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SELF-DETERMINATION IN THE ARAB-ISRAELI CONFLICT: MEANING, MYTH, AND POLITICS

MALVINA HALBERSTAM*

I. INTRODUCTION

Self-determination has become a dominant theme of this era. The U.N. Charter refers to the "principle of self-determination";¹ numerous U.N. instruments affirm the "right to self-determination";² and, in every part of the world, peoples assert claims to self-determination.³

What appears to be a great ideal encounters numerous difficulties, however, as soon as one attempts to define it or apply it. That is especially true when two peoples each claim a right to self-determination in the same territory, as is often the case and as is true in the Arab-Israeli conflict.

This Article examines the concept of self-determination and its application to the Arab-Israeli conflict. It concludes that self-determination has never been applied as an objective universal principle; that even if it were so applied, it would not justify Palestinian Arab claims to an independent state in the disputed territories; and, finally, that regardless of the basis of the claim, no state can be expected to grant self-determination to a group whose avowed purpose is to destroy it.

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1. U.N. CHARTER, art. 1, para. 2.

2. See, e.g. *International Covenant on Civil and Political Rights*, G.A. Res. 2200 (xxi), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966); *International Covenant on Economic, Social, and Cultural Rights*, G.A. Res. 2200 (xxi), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966); *Declaration on the Granting of Independence to Colonial Countries and Peoples*, G.A. Res. 1514 (XV), 21 U.N. GAOR Supp. (No. 16A) at 66, U.N. Doc. A/L 323 and Add. 1-6 (1960).

3. See *infra* notes 6-16 and accompanying text.

II. DEFINING SELF-DETERMINATION

A fundamental problem underlying any discussion of self-determination is defining the term. As an initial matter, one must determine to what groups the term can be applied. What characteristics entitle a group to self-determination? Must it have a distinct racial, religious, or ethnic identity? Is every group that has such a distinct identity entitled to self-determination? Does it matter that the granting of self-determination to one group requires denial of self-determination to a competing group? Is it relevant that the formation of a separate state by a group claiming the right to self-determination will make the state from which it disengages economically non-viable or militarily indefensible? As one commentator noted:

The necessity of defining the "self" which is to exercise "self-determination" lies at the heart of what is probably the most basic dilemma in the matter of self-determination: recognition of the rights of one "self" entails a denial of the rights of a competing "self." For, in essence, every demand for self-determination involves some countervailing claim or claims.⁴

[T]he same instance may be viewed as an affirmation or negation of "self-determination" depending on the angle of the viewer and the "self" upon which he is focusing. Thus, inclusion of the Sudetenland in Czechoslovakia may be deemed a violation of the self-determination of the *Sudetens*, or alternatively, a way of securing Czechoslovakia's self-determination by making the state economically viable and strategically defensible.⁵

More recently, one could make the same comments with respect to the Ibos in Biafra. Did the Ibos have a right to self-determination, or did Nigeria have a right to bar the secession of Biafra because without Biafra its viability would be jeopardized?

In the two weeks immediately preceding this Sympo-

4. M. POMERANCE, *SELF-DETERMINATION IN LAW AND PRACTICE* 2 (1982).

5. *Id.* at 9.

sium, the *New York Times* reported claims for self-determination, some accompanied by violence and substantial loss of life, by the Serbs in Yugoslavia,⁶ by the Tatars in the Crimea,⁷ by the Armenians in Azerbaijan,⁸ by Lithuanians, Estonians, and Latvians⁹ in the U.S.S.R., and by the Tamils in Sri Lanka.¹⁰ Other groups engaged in struggles for self-determination include the Kurds in Iraq, Iran, and Turkey,¹¹

6. Yugoslavia is a confederation of six largely autonomous republics and two quasi-autonomous regions, composed of various ethnic groups, including Serbs, who constitute a majority of the Republic of Serbia and of Yugoslavia as a whole, and Albanians. The recent conflict between ethnic Serbs and ethnic Albanians is over control of the quasi-autonomous region of Kosovo. See *N.Y. Times*, Oct. 16, 1988, § 4, at 1, col. 1.

7. Crimean Tatars number about 300,000 and live in what is today the southern part of the Ukraine. Many Crimean Tatars were deported from their native land after World War II by Stalin because of suspected collaboration with the Nazis. It is estimated by the Tatars living today that almost half of those deported died while in transit from Crimea to Soviet Central Asia. See *Wash. Post*, Feb. 17, 1989, § 3, at 1; *Christian Sci. Monitor*, July 3, 1989, at 6.

8. There are approximately 5.5 million Armenians, of whom 4.1 million live in the Armenian Soviet Socialist Republic, 500,000 in the United States, and another 126,000 in the Nagorno-Karabakh region of the Azerbaijan Soviet Socialist Republic. The rest are scattered throughout the world. The Armenians are united by race, religion, geography, and language. An Armenian empire existed in 70 B.C.E., but in 1540 C.E. most of Armenia came under Ottoman rule. At the end of World War I, an independent Armenia was established, but it was quickly annexed and incorporated into the Soviet Union. See *N.Y. Times*, Feb. 28, 1988, § 1, at 1, col. 4.

9. The formerly independent Baltic states of Lithuania, Latvia, and Estonia became part of the Soviet Union following World War I. Over the past year these states have made increasingly strong demands for autonomy. See *N.Y. Times*, Oct. 11, 1988, § 1, at 12, col. 1.

10. The Tamils, a distinct ethnic group, share the island of Sri Lanka with the majority Sinhalese. Over the past five years, more than 8,500 people have died in ethnic violence between the Tamils and the Sinhalese. The Tamils are demanding a partition of Sri Lanka along ethnic lines, with the Tamils getting the north and northeastern regions, and the Sinhalese the remainder. See *N.Y. Times*, Oct. 11, 1988, § 1, at 8, col. 1.

