



Israel Remains on the Right. The Historical Reasons Behind a Long-established Political Supremacy

Lorenzo Kamel

Abstract

As a result of the last Israeli elections 48 out of 120 members of the previous Knesset will not return for another term - something hard to imagine in most democratic countries of the world. Despite this, the coming government will remain firmly on the right. This is explained by the fact that what is commonly considered the center is actually the right (at least with regard to the conflict). This paper analyses the historical conditions that favoured this long-established political supremacy. It is argued that demographic, regional and Palestinian related factors are relevant aspects for a comprehensive understanding of the issue, but that only a deeper analysis that takes on board the way in which religion, security and international law have been (mis)used can provide a full-fledged explanation.

Keywords: *Israel / Domestic policy / Political parties / Religion / Security / Settlements / International law / Palestine / Occupied Palestinian territories (OPT)*

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by Lorenzo Kamel*

Introduction

Yair Lapid has been unanimously recognized as the winner of the last Israeli elections. His party, Yesh Atid (There is a Future), obtained 19 seats in the 120-member Knesset and is now the second-largest political actor after the Likud-Beiteinu list (31 seats). The latter coalition, having shed 11 seats in comparison to the 2009 elections, is one of the main losers of the electoral turnout. Such a result, together with the “honorable defeat” of the Labour party (15 seats) and the good performance of the Zionist left-wing party Meretz (6 seats), has prompted many to suggest the return of “Israel to the center”,¹ “a shift away from the right to the [center]”,² or a “virtual tie between the right and center-left” forces.³

These assessments are questionable. None of the four main parties - Likud, Yesh Atid, Labour, HaBayit HaYehudi (12 seats) - can be accurately described as centrist when it comes to the Israeli-Palestinian conflict. In this respect, the great winner of the last Israeli elections has been the status quo. An important percentage of Israelis voted “for Likud, which created the status quo and Yesh Atid, the party that is least likely to change the status quo”.⁴ Yair Lapid and Prime Minister Benjamin Netanyahu have a similar political stance with regard to Jerusalem and other crucial issues. Just a few days before the elections, for example, Lapid clarified on his Facebook page that “I do not think that the Arabs want peace. What I want is not a new Middle East, but to be rid of them and put a tall fence between us and them”.⁵ Lapid - who presented his foreign policy platform last year in the settlement of Ariel because, he stated, “there exists no map in which Ariel isn’t a part of the State of Israel”⁶ - also criticized the left for negotiating the division of Jerusalem. On some of these issues Lapid holds positions that are several steps back from the ideas held by Israeli negotiators in the previous

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¹ Ari Shavit, “The dramatic headline of this election: Israel is not right wing”, in *Ha’aretz*, 24 January 2013.

² Yehuda Ben Meir, Institute for National Security Studies (INSS), quoted in Chris Arsenault, “‘Status quo’ biggest winner in Israel vote”, in *Al Jazeera*, 23 January 2013, <http://www.aljazeera.com/indepth/features/2013/01/201312302652718788.html>.

³ Edmund Sanders, “Israel elections deal a major setback to Netanyahu”, in *Los Angeles Times*, 22 January 2013, <http://articles.latimes.com/2013/jan/22/world/la-fg-israel-election-20130123>.

⁴ Chris Arsenault, “‘Status quo’ biggest winner in Israel vote”, cit.

⁵ Gil Ronen, “Lapid: I Want to be Rid of the Arabs”, in *Israel National News*, 20 January 2013, <http://www.israelnationalnews.com/News/News.aspx/164389>.

⁶ Revital Hovel. “Yair Lapid says he opposes occupation, but will present platform in West Bank settlement”, in *Ha’aretz*, 20 October 2012.

decade.⁷ No surprise, as noted by pollster Mina Zemah, that Yesh Atid drew about 50 percent of its support from the right.

Furthermore, unlike the past three years, Netanyahu is going to have a significant presence on his right flank (in addition to the fact that Likud itself has shifted significantly to the right after its last primaries). Naftali Bennett, leader of HaBayit HaYehudi - the third possible main pillar in Netanyahu's coming coalition - has on many occasions harshly accused Netanyahu of supporting the two-state solution as well as of being "soft" on the Palestinian bid at the UN. Besides his proposal to annex Area C, i.e. 60 percent of the West Bank, Bennett said, about the Palestinians: "I will do everything in my power to make sure they never get a state".⁸

Nowadays, the Labour Party, which like Yesh Atid falls within the center-left on economic issues, is a totally different political movement with regard to the peace process. Its leader Shelly Yachimovich, who electioneered in Ariel and many other Israeli settlements, went so far as to declare to the settler website *Arutz Sheva* that it is a historical error to consider Labour a left-wing party.⁹

Thus, what is considered the center or the center-left is actually the right (at least with regard to the conflict). As noted by Michael Koplow, it is somewhat far-fetched to claim that "the center scored a great victory".¹⁰ But why did a relevant percentage of Israeli voters continue to feel that parties with programs that support the settlements or/and the indivisibility or Jerusalem or/and the annexation of a big part of the Palestinian territories were worthy of their support?

