

# **Self-Determination and the Israeli-Palestinian Conflict**

In the adjustment of Jews and Arabs, one-sided bargains  
are to be dreaded. They spell disaster for the future.

Alfred North Whitehead, 1937

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### 1. INTRODUCTION

Much of the current political instability in the Middle East stems from the conflict between Israeli Jews and Palestinian Arabs. At issue is a struggle over territory, each group claiming possession of the region traditionally known as Palestine. The West is familiar with the vision of Palestine as a "promised" land with which Jews have maintained an association for over 3000 years, though Jews governed no portion of it from the time of the Roman conquest in 65 B.C. till 1948 when, through the success of the Zionist movement, the state of Israel was established. Yet the historical association of Palestinian Christians and Muslims to Palestine is equally deep, whether as the descendents of ancient Canaanites, Phoenicians, Jews, Philistines, or Arabs. Since the rise of Islam in the 7th Century A.D., Palestine had been part of the larger Islamic world under the rule of various Islamic governments, even though no independent sovereign Arab or Muslim state was ever established there. Moreover, the strategic location of Palestine makes it a vital land bridge linking the Asian and African portions of the Arab and Islamic worlds, favoring its political linkage to larger units.

Matters are complicated by the religious significance of Palestine to three major religious traditions, Jewish, Christian, and Islamic, each claiming descent from the monotheistic faith of

Abraham. Religious sentiment generates a connection to territory that transcends purely legal and political concerns, and the intense emotional attachments to Palestine and Jerusalem have given the conflict between Israelis and Palestinians significance far beyond that of usual regional disputes. As W. T. Stace wrote in 1947, the question of Palestine "is not an isolated issue. It touches the future of the whole world" (in Khalidi 1971, 641).

The notion of *self-determination* has been invoked to shed light on the struggle. Some view it in terms of rival claims by distinct peoples, each wishing to determine its destiny in Palestine, thus, as a tragic clash between competing *rights* (e.g., Dinstein 1980, Gerner 1991).<sup>i</sup> But not all find this image appealing. Apart from the members of each group who deny that the other has any rights of self-determination in Palestine at all, a construal of the conflict as a clash of competing rights of self-determination obscures its evolution while blocking proposals for its just solution. At best, it merely dramatizes the difficulty without resolving it. Still, the concept of self-determination remains relevant in understanding the critical historical and normative dimensions, for it is employed in justifying present hostilities, explaining present obligations, and proposing viable solutions. The following is an examination of its application to this very troublesome conflict.

## 2. SELF-DETERMINATION IN INTERNATIONAL LAW AND MORALITY

There is a considerable debate about the status of self-determination in international law, a debate made even more timely by recent events in the post Cold War era, as various groups, peoples, nationalities, renew calls for self-determination within given territories. The unresolved questions are several (see Emerson 1971, Paust 1980, Pomerance 1984), including the following: What is self-determination? What is called for by a principle or right of self-determination? Is self-determination a right, a formative or directive principle to be used as a basis for establishing statutes, or a moral or political principle to be used in guiding debates over

sovereignty in disputed territory? When, and to whom, does self-determination apply, that is, what are the proper units or beneficiaries of self-determination? What are the mechanisms for implementing self-determination?

The mere existence of a debate over self-determination does not diminish its normative or legal relevance; the concept has been prominent in efforts to secure lasting peace in the aftermaths of each of the world wars and in the subsequent breakup of European colonial empires. It is present in agreements having significance for international law, for example, in Article 1 of the United Nations Charter which calls upon member nations "to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace." However, the exact status accorded self-determination by this terminology remains a matter of debate. That a right is recognized is indicated in the French version "du principe de l'égalité de droits des peuples et de leur droit à disposer d'eux-mêmes," which explicitly refers to a right (*droit*). Again, the language of "right" occurs in a number of General Assembly Resolutions, for example, in GA Res. 1514 of Dec. 14, 1960 and GA Res. 2625 of Oct. 24, 1970, and, again, in Article 1 of the International Covenant on Civil and Political Rights passed by the General Assembly on Dec. 16, 1966:

All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development.

While not all legal scholars take these provisions to settle the issue,<sup>ii</sup> it remains that post World War II diplomacy has repeatedly invoked the concept of self-determination to justify independence movements in regions which had previously been under foreign domination.<sup>iii</sup> This is enough to establish its normative importance for international relations, if not its status as a *jus cogens* principle of international law.<sup>iv</sup>

It is at the level of *moral* foundations for international law and diplomacy that our present discussion of self-determination is anchored.<sup>v</sup> The concern is not whether self-determination is enshrined in international law, and if so, how, nor whether a principle of self-determination has any effect on the actual policies and practices of nations. The issue is whether there is justification for taking some such principle as a normative basis for settling questions of international law and international relations.

Some preliminary problems must be taken up. Most directly, if self-determination is to involve a people's entitlement to political autonomy or popular sovereignty within a given territory, then at least three elements stand to be clarified: (i) the group of people in question, (ii) the territory at issue, and (iii) the connection that makes that group entitled to self-determination there. There is considerable vagueness on each account. For example, while some might think it easiest to first delineate the group in question, there is little agreement about the identifying criteria for the appropriate collectives, e.g., on what a "people" is (Emerson 1971, 462). If not defined in regional terms, then some sort of national, cultural, or linguistic similarities might seem relevant, but these are as vague as they are controversial (see Section 3 below). Perhaps all that is necessary is that members of the group share enough moral ideals that would sustain their adherence to the same political and legal institutions, thus, minimally, that the group possesses the potential for constituting a "politically coherent" community (Ofuatey-Kodjoe 1977, 156-9). Even if this could be determined, there remains the problem of fixing the region in which a community is entitled to be self-determining. No precise individuating conditions for "territories" or "regions" have been agreed upon. Historical boundaries are no doubt important, as are geographic-economic considerations, but so are the historic and emotional attachments peoples have to given regions, including the aspirations of both the minorities which dominate sub-regions of historically-recognized territories and the majorities which dominate larger regions within which these territories fall. Could these matters be settled, there is still the

difficulty of determining the appropriate link of community to territory; it is fair enough to demand that the collective consist of established inhabitants or legitimate residents of the territory in question, but deciding who is a "legitimate resident" is a delicate matter, particularly concerning immigrants and those whose refugee status is not voluntary. Plainly, we do not yet have a precise formula for deciding when a given region or people is entitled to self-determination.