11. There are approximately 20 million Kurds, united by a common linguistic, ethnic, and cultural heritage, inhabiting an area of mountainous land that encompasses much of Eastern Turkey, Northern Iraq, Western Iran, and small areas of Syria and the Soviet Union. Within that area, which is known as Kurdistan, the Kurds are an overwhelming majority. The Kurds have been fighting for self-determination since 1924, when Turkish troops destroyed 206 Kurdish villages and killed 15,200 individu-

the Sikhs in Punjab,¹² the Nagas in North East India,¹³ and the Eritreans in Ethiopia.¹⁴

Almost all states support the "right" to self-determination by some groups but oppose such claims by others. Iraq favors self-determination for the Palestinians but not for the Kurds. The Soviet Union has in the past supported numerous claims for self-determination, but does not grant self-determination to the Lithuanians, Latvians, or Estonians (all of whom have a long history of independence), or to the Armenians in Azerbaijan, or the Tartars in Crimea. India supported self-determination for Bangladesh but not for the Sikhs in Punjab or for the people of Nagaland and Mizoram, whose leaders it lists as "wanted criminals."¹⁵ Nor do Western states support unequivocally a right to self-determination. Canada opposed Quebec's claim; the U.K. is engaged in a long and bloody struggle with Ireland; and the United States will not give self-determination to the Native American Indians living on reservations. A noted commentator concluded that "the majority of member states of the United Nations deny national self-determination to their ethnic, religious, cultural and political minorities."¹⁶

The U.N. Charter does not provide for a "right" to self-

als. In 1932, 18,000 Kurds were killed by Iraqi troops, and, most recently, 5,000 Kurds in Iraq were killed when Iraqi warplanes dropped chemical weapons on Iraqi villages inhabited by Kurds, ostensibly in Iraq's war against Iran. In addition, another 700 Kurds have been killed in Turkey since 1984. See Wash. Post, Oct. 16, 1989, § 1, at 27; Oct. 17, 1989, § 1, at 16; see also Y. GOTLIEB, SELF-DETERMINATION IN THE MIDDLE EAST 72-92 (1982).

12. Approximately 14 million Sikhs live in the northern Indian states of Punjab, where they form a majority, and Haryana. They are linked by a religious, territorial, and ethnic identity. In the early 19th century, the Sikhs had their own state, but it was annexed by the British in 1849. In 1988 alone, over 2,000 people died in the Sikh struggle for self-determination. See N.Y. Times, Apr. 4, 1984, § 1, at 6, col. 3; Nov. 8, 1988, § 1, at 5, col. 1.

13. See N.Y. Times, Mar. 13, 1984, § 1, at 8, col. 2.

14. Eritrea is a Red Sea coastal region located in the north of Ethiopia. The war between the Eritrean People's Liberation Front and the Ethiopian Army has been waged over the past 30 years and has taken hundreds of thousands of lives. See N.Y. Times, Nov. 28, 1988, § 1, at 8, col. 1.

15. See N.Y. Times, Mar. 13, 1984, § 1, at 2, col. 3.

16. Schwarzenberger, *The Purpose of the United Nations: International Judicial Practice*, in 4 ISR. Y.B. ON HUM. RTS. 11, 42 (1974).

determination. Instead, it states that one of the purposes of the Charter is to develop friendly relations among nations based on "respect for the principles of equality and self-determination."¹⁷ Although General Assembly Resolutions speak of a "right to self-determination," the General Assembly is not a law-making body. Its resolutions only have legal effect to the extent that each resolution reflects the development of a customary rule of law based on state practice.¹⁸ Furthermore, scholars disagree on whether state practice supports the conclusion that there is a "right" to self-determination.¹⁹ After examining state practice, Emerson concluded:

One obvious version which can be disposed of without further ado is the notion that when United Na-

17. U.N. CHARTER art. 1, para. 2.

18. See Halberstam, *Recognition, Use of Force, and the Legal Effect of United Nations Resolutions Under the Revised Restatement of the Foreign Relations Law of the United States*, 19 ISR. L. REV. 495, 509-512 and the authorities cited therein. The Tentative Draft of the Restatement on U.S. Foreign Relations Law provided,

In determining whether a rule has been accepted as international law . . . substantial weight is accorded to . . . Resolutions of International Organizations.

RESTATEMENT OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES, Tent. Draft No. 1, § 103 (1980).

There was considerable opposition to this provision by members of the Institute, including the present writer, and it was deleted. See RESTATEMENT OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES (3RD) § 103(2). However, comment (c) to the section says,

States often pronounce their views on points of international law, sometimes jointly through resolutions of international organizations that undertake to declare what the law is on a particular question, usually as a matter of general customary law. International organizations generally have no authority to make law, and their determinations of law ordinarily have no special weight, but their declaratory pronouncements provide some evidence of what the states voting for it regard the law to be. The evidentiary value of such resolutions is variable. Resolutions of universal international organizations, if not controversial and if adopted by consensus or virtual unanimity, are given substantial weight. Such declaratory resolutions of international organizations are to be distinguished from those special "law-making resolutions" that, under the constitution of an organization, are legally binding on its members.

19. See Emerson, *Self-Determination*, 65 AM. J. INT'L LAW 459, 460-61 (1971).

tions resolutions or the first articles of the two Covenants on Human Rights assert that "All peoples have the right to self-determination," they mean what they say, *i.e.*, that all peoples have the right. Anyone tempted by so simple an interpretation is invited to consult the Germans, Koreans, and Vietnamese; the Biafrans or Ibos, the south Sudanese, the Baltic peoples, the Formosans, the Somalis, and the Kurds and Armenians. There have been two major periods when self-determination has garnered a substantial measure of international acceptance as an operative right or principle, but in each instance only for a closely defined category of peoples or territories. The first concerned the European territorial settlement at the close of World War I, in which Woodrow Wilson and others proclaimed the right of self-determination in universal terms. . . . In the second, following World War II, the focus of attention has been the disintegration of the overseas empires. . . .²⁰

Furthermore, self-determination does not necessarily mean the right to an independent state. *The Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations* lists the following "modes of implementing the right of self-determination":

The establishment of a sovereign and independent state, the free association or integration with an independent state or the emergence into any other political status freely determined by a People. . . .²¹

In the *Western Sahara* case,²² the International Court of Justice construed self-determination to require only the free and genuine expression of the will of the peoples of the territory.²³ Judge Dillard, in his concurrence, stated even more emphatically that self-determination was not to be equated with independence. Rejecting Spain's assertion that "in the free exercise of the population's right to self-determination,

20. *Id.* at 462-63.