1. Explaining the shift to the right

The progressive shift to the right that has taken place in Israel from about 1996 is in part connected to the failure of the peace process. Simply put, when people have the impression that there is no chance for peace, the right appears to be more credible than the left. Also demographic reasons underpin the shift to the right. The Orthodox and ultra-Orthodox, traditionally close to the right, have more children. Alongside this, among the Russians who immigrated to Israel in the 1990s - over a million - the big majority sympathizes with the right-wing. The regional context also explains Israel's shift to the right. The Arab Spring has reinforced the belief that "the whole region and

⁷ Noam Sheizaf, "Lapid's platform: No compromise over Jerusalem, no settlement freeze", in *+972 Magazine*, 25 January 2013, <http://972mag.com/lapids-platform-no-compromise-over-jerusalem-no-settlement-freeze>.

⁸ David Remnick, "The Party Faithful", in *The New Yorker*, 21 January 2013, http://www.newyorker.com/reporting/2013/01/21/130121fa_fact_remnick.

⁹ Interview with Shelly Yachimovich (in Hebrew), in *Arutz Sheva*, 7 November 2012, <http://www.inn.co.il/News/News.aspx/246470>.

¹⁰ Michael J. Koplow, "No, Israel Did Not Just Vote for the Center", in *Foreign Affairs Snapshots*, 23 January 2013.

world's against us",¹¹ and, therefore, Israel should be strong and uncompromising; in David Remnick's words: "No more negotiations, no more illusions".¹²

All this, however, does not fully explain "the growing strength of openly annexationist rightwing forces".¹³ Rick Richman noted that what is commonly portrayed as a "dramatic imminent shift" to the right is not in reality a "shift," but a "realization" triggered by specific events that seem to point to a long-term trend, namely the Second Intifada, the Palestinian rejection of Israel's "offer" of a "state", the transformation of Gaza into "Hamastan", the inertia showed by Mahmoud Abbas after the announcement of the 2009 settlements "construction freeze", and his unilateral pursuit of statehood at the UN.¹⁴

Fatah and Hamas's responsibility in perpetuating the current stalemate cannot be underplayed. Hamas's leadership, to many a functional ally of extremist political forces in Israel, is far from accepting the legitimacy of "the other"¹⁵ and the principle that only international law and non-violent forms of resistance can make a breakthrough. Both political movements, moreover, have failed to hold new elections and reconcile their differences; violations of civil rights and Palestinian shortcomings in the fields of democracy and good governance are still ongoing realities. Nonetheless, Israel's dramatic shift to the right cannot be understood simply as a result of Palestinian dynamics. Not only because these were in some cases the results (often misguided) of Israeli actions, but also because of the partial truths they uncover.

A meaningful example in this respect is represented by the already mentioned 10-month "settlement freeze", which did not include East Jerusalem or the freezing of public buildings, such as schools and synagogues. It applied only to new constructions, meaning that construction on those already underway continued, with the result that in the weeks preceding the moratorium a boom of new buildings was registered. Moreover, in the weeks following September 26, 2010, the day in which the moratorium ended, 1,650 new houses were built, barely fewer than the number built in all of 2009.

2. The selective use of religion, security and international law

Demographic, regional and Palestinian related explanations thus shed light only partially on Israel's shift to the right. Three crucial ingredients of a comprehensive explanation are still missing: the rearticulation of the "occupation discourse" and of the settlements question through the selective use of religion, security and international law.

¹¹ Hillel Schenker, "Elections 2013: Israel at the Crossroads", in *Palestine-Israel Journal*, 15 January 2013, <http://www.pij.org/details.php?blog=1&id=183>.

¹² David Remnick, "The Party Faithful", cit.

¹³ Gideon Rachman, "Netanyahu: tactical genius, strategic idiot", in *The Financial Times*, 14 January 2013.

¹⁴ Rick Richman, "The Israeli Elections and Political Reality", in *Commentary*, 11 January 2013, <http://www.commentarymagazine.com/2013/01/11/the-israeli-election-will-deliver-a-message-from-across-the-political-spectrum>.

