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Israel's Rights as a Nation-State in International Diplomacy

Alan Baker

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- In response, several world-renowned experts have joined to present an authoritative exposition of *Israel's Rights as a Nation-State in International Diplomacy*, published jointly by the Jerusalem Center for Public Affairs and the World Jewish Congress.
- The volume includes: "The National Rights of Jews" by Prof. Ruth Gavison, "From the Balfour Declaration to the Palestine Mandate" by Sir Martin Gilbert, "Self-Determination and Israel's Declaration of Independence" by Prof. Shlomo Avineri, "The United Nations and Middle East Refugees: The Differential Treatment of Arabs and Jews" by Dr. Stanley A. Urman.
- "Israel's Rights Regarding Territories and the Settlements in the Eyes of the International Community" by Amb. Alan Baker, "The Historical and Legal Contexts of Israel's Borders" by Prof. Nicholas Rostow, "The Misleading Interpretation of Security Council Resolution 242 (1967)" by Prof. Ruth Lapidoth, "Defending Israel's Legal Rights to Jerusalem" by Amb. Dore Gold.

- “Palestinian Unilateralism and Israel’s Rights in Arab-Israeli Diplomacy” by Dan Diker, “Is the Gaza Strip Occupied by Israel?” by Col. (res.) Pnina Sharvit-Baruch, “The Violation of Israel’s Right to Sovereign Equality in the United Nations” by Amb. Alan Baker, and “Countering Challenges to Israel’s Legitimacy” by Prof. Alan M. Dershowitz.

As the United Nations is about to be manipulated by a Palestinian attempt to impose its statehood on the international community in a manner that undermines a vital negotiating process based on the UN’s own resolutions, a concerted campaign is being waged against Israel by Palestinian, Muslim, and other non-Arab elements in the international community to question the very legitimacy of Israel in virtually every aspect of its historical, political, and cultural life, with the aim of undermining the very foundations of Israel’s existence.

In response, several world-renowned experts have joined to present an authoritative exposition of *Israel’s Rights as a Nation-State in International Diplomacy*, edited by Alan Baker, former legal counsel of Israel’s Foreign Ministry and former ambassador to Canada, and published jointly by the Jerusalem Center for Public Affairs and the World Jewish Congress.

The National Rights of Jews

Prof. Ruth Gavison, Professor (emerita) of Human Rights at the Faculty of Law of the Hebrew University of Jerusalem and recipient of the Israel Prize in Law (2011), challenges the often-repeated denial by the Arabs of the rights of Jews to establish their own nation. The Jews have always had the characteristics of a nation, both ethnical and cultural, and not only religious. This was true before Israel was established and it is true today. It is justified for Jews to have sought revival of their political independence in their ancient homeland – Zion.

Zionism is not a colonial or an imperialist enterprise. The Arab population in pre-state Israel had never enjoyed or established political independence, and Jews were at liberty to seek political revival in the only place in the world that had been their homeland.

“An Overwhelmingly Jewish State” - From the Balfour Declaration to the Palestine Mandate

World-renowned British historian and author **Sir Martin Gilbert**, who is Winston Churchill’s official biographer, discusses how Great Britain viewed the right of the Jews to a national home in Palestine. The *Times* of London declared on September 19, 1919: “Our duty as the Mandatory power will be to make Jewish Palestine not a struggling State, but one that is capable of vigorous and independent national life.”

Winston Churchill announced publicly on March 28, 1921: “It is manifestly right that the Jews, who are scattered all over the world, should have a national center and a National Home where

some of them may be reunited. And where else could that be but in the land of Palestine, with which for more than 3,000 years they have been intimately and profoundly associated?"

On June 3, 1922, the British Government issued a White Paper, known as the Churchill White Paper, which stated: "During the last two or three generations the Jews have recreated in Palestine a community, now numbering 80,000....It is essential that it should know that it is in Palestine as of right and not on the sufferance. That is the reason why it is necessary that the existence of a Jewish National Home in Palestine should be internationally guaranteed, and that it should be formally recognized to rest upon ancient historic connection."

Churchill told the 1937 Palestine Royal Commission: "We committed ourselves to the idea that someday, somehow, far off in the future, subject to justice and economic convenience, there might well be a great Jewish State there, numbered by millions, far exceeding the present inhabitants of the country and to cut them off from that would be a wrong."

Self-Determination and Israel's Declaration of Independence

Israel Prize recipient **Prof. Shlomo Avineri**, Professor of Political Science at the Hebrew University and Director-General of the Israel Foreign Ministry in the first term of Prime Minister Yitzhak Rabin, analyzes Israel's right to self-determination in the context of its Declaration of Independence. He notes that the Arabs of Palestine and Arab states went to war not only against the emerging Jewish state, but also against a UN resolution in the only known case when member states of the UN not only did not abide by a UN resolution but went to war against it.

Had the Arab community gone through a profound internal debate and come out of it – as did the Jewish community – with an acceptance, however reluctant, of the compromise idea of partition, be it on moral or realistic grounds, or both – history would have been different: on May 15, 1948, two states – Israel and Palestine – would have been established. There would have been no 1948 war, no Palestinian refugees, no *nakba*, no further Arab-Israeli wars, no terrorism, and no Israeli reprisals. This could have happened – but it did not. The moral and political responsibility rests on the shoulders of the Arab side. Had the Palestinian Arabs and the countries of the Arab League chosen a different path, this would have made the Middle East a region of prosperity, mutual respect, progress and abundance for all its peoples.

Despite the difficult war situation, the practical steps taken by the newly established, independent State of Israel reflected the country's willingness to abide by obligations inherent in the UN partition plan. Israel adopted a multicultural approach toward its Arab minority, maintaining the status of Arabic as an official language. Israeli Arabs send their children to schools which teach in Arabic, with the curriculum tailored to their culture.

The acceptance by most Israelis today of a two-state solution – of a Jewish and a Palestinian state living in peace with each other – is a testimony to the fact that, despite decades of war

and siege, the fundamental decision adopted by the Jewish community in 1947 continues to guide the moral compass of the Jewish state.

The United Nations and Middle East Refugees: The Differential Treatment of Arabs and Jews

Dr. Stanley A. Urman, Executive Director of Justice for Jews from Arab Countries (JJAC), contrasts the considerable diplomatic advocacy and discussion concerning the Palestinian refugee issue with the utter lack of consideration for the Jewish refugee issue. The mass violations of the human rights of Jews in Arab countries and the displacement of over 850,000 Jews from their countries of birth has never been adequately addressed by the international community, although on two separate occasions, the United Nations High Commissioner for Refugees (UNHCR) specifically declared that Jews fleeing from Arab countries were indeed refugees “who fall under the mandate” of the UNHCR.

From 1949 to 2009, General Assembly resolutions focused much greater attention on the issue of Palestinian refugees (163 resolutions) – some 20 percent – than on any other Middle East issue. There were never any General Assembly resolutions that even mention Jewish refugees from Arab countries. Since 1947, billions of dollars have been spent by the international community to provide relief and assistance to Palestinian refugees. During that same period, international resources provided to Jewish refugees from Arab countries were negligible.

For the United Nations or other international entities to continue to ignore or reject the rights of Jewish refugees from Arab countries is to validate past and continuing injustice.

Israel’s Rights Regarding Territories and the Settlements in the Eyes of the International Community

For over 40 years, it has been persistent UN practice to repeat in parrot fashion the phrases “Israel the occupying power,” “the occupied Palestinian territories,” and to refer to Israel’s settlement activity as illegal, irrespective of the facts and the correct legal situation. **Amb. Alan Baker** stresses that the Israel-Palestinian Interim Agreement of 1995, signed by Israel and the PLO, was witnessed by the United States, the European Union, Egypt, Jordan, Russia, and Norway, and supported by the UN. This agreement changed the status of the territory and the status of each of the parties to the agreement as well.

Israel’s continued presence in Area C of the West Bank, pending the outcome of permanent status negotiations, enjoys the official sanction of the PLO. It cannot, by any measure of political manipulation or legal acrobatics, be considered “occupied territory.”

Construction activity by each side in those parts of the territory under their respective control was expressly permitted in the agreement. Israel’s presence in the territory of the West Bank,

pending the outcome of permanent status negotiations, was with the full approval of the Palestinian leadership and thus is not occupation.

Furthermore, analysis of the introduction to the 4th Geneva Convention as well as the official International Red Cross Commentary to it makes it very clear that Article 49 of the Convention was never intended to apply, and cannot apply, to settlement activity carried out by Israel.

The Historical and Legal Contexts of Israel's Borders

Prof. Nicholas Rostow, senior director of the U.S. National Defense University's Center for Strategic Research, addresses the claims against Israel's rights to defensible and recognized borders. He notes that UN Resolution 242 left open for negotiation where Israel's final boundaries would be in exchange for withdrawal from Egyptian, Jordanian, Syrian, and disputed territory, rather than requiring a restoration of the 1949 Armistice Demarcation Lines as the international boundary of Israel. The resolution thus treated that boundary only as marking a minimum Israeli territory. Resolution 242 arguably entitled Israel to more territory than that. Adjustments were contemplated, as implied by the requirement for "secure and recognized boundaries."

The Misleading Interpretation of Security Council Resolution 242 (1967)

Israel Prize recipient **Prof. Ruth Lapidot**, former legal adviser to Israel's Foreign Ministry and member of Israel's negotiating team, analyses the way in which Israel's rights are being consistently negated through misleading interpretations of UN Security Council Resolution 242. The resolution does not request Israel to withdraw from *all* the territories captured in the 1967 Six-Day War and does not recognize that the Palestinian refugees have a right to return to Israel.

The establishment of secure and recognized boundaries requires a process in which the two states involved actually negotiate and agree upon the demarcation of their common boundary. The UN Security Council did not regard Israel's presence in the territories as illegal. As an act of self-defense, this military occupation was and continues to be legitimate, until a peace settlement can be reached and permanent borders agreed upon.

Defending Israel's Legal Rights to Jerusalem

Israel's rights regarding Jerusalem are perhaps one of the most sensitive issues on the agenda of the international community. **Amb. Dore Gold**, former ambassador to the United Nations and currently President of the Jerusalem Center for Public Affairs, sets out Israel's rights regarding the city. The Jewish people restored their clear-cut majority in Jerusalem not in 1948 or in 1967 but in 1863, according to British consular records. This transformation occurred well

before the arrival of the British Empire in the First World War and the Balfour Declaration. It even preceded the actions of Theodor Herzl and the First Zionist Congress. Indeed, in 1914 on the eve of the First World War there were 45,000 Jews in Jerusalem out of a total population of 65,000.

In the last seventeen years, a number of key misconceptions about Jerusalem took hold in the highest diplomatic circles in the West as well as in the international media. When Israel signed the Oslo Agreements in 1993, for the first time agreeing to make Jerusalem an issue for future negotiations, that did not mean that Prime Minister Yitzhak Rabin planned to divide Jerusalem. On October 5, 1995, one month before he was assassinated, he detailed to the Knesset his vision for a permanent status arrangement with the Palestinians: “First and foremost, united Jerusalem, which will include both Ma’ale Adumim and Givat Ze’ev – as the capital of Israel, under Israeli sovereignty.”

In the years of the Arab-Israeli peace process, proposals were raised and considered for the re-division of Jerusalem, but no binding agreements were actually reached and brought to the Knesset for ratification. Israeli opinion remained firm about the rights of the Jewish people to retain their united capital under the sovereignty of Israel. The recognition of those rights in the future by the international community will depend on Israel demonstrating that it alone will protect the Holy City for all faiths.

Palestinian Unilateralism and Israel’s Rights in Arab-Israeli Diplomacy

Dan Diker, Secretary-General of the World Jewish Congress and Adjunct Fellow of the Hudson Institute in Washington, addresses the attempt to deny Israel’s rights to settle the conflict through bilateral negotiation. UN support for or endorsement of Palestinian unilateral actions would clearly negate the principles of negotiated settlement of disputes as set out both in the UN Charter and in the major Security Council resolutions regarding the Middle East peace process.

A unilateral declaration of statehood by the Palestinians robs Israel of all its rights and negates the peace process’s validity in its entirety. The Palestinians’ rush to unilateral statehood cannibalizes the basis of all past agreements including those that established the Palestinian Authority, and ignores and dismisses the concessions already made by Israel during the Oslo Accords and in later agreements.

Is the Gaza Strip Occupied by Israel?