21. G.A. Res. 2625, 25 U.N. GAOR Supp. (No. 28) at 121.

22. *Western Sahara* (Advisory Opinion), 1975 I.C.J. 12.

23. *Id.* at 25.

allowance *must* be made for the *independence of the territory as a legal possibility*," he stated:

I can find nothing in [the relevant U.N.] resolutions, however, or in the legal aspect of the "right" itself, which compels such conclusions. On the contrary it may be suggested that *self-determination is satisfied by a free choice not by a particular consequence of that choice or a particular method of exercising it.*²⁴

In sum, the establishment of an independent state for each group seeking "self-determination" may not be the best solution. The desirability of an independent state depends on its economic, political, and military viability and on the effect its independence would have on other states in the region.

III. ARAB AND JEWISH CLAIMS TO SELF-DETERMINATION IN PALESTINE

A. *Jewish and Arab Ties to Palestine*

Ancient Israel included the territory which has in recent years been referred to as the West Bank. It was then known as Judea and Samaria, as it was referred to in the British Mandatory and U.N. records until 1948.²⁵ This area was the heart of ancient Israel, and many places in Judea and Samaria are the site of important events in Jewish history.

For instance, the tombs of the patriarchs Abraham, Isaac, and Jacob, and the matriarchs Sarah, Rebecca, and Leah, are located in Hebron. Hebron is also the city in which David was anointed King and where he reigned for nine years before he established Jerusalem as the capital. Bethlehem was the birthplace of David and is the site of the Tomb of Rachel, one of the matriarchs of the Jewish people.²⁶ Samaria served as the capital of the Israelite kingdom in the ninth-century B.C.E. (subsequently, the whole northern portion of what is now known as the West Bank was

24. *Id.* at 123 (emphasis added).

25. See L. DAVIS, *MYTHS AND FACTS 1989: A CONCISE RECORD OF THE ARAB-ISRAELI CONFLICT* 14 (1989).

26. See Chertoff, *The Jewish Presence on the West Bank*, in *THE HASHEMITE KINGDOM OF JORDAN AND THE WEST BANK* 205-209 (A. Sinai & A. Pollock eds. 1977).

known as Samaria²⁷). Modiin, the site of the Maccabean revolt and struggle for independence, commemorated on Hanukkah, is also on the West Bank.²⁸ Almost all the areas of historical or religious significance to Jews are in what is now referred to as the West Bank.²⁹

When the Romans captured Israel in about 130 C.E., they forcibly removed a large part of the Jewish population.³⁰ The Romans also changed the name of Israel to Palestine to obliterate the association between the people of Israel and that land.³¹ Jews have, however, lived continuously in Israel from that time to the present. Hebron was part of Israel in the tenth century B.C.E.,³² and there was a world-famous *yeshiva* (Talmudic institute) in Hebron in the 20th century. Jews continued to live in Hebron until the slaughter of the Jewish inhabitants of Hebron in 1929.³³ Thus, there has been strong Jewish identification with the land of Palestine for several millennia.

There has never been an independent Arab state in Palestine.³⁴ Indeed, prior to Jewish immigration, much of Palestine was largely barren and sparsely populated. Most of the Arab population of Palestine immigrated to Palestine from other Arab lands during the British Mandate Period.³⁵

27. *See id.* at 205-208.

28. G. ROWLEY, *ISRAEL INTO PALESTINE* 12 (1984).

29. *See* Chertoff, *supra* note 26, at 207-208.

30. *Id.* at 12-13.

31. *Id.* at 13.

32. *Id.*

33. *See* Chertoff, *supra* note 26, at 206.

34. For a discussion of the beginning of Palestinian nationalism, see Pipes, *The Year the Arabs Discovered Palestine*, 21 *MIDDLE E. REV.* 37 (vol. 4 1989).

Palestinians abandoned Pan-Syrianism and replaced it with Palestinian separatism for tactical reasons, not out of heartfelt sentiment. . . . Ultimately, Palestinian nationalism originated in Zionism; were it not for the existence of another people who saw British Palestine as their national home, the Arabs would have continued to view this area as a province of Greater Syria. *Id.* at 41-42. *See also* Near East Report, Nov. 6, 1989, at 188 (quoting a recent statement by a Jordanian minister that Syria, Jordan, Lebanon, and Palestine were one unit, and that "there were no regional sentiments and until the 20th century they did not exist. Everyone was from greater Syria.").

35. J. PETERS, *FROM TIME IMMEMORIAL* 196-325 (1984); *see also* A.

Dr. Carl Hermann Voss, Chairman of the American Christian Palestine Committee, stated:

The Arab population of Palestine was small and limited until Jewish resettlement restored the barren lands and drew to it Arabs from neighboring countries. . . . When organized Jewish colonization began in 1882, there were fewer than 150,000 Arabs in the land. The great majority of the Arab population in recent decades were comparative newcomers—either late immigrants or descendants of persons who had immigrated into Palestine in the previous seventy years.³⁶

Joan Peters, an American civil rights worker and free-lance writer, who was initially motivated to study the situation by concern for the plight of "Palestinian refugees," concluded, after seven years of research in archives on three continents and innumerable interviews, that the claim that the establishment of Israel caused the displacement of Palestinians who had lived there from "time immemorial" was a "myth" *deliberately* created by Arab leaders in their war against Israel.³⁷

SACHAR, A HISTORY OF THE JEWS 413-14 (5th ed. 1964). Proponents of a Palestinian state take issue with this assertion. See, e.g., Abu-Lughod, *The Demographic Transformation of Palestine*, in *THE TRANSFORMATION OF PALESTINE* 139-163 (I. Abu-Lughod ed. 1971). Some even argue that the "Palestinians of today are the descendants of the Philistines, the Canaanites and other early tribes. . . . Their settlement in Palestine can be traced back to at least forty centuries." H. CATTAN, *PALESTINE, THE ARABS AND ISRAEL: THE SEARCH FOR JUSTICE* 6 (1969). Since Peters has been criticized, see Finkelstein, *Disinformation and the Palestine Question: The Not-So-Strange Case of Joan Peters's From Time Immemorial*, in *BLAMING THE VICTIMS: SPURIOUS SCHOLARSHIP AND THE PALESTINIAN QUESTION* 33-69 (E. Said & C. Hitchens eds. 1988), the author has supplemented cites to Peters with other supporting authority whenever possible.

36. C. VOSS, *THE PALESTINIAN PROBLEM TODAY: ISRAEL AND ITS NEIGHBORS* 13 (1953).

37. J. PETERS, *supra* note 35, at 13-15. She quotes Musa Alami, an Arab activist who wrote, "[H]ow can people struggle for their nation, when most of them do not know the meaning of the word. . . . The people are in great need of a 'myth' to fill their consciousness and imagination." *Id.* at 13. See also Alami, *The Lesson of Palestine*, 3 *MIDDLE E. J.* 373-405 (no. 4 1949). Peters also notes that "the campaign has provided non-Arabs with moral rationalization for abiding by the Arabs' anti-Israel rules, which are regarded as prerequisites to getting Arab oil and the financial benefits from Arab oil wealth." J. PETERS, *supra* note 35, at 15.

In fact, to make the Arabs who left when Israel was established in 1948 eligible for assistance, the U.N. was forced to change its definition of "refugee" from a person who was forced to leave his "permanent" or "habitual" home to any person who had been in Palestine for "two years" prior to 1948.³⁸

The Arabs who live in what was the Palestinian Mandate, and is now Jordan, Israel, and the disputed territories, are primarily the same race, speak the same language, and practice the same religions as Arabs living in the various Arab states. Furthermore, Arabs everywhere consider themselves part of the same Arab nation. The Palestinian National Charter proclaims, "the Palestinian people are an integral part of the Arab nation."³⁹ A former mayor of East Jerusalem stated:

Palestine, Jordan and Syria constituted one family until the British and French occupation in 1918. . . .

We do not differentiate between our people.⁴⁰

Therefore, both by historical account and by their own admission, the Arab residents of what was Palestine are not distinct ethnically, racially, or religiously from the inhabitants of neighboring Arab states.

B. *From the League of Nations Mandate to the 1967 War*

Following the defeat of the Ottoman Empire, which included Palestine, the League of Nations established a Mandate for "the administration of the territory of Palestine, which formerly belonged to the Turkish Empire."⁴¹ The Mandate recognized "the historical connection of the Jewish people with Palestine" and "the grounds for reconstituting

38. J. PETERS, *supra* note 35, at 4; *see also* L. DAVIS, *supra* note 25, at 8.

39. The Palestine National Charter, art. 1, *reprinted in* THE MIDDLE EAST AND NORTH AFRICA 1989, at 89-90 (35th ed. 1988).

40. Pipes & Garfinkel, *Is Jordan Palestine?*, 86 COMMENTARY 40 (Oct. 1988).

41. The Mandate for Palestine was confirmed by the Council of the League of Nations on July 24, 1922. 3 LEAGUE OF NATIONS O.J. 1007 (1922). The International Court of Justice (ICJ) has held that a mandate is a legally binding instrument. *See* Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970) (Advisory Opinion), 1971 I.C.J. 16.

their national home" in Palestine.⁴² It instructed the Mandatory to place "the country under such political, administrative and economic conditions as will secure the establishment of the Jewish national home;"⁴³ to "facilitate Jewish immigration;" to "encourage . . . close settlement by Jews on the land;"⁴⁴ and to enact a nationality law "framed so as to facilitate the acquisition of Palestinian citizenship by Jews who take up their permanent residence in Palestine."⁴⁵

In 1923, Britain, for its own political reasons, and contrary to the terms of the Mandate, established a new Arab entity, Transjordan, in almost four-fifths of Palestine.⁴⁶ Also contrary to the terms of the Mandate, Britain sharply restricted Jewish immigration to Palestine both before and during World War II,⁴⁷ while allowing entry to large numbers of Arabs, not only to Eastern Palestine, where it had already established Transjordan, but also to Western Palestine.⁴⁸

The international community condemned Britain's establishment of Transjordan in the territory designated for "the Jewish National Home" by the Mandate and its restriction of Jewish immigration. Franklin Roosevelt wrote, "Frankly, I do not see how the British Government reads into the original Mandate or into the White Paper of 1922 any policy that would limit Jewish immigration."⁴⁹ The Conference of Protestant and Catholic Leaders declared it "the profound conviction of Christian America that [Britain] re-

42. 3 LEAGUE OF NATIONS O.J. 1007 (1922).

43. *Id.* art 2.

44. *Id.* art. 6.

45. *Id.* art. 7.

46. See J. HUREWITZ, *THE STRUGGLE FOR PALESTINE* 20 (1950); L. DAVIS, *supra* note 25, at 5-6. The map in Appendix A shows Palestine under the Mandate and the area in which Britain established Transjordan.

47. A. SACHAR, *supra* note 35, at 427-28; see also A. EBAN, *MY COUNTRY* 34 (1972).

48. A. SACHAR, *supra* note 35, at 413-14; see also L. DAVIS, *supra* note 25, at 11 (Between World War I and World War II the "Arab population [in Palestine] rose by 75%, as compared with a 25% increase in populous Egypt. . . . Significantly, the Arab increase was largest in areas of intensive Jewish development . . . 216% in Haifa, 134% in Jaffa and 90% in Jerusalem.").

49. N. BETHELL, *THE PALESTINE TRIANGLE: THE STRUGGLE FOR THE HOLY LAND, 1935-1948*, at 69 (1979).

scind its illegal, unjust, and indefensible partition of Palestine, [that it] restore Transjordan to its proper place as part of Palestine territory, and throw it open to Jewish settlement."⁵⁰

Indeed, in 1939, the League of Nations Permanent Mandate Commission protested the 1939 British White Paper as a violation of the Palestine Mandate.⁵¹ The Commission report concluded that the restrictions laid down by the 1939 White Paper, along with its recognition of Arab rule in Transjordan, violated Britain's obligations as Mandatory.⁵² Nevertheless, Britain continued to restrict Jewish immigration, even when Jews fleeing the Nazis drowned at sea because Britain would not permit ships carrying Jews to enter Palestine.⁵³

In 1946, Britain gave independence to Transjordan,⁵⁴ which it had earlier established in the eastern part of Mandatory Palestine. Transjordan did not include the territories currently in dispute. Judea and Samaria were part of Western Palestine and were captured by Transjordan in 1948,⁵⁵ when it and the other Arab states rejected the U.N. resolution recommending partition and attacked Israel.⁵⁶ Transjordan annexed these territories,⁵⁷ and referred to the areas collectively as the West Bank, thereby minimizing the Jewish association which the names Judea and Samaria evoked. It also changed its own name from Transjordan to

50. Conference of Protestant and Catholic Leaders, New York (December 1936), reported in 12 *PALESTINE* (no. 2, January 13, 1937).