¹⁵ "Hamas denies accepting two-state solution", in *Ma'an News Agency*, 31 January 2013, <http://maannews.net/ENG/ViewDetails.aspx?ID=560770>.

Prime Minister Benjamin Netanyahu has often selectively used religion to justify the colonization of the West Bank, by claiming that it represents “the heart of our Jewish Homeland”.¹⁶ Applying this logic coherently, however, would mean that Israel should give up the coast between Ashdod and Ashkelon, which has never been part of the ancient Israelite kingdoms.¹⁷ The numerous archaeological expeditions carried out over decades in Ashkelon - one of five ancient Philistine cities, which today encompasses what was, until 1948, the Palestinian village of al-Majdal - have confirmed that it was never conquered by the ancient Israelites. And even if one assumes that there was a conquest, the occupation of an area for a few years does not mean that it represented part of the “historic Jewish homeland”. Otherwise, the many Philistine raids and sometimes occupations of Israelite towns as far east as the Jordan River valley would also make these areas “less” Israelite.

Besides religion, also the security argument has been instrumentalized as a tool to cover a broader range of interests that little have to do with “defensible borders”.¹⁸ Martin van Creveld, a well-known Israeli military historian, clarified that “just as Israel does not need the West Bank to defend itself against ballistic missiles, it does not need that territory to defend itself against conventional warfare”.¹⁹ In other words, it is not the occupation of the Palestinian Territories that can guarantee Israel’s legitimate need of security.²⁰ Rather, as Shlomo Ben-Ami has pointed out, only when Israel’s occupation will end and the Palestinians will recover their dignity as a nation, “will the Jewish state’s existence be finally secured”.²¹ Indeed, even a fully demilitarized West Bank, whose borders with Jordan will be manned by a contingent of international forces or by the Israel Defence Force, does not by itself fully prevent the use of Qassam rockets which today are still being fired from Gaza to Sderot and Ashkelon. The security concern is certainly understandable. However, even assuming that it represents an insurmountable obstacle, the psychological humiliation and exploitation of natural resources that are taking place beyond the “separation barrier” cannot be justified by the legitimate Israeli need to rely on safe borders.

¹⁶ Netanyahu’s speech at Bar Ilan, 14 June 2009, <http://www.haaretz.com/news/full-text-of-netanyahu-s-foreign-policy-speech-at-bar-ilan-1.277922>. In the same speech the Israeli PM pointed out that “our link to the Land of Israel, and the Palestinian population who live here, have created deep disagreements within Israeli society”. The main issue is thus the opposition between a “link” and a population that happened to live on the spot.

¹⁷ One verse in the *Book of Judges* seems to refute this, indicating that the area was conquered and subdued for a handful of years, but the same verse is contradicted in the very same chapter of the book. See Carolyn Pressler, *Joshua, Judges, and Ruth*, Louisville, Westminster John Knox Press, 2002, p. 132.

¹⁸ See Yehezkel Lein and Eyal Weizman, *Land Grab. Israel’s Settlement Policy in the West Bank*, Jerusalem, B’Tselem, May 2002, http://www.btselem.org/publications/summaries/200205_land_grab.

¹⁹ Martin van Creveld, “Israel Doesn’t Need the West Bank to be Secure”, in *Forward. The Jewish Daily*, 15 December 2010, <http://forward.com/articles/133961/israel-doesn-t-need-the-west-bank-to-be-secure>.

²⁰ Before the 1967 war, thus earlier than the peace agreements that Israel signed with Cairo (1979) and Amman (1994), the West Bank was still in Jordanian hands (an occupation which was opposed by the local Palestinian population at the time to the point that King Hussein felt obliged to impose martial law), West Jerusalem was bordered on three sides by hostile territory, Arab armies stood within 14 miles of Tel Aviv.

²¹ Shlomo Ben-Ami, “Netanyahu’s Border War”, in *Project Syndicate*, 24 May 2011, <http://www.project-syndicate.org/commentary/netanyahu-s-border-war>.

Even today, as confirmed by many detailed reports²² and recently filmed videos,²³ dozens of quarries are currently active in the West Bank, providing some 12 million tons of stone, gravel, and dolomite annually, 75 percent of which is used for construction inside Israel. Millions of Palestinians are deprived of their freedom of movement, due partly to dozens of checkpoints throughout the West Bank. Moreover, in the Palestinian territories, new drilling of aquifer systems for the consumption of settlers and Israeli citizens are being built. Finally, in about 60 percent of the West Bank, there is exclusive control of Israeli authorities over every aspect of civil life. Each of these aspects represent a different form of “violence” and only a simplistic approach, or one marred by bias, could accept such a reality in the name of “security”.²⁴