Illuminating algorithms are hard to come by, but some advance can be made by describing distinct, though overlapping, concepts of self-determination, each emphasizing different elements in the overall call for political autonomy or popular sovereignty. At least three different notions and correlated principles can be identified:

*Regional Self-Determination* -- a demand that inhabitants of well-established regions, territories, or states be allowed to settle for themselves all questions of sovereignty over that territory, even if they should choose to be politically autonomous. Typically, regional self-determination is demanded when a territory is under foreign domination or, for one reason or another, unsettled or disputed, but it is also conceived as a continuing right of peoples within established state boundaries.

*Democratic Self-Determination* -- the idea of self-government by popular consent, requiring that the inhabitants of a territory ought to be democratically self-governing or that the social and political institutions which regulate public life be established through broadly "democratic" procedures. Minimally, this requires that the institutions be both founded and sustained by democratic means, hence, by majority preference, though it is a further step to insist that these institutions themselves operate on democratic principles, thus, that a self-determining unit be a "democracy." Taking it, would mandate a democratic form of government in order for self-determination to be realized.

*National Self-Determination* -- the conception that a nation or people has a right to

constitute itself as an independent sovereign state, a view popularized under the 19th Century German socialists' call for the *Selbstbestimmungsrecht* (sovereign right) of peoples (Umozurike 1972, 3). At its crux is the concept of a "nation" or a "people," viz., a group whose members self-consciously share a cultural identity that is vital in determining the self-identity of each (Margalit and Raz 1990). Historically, this view has been used not only to justify the right of existing nation-states to determine their own form of government and destiny, but to pave the way for subordinate national groups to claim rights of secession from larger political unities. It also strengthened the call for cultural, ethnic, religious, and racial homogeneity within a state, as such, providing an atmosphere in which 20th Century nationalist movements could flourish.

Various combinations of these three conceptions yield still richer notions of self-determination, and there are elements in each in the relevant modern discussions. But it is important not to conflate them; none requires any one of the others. Arguably, democratic self-determination must be either regional or national, though the converse is not true. Nor is national self-determination necessarily regional; a call for self-determination of a certain national group in a territory might be quite oblivious to the interests of the established inhabitants of that territory.

A combination of regional and democratic self-determination -- self-government by the inhabitants of a territory through popular consent -- emerged as the important principle after World War I. Embedded within his vision of enduring world peace, President Woodrow Wilson felt its observance was a natural extension of democratic theory essential for both preventing future wars and "making the world safe for democracy":

. . . no peace can last, or ought to last, which does not recognize and accept the principle that governments derive all their just powers from the consent of the governed, and that no right anywhere exists to hand peoples about from sovereignty to sovereignty as if they were property" (Pomerance 1976, 2).

He first employed the term 'self-determination' on February 11, 1918: "Peoples may now be dominated and governed only by their own consent. Self-determination is not a mere phrase. It is an imperative principle of action, which statesmen will henceforth ignore at their peril" (Temperley 1920, 266). A more complete statement of the relevant principle came on July 4, 1918:

The settlement of every question, whether of territory, of sovereignty, of economic arrangement, or of political relationship upon the basis of the free acceptance of that settlement by the people immediately concerned and not upon the basis of the material interest or advantage of any other nation or people which may desire a different settlement for the sake of its own exterior influence or mastery.

(Temperley 1920, 264-5)

It was in this form that Wilson's vision emerged as a "basic principle" for negotiations in the Paris Peace Conference of 1919 (Temperley 1920, 266-268, 357-364), despite the fact that neither the principle nor the term 'self-determination' made their way into the Covenant of the League of Nations (Lansing 1921, 93-105).

Three aspects of Wilson's principle stand to be clarified before considering it as a possible cornerstone of international justice. First, while it does not obviously assert a universal *right* of self-determination, Wilson's normative language indicates that he conceived of the principle as a moral precept rooted in the long-standing ideal that political institutions gain legitimacy only from the consent of the governed. Here, the principle mirrors a good deal of Western political philosophy and indicates, at minimum, that Wilson's concept was one of *democratic* self-determination. Second, the wording in the last sentence of the second quote from Wilson suggests that the principle was also offered as a maxim of political prudence, one which should guide those "statesmen" entrusted with making decisions about the future status of given territories. Combining the moral and prudential in this way, the principle imposes an

obligation upon any agent, whether a state, an institution, or an individual, which, by virtue of historic circumstance, has a voice in resolving an issue of sovereignty.<sup>vi</sup>

Third, the Wilsonian principle was primarily intended for use in settling questions concerning the status of territories *unsettled* by conflict, or which are, or previously had been, under foreign domination. It was as such that the principle was utilized in the Paris Peace Conference of 1919, though its application was contested precisely in certain "unsettled" regions, e.g., Alsace-Lorraine, Upper Silesia, and, as we shall see, Palestine. After World War II, it was in circumstances occasioned by international conflict and colonial breakup that the paradigmatic applications of the principle of self-determination occurred (see Espiell 1980, 46-48; Umozurike 1972, 14; Crawford 1979, 87-88). Thus, the Wilsonian concept is also one of *regional* self-determination. Indeed, there is reason to think that the regional concept prevails in international law, not the national concept, and that its most obvious relevance is to decisions about the political status of unsettled regions which are not yet self-governing or are in dispute, e.g., regions established under mandates and trusts (Crawford 1979, 84-106, and Ofuatey-Kodjoe 1977, chp. VII).

So understood, the principle of self-determination is to be invoked whenever there is a question about what political, economic, social, and cultural institutions are to prevail in a territory. Such a question is genuine when there is a potentially politically coherent community whose members are legitimate residents of a territory which either (i) is under the domination of a foreign community in a way that threatens the well-being and human rights of its members, (ii) was formerly dominated by another community but is currently free from that domination and not yet self-governing, or (iii) is currently under some form of internationally sanctioned trusteeship. The community of legitimate residents would then be the beneficiary of the principle's application. What the principle requires is that the said institutions be decided by the community in question, not by external communities, agencies, or nations. The preferred

mechanisms for resolution are referenda, especially plebiscites, viz., community-wide votes on political proposals whose outcomes are determined by majority preference (see Cobban 1944; Johnson 1967; Umozurike 1972; Farley 1986).

