel's 'narrow hips,' and many others are in strategically sensitive areas.

The actual *developed* areas of Israeli settlements occupy less than 2% of the landmass of the West Bank.

*Peace Now*, which favors unilateral withdrawal and dismantling of Jewish communities in the West Bank, estimates the Jewish communities there take up only 1.36 percent of the land. The human rights organization *B'tselem*, which monitors Jewish building construction on the West Bank and reports its scope to parties abroad, also found the extent of Jewish settlement to be marginal. A *B'tselem* study published in 2002 found the percentage of developed areas of Jewish settlement on the West Bank comprises 1.7% of all land on the West Bank; if one includes non-developed municipal areas (almost all of which is unpopulated and zoned to meet expansion needs), 5.1% of the West Bank is 'occupied' by Jewish settlements.<sup>66</sup> The other 94.9 percent is either land owned by local Arabs and registered in the Land Registry, IDF military installations, public lands administered by the government or undeveloped public land zoned to local councils.

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### **Jews Have Lived in the West Bank Since Ancient Times**

Following the 1967 Six-Day War, the rise of Jewish settlements symbolized the *restoration* of a dimension of history often ignored by Arabs and unknown to most non-Israelis, which is that Jews had lived in the West Bank and the Old City of Jerusalem during Mandate times. That period ended only after they were killed or driven out in the aftermath of the 1948 war - when Jewish communities were obliterated. Between 1949 and 1967, Jordanian military personnel razed Jewish settlements, destroyed 58 synagogues, and used headstones from the Jewish cemetery on the Mount of Olives to build roads.<sup>67</sup> In the course of the 1948 War, the West Bank was rendered *judenrein* – ethnically cleansed of Jews – by Jordanian invaders.

### **A vibrant Jewish life in the land of Israel existed hundreds of years prior to the official establishment of the State of Israel in 1948.**

The mountainous areas of Judea and Samaria were the cradles of Jewish civilization – from Bethel, where Jacob fought with the angels, and Shilo, where the Ark of the Covenant resided, to Hebron, the city of the Patriarchs. The Old City in Jerusalem, Hebron in Judea, Safed and Tiberius in the Galilee, were four

holy cities where the Jews were concentrated throughout the ages. In 1898, on the eve of the first wave of Zionist immigration, Edwin S. Wallace, Consul General of the United States, visited Palestine and Jerusalem and wrote:<sup>68</sup>

Of the eighty thousand Jews in Palestine, fully one-half are living within the walls, or in the twenty-three colonies just outside the walls, of Jerusalem.

Where the Jewish population [in Jerusalem] outnumbers all others, three to one [a full 75 percent], the Jew has few rights.

Although permitted to settle anywhere west of the Jordan River, Zionist settlements were concentrated first in the coastal area, the Galilee and the Negev, in Jerusalem and Hebron in Judea. Jewish settlement elsewhere was more sparse.

During the 1948 War of Independence, the Jewish inhabitants - the men, women and children - living in communities north of Jerusalem and in the Jewish Quarter of the Old City, in the Etzion bloc between Hebron and Jerusalem and in the Jordan Rift Valley, were either evacuated to save their lives, killed as combatants while defending their homes, massacred after they surrendered or taken as prisoners of war and not allowed to return to their homes. 2,000 Jewish inhabitants of the Old City, who lived next to the holiest site in Judaism – the Western Wall of the Temple Mount - were an intolerable presence to the Arabs. Not one Jew was allowed to reside in or *visit* Jordanian territory, including the Old City, for 19 years.

After illegally annexing the West Bank in 1950, Jordan adopted a law in 1954 granting Jordanian citizenship to residents of the West Bank. The law covered those who had been subjects of the British Mandate and stipulated “any man will be a Jordanian subject ... if he is not Jewish.”<sup>69</sup> Jordan also prohibited Jordanians from selling land to Jews by penalty of death; the Palestinian Authority adopted a similar law in the 1990s.

**Israel took pains to respect and maintain the legal status of *both* Jewish and Palestinian inhabitants with parallel administrative structures.**

Israel respects the fact that the territories are contested; that is, the Green Line serves its prior administrative functions until the parties can agree to a new boundary. Inhabitants – Jews and Arabs – remain subject to separate administrative machinery and legal systems – Israelis to Israeli law, Palestinians to Jordanian law, until a compromise can be reached in final-status agreements. Israel has bent over backwards, granting *de facto* recognition of Jordan’s *illegal* annexation so as not to unilaterally apply Israel’s own legal system on Jewish residents and Palestinian inhabitants.

**In any permanent settlement, large tracts of undeveloped public land would be transferred to Palestinian hands.**

Israeli settlements – a very small portion of the West Bank, concentrated mostly in large blocs – are hardly an obstacle to peace.

Key Jewish settlement blocs exist in militarily strategic parts of the West Bank essential to Israel's security. One of them is the Jewish settlement of Ofra, located on the highest point in the West Bank. There, the IDF set up an early warning monitoring station to protect Israel's densely populated low-lying heartland from a surprise attack from the east (see the chapter "A Secure Israel"). UN Resolutions 242 and 338 underscore that any withdrawal must provide for "secure borders." Israeli settlements in strategic areas of the West Bank are not obstacles to peace, if peace is the Arab objective. Most Jewish settlement is adjacent to the Green Line where Israel, since 1949, enjoyed merely a 9-miles of 'strategic depth,' a situation that not only invited aggression in 1967, but also in 2000 when cities and towns along Israel's 'narrow hips' took the brunt of the terror campaign launched by the Palestinian Authority, terrorism that since has been reduced due to the building of the anti-terrorist barrier. Clearly Israel has a good case for demanding these areas be *solidified* in any future peace agreement.<sup>70</sup>

### **Settlers as fanatical fundamentalists?**

Israeli are often portrayed as loose cannons, lawless extremists who violently oppose any attempt by their own government to uproot them - even in exchange for peace. The reality is quite different.

To justify a one-sided separation whereby Jewish settlers should be sent back to Israel, the Arabs and their supporters portray 'gun-toting settlers' who terrorize innocent Palestinians as a counterweight to Palestinian terrorists who target Jewish civilians, suggesting settlers are the source of the violence as a whole.

Jewish settlers in the West Bank and Gaza are often portrayed in the media by their adversaries as religious zealots who would use lethal force to stop the Israeli government from dismantling their homes. But that view is not supported by academic research, opinion polls or reality.

Polls of settlers taken in 1995, 1997, and 1999 jointly by the Begin-Sadat (BESA) Center for Strategic Studies at Bar Ilan University and by the Palestinian-run Department of Strategic Analysis at the Center for Policy Research Studies<sup>71</sup> drew a profile of Jewish settlers in the West Bank and Gaza that defies the stereotype;

Thirty-one percent of the settlers are secular. Only 16 percent are ultra-Orthodox, with others religiously observant individuals identifying themselves as "modern" Orthodox (37 percent) to those who keep the tradition<sup>72</sup> (16 percent). Only 27 percent settled on the West Bank for ideological or religious reasons; 46 percent came for economic reasons - like affordable housing.

### **Hoping that the war would lead to recognition and peace with its neighbors, Israel did not rush to settle the West Bank after the Six-Day War.**

Extensive settlement activity began in the late 1970s and early 1980s, more than ten years after the 1967 Six-Day War.

The first steps toward Jewish settlement beyond the Green Line immediately after the 1967 war were modest. A small Jewish presence was established in Judea,

when a kibbutz (Kfar Etzion) - whose defenders had been massacred by the Arabs in 1948 - was rebuilt, and a separate Jewish neighborhood (Kiryat Arba) was built on empty Israel - owned land (state land) on the outskirts of Hebron.

Hebron is a biblical and holy city, whose ancient Jewish community was expelled in 1929 after a bloody Arab pogrom. At the same time, a handful of secular farming settlements were established in the desolate Jordan Rift Valley where, under any territorial compromise, Israel must maintain a strong presence to protect its eastern flank. The first Jewish settlement in Samaria – the area of the West Bank that is most densely populated by Arabs – was approved in 1975.

In 1977 – a decade after the Six-Day War - only 3,500 Jewish settlers lived in the heart of West Bank (not including the Jordan Rift Valley farmers). Massive settlement activity took place between 1977 and 1984. From 1967 to the present, each Israeli government, right and left, has supported the settlements, although the degrees, locations and objectives have varied from government to government. This is reflected in the diversity of those who have chosen to live in the Territories.

The settlers represent a cross section of Israeli society. Settlers are urbane, well-integrated into Israeli society and, on the whole, more financially secure than Israelis inside the Green Line. They are better educated than the general population, with 33 percent of the adults holding undergraduate or post-graduate degrees. Thirty-five percent commute to jobs in Israel proper, and 42 percent earn incomes above the national average.

The settlements are hardly frontier-like strongholds, and look like other bedroom suburbs inside the Green Line. They are planned communities dominated by neighborhoods of modest Mediterranean-style, red-tiled villas and low-rise garden apartments, with preplanned services like schools, shopping and other amenities.

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## **Israelis are law-abiding citizens**

### **Violence is remarkably absent both from Israeli politics and from Jewish life.**

Dismantling the settlements is an emotional issue, often accompanied by bitter verbal exchanges and dire warnings from the right and the left. Historically, verbal divisiveness has not led to civil wars. When Israel signed a peace treaty with Egypt and handed over the Sinai, thousands of settlers were uprooted from 1982, most of them from the town of Yamit and surrounding Israeli agricultural villages. Ariel Sharon was the Israeli official who handled the dismantling of the settlements as minister of defense – an evacuation marked by bitter public protest but no bloodshed.

Two studies sought to evaluate how settlers would respond to territorial compromise involving dismantling, and found evidence that the vast majority of them would not resort to violence:

A poll taken in 1999 by BESA and CPSR found 79 percent would not resist in any way a government decision to evacuate settlements; 8 percent advocated verbal confrontation and 7 percent passive resistance; only 2 percent condoned use of physical force (hitting, use of weapons, etc.); 80 percent opposed any confrontation with the Israeli army; and only 2 percent advocated violent confrontations in order to prevent evacuation.

A poll conducted by Peace Now in 2002 found that, despite two years of violence, the number who would violently oppose a withdrawal remained stable. The poll showed that a majority of the settlers would willingly give up their homes if a real peace agreement was reached that required them to relocate.<sup>73</sup> More than two-thirds (68 percent) of the settlers said they would obey a democratic decision for withdrawal, and only the smallest of minorities (6 percent) said they would “resist such an order.” Peace Now concluded that 2 percent of West Bank/Gaza settlers can be labeled ‘extremists,’ having declared that they would resist with “all means.”