Paradoxically, by unilaterally supporting the settlement project - including during the Oslo negotiations - and its consequences for Palestinian rights, almost all post-1967 Israeli leaders have actually promoted the conditions fostering right and far-right wing forces. This was starkly true for the last government. During Netanyahu’s four-year term, 38 percent of nearly 6,900 West Bank construction starts were reported in settlements deep inside Palestinian territory, compared to 20 percent under his predecessors. Moreover, in violation of the Roadmap and other international obligations, Netanyahu’s government adopted a new policy in regard to illegal outposts that explicitly gave the green light to establish facts on the ground as settlers saw fit.²⁵ Finally, between 2009 and 2011, according to the Israeli Central Bureau of Statistics (CBS), investment in settlements grew by at least 38 percent. Settlement construction, as Avigdor Lieberman clarified a few days ago, is “Israel’s national interest”.²⁶

Finally, alongside religion and security, a third argument is often evoked in order to legitimize the colonization of Palestinian territories. The 89 pages of the Levy Report, released on 9 July 2012 by a special committee appointed in late January 2012 by PM Netanyahu to investigate whether the Israeli presence in the West Bank is to be considered an occupation or not, clarified that “Israelis have the legal right to settle in Judea and Samaria and the establishment of settlements cannot, in and of itself, be considered illegal”.²⁷ PM Netanyahu commented the report stating that it “is important because it deals with the legalization and the legitimization of the settlement enterprise in Judea and Samaria on the basis of facts, a variety of facts and arguments that

²² See B’Tselem, *Following court petition, Israel will reduce prohibited mining in the West Bank*, 22 September 2010, http://www.btselem.org/settlements/20100922_israeli_quarries_in_the_west_bank.

²³ See Adri Nieuwhof, “CEMEX tries to reason away complicity in Israeli violations of international law”, in *Electronic Intifada*, 19 August 2011, <http://electronicintifada.net/blogs/adri-nieuwhof/cemex-tries-reason-away-complicity-israeli-violations-international-law>.

²⁴ See Yehezkel Lein and Eyal Weizman, *Land Grab*, cit.

²⁵ Peace Now, “Settlements & the Netanyahu Government: A Deliberate Policy of Undermining the Two-State Solution”, in *Peace Now Reports*, 16 January 2013, http://peacenow.org.il/eng/Netanyahu_Summary.

²⁶ Yanir Yagna, “Lieberman: Contrary to decline in polls, Likud-Beiteinu will win 40 seats”, in *Ha’aretz*, 19 January 2013. Contrary to what the former Israeli Foreign Minister claimed, most Israelis, according to the polls, believe in preserving both their country’s Jewish character, and its democracy. This is not possible to achieve so long as millions of Palestinians are ruled, against their will, by Israel.

²⁷ See the English translation of the Levy Report’s conclusions and recommendations, <http://www.pmo.gov.il/English/MediaCenter/Spokesman/Documents/edmundENG100712.pdf>. For the complete report see: *דו"ח על מעמד הבניה באזור יהודה ושומרון* (A report on the status of construction in Judea and Samaria), 21 June 2012, <http://www.pmo.gov.il/Documents/doch090712.pdf>.

should be seriously considered".²⁸ The Levy Report - publicly supported by former Foreign Minister Avigdor Lieberman, Interior Minister Eli Yishai and many other key political figures - is the last of a long list (see for instance the 2005 Sasson Report²⁹) of attempts to use international law for "annexationist purposes". As Public Diplomacy Minister Yuli Edelstein noted: "As a resident of a settlement in Judea and Samaria and the public diplomacy minister who fights to express the natural right to settle [there] and not apologize for it, I welcome the [Levy] committee's findings".³⁰ Such widespread political support for this legal interpretation deserves closer attention.

The Levy Report pointed out that "with the establishment of the United Nations in 1945, the principle of recognizing the validity of existing rights of states acquired under various mandates, including of course the rights of Jews to settle in the Land of Israel by virtue of the above documents, was determined in article 80 of its charter".³¹ Article 80 of the UN Charter implicitly recognizes the "Mandate for Palestine" of the League of Nations. The late Eugene Rostow, former dean of Yale Law School, also known for being a key draftee of the UN Resolution 242, clarified that "a trust" - as in Article 80 of the UN Charter - "does not end because the trustee dies".³² Backed by two International Court of Justice (ICJ) advisory opinions in 1950³³ and 1971³⁴ on the status of South-West Africa (Namibia), Rostow's argument, which is repeated in the Levy report, is that although the League of Nations had ceased to exist, the commitments of the League of Nations remain binding. According to an interpretation held by a growing number of scholars³⁵ and by most Israeli right-wing parties, the preamble³⁶ as well as

²⁸ Tovah Lazaroff and Lahav Harkov, "C'tee to debate legalizing outposts in wake of report", in *The Jerusalem Post*, 10 July 2012, <http://www.jpost.com/DiplomacyAndPolitics/Article.aspx?id=276855>. See also Stephen Lendman, "International Law Revisionism and the Military Occupation of Palestine", in *Global Research*, 12 July 2012, <http://www.globalresearch.ca/international-law-revisionism-and-the-military-occupation-of-palestine/31876>.