An argument for ranking the principle of regional-democratic self-determination as a norm of international justice is available from prevailing philosophies of political legitimacy. It has become an increasingly dominant view that social, political, economic, and cultural institutions should be created and sustained through the preferences of the people whose lives they most immediately affect and, therefore, that the people be allowed to participate in the relevant decision-making processes that determine these institutions. By voluntarily binding themselves to a social-political arrangement, a people's commitment grounds a moral obligation to abide by its terms and, in this way, preferred institutions and their constitutive rules gain legitimacy. Settling a territorial dispute through self-determination increases chances that the arrangement will conform to what people perceive as just, if not to what is just, and thereby, enhance prospects for future stability, peace, and orderly development. By contrast, imposing an arrangement upon a people against their will creates resentment that is likely to nourish future instability. It is, thus, that observing self-determination -- whether as a political principle for solving conflicts over sovereignty, a legal right of peoples, or a human right of individuals (Chen 1976; Paust 1980, 8-9) -- has become the crucial mechanism for securing a people's recognition of a state apparatus established in a region within which they are entitled to self-determination.

Two final observations. While the principle of regional-democratic self-determination imposes an obligation upon decision-makers, it also taken as conferring entitlement to self-determination upon deserving collectives. Such a "right," if this language is appropriate, should not be considered absolute (Emerson 1971, 466-7; Pomerance 1984, 332-7). There are independent considerations limiting how a people can exercise self-determination and checks upon the types of institutions they are entitled to establish. Certainly, the human rights of every

inhabitant of the territory must be respected and legitimate minority interests taken into account, in which case, self-determination cannot be construed as a *carte blanche* for majorities to establish objectionable forms of discrimination. Consequently, it does not provide the sole normative principle relevant to decisions concerning the political status of disputed territories.<sup>vii</sup>

Finally, it is obvious that nations and diplomats do not always abide by recognized principles of international justice, no matter how entrenched they may be. But even if adherents of *realpolitick* are correct in holding that nations act only in regards to promoting their self-interest, unmoved by moral considerations, it remains that some standards of international behavior are universally welcomed as means for fostering cooperation and assuring a stable predictable international order and, thus, an orderly pursuit of self-interest. More impressively, international law itself is largely the creation of powerful nations seeking a viable framework for international stability within which justification for actions and policies can be sought. Recognized norms constitute a fabric of constraints regulating a wide variety of international transactions and conditioning the sorts of responses a country makes to perceived opportunities and provocations (Joyner 1988, 196). There have been widespread violations, to be sure, and perhaps there are intrinsic limits to the effectiveness of the prevailing norms, but as long as there is a need for any countries to achieve a *modus vivendi* with each other, normative proposals for achieving international order, e.g., that of self-determination, will retain their practical relevance.<sup>viii</sup>

### 3. NATIONAL SELF-DETERMINATION: A BRIEF DISCUSSION

Understood as calling for regional-democratic self-determination, the Wilsonian principle is restricted in its application to specific sorts of territories and communities; neither does it apply to all peoples or national groups, nor does it require recourse to plebiscite for all outstanding disputes about prevailing institutions in every territory (Crawford 1979, 101). It

does not confer a right to national sovereignty upon all peoples, and even for those who satisfy the conditions of beneficiaries, there is no implication that an application of the principle is of overriding importance.

It may be asked, of course, whether there are also grounds for inclusion of a principle of *national* self-determination within a framework of international justice and moral decision-making. Margalit and Raz 1990 argue affirmatively, though the authors make no claims about its recognition in international law. Briefly, their argument is that since there is value to membership in a "self-encompassing" (national) group, including participation in the political activities of that group, then there is an inherent value in that group's being self-governing (Margalit and Raz 1990, 451, and see Chen 1976). A right to self-determination derives from this value (p. 456) and is possessed when the self-encompassing group (i) "forms a substantial majority in a territory," (ii) "the new state is likely to respect the fundamental interests of its inhabitants," and (iii) "that measures are adopted to prevent its creation from gravely damaging the just interests of other countries" (p. 457), in which case the right to self-determination is not unconditional (pp. 459-461)

That there is an inherent value in self-government cannot be disputed, but the restrictions on when this right is possessed, if ever, are perhaps more severe than Margalit and Raz recognize. Few regions of the world are culturally homogenous, and "unsettled" regions typically are not. Conscious national self-determination is likely to entail emergence of characteristic cultural values within political and legal institutions. This poses a threat to the interests and rights of minorities outside the predominant national majority within a territory -- it always has and it continues to do so as on-going disturbances in Africa, Eastern Europe, and the former Soviet Union testify. Minorities resent not only the imposition of cultural values of majorities but the threat of such, for the establishment of political institutions to reflect the preferences of national groups poses a danger to their rights and interests. Even if assurances are

given to protect the human rights of these minorities, international law has not evolved to the point where there are reliable mechanisms to ensure such protection. Finally, the threat of national determination to world peace must also be considered, not only because a proliferation of claims for self-determination threatens world order,<sup>ix</sup> but because the call for national self-determination has often been coupled with nationalistic chauvinism, persecution of minorities, and interstate belligerency, e.g., with Nazi Germany during World War II and, recently, in the Balkans.<sup>x</sup> In today's world, there is an increasing need for individuals to identify themselves as members of the global community, to work for the common interest, and to recognize that the world and its resources belong to peoples of diverse cultural backgrounds. Too frequently, the demand for national allegiance is exclusivist, pointing an individual in an opposite direction.

A right to national self-determination might seem appropriate in certain limited circumstances, viz., when the "nation" in question is an overwhelming majority and there are constitutional and international safeguards for protection of minority rights. But then, the principle of regional-democratic self-determination, as delineated above, is itself sufficient to secure the same ends of self-government. Therefore, additional justification in terms of national self-determination is not only of dubious worth, as argued above, but, quite frankly, unnecessary.

#### 4. SELF-DETERMINATION IN PALESTINE: 1918-1948

The tragedy of the people of Palestine is that their country was 'given' by a foreign power to another people for the creation of a new state.

-- Bertrand Russell 1970

In 1917-18, combined British and Arab forces ended over 400 years of Turkish administration in various parts of the Arab world, including Palestine. The nationalities in these territories, stated Wilson in his famous "Fourteen Points" speech of January 1917, "should be

assured an undoubted security of life and an absolutely unmolested opportunity of autonomous development." Yet nothing of the sort took place immediately; in the aftermath of World War I, the newly-formed League of Nations placed much of the region under mandatory rule by the British and French, Palestine going to the British.<sup>xi</sup>

At that point, there was uncertainty in Western capitols about the precise borders of historic Palestine. It was generally agreed that the region extended at least to the Mediterranean on the west, the Jordan River on the east, the southern Golan Heights in the northeast, and the Negev and Sinai deserts in the south, but there was dispute concerning the northern and eastern borders, fueled partly by Zionist aspirations.<sup>xii</sup> The area mentioned, including the Negev, was classified as 'Palestine' by the terms of the League of Nations Mandate for Palestine granted to the British in 1922. There were some 800,000 inhabitants in that region by 1918, Arabs outnumbering Jews ten to one. Ownership of approximately half of the land was in private Arab hands, 2.6% was privately owned by Jews, while the remainder was State property under the Ottoman law, though much of it had been farmed by generations of Arab villagers.

Given the general acceptance of Wilson's principle, it would seem that Palestine, either in itself or as part of a larger geographical unit, was a region to which regional-democratic self-determination should have been applied. Despite Arab expectations, this never occurred. Two political decisions intervened, one by the British in 1917 and another by the Americans in 1946, both eventuating in actions taken by international bodies which entailed a denial of self-determination in Palestine. This assessment has been well-argued in Cattani 1976, Bassouni 1978, Mallison 1986, and Quigley 1990. Here some features will be highlighted.

During World War I, Britain promised its Arab allies independence throughout the territory liberated from the Turks,<sup>xiii</sup> but also signed two other agreements which embodied contrary policies. In 1916, Great Britain and France concluded the Sykes-Picot agreement by which the Arab Middle East would be divided up into regions of British and French influence

under the sovereignty of those powers, with Palestine placed under some form of international administration. This was soon superseded by a more momentous decision; in 1917, the wartime British government under David Lloyd George issued the *Balfour Declaration* declaring British policy to establish a "national home" for the Jewish people in Palestine. The Declaration was the first significant victory for the Zionist movement initiated in the late 19th Century. Under the persuasive and careful diplomacy of its chief spokesman, Chaim Weizmann, the British Foreign Secretary, Arthur Balfour, issued the declaration in a letter of November 2, 1917 to Lord Rothschild:

'His Majesty's Government view with favour the establishment in Palestine of a national home for the Jewish people, and will use the 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 the existing non-Jewish communities in Palestine, or the rights and political status enjoyed by Jews in any other country.' (Mallison 1986, 427-9)

In one stroke, Palestine, a land which had been peopled by an Arab majority for centuries, was now promised by a European power to the Jewish people; not to the established Jewish minority in Palestine, but to the Jewish people *per se*. Although the crucial phrases 'civil and religious rights' and 'political status' were left undefined by the Declaration, it is significant that the document contrasted civil rights with political status while avoiding reference to the political status of Palestinian Arabs, viz., the "non-Jewish communities" which comprised the substantial majority of inhabitants.<sup>xiv</sup>

The principle of self-determination was ignored here; the largest segment of Palestine's inhabitants did not participate in the making of a decision which was to have a monumental impact upon their future. They were not consulted; no referendum, no plebiscite, was ever held, no approval from Palestinian representatives ever secured. To the contrary, they adamantly

opposed it and repeatedly voiced their opposition, e.g., as early as 1919 (Khalidi 1971, 213-21). Again, in 1925, shortly after the Balfour Declaration had been incorporated into the terms of the 1922 Mandate for Palestine, the international lawyer, Quincey Wright, reported that Palestinian Arabs viewed the Declaration as a political decision constituting "a gross violation of the principle of self-determination proclaimed by the Allies" (Quigley 1990, 18). The governments of the United States and Great Britain were apprised of the situation in Palestine and fully informed of Arab opposition to the Balfour Declaration. In 1919, President Wilson dispatched a commission to the Near East to report on the political situation there. In its report to the Paris Peace Conference on August 28, 1919, the commissioners, Dr. King and Mr. Crane, expressed concern about the future of Palestine, claiming that if the principle of self-determination is to rule,

. . . then it is to be remembered that the non-Jewish population of Palestine -- nearly 9/10 of the whole -- are emphatically against the entire Zionist programme. The tables show that there was no one thing upon which the population of Palestine was more agreed than upon this. To subject a people so minded to unlimited Jewish immigration, and to steady financial and social pressure to surrender the land, would be a gross violation of the principle just quoted, and of the people's rights, though it kept within the forms of law.<sup>xv</sup>

The commissioners also noted that none of the British officers consulted felt that a Jewish National Home could not be established except by the force of arms. Finally, citing Article 22 of the League of Nations Covenant (see note 11), their report indicated that the inhabitants preferred that the mandate for all Syria (including Palestine) go to the United States.

But the recommendations of the King-Crane Commission fell on deaf ears. They became no part of the policy of either the United States or Great Britain, and they were ignored by the League of Nations committees which drew up the terms of the mandates. In March 1919, and

again in April 1919, Wilson reiterated his earlier approval (October 1917) of the Balfour Declaration (Lilienthal 1982, 30; Heckscher 1991, 340), and in 1922 the U.S. Congress concurred (Stone 1981, 151-2). Wilson was apparently not pressed upon the apparent conflict of this vision with his principle of self-determination (see Khalidi 1971, xxxii; Lansing 1921, 104-5), and the British took the view that he fully supported Zionism (Lloyd George 1939, 734-5). The British Government had already ruled out settlement of the Palestine question by appeal to the principle of self-determination. Lord Balfour was particularly blunt:

. . . in Palestine we do not propose even to go through the form of consulting the wishes of the present inhabitants of the country . . . The Four Great Powers are committed to Zionism. And Zionism, be it right or wrong, good or bad, is rooted in age long traditions, in present needs, in future hopes, of far profounder import than the desires and prejudices of the 700,000 Arabs who now inhabit that ancient land. (Khalidi 1971, 208)

An official memorandum of the British Foreign Office Department to the British Cabinet contained an equally explicit suspension of the principle:

The problem of Palestine cannot be exclusively solved on the principle of self-determination, because there is one element in the population -- the Jews -- which, for historical and religious reasons, is entitled to a greater influence than would be given to it if numbers were the sole test. (Lloyd George 1939, 750)

These statements foreshadowed subsequent British policy. No mention of self-determination was made in the terms of the Mandate for Palestine and, against the wishes of the Arab majority, the gates of Palestine were opened to Jewish immigration so that by 1931 the Jews constituted 16% of the total population, and by 1936, 28%. Even at the height of World War II in 1942, Winston Churchill, echoing the sentiments of Balfour and Lloyd George, expressed concern about the self-determination clause of the Atlantic Charter since it might obstruct Zionist

settlement in Palestine (letter to President Franklin Roosevelt, quoted in Khalidi 1971, 49). By 1947, Jews constituted roughly one-third of the Palestine's population of approximately 1.9 million people, "by the might of England, against the will of the people" (Toynbee 1954, 306).