### **Most Israelis living in the Territories demonstrated extraordinary self-restraint in recent years.**

In May 2003, Israel Defense Forces (IDF) statistics showed that on average, there are 100 incidents a week in Israel and the Territories where Jews are targeted by Palestinian terrorists. Since Oslo and the outbreak of the Al Aqsa *intifada*, Israeli settlers have faced an unrelenting series of drive-by-shootings and terrorist attacks on public buses and bus stops; mortar and rocket attacks on civilian settlements, and knifings and shooting of civilians in their homes, on the way home from prayers, commuting to work or on the way home from a family affair, including children at play and children on school buses. Between September 2000 and October 2004, Arab terrorists took the lives of 34 Jewish children and 176 adult civilians in the West Bank and Gaza,<sup>74</sup> of a Jewish population of 250,000.<sup>75</sup>

Arabs create the impression that Palestinians are at risk from violent Israelis. A close analysis of realities reveals who is really endangered. All Jewish Israeli schools and many communities, both in sensitive areas inside Israel and settlements in the Territories, are surrounded by perimeter fences and alarm systems and public places from restaurants and banks to wedding halls including school (and school trips), have armed guards at the entrance. This is not the case in Israeli Arab communities or among Palestinians in the Territories, who are not exposed to terrorist attacks on civilians.

### **Settlers as a community attempt systematically to *avoid* conflict.**

Settlers travel on bypass roads built by Israel that detour around Arab villages. They ride in bulletproof buses or wear flak jackets on their commute in their cars. More recently, some settlers have surrounded their villages with security fences. Except in rare instances, Jewish settlers, have not taken wholesale retaliation against Palestinian villages, or attempted to establish a balance of terror.<sup>76</sup> *B'tselem's* most damning report<sup>77</sup> – a list of 32 Palestinian civilians reportedly

killed by Israeli citizens, and the circumstances surrounding their deaths - reveal that 15 out of the 30 incidents listed involved Palestinians who were shot while killing Israelis or infiltrating Jewish settlements with lethal intent..

The other 15 innocent civilians murdered, where settlers are suspected to be involved, are inexcusable under any circumstances, but the number of such acts is objectively small. In 1999, the late Professor Ehud Sprinzak, a fellow at the Counter-terrorism Institute in Herzliya, an expert on right-wing extremism, published a study entitled *Brother Against Brother: Violence and Extremism in Israeli politics from Altalena to the Rabin Assassination*. Professor Sprinzak not only said that in his estimation Israelis, including settlers, would not resort to armed resistance if ordered by their government to abandon their homes; he said that had other Western nations faced Israel's external and internal challenges, their streets would have been flooded with blood."<sup>78</sup> This was said before the quantum leap in levels of violence since September 2000. There were 17,600 (!) incidents<sup>79</sup> where Jews were targeted by Palestinian terrorists between September 2000 and May 2003 alone (with and without casualties) on both sides of the Green Line

**Calls for a freeze on Jewish construction in disputed Territories - while Arab construction, which far exceeds Jewish development, continues unfettered - are clearly biased.**

Arabs claim that Jewish settlements "change the status" of the Territories and represent a distortion of the Oslo Accords. The phrase applies to acts that change the political status of the disputed territory - such as outright Israeli annexation or a Palestinian declaration of statehood. Since Jewish settlements are legal, any halt in construction should be reciprocated.

The Oslo Accords do not forbid Israeli or Arab settlement activity. Charges that further Jewish settlement activity preempts final negotiations by establishing realities requires reciprocity. If the West Bank and Gaza were *de jure* part of the British Mandate, and if the Mandate borders are the last legal document concerning this territory; and if Jews were forcibly expelled from the West Bank and Gaza in 1948 during a war of aggression aimed at them—then these Territories must be considered disputed Territories, at the least.

The Israeli-Palestinian border dispute is like every other major and minor boundary dispute around the globe. Since the West Bank and Gaza were redeemed in 1967 in a defensive war and are not "Occupied Territories" gained illegally by a bellicose power; and since this fact is recognized in the wording of UN Resolutions 242 and 338 that call for a settlement to institute "secure and recognized borders," calling for a construction freeze on Jewish settlements should, logically, be paralleled by a freeze on Arab construction in the West Bank.

According to a former policy planning official,<sup>80</sup> the tempo of Arab construction is "more than 10 times the number of buildings under construction [in the

Territories] than those approved [by the Israeli government] for the [Jewish] settlers.”

**The Oslo II Agreement recognizes *de facto* the special status and security needs of Jewish communities in the West Bank.**

The agreement regulates the relationship between Palestinians and Israelis by establishing three types of administration: full Palestinian self-rule in totally Arab areas (Area A); Israeli civil and military control in totally Jewish areas (Area C); and civil Palestinian self-rule and Israeli military control in intermediate areas (Area B). The final status remains to be established, which is why “Legally Held Disputed Territories” represents the appropriate and accurate term.

Rather than negotiate a settlement, as agreed to in September 1993, Palestinians elect to break their commitment and to intensify the use of terrorism as a political vehicle in a low-tech war of aggression (see the chapter “Rejectionism”).

The status issue has been co-opted and warped by the Palestinians in an attempt to curtail Jewish settlement. Neither the 1993 “Oslo I” (the Declaration of Principles) nor the 1995 Oslo II (Interim Agreement) stipulate that the construction of settlements, neighborhoods, houses, roads or other building projects cease - pending a peacefully negotiated final settlement between the parties.<sup>81</sup> According to a former policy planning official,<sup>82</sup> the pace of Arab construction is “more than 10 times the number of buildings under construction [in the Territories] than those approved [by the Israeli government] for the [Jewish] settlers.” Calls for a freeze on Jewish construction in the Territories - while Arab construction continues unfettered, are unfair – all the more so, in light of the fact that Jews were forcibly expelled in 1948.

*Legalities aside, before 1967 there were no Jewish settlements in the West Bank, and for the first ten years of so-called occupation there were almost no Jewish settlers in the West Bank. And still there was no peace with the Palestinians. The notion that Jewish communities pose an obstacle to peace is a red herring designed to blame Israel for lack of progress in the Peace Process and enable Palestinian leadership to continue to reject any form of compromise and reconciliation.*

**The British governed the territory of Palestine for more than 30 years. Their experience and observations with the Jews and Arabs in Palestine were well documented and continually reported to the League of Nations.**

The British High Commissioner on the Administration of Palestine observed the Jews in the land of Palestine and reported in 1925:

“... [the Jews] are on an intellectual level distinctly above that of the ordinary [Arab] peasant; they are much more than hewers of wood and drawers of water; they read, they think, they discuss; in the evenings they have music, classes, lectures; there is among them a real activity of mind. And the third factor is that they are fully conscious that they are not engaged in some casual task, without special significance other than the provision of their own livelihood; they know quite well that they are an integral part of the movement for the *redemption* of Palestine; that they, few though they may be, are the representatives, and in a sense the agents, of the whole of Jewry; that the daily work in which they are engaged is in touch with the prophecies of old and with the prayers of

millions now. So they find the labour of their hands to be worthy in itself; it is made lighter by intellectual activity; it is ennobled by the patriotic ideal which it serves. That is the reason why these pioneers are happy.” *(emphasis added)*

In Command Paper No. 1700, issued by His Majesty's Government in April, 1922, the [British] Secretary of State described the Jewish National Home in Palestine in the following terms:

“This [Jewish] community [in Palestine] has its own political organs, an elected assembly for the direction of its domestic concerns, elected councils in the towns, and an organisation for the control of its schools. It has its elected Chief Rabbinate and Rabbinical Council for the direction of its religious affairs. Its business is conducted in Hebrew as a vernacular language, and a Hebrew press serves its needs. It has its distinctive intellectual life and displays considerable economic activity. *This [Jewish] community, then, with its town and country population, its political, religious and social organisations, its own language, its own customs, its own life, has in fact ‘national’ characteristics.*” *(emphasis added)*

Evaluating Palestinian Arabs behavior, the British concluded:

(July 1937, Palestine Royal Report) Two peoples at war cannot promote each other's welfare.

For these reasons we find ourselves reluctantly convinced that no prospect of a lasting settlement can be founded on moderate Arab nationalism. At every successive crisis in the past that hope has been entertained. In each case it has proved illusory.

#### **IN A NUTSHELL:**

- Jewish settlements are established on unutilized public land and don't dispossess any Arab residents.
- Jewish settlements occupy only a fraction of the landmass of the West Bank – therefore, they are no obstacle to peace or final status arrangements.
- Settlers are not religious fanatics. They are a diverse community of religious and secular people who chose to live on the West Bank for a host of reasons – in short, normal middle-class families.
- Both in public opinion polls and in their behavior, Jewish settlers have demonstrated a high degree of moderation. In opinion polls they have overwhelmingly expressed their acceptance of the decisions of their government – come what may.
- Settlers are not ‘loose cannons’ who terrorize Arabs. In fact, they seek to avoid conflict and have reacted to a massive onslaught by Palestinians who targets civilians, including children, with admirable restraint under extremely trying conditions.



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<sup>1</sup> George P. Fletcher is a professor at Columbia University School of Law and author of *Romantics at War: Glory and Guilt in the Age of Terrorism*. See "Annan's Careless Language," *The New York Times*, March 21, 2002, at [http://www.uscj.org/neweng/worcester/Link\\_Fletcher020321.htm](http://www.uscj.org/neweng/worcester/Link_Fletcher020321.htm).

<sup>2</sup> See Professor Stone "Israel and Palestine", The Johns Hopkins University Press, Baltimore and London, 1982, p. 75. The International Court of Justice (I.C.J.) has been insistent, not least as regards questions of territorial title, that the rules and concepts of international law have to be interpreted "by reference to the law in force" and "the State practice" at the relevant period. (Majority Opinion in the *Western Sahara* case, I.C.J. Reports, 1975, p. 12, esp. at 38-39). Judge de Castro in his Separate Opinion (*ibid.*, 127, at 168 ff.) declared the principle *tempus regit factum* as a recognized principle of international law. He continued (p. 169): "Consequently, the creation of ties with or titles to a territory must be determined according to the law in force at the time.... The rule *tempus regit factum* must also be applied to ascertain the legal force of new facts and their impact on the existing situation." He went on to illustrate this influence of "new facts and new law" by reference to the impact on the suppression of the colonial status of Western Sahara by the principles concerning non-self-governing territories emanating from the United Nations Charter and the later application to them of the principle of Self determination (pp. 169-71). This limiting rider has reference to the appearance of new principles of international law, overriding the different principles on which earlier titles are based. But, of course, it can have no application to vested titles based, as was the very territorial allocation between the Jewish and Arab peoples, on the principle of self-determination itself.

<sup>3</sup> The *Palestine Post* was founded by Gershon Agron, an American journalist and published its first issue on December 1, 1932. In 1950, the Palestine Post changed its name to *The Jerusalem Post*.

<sup>4</sup> *Ibid.*

<sup>5</sup> From the report by The High Commissioner on The Administration of Palestine 1920-1925 to the Right Honorable L. S. Amery, M.P., Secretary of State for the Colonies. Government Offices, Jerusalem, 22nd April, 1925.

<sup>6</sup> See the US Department of Defense *Dictionary of Military Terms – Occupied Territory* <http://www.dtic.mil/doctrine/jel/doddicct/data/o/03774.html>.

<sup>7</sup> Dr. Dore Gold, former Israeli Ambassador to the UN and head of the Jerusalem Center for Policy Studies has noted: "The language of 'occupation' has allowed Palestinian spokesmen to obfuscate [the historic sequence of events]. By repeatedly pointing to 'occupation' they manage to reverse the causality of the conflict ... thus, the current territorial dispute is allegedly the result of an Israeli decision 'to occupy,' rather than a result of a war imposed on Israel by a coalition of Arab states in 1967." See "Territories to Disputed Territories," JCPS, No. 470, January 16, 2002, at <http://www.jcpa.org/jl/vp470.htm>

<sup>8</sup> Dore Gold, *ibid.*

<sup>9</sup> *Israel – Boundary Disputes with Arab Neighbors 1946 – 1964* at <http://www.archiveeditions.co.uk/Leafcopy/630-5.htm>.

<sup>10</sup> For details, see Yoav Gelber, *Israeli-Jordanian Dialogue, 1948-1953 – Cooperation, Conspiracy, or Collusion?* Chapter 8 (Domestic Crisis in Transjordan Over Relations with Israel), Sussex Academic Press, Brighton, 2004.

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<sup>11</sup> Indeed, the Palestinians succeeded in passing just such a resolution in a pro-Palestinian UN – that in essence sanctions suicide bombers who target civilians, and other abominations (see the chapters “United Nations Bias,” “Human Rights” and “Incitement”).

<sup>12</sup> Palestine is a word coined by the Romans around 135 CE from the name of a seagoing Aegean people who settled on the coast of Canaan in antiquity – the Philistines. The name was chosen to replace Judea, as a sign that Jewish sovereignty had been eradicated after the Jewish Revolt against Rome. In the course of time, the name Philistia in Latin was further bastardized into Palistina or Palestine. In modern times the name ‘Palestine’ or ‘Palestinian’ was applied as an adjective to all inhabitants of the geographical area between the Mediterranean Sea and the Jordan River – Palestinian Jews and Palestinian Arabs alike. In fact, up until the 1960s, most Arabs in Palestine preferred to identify themselves merely as part the great Arab nation or as part of Arab Syria.

Until recently, no Arab nation or group recognized or claimed the existence of an independent Palestinian nationality or ethnicity. Arabs who happened to live in Palestine denied that they had a unique Palestinian identity. The First Congress of Muslim-Christian Associations (in Jerusalem, February 1919) met to select Palestinian Arab representative for the Paris Peace Conference. They adopted the following resolution: “We consider Palestine as part of Arab Syria, as it has never been separated from it at any time. We are connected with it by national, religious, linguistic, natural, economic and geographical bonds.” See Yehoshua Porath, “The Palestinian Arab National Movement: From Riots to Rebellion”, Frank Cass and Co., Ltd, London, 1977, vol. 2, pp. 81-82.)

<sup>13</sup> “ARTICLE 22 OF THE COVENANT OF THE LEAGUE OF NATIONS”, A/297, 30 April 1947 at: <http://middleeastfacts.org/content/UN-Documents/A-297-30-April-1947-conenant-article-22.htm>

<sup>14</sup> Palestine Royal Report, July 1937, Chapter II, p. 38.

<sup>15</sup> See the full text of the Mandate for Palestine in the Documents section.

<sup>16</sup> The “Palestine Royal Report,” July 1937, Chapter II, p. 20.

<sup>17</sup> For a brief description of the Mandate System, see Q. Wright, *Mandates under the League of Nations* (1930, repr. 1968) cited on Fact Monster, at: <http://www.factmonster.com/ce6/history/A0831495.html>.

<sup>18</sup> For this and a host of other quotes from Arab spokespersons on the Syrian identity of local Arabs, see: <http://www.yahoodi.com/peace/palestinians.html>.

<sup>19</sup> “Official Records of the Second Session of the General Assembly supplement No. 11 – United Nations Special Committee on Palestine, 22 July 1947” at: <http://domino.un.org/unispal.nsf/0/15d51d0d80adc17f85256e9e006f0501?OpenDocument>

<sup>20</sup> Ibid.

<sup>21</sup> The Palestinians pretend to have abolished anti-Israel clauses in a three day meeting of the Palestinian National Council in Gaza in April 1996, but the Council only took a bureaucratic decision to establish a committee to discuss abolishment of the clauses that call for the destruction of Israel as they had promised to do at the outset of the Oslo Accords, while no further action has been taken by this ‘committee’ to this day. .

<sup>22</sup> See “Palestine Liberation Organization” at: <http://www.palestine-un.org/>

<sup>23</sup> See Permanent Missions to the UN, at: <http://www.un.int/index-en/webs.html>

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<sup>24</sup> ICJ, “advisory opinion of 9 July 2004, legal consequences of the construction of a wall in the occupied Palestinian territory”

<sup>25</sup> See Eugene V. Rostow, “The Future of Palestine,” Institute for National Strategic Studies, November 1993. Professor Rostow was Sterling Professor of Law and Public Affairs Emeritus at Yale University and served as the Dean of Yale Law School (1955-66); Distinguished Research Professor of International Law and Diplomacy. Professor Rostow served as U.S. Undersecretary of State in 1967 and was a key drafter of UN Resolution 242. See also his writing: “Are Israel’s Settlements Legal?” *The New Republic*, October 21, 1991.

<sup>26</sup> See: <http://www.direct.gov.uk/Homepage/fs/en>.

<sup>27</sup> Eugene V. Rostow, “The Future of Palestine,” Institute for National Strategic Studies, November 1993. Professor Rostow was Sterling Professor of Law and Public Affairs Emeritus at Yale University and served as the Dean of Yale Law School (1955-66); Distinguished Research Professor of Law and Diplomacy, National Defense University; Adjunct Fellow, American Enterprise Institute. In 1967 as U.S. Under-Secretary of State for Political Affairs he became a key drafter of the UN Resolution 242. See also his writing: “Are Israel’s Settlements Legal?” *The New Republic*, October 21, 1991.

<sup>28</sup> Report of the Anglo-American Committee of Enquiry regarding the problem of European Jewry and Palestine. Lausanne, 20th April, 1946.

<sup>29</sup> “From Mandate to Partition, Lessons Learned or Mistakes Repeated – The United Nations and Palestine,” *al majdal*, December 2000, at

[http://www.badil.org/Publications/Bulletins/B\\_3.html](http://www.badil.org/Publications/Bulletins/B_3.html). In this critique, the magazine justifies rejection of the Partition Plan in 1947, then blames the UN for not stepping in to enforce it in 1948 when Palestinians began to lose the war, charging that the refugee problem was “the consequences of inaction by the UN.”

<sup>30</sup> “Back to the Future: NPR Rewrites Israel’s War of Independence” citing A. J. Barker, *The Arab Israeli Wars*, October 9, 2002, at

[http://www.camera.org/index.asp?x\\_context=4&x\\_outlet=28&x\\_article=291](http://www.camera.org/index.asp?x_context=4&x_outlet=28&x_article=291).

<sup>31</sup> For a study of the struggle to obtain arms for the state in the making, see Leonard Slater, “The Pledge,” Simon and Schuster, 1970.

<sup>32</sup> Between November 30, 1947 – July 20, 1949.

<sup>33</sup> For an overview of this, see Yoav Gelber, “Why Did the Palestinians Run Away in 1948?” December 10, 2002, History News Network, at <http://hnn.us/articles/782.html>.

<sup>34</sup> UN Security Council 69 (S/RES/69, 4 March 1949. See:

<http://domino.un.org/UNISPAL.NSF/0/ccf3096aa8f1bb8d852560c2005da665?OpenDocument>.

UN General Assembly 273 (III) A/RES/273, 11 May 1949. See:

<http://domino.un.org/UNISPAL.NSF/0/83e8c29db812a4e9852560e50067a5ac?OpenDocument>.

<sup>35</sup> Cited in “Occupied Territories: Forgotten Facts About the West Bank and Gaza Strip,” Ministry of Foreign Affairs, February 2003, at

[http://www.mfa.gov.il/MFA/MFAArchive/2000\\_2009/2003/2/DISPUTED+TERRITORIES-+Forgotten+Facts+About+the+We.htm](http://www.mfa.gov.il/MFA/MFAArchive/2000_2009/2003/2/DISPUTED+TERRITORIES-+Forgotten+Facts+About+the+We.htm).

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<sup>36</sup> See: <http://www.un.org/aboutun/charter/chapter7.htm>.

<sup>37</sup> In 1999, at the height of optimism regarding an impending settlement, 80 percent of the public in neighboring countries supported continuing the conflict and 54 percent wanted Israel to ‘disappear.’ See data cited in conclusion of *Antisemitism Worldwide 1999/2000*, Institute for the Study of Contemporary Anti-Semitism and Racism, Tel Aviv University, <http://www.tau.ac.il/Anti-Semitism/asw99-2000/arab.htm>. More indirect tactics include the ‘phase strategy’ to gain the West Bank, then attack Israel, and use demography as a weapon – Palestinians have the highest birthrate in the world, twice as high as the overall Arab world’s high birthrate. Another tactic is to use the Right of Return and demand that Israel accept Arab refugees.

<sup>38</sup> See the chapter “Documents” UN Charter – Article 51.

<sup>39</sup> Moshe Dayan, *Milestones*, 1976, *Yediot Ahronot* Publishers, p. 578.

<sup>40</sup> Carta’s *Atlas of Israel: The Third Decade 1971-1981*, p.130. By comparison, in the Six-Day War – a three-front war, not a two-front war, Israel sustained 759 fatalities.

<sup>41</sup> Professor, Judge Schwebel has served on the International Court since 15 January 1981. He was Vice-President of the Court from 1994 to 1997 and has been President from 1997 to 2000. A former Deputy Legal Adviser of the United States Department of State and Burling Professor of International Law at the School of Advanced International Studies of The Johns Hopkins University (Washington), Judge Schwebel is the author of three books and some 150 articles on problems of international law and organization, including the notable “Justice in International Law,” Cambridge University Press, 1994. Opinions quoted are not derived from his position as a judge of the ICJ.

<sup>42</sup> For a recent reexamination of the Six-Day War and how it came to be, see Michael Oren, *Six Days of War: June 1967 and the Making of the Modern Middle East*, Oxford University Press, 2002, at <http://www.shalem.org.il/oren/index.htm>. For a 50-page excerpt, see: <http://www.shalem.org.il/oren/book.doc>. For an in-depth article by Michael Oren – “Did Israel Want the Six-Day War?” *Azure*, Spring 1999, at <http://www.azure.org.il/7-Oren.html>. For a vivid picture of conditions prior to the Six-Day War, see “Disputed Territories: Forgotten Facts About the West Bank and Gaza Strip,” Israel Ministry of Foreign Affairs, February 2003, at <http://www.mfa.gov.il/MFA/SearchResults.htm?strSearch=disputed%20territories>. Troop concentrations cited by Minister of Foreign Affairs Abba Eban in the Security Council in the aftermath of the war.

<sup>43</sup> See Cato Policy Analysis No. 159; *The Suez Crisis, 1956, "Ancient History": U.S. Conduct in the Middle East Since World War II and the Folly of Intervention*, by senior editor Sheldon L. Richman. See: <http://www.cato.org/pubs/pas/pa-159.html>. In *Time.com*, see the section titled “Time100” and dedicated to the most important people of the 20th century, including the section devoted to David Ben-Gurion and describing the 1957 UN deliberation over the war of 1956 – The Sinai Campaign, states: “At this point, France’s Premier Guy MoDd and Foreign Minister Christian Pineau arrived in Washington.... Pineau submitted to Dulles a draft resolution whereby 1) Israel would withdraw unconditionally, and 2) Israel’s rights would be reserved under the Charter’s self-defence clause if Egypt should go back to raids and blockades against her.” See: [http://www.time.com/time/time100/leaders/profile/bengurion\\_related5.html](http://www.time.com/time/time100/leaders/profile/bengurion_related5.html).

<sup>44</sup> See Jordan official Website: “The Disaster of 1967” at [http://www.kinghussein.gov.jo/his\\_periods3.html](http://www.kinghussein.gov.jo/his_periods3.html).

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- <sup>45</sup> See Jordan official Web site: “The Disaster of 1967” at [http://www.kinghussein.gov.jo/his\\_periods3.html](http://www.kinghussein.gov.jo/his_periods3.html).
- <sup>46</sup> See “Disputed Territories: Forgotten Facts About the West Bank and Gaza Strip,” Israel Ministry of Foreign Affairs, February 2003, at <http://www.mfa.gov.il/mfa/go.asp?MFAH0n1m0>.
- <sup>47</sup> Moshe Dayan, *ibid.*, p. 439.
- <sup>48</sup> Professor, Judge Schwebel, “Justice in International Law,” Cambridge University Press, 1994. Opinions quoted are not derived from his position as a judge of the ICJ.
- <sup>49</sup> *Ibid.* Professor, Judge Schwebel in *What Weight to Conquest?*
- <sup>50</sup> See “Jerusalem and the Holy Places,” The Anglo-Israel Association, October 1968, page 52. Sir Elihu Lauterpacht - Judge ad hoc of the International Court of Justice. Published also “Aspects of the Administration of International Justice,” 1991. Director, Research Centre for International Law, University of Cambridge Member, Arbitration Panel, World Bank Centre for the Settlement of Investment Disputes.
- <sup>51</sup> “Israel and Palestine, Assault on the Law of Nations” *The Johns Hopkins University Press, 1981, p. 127*. The late Professor Julius Stone was recognised as one of the twentieth century's leading authorities on the Law of Nations. His short work represents a detailed analysis of the central principles of international law governing the issues raised by the Arab-Israel conflict. He was one of a few scholars to gain outstanding recognition in more than one field. Professor Stone was one of the world's best-known authorities in both Jurisprudence and International Law.
- <sup>52</sup> George P. Fletcher is a professor at Columbia University School of Law and author of *Romantics at War: Glory and Guilt in the Age of Terrorism*. See “Annan's Careless Language,” *The New York Times*, March 21, 2002, at [http://www.uscj.org/neweng/worcester/Link\\_Fletcher020321.htm](http://www.uscj.org/neweng/worcester/Link_Fletcher020321.htm).
- <sup>53</sup> See “Annan's Careless Language,” *The New York Times*, March 21, 2002, at [http://www.uscj.org/neweng/worcester/Link\\_Fletcher020321.htm](http://www.uscj.org/neweng/worcester/Link_Fletcher020321.htm).
- <sup>54</sup> The massacre of innocent Arabs at Dir Yassin is discussed in the chapter on refugees.
- <sup>55</sup> The History of Gush Etzion, see: <http://www.jafi.org.il/education/festivals/zkatz/at/etzion9.html>.
- <sup>56</sup> “Chronology and victims of Palestinian Terrorism Prior to Israel's Occupation of West Bank and Gaza,” Jewish Community Relations Council, at <http://www.jcrc.org/main/terror.htm>.
- <sup>57</sup> See “*Land Grab: Israel's Settlement Policy in the West Bank*,” B'tselem, May 2002, p. 45.
- <sup>58</sup> Quoted in “Back to the Future”: NPR Rewrites Israel's War of Independence, CAMERA, October 9, 2002, at <http://world.std.com/~camera/docs/alert/nprbtf.html>. The book was reprinted by the Institute for Palestine Studies in 1991, [http://www.amazon.com/exec/obidos/tg/detail/-/0887282148/qid=1054275456/sr=1-1/ref=sr\\_1\\_1/103-9816466-7086254?v=glance&s=books](http://www.amazon.com/exec/obidos/tg/detail/-/0887282148/qid=1054275456/sr=1-1/ref=sr_1_1/103-9816466-7086254?v=glance&s=books).
- <sup>59</sup> “Economy of Judea, Samaria and the Gaza Strip - 1967,” *Carta's Atlas of Israel – The Second Decade 1961-1971*, p. 99. For most, ‘running water’ was a village well, or tap in a common courtyard. Indicative of the change, water consumption has risen from 5 cubic meters per capita in 1966 to 20 cubic meters per capita in 1980, and 35 cubic meters by 1990.

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<sup>60</sup> Cited in David Newman, “Demarcating an Israeli-Palestinian Border: Geographic Considerations,” JCPA, July 15, 1997, at <http://www.jcpa.org/jl/hit10.htm>.

<sup>61</sup> Efraim Orni and Elisha Efrat, *Geography of Israel*, 1966, p.165-166.

<sup>62</sup> Demographic data, see PASSIA, Palestinian Academic Society for the Study of International Affairs, cited at <http://www.us-israel.org/jsource/History/yishuv.html>.

<sup>63</sup> See “*Land Grab: Israel’s Settlement Policy in the West Bank*,” *B’tselem*, p. 49, quoting a senior civil servant in the Ministry of Interior.

<sup>64</sup> “Israeli Settlements and International Law,” prepared by the legal advisor of the Ministry of Foreign Affairs, March 2001, at <http://www.gamla.org.il/english/docs/gen.htm>

<sup>65</sup> Chaim Herzog, *ibid*.

<sup>66</sup> *Land Grab: Israel’s Settlement Policy in the West Bank*, *B’tselem*, May 2002.

<sup>67</sup> Jeff Jacoby, “When Jerusalem was divided,” *Jewish World Review*, January 9, 2001, at <http://www.jewishworldreview.com/jeff/jacoby010901.asp>.

<sup>68</sup> Edwin S. Wallace, former Consul General of the United States, “THE JEWS IN JERUSALEM” *Cosmopolitan* magazine – 1898, pp. 317-324

<sup>69</sup> Cited in a speech by Chaim Herzog, Israeli ambassador to the UN (1975-78) – “Jewish settlements in ‘the Territories’ Aren’t the Problem,” republished by *FrontPage* magazine.com, at <http://www.frontpagemag.com/Articles/Printable.asp?ID=7142>.

<sup>70</sup> The Center for Security Policy, “Israeli Settlements: Legitimate, Democratically Mandated, Vital to Israel’s Security, and Therefore, In U.S. Interest,” December 17, 1996, at [http://www.freeman.org/m\\_online/jan97/center.htm](http://www.freeman.org/m_online/jan97/center.htm).

<sup>71</sup> “The Future of Israeli Settlement in the West Bank and Gaza Strip,” at <http://www.pepsr.org/survey/cprspolls/special/99/setpoll99e1.html>.

<sup>72</sup> A term used for those who observe many traditions but are not strictly religious, thus they may keep kosher and go to synagogue on Saturday, but then might go to soccer matches.

<sup>73</sup> “Settler Attitudes Towards Withdrawal from the Territories,” Peace Now, July 2002. See: <http://www.peace-now.org/SettlementSites/settler-positione.doc>.

<sup>74</sup> “Israelis Killed in the Occupied Territories (including East Jerusalem),” *B’tselem*, September 29, 2000, May 11, 2003, at [http://www.btselem.org/English/Statistics/al\\_Aqsa\\_Fatalities\\_Tables.asp](http://www.btselem.org/English/Statistics/al_Aqsa_Fatalities_Tables.asp).

For a list of fatalities in the Territories between September 1993 (Oslo) and February 2002 and the circumstances of their deaths, see: <http://www.gamla.org.il/english/docs/terror.htm>; for statistics on terrorist activity broken down by type and place (Judea and Samaria, Gaza, inside the Green Line), see IDF spokesperson, at <http://www.idf.il>.

<sup>75</sup> “Fatalities in the al-Aqsa Intifada: 29 Sept. 2000 – 15 October 2004,” *B’tselem*, at [http://www.btselem.org/English/Statistics/Al\\_Aqsa\\_Fatalities.asp](http://www.btselem.org/English/Statistics/Al_Aqsa_Fatalities.asp)

<sup>76</sup> The worst was a massacre by a lone Israeli in the Cave of the Patriarchs in Hebron in 1994 that took the lives of 29 Muslim worshippers. Three 2002 *B’tselem* reports show the overwhelming majority of violent acts of retribution after

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murders and other attacks on Jews focused on property damage – from turning over vegetable carts and smashing windshields to ransacking and arson of Arab property at crime scenes and disruption of olive harvests.

<sup>77</sup> “Palestinian civilians killed by Israeli civilians in the Occupied Territories,” B’tselem, at [http://www.btselem.org/English/Statistics/Fatalities\\_Lists/Pal\\_by\\_Is\\_eng.asp](http://www.btselem.org/English/Statistics/Fatalities_Lists/Pal_by_Is_eng.asp).

<sup>78</sup> Sprinzak’s conclusions, cited in a book review of his work. See Amazon.com: [http://www.amazon.com/exec/obidos/tg/stores/detail/-/books/0684853442/reviews/qid=1054505277/sr=8-2/ref=sr\\_8\\_2/002-8938003-3157608](http://www.amazon.com/exec/obidos/tg/stores/detail/-/books/0684853442/reviews/qid=1054505277/sr=8-2/ref=sr_8_2/002-8938003-3157608)

<sup>79</sup> “Monthly Analysis of All Terrorist Incidents Since September 2000 – 27.5.03,” IDF Spokesperson, at [http://www.idf.il/daily\\_statistics/english/4.gif](http://www.idf.il/daily_statistics/english/4.gif)

<sup>80</sup> Ibid. David Bar-Ilan was Director of Policy Planning and Communications under the Benjamin Netanyahu administration. Also see *Arab Construction in Territories Rises by 27%* at <http://www.imra.org.il/story.php3?id=21286>

<sup>81</sup> “Har Homa, Legal Aspects,” Israel Ministry of Foreign Affairs, March 3 1997, at <http://www.israel.org/mfa/go.asp?MFAH01gi0>.

<sup>82</sup> Ibid. David Bar-Ilan was Director of Policy Planning and Communications under the Benjamin Netanyahu administration. Also see *Arab Construction in Territories Rises by 27%* at <http://www.imra.org.il/story.php3?id=21286>