²⁹ Israel Government, *Summary of the Sasson Report*, 8 March 2005, <http://www.mfa.gov.il/MFA/Government/Law/Legal+Issues+and+Rulings/Summary+of+Opinion+Concernin+g+Unauthorized+Outposts+-+Talya+Sason+Adv.htm>.

³⁰ Lahav Harkov, "PM to decide on Levy report with settlement c'tee", in *The Jerusalem Post*, 7 September 2012, <http://www.jpost.com/DiplomacyAndPolitics/Article.aspx?ID=276802>.

³¹ See the English translation of the legal arguments in the Levy Report, available at <http://elderofziyon.blogspot.cz/2012/07/english-translation-of-legal-arguments.html>.

³² See Eugene V. Rostow, "The Future of Palestine", in *McNair Papers*, No. 24 (November 1993), p. 10, <http://purl.access.gpo.gov/GPO/LPS33773>. According to Rostow, "How that Convention [Fourth Geneva Convention] could apply to Jews who already had a legal right, protected by Article 80 of the United Nations Charter, to live in the West Bank, East Jerusalem, and the Gaza Strip, was never explained". Ivi, p. 13. See also Eugene V. Rostow, "Are Settlements Legal?", in *The New Republic*, 21 October 1991, available at <http://www.israpundit.com/archives/34179>.

³³ International Court of Justice (ICJ), Advisory Opinion on the *International Status of South West Africa*, 11 July 1950, <http://www.icj-cij.org/docket/index.php?&case=10>.

³⁴ International Court of Justice (ICJ), Summary of the Advisory Opinion on the *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, 21 June 1971, <http://www.icj-cij.org/docket/index.php?&case=53>. See p. 79: "When the League of Nations was dissolved, the *raison d'être* and original object of these obligations remained. Since their fulfillment did not depend on the existence of the League, they could not be brought to an end merely because the supervisory organ had ceased to exist. [...] The International Court of Justice has consistently recognized that the Mandate survived the demise of the League [of Nations]".

³⁵ Cynthia D. Wallace, *Foundations of the International Legal Rights of the Jewish People and the State of Israel and the Implications for the Proposed New Palestinian State*, Lake Mary, Creation House, 2012, p. 25. Howard Grief, *The Legal Foundation and Borders of Israel under International Law*, Jerusalem, Mazo,

Article 2³⁷ of the Mandate secured the establishment of the Jewish National Home on “the whole country of Palestine, not a mere part”.³⁸ The whole of mandatory Palestine, including the West Bank and Gaza Strip, would thus remain open to Israeli settlements: “the Jewish right of settlement in the whole of western Palestine - the area West of the Jordan - survived the British withdrawal in 1948”.³⁹

These arguments are problematic. The right granted to the Jewish people to settle in the mandated territories was never framed in exclusive terms. The British White Paper of June 1922 - the first document that *officially* clarified the interpretation of the Mandate’s text - pointed out that the Balfour Declaration⁴⁰ does “not contemplate that Palestine as a whole should be converted into a Jewish National Home, but that such a Home should be founded ‘in Palestine’”.⁴¹ Zionist consent to this interpretation was requested, and received, before the Mandate was confirmed in July 1922. In Chaim Weizmann’s words: “It was made clear to us that confirmation of the Mandate would be conditional on our acceptance of the policy as interpreted in the White Paper [of 1922], and my colleagues and I therefore had to accept it, which we did, though not without some qualms”.⁴² It is only in light of these clarifications that the preamble and Article 2 of the Mandate text can and should be understood.

Furthermore, after the United Nations General Assembly suggested the partition of Palestine in 1947 and the State of Israel was unilaterally established, the Jewish people’s rights under the Mandate have been fulfilled and they no longer have the unilateral right to settle in the former Mandate territory except for the State of Israel. In the words of Marcelo Kohen, international law professor at the University of Geneva, “Once the [Jewish] National Home was established on part of Palestine, and more

2008, p. 118. Eli E. Hertz, *Reply to The Advisory Opinion of 9 July 2004 in the Matter of the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory as Submitted by the International Court of Justice*, New York, Myths and Facts, 2005, <http://www.mythsandfacts.org/replyonlineedition>. Hugh Fogelman, *Christianity Uncovered*, Bloomington, Xlibris, 2012, p. 442.