In light of the attempts to represent Israel as if it is still occupying the Gaza Strip, even after having evacuated its forces and citizens from the area, **Col. (res.) Pnina Sharvit-Baruch**, former head of the IDF International Law Department who served as legal adviser to the Israeli

negotiating teams during Israeli-Palestinian and Israeli-Syrian peace negotiations between 1993-2009, places the legal status of Gaza in the correct perspective.

The evacuation of Israeli citizens and IDF forces from Gaza was aimed to reduce friction with the Palestinian population and improve Palestinian living conditions. The hope was that the Palestinians would take advantage of the opportunity created by Israel's disengagement to break the cycle of violence and reengage in a process of dialogue. Israel is clearly not an occupier of Gaza. Israel has fully withdrawn and carries out no governmental authority over the population in the area.

According to the Supreme Court of Israel: "Israel is under no general obligation to provide for the welfare of the residents of the Gaza Strip and to preserve the public order there, according to the body of laws pertaining to belligerent occupation in international law." Israel does not possess full control over the external perimeter of Gaza and has no effective control over the area. Thus, there is no valid legal basis to regard Israel as the occupying power of the Gaza Strip. The Hamas government exercises effective powers of government there. Consequently, the laws of occupation do not apply.

The Violation of Israel's Right to Sovereign Equality in the United Nations

Amb. Alan Baker notes that since becoming a member of the UN in 1949, Israel has been denied its Charter-based right to "sovereign equality," and is the only UN member state that is excluded from the UN geographical groupings and that cannot be elected to the Security Council, the International Court of Justice, or any other major UN body. Sovereign equality in the UN – judicial equality, equality of voting, equality in participation in all UN activities and processes, and equality in membership in all forums – break down with respect to Israel, which is clearly discriminated against.

Since Israel has been excluded from its geographical regional group – the Asian Group – by vote of the Arab and Muslim members of that group, and is not accepted as a full member in the Western European and Others Group (WEOG), Israel is being denied its UN Charter-guaranteed equality.

In such a situation, Israel can never put up its candidacy for membership in the Economic and Social Council or other major UN organs. It is denied any chance of having its jurists chosen as candidates for the major juridical institutions, tribunals, and courts within the UN system, and it cannot participate in consultations between states, organized within the regional group system, to determine positions and voting on issues, resolutions, and other matters. In 1998, the UN Secretary-General called "to rectify an anomaly: Israel's position as the only Member State that is not a Member of one of the regional groups....We must uphold the principle of equality among all UN member states."

Sir Robert Jennings, former President of the International Court of Justice, wrote in 1999: “Exclusion of one member from an essential part of the workings of an international organization in which all other members are entitled to participate is a crude breach of the rule on non-discrimination.” He continued: “I venture to suggest that Israel’s exclusion should no longer be tolerated; and that it is now an issue of primary importance for the [UN] Organization itself to see that it be remedied.”

Countering Challenges to Israel’s Legitimacy

Persistent and oft-repeated charges against Israel’s legitimacy, such as the charge that Israel is an illegitimate, “colonial” state; that it secured its statehood unlawfully; that it is an apartheid state; and the claim for a “one-state solution” are analyzed by the eminent U.S. jurist **Prof. Alan M. Dershowitz**, Professor of Law at Harvard Law School. He notes that the Jewish refugees in Palestine had established their homeland without the assistance of any colonial or imperialist power. They relied on their own hard work in building an infrastructure and cultivating land they had legally purchased. These Jews had the right to determine their own future consistent with the Wilsonian principle of self-determination.

Israel’s statehood was secured lawfully by, among other instruments and acts, the Balfour Declaration of 1917, the 1922 League of Nations Mandate, the 1937 Peel Commission Report, the 1947 United Nations partition resolution, Israel’s Declaration of Independence, subsequent recognition of the State of Israel by numerous world powers, and Israel’s acceptance into the United Nations. What other country has its origins so steeped in international law?

A bi-national state would not only imperil Israel’s Jewish population, but would eradicate the one state in the Middle East that affords its Muslim citizens more expansive civil liberties and political prerogatives than any other. Israeli Arabs are better off – as measured by longevity, health care, legal rights, even religious liberty – than other Arabs in the Middle East.

* * *

This book will serve as a vital tool for all those who are genuinely interested in looking through the shallow and clichéd attempts by those in the international community who are determined, for whatever reason, to question Israel’s legitimacy and to deny its rights.

This *Jerusalem Issue Brief* is available online at:
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