Despite explicit assurances from Zionist leaders like Weizmann that Jews had no intention of turning the Arabs out of their homes, Zionist political rhetoric in the streets and exclusivist policies on Jewish-owned land revealed other intentions. Only when Arabs resorted to armed insurrection against the British in 1936-1938 did the Government change its policy. In the 1939 MacDonal White Paper, Britain renounced the Balfour Declaration and declared a new policy of advocating a singular secular state throughout Palestine (Khalidi 1971, 461-75). This met with approval among many Arabs (though not all), but was angrily rejected by the Zionist movement (Hirst 1984, 96-7, and see Gal 1991). With the onset of the Second World War, the latter began to concentrate its diplomatic efforts upon the United States.

In the aftermath of World War II, a weakened Great Britain thrust the issue of Palestine onto the lap of the newly formed United Nations. Western opinion was now more favorably disposed towards Zionist aspirations as the facts of Nazi persecution and genocide of European Jews became clear. In the most significant political victory for Zionism since the Balfour Declaration, President Truman endorsed Zionist proposals in August 1946 (Khalidi 1971, lxiv), setting in motion American diplomatic efforts to secure a partition of Palestine into a Jewish and an Arab state. In September of 1947, the UN Special Committee on Palestine (UNSCOP) acknowledged that the League of Nations Mandate had violated the Palestinian Arabs right of self-determination and that the creation of a Jewish National Home in Palestine "ran counter" to the principle of self-determination (Quigley 1990, 33).<sup>xvi</sup> But prevailing political opinion, particularly in the United States and USSR, pushed the General Assembly to recommend partition of Palestine into Jewish and Arab states with Jerusalem placed under an international trusteeship (Resolution 181 of November 29, 1947). While Great Britain abstained in the voting,

the United States led the fight for approval, resorting to pressure diplomacy to secure the necessary votes (Khalidi 1971, 709-30). Officially, the Jewish Agency (the political arm of the Zionist movement in Palestine) accepted the recommendations of the partition plan; Arabs overwhelmingly rejected its provisions as constituting a gross violation of the rights of the Arab majority in Palestine. It is, as some describe it, the "original sin" which "underlies the entire Palestine conflict" (Lilienthal 1982, 97).

In the subsequent violence of 1948-1949, Jewish military organizations outnumbered and outgunned the disorganized Palestinian forces and their Arab allies (Khalidi 1971, 861-71). Massacres, like those that took place at the Arab village of Deir Yassin in early April 1948, caused thousands of Arabs to flee from their homes in fear of a similar fate (Hirst 1984, 123-9; Khalidi 1971, 761-6, 795-806). Outright expulsion was employed by the Israeli forces in other cases, e.g., in Lydda, Ramleh, Haifa, and parts of the Galilee region (Flapan 1986; Morris 1988). Self-determination took on a new meaning, with the gun rather than the ballot box as its principal instrument. By the time a cease-fire was finalized in 1949, over 800,000 Arabs fled or were driven from their homes, villages, and towns, and Israel came into possession of 77% of mandated Palestine. The refugees were never permitted to return to their homes which, in many cases, no longer exist, since Israel has destroyed 385 Arab villages (Lilienthal 1982, 159). Today, they and their descendents number over 3 million, and on land that was once theirs, Jewish immigrants from Europe and other parts of the Middle East, are settled. Chaim Weizmann, who had earlier assured the Arabs of Jaffa that it had never been anybody's intention "to turn anyone out of his property" now proclaimed that the events of 1948 constituted "a miraculous clearing of the land: the miraculous simplification of Israel's task" (Hirst 1984, 143). Here, then, the seeds of violence in the Middle East took root and germinated.

Let us conclude with these observations. After World War II, the Atlantic Charter and UN Charter made the principle of regional-democratic self-determination a clearly

acknowledged norm of international diplomacy, and there are powerful arguments that it existed as a norm of international law by the time of the UN Resolution 181 in 1947 (Quigley 1990; Bassouni 1978; Cattani 1976; and Mallison 1986). With UN Resolution 181, however, Palestinian Arabs were denied input into the decision-making process that would determine their fate, despite the fact that by 1947 they still outnumbered Jews by a two to one ratio. Although Jews owned only about 6% of Palestine, nearly 56% of the territory was allotted to the proposed Jewish state, while the Arab state was to be established on 43.7%, the remainder being in Jerusalem. Adherence to the concept of regional-democratic self-determination would have called for a plebiscite on the partition proposal. As it was, Resolution 181, the establishment of Israel on May 14, 1948, the subsequent violence and refusal of repatriation, constituted an unmistakable denial of self-determination for the Arab residents of Palestine.

Some have tried to justify Resolution 181 by claiming that the Jewish inhabitants of Palestine secured self-determination (Stone 1981, 14-15) and, indeed, that the very existence of a democratic Israel represents a paradigmatic exercise of that right. Yet however strong the case for a Jewish state was in 1947, it could not be anchored on the type of self-determination discussed above, viz., regional-democratic self-government. The Jews lacked a majority in Palestine in 1947; over half of the 650,000 Jews in Palestine had immigrated since 1920, at least 10% classified as "illegals" by the British authorities (Anglo-American Survey: Supplement 1947, 17-23). Hence, the Zionist claim to be exercising a right to self-determination *in 1947-48* could only reduce to a plea for self-government by a specific national group within a certain territory, that is, for *national* self-determination. The existence of such a right is questionable (as argued in Section 3), but even if it did exist, the belief that it would override the call for regional-democratic self-determination is an implausible repudiation of the Wilsonian principle.<sup>xvii</sup>

Finally, considering the demographic, historic, and legal circumstances prevailing in

1947-48, Arab Palestinians cannot be faulted for failing at that time to recognize another people's claim for nationhood in a territory which they (the Palestinians) regarded as their own. Given standing international norms, Palestinians, and Arabs in general, were under no obligation to either accept Resolution 181 or to recognize the state of Israel. How could they? The imposition of Israel was not only against their will, it defied all standards of international behavior in directly assaulting their rights to land, homes, and heritage in their traditional domain. On this score, David Ben-Gurion, Israel's first Prime Minister, was candid: Why should the Arabs make peace? If I was an Arab leader I would never make terms with Israel. That is natural: we have taken their country. . . . Why should they accept that? (quoted in Goldmann 1978, 99).

## 5. A CONTINUED DENIAL OF SELF-DETERMINATION: 1948-1992

In the years since Israel's declaration of statehood, Israeli Jews have enjoyed a considerable measure of self-determination: they have constituted themselves as a nation-state, are self-governing in the territory controlled by that state, and enjoy democratic rights of political participation. At the same time, the vast majority of Palestinians have been denied the most elemental form of self-determination by being excluded from the negotiations that have taken place to resolve the Israeli/Palestinian conflict, not only those in areas under Israel's control, but also those in the surrounding Arab countries to which the Palestinians fled or were expelled in 1947-48. This denial has persisted despite numerous resolutions by the UN General Assembly that the right of self-determination be accorded the Palestinian people.<sup>xviii</sup> Let us see how it has been manifested.

(1) Although Resolution 181 called for the establishment of an Arab state in 43.7% of Palestine, it never materialized. Instead, from May 1948 to June 1967, Israeli, Jordanian, and Egyptian forces occupied that area and Palestinian Arabs were never given the opportunity to

create a state, but were precluded from so doing by force of arms. Similarly, under Jordanian rule, Palestinians of the West Bank were accorded no rights of democratic participation in their own governance.

(2) Throughout Israel's occupation of the West Bank, Gaza Strip, and Golan Heights (since June 1967), Arab residents have been denied any right of self-determination and any democratic rights, save for municipal elections in 1972 and 1976. Instead, they have been governed by patchwork of Turkish, British, Jordanian law, and Israeli Military Orders which includes a stringent set of Defence Regulations, introduced into Palestine by the British, which sanction deportations, house demolitions, land expropriation, and detention without charge. Israel has annexed East Jerusalem, taken direct control of over 55% of land in the Bank and 40% of land in the Gaza Strip. Currently, there are some 140,000 Israeli Jews in East Jerusalem and its outer belt, and approximately 100,000 in the rest of the Occupied Territories, each of whom are governed by Israeli law, not the regulations governing Palestinians.<sup>xix</sup> The Palestinian *Intifada* (uprising) is a direct response to these facts and to the Military Government's arbitrary taxation without representation, harassment and closure of Palestinian institutions, collective punishment, and systematic brutality. The very existence of these practices, and the on-going occupation itself, argue Palestinians, constitute a continual violation of their human rights and entitlement to self-determination.

(3) Several attempts to resolve the Palestinian problem in the international arena have failed to include Palestinian participation, most notably, the deliberations leading up to the framing of the important Security Council Resolutions 242 and 338 and of the so-called "Framework for Peace in the Middle East" contained in the celebrated Camp David Accords. The latter document, signed by Israel, Egypt, and the United States, goes some distance in providing Palestinians an opportunity to "participate in the determination of their own future," by entering into negotiations "on the resolution of the Palestinian problem in all its aspects."

Palestinians charged, however, that the Accords violated their right to self-determination; they were excluded from the negotiations which led to the Framework, and no provision was made for their exercise of self-determination. The General Assembly concurred on the latter (GA Res. 34/65, Nov. 29, 1979). More explicitly, the Accords were an unusual means of securing peace between belligerents since they (a) failed to address the concerns of Palestinians outside the Occupied Territories (over 3 million of the roughly 5.2 million Palestinians); (b) excluded participation by the PLO -- the political organization supported by the overwhelming majority of Palestinians both inside and outside Palestine --in the projected negotiations over the status of the Territories; and (c) offered only a temporary "autonomy" to Palestinians with Israel retaining control of resources, public land, security, and foreign trade. Also, the Accords allow Israel to continue its controversial settlement program, an explicit violation of the Fourth Geneva Convention governing territories occupied as a result of war (see note 19) and of the preferences of the inhabitants of the territories (Mallison 1986, chp.6; Quigley 1990, chp. 24). Perhaps this, more than anything, discredited the entire Framework in Palestinian eyes.<sup>xx</sup>

(4) In the celebrated peace negotiations which began in November 1991 in Madrid and have been carried on intermittently since that time, only Palestinians from the Occupied Territories (excluding Arab East Jerusalem) have been permitted representation. As with the Camp David Accords, the majority (roughly two-thirds) of all Palestinians and the PLO are excluded. For this reason, any proposals for peace issuing from these negotiations unacceptable to this larger community would not constitute an exercise of self-determination; their implementation would be yet another violation.<sup>xxi</sup>

## 6. CONCLUDING REMARKS

. . . once you appeal to the principle of self-determination both Arabs and Zionists are

prepared to make every use of it they can. No doubt we shall hear a good deal of that in the future, and, indeed, in it we may find a solution of our difficulties.

-- Lord Curzon 1918 (Lloyd-George 1939, 739-740)

The systematic violation of the principle of regional-democratic self-determination in Palestine is at once a failure to observe and apply a recognized moral norm as well as a continuing source of the ongoing conflict between Israelis and Palestinians, Jews and Arabs. In this sense, Wilson's warning of the "peril" of ignoring the principle of self-determination was prophetic. Yet the principle remains relevant, for the struggle over Palestine continues to pose a severe threat to world peace.

To some degree, the majority in Palestine today does exercise self-determination, for Israel has been a sovereign state for over four decades, recognized by a large number of countries and a member of the United Nations. One might argue that Israel's legitimacy can *currently* be based upon the principle of regional-democratic self-determination; it would be sanctioned by a plebiscite held today among the six million plus persons currently residing in the territory of mandated Palestine, most of who can reasonably claim to be legitimate residents. But deciding sovereignty by this simple procedure would be to ignore past and present violations of self-determination and to bypass the difficult question of exactly which parties are entitled to self-determination there now. In plain fact, Israel exists only because Palestinian Arabs have been systematically denied self-determination during the period 1917-1992 -- and Palestine is the *only* territory placed under a League of Nations Mandate in which the established inhabitants were not granted this privilege. Given Palestinians' persistent attachment to their ancient homeland, their unresolved grievances, and repeated international recognition of their entitlement to self-determination in Palestine (see note 18 and also Roberts 1990, 76-9), the status quo in Palestine cannot be sanctioned by appeal to regional-democratic self-determination. To do so would be a mockery of the principle. On the contrary, since the 5 million plus

Palestinians constitute a politically coherent group with an acknowledged connection to the land, yet without having been the beneficiary of self-determination, they retain an entitlement. That force was used against them has not erased the fact that they are, and are recognized as being, a legitimate unit entitled to self-determination (Crawford 1979, 117).<sup>xxii</sup>

But the clock cannot be turned back to 1947, or to 1917, and it must be asked what the principle of regional-democratic self-determination *currently* requires in Palestine or Israel. Much depends on who now counts as a legitimate resident of that territory, and there is no clear criterion for settling this sticky normative question. It seems clear that entitlements, including legitimate residency, change with the passage of time; what was the case in 1947 or 1917 is not necessarily so in 1992. But how much do they change and over what periods of time? At present, large numbers of both Israeli Jews and Palestinian Arabs can legitimately claim entitlement to self-determination in Palestine or Israel. Yet, as time passes, this assessment is likely to change if the status quo is not altered. Current Zionist insistence that Jews as such need a safe haven and are entitled to self-determination in their ancient homeland can be matched by Palestinian claims for reestablishing themselves in their homeland, and for similar reasons. Their position is supported by even more comprehensive Arab and Islamic interests in sovereignty throughout the Fertile Crescent and Arabian Peninsula -- and was in this region that Sheriff Hussein of Mecca sought self-determination in 1915 -- if not throughout the Near East and North Africa combined. Indeed, population numbers, historical association, and the current economic, political, and military threats to the Middle Eastern peoples by aggressive Western powers lend force to arguments that the legitimate interests of Arabs require a measure of political and geographical unity throughout their traditional domain. Plainly, at this point in time, there is nothing in the principle of regional-democratic self-determination itself -- as articulated above and as set forth in the relevant international documents -- which decisively settles the rival claims (Dinstein 1980, 255).

The normative discussion must not be stalemated by these observations, otherwise the door is opened to political chaos, violence, and the temporary rule by the strongest. A solution must be found and articulated, and if any is to be acceptable the principle of regional-democratic self-determination must be followed. Some have proposed creation of a single binational state under a democratic constitution throughout Palestine; others argue that the proper place for Palestinian self-determination is in Jordan. A more widely accepted compromise, one which would permit both Jews and Arabs a degree of self-determination in Palestine, is the two-state solution as originally envisioned in UN Resolution 181 (see the Jaffee Center Proposal 1989; Fuller 1989). In this respect, the Palestine National Council's acceptance of UN Resolution 181 (November 1988), coupled by its appeal to self-determination, is significant. The majority of Palestinians, in supporting the Council's decision, have effectively conceded to Israeli Jews a right to self-determination in Israel, and in calling for their own state they are not only reasserting their right to self-determination in Palestine but delimiting the region within which it is to be exercised (officially, the 43.7% of Palestine allotted them by Resolution 181).

If compromise of this sort fails, radicals among the Palestinians, and perhaps within the Arab and Islamic world in general, will assume control of the other half of the Palestinian/Israeli conflict -- just as those who refuse territorial compromise have dominated the Israeli Government for much of the past 15 years. The prospects are sobering. Whitehead's admonition in 1937 remains timely; one-sided bargains are to be avoided, the ideal visions of zealots must be curtailed. In conclusion, unless Palestinians, like Israeli Jews, are allowed some exercise of self-determination in choosing the type of political institutions they wish to be governed by *in* Palestine, whether as an independent democratic state or in affiliation with some other state (Jordan or Israel), then, for the foreseeable future, there is utterly no chance for a just and lasting peace in the Middle East. War and genocide would become the increasingly likely consequences -- a prospect which the world should find difficult to tolerate.

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## NOTES

i... This was also the conclusion of Great Britain's Palestine Royal Commission in 1937, which stated that the dispute between Jews and Arabs is "fundamentally a conflict of right with right." According to W. T. Stace, however, this is "a crude piece of ethical analysis," since Zionist claims to Palestine were based on unjust promises by the British, specifically, the Balfour Declaration discussed in Section 4 below (Khalidi 1971, 637-8).

ii... The question of the precise status of self-determination in international law, specifically, whether it is a legal right, has sparked considerable discussion (see Emerson 1971, who cites representatives from both sides of the controversy). Several argue that self-determination is recognized by international law as a right of certain collectives, e.g., Suzuki 1976, 828; Ofuatey-Kodjoe 1977, 160-7; Bassouni 1978, 2-4, and Mallison 1986, 193. Citing Chen 1976, Paust 1980, 8-9, observes that a case can be made for ranking self-determination as a human right, given Article 21 of the "Universal Declaration of Human Rights" (adopted by the UN General Assembly on Dec. 10, 1948), and Friedlander 1980, 309, concludes that self-determination is a "principle" of international law. On the other hand, Emerson 1964 argues that there is no legal right of self-determination, Feinstein 1979, 462, denies that its inclusion in the UN Charter converts the principle into a "norm of international law," and Pomerance 1984, 337, denies that there is any "single right to self-determination in all cases." Crawford 1979, 84-118, while granting self-determination status within international law, vacillates between the language of 'principle' and 'right'.

iii...

Espiell 1980, 46-48, lists regions in which the exercise of self-determination has been granted, in many cases yielding national independence. See also Umozurike 1972, 193.

iv... On the other hand, Crawford 1979 states that it is "much less certain" that self-determination has *jus cogens* status, though allows that it may be protected by other means within International Law (Crawford 1979, 81, 365-7).

v... Stace 1947, for example, discusses self-determination at this level: "the principles of law and justice do not change, or at least change very slowly. Now the main principle of international justice is that which was laid down in the Atlantic Charter. Nations should have the right of determining their internal affairs without aggression from outside nations. . . . It has always been, for that matter, the fundamental idea of democracy. For the self-determination or democracy of a nation means that its affairs are governed by the wishes of its own

people." (in Khalidi 1971, 632).

vi... By combining the political mandate with the moral principle, Wilson took a step towards satisfying Kant's call for a merger of politics with morality:

"Men can no more escape the concept of right in their private relations than in their public ones; nor can they openly risk basing their politics on the handiwork of prudence alone, and, consequently, they cannot altogether refuse obedience to the concept of public right (which is particularly important in the case of international right)" (Kant 1983, 131, from the essay "To Perpetual Peace: A Philosophical Sketch" written in 1795). Compare Friedlander 1980, 314-318, which discusses self-determination as a political principle.

vii... Umozurike 1972, 192, includes the mentioned constraints among the "characteristics" of self-determination, thereby adding something to the meaning of 'self-determination' beyond the idea of self-government or popular sovereignty. This is more idiosyncratic than standard.

viii... The case for the practical relevance for a code of international law is made forcefully in Kant 1983, especially in "Idea for a Universal History With a Cosmopolitan Intent" pp. 29-39 and "On the Proverb: That May Be True in Theory But Is No Practical Use" pp. 85-89. There are abundant examples illustrating Kant's point about the relevance of the concept of right in justifying public policy (see note 6). Even the leadership of so powerful a country as the United States has found it expedient to offer justification for its recent military actions in foreign arenas. Thus, the invasion of Panama in December 1989 was dubbed "Operation Just Cause," and, in his State of the Union Address of January 1991, President George Bush repeatedly emphasized the correctness of the armed action in removing Iraqi forces from Kuwait, stating the "our cause is just, our cause is moral, our cause is right."

ix... The American Secretary of State in 1919, Robert Lansing, reacted to President Wilson's call for self-determination in this way: "The more I think about the President's declaration as to the right of 'self-determination,' the more convinced I am of the danger of putting such ideas into the minds of certain races. It is bound to be the basis of impossible demands on the Peace Congress and create trouble in many lands. What effect will it have on the Irish, the Indians, the Egyptians, and the nationalists among the Boers? . . . How can it be harmonized with Zionism, to which the President is practically committed? The phrase is simply loaded with dynamite. It will raise hopes which can never be realized. It will, I fear, cost thousands of lives. In the end it is bound to be discredited, to be called the dream of an idealist who failed to realize the danger until too late to check those who attempt to put the principle in force. What a calamity that the phrase was ever uttered! What misery it will cause!" (Lansing 1921, 97-8). This passage suggests that Lansing interpreted self-determination

along national lines.

x... Particularly important here is whether a given minority in a self-determining territory has strong cultural and political links to communities on the outside. This was an important factor in Nazi propaganda, and is relevant to understanding the conflict among Palestinians and Israelis, since both parties have strong links to external communities giving it the international dimension it has.

xi... Article 22 of the League of Nations Covenant established the mandate system which called for tutelage by "advanced nations" over "peoples not yet able to stand by themselves" in the modern world ". . . until such time as they are able to stand alone" including certain communities formerly belonging to the Turkish Empire. It also specified that the "wishes of these communities must be a principal consideration in the selection of the Mandatory."

xii... Lloyd-George 1939, 721-773, relates some of the controversies concerning the borders of Palestine that occurred during the years 1917-1921.

xiii... British promises to Arabs were conveyed to their ally, Sheriff Hussein, the Emir of Mecca, by Sir Henry MacMahon, the British High Commissioner in Cairo at the time (see Khouri 1976, 405). Stone 1981, 146-7, cites a letter of 1937 by MacMahon to the *Times* in which he claimed that Palestine "was not or was not intended to be included in the territories in which the independence of the Arabs was guaranteed in my pledge" and that this was understood by Sheriff Hussein. But this interpretation does not agree with the description of Hussein's views by David Lloyd-George who was Prime Minister at the time. Lloyd-George mentions that MacMahon himself was then (in 1915) "very reluctant" to discuss boundaries despite the insistence of Hussein to include all the area along the eastern Mediterranean coast up to Mersina, an area which includes Palestine even though it was not mentioned by name (Lloyd-George 1939, 660-2).

xiv... This aspect of the Balfour Declaration is not accidental, as argued by J. M. N. Jeffries in "Analysis of the Balfour Declaration," reprinted in Khalidi 1971, 173-188. The role of the Zionist leadership in drafting the document is discussed in both Jeffries and F. Manuel, "Judge Brandeis and the Framing of the Balfour Declaration" in Khalidi 1971, 165-172.

xv... The text of the King-Crane report is reprinted in Khalidi 1971, 213-218. Zionists are fond of citing a January 3, 1919 agreement between the Emir Feisal of Mecca, a leader of the Arab resistance in 1915-1918, and Chaim Weizmann. It called for large-scale Jewish immigration into Palestine provided that the rights of Arab farmers be protected and "no religious test shall ever be required for the exercise of civil or political rights" (Stone 1981, 147-8). However, Feisal added that the agreement shall be void unless the Arabs achieve independence as promised by the British, and in a subsequent letter to Mr. Felix Frankfurter, an American Zionist, Feisal made it clear that Arabs would not accept a Jewish state as such but only a possible Jewish province in a larger Arab state (Khouri 1976, 12). There was no popular representation of or support by Palestinian Arabs in

the making of this agreement, as the results of the King-Crane Commission pointed out (see Hocking 1945 reprinted in Khalidi 1971, 502). To the contrary, there was outright opposition (Muslih 1988, chp.5).

xvi... A subcommittee of a General Assembly Ad Hoc committee to consider the UNSCOP proposals concluded that the proposed partition is contrary to Article 1 of the UN Charter (Khalidi 1971, 655).

xvii... Had the principle of regional-democratic self-determination been observed in Palestine in 1918-48, the world would not be saddled with the current conflict among Israelis and Palestinians and its ominous potential for massive destruction.

Of course, the state of Israel might never have come into being, but such would have been the consequences of strict adherence to the principle.

xviii... See, for example, G.A. Resolutions 2535 B of Dec. 10, 1969; 2649 of Nov. 30, 1970; 2672 C of Dec. 8, 1971; 2792 D of Dec. 6, 1971; 3210 of Oct. 14, 1974; 3236 of Nov. 22, 1974 3376 of 1975. A more complete list of resolutions on the Palestinian/Israeli conflict is given in Mallison 1986, 459-484.

xix... These figures are taken from "Report on Israeli Settlement in the Occupied Territories," published by the Foundation for Middle East Peace (Washington D. C., 1991). This report also cites a number of UN Security Council Resolutions which have condemned Israel's settlement program as contrary to Article 49 of the fourth Geneva Convention, and concurring discussions can be found in Mallison 1986, Quigley 1990, and Roberts 1990. Israelis have contested these judgments (for example, Stone 1981, 177-181), but they stand alone on this matter. Eugene Rostow cites Stone in a letter to *The American Journal of International Law* 84 (1990), 717-20, in defending Israeli settlements. Robert's response (720-22) is gentle, but, for the most part, decisive.

xx... The issue of settlements has been a matter of utmost concern to Palestinians in the Occupied Territories. The Palestinian delegation currently (January 1992) engaged in peace negotiation with Israelis has repeatedly called for an immediate halt to construction of settlements (see, for example, the statement by the Palestinian representative, Dr. Haidar Abdel Shafi in *The New York Times*, Friday, November 1, 1991, p. A7).

xxi... At the same time it is highly unlikely that Palestinians inside the Territories would break ranks with those outside of Palestine -- a fact that Israel has itself assured through its deportation policy, since many West Bank and Gaza Strip deportees now occupy important positions within the PLO.

xxii... It is doubtful that the status quo can be justified by any other aspects of international justice or law, as Cattani 1976, Mallison 1986, Quigley 1990, Roberts 1990 have argued.