³⁶ In favour of the “establishment in Palestine of a national home for the Jewish people”. League of Nations’ Mandate for Palestine:

<http://unispal.un.org/UNISPAL.NSF/0/2FCA2C68106F11AB05256BCF007BF3CB>.

³⁷ Article 2 asked to the Mandatory to create the political, administrative and economic conditions fit for the establishment of the “Jewish national home” in the country.

³⁸ Howard Grief, *The Legal Foundation and Borders of Israel under International Law*, cit., p. 106.

³⁹ Eugene V. Rostow, “The Future of Palestine”, cit., p. 10.

⁴⁰ Arthur Balfour, British Secretary of State between 1916 and 1919, visited for the first time Palestine in 1925. He was convinced that the Zionist ambitions were “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”. The National Archives [from now, TNA], FO 371/4185. Balfour to Lord Curzon, 11 August 1919. Curzon, the only member of Lloyd George’s cabinet (1916-1922) who had physically been in Palestine, had a different attitude toward the question. When Hubert Young, a key figure in the Foreign Office, wrote in November 1920 that the only commitment taken by London “in respect of Palestine is the Balfour Declaration constituting it a National Home for the Jewish People”, Curzon corrected him as follows: “No. ‘Establishing a National Home in Palestine for the Jewish people’ - a very different proposition”. TNA, FO 371/5124. Curzon, 29 November 1920.

⁴¹ British White Paper, in *House of Commons Papers*, Vol. XXIII (1922), p. 18, available at <http://unispal.un.org/UNISPAL.NSF/0/F2CA0EE62B5680ED852570C000591BEB>.

⁴² Chaim Weizmann, *Trial and Error. The Autobiography of Chaim Weizmann*, Westport, Greenwood, 1972, p. 208.

importantly, as a state, the immigration to other parts of Palestine was no longer justified under the Balfour Declaration or under the Mandate agreement".⁴³

Some scholars, however, have claimed that resolution 181, which suggested the partition of Palestine, "has no legal ramifications" and that its "validity hinged on acceptance by both parties of the General Assembly's recommendation".⁴⁴ Indeed, neither the Israeli establishment, nor the UN, nor the Arab states asked the Palestinians to reject or accept that resolution.⁴⁵ Moreover, to keep claiming that resolution 181 is void,⁴⁶ and, more than this, that the UN had no authority to make it,⁴⁷ - two aspects that, not surprisingly, had been suggested also by some Arab scholars⁴⁸ - remove one of the main internationally-recognized grounds for the recognition of the State of Israel. Finally, to minimize its legal value resorting to article 80 of the UN Charter can be counterproductive in as much as that very same Charter is based on "the principle of equal rights and self-determination of peoples" (art. I, sect. II), i.e. the right of a people to control their own social, political and cultural destiny.

The fact that in the Palestine Mandate there was "no mention of the national rights of the Arab people"⁴⁹ must be considered secondary, or irrelevant, with respect to the officially stated purposes of the British Power,⁵⁰ the (admittedly vague) principle contained in Article 22 of the League of Nations Covenant,⁵¹ the first article of the UN

⁴³ Marcelo G. Kohen, "La longue marche vers la reconnaissance territoriale de l'autre", in William OSSIPow (ed.), *Israël et l'autre*, Geneve, Labor et Fides, 2005, p. 25 (author's transl.).

⁴⁴ Eli E. Hertz, *Reply to The Advisory Opinion of 9 July 2004 ...*, cit., p. 55.

⁴⁵ As clarified by Uri Avnery, "No one asked the Arab Palestinians whether to accept or reject anything. If they had been asked, they would probably have rejected partition, since - in their view - it gave a large part of their historical homeland to foreigners". Uri Avnery, "Sacred Mantras", in *Weekly Newsletter*, 25 June 2011, available at <http://zope.gush-shalom.org/home/en/channels/avnery/1308952216>.

⁴⁶ Eli E. Hertz, *Reply to The Advisory Opinion of 9 July 2004 ...*, cit., p. 56.

⁴⁷ Howard Grief, *The Legal Foundation and Borders of Israel under International Law*, cit., p. 256.

⁴⁸ Israel Ministry of Foreign Affairs, *The Status of General Assembly Resolution 181 (II) of 29 November 1947*, 30 March 1999.

http://www.mfa.gov.il/MFA/MFAArchive/1990_1999/1999/3/The+Status+of+General+Assembly+Resolution+181+-II-.htm.