51. *Manchester Guardian*, Aug. 18, 1939, quoted in N. BETHELL, *supra* note 49, at 70.

52. M. MANSOOR, *POLITICAL & DIPLOMATIC HISTORY OF THE ARAB WORLD 1900-1967: A CHRONOLOGICAL STUDY*, at May 18, 1939 (1972).

53. A. EBAN, *supra* note 46, at 39; see also PERLMUTTER, *ISRAEL, THE PARTITIONED STATE* 94 (1985).

54. M. MANSOOR, *supra* note 51, at Jan. 17, 1946, Feb. 9, 1946, Mar. 22, 1946.

55. *Id.* at May 16, 1948, May 18, 1948.

56. *Id.* at Mar. 13, 1948 ("The Arab League proclaimed a state of war between the seven Arab states and Palestinian Jewry and announced that the Arab states would invade the Holy Land as soon as the U.K. gave up the mandate."). See also *id.* at June 25, 1948 ("King Abdullah of Transjordan announced that the Arab States, headed by Egypt, had decided to continue the struggle in Palestine with the aim of abolishing the Jewish state.").

57. *Id.* at May 16, 1948, May 18, 1948.

Jordan.⁵⁸ Israel captured the territories in 1967 after Jordan attacked Israel, despite Israel's pleas to Jordan not to join Egypt in its war against Israel.⁵⁹ Jordan held the area for which the Palestinian right to self-determination is now asserted from 1948 to 1967.

During the almost twenty years that the area was under Arab control no "Palestinian" state was ever established there. Nor did the states that so vehemently advocate a "Palestinian right to self-determination" now propose establishing a Palestinian state in this territory during that period. Clearly, it was not in their political interest to do so then, when the territory was under Arab control, as it is now that Israel has control of the territory.

C. Arab and Jewish Refugees

It is estimated that between 400,000 and 750,000 Arabs fled from Israel during the 1948 War and became refugees.⁶⁰ At the same time, over 700,000 Jews from Arab states immigrated into Israel.⁶¹ Although there are twenty-one Arab states with a land mass of over 5,000,000 square miles, this large block of states has generally refused to absorb the Palestinian refugees and to allow them to assimilate into the local population. Israel, on the other hand, with a territory of less than 10,000 square miles, absorbed 1.3 million Jewish refugees, 600,000 from Europe and over 700,000 from Arab states.⁶²

Resettlement of the Arab refugees would not only have solved the refugee problem but would have benefitted Iraq and Syria, who needed additional population. Salah Jabr,

58. 9 FACTS ON FILE YEARBOOK 1949, at 139, §§ M-N (1950).

59. A. SACHAR, *supra* note 35, at 446-47.

60. The exact number has never been determined and is the subject of considerable controversy. According to Joan Peters, estimates vary from 430,000 to 650,000. The Statistical Abstract of Palestine reported the total Arab population living in the Jewish-settled areas to be 570,800 in 1944-45. See J. PETERS, *supra* note 35, at 16-17; see also D. Heisel, *International Migration* in 1 INTERNATIONAL ENCYCLOPEDIA OF POPULATION 366 (J.A. Ross ed. 1982) (estimating the number of Arabs who fled during 1948 to be 750,000).

61. Heisel, *supra* note 59, at 366.

62. See L. DAVIS, *supra* note 25, at 5; M. AUMANN, THE PALESTINIAN LABYRINTH—A WAY OUT 28-29 (1985).

former Prime Minister of Iraq and leader of the Iraqi Nationalist Party, stated:

[T]he emigration of 120,000 Jews from Iraq to Israel is beneficial to Iraq and to the Palestinian Arabs because it makes possible the entry into Iraq of a similar number of Arab refugees and their occupation of the Jewish houses there.⁶³

A 1951 study by the International Development Advisory Board concluded that Iraq alone could absorb a refugee population of 750,000.⁶⁴ According to a Damascus newspaper editorial, Syria needed a population of five million people in order to work the lands and make them fruitful.⁶⁵ An Egyptian newspaper reported,

[t]he Syrian government has officially requested that half a million Egyptian agricultural workers from the Delta region be permitted to emigrate to Syria in order to help develop Syrian land which would be transferred to them as their property.⁶⁶

This offer, however, was not extended to the Palestinian refugees from Israel. At a 1957 refugee conference, the Arabs declared that "[a] discussion aimed at a solution of the Palestine problem which will not be based on ensuring the refugees' right to *annihilate Israel* will be regarded as a desecration of the Arab people and an act of treason."⁶⁷ In 1958, Ralph Galloway, the former director of the United Nations Relief and Works Agency, the U.N. agency that provides relief for the Arab refugees, stated,

The Arab states do not want to solve the refugee problem. They want to keep it as an open sore, as an affront to the United Nations and as a weapon against Israel. Arab leaders do not give a damn whether the refugees live or die.⁶⁸

63. D. ANDERSON, *THE ARAB REFUGEE PROBLEM—HOW IT CAN BE SOLVED* 39 (1951) [hereinafter *REFUGEE PROBLEM*].

64. International Development Advisory Board Report, Mar. 7, 1951.

65. *REFUGEE PROBLEM*, *supra* note 63, at 50.

66. *Id.*

67. T. PRITIE & B. DINEEN, *THE DOUBLE EXODUS: A STUDY OF ARAB AND JEWISH REFUGEES IN THE MIDDLE EAST* 13 (1974) (emphasis added).

68. Pritie, *Middle East Refugees*, in *THE PALESTINIANS: PEOPLE, HISTORY, POLITICS* 71 (M. Curtis ed. 1975).

In many situations population exchanges solved refugee problems. In 1923 Turkey and Greece exchanged 1,250,000 Greeks for 355,000 Turks.⁶⁹ India and Pakistan exchanged 8,500,000 Sikhs and Hindus from Pakistan for 6,500,000 Muslims from India.⁷⁰ Between 1945 and 1948 West Germany absorbed seven million, and East Germany absorbed 3.5 million Germans from Eastern Europe.⁷¹ South Korea absorbed 1.5 million Koreans from North Korea,⁷² while South Vietnam absorbed one million Vietnamese from North Vietnam.⁷³ Refugees are a continuing phenomenon in many parts of the world. West Germany recently absorbed tens of thousands of refugees from East Germany,⁷⁴ and Turkey recently reported that several hundred thousand Muslims fled from Bulgaria to Turkey.⁷⁵ The Arab nations, however, have refused to solve the Palestinian problem through similar exchanges. Joan Peters found that

[a]mong the dozens of countries to which tens of millions of refugees have fled for asylum, the only instance in which the 'host countries refused,' as a bloc, to assist properly, or even to accept *aid* in the *permanent* rehabilitation of their refugees, occurred in the 'Arab states.'⁷⁶

John McCarthy, who through several Catholic relief organizations has been instrumental in the settlement of approximately one million refugees in many parts of the world, responded, when asked why the Palestinian conflict still exists,

The governments . . . all said . . . 'No, we won't do it. The only place they're going to resettle is back in Israel, right or wrong.' You must remember *these people are simply pawns*.⁷⁷

Even King Hussein of Jordan stated,

69. J. PETERS, *supra* note 35, at 27.

70. J. PETERS, *supra* note 35, at 26.

71. Heisel, *supra* note 59, at 366.

72. *Id.* at 367.

73. *Id.* at 368.

74. See Tagliabue, *Travel Ban Lifted and East Germans Swarm to Prague*, N.Y. Times, Nov. 2, 1989, § 1, at 1, col. 8.

75. See N.Y. Times, Oct. 1, 1989, § 1, at 19, col. 1.

76. J. PETERS, *supra* note 35, at 27.

77. *Id.* at 28 (emphasis added).

Since 1948 Arab leaders have approached the Palestine problem in an irresponsible manner. . . . They have used the Palestine people for selfish political purposes. This is ridiculous and, I could say, criminal.⁷⁸

Unfortunately, the Palestinian refugees and the Arabs in the territories are still pawns, except now the cry has changed from a call for the right of the refugees to return to their homes in Israel to a call for the "right to self-determination."

In 1977, Syrian officials expressed the wish for American technological assistance in order to develop the arable Syrian land. The Syrian Minister of Trade and Economy said that Syria needed people as well as technology, and would give plots of valuable land in Syria to anyone who would work it. When various Syrian officials were asked to give the land to those Palestinian Arabs who chose to accept the offer, the officials always answered:

We will give the land to anyone—the Ibos, the Koreans, Americans . . . anyone who comes—anyone but the Palestinians! *We must keep their hatred directed against Israel.*⁷⁹

IV. THE CAMP DAVID AGREEMENTS, THE PALESTINE COVENANT, AND THE ALGIERS DECLARATION

In 1978, Israel entered into a peace treaty with Egypt. The treaty, known as the Camp David Agreements, also includes a *Framework for Peace in the Middle East*, which deals with the disputed territories. It provides, *inter alia*, that the Israeli military government and its civilian administration will be withdrawn as soon as a self-governing authority has been freely elected by the inhabitants of these areas to replace the existing military government. . . .

As soon as possible, but not later than the third year after the beginning of the transitional period, negotiations will take place to determine the final status of the West Bank and Gaza and its relation-

78. T. PRITIE & B. DINEEN, *supra* note 67, at 16 (citing Associated Press interview, Jan. 1960).

79. J. PETERS, *supra* note 35, at 406 (emphasis added).

ship with its neighbors. . . . These negotiations will be conducted among Egypt, Israel, Jordan and the elected representatives of the inhabitants of the West Bank and Gaza.⁸⁰

In the eleven years since this Agreement was signed no self-governing authority has been elected and no negotiations to determine the status of the disputed territories have taken place. Instead, Egypt was expelled from the Arab League for making peace with Israel, other Arab states broke diplomatic relations with it,⁸¹ and Sadat was killed (as was Abdullah, Hussein's grandfather, in 1948, when it was believed he was negotiating with Israel). To ensure that Jordan did not enter the negotiations, as was arguably contemplated by the Camp David Agreements, the Arab League proclaimed that only the Palestinian Liberation Organization (PLO) was authorized to negotiate.

The Palestine National Charter, the governing instrument of the PLO, provides in relevant part,

Palestine, with the boundaries it had during the British Mandate, is an indivisible territorial unit

. . . .⁸²

Armed struggle is the only way to liberate Palestine

. . . .⁸³

The liberation of Palestine . . . is a national duty and . . . aims at the elimination of Zionism in Palestine.⁸⁴

The Palestine National Covenant that was adopted in 1964, before Israel gained control of Judea and Samaria, contained similar provisions.

On November 12-15, 1988, the Palestine National Council (PNC), the PLO "Parliament," met in Algiers and issued a political communique and declaration of independence, which has been widely interpreted as recognizing

80. A Framework for Peace in the Middle East Agreed at Camp David, art. 1(a) and 1(c), *reprinted in* 17 I.L.M. 1463 (1978).

81. Egypt was expelled from the League in 1979, and readmitted in May 1989. N.Y. Times, May 22, 1989, at A3, col. 1; N.Y. Times, May 23, 1989, at A11, col. 1.

82. The Palestinian National Charter, art. 2, *reprinted in* THE MIDDLE EAST AND NORTH AFRICA 1989, at 89-90 (35th ed. 1988), *also reprinted in* J. PETERS, *supra* note 35, at 417-20.

83. *Id.* art. 9.

84. *Id.* art. 15.

Israel and renouncing terrorism. It did neither explicitly. The provision that has been interpreted as doing so "affirms the determination of the Palestine Liberation Organization to reach a comprehensive peaceful solution of the Arab-Israeli conflict and its essence, the Palestinian cause, within the framework of the United Nations charter . . . in a manner that assures the right of Palestinian Arab people to return, exercise self-determination, and establish its independent national state on its national territory, and creates arrangements of security and peace for all the states of the region."⁸⁵ The Algiers Declaration did not reject or modify the Covenant. Rather, it continued the polemic of earlier Arab declarations, referring to Israel as "the Zionist entity" and describing it as "a colonialist, racist, Fascist State. . . ."⁸⁶ Some factions of the PLO vehemently opposed the resolution and have been implicated subsequently in terrorist attacks.⁸⁷

Even some Palestinians who supported the Algiers Declaration have interpreted it very differently in the Arab press than in the West, explaining that it was only intended as an interim step to the ultimate goal: the elimination of Israel and the establishment of an Arab state in all of Palestine. For example, Abu Iyad, the First Deputy to Yasir Arafat, stated,

The PNC decisions [in Algiers, 1988] are a refinement of the Palestinian position as adopted in the Phased Plan in Cairo 14 years ago. . . . The PNC session in Algiers in 1988 was meant to revitalize this program and to create a mechanism to get it moving. . . .⁸⁸ According to the 'Phased Plan' we

85. N.Y. Times, Nov. 17, 1988, § 1, at 8, col. 1. The resolution is reproduced in its entirety in 27 I.L.M. 1660 (1988).

86. 27 I.L.M. 1663 (1988).

87. These include the explosion of Pan Am Flight 103 on December 22, 1988, in which 258 passengers and crew, and 17 persons on the ground in Lockerbie, Scotland, were killed, and the fire-bombing of a passenger bus outside Jericho in which a woman and her three children were killed. N.Y. Times, Oct. 31, 1988, § 1, at 1, col. 1; Dec. 22, 1988, § 1, at 1, col. 6.

88. Embassy of Israel (Washington, D.C.), For Your Information: PLO Intentions Revealed Through the Right of Return 3 (undated newsletter distributed in 1989) (quoting Parisian PLO Journal *Al-Yom Al-Sabah*,

will establish a Palestinian state on any part of Palestine that the enemy will retreat from. . . . We cannot achieve the strategic goal of a Palestinian state in all of Palestine without first establishing a Palestinian state [on part of its territory]. . . . The state will be a solid base for the revolution. . . .⁸⁹ We shall liberate Palestine stage by stage The borders of our state as we declared it represent only a part of our national aspirations. We will work to expand them in order to realize our aspirations for all the land of Palestine. . . .⁹⁰

Sheikh Abd Al-Hamid El-Wayekh, Chairman of the PNC, stated,

If the PLO succeeds in establishing a state in the West Bank and Gaza, it would not prevent the continuation of the struggle until the liberation of all of Palestine is achieved. . . . We are working to achieve what is possible in the present phase, and afterwards we will demand more. . . .⁹¹

The PNC has accepted an interim solution, implying that we will accept whatever territories we can get. Then we will demand the rest of Palestine. We do not reject the idea of a state on a quarter or half of our territory, but we will demand the other parts later.⁹²

Leila Khaled, secretary-general of the PLO's General Union of Palestinian Women, stated,

Our first objective is to return to Nablus, and then move on to Tel Aviv. The day that we achieve independence will signify the defeat of Israel as a state.⁹³

Although Yasir Arafat, Chairman of the PLO, claims to have renounced terrorism, he impliedly threatened the life of Elias Freij, elected mayor of Bethlehem, when the latter sug-

Nov. 28, 1988). The *Journal* has not checked the accuracy of the quotations from this newsletter against the cited primary sources.

89. *Id.* at 3 (quoting *Al-Safir* (Lebanon), Jan. 1988).

90. *Id.* at 4 (quoting *Al-Anba* (Kuwait), Dec. 6, 1988).

91. *Id.* at 5 (quoting *Al-Siyasa* (Kuwait), Dec. 21, 1988).

92. *Id.* (quoting *A-Shira* (Beirut), Aug. 22, 1988).

93. *Id.* at 2 (quoting *MIDDLE EAST MONTHLY* (London), Jan. 1989).

gested a one-year truce to the intifada as a first step in the peace process. Arafat warned in a radio broadcast, "Any Palestinian who proposes an end to the intifada exposes himself to the bullets of his own people and endangers his life. The P.L.O. will know how to deal with him."⁹⁴ In the words of former U.S. Secretary of State George Shultz, this comports "very badly" with Arafat's renunciation of terrorism.⁹⁵

These statements by leading PLO figures underscore the declaration's ambiguous language and show that Israel's territorial integrity and very existence would be compromised severely by the creation of a Palestinian state under the current circumstances.

V. CONCLUSION

Self-determination is a political tool used by states against their opponents for political purposes. It has been used with particular success by the Arabs against Israel, both in the U.N.⁹⁶ and in the media.⁹⁷

94. Rosenthal, *On My Mind*, N.Y. Times, Jan. 6, 1989, at A31, col. 1; Wash. Post, Jan. 4, 1989, at A12, col. 4.

95. Wash. Post, Jan. 5, 1989, at A15, col. 1.

96. In 1974, the United Nations invited the PLO to establish an Observer Mission and has funded its activities from the U.N. budget. *Observer Status for the Palestine Liberation Organization*, G.A. Res. 3237, 29 U.N. GAOR Supp. (No. 31) at 4, U.N. Doc. A/9631 (1974). It has not done so for the Kurds, Armenians, Sikhs or other groups seeking self-determination discussed earlier. See *supra* notes 6-14 and accompanying text. For a detailed description of the way in which the Arab states and the PLO have used the U.N., its agencies, and its committees as a platform against Israel, see H.O. SCHOENBERG, *A MANDATE FOR TERROR: THE UNITED NATIONS AND THE PLO* (1989).

97. Television news programs and the *New York Times* have reported killings of Arabs in the occupied territories since the uprising on an almost daily basis, often on the front page. The killing of tens, hundreds, sometimes thousands of Tamils, Sikhs, or Kurds is reported much more sporadically, and often buried deep inside the paper. For example, several days before this symposium, the *New York Times* reported that "[m]ore than 2,000 people have died so far this year" in India in the Sikh's struggle for independence. N.Y. Times, Oct. 25, 1988, § 1, at 14, col. 1. This, however, did not appear on the front page, under the headline "India kills 2,000 Sikhs," or even "Two Thousand People Die in Punjab," but on page 14, at the end of the third paragraph of a story entitled "A Flower of North India, The Punjab, Slowly Dies." *Id.*

In the same edition of the *New York Times*, A. Rosenthal wrote in a different context:

Whatever criteria one uses, the concept of "self-determination" is not applicable to the Arab-Israeli conflict. Palestinians have historically not formed a distinct racial, religious, or ethnic group. According to their own Charter, they are an "integral part of the Arab nation."⁹⁸ If there is any differentiation between Palestinian Arabs and other Arabs there already exists a state, Jordan, which occupies almost 80% of historic Palestine. The majority of Jordanians are Palestinian Arabs.⁹⁹

The territories in question are occupied not by a distant colonial empire without historical ties to the land it is occupying, but by a tiny neighboring state, occupying a tiny fraction of the total land mass controlled by Arabs;¹⁰⁰ whose people have lived continuously in that land for three thousand years, through various occupations and under the most adverse conditions; and whose right to a "National Home" in that land was confirmed by the League of Nations Mandate for Palestine and U.N. Resolution 242. An independent

Every journalist knows that a story on the front page or its television equivalent can interest the whole country, but that the same big news story, inside, often has no impact at all. And we all know that some big news stories would not even exist if we did not create and publicize them. . . .

N.Y. Times, Oct. 25, 1988, § 1, at 31, col. 5.

98. The Palestinian National Covenant, *supra* note 82, art. 1.

99. See *supra* notes 61-62 and accompanying text.

100. See L. DAVIS, *supra* note 25, at 18, 98; Arab leaders have at various times emphasized this identity. For example, in 1970, Crown Prince Hassan of Jordan stated,

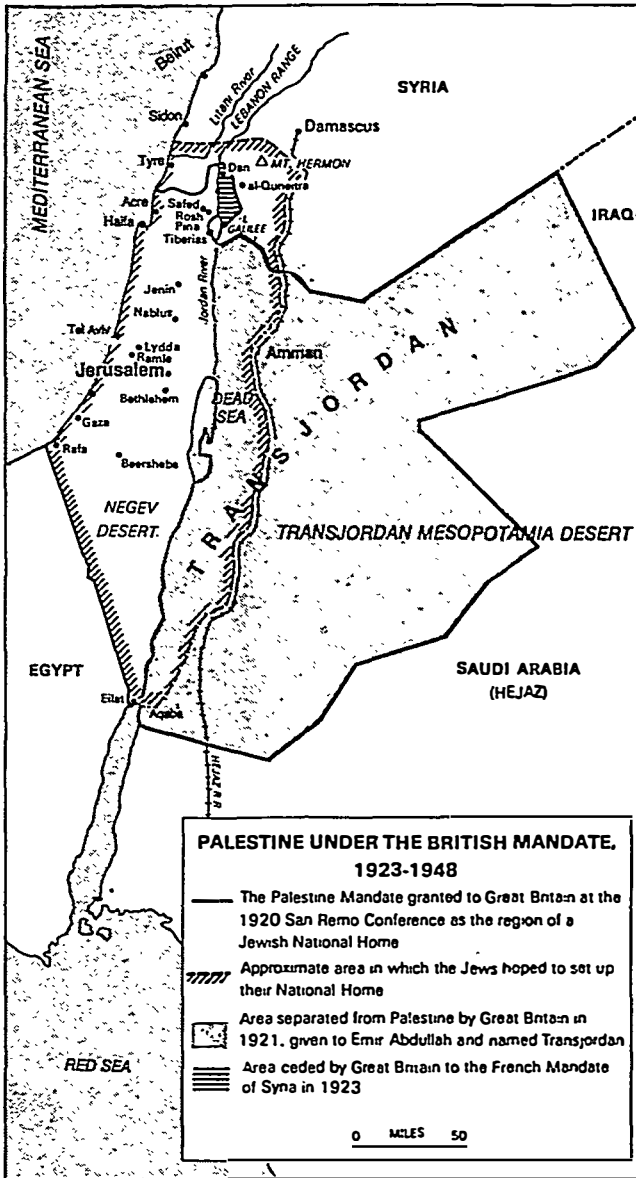
Palestine is Jordan and Jordan is Palestine. There is one people and one land, with one history and one destiny.

AUMANN, *THE PALESTINIAN LABYRINTH—A WAY OUT* 16 (1985). In 1981, King Hussein again asserted, "Jordan is Palestine and Palestine is Jordan." Pipes & Garfinkel, *Is Jordan Palestine?*, COMMENTARY, Oct. 1988, at 40. Indeed, King Abdullah had wanted to call his new state "Palestine," but was dissuaded by his British advisors. *Id.* at 14. Palestinians have had a major role in the Jordanian government. Twelve of 27 prime ministers and seven of 14 speakers of Parliament were of Palestinian origin. Near East Report, Nov. 13, 1989, at 191 (citing a study by a Jordanian researcher published in the *Jordan Times* on October 10, 1989). Further, according to Sir Alec Kirkbride, Britain's envoy to Eastern Palestine, at "the time of the issue of this mandate the areas which lay to the east of the river . . . were intended to serve as a reserve of land for use in the resettlement of Arabs once the National Home for the Jews in Palestine . . . became an accomplished fact." A. Kirkbride, *A Crackle of Thorns* 19 (1956).

Palestinian state in the disputed territories would not be economically, politically, or militarily viable. Nor would the creation of such a state "promote friendly relations," the *sine qua non* for self-determination under the Charter. For no state can be required to recognize a group's claim to self-determination, whatever its basis, as long as the avowed purpose of that group, proclaimed in its Charter and repeatedly reaffirmed in speeches of its leaders and in acts of terrorism, is the destruction of that state.

There are serious problems in the Middle East. These include the rights of Jews and Arabs to decent living conditions, the rights of Arabs who left Israel and Jews who left various Arab states to be compensated for their property, the rights of Arabs in Israel and the territories and the rights of the remaining Jews in the Arab states not to be arrested without charges or imprisoned without a trial, and ultimately, the determination of the borders between Israel and its neighbors, including sovereignty over the disputed territories. The invocation of a "right to self-determination" does not provide a solution to these complex problems. They can only be resolved through negotiations culminating in a comprehensive peace between Israel and the Arab states in the region.

APPENDIX A



Reprinted from L. DAVIS, MYTHS AND FACTS 1989: A CONCISE RECORD OF THE ARAB-ISRAELI CONFLICT 6 (1988).