

FROM MANDATE TO MINESHAFT: THE LONG ROCKY ROAD TO THE MODERN STATE OF ISRAEL

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I. INTRODUCTION: LOCATION, LOCATION, LOCATION!

It is incredible that a tiny strip of real estate smaller than the state of New Jersey,¹ made up largely of unforgiving wilderness,² and with

* J.D. Candidate, Regent University School of Law, 2008. Special thanks to Professor Robert W. Ash of Regent University School of Law, for his invaluable guidance on this paper and for being a steady source of encouragement to me. I would also like to give special honor to two trusted mentors – Charlie Thompson and Warren Singleton – for their consistently wise counsel in helping me to successfully navigate the paths of transition. The rich lessons that I have gleaned from their selfless investments of time, patience, and care on my behalf will remain with me forever. Little did I know when I first began researching Israel's journey from obscurity in the desert to modern statehood, that it would end up leading me on a personal journey of faith. As a believing Jew, I have struggled to understand the purpose of the scriptural emphasis on Israel as a "holy nation," and have questioned what it really means to be a "chosen people." To my surprise, the answers to those questions emerged as I began to reconstruct the biblical account of the God who *kept* His promise to bring the Children of Israel out of bondage in Egypt, who *kept* His promise to bring the captivity of the Jews in Babylon to an end, who *kept* His promise to birth the Jewish homeland in a single day, and who *kept* His promise to populate it by drawing back the sons and daughters of Jacob from the four corners of the earth. Scripture indicates that Israel is the tool God has chosen to "make for Himself such a great name that *every* nation will voluntarily seek after Him and worship Him for [W]ho He is." RAMON BENNETT, WHEN DAY AND NIGHT CEASE 68 (1992) (emphasis added). As such, I submit that God's faithfulness toward Israel, in choosing what began as the smallest and least of all nations, and causing her to survive throughout the centuries in the face of incredible odds, is not really about *Israel*. On the contrary, it is about *God* and His intense desire for *all* nations to know Him – as the Covenant Keeper – the God who can be trusted in every circumstance, and in every generation, because He keeps His word.

¹ See Bureau of Near Eastern Affairs, U.S. Department of State, Background Note: Israel (May 2006), <http://www.state.gov/r/pa/ei/bgn/3581.htm>. (noting that the nation of Israel measures only 7,850 square miles). See also TheseUnitedStates – New Jersey, <http://www.theseunitedstates.com/newjersey.html> (last visited Sept. 8, 2006) (noting that the state of New Jersey measures 8,721 square miles).

² See generally 2 DAVID LLOYD GEORGE, MEMOIRS OF THE PEACE CONFERENCE, 729-30 (Yale Univ. Press 1939), available at <http://users.cyberone>.

few natural resources,³ should hold such power over the souls of men down through the ages, that they have spilled their life's blood willingly in their drive to possess it! Yet, Israel's history confirms this phenomenon, as even today, peoples of diverse cultures wrestle over her, fighting what they believe to be a holy war for possession of what they believe to be a Holy Land. Ironically, the fact the land *is* indeed hallowed appears to be the *only* point on which all those conflicting forces have agreed. The purpose of this writing is (1) to examine an especially pivotal time in history, specifically, the timeframe between the fall of the Ottoman Empire and the birth of the modern state of Israel in 1948; (2) to evaluate the legal authority of selected actions taken by the British and the United Nations during that period; and (3) to examine the lasting impact of those actions from a global perspective.

II. ISRAEL IN THE FRAMEWORK OF HISTORY

This section of text will not attempt to recount a detailed historical timeline of Israel's history. Rather, it will provide a highlighted version of that history, designed to lay the framework for examining the impact of selected actions by Britain and the United Nations concerning Israel's re-establishment in the land.

A. The Biblical Account of the Establishment of Israel

1. The Patriarchs: Abraham, Isaac, and Jacob

The Bible provides the earliest account of the founding of Israel, starting with a man named Abram, who lived in the region of Ur, located in what is now present-day Iraq, in approximately 1800 B.C.⁴ Scripture tells us that Abram, at the age of 75, had a divine encounter with God, Who challenged him to pull up stakes and, together with his wife, Sarai, leave all that was familiar to them, and go start a new life in a distant land of which they had no knowledge.⁵ "The Lord said to Abram: 'Go forth from your native land and from your father's house to a land that I will show you.'"⁶

com.au/myers/l-george.html.

³ See *id.* at 730.

⁴ See AMANDA RORABACK, PALESTINE IN A NUTSHELL 8 (2004).

⁵ See AMANDA RORABACK, ISRAEL IN A NUTSHELL 4 (2004).

⁶ *Genesis* 12:1 (New Jewish Publication Society Translation).

As a result of Abram's willingness to accept that challenge, God made an unconditional covenant with him, sealed with the promise of an inheritance consisting of a specific tract of land extending from the Nile River to the Euphrates, to be passed on to his offspring⁷ as follows:

To your offspring I assign this land, from the river of Egypt [Nile] to the great river, the river Euphrates . . . I will maintain My covenant between Me and you, and your offspring to come, as an everlasting covenant throughout the ages, to be God to you and your offspring to come. I assign the land you sojourn in to you and your offspring to come, all the land of Canaan, as an everlasting holding.⁸

The story of Israel's history unfolds from there, as Abram, the patriarch of what will later become the Jewish nation, struggles with the fear that his legacy will die with him, for after his many years of marriage to Sarai, they remain childless.⁹ Yet, God specifically assures Abram (now called Abraham, meaning "father of a multitude of nations") he will have a son through Sarai (now called Sarah, meaning "princess").¹⁰ After waiting many years for the fulfillment of that promise, Abraham's faith waivers. Sarah persuades him to participate in a scheme of good intentions aimed at "helping" God keep His word, which involves enlisting the services of Sarah's maidservant, Hagar, as a surrogate mother.¹¹ Thus was born Abram's first child, Ishmael, who, though a legitimate heir, was not the son of God's promise.¹² Several more years passed, and finally when Abraham was 100 years old, and after it was abundantly clear that neither he, nor Sarah, were physically able to produce a child by natural means, God's promise to

⁷ See *Genesis* 15:5-21 (New Jewish Publication Society Translation).

⁸ *Genesis* 15:18 and 17:7-8 (New Jewish Publication Society Translation).

⁹ See *Genesis* 15:2-3 (New Jewish Publication Society Translation).

¹⁰ See *Genesis* 17:5-19 (New Jewish Publication Society Translation). See also Abraham, <http://www.jewishvirtuallibrary.org/jsource/biography/abraham.html> (last visited Dec. 10, 2005). In changing their names from Abram and Sarai to Abraham and Sarah, God added the Hebrew letter "Hey," thus representing a new dimension of godliness in their lives. The Parashsa Letter of the Jewish Primary Day School, Number 9 Parashat Lech Lecha, (1998) http://www.jpds.org/index.asp?Type=B_BASIC&SEC={4E0BEEA0-7145-4C5D-A25B-212503F86823} (last visited Dec. 10, 2005).

¹¹ See *Genesis* 16:1-4 (New Jewish Publication Society Translation).

¹² See generally *Genesis* 17:18-21 (New Jewish Publication Society Translation).

them was fulfilled in the form of a son, whom they named Isaac.¹³ Meanwhile, the jealousies often associated with raising a blended family reared their head in Abraham's household, causing him to face the difficult situation of having to send Ishmael and Hagar away from Isaac and Sarah in order to maintain familial peace and protect Isaac's inheritance (as the son of God's promise, inheriting the land of God's promise).¹⁴ With an anguished heart, Abraham sends Ishmael away, for before Isaac was born, Abraham had specifically petitioned God that Ishmael would be blessed.¹⁵ The Bible says God answered that prayer,¹⁶ and thus, Ishmael became the father of the Arab nations.¹⁷ The sibling rivalry between Isaac and Ishmael set the stage for the ongoing rivalry between Arab and Jew to this day.

The Biblical account relates that Isaac grew to manhood and produced twin sons, Esau and Jacob.¹⁸ Though Esau was the first-born, he did not receive the inheritance of the first-born;¹⁹ that blessing was conferred upon Jacob,²⁰ whom God re-named Israel.²¹ As a result, Jacob's twelve sons, who later became twelve tribes, are referred to as the Children of Israel²² and/or the Israelites.²³ Hence, the later reference to the territory of their inheritance (i.e., the land of Canaan)²⁴ as simply "Israel."

¹³ See *Genesis* 21:1-7 (New Jewish Publication Society Translation).

¹⁴ See generally *Genesis* 21:8-12 (New Jewish Publication Society Translation).

¹⁵ See *Genesis* 17:18-21 (New Jewish Publication Society Translation).

¹⁶ And Abraham said to God: "O that Ishmael might live by Your favor!" God said,

"Nevertheless, Sarah your wife shall bear you a son, and you shall name him Isaac; and I will maintain My covenant with him as an everlasting covenant for his offspring to come. As for Ishmael, I have heeded you. I hereby bless him. I will make him fertile and exceedingly numerous. He shall be the father of twelve chieftains, and I will make of him a great nation. But My covenant I will maintain with Isaac, whom Sarah shall bear to you at this season next year."

Id.

¹⁷ See RORABACK, *supra* note 4, at 9.

¹⁸ See *Genesis* 25:20-26 (New Jewish Publication Society Translation).

¹⁹ See *Genesis* 25:23 (New Jewish Publication Society Translation).

²⁰ See generally *Genesis* 25:23-34 and 27:1-37 (New Jewish Publication Society Translation).

²¹ *Genesis* 32:29 (New Jewish Publication Society Translation).

²² See generally *Genesis* 32:33 (New Jewish Publication Society Translation).

²³ See generally *Exodus* 9:7 (New Jewish Publication Society Translation).

²⁴ *Genesis*, *supra* note 8.

2. Temporary Exile

After settling in Canaan, a devastating famine occurred in the land and the Children of Israel were compelled to temporarily relocate to Egypt where food was plentiful.²⁵ That “temporary” exile turned into a situation of forced servitude for a period of 430 years,²⁶ exactly as God had foretold Abraham.²⁷

3. Re-gathering of the Children of Israel Under Moses and Joshua

Toward the end of their time in Egypt, God sent a dynamic character named Moses to deliver the Israelites (i.e., the Jewish people) out of bondage and mobilize them for transport back to the land of their promised inheritance.²⁸ The journey spanned forty years,²⁹ after which Joshua succeeded Moses and led the people through the lengthy process of regaining possession of their land,³⁰ a land to which they had never relinquished ownership.³¹

Upon their return to the land, nine and one-half of the twelve tribes of Israel settled in the land west of the Jordan River, while the remaining tribes (Reuben, Gad, and the half-tribe of Manasseh) settled on the east side of the river.³²

²⁵ See generally *Genesis* 43-46 (New Jewish Publication Society Translation).

²⁶ See *Exodus* 12:41 (New Jewish Publication Society Translation).

²⁷ *Genesis* 15:13-16 (New Jewish Publication Society Translation).

And [God] said to Abram: “Know well that your offspring shall be strangers in a land not theirs, and they shall be enslaved and oppressed four hundred years; but I will execute judgment on the nation they shall serve, and in the end they shall go free with great wealth. . . . And they shall return here in the fourth generation”

Id.

²⁸ See generally *Exodus* 3-13 (New Jewish Publication Society Translation).

²⁹ See *Exodus* 16:35 (New Jewish Publication Society Translation).

³⁰ See generally *Joshua* 1-23 (New Jewish Publication Society Translation).

³¹ Although circumstances had resulted in the Israelites’ *absence* for a long season, they had not abandoned their boundaries, for God had foretold their return. See generally *Genesis* 46:2-4 (New Jewish Publication Society Translation).

God called to Israel in a vision by night: . . . “I am God, the God of your father. Fear not to go down to Egypt, for I will make you there into a great nation. I Myself will go down with you to Egypt, and I Myself will also bring you back”

Id.

³² See generally *Joshua* 13:7-8 (New Jewish Publication Society Translation). The region east of the Jordan River, later to be called Transjordan, is now known as Jordan.

4. The Kingdom Years

Upon the death of Joshua and a series of other leaders who succeeded him, the twelve tribes became a kingdom, ruled first by King Saul and then by King David.³³ During this period, Israel was successful in re-establishing her boundaries all the way to the Euphrates,³⁴ as had been promised.³⁵ It was also during this time that Jerusalem was first declared the capital of Israel.³⁶

Rule of the kingdom eventually passed to David's son, Solomon, who catapulted Israel into an era of expansive development of culture and commerce.³⁷ Unfortunately, those projects came with a heavy price tag that resulted in burdensome taxes, which eventually produced resentment and disunity among the people.³⁸ Ultimately, the kingdom split into two kingdoms: Israel in the north and Judah in the south.³⁹ Both kingdoms were eventually besieged and the people were taken into captivity, resulting in a scattering of the twelve tribes.⁴⁰ Yet, even in exile, they were committed to the dream of returning to their land, as evidenced by their distinct habit of directing all prayers toward Jerusalem (a practice still observed today⁴¹) and their steadfast loyalty to that City,⁴² as recorded in Scripture:

By the rivers of Babylon, there we sat . . . and wept, as we thought of Zion. There on the poplars we hung up our lyres, for our captors asked us there for songs, our tormentors, for amusement: "Sing us one of the songs of Zion." How can we sing a song of the Lord on alien soil? If I forget you, O Jerusalem, let my right hand wither; let my tongue stick to my palate

³³ See generally 1 Samuel 9:15-11:15 and 2 Samuel 5:3-4 (New Jewish Publication Society Translation).

³⁴ See *Israel, Land of: Geographical Survey*, in ENCYCLOPEDIA JUDAICA (Judaica Multimedia (Israel) Ltd. CD-ROM, 1997). See also RORABACK, *supra* note 5, at 5.

³⁵ See *id.* See also Genesis 15:18, 17:7-8.

³⁶ See RORABACK, *supra* note 5, at 5.

³⁷ See *id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ See *id.* at 5-6.

⁴¹ Eli E. Hertz, *Jerusalem*, <http://www.mythsandfacts.com/NOQOnlineEdition/Chapter3/jerusalem1.htm> (last visited Nov. 3, 2006).

⁴² See RORABACK, *supra* note 5, at 6.

if I cease to think of you, if I do not keep Jerusalem in memory even at my happiest hour.⁴³

It was there, in Israel's captivity, that the seeds of Zionism were first planted.⁴⁴

B. The History of Israel during the Greco-Roman Period

Seventy years after the Children of Israel had been forced into exile from Judah, the Babylonian empire fell to the Persians, which resulted in the release of the Jewish people from their captivity, and allowed them to return to their land.⁴⁵ Approximately 150 years later, the Persian Empire was, in turn, conquered by Alexander the Great.⁴⁶ Up to that time, the Jews living in Judah had not sensed any need to establish an independent military defense force because they had enjoyed peace as subjects of the Persian Empire.⁴⁷ However, when Alexander's army invaded their territory in 331 B.C., they had no choice but to submit.⁴⁸ As a result, the land of Israel would remain under the control of Greco-Roman forces for the next 900 years.⁴⁹

Upon Alexander's death, his kingdom was divided, resulting in a long succession of foreign forces occupying Judah (later called Judea), which the Jews periodically rebelled against.⁵⁰ Following the Roman destruction of the Temple in Jerusalem in A.D. 70, the Roman army completely drove the Jews out of their land.⁵¹ Thus began the Diaspora (i.e., the dispersion of the Jewish people into foreign lands) that would last for the next two millennia.⁵² As a parting blow, the Romans re-named the land "Palestina" (later known as Palestine) after the Philistines, former enemies of Israel,⁵³ in a "deliberate attempt . . . to obliterate any sign of Jewish attachment to a homeland."⁵⁴

⁴³ *Psalms* 137:1-6 (New Jewish Publication Society Translation).

⁴⁴ See generally RORABACK, *supra* note 5, at 6.

⁴⁵ See *id.* at 6.

⁴⁶ See *id.* at 7.

⁴⁷ See *id.*

⁴⁸ See *id.*

⁴⁹ See *id.*

⁵⁰ See *id.* at 7-8.

⁵¹ See *id.* at 8.

⁵² See *id.*

⁵³ YITSCHAK BEN-GAD, *THE ROADMAP TO NOWHERE* 245 (2004).

⁵⁴ *Id.*

C. The History of Israel Following the Birth and Rise of Christianity

No account of Israel's history, not even an abbreviated version such as this, would be complete without mentioning the tremendous impact of the ministry of Jesus of Nazareth, whose followers were brutally treated by the Romans until the 4th century A.D., when Constantine came to power as ruler of the Eastern Roman Empire.⁵⁵ At that time, Constantine formally declared Christianity to be "the religion of his empire,"⁵⁶ after which Israel (then called Palestine) would never be the same.⁵⁷ Jerusalem and its environs were elevated to the status of regular tourist hot spots for Christian pilgrimages,⁵⁸ thus earning its title as the "Holy Land." Later, Christianity would have yet another, though unwelcome, impact on the region: the Crusades.⁵⁹

D. The History of Israel and the Rise of Islam

The religion of Islam has also had a significant impact on Israel's history. A few years after Mohammed's death in A.D. 632, the faith spread quickly.⁶⁰ Muslim troops invaded the "Holy Land," subjecting both Jews and Christians to Islamic influence and rule, though not requiring conversion to Islam.⁶¹ Because Muslims believe Mohammed journeyed to heaven from the Temple Mount,⁶² "the conquering Arab forces built their own religious structures on the remains of the Jewish Temple"⁶³ – a decision of enormous impact, proving to be a major source of contention to this day. Meanwhile, Muslim forces persecuted non-Muslims in the region, destroying holy sites (e.g., the Church of the Holy Sepulcher), and finally, banning Christians from entering those areas altogether.⁶⁴ By 1071, the stage was set for a show-down between the Muslim forces in Palestine and the Christian kingdoms in Europe,⁶⁵ a confrontation that would last for the next 200 years.⁶⁶ Enter the Crusades.⁶⁷

⁵⁵ RORABACK, *supra* note 5, at 9.

⁵⁶ *Id.* at 10.

⁵⁷ *See id.*

⁵⁸ *Id.*

⁵⁹ *See generally id.* at 13.

⁶⁰ Alexandra Alter, "Shia Revival" Explores Muslim Divide, *CONTRA COSTA TIMES* (Aug. 20, 2006).

⁶¹ *See RORABACK, supra* note 5, at 11.

⁶² *See id.*

⁶³ *Id.*

⁶⁴ *See id.* at 12.

⁶⁵ *See id.*

E. The History of Israel and the Crusades

Billed as a "campaign to liberate the Holy City from the Muslim 'infidels,'" the armies of Europe, under the direction of Pope Urban II, eagerly departed for the Middle East.⁶⁸ In reality, the Crusades betrayed their stated purpose and massacred both Muslims and Jews.⁶⁹ Synagogues and mosques alike were converted into churches.⁷⁰ Although the Crusaders gained control over Jerusalem initially and established Christian kingdoms in the Holy Land, in the end, the Muslims regained control of all that the Christians had conquered in the region.⁷¹ In 1517, control of Palestine fell to the Ottoman Turks, where it would remain until World War I.⁷²

F. The History of Israel and the Ottoman Empire

The Ottoman Empire reached its peak in the 16th century A.D., initially stretching across Greece, Albania, Romania, Bulgaria, Macedonia, Serbia, Constantinople (which the Ottomans re-named Istanbul), Syria, and Egypt,⁷³ and finally extending "west across North Africa, east along the upper Arabian Peninsula, north to Vienna and Russia's Crimea Coast, and south as far as Sudan."⁷⁴ Included in this territory was Palestine,⁷⁵ where the non-Muslim inhabitants of the region fared reasonably well, because the Ottoman rulers implemented a policy of religious tolerance toward them.⁷⁶ Although Muslims were required to follow *Shari'a* (Muslim Sacred Law), it was not imposed on non-Muslims, who were generally allowed to practice their respective faiths.⁷⁷ However, the influence of Muslim scholars who believed the

⁶⁶ *Id.*

⁶⁷ *See generally id.* at 13.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *See id.*

⁷² *Early History: Palestine Origin, Where did the Name Palestine Come From?*, PALESTINE FACTS, http://www.palestinefacts.org/pf_early_palestine_name_origin.php (last visited Nov. 4, 2006).

⁷³ *Ottoman Empire*, in *ENCYCLOPAEDIA BRITANNICA ONLINE*, <http://www.britannica.com/eb/article-9111081> (last visited Sept. 10, 2006); RORABACK, *supra* note 4, at 19.

⁷⁴ *Id.* at 20.

⁷⁵ *See id.*

⁷⁶ *See id.*

⁷⁷ *Id.*

Muslim and Ottoman civilization to be superior to the rest of the world gained a foothold throughout the Empire, producing isolationism as it cut itself off from the “infidel West.”⁷⁸ As a result, the Empire – a once powerful center of world-wide commerce – began to lose its place in the trade balance.⁷⁹ In an effort to make up for the loss, the Empire began to tax the people heavily, with the poor bearing the brunt of the burden. Eventually the tax collection system itself became corrupt, causing the authority of the Empire to lose its strength.⁸⁰ The European powers took full advantage of the situation, with each one positioning itself for a piece of the proverbial pie.⁸¹ “France claimed to be the protector of all Catholics living in the Empire, Russia claimed rights of protection over the Orthodox communities and the British claimed to be the protectors of the Jews, Druze . . . and Protestants.”⁸² Attempts by the Empire to improve its trade advantages with the West backfired and turned into “foreign exploitation.”⁸³ Steeped in debt to the European nations, the Ottoman Empire became known towards the end of the 19th century as the “Sick Man of Europe.”⁸⁴ Britain, France, and Russia were in the wings “waiting like vultures to claim their shares of the Empire once it collapsed.”⁸⁵ Collapse came with World War I.⁸⁶

Meanwhile, a group known as the Young Turks – consisting mainly of students and military officers – staged a revolution against the Ottoman regime, which had become too weak to stand against them.⁸⁷ The newly empowered Young Turks made a series of unfortunate decisions, ranging from instituting “Turkification,” – a program promoting and favoring Turkish culture (which, in turn, backfired by alienating the Arab population) – to a program of ethnic cleansing aimed against the Armenians (who had grown prosperous and were thus perceived by the Turks as competitors in the quest for economic gain and political power).⁸⁸ However, the principal error committed by the new Turkish government was its decision at the beginning of

⁷⁸ See *id.* at 21.

⁷⁹ See *id.*

⁸⁰ See *id.*

⁸¹ See *id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.* at 23.

⁸⁵ *Id.*

⁸⁶ See *id.* at 27-28.

⁸⁷ See *id.* at 27.

⁸⁸ See *id.*

World War I to break its traditional alliances with Britain and France and to align itself with Germany instead.⁸⁹ With that decision, the Sick Man of Europe had committed suicide.⁹⁰

G. The Rise of Zionism

1. Theodor Herzl: The Jewish State

While Jews in Western Europe had “successfully integrated into many of the most progressive cities in [that part of the world],”⁹¹ those living in Russia and Eastern Europe were feeling the effects of virulent anti-Semitism.⁹² However, in 1884, the Dreyfus Affair, an episode occurring in France, served as a wake-up call to Jews living at ease in Western Europe.⁹³ A Jewish military officer by the name of Alfred Dreyfus was wrongly accused and convicted of a crime he did not commit.⁹⁴ The fact Dreyfus was later acquitted was immaterial, for the handwriting was already on the wall: anti-Semitism had pierced through the comfortable façade of those days in Western Europe, and from that point on, nothing would ever be the same.⁹⁵ The belief that Jews would, thereafter, “only be secure in a sovereign Jewish nation,”⁹⁶ led to the Zionist movement – a movement advocating the return of the Jewish people to their historic homeland.⁹⁷ Theodore Herzl emerged from the ranks to spearhead that effort.⁹⁸

⁸⁹ See generally *id.*

⁹⁰ See generally *id.*

⁹¹ *Id.* at 30.

⁹² See *id.*

⁹³ See *id.*

⁹⁴ See *id.*

⁹⁵ See *id.* at 30-31.

⁹⁶ RORABACK, *supra* note 5, at 20-21.

⁹⁷ See RORABACK, *supra* note 4, at 31.

⁹⁸ See *id.* Theodor Herzl, a Hungarian Jew, was the founder of modern Zionism. Sent to Paris as a correspondent for the Vienna Neue Frei Presse, he reported on the Dreyfus affair. Appalled by the vicious anti-Semitism he observed, he decided that Jewish assimilation in Europe was impossible and that the only solution to the Jewish problem was the establishment of a Jewish national state. He stated his ideas in his famous pamphlet, *Der Judenstaat*, first published in 1896. Yahoo! Education, <http://education.yahoo.com/reference/encyclopedia/entry/Herzl-Th> (last visited Nov. 3, 2006).

2. First Zionist Congress: The Basle Declaration

In August 1897, "more than 200 people from 17 countries gathered in Basle, Switzerland to attend the first Zionist Congress and named Herzl its first president."⁹⁹ The Basle Declaration set forth its aim in one simple statement: "The aim of Zionism is to create for the Jewish people a home in Palestine secured by public law."¹⁰⁰

III. ISRAEL ON THE DRAWING BOARD

A. Contradictory British Promises During World War I

"To secure its victory over the Central Powers in World War I, Britain entered into three contradictory agreements regarding the territories of the Ottoman Empire": the McMahon-Hussein agreement, the Sykes-Picot agreement, and the agreement to establish a Jewish homeland as laid out in the Balfour Declaration.¹⁰¹

1. The McMahon-Hussein Agreement

In a 1915 letter from Sir Henry McMahon, the British High Commissioner in Cairo, to Hussein Ibn Ali, the Sherif of Mecca,¹⁰² the British promised to stand with Hussein's campaign to restore the independence of the "Arab portions of the Ottoman Empire . . . under the rule of the Saudi Arab Hashemite family,"¹⁰³ if in return, Hussein would launch "an Arab revolt against the Ottoman Turks."¹⁰⁴ "Palestine was not mentioned by name in this exchange: the Arabs subsequently claimed that it had been included in the promise of an independent Arab state. The British denied this – as evidenced by McMahon's letter published in the *London Times* in 1937."¹⁰⁵

⁹⁹ RORABACK, *supra* note 5, at 21.

¹⁰⁰ The Basle Declaration (1897), in *THE ISRAEL-ARAB READER: A DOCUMENTARY HISTORY OF THE MIDDLE EAST CONFLICT* 9, 9-10 (Walter Laqueur & Barry Rubin eds., Penguin Books 6th rev. ed. 2001) (1969).

¹⁰¹ RORABACK, *supra* note 4, at 30.

¹⁰² *THE ISRAEL-ARAB READER*, *supra* note 100, at 11.

¹⁰³ RORABACK, *supra* note 4, at 30.

¹⁰⁴ *Id.*

¹⁰⁵ The McMahon Letter to Hussein Ibn Ali (Oct. 24, 1915), in *THE ISRAEL-ARAB READER*, *supra* note 100, at 11-12. Speaking on behalf of the Government of Great Britain, McMahon's letter to Sherif Hussein gave the following assurances to the Arabs:

2. The Sykes-Picot Agreement

In 1916, Sir Mark Sykes, "a distinguished British orientalist, and Charles Georges-Picot, formerly French Consul in Beirut,"¹⁰⁶ signed a secret agreement,¹⁰⁷ wherein the French and British governments "laid out plans to carve up the Ottoman territories into French and British spheres of influence."¹⁰⁸ It was agreed that "France would exercise direct control over an area roughly corresponding to present-day Lebanon and the southwest portion of Turkey and have an 'influence' over Syria and northern Iraq."¹⁰⁹ Britain, on the other hand, would "have direct control over the southern portion of present-day Iraq (including Baghdad) and have 'influence' over Jordan and North Arabia. Palestine was to become an International zone."¹¹⁰

(1) Subject to . . . modifications [as previously set forth], Great Britain is prepared to recogni[z]e and support the independence of the Arabs in all the regions within the limits demanded by the Sherif of Mecca.

(2) Great Britain will guarantee the Holy Places against all external aggression and will recogni[z]e their inviolability.

(3) When the situation admits, Great Britain will give to the Arabs her advice and will assist them to establish what may appear to be the most suitable forms of government in those various territories.

(4) On the other hand, it is understood that the Arabs have decided to seek the advice and guidance of Great Britain only, and that such European advisers and officials as may be required for the formation of a sound form of administration will be British.

(5) With regard to the *vilayets* of Baghdad and Basra, the Arabs will recogni[z]e that the established position and interests of Great Britain necessitate special administrative arrangements in order to secure these territories from foreign aggression to promote the welfare of the local populations and to safeguard our mutual economic interests.

I [McMahon] am convinced that this declaration will assure you [Hussein Ibn Ali] beyond all possible doubt of the sympathy of Great Britain towards the aspirations of her friends the Arabs and will result in a firm and lasting alliance

Id. at 11-12.

¹⁰⁶ The Sykes-Picot Agreement (May 15-16, 1916), in THE ISRAEL-ARAB READER, *supra* note 100, at 13.

¹⁰⁷ RORABACK, *supra* note 4, at 28.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

3. The Balfour Declaration

Although it has since become a hotly contested issue, History itself testifies to the inextricable bond between the Jewish people and the land of Israel.¹¹¹

Despite efforts of several . . . world powers to remove the Jews permanently from the land and to nullify Jewish identification with the country, the Jewish presence in the Land of Israel remained unabated from the time of the patriarchal and Israelite periods, through the time of the Davidic/Solomonic kingdoms, through the period of the Assyrian and Babylonian exiles and return under Persian rule, through Hellenistic rule and restoration of Jewish independence under the Hasmoneans, through the Roman conquest[,], the Great Revolt of [A.D. 66] and the Bar Kokhba uprising of [A.D. 132], through the Byzantine and Parthian occupations, through the Arab Conquest and Crusader Kingdom, the time of the Mamlukes, the Mongols and the Ottomans until the British forces together with the Jewish Legion defeated the Ottoman Turks in World War I. It was in recognition of this undeniable historical linkage between the Jewish People and Palestine that the British Government issued the famous Balfour Declaration of 1917 which formed the moral and legal predicate for [later] . . . granting . . . the Mandate for Palestine¹¹²

In a letter from British Foreign Minister Arthur James Balfour to Lord Rothschild in November 1917, the British government endorsed the Zionist agenda of establishing a homeland for the Jewish people in Palestine:¹¹³

His Majesty's Government views with favour the establishment in Palestine of a national home for the Jewish people, and will use their best endeavors to facilitate the achievement of this object, it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of ex-

¹¹¹ See Marc Zell & Sonia Shnyder, *Palestinian Right of Return or Strategic Weapon?: A Historical, Legal and Moral/Political Analysis*, 8 NEXUS 77, 80 (2003).

¹¹² *Id.*

¹¹³ THE ISRAEL-ARAB READER, *supra* note 100, at 16.

isting non-Jewish communities in Palestine, or the rights and political status enjoyed by Jews in any other country.¹¹⁴

As may be expected, this agreement with Zionist goals generated speculation regarding Britain's intentions with regard to Palestine.¹¹⁵ It is generally accepted that,

with this declaration, the British hoped to win support of world Jewry during World War I and, more importantly, to persuade the Jews in the U.S. to put pressure on their government to enter the war on Britain's side, and the Jews of Russia . . . [those who took part in the Bolshevik Revolution] to keep Russia in the war. A Jewish nation under British sovereignty in close proximity to the Suez Canal, moreover, would help ensure freedom of access through the Canal, the main passageway to the sea route to India and East Africa.¹¹⁶

A more cynical interpretation of Britain's motives was offered by Menachem Begin, the underground freedom fighter and head of the Irgun, and later Prime Minister of Israel:¹¹⁷

British Middle Eastern policy had long wanted Palestine Ivan Greenberg, the former editor of the *Jewish Chronicle* (a man who sacrificed his career for his beliefs) told me . . . that his father, L. J. Greenberg, one of Herzl's leading helpers and his special envoy to Egypt . . . had been told by Lord Cromer, Britain's great pro-consul in Egypt: "When the Ottoman Empire crumbles, as sooner or later it surely will, we must have Palestine." That was early in the twentieth century. In fact direct British interest in the fate of Eretz Israel had already become apparent in the nineteenth century. This helps to explain why, among the early "Zionists" who preceded Herzl, there were so many Englishmen. It explains, too, why the British Government in those days were concerned with the protection

¹¹⁴ The Balfour Declaration, in THE ISRAEL-ARAB READER, *supra* note 100, at 16.

¹¹⁵ See generally RORABACK, *supra* note 5, at 22.

¹¹⁶ *Id.*

¹¹⁷ See generally MENACHEM BEGIN, THE REVOLT 64-67 (1978). The Irgun was a small armed underground Jewish dissident group. MARTIN GILBERT, ISRAEL: A HISTORY 80 (1998).

of Jews persecuted by the Sultan. . . . [On the other hand], [w]hat could be more humanitarian than extending protection to persecuted Jews – the People of the Bible . . . ? And if, as it turned out, this also paid Imperial dividends – what of it? All the Powers were anxious to interfere in the affairs of Turkey, the disintegrating “sick man of Europe.” France intervened on behalf of the Catholics, Russia in the interests of the Greek Church. The Germans claimed Protestant interests, and were in any case friendly with the Sultan, and were busy planning the Berlin-Baghdad railway. What was left for Britain? The Jews! And, incidentally, to whom did Palestine belong? To the Jews of course. It said so in the Bible. (But – “Mr. Greenberg, Britain must have Palestine. . .”). . . . The British wanted Eretz Israel because it lies at the Eastern end of the Mediterranean, because it is at the crossroads of three continents, because it lies athwart the road to India, because . . . there are many important reasons. Palestine has been desired by all the world’s rulers since Nebuchadnezzar. But if a great Power wants a country, does it just take it, “annex” it? Not if it is a clever Power! British policy, therefore, was ready to back a great ideal which would enable Britain to take over control of Palestine without seeming to. The ideal was at hand: the Jews to whom the Bible had promised Palestine, were persecuted and needed a home. The ideal was very appealing. Britain would promise the Jews a Home – in Palestine. . . . Britain would have Palestine, and the Jews would have a Home Such a policy would also help British interests in America, for the Jews there had influence That . . . was the flavour of thought underlying the Balfour Declaration. That was how the British Mandate was hatched, and how British policy in Eretz Israel developed, reaching its climax during the Second World War.¹¹⁸

Regardless of Britain’s motives, one thing was certain: “[f]rom [that] moment [on] . . . the question of entitlement [to Palestine] was an issue.”¹¹⁹

¹¹⁸ *Id.*

¹¹⁹ RORABACK, *supra* note 4, at 30.

B. Putting Out the Lights on World War I and the Ottoman Empire

1. Overview of the Paris Peace Conference and Subsequent Fall-Out

Following World War I, the victorious powers gathered at Versailles for the Paris Peace Conference in 1919.¹²⁰ This event marked the end of the ailing Ottoman Empire.¹²¹ It was then the covert settlement between France and Britain set forth in the Sykes-Picot Agreement was revealed.¹²² The agreement was roundly criticized as contrary to the ideal of “worldwide national self-determination”¹²³ and as being in conflict with the goals of the League of Nations.¹²⁴ Moreover, Britain had “also agreed to establish a homeland for the Jews in Palestine in return for their efforts in World War I.”¹²⁵ In an effort to reconcile those conflicting agendas, a compromise was reached reaffirming the terms of both the Sykes-Picot Agreement and the Balfour Declaration.¹²⁶ “[T]he Ottoman territories would become ‘Mandates’ of Britain and France while they were being prepared for future self rule; that is, the European countries would have the right to temporarily administer the government and affairs of the Ottoman territories until it was decided that they could function independently.”¹²⁷ Britain “received the Mandate for Palestine (which included the area that would be called Transjordan and [what is now] present-day Iraq),”¹²⁸ and France was awarded oversight of Syria and Lebanon.¹²⁹ Yet, the placement of Syria under French authority had the unfortunate result of “expelling the government of Sherif Hussein’s son, Faisal ibn Ali, which had been set up in Damascus when the Arabs captured the city in 1918.”¹³⁰ In an effort to “save face” regarding the promise made in the McMahon-Hussein Agreement, the British handed over rule of Iraq to King Faisal as a consolation prize for his loss of the throne in Damascus and sweetened the deal by installing Faisal’s brother (Abdullah) as the Emir of Transjordan.¹³¹

¹²⁰ See *id.* at 28.

¹²¹ See *id.*

¹²² See *id.*

¹²³ *Id.*

¹²⁴ See *id.*

¹²⁵ *Id.* at 29.

¹²⁶ See *id.* at 28-29.

¹²⁷ *Id.* at 28.

¹²⁸ *Id.* at 29.

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ See *id.*

By dividing the Ottoman Empire into small, unstable states headed by foreign rulers who depended on the West for legitimacy (both Faisal and Abdullah were Saudis), the occupiers had successfully ensured that the Middle East would no longer pose a viable threat to the West. The European powers, moreover, were now in a position to exercise great economic, political and military control over the Middle East.¹³²

2. The Faisal-Weizmann Agreement

In January of 1918, two years before he was installed as King of Iraq,¹³³ Emir Faisal “met with various Jewish leaders and signed an agreement with Dr. Chaim Weizmann . . . leader of the Zionist movement.”¹³⁴ Faisal agreed to support the Balfour Declaration¹³⁵ and made a commitment that “[a]ll necessary measures shall be taken to encourage and stimulate immigration of Jews into Palestine on a large scale, and as quickly as possible to settle Jewish immigrants upon the land through closer settlement and intensive cultivation of the soil.”¹³⁶ It appears Faisal was rather an anomaly amongst his Arab brethren with regard to his disposition toward the Jews, for two months later in a letter to Felix Frankfurter—an American Zionist who would eventually become a Justice on the U. S. Supreme Court—he penned the following sentiments:¹³⁷

We feel that the Arabs and Jews are cousins in race, having suffered similar oppressions at the hands of powers stronger than themselves, and by a happy coincidence have been able to take the first step towards the attainment of their national ideals together. We Arabs, especially the educated among us, look with the deepest sympathy on the Zionist movement We

¹³² *Id.*

¹³³ See THE ISRAEL-ARAB READER, *supra* note 100, at 17.

¹³⁴ *Id.*

¹³⁵ See EMIR FAISAL AND CHAIM WEIZMANN: AGREEMENT, ART. III, reprinted in THE ISRAEL-ARAB READER, *supra* note 100, at 17. Note that there are three apparently accepted spellings of the Emir’s name (“Feisal,” “Faisal,” and “Faysal”). See RORABACK, *supra* note 4, at 29; *Faysal I*, in ENCYCLOPAEDIA BRITANNICA ONLINE, <http://www.britannica.com/ebc/article-9364167> (last visited Sept. 10, 2006).

¹³⁶ EMIR FAISAL AND CHAIM WEIZMANN: AGREEMENT, *supra* note 135, at 17-18.

¹³⁷ See generally *id.* at 19 (Faisal’s letter written in March 1919 encourages cooperation between Arabs and Jews).

will do our best, in so far as we are concerned, to help them through: we will wish the Jews a most hearty welcome home . . . The Jewish movement is national and not imperialist. Our [Arab] movement is national and not imperialistic, and there is room in Syria for us both. Indeed I think that neither can be a real success without the other.¹³⁸

Ten years after he ascended the throne of Iraq, King Faisal denied recall of taking part in the Faisal-Weizmann Agreement.¹³⁹

3. The King-Crane Commission

At the encouragement of the British, the Jewish population in Palestine established the Jewish Agency to function as an official liaison between the Jewish community and the British government.¹⁴⁰ The British encouraged the Arab population in Palestine to form a parallel agency, but the Arab community refused to do so on the basis that formation of such an organization would constitute Arab acceptance of the idea that Jews had an equal right to the land.¹⁴¹ In fact, claiming fear

the Jews planned to create a wholly Jewish nation by displacing all its indigenous inhabitants . . . [the Arab community] sent a memorandum to the [world powers gathered at the] Paris Peace Conference [in 1919] . . . opposing the Balfour Declaration and demanding independence as promised in the McMahon-Hussein agreement.¹⁴²

The memorandum was "one of the first Arab statements on record opposing Jewish migration to Palestine."¹⁴³ Oddly enough, the memorandum states the

undersigned members . . . made up of representatives from the three Zones . . . provided with credentials and authorizations by the inhabitants of our various districts, Moslems, Christians,

¹³⁸ Correspondence between Emir Feisal and Felix Frankfurter, in *THE ISRAEL-ARAB READER*, *supra* note 100, at 19-20.

¹³⁹ *THE ISRAEL-ARAB READER*, *supra* note 100, at 17.

¹⁴⁰ RORABACK, *supra* note 4, at 32.

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *THE ISRAEL-ARAB READER*, *supra* note 100, at 21.

and Jews, have agreed upon the following statement of the desires of the people of the country who have elected us to present them¹⁴⁴

However, the seventh article of that document which, according to the memorandum, was "accepted unanimously,"¹⁴⁵ tends to challenge the credibility of their claim of having obtained the endorsement of the Jewish districts of the region.¹⁴⁶ It states in pertinent part:

We oppose the pretensions of the Zionists to create a Jewish commonwealth in the southern part of Syria, known as Palestine, and oppose Zionist migration to any part of our country; for we do not acknowledge their title but consider them a grave peril to our people from the national, economical, and political points of view.¹⁴⁷

In response to those demands and at the suggestion of a sympathizer with the Arab cause,¹⁴⁸ President Woodrow Wilson, who had recently made a strong pitch for the right of national self-determination¹⁴⁹ of the "associated peoples of the world,"¹⁵⁰ tasked a "group of delegates (the King-Crane Commission)"¹⁵¹ to investigate and make suitable recommendations to determine "which of the Western nations should act as the mandatory power for Palestine."¹⁵² The recommendations favored Arab interests,¹⁵³ calling for "serious modification of the extreme Zionist program for Palestine of unlimited immigration of Jews, looking finally to making Palestine distinctly a Jewish state."¹⁵⁴ Furthermore, the recommendations stated that "'a national home for the Jewish people' is not equivalent to making Palestine into a Jewish state; nor can the erection of such a Jewish state be

¹⁴⁴ The General Syrian Congress: Memorandum Presented To The King-Crane Commission (July 2, 1919), in *THE ISRAEL-ARAB READER*, *supra* note 100, at 21-22.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at 22.

¹⁴⁸ *THE ISRAEL-ARAB READER*, *supra* note 100, at 23.

¹⁴⁹ See The King-Crane Commission: Recommendations (Aug. 28, 1919), in *THE ISRAEL-ARAB READER*, *supra* note 100, at 23-25.

¹⁵⁰ *Id.* at 24.

¹⁵¹ RORABACK, *supra* note 4, at 32.

¹⁵² *THE ISRAEL-ARAB READER*, *supra* note 100, at 23.

¹⁵³ See generally The King-Crane Commission, *supra* note 149, at 23.

¹⁵⁴ *Id.*

accomplished without the gravest trespass upon the 'civil and religious rights of existing non-Jewish communities in Palestine.'"¹⁵⁵ Stating concern for the right of national self-determination of the non-Jewish inhabitants of that region, the recommendations noted that "the non-Jewish population of Palestine – nearly nine-tenths of the whole – are emphatically against the entire Zionist program."¹⁵⁶ As a result, the recommendations stated that "[t]he Peace Conference should not shut its eyes to the fact that the anti-Zionist feeling in Palestine and Syria is intense and not lightly to be flouted."¹⁵⁷ The crowning blow was delivered in the statement that "the initial claim, often submitted by Zionist representatives, that they have a 'right' to Palestine, based on an occupation of two thousand years ago, can hardly be seriously considered."¹⁵⁸ The recommendations opined further that

the places which are most sacred to Christians – those having to do with Jesus – and which are also sacred to Moslems, are not only not sacred to Jews, but abhorrent to them. [Therefore,] [i]t is simply impossible . . . for Moslems and Christians to feel satisfied to have these [sacred] places in Jewish hands
¹⁵⁹

Claiming to act out of a "deep sense of sympathy for the Jewish cause,"¹⁶⁰ the King-Crane Commission urged "only a greatly reduced Zionist program be attempted by the [Paris] Peace Conference and even that, only very gradually initiated. This would have to mean that Jewish immigration should be definitely limited, and that the project for making Palestine distinctly a Jewish commonwealth should be given up."¹⁶¹ Far from being just another innocuous government report to be filed away and forgotten, the recommendations of the King-Crane Commission would eventually provide the rationale for subverting Britain's promise in the Balfour Declaration.¹⁶²

¹⁵⁵ *Id.* at 23-24.

¹⁵⁶ *Id.* at 24.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.* at 25.

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² THE ISRAEL-ARAB READER, *supra* note 100, at 25-26.

C. League of Nations: British Mandate for Palestine

The significance of the British Mandate for Palestine is perhaps best understood when prefaced by this historical analysis offered by international law expert Howard Grief:

As part of the settlement in which the Arabs received most of the lands formerly under Turkish sovereignty in the Middle East, the whole of Palestine, on *both* sides of the Jordan, was reserved exclusively for the Jewish people as their national home and future independent state. Under the terms of the settlement that were made by the Principal Allied Powers consisting of Britain, France, Italy and Japan, there would be no annexation of the conquered Turkish territories by any of the Powers, as had been planned in the secret Sykes-Picot Agreement of . . . 1916. Instead, these territories, including the peoples for whom they were designated, would be placed under the Mandates System and administered by an advanced nation until they were ready to stand by themselves. The Mandates System was established and governed by Article 22 of the Covenant of the League of Nations, contained in the Treaty of Versailles and all the other peace treaties made with the Central Powers – Germany, Austria-Hungary, Bulgaria and Turkey. The Covenant was the idea of US President Woodrow Wilson and contained in it his program of Fourteen Points . . . while Article 22 which established the Mandates System, was largely the work of Jan Christiaan Smuts who formulated the details in a memorandum that became known as the Smuts Resolution . . . in which Palestine as envisaged in the Balfour Declaration was named as one of the mandated states to be created. [Thus,] [t]he official creation of [Palestine, later to be named Israel] . . . took place at the San Remo Peace Conference [of 1920] where the Balfour Declaration was adopted by the Supreme Council of the Principal Allied Powers as the basis for the future administration of Palestine which would henceforth be recognized as the Jewish National Home.¹⁶³

¹⁶³ Howard Grief, *Legal Rights and Title of Sovereignty of the Jewish People to the Land of Israel and Palestine Under International Law*, Ariel Center for Policy Research, Policy Paper No. 147 (2003), <http://www.therightroadtopeace.com/infocenter/Heb/HowardGriefE.html> (emphasis added).

The Mandate for Palestine was thus assigned to Britain, creating a contractual relationship between “the Principal Allied Powers and Britain, the former as Mandatory and the latter as Mandatory. The Principal Allied Powers designated the Council of the League of Nations as the supervisor of the Mandatory to ensure that all the terms of the Mandate Charter would be strictly observed.”¹⁶⁴ As the Mandatory, Britain was required to render a progress report on her activities to the League Council each year, forming an additional contractual bond between Britain and the League of Nations.¹⁶⁵

The details for the planned independent Jewish state were set forth in three basic documents, which may be termed the founding documents of mandated Palestine and the modern Jewish state of Israel that arose from it. These were the San Remo Resolution of April 25, 1920, the Mandate for Palestine conferred on Britain by the Principal Allied Powers and confirmed by the League of Nations on July 24, 1920, and the [treaty resulting from the] Franco-British Boundary Convention of December 23, 1920. These founding documents were supplemented by the Anglo-American Convention of December 3, 1924 respecting the Mandate for Palestine.¹⁶⁶

The San Remo Resolution on Palestine, effectively “combined the Balfour Declaration with Article 22 of the League of Nations Covenant”¹⁶⁷ in stating

[t]he High Contracting Parties agree to entrust, by application of the provisions of Article 22, the administration of Palestine, within such boundaries as may be determined by the Principal Allied Powers, to a Mandatory . . . responsible for putting into effect the declaration originally made on November 8, 1917, by the British Government, and adopted by the other Allied Powers, in favour of the establishment in Palestine of a national home for the Jewish people¹⁶⁸

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ Paul Eidelberg, *The Return of Nationalism*, ISRAPUNDIT Home Page, http://israpundit.com/archives/2005/06/the_return_of_n.php (last visited Sept. 10, 2006).

¹⁶⁸ San Remo Resol. (April 25, 1920), available at <http://www.therightroadtopeace.com/infocenter/Heb/SanRemoRes.html>.

The San Remo Resolution further "retained its validity as an independent act of international law when it was inserted into the Preamble of the Mandate for Palestine and confirmed by 52 [nation] states,"¹⁶⁹ causing it to become the foundation "upon which the Mandate was constructed and to which it had to conform."¹⁷⁰ Described by some scholars as the "Magna Carta of the Jewish people,"¹⁷¹ the San Remo Resolution is "the pre-eminent foundation document of the State of Israel and the crowning achievement of pre-state Zionism,"¹⁷² providing the "best proof that the whole country of Palestine and the Land of Israel belong exclusively to the Jewish people under international law."¹⁷³

Whereas the Balfour Declaration "stated the principle or object of a Jewish state,"¹⁷⁴ and the San Remo Resolution gave the Balfour Declaration the "stamp of international law,"¹⁷⁵ the Mandate for Palestine provided the "means for the realization of the Jewish state."¹⁷⁶ Hence, these documents worked in concert as "building blocks in the legal structure that was created for the purpose of bringing about . . . an independent Jewish state."¹⁷⁷

The Preamble of the Mandate accorded recognition to the "historical connec[tion] of the Jewish people with Palestine and to the grounds for reconstituting their national home in that country,"¹⁷⁸ and Article 6 of the Mandate stated:

[t]he Administration of Palestine, while ensuring that the rights and position of other sections of the population are not prejudiced, shall facilitate Jewish immigration under suitable conditions and shall encourage, in cooperation with the Jewish agency . . . close settlement by Jews on the land . . .¹⁷⁹

¹⁶⁹ Eidelberg, *supra* note 167.

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ The British Mandate, July 24, 1922, 44 Stat. 2184, 12 Bevans 417, reprinted in THE ISRAEL-ARAB READER, *supra* note 100, at 30.

¹⁷⁹ *Id.* at 31.

Thus, the Mandate provided a "right of return for the Jewish people to Palestine,"¹⁸⁰ as well as "the right to establish settlements on the land throughout [Palestine] in order to create the envisaged Jewish state."¹⁸¹

Although Britain was the primary actor on stage during the Mandate years, the United States also co-starred in the drama,¹⁸² for those three "bedrock" documents (the Balfour Declaration, the San Remo Resolution, and the British Mandate) "were later supplemented by the 1924 Anglo-American Convention on Palestine, which was ratified by the United States Senate and thus made the supreme law of the land."¹⁸³

Zionist leaders were allowed to participate in the drafting of the Mandate prior to its submission to the League Council for approval in 1920, whereas the Arabs were not invited to participate in that process.¹⁸⁴ This confirms "the Jewish people were the exclusive beneficiary of the national rights enshrined in the Mandate."¹⁸⁵ The provisions of the Mandate protected the national rights of the Jewish people, but spoke only in terms of "civil and religious rights"¹⁸⁶ for non-Jews.¹⁸⁷

The original plan was the Mandate would include the specific boundaries of Palestine, but the negotiating process with France regarding what would later become the Palestine-Syrian border took longer than expected. As a result, a decision was made to establish the boundaries under separate cover in the form of a treaty resulting from the Franco-British Boundary Convention in late 1920.¹⁸⁸

The borders of Palestine, as agreed to at the San Remo Conference and later fixed in the settlement agreed upon at the Franco-British Boundary Convention,¹⁸⁹ were based on the biblical apportionment referred to as "from Beer-sheba to Dan."¹⁹⁰ This meant Palestine would:

¹⁸⁰ Eidelberg, *supra* note 167.

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ Grief, *supra* note 163.

¹⁸⁵ *Id.*

¹⁸⁶ BEN-GAD, *supra* note 53, at 243.

¹⁸⁷ Grief, *supra* note 163.

¹⁸⁸ *Id.*

¹⁸⁹ *SyriaAsad: Background to a Dictatorship*, <http://www.library.cornell.edu/colldev/mideast/insight.htm>.

¹⁹⁰ 2 *Chronicles* 30:5 (New Jewish Publication Society Translation). See also GEORGE, *supra* note 2, at 721 (Lloyd George's definition of the territory referenced

have the borders that included all areas of the country settled by the Twelve Tribes of Israel during the First Temple Period, embracing historic Palestine both east and west of the Jordan River . . . [thus implying] that the whole of Jewish Palestine would be reconstituted as a Jewish state.¹⁹¹

Note this allotment of land was far less than the territory (from the Nile to the Euphrates River) promised in the Biblical Mandate.¹⁹² The actual negotiations for boundaries were marked by a flurry of territory exchanges between the British and French, with mangled results (e.g., some of the northern areas were excluded, while the Golan was exchanged for the Kinneret (Sea of Galilee)).¹⁹³ This exchange of territories clearly violated the "Beer-sheba to Dan" formula agreed to during the conference at San Remo,¹⁹⁴ thus setting the tone for progressive violation of the terms of the Mandate as time went on.

1. What Did the Mandate Actually Empower the British To Do?

The obligations of the Mandatory power, as stated in the San Remo Resolution of April 25, 1920,¹⁹⁵ and later enumerated in detail in the Mandate for Palestine,¹⁹⁶ were to implement the Balfour Declaration.¹⁹⁷ This made Britain responsible for using her "best endeavors"¹⁹⁸ to "secure the establishment of the Jewish national home,"¹⁹⁹ while developing "self-governing institutions"²⁰⁰ and "safeguarding the civil and religious rights of all the inhabitants of Palestine, irre-

in the Balfour Declaration, which promised to establish in Palestine a national homeland for the Jewish people, as extending from Dan to Beersheba).

¹⁹¹ Grief, *supra* note 163.

¹⁹² See generally Genesis 15:18-21 (New Jewish Publication Society Translation).

¹⁹³ Grief, *supra* note 163.

¹⁹⁴ *Id.*

¹⁹⁵ San Remo Resol., *supra* note 168.

The Mandatory will be responsible for putting into effect the declaration originally made on November 8, 1917, by the British Government, and adopted by the other Allied Powers, in favour of the establishment in Palestine of a national home for the Jewish people . . .

Id.

¹⁹⁶ See The British Mandate, *supra* note 178, at 30.

¹⁹⁷ The Balfour Declaration, *supra* note 114, at 16.

¹⁹⁸ *Id.*

¹⁹⁹ The British Mandate, *supra* note 178, at 31.

²⁰⁰ *Id.*

spective of race and religion.”²⁰¹ The practical effect of the San Remo Resolution was to convert the Balfour Declaration from a policy agreement to establish a sovereign Jewish state into “a binding act of international law that required specific fulfillment by Britain . . . in active cooperation with the Jewish people.”²⁰² As such, the British Government, accountable to the Principal Allied Powers, was now charged with responsibility to “ensure that the Jewish National Home would be duly established.”²⁰³

Nonetheless, within the brief text of the Balfour Declaration was a thread destined to unravel. The phrase “in Palestine,”²⁰⁴ indicating the land both east and west of the Jordan River, generated serious controversy amongst those who were not in sympathy with Zionist goals.²⁰⁵

[Yet it is] absurd to imagine that this phrase could be used to indicate that only a part of Palestine was reserved for the future Jewish National Home, since both were created simultaneously and used interchangeably, with the term “Palestine” pointing out the geographical location of the future independent Jewish state. Had “Palestine” meant a partitioned country with certain areas of it set aside for Jews and others for Arabs, that intention would have been stated explicitly at the time the Balfour Declaration was drafted and approved and later adopted by the Principal Allied Powers. No such allusion was ever made in the prolonged discussions that took place in fashioning the Declaration and ensuring its international approval. There is therefore no juridical or factual basis for asserting that the phrase “in Palestine” limited the establishment of the Jewish National Home to only a part of the country. On the contrary, Palestine and the Jewish National Home were synonymous terms, as is evidenced by the use of the same phrase in the second half of the Balfour Declaration which refers to the existing non-Jewish communities “in Palestine”, clearly indicating the whole country. Similar evidence exists in the preamble and terms of the Mandate Charter.²⁰⁶

²⁰¹ *Id.*

²⁰² Grief, *supra* note 163.

²⁰³ *Id.*

²⁰⁴ The Balfour Declaration, *supra* note 114, at 16.

²⁰⁵ Grief, *supra* note 163.

²⁰⁶ *Id.* See, e.g., The British Mandate, *supra* note 178, at 30. The preamble to the Mandate specifically references “existing non-Jewish communities in Palestine.” *Id.* Article 16 of the Mandate refers to “all faiths in Palestine” (i.e., which would be

Those who were opposed to the establishment of a sovereign Jewish state in Palestine aggressively seized upon that “hanging thread” and pulled with all their might, as evidenced by the Churchill White Paper of 1922.²⁰⁷

2. The Amputation of Transjordan and the Churchill White Paper of 1922

The Palestine Mandate as granted to Great Britain at the San Remo Conference of 1920, and confirmed by the League of Nations in 1922, covered a territory of 45,820 square miles east and west of the Jordan river. Its boundaries reached from the Mediterranean in the West to [the] Iraq border in the East. Thus, all of Jordan was encompassed within the border of Palestine.²⁰⁸

The official confirmation of the Mandate was well underway, when suddenly it hit a definitive snag precipitated by “a surprise last-minute intervention by the U.S. Government,”²⁰⁹ resulting in an unnecessary delay of those proceedings.²¹⁰

[The delay precipitated by the U.S.] gave an unexpected opportunity to Winston Churchill, the new Colonial Secretary placed in charge of the affairs of Palestine, to change the character of the Mandate: first, by having a new article inserted (Article 25) which allowed for the provisional administrative separation of Transjordan from Cisjordan; second, by redefining the Jewish National Home to mean not an eventual independent Jewish state but limited to a cultural or spiritual center for the Jewish people. These radical changes were officially introduced in the Churchill White Paper of . . . 1922 and led directly to the sabotage of the Mandate. Thereafter, the British never departed from the false interpretation they gave to the Jewish National

understood to include faiths other than Judaism), and Article 18 of the Mandate refers to non-discrimination against foreign nationals in Palestine. *Id.* at 34.

²⁰⁷ See THE ISRAEL-ARAB READER, *supra* note 100, at 25-26.

²⁰⁸ THE PEACE ENCYCLOPEDIA, *Palestine: Where Is Palestine?*, <http://www.yahoodi.com/peace/palestine.html> (last visited Oct., 16, 2005).

²⁰⁹ Grief, *supra* note 163.

²¹⁰ *Id.*

Home which ended all hope of achieving the envisaged Jewish state under their auspices.²¹¹

Prior to the Churchill White Paper of 1922,

official British documents continued to refer to the area [of Transjordan, now Jordan] as Eastern Palestine, and Britain's envoy described [it] as "a reserve of land for use in the resettlement of Arabs [from Western Palestine], once the National Home for the Jews in Palestine' resulted in the 'Jewish independent state.'"²¹²

However, Churchill's sleight of hand maneuver of slipping Article 25²¹³ into the Mandate postponed or withheld application²¹⁴ of the Jewish National Home provision of that document,²¹⁵ and resulted in a combination of effects that plague Israel to this day. First, the area east of the Jordan River, which had heretofore been included as part of the territory accorded to the Jewish National Home by the League of Nations Mandate, was suddenly, if not surreptitiously, severed from the future Jewish state.²¹⁶ Second, a Pandora's Box was opened in the form of "a deleterious influence on the administration of Cisjordan [the area west of the Jordan] by encouraging the false idea that Arab national rights existed not only in the severed part of the Jewish National Home across the Jordan, but in the remaining part [of Palestine] as well."²¹⁷

As time went on, administration of the Mandate progressively gave way to increased "British sabotage, misinterpretation, distortion and

²¹¹ *Id.*

²¹² Zell, *supra* note 111, at 81 (quoting Alec Kirkbride, *A Crackel of Thorns* 19-20 (London 1956)).

²¹³ Article 25 of the Mandate stated that:

In the territories lying between the Jordan and the eastern boundary of Palestine as ultimately determined, the Mandatory shall be entitled with the consent of the Council of the League of Nations, to postpone or withhold application of such provisions of this mandate as he may consider in applicable to the existing local conditions, and to make such provision for the administration of the territories as he may consider suitable to those conditions

The British Mandate, *supra* note 178, at 36.

²¹⁴ Grief, *supra* note 163.

²¹⁵ *Id.*

²¹⁶ *See id.*

²¹⁷ *Id.*

outright denial of what the Mandate stood for.”²¹⁸ In his book, *The Revolt*, Menachem Begin offered the following observations on a cyclical pattern of Britain’s *modus operandi*²¹⁹ in achieving what he dubbed the “British Master Plan”²²⁰ for control over Palestine:

The plan was clear and consistent, both in purpose and content. To achieve its purpose the British were anxious for a limited number of Jews to enter Eretz Israel – but no more than that. What does one do in such a case? One “plays the ends against the middle.” . . . Even this plan, however . . . turned out to be inadequate to meet the situation in Europe between the wars, a continent soaked as it was in hatred and blood. . . . and anti-semitism was growing apace. Scores of thousands of . . . Jews [who] . . . could find no place in the life of the countries they lived in, turned naturally, to Eretz Israel. Masses of Jews were straining every nerve to get there. What was to be done? The flood of Jewish repatriation was a potential threat to British domination. . . . At the Cairo Conference in 1921 . . . Churchill had said that what the Arab princes and kings called themselves was not important “so long as they do what we want when we want it.” But could the same be said of the Jews? There seemed a real danger here. Arab riots had to be harvested more carefully. Two highly respectable instruments were invoked. The first was the Commission of Inquiry – of which a whole series came and went. These Commissions had the added psychological advantage of appearing as impartial adjudicators emphasi[z]ing and re-emphasi[z]ing that there were two conflicting “rights” in Palestine, and thus underlining the need for the permanent presence in Palestine of the Mandatory Power as a third and deciding party. The other instrument was the White Paper – of which quite a number were published, proclaiming in judicial and measured language the various pretexts and justifications for the policy of keeping the Jews out of Palestine, and restricting the development of those already there. This cycle of events was repeated again and again. The Arabs were encouraged, sometimes quite openly, to organize attacks on the Jews. Then would come an Inquiry Commission with their reports. A White Paper would be pub-

²¹⁸ See *id.*

²¹⁹ See MENACHEM BEGIN, *supra* note 117, at 67.

²²⁰ *Id.*

lished, and [Jewish] immigration stopped or reduced almost to nothing.²²¹

Following the cyclical pattern identified by Begin, The Churchill White Paper of 1922 offered a merely superficial confirmation of the Balfour Declaration,²²² resulting in progressively watered-down terms.²²³ One such condition asserted:

Unauthorized statements have been made to the effect that the purpose in view is to create a wholly Jewish Palestine. Phrases have been used such as that Palestine is to become "as Jewish as England is English." His Majesty's Government regard any such expectation as impracticable and have no such aim in view. Nor have they at any time contemplated, as appears to be feared by the Arab Delegation, the disappearance or the subordination of the Arabic population, language, or culture in Palestine. They would draw attention to the fact that the terms of the [Balfour] Declaration referred to do not contemplate that Palestine as a whole should be converted into a Jewish National Home, but that such Home should be founded *in Palestine* 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 world²²⁴

Another depreciated term came in the form of an admission that "it is necessary that the Jewish community in Palestine should be able to increase its numbers by immigration,"²²⁵ followed by the qualification that "[i]t is essential to ensure that the immigrants should not be a burden upon the people of Palestine as a whole, and that they should not deprive any section of the present population of their employment."²²⁶ This rationalization resulted in the establishment of a special commit-

²²¹ *Id.* at 67-68.

²²² *See* THE ISRAEL-ARAB READER, *supra* note 100, at 25-26.

²²³ *See* The Churchill White Paper (June 1922), *in* THE ISRAEL-ARAB READER, *supra* note 100, at 26-27.

²²⁴ *Id.*

²²⁵ *Id.* at 28.

²²⁶ *Id.*

tee for the purpose of restricting Jewish immigration to Palestine.²²⁷ Thus began Britain's repudiation of the obligation she had undertaken "to develop Palestine gradually into an independent Jewish state."²²⁸

3. The Peel Commission (Palestine Royal Commission)

The Mandate's commitment to a Jewish "national home" encouraged Jews to immigrate to Palestine in great numbers. During the 24 years of the British Mandate, the Jewish population in Palestine grew from 83,790 in 1922 (or roughly 12% of the population) to 608,225 in 1946 (or roughly 33% of the population). The rise of Hitler in Germany also provided a powerful impetus for Jewish immigration to Palestine, which, at least until 1939, remained one of the few areas admitting Jewish refugees.²²⁹

"With the entry into force of the Palestine Mandate came the realization among the local Arab population that the Zionist program was no passing phase and that the Jewish program for building up a national home in Palestine was here to stay."²³⁰ The elements of economic and societal change that took place as a natural part of the process caused friction between the two groups, erupting into "bloody Arab riots . . . inspired and led by the virulently anti-Jewish Moslem cleric, Amin al-Husseini, who was, ironically, appointed Grand Mufti of Jerusalem, and therefore chief Moslem cleric in the land, by the then British Commissioner for Palestine, Herbert Samuel, himself Jewish."²³¹

Demanding a prohibition of Jewish immigration, a ban of land transfers from Arabs to Jews, and an end to the British Mandate, the Arab campaign soon became a full-scale revolt against British rule. In response to this revolt, the British created a Royal Commission [i.e., the Peel Commission] to study the roots of the conflict and to propose a solution.²³²

²²⁷ *Id.*

²²⁸ Grief, *supra* note 163.

²²⁹ Michael Eisner, *Jerusalem: An Analysis of Legal Claims and Political Realities*, 12 WIS. INT'L L.J. 221, 224 (1994).

²³⁰ Zell, *supra* note 111, at 82.

²³¹ *Id.*

²³² Eisner, *supra* note 229, at 224.

At this juncture, it is important to bear in mind that the San Remo Resolution²³³ had merged the "Balfour Declaration with Article 22 of the . . . Covenant [of the League of Nations]."²³⁴ As such, the provisions of Article 22 of the Covenant were applicable to those Jews who would establish their home in Palestine, as evidenced by the Smuts Resolution (later to become the foundation of Article 22 of the Covenant, which specifically named Palestine within the legal framework of that text).²³⁵ Even so, that did not stop the Peel Commission, upon finding "'no common ground' between the Jewish and Arab communities engaged in 'an irrepressible conflict,'"²³⁶ from recommending Palestine be partitioned into separate Arab and Jewish states,²³⁷ and then attempting to assert Article 22 as "the legal basis to justify the partition"²³⁸ The exclusive application of the term "Palestine" to the Jewish state, within the context of Article 22, was a well-established fact even in the Arab world as early as 1919, as evidenced by the Faisal-Weizmann Agreement and correspondence between Emir Faisal and Felix Frankfurter, wherein Faisal deemed the move to develop Palestine into a Jewish state as both "moderate and proper."²³⁹ In the meantime, the Arabs emphatically rejected any partition of Palestine into Arab and Jewish states, based on their position that it was an "unacceptable compromise of Arab sovereignty over all of Palestine."²⁴⁰ "In order to appease the Arabs, the British government abandoned the plan."²⁴¹

4. Nail in the Coffin: The White Paper of 1939

In 1939, the unthinkable happened. The British government issued the "'White Paper,' which called for the creation within ten years of one independent state for both Arabs and Jews in Palestine,"²⁴² a total reversal of Britain's former position on partition as recommended by the Peel Commission.²⁴³ Restricting Jewish immigration to "a 75,000

²³³ San Remo Resol., *supra* note 168.

²³⁴ Grief, *supra* note 163.

²³⁵ *Id.*

²³⁶ Eisner, *supra* note 229, at 224.

²³⁷ *Id.*

²³⁸ Grief, *supra* note 163.

²³⁹ *Id.*

²⁴⁰ Eisner, *supra* note 229, at 225.

²⁴¹ Yoav Tadmor, Comment, *The Palestinian Refugees of 1948: The Right to Compensation and Return*, 8 TEMP. INT'L & COMP. L.J. 403, 407 (1994).

²⁴² Eisner, *supra* note 229, at 225.

²⁴³ *See id.*

quota over the following five years, with any subsequent immigration needing the approval of the Arab majority - and [placing] restrictions on transfers of land from Arabs to Jews,"²⁴⁴ the White Paper officially nullified Britain's commitment to the Jews as promised in the Balfour Declaration,²⁴⁵ which had, since the inception of the Mandate, become international law.²⁴⁶ Ironically, "Britain's strict enforcement of the White Paper's immigration requirements came tragically . . . [at the very time the] Jews [were trying] desperately to escape the atrocities of Nazi Germany by emigrating to Palestine."²⁴⁷ As a result, "hundreds of thousands"²⁴⁸ of European Jews became trapped in the corner fashioned by Britain's actions and thus, lost their lives.²⁴⁹

[The Jewish state] was being prevented by Britain, at the demand of the Arabs, from opening its gates to those refugees most in need. This coincided with the beginning of the Holocaust, in which six million Jews were murdered. Had the Arabs accepted the two-state solution recommended by the Peel Commission, instead of responding with violence, hundreds of thousands - perhaps even a million or more - European Jews could have been saved, since the Nazi program up until 1941, called for Jews to be expelled from Europe but not necessarily murdered. The "final solution" became the solution of choice for the Nazis only when it became clear that there was nowhere for the Jews of Europe to go, except to the gas chambers and killing fields.²⁵⁰

Offering a pathetically watered-down interpretation of the Balfour Declaration, the White Paper provided that the Jewish national home was not to *be* Palestine, but to merely be *in* Palestine.²⁵¹ To his credit, "[f]ormer British Prime Minister Lloyd George, in a 1939 address,

²⁴⁴ *Id.*

²⁴⁵ Richard Wilner, *Nationalist Movements and the Middle East Peace Process: Exercises in Self-Determination*, 1 U.C. DAVIS J. INT'L. L. & POL'Y 297, 315 (1995).

²⁴⁶ See Grief, *supra* note 163.

²⁴⁷ Wilner, *supra* note 245, at 315-16.

²⁴⁸ ALAN DERSHOWITZ, *THE CASE FOR ISRAEL* 52 (2003).

²⁴⁹ See *id.*

²⁵⁰ *Id.*

²⁵¹ Tadmor, *supra* note 241, at 405.

called the White Paper '[a]n act of national perfidy that will dishonor the name of Britain.'"²⁵²

"Despite the heavily pro-Arab nature of the White Paper, the Arabs rejected it on the grounds that it did not go far enough, and launched a widespread campaign of violence" ²⁵³ The response of the Jewish Agency to this blatant betrayal²⁵⁴ was effectively summed up in (future Prime Minister of Israel) David Ben-Gurion's firm vow to "fight the war as if there were no White Paper . . . and . . . [to] fight the White Paper as if there were no war."²⁵⁵ This declaration "set the tone for Jewish Agency policy and operations during World War II."²⁵⁶

Meanwhile, Britain's "resist[ance] to [Jewish] immigration after 1939 was dramatically illustrated in 1941 by the loss of the ship named *Struma* with 760 Jewish passengers, a tragedy that was entirely caused by British authorities' unmitigated enforcement of their policy against the 'illegal' Jewish immigrants fleeing from Hitler's war against them."²⁵⁷

²⁵² Chuck Morse, *Hitler's Arab Allies*, THE JEWISH PRESS, Aug. 31, 2002, http://www.jewishpress.com/print.do/14111/Hitler&%2339;s_Arab_Allies.html.

²⁵³ *British Mandate: McDonald White Paper*, PALESTINE FACTS, http://www.palestinefacts.org/pf_mandate_whitepaper_1939.php (last visited Oct. 16, 2005).

²⁵⁴ See Grief, *supra* note 163.

²⁵⁵ *The Making of the State: Five Historical Decisions – Ben Gurion Centenary 1886-1986, Chapter 1 -The White Paper of 1939*, <http://www.jafi.org.il/education/50/act/bg/bg1.htm> (last visited Oct. 16, 2005).

²⁵⁶ *British Mandate: World War II Palestine, What Happened in Palestine During World War II?*, PALESTINE FACTS, http://www.palestinefacts.org/pf_mandate_during_ww2.php (last visited Oct. 16, 2005).

²⁵⁷ *British Mandate: British Opposition, Why Did the British Oppose Jewish Immigration to Palestine?*, PALESTINE FACTS, http://palestinefacts.org/pf_mandate_oppose_immigration.php (last visited Oct. 16, 2005). The *Struma* was a Romanian ship crammed full of Jews fleeing the horrors of eastern Europe; it had dropped anchor in Turkey while awaiting permission from the British to transport her load of human cargo to Palestine. PALESTINE FACTS, *supra* note 256. Instead of permitting the *Struma* to proceed to Palestine, the British "encouraged Turkish authorities to tow the ship into the Black Sea and cast it adrift, an inhuman[e] act given that the pass[en]gers had been on board for 74 days, overcrowded with inadequate supplies." *Id.* While waiting in hopes that public conscience would force Britain to allow the *Struma* to complete her mission of mercy, the ship was "sunk by a Russian submarine with the loss of [everyone on board]. This tragic incident was the final blow to support of Britain among the Jews of Palestine." *Id.*

5. The British Exceeded Authority to Restrict Immigration and Land Purchases

As early as 1936, “[t]he British [had] placed restrictions on Jewish immigration, while allowing Arabs to enter the country freely.”²⁵⁸ Restrictions aimed against the Jews continued to increase dramatically, such that by 1939, land sales to Jews were forbidden in ninety-five percent of Palestine, and Jewish immigration had been limited to “75,000 for the next five years, after which it was to cease altogether.”²⁵⁹ These restrictions were in direct violation of Article 6 of the Mandate,²⁶⁰ which provided:

The Administration of Palestine, while ensuring that the rights and positions of other sections of the population are not prejudiced, shall facilitate Jewish immigration under suitable conditions and shall encourage, in cooperation 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.²⁶¹

“In 1930, the Hope Simpson Commission, sent from London to investigate the 1929 Arab riots, said the British practice of ignoring the uncontrolled illegal Arab immigrants from Egypt, Transjordan and Syria had the effect of displacing the prospective *Jewish* immigrants.”²⁶² As reported by the Peel Commission in 1937, the “shortfall of land is, we consider, due less to the amount of land acquired by Jews than to the increase in the Arab population.”²⁶³ Clearly then, the only permissible reason for restricting Jewish immigration as specified under the Mandate (i.e., to ensure “that the rights and positions of other sections of the population [were] not prejudiced”²⁶⁴) was not at issue.²⁶⁵

As for the restrictions on land purchases, “. . . the British had allotted 87,500 acres of the 187,500 acres of cultivable land to Arabs and

²⁵⁸ Mitchell Bard, *British Restrictions on Jewish Immigration*, <http://www.jewishvirtuallibrary.org/jsource/History/mandate.html> (last visited Sept. 7, 2006).

²⁵⁹ *Id.*

²⁶⁰ The British Mandate, *supra* note 178, at 31.

²⁶¹ *Id.*

²⁶² Bard, *supra* note 258.

²⁶³ *Id.*

²⁶⁴ The British Mandate, *supra* note 178, at 31.

²⁶⁵ See generally Bard, *supra* note 258.

only 4,250 acres to Jews.”²⁶⁶ Yet, the only permissible purpose for restricting Jewish land purposes as specified under the Mandate (again, to ensure “that the rights and positions of other sections of the population [were] not prejudiced”²⁶⁷) was not at issue, either.²⁶⁸

As such, the British exceeded their lawful authority to restrict Jewish immigration and Jewish land purchases.²⁶⁹ Both actions were expressly in violation of the Mandate and, therefore, illegal.²⁷⁰

6. Possible Motives for Britain’s Actions: The Suez Canal and the Power of Oil

“What the British essentially did in governing Palestine was to implement their false interpretations of the Mandate rather than its plain language and meaning. This turned the Mandate Charter upside down and made its aim of a Jewish state unrealizable.”²⁷¹ In all this, the logical question seems to be: “What caused the British to act in this way?” On the surface, two reasons for Britain’s behavior seem to emerge, but they tend to blend into one central underlying theme.

“[T]he British administration was far more sensitive to the Arab’s claims than to those of the Jews.”²⁷² One reason for Britain’s markedly pro-Arab stance was the fact that, “as World War II opened in Europe, the British [felt they] needed to coax the Arabs into submissiveness so that the Suez Canal could be maintained in relative tranquility.”²⁷³ This was a reasonable concern, given the Suez Canal figured prominently in Britain’s agenda for establishing her presence in the region in the first place.²⁷⁴

Additionally, the British administration was “concerned with Nazi inroads into the Arab world.”²⁷⁵ Why? “[B]ecause a major part of the oil resources of the Commonwealth were in the Arab world.”²⁷⁶ The

²⁶⁶ *Id.*

²⁶⁷ The British Mandate, *supra* note 178, at 31.

²⁶⁸ *See generally* Bard, *supra* note 258.

²⁶⁹ The British Mandate, *supra* note 178, at 31.

²⁷⁰ *See generally id.*

²⁷¹ Grief, *supra* note 163.

²⁷² PALESTINE FACTS, *supra* note 257.

²⁷³ *Id.*

²⁷⁴ RORABACK, *supra* note 5, at 22.

²⁷⁵ Chuck Morse, *Hitler and the Palestinian Arabs*, Dec. 26, 2002, ARUTZ SHEVA – ISRAELNATIONALNEWS.COM, <http://www.israelnationalnews.com/print.php3?what=article&id=1751>.

²⁷⁶ HOWARD M. SACHAR, *A HISTORY OF ISRAEL: FROM THE RISE OF ZIONISM TO OUR TIME* 225 (1986).

common denominator for Britain's conduct during the Mandate years came down to just one little word: oil.

Palestine had no oil, but neighboring Arab states were the world's newest and lowest cost suppliers. . . . A flurry of oil exploration activity occurred in the gulf in the 1930s with the United States and Britain competing with one another for oil concessions. One reason for the increased activity was that in 1932 the new Iranian government of Reza Shah Pahlavi revoked [the Anglo-Persian Oil Company's] concession. Although the Shah and the British later agreed on new terms, the threat of losing Iranian oil convinced the British in particular that they must find other sources. The small states of the Persian Gulf were a natural place to look. Geological conditions were similar to those in Iran, and, because of treaties signed between 1820 and 1920, the British had substantial influence and could restrict foreign access. Since the British relied on the Arab (or Arab-supporting) regimes of the Middle East, a pro-Arab policy in Palestine served them best to protect rights to Arab oil, the Suez [C]anal, and British interests in India and beyond.²⁷⁷

"To have opened a major quarrel with the Arab states," wrote [British historian] Christopher Sykes . . . "when Europe was moving toward war, would have been an act of folly by Great Britain without precedent." . . . Now there were British interests to be protected at a moment when national survival was in the balance.²⁷⁸

However, as it turned out, the choices Britain apparently made to protect her interests during World War II did not serve to improve her position *after* the war, for she found herself caught in the trap of continuing to "[accept] as unchallengeable the importance of maintaining the friendship of the Arab world."²⁷⁹

Britain in 1945 was virtually bankrupt. Its armies had engaged the Axis on five continents and had borne the weight of hostilities longer than any other Allied nation. When the bill was cal-

²⁷⁷ PALESTINE FACTS, *supra* note 257.

²⁷⁸ SACHAR, *supra* note 276, at 225.

²⁷⁹ *Id.* at 251.

culated afterward, a quarter of Britain's national wealth was found to have been expended. The domestic cupboard was bare. The nation's remaining supply of hard currency was adequate for barely 40 percent of current purchases, and this at a moment when the new Labor government was intent on carrying out an extensive, even revolutionary, program of social welfare. One . . . priority [concern] . . . therefore, was to assure the single most important of Britain's remaining overseas resources. This was oil, the power source of the country's very industrial existence and a foreign-currency earner of near-sacred importance. . . . If there was anxiety for continued supply, it was related less to the bottomless wells of the Persian Gulf than to the pipelines crossing the frontiers of other, politically unstable, Arab lands. The growing network, traversing hundreds of miles of desert, was uniquely vulnerable to disruption and sabotage, and its security would be assured only as long as Britain could depend upon Arab political friends and quiescence. . . . [As such, it was Britain's perception that her] sphere of influence in the Persian Gulf area, with its immense oil reserves, and in the lower Middle East, fronting the "warm waters of the Mediterranean," had to be protected at any cost.²⁸⁰

If nothing else, Britain's administration of the Mandate appears to confirm that she had a firm grasp on her priorities, which could arguably be summed up as: oil, oil, and more oil.

7. Britain's Decision to Abandon the Mandate

During World War II, the question of Palestine slipped to the back burner, while defeating Hitler became the primary focus.²⁸¹ However, once the war ended and the ghastly details of the Nazi concentration camps began to be known, "support developed within the international community for the creation of a Jewish state in Palestine."²⁸² As such, Britain found herself under renewed pressure to abandon the restrictions she had imposed on Jewish immigration to Palestine since 1939.²⁸³ Even so, she stubbornly persisted in enforcing "the policy

²⁸⁰ *Id.* at 251-52.

²⁸¹ Eisner, *supra* note 229, at 225.

²⁸² *See id.* at 225-26.

²⁸³ *See id.* at 226.

articulated in the White Paper”²⁸⁴ In response to Britain’s refusal to budge,

[u]nder Ben-Gurion’s direction, the Jewish Agency decided in October 1945 to unite with Jewish dissident groups in a combined rebellion against the British administration in Palestine (the United Resistance Movement). The combined Jewish resistance movement organized illegal immigration and kidnapping of British officials in Palestine and sabotaged the British infrastructure in Palestine.²⁸⁵

Eventually, after finding herself boxed in between “international support for a Jewish state”²⁸⁶ on the one side, and “violent opposition to its occupation from both Jews and Arabs”²⁸⁷ on the other, Britain “decided to throw up [her] hands and toss the fate of the [M]andate to the newly formed United Nations,”²⁸⁸ which assumed the role previously held by the League of Nations.²⁸⁹

The end result of British sabotage, misinterpretation, distortion and outright denial of what the Mandate stood for was that Jewish legal rights and title of sovereignty over the whole of Palestine as originally envisaged in the San Remo Resolution and the Mandate became so blurred, obfuscated and confused by the time the Mandate ended, it was no longer understood or held to be true.²⁹⁰

D. United Nations Actions

1. United Nations Recommendations on Palestine

In a special session of the U.N. General Assembly, which began in late April 1947, “the Assembly established the United Nations Special Committee on Palestine (UNSCOP), made up of 11 Member States, to

²⁸⁴ *British Mandate: Armed Resistance, Why Did Jewish Armed Resistance Against the British Begin?*, PALESTINE FACTS, http://www.palestinefacts.org/pf_mandate_attacks_jewish.php (last visited Oct. 16, 2005).

²⁸⁵ *Id.*

²⁸⁶ Eisner, *supra* note 229, at 226.

²⁸⁷ *Id.*

²⁸⁸ Zell, *supra* note 111, at 84.

²⁸⁹ Tadmor, *supra* note 241, at 407.

²⁹⁰ Grief, *supra* note 163.

investigate all questions relevant to the problem of Palestine and to recommend solutions to be considered by the General Assembly at the regular session in September 1947.”²⁹¹ Following a three-month study of the centuries-old struggle,²⁹² UNSCOP “found what had long been apparent: The conflicting national aspirations of Jews and Arabs could not be reconciled.”²⁹³ As such, UNSCOP recommended that the British Mandate be terminated²⁹⁴ and proposed partition of the land into separate independent Jewish and Arab states.²⁹⁵ Although the civil and religious rights of the Arabs living in Palestine had been safeguarded, they were explicitly “accorded *national* rights in Syria, Mesopotamia and Arabia . . . [but] not in Palestine.”²⁹⁶

2. UN Resolution 181: The Partition Plan

Accepting UNSCOP’s proposal, “the U.N. General Assembly voted on November 29, 1947, in favor of the Palestine Partition Plan” (United Nations Resolution 181),²⁹⁷ which proposed

two states that were essentially intertwined. The Arab state consisted of three chunks of land . . . each surrounded by Jewish territory . . . [and] connected by thin slices of land. Likewise, the Jewish state consisted of three areas, each surrounded by Arab territory and connected by narrow slivers of land.²⁹⁸

Jerusalem, located within the territory allotted to the Arab state, “was to be administered by the U.N. for the benefit of all faiths.”²⁹⁹ In effect, the Plan amounted to a series of “geographical patchworks of noncontiguous territories, vulnerable corridors and supply lines, exposed communities, and indefensible borders . . . [that, if imple-

²⁹¹ United Nations, *The Question of Palestine and the United Nations* 5 (2002), <http://www.un.dk/seminar/palestine%20book%20june2002.pdf#search='Question%20of%20Palestine%20before%20the%20united%20nations>.

²⁹² Eisner, *supra* note 229, at 226.

²⁹³ MITCHELL G. BARD, MYTHS AND FACTS: A GUIDE TO THE ARAB-ISRAELI CONFLICT 32 (2002).

²⁹⁴ *British Mandate: United Nations, When did the United Nations Become Involved in Palestine?*, PALESTINE FACTS, http://www.palestinefacts.org/pf_man date_un.php (last visited Nov. 5, 2006).

²⁹⁵ Grief, *supra* note 163.

²⁹⁶ *Id.* (emphasis added).

²⁹⁷ Eisner, *supra* note 229, at 227.

²⁹⁸ *Id.*

²⁹⁹ *Id.*

mented] would create a territorial tinderbox and a perpetual temptation to renew the conflict [between Arabs and Jews].”³⁰⁰ After Transjordan, which had represented seventy-seven percent of the land under the original terms of the Mandate, had been separated from the rest of Palestine, only twenty-three percent of the territory remained intact.³⁰¹ Of that “remaining 23%, [the Partition Plan allocated] 56% . . . to a Jewish state, 42% to an Arab state, and an international zone for the holy places in and around Jerusalem was allocated 2%.”³⁰²

3. Did the U.N. Have Legal Authority to Partition Palestine into Jewish and Arab States?

“[T]he U.N. Charter does not authorize the General Assembly to adopt [legally] binding resolutions. Only the Security Council acting under Chapter VII [of the U.N. Charter] has the authority to adopt binding resolutions.”³⁰³ The Palestine Partition Plan was a General Assembly resolution.³⁰⁴ As such, it was merely a recommendation that the voting members of the United Nations could accept or reject.³⁰⁵

The U.N. did not have “an automatic responsibility for territories assigned as Mandates by the League of Nations, and hence, had no automatic authority over Palestine or responsibility for dealing with the conflict between Arabs and Jews within Palestine.”³⁰⁶ On the other hand, the U.N. would have had responsibility to intervene in the conflict in Palestine if it had been perceived as a risk to “international peace and security.”³⁰⁷

³⁰⁰ Richard K. Betts, *The Delusion of Impartial Intervention*, 73 FOREIGN AFFAIRS 20 (1994).

³⁰¹ *Israel's Independence: Role of the UN, What was the Role of the United Nations?*, PALESTINE FACTS, http://www.palestinefacts.org/pf_independence_un_role.php (last visited Nov. 5, 2006).

³⁰² *Id.*

³⁰³ Malvina Halberstam, *The General Assembly Resolution, the ICJ Decision, Another General Assembly Resolution Condemning Israel's Construction of the "Fence": A Tragi-Comedy in Three Acts*, <http://www.conferenceofpresidents.org/Malvina%20halberstam%20article%208-5.doc> (last visited Dec. 11, 2005).

³⁰⁴ Tadmor, *supra* note 241, at 414.

³⁰⁵ *Id.* at 414-15.

³⁰⁶ Howard Adelman, *United Nations' First Failure UNSCOP and the Partition of Palestine*, Chapter 3, at 1-2 (unpublished manuscript, on file at York University Centre for Refugee Studies), *available at* <http://www.yorku.ca/crs/OCEP/ocepdocusments.htm> (last visited Nov. 29, 2005).

³⁰⁷ *Id.* at 2.

[T]hough the United Nations was not the automatic heir of the powers and functions of the League of Nations, in particular its legal authority over mandates, the United Nations was set up with a system of trusteeships which were applicable to three types of territories:

- (a) Territories detached from enemy states as a result of war which were under the temporary governance of the allies;
- (b) Territories voluntarily placed under the trusteeship system by the state responsible for their administration; and
- (c) Former mandate territories where the mandatory authority entered a contractual agreement to transfer the mandate territory to the United Nations trusteeship system.³⁰⁸

Therefore, given the "dissolution of the League of Nations," the only "legal alternatives for dealing with territories under the Mandate" were for Britain to either transfer the "Mandate to a trusteeship by agreement with the United Nations" or to "conclude the Mandate by granting sovereign authority over the territory . . . in accordance with the terms of the Mandate."³⁰⁹

As may be expected, the Jews and Arabs had conflicting ideas concerning the "obligations of the United Nations towards the Palestine Mandate."³¹⁰ "The Jews wanted an explicit undertaking by the United Nations to recognize and preserve the old rights and obligations of the Palestine Mandate, particularly those of Article 6 calling for Jewish immigration and settlement."³¹¹ Conversely, the Arabs argued that "since the Mandate was an agreement of the [now defunct] League of Nations . . . the Mandate itself was null and void" and that the Mandate territories (Palestine, in this case) should be transferred automatically to the people of the territory.³¹² However, Britain's stated response to both sides was that she had no authority under the terms of the Mandate "to award the country either to the Arabs or to the Jews, or even to partition it between them."³¹³

Moreover, Britain had no "intention of entering into . . . a contract" to transfer the Mandatory authority to the U.N., for she had her "own

³⁰⁸ *Id.*

³⁰⁹ *See id.* at 2-3.

³¹⁰ *Id.* at 3.

³¹¹ *Id.*

³¹² *Id.* at 4-5.

³¹³ *Id.* at 8.

interest in maintaining a military presence in Palestine.”³¹⁴ Therefore, Britain crafted a third alternative, where she would continue to hold on to the Mandate, but solicit input from the United Nations on how the Mandate could be administered “in its present form” or could be suitably amended.³¹⁵

Instead of transferring authority to the U.N. or giving independence directly to Palestine, [Britain] asked the U.N. to recommend the terms of a settlement without binding itself to follow the recommendation or transferring the authority over the territory to the U.N. to implement those recommendations.³¹⁶

Britain claimed that her authority “to accept either the Arab or Jewish proposals or to impose [her] own [solution]” “was inadequate, [yet she] insisted on retaining that authority.”³¹⁷ This stance resulted in the following conundrum:

[W]here would the authority come from to impose a solution recommended by the international community? The U.N. had no means to give that authority to Britain unless the Mandate were first transferred to a Trusteeship. . . . [W]ithout a transfer of authority to the U.N., the terms of the Mandate could not be altered under a Trusteeship. The paradox was fundamental.³¹⁸

Theoretically, the United Nations were not restricted to the terms offered by Britain.³¹⁹ Indeed, there were probably at least six options open to the United Nations at that time:

(1) the Security Council could have acted under Chapter VII [of the U.N. Charter] and assumed military responsibility for the Palestine Mandate in the face of the declining British position and a presumed threat to international peace; (2) the United Nations General Assembly could have assumed interim administrative responsibility for the Palestine Mandate; (3) . . .

³¹⁴ *Id.*

³¹⁵ *Id.* at 8-9.

³¹⁶ *Id.* at 8.

³¹⁷ *Id.* at 9.

³¹⁸ *Id.*

³¹⁹ *Id.* at 11.

if Britain was not able to set the conditions for independence for Palestine, [then the United Nations could have required Britain to] enter into a contract with the U.N. to transfer legal Mandatory Authority to the U.N. Trusteeship Council; (4) the United Nations could have unilaterally set conditions for debating the issue of Palestine and offering its recommendations to Britain, requiring Britain to retain the responsibility for their implementation; (5) the United Nations could have negotiated conditions for debating the issue of Palestine and offering its recommendations to Britain; [or] (6) the United Nations could accept the responsibility for making a recommendation on the disposition of the Mandate on whatever conditions and terms Britain presented. It is clear that the U.N. adopted the last option.³²⁰

By neglecting “to obtain any prior commitment from Britain about how [the recommendation provided by the U.N. would be used] or even that Britain would cooperate in implementing the advice received,” the U.N. set itself up for failure.³²¹

[In reality,] Britain was really asking the U.N. to help share the responsibilities without giving the U.N. any authority. Further, Britain would accept U.N. involvement in a solution enforced by Britain only if Britain agreed to the solution. Any requirement of continuing British responsibility and cooperation would be expected if and only if a solution could be reached which was acceptable to Britain, and to the Arabs – for this is what the British “conscience” required at the time.³²²

Since the earlier Arab attempts to have the Mandate terminated and Palestine granted immediate independence had been defeated, the United Nations had two realistic choices – to simply act as a moral voice without legal or physical clout to enforce its decision, or to insist on obtaining full or partial legal authority over the Mandate of Palestine to strengthen its hand in dealing with the conflicting parties. The United Nations plunged ahead to develop a moral voice, presumably because the prob-

³²⁰ *Id.*

³²¹ *Id.* at Chapter 1: The U.N. Perspective, 2 and Chapter 3: Involving the Nations, 10.

³²² *Id.* at Chapter 4: The U.N. as an Impartial Moderator, 1.

lem was urgent and delegates wanted to avoid additional procedural wrangles but, perhaps, because [they] recognized [that] the U.N. would not obtain legal authority.³²³

As it turned out, the moral authority of the U.N. was not much stronger than its legal authority, for "the manner in which partition was [actually] passed" revealed the United Nations as little more than a stage on which "the power politics of the major powers" were played out.³²⁴

4. Jewish Response to Partition

The Jewish Agency agreed to the Partition Plan, in general, but viewed the conditions for Jerusalem with particular caution,³²⁵ since under the provisions of the Plan, Jerusalem was "severed from the Jewish State."³²⁶ The Partition Resolution was a compromise at best,³²⁷ wherein the Zionists "sensed that their best hope in the long run was to be found in a private understanding with their neighbors."³²⁸ However, that would remain a false hope, for the Arabs were not in the mood to bargain.³²⁹

5. Arab Response to Partition

"Despite the fact that 77 percent of [eastern] Palestine (Jordan) promised to the Jews was given to the Arabs, the Palestinian Arabs of the West Bank of Jordan resisted the establishment of the Jewish national home in [western] Palestine (the remaining 23 percent),"³³⁰ and the Arab states unanimously refused to be bound by the U.N. Resolu-

³²³ *Id.* at 3.

³²⁴ *Id.* at Chapter 6: The Partition Decision, 35-36.

The manner in which partition was passed was deemed by some observers to have seriously damaged even further the one source of [clear] authority the United Nations did have -- its moral authority. . . . [T]he discussion [on partition] in the General Assembly went on in a deplorable atmosphere of passion, frivolity, and confusion, crowned by a vote which the Arabs still regard as irregular if not null and void. *Id.*

³²⁵ Eisner, *supra* note 229, at 228.

³²⁶ BARD, *supra* note 293, at 32.

³²⁷ Eisner, *supra* note 229, at 228.

³²⁸ SACHAR, *supra* note 276, at 285.

³²⁹ *Id.*

³³⁰ BEN-GAD, *supra* note 53, at 255.

tion.³³¹ Questioning the authority of the U.N. to even recommend partition in the first place, the Arabs also claimed that the Balfour Declaration and British Mandate were invalid.³³² The heart of the matter would seem to be traceable back to the same mindset the Arabs had exhibited toward partition under the Peel Plan³³³ (i.e., that the mere existence of a Jewish state under any conditions was an “unacceptable compromise of Arab sovereignty over all of Palestine”).³³⁴ Put simply, unless the Palestinian Arabs were offered Palestine in its entirety, they “did not want to establish a Palestinian state. Instead, they wanted to prevent the establishment of a Jewish state.”³³⁵

6. British Response to Partition

It would be reasonable to expect that Britain would have been willing to at least *cooperate* with the United Nations after unceremoniously dropping the tangled mess of the Mandate into their lap. Yet, Britain made it abundantly clear that she did not want to be associated with the U.N. Partition Plan in any way.³³⁶ Basing her dissatisfaction on the fact that the Plan was not mutually agreeable to both Arabs and Jews, Britain declined to help implement any aspect of the Plan.³³⁷ Moreover, she refused to agree to an incremental “transfer of authority over Palestine to a United Nations commission,”³³⁸ claiming such action would generate disorder, and even blocked UNSCOP members from entering the region.³³⁹ In the meanwhile, it was Britain herself who ended up “foster[ing] disorder.”³⁴⁰

The single most notable feature of mandatory noncooperation by late 1947 was Britain’s undisguised partiality for the Arab military effort. The embargo on Jewish immigration and Jewish weapons acquisition was stringently maintained. The Jews were denied the right to organize a militia . . . All the while,

³³¹ Tadmor, *supra* note 241, at 407.

³³² Eisner, *supra* note 229, at 225.

³³³ BARD, *supra* note 293, at 35.

³³⁴ Eisner, *supra* note 229, at 225.

³³⁵ BEN-GAD, *supra* note 53, at 225.

³³⁶ Charles Bryan Baron, *The International Legal Status of Jerusalem*, 8 TOURO INT’L L. REV. 1, 7 (1998).

³³⁷ *Id.*

³³⁸ *Id.* at 7-8.

³³⁹ *Id.* at 8.

³⁴⁰ *Id.*

Britain continued to sell weapons to Iraq and Transjordan under its treaty relations with those states.³⁴¹

What was the basis for Britain's pro-Arab stance? She was in the midst of "negotiating a new treaty with Egypt and seeking Arab goodwill as a means of protecting British oil interests. The notion of participating in any scheme that was objectionable to the Arabs, even a plan enjoying international sanction, was unthinkable."³⁴² Another reason for Britain's behavior during this time was that she had developed close ties with Transjordan – so close, in fact, that the commanding officer of Transjordan's military forces (later known as the "Arab Legion") was a British officer.³⁴³ Also, the extremist activities of the Irgun against the British had increased to an all-time level, resulting in acts of violence such as blowing up a wing of the King David Hotel (which housed several British government offices).³⁴⁴ Added to that was the fact that "Jewish refugee traffic and Zionist propaganda had shamed Britain before the world."³⁴⁵ As a result, Britain had developed an attitude of bitterness toward the Jews.³⁴⁶

7. The United States' Last Minute Effort to Ditch the Partition Plan

The United States had initially endorsed the Partition Resolution.³⁴⁷ However, as tensions escalated, the United States realized that all was not going according to plan.³⁴⁸ In fact, no sooner was "the resolution approved than State Department officials began discreetly qualifying their government's pro-Zionist stance,"³⁴⁹ while also suspending the "licensing of arms shipments" destined for the Jewish state.³⁵⁰ In the meantime, the Arabs applied pressure on Washington and United States oil companies to quietly abandon partition.³⁵¹ That ploy was very effective, resulting in a complete policy shift, wherein the United States suddenly announced that "partition was no longer

³⁴¹ SACHAR, *supra* note 276, at 297.

³⁴² *Id.* at 285.

³⁴³ Edward S. Hayes: Medals of the Hashemite Kingdom of Jordan, <http://faculty.winthrop.edu/haynese/medals/jordan.html> (last visited Dec. 12, 2005).

³⁴⁴ SACHAR, *supra* note 276, at 264-67.

³⁴⁵ *Id.* at 296.

³⁴⁶ *Id.*

³⁴⁷ *Id.* at 301.

³⁴⁸ *Id.*

³⁴⁹ *Id.*

³⁵⁰ *Id.*

³⁵¹ *Id.*

possible”³⁵² and that “Palestine ought to be put under the control of the United Nations.”³⁵³

8. Jewish Response to Trusteeship

The United States’ abrupt policy shift struck terror in the hearts of the Jewish Agency, for “under trusteeship, international police efforts would be used against the Jews.”³⁵⁴ Their initial response was to flood Washington with “wires and petitions” in an effort to persuade President Truman to change his position.³⁵⁵ The Jewish National Homeland, which had come so close to being born, was about to be ruthlessly shoved back into the womb.³⁵⁶

However, where crisis and necessity intersect, courage is born. Within twenty-four hours of withdrawal of United States support for partition, the leader of the Jewish Agency, David Ben-Gurion³⁵⁷ challenged the American proposal, declaring, “[i]t is we who will decide the fate of Palestine. We cannot agree to any sort of [t]rusteeship, permanent or temporary. The Jewish state exists because we defend it.”³⁵⁸ As such, the Jewish Agency decided to take hold of the reins of destiny and “plan for the establishment, if necessary without international support, of a provisional government.”³⁵⁹

Secretary of State George Marshall begged Ben-Gurion to delay proclaiming statehood because he believed that the Jewish state would be “quickly destroyed by the overwhelmingly superior forces of the Arab [s]tates.”³⁶⁰ As such, Secretary Marshall urged Ben-Gurion to wait until the “political climate” grew more favorable to declare independence, adding that perhaps international support could be garnered to implement some form of partition in the future.³⁶¹ But the birth pangs had begun in earnest, making it too late to turn back. Ben-Gurion described it as follows:

³⁵² GILBERT, *supra* note 117, at 165.

³⁵³ *Id.*

³⁵⁴ SACHAR, *supra* note 276, at 303. *See also* Adelman, *supra* note 306, Chapter 8, at 9.

³⁵⁵ SACHAR, *supra* note 276, at 303.

³⁵⁶ *See generally id.* at 301.

³⁵⁷ Encyclopedia Britannica Online, <http://www.britannica.com/ebc/article9357017> (last visited Nov. 3, 2006).

³⁵⁸ GILBERT, *supra* note 117, at 165.

³⁵⁹ *Id.*

³⁶⁰ DAVID BEN GURION & MOSHE PEARLMAN, BEN GURION LOOKS BACK: IN TALKS WITH MOSHE PEARLMAN 10 (1970).

³⁶¹ *Id.*

On the face of it, such advice was not to be dismissed lightly. Yet it could not deflect us from our chosen course. For Marshall could not know what we knew – what we felt in our very bones: that this was our historic hour; if we did not live up to it, through fear or weakness of spirit, it might be generations or even centuries before our people were given another historic opportunity – if indeed we would be alive as a national group. However grave might be the repercussions of the decision to declare our independence, I knew that the future would be infinitely worse for my people if we did NOT do so.³⁶²

IV. MODERN STATE OF ISRAEL PROCLAIMS INDEPENDENCE

“In the midst of rioting on May 14, 1948,”³⁶³ David Ben-Gurion, in his capacity as Prime Minister and Minister of Defense of the newly created state, to be called Israel, proclaimed her independence.³⁶⁴ As such, tiny Israel was born into a rough neighborhood, surrounded by enemies ready to close in on her.³⁶⁵ The following day, the British departed,³⁶⁶ and five angry Arab nations (Syria, Lebanon, Iraq, Egypt and Transjordan) “invad[ed] Israel from all sides.”³⁶⁷ The fight for possession of Israel’s inheritance had begun in earnest, even as it continues to this day.

V. CONCLUDING REMARKS

A. The Roadmap to Peace: Been There, Done That

The current “Roadmap to Peace,”³⁶⁸ though touted as a modern idea, is nothing new. It is, in fact, history repeating itself.³⁶⁹ As for the

³⁶² *Id.*

³⁶³ RORABACK, *supra* note 5, at 28.

³⁶⁴ GILBERT, *supra* note 117, at 186.

³⁶⁵ *See* RORABACK, *supra* note 5, at 29.

³⁶⁶ THE ISRAEL-ARAB READER, *supra* note 100, at 81.

³⁶⁷ RORABACK, *supra* note 5, at 29.

³⁶⁸ *See generally Roadmap to Solution of Israeli-Palestinian Conflict*, U.S. DEP’T OF STATE, (Apr. 30, 2003), available at <http://usinfo.state.gov/mena/Archive/2004/Feb/04-725518.html> [hereinafter *Roadmap to Peace*].

³⁶⁹ The Roadmap to Peace is merely the most recent scene in the drama of robbing Israel of the land originally accorded to her by the League of Nations Mandate. *See* Grief, *supra* note 163. Earlier “scenes” consisted of the amputation of Transjordan and later, the United Nations Partition Resolution. *See generally id.*

two-state agenda of the Roadmap,³⁷⁰ the Palestinian Arabs could have had an independent Palestinian state nearly seventy years ago, as early as the Peel Commission Report;³⁷¹ yet, they flatly refused the offer and would have nothing to do with it.³⁷² In stubborn defiance, adopting an attitude of “all or nothing,” the Arabs considered the idea of partition completely unacceptable, because to accept partition would mean to accept the existence of a Jewish state, and accepting the existence of a Jewish state would mean less than total “Arab sovereignty over all of Palestine.”³⁷³ Ten years after the Peel Commission Report, the opportunity for an independent Palestinian state presented itself yet again in the form of the U.N. Partition Resolution.³⁷⁴ Just as before, “the Arabs . . . categorically rejected the . . . Plan, and declared their intention of preventing its implementation by force.”³⁷⁵

Had [t]he Arabs accepted the U.N. partition, there would have been a large, contiguous Palestinian state alongside a Jewish state. The two-state solution that is now the international consensus would have been achieved without bloodshed. Surely anyone who now accepts the two-state solution must place the blame for it not being implemented in 1947 (or even earlier in 1937 [under the recommendation of the Peel Commission]) on the Arab and Palestinian leaders who rejected a Palestinian state when it was offered to them.³⁷⁶

Interestingly enough, the same cast of “actors” who starred in the earlier scenes (Britain and the United States) have now re-gathered on the stage for a repeat performance in the “Roadmap to Peace.” See generally U.S., U.K. to Publish “Roadmap” to a Palestinian State, PBS ONLINE NEWSHOUR (Apr. 7, 2003), http://www.pbs.org/newshour/updates/roadmap_04-08-03.html. See also *Roadmap to Peace*, *supra* note 368.

³⁷⁰ See generally *id.*

³⁷¹ Eisner, *supra* note 229, at 224.

³⁷² *Id.* at 225.

³⁷³ See generally *id.*

According to Muslim doctrine, any land once conquered by Muslims becomes *Dar Al Islam* (House of Islam). It can never revert to “infidels.” By this doctrine[,] all of Israel is *Dar al Islam* because Arab invaders had driven out the Byzantines in the seventh century . . . [Taken to its logical conclusion then,] [b]y this doctrine, [the nation of] Spain is also “Dar-al-Islam.”

Tzemach News Service, *The Tines of the Forked Tongue*, <http://www.tzemach.org/fyi/docs/speak/topsy-turvy-3.htm> (last visited Aug. 13, 2006).

³⁷⁴ Eisner, *supra* note 229, at 227.

³⁷⁵ *Id.* at 228.

³⁷⁶ DERSHOWITZ, *supra* note 248, at 69.

Consistent with this precedent, the Arabs passed up yet another prime opportunity to form an independent Palestinian state, when as a result of Israel's armistice agreements between Egypt and Jordan in 1949, the Gaza Strip and the West Bank – territories intended by the U.N. Partition Plan for the Arab Palestinian state – were left under Egyptian and Jordanian occupation, respectively.³⁷⁷ Those territorial boundaries were observed for nearly two decades (until the Six Day War of 1967), and the Arabs made no effort to establish a Palestinian state in either the Gaza Strip or the West Bank during that time.³⁷⁸

However, there is a fundamental point which the international community continues to overlook: the fact that an independent Palestinian state *was* created (and *continues to exist*) in the form of the Hashemite Kingdom of Jordan.³⁷⁹ As Yitzhak Shamir, the former Prime Minister of Israel, explains:

There was little we [Israel] were not ready to do to achieve peace. Attesting to that was the very fact that we accepted the U.N. General Assembly resolution on the establishment of a Jewish state in ten percent of the area originally allotted to a national Jewish homeland by the mandate of the League of Nations. But the Arabs around us found unacceptable the existence of an independent non-Arab state in any area, however small, of what had once been part of the Arab empire, and they continued to war against us. . . . Today, a little less than one-quarter of the area of the original Palestine mandate is in our hands. The other three-quarters, now called the Hashemite Kingdom of Jordan, is in Arab hands. Jordan, whose population consists of people from both sides of the Jordan River is, therefore, a Palestinian Arab state in every respect except in name. When King Hussein's grandfather proclaimed his independence from Britain, he wanted to call his country Palestine. The British Foreign Office dissuaded him. King Hussein himself, and all other Palestinian leaders, have stated that the Arabs on both sides of the river are one nation. And indeed, two-thirds of Jordan's population is from western Palestine, as are

³⁷⁷ See *State of Israel: Historical Survey*, in *ENCYCLOPEDIA JUDAICA*, *supra* note 34.

³⁷⁸ See *id.*

³⁷⁹ Yitzhak Shamir, *Israel at 40: Looking Back, Looking Ahead*, 66 *FOREIGN AFFAIRS* 574, 576 (1987-1988).

most of the members of its parliament and the best-known prime ministers and members of the government. Stating these facts does not, of course, imply opposition on our part to King Hussein's rule in Jordan. But, clearly, another Palestinian state between Jordan and Israel, in the 2,000 square miles of Judea and Samaria - an area the size of a large county in the western United States - makes no sense politically, cannot be viable economically and can only serve as a terrorist, irredentist base from which both Israel and Jordan will be threatened.³⁸⁰

Indeed, the fact Transjordan was regarded as part of Palestine³⁸¹ was confirmed by none other than King Abdullah of Transjordan, who declared in April 1948 that "Palestine and Trans-Jordan are one, for Palestine is the coastline and Trans-Jordan the hinterland of the same country."³⁸² Similarly, the Prime Minister of Jordan, "Hazza al-Majali confirmed: 'We are the army of Palestine . . . the overwhelming majority of the Palestine Arabs . . . are living in Jordan.'"³⁸³

As such, the two-state agenda of the Roadmap to Peace³⁸⁴ was accomplished³⁸⁵ long before the Quartet (consisting of the United States, European Union, Russia, and the United Nations)³⁸⁶ combined for the apparent purpose of finishing up what Britain and the League of Nations (later United Nations) had begun decades ago: violating the agreements allocating Palestine—all of Palestine—as a homeland for the Jewish people.³⁸⁷ Moreover, the stated Roadmap initiative of promoting "a comprehensive peace on all tracks"³⁸⁸ is not compatible with the concept of establishing "a second Palestinian Arab state to the west of the . . . Jordan."³⁸⁹ For as Yitzhak Shamir explained, the reality of such a scenario "is a prescription for anarchy, a threat to both Israel and Jordan, and a likely base for terrorist . . . penetration."³⁹⁰ With that in mind, one cannot help but question the motives of the

³⁸⁰ *Id.*

³⁸¹ Zell, *supra* note 111, at 81.

³⁸² *Id.* at 86.

³⁸³ *Id.*

³⁸⁴ See generally *Roadmap to Peace*, *supra* note 368.

³⁸⁵ See generally Shamir, *supra* note 379, at 576.

³⁸⁶ *Id.*

³⁸⁷ See generally Grief, *supra* note 163.

³⁸⁸ *Roadmap to Peace*, *supra* note 368.

³⁸⁹ Yitzhak Shamir, *The Middle East: Israel's Role in a Changing Middle East*,

60 FOREIGN AFFAIRS 789, 791 (1982).

³⁹⁰ *Id.*

Quartet as they serenade Israel with more promises of land for peace.³⁹¹ Taken to its logical end, their land-for-peace “melody” has the faint ring of the Plan of Phases adopted by Arafat’s Palestine Liberation Organization in 1974, wherein the first phase compels Israel to “relinquish territory that could be used subsequently to drive the Jews into the sea.”³⁹² Although the civilized western mind would tend to discount such statements as mere extremist rhetoric, the agenda to “drive the Jews into the sea” is, in fact, an established Arab goal, first executed by Egypt as Pharaoh’s armies pursued the Israelites into the Red Sea.³⁹³ Thousands of years later, in 1967, Egypt resurrected that agenda, and in concert with Syria, positioned their armies to “launch an unprovoked attack” on Israel in an effort to make good on Gamal Abdul Nasser’s vow to “drive the Jews into the sea.”³⁹⁴

NPR Diplomatic Correspondent Mike Shuster report[ed] . . .

[T]he mood in the Middle East was ugly. . . . Israel, independent since 1948, was surrounded by Arab states dedicated to its eradication. Egypt was ruled by Gamal Abdel Nasser, a firebrand nationalist whose army was the strongest in the Arab Middle East. Syria was governed by the radical Baathist Party, constantly issuing threats to push Israel into the sea. The Israelis attacked Egypt first, on June 5, 1967, in what most historians say was a defensive move. . . . After six days of war, Israel had seized all of the Sinai and Gaza from Egypt, the West Bank and all of Jerusalem from Jordan, and the Golan Heights from Syria.³⁹⁵

³⁹¹ See generally *Roadmap to Peace*, *supra* note 368.

³⁹² Center for Security Policy, Decision Brief No. 02-D 17, ‘*Mr. Arafat, Renounce This Map*,’ http://www.centerforsecuritypolicy.org/index.jsp?section=papers&code=02-D_17 (last visited Oct. 16, 2005).

³⁹³ See Rachel Neuwirth, *Israel May be Compelled to Preempt*, Arutz Sheva – IsraelNationalNews.com (Aug. 10, 2004), <http://www.israelnationalnews.com/print.php3?what=article&id=4036>. Note the agenda of driving the Jews into the sea was not being carried out by a terrorist fringe group, but rather by the national armies of Egypt and Syria. *Accord Exodus* 14:5-25 (New Jewish Publication Society Translation).

³⁹⁴ Neuwirth, *supra* note 394.

³⁹⁵ Mike Shuster, *The Mideast: A Century of Conflict, Part 4 of NPR Diplomatic Correspondent Mike Shuster’s series on the 1967 Six Day War*, National Public Radio (Oct. 3, 2002) (transcript available at <http://www.npr.org/news/specials/mideast/history/history4.html>).

Six years later, the Arab agenda to push Israel into the sea reared its head yet again.

On October 6, 1973 – the Jewish Day of Atonement, Yom Kippur – Egyptian and Syrian forces staged a surprise attack on Israeli Forces situated on the Suez Canal and the Golan Heights. . . . The intensity of the Egyptian and Syrian assault, so unlike the situation in [the Six Day War], rapidly began to exhaust Israel's reserve stocks of munitions. With Israel threatened by catastrophe, Prime Minister [Golda] Meir turned to the United States for aid Washington's reluctance to help Israel changed rapidly when the Soviet Union launched its own resupply effort to Egypt and Syria. President Nixon countered by establishing an emergency supply line to Israel, even though the Arab nations imposed a costly oil embargo, and various American allies refused to facilitate the arms shipments.³⁹⁶

It is ironic that, thirty years later, the United States, Israel's most important ally, should be spearheading this most recent plan to drive the Jews into the sea (i.e., the Roadmap to Peace).³⁹⁷

B. The Arab Rejection of Palestinian Arabs

The Palestinian refugee problem would not exist if the Arabs had accepted the U.N. Partition Plan.³⁹⁸ "The Arab aggression against Israel resulted in the Arab refugee problem."³⁹⁹ It is readily accepted that Palestinian Arabs are part of the "Arab family," as confirmed by "the late military commander of the PLO as well as member of the PLO Executive Council, Zuhair Muhsin," who declared: "There are no differences between Jordanians, Palestinians, Syrians and Lebanese. We are all part of one nation."⁴⁰⁰ Yet, why have all of the Arab nations, with the exception of Jordan, refused since 1948 to draw the Palestinians in and give them citizenship within their own (Arab) bor-

³⁹⁶ Encyclopaedia Britannica Online, *The Yom Kippur War*, <http://www.britannica.com/eb/article-219432> (last visited Aug. 29, 2006).

³⁹⁷ See generally U.S., U.K. to Publish "Roadmap" to a Palestinian State, *supra* note 368.

³⁹⁸ BEN-GAD, *supra* note 53, at 249.

³⁹⁹ *Id.*

⁴⁰⁰ THE PEACE ENCYCLOPEDIA, *Palestine: Who are the Palestinians?* <http://peace.heebz.com/palestine.html> (last visited Aug. 29, 2006).

ders?⁴⁰¹ Also, why did Jordan, which had initially granted citizenship to the Palestinian refugees after 1948, revoke the Jordanian citizenship of all the Arabs living in Judea, Samaria, and Gaza in 1988?⁴⁰² Again, we turn to the statements of former PLO Commander Muhsin, who explained: "It is only for political reasons that we carefully underline our Palestinian identity . . . [Y]es, the existence of a separate Palestinian identity serves only tactical purposes. The founding of a Palestinian state is a new tool in the continuing battle against Israel."⁴⁰³ Put simply, "[t]he Arab states preferred to maintain the Palestinian refugees in abject misery as a vehicle to torment, embarrass and undermine support for the Jewish state."⁴⁰⁴ The Arab nations would not agree to take in the Palestinians because it has been more effective to use the Palestinians to keep Israel in an uproar, agitated from the inside out.⁴⁰⁵ In truth, references to the plight of the "poor Palestinians" are quite accurate, for indeed, they are poorer than they know. Abandoned by their Arab brethren in neighboring lands, the Palestinians have been reduced to mere pawns on a chessboard in the ongoing quest to rid the map of Israel, whose Jewish population represents only about two and a half percent of the population in the Middle East, and sits surrounded and dwarfed by twenty-one Arab states, whose total land mass is over 640 times her size.⁴⁰⁶

C. The Evil Twins: Duplicity and Complicity

The Mandate years were marked by British duplicity and betrayal, resulting in violations of international law that posed a considerable stone of stumbling on the long, rocky road to the modern state of Israel.⁴⁰⁷ Great Britain, as administrator of the Mandate, was openly complicit in her abuse of power, while other nations (the member states of the League of Nations, which had agreed to the terms of the British Mandate) merely stood by and watched from a distance.⁴⁰⁸ As

⁴⁰¹ Tanya Kramer, *The Controversy of a Palestinian "Right of Return" to Israel*, 18 ARIZ. J. INT'L & COMP. L. 979, 1001 (2001).

⁴⁰² BINYAMIN "BENNY" ELON, *GOD'S COVENANT WITH ISRAEL* 102-03 (Dr. Larry Keefauver et al. eds., 2005).

⁴⁰³ THE PEACE ENCYCLOPEDIA, *supra* note 401.

⁴⁰⁴ Kramer, *supra* note 402.

⁴⁰⁵ See generally BEN-GAD, *supra* note 53, at 244.

⁴⁰⁶ *Id.* at 243-44, 274. "The Jewish population in Israel is about 5.1 million. The Arab population in the Arab states is over 200 million." *Id.* at 274.

⁴⁰⁷ Wilner, *supra* note 245, at 315. See generally Grief, *supra* note 163.

⁴⁰⁸ Wilner, *supra* note 245, at 313-14.

a result, Jewish land and lives were lost.⁴⁰⁹ Transjordan, the area east of the Jordan River, which had represented seventy-seven percent of the land originally accorded to the Jewish National Home by the League of Nations Mandate, was amputated from the rest of Palestine and given over to the Arabs, leaving only twenty-three percent of the (Jewish) territory intact.⁴¹⁰ Then, just as Jews were fleeing for their lives from Hitler's occupation of Europe, the British engineered (what amounted to) a dramatic squeeze play, placing unauthorized restrictions on Jewish immigration into Palestine and unauthorized limitations on transfers of land from Arabs to Jews.⁴¹¹ When it became clear to Great Britain that she was boxed in between pressure from the international community to establish a Jewish homeland, and extreme opposition to the British occupation of Palestine from both Arabs and Jews, she abruptly dropped the Mandate like a hot potato into the inexperienced lap of the United Nations.⁴¹²

The mangled results of Great Britain's administration of the Mandate required a level of wisdom and experience that clearly exceeded the capabilities of the newly formed United Nations.⁴¹³ Moving in zeal to provide a quick fix to the situation, the U.N. General Assembly overstepped the bounds of its authority by passing the Partition Plan. The Plan, carving up the remaining twenty-three percent of the Jewish homeland into three noncontiguous territories having indefensible borders, left only fifty-six percent of that reduced area for the Jewish state

⁴⁰⁹ PALESTINE FACTS, *supra* note 257. See generally Grief, *supra* note 163.

⁴¹⁰ PALESTINE FACTS, *supra* note 301. It is worth noting that, according to Scripture, the land ultimately belongs to God, such that not even Israel may sever any portion of the land for transfer to another. See *Genesis* 17:8 and *Leviticus* 25:23 (New Jewish Publication Society Translation). With that in mind, perhaps those nations now pressuring Israel to give up the West Bank and Jerusalem would do well to consider the following Scriptures:

[I]n those days and in that time, when I restore the fortunes of Judah and Jerusalem, I will gather all the nations and . . . contend with them over My very own people, Israel, which they scattered among the nations. For they divided My land amongst themselves

Joel 4:1-2 (New Jewish Publication Society Translation). "[W]hen all the nations of the earth gather against [Jerusalem]. . . I will make Jerusalem a stone for all the peoples to lift; all who lift it shall injure themselves." *Zechariah* 12:3 (New Jewish Publication Society Translation).

⁴¹¹ See Eisner, *supra* note 229, at 225.

⁴¹² See generally Tadmor, *supra* note 241, at 407.

⁴¹³ See generally History of the United Nations, <http://www.un.org/aboutun/unhistory> (last visited Aug. 14, 2006). The U.N. had only been in existence for two years when it agreed to assume the "baggage" of the British Mandate. *Id.*

— a mere sliver of the land that had been originally accorded by the British Mandate.⁴¹⁴

D. Israel, the Canary in the Mineshaft

In all probability, during the Mandate years, the more “sophisticated” global powers regarded Palestine as little more than a troublesome strip of burning sand in the middle of nowhere. Great Britain’s violations of the Mandate were, after all, something that was happening “over there” in a place far removed from the western concept of civilization. Added to the mix was the fact that World War II was heating up, causing the Allied Nations to evaluate world situations in terms of their impact on the war effort.⁴¹⁵ Although those factors may explain *why* events occurred as they did during the Mandate years, they certainly did not excuse the member states of the (former) League of Nations from their responsibility to address Britain’s flagrant violations of the Mandate to which they had collectively agreed.⁴¹⁶ However, the British Mandate is now obsolete, the League of Nations is no more, and nearly sixty years have passed since the Jewish state came into existence. So what lasting impact do those events have on us today? Why should it matter if violations that were swept under the rug during the Mandate years (such as the illegal transfer of land away from the Jewish homeland) are now sanctioned in present day initiatives, such as the Roadmap to Peace?⁴¹⁷ Perhaps such questions are best answered by what may be one of the most profound prophetic statements of our time, uttered (albeit in another context) by none other than Senator Hillary Rodham Clinton, who, in a speech at the Conference of Presidents of Major Jewish Organizations held in Jerusalem in 2002, openly declared: “I believe it is important for Americans to recognize that Israel is like a canary in a mine shaft[.] [W]hat matters to Israel at this moment — right now — will largely determine what happens to us and the rest of the world.”⁴¹⁸

⁴¹⁴ See generally PALESTINE FACTS, *supra* note 301.

⁴¹⁵ See generally Eisner, *supra* note 229, at 225.

⁴¹⁶ See generally Grief, *supra* note 163.

⁴¹⁷ See generally Roadmap to Peace, *supra* note 368.

⁴¹⁸ Hillary Clinton, Address at the Conference of Major Jewish Organizations (February 23, 2002) (transcript available at http://clinton.senate.gov/speeches/020223_Israel.html). It is worth noting, according to Scripture, the terms of the Biblical Mandate established over 3800 years ago, extending from the Nile to the Euphrates, and far exceeding the provisions of the defunct British Mandate, is still wholly in force and will eventually be fulfilled, thus restoring the complete measure

of Israel's geographical inheritance. *See Genesis* 15:18-21 and 17:7-8 (New Jewish Publication Society Translation). *See generally* Grief, *supra* note 163. In the meanwhile, the specific chain of events that will bring about that dramatic conclusion, as well as the timing in which those events will occur, remain obscured from our vision – as history yet to be made.