⁴⁹ Legal arguments in the Levy Report, cit.

⁵⁰ As pointed out in the British White Paper of 1922 - submitted to and accepted by the Zionist leadership before the official approval of the Palestine Mandate - "His Majesty's Government [...] observed with satisfaction that at a meeting of the Zionist Congress, the supreme governing body of the Zionist Organization, held at Carlsbad in September, 1921, a resolution was passed expressing as the official statement of Zionist aims 'the determination of the Jewish people to live with the Arab people on terms of unity and mutual respect, and together with them to make the common home into a flourishing community, the upbuilding of which may assure to each of its peoples an undisturbed national development'".

⁵¹ Article 22 provided for the principle of self-determination and ultimately independence. If such article could be applied to Palestine and if the latter was indeed an "A-class" mandate, are two long-debated issues. Kattan clarified for example that Article 22 "provided for the 'well-being and development' of the peoples concerned which formed 'a sacred trust of civilization'. Moreover, certain 'communities', i.e. peoples, formerly belonging to the Turkish Empire, had 'reached a stage of development where their existence as independent nations can be provisionally recognized'. Evidently, this terminology only applied to the Arabs of Palestine and not to the Zionists who at that time were primarily Jews of European origins". Victor Kattan, *From Coexistence to Conquest*, New York, Pluto Press, 2009, pp. 138-139. Hertz, on the other hand, claimed that "The 'Mandate for Palestine' never mentions Class 'A' status at any time for Palestinian Arabs". Eli E. Hertz, *Reply to The Advisory Opinion of 9 July 2004 ...*, cit., p. 32. H. Duncan Hall pointed out that "Each of the 'A' mandates was more or less *sui generis*, designed to fit the particular condition of a particular territory". H. Duncan Hall, *Mandates, Dependencies and Trusteeship*, Washington,

Charter and, above all, the historical developments in the last six decades. The League of Nations, a body devoid of any Arab representation, founded as a result of the Paris Peace Conference,⁵² was a much less representative organization than the UN, and was indeed superseded by it. Also in these last few years the UN General Assembly and Security Council⁵³ have confirmed their commitment in favour of a region where two states, Israel and Palestine, live side by side within secure and recognized borders. To underplay these aspects in favour of a dubious interpretation of article 80 of the UN Charter means to ignore the present in favour of the Mandate system, which Cherif Bassiouni and Shlomo Ben-Ami have defined as “a new form of colonialism that had the appearance of international legitimacy”.⁵⁴

In this respect the lack of clear-cut borders cannot be considered a valid objection to the feasibility of the “two self-determinations” principle. Both Israel and Palestine have no agreed boundaries in the context of a peace agreement. Palestine, recognized as a non-member State by the UNGA on 29 November 2012, theoretically and based on the same reasoning as presented by some Israeli leaders, could now start building settlements on Israeli soil. Even if we consider as irrelevant the fact that no state or international organization in the world recognizes Israel beyond the “Green Line”, all parties must accept that when a nation “shows every sign of continuance and is recognised by the generality of nations”⁵⁵ - two aspects that apply to the Israelis and the Palestinians alike - it must be put in the condition to self-determine its future.

The habit to resort to the League of Nations times in order to justify settlements in the Palestinian Territories is linked to two final major misunderstandings. The first is related to a questionable assessment of the purposes of the League or, more specifically, to its “White man’s burden” approach. The system of the mandates was in theory underpinned by the benevolent intention of preparing the various peoples to self-determination. In practice, it was mainly a tool used by the victorious powers to legitimize their “right of conquest” on the spoils of the former empires, as well as the lands belonging to the defeated countries. Such aims were pursued through a paternalistic approach that on the one hand fostered the idea that there exists a

Carnegie Endowment for International Peace, 1948, p. 149. No one of the different positions can be considered incorrect. The diatribe is once again connected to the vague wording used in the Mandate text.

⁵² The person chosen by the British in order to represent the Palestinian people at the Paris Conference of 1919 was Faysal, the son of the self-proclaimed “king of the Hijaz” Husayn. The letter written by Weizmann to his wife on the 17 July 1918 - a few days after the private meeting that took place in Aqaba between the Zionist leader and Faysal - is in this respect particularly revealing: “I made the acquaintance of Feisal [...]. He is not interested in Palestine, but on the other hand he wants Damascus and the whole of Northern Syria. He talked with great animosity against the French, who want to get their hands on Syria. He expects a great deal from collaboration with the Jews. *He is contemptuous of the Palestinian Arabs whom he doesn’t even regard as Arabs* [italics added]”. Cit. in Barnet Litvinoff (ed.), *The essential Chaim Weizmann. The Man, the Statesman, the Scientist*, London, Weidenfeld, 1982, p. 209.

⁵³ The “vision of a region where two States, Israel and Palestine, live side by side within secure and recognized borders” has been confirmed by the United Nations Security Council resolution 1397 (S/RES/1397), 12 March 2002,

<http://unispal.un.org/unispal.nsf/0/4721362DD7BA3DEA85256B7B00536C7F>.

⁵⁴ M. Cherif Bassiouni, Shlomo Ben-Ami (eds.), *A Guide to Documents on the Arab-Palestinian/Israeli Conflict: 1897-2008*, Leiden, Martinus Nijhoff, 2009, p. 16.

⁵⁵ Elihu Lauterpacht, “Jerusalem and the Holy Places”, in *Anglo-Israel Association Pamphlets*, No. 19 (October 1968), p. 18, available at http://www.mefacts.com/cached.asp?x_id=10903.

hierarchy between different “races”⁵⁶ and on the other put an exaggerated emphasis on the need to specify distinct boundaries based on ethnic principles. As noted by Weldon Matthews, “the concept of the mandates preserved the notions of racial hierarchy that typified the belief and practice of the era of High Imperialism”.⁵⁷ In this respect it is noteworthy that in the specific Palestinian context, the British Power used to refer to the Arab Palestinians, which at the time of the Balfour Declaration represented about the 9/10ths of the total local population,⁵⁸ simply as “non-Jewish communities”.⁵⁹ This despite the fact that almost all Palestinian journals of the time used to refer to that same majority naming it “Palestinians” and/or “Arabs”. Najeeb Nassar, owner of the Haifa-based al-Karmil newspaper, wrote for example an article in 1914 addressing the Arabs of the surrounding regions: “We, your Palestinian brothers, share with you all your problems. Why, then, don’t you share a little with us the disasters that we are facing [...]?”⁶⁰

The second misunderstanding refers once again to the right granted to the Jewish people to settle in the mandated territories. The right was not unlimited, but explicitly subordinated to the protection of the “rights and position of other sections of the population”.⁶¹ Those very same rights are currently being violated by the continuous fundings allotted to new settlements and outposts⁶² and through the exploitation of local natural resources, a policy specifically prohibited by the Fourth Hague Convention of

⁵⁶ Jan Smuts, the “architect” of the mandate system, called the African people “barbarians”, while William Ormsby-Gore, the first British representative to the Permanent Mandates Commission of the League of Nations (from 1921 to 1922), clarified that the inhabitants present to the West of the Jordan river should not be considered Arabs, “but only Arabic-speaking”. TNA FO 406/40. Ormsby-Gore, 16 August 1918.

⁵⁷ Weldon C. Matthews, *Confronting an Empire, Constructing a Nation*, London, I.B. Tauris, 2006, p. 20.

⁵⁸ Gilbert Clayton wrote on 5 February 1918 that the population in Palestine was composed by 573,000 “non Jews” e 66,000 “Jews”. TNA FO 608/98. Clayton was persuaded that “the so-called Arabs of Palestine - as he wrote to Gertrude Bell in 1918 - are not to be compared with the real Arab of the Desert. [...] He is purely local and takes little or no interest in matters outside his immediate surroundings”. Cit. in Jon Kimche, *There Could Have Been Peace*, New York, Dial Press, 1973, p. 55.

⁵⁹ TNA CAB 23/4. Memorandum by Alfred Milner, 6 October 1917.

⁶⁰ Najeeb Nassar, in *al-Karmil*, 6 December 1914. Cit. in Ali Muhafazah, *al-Fikr al-siyasi fi Filastin. Min nihayat al-hukm al-'Uthmani hattá nihayat al-intidab al-Baritani, 1918-1948* (Political Thought in Palestine: From the End of Ottoman Rule Until the Conclusion of the British Mandate), Amman, Markaz al-Kutub al-Urduni, 1989. Some roots of this “Palestinian self-perception” can be traced to a far past. Haim Gerber, referring to the expression “Filastin biladuna” (“Palestine our Land”) used in the XVII century by Ramla’s jurist Khayr al-Din al-Ramli, noted for example that “[l]ittle used sources from the 17th and 18th centuries indicate some remarkable traces of awareness of territorial consciousness that deserve closer scrutiny. [...] While I am fully aware that some may claim that such territorial concepts may simply refer to one’s native home, place of birth, a close reading of al-Ramli may suggest that there is something more to it, and that we are in fact looking at something that can only be called embryonic territorial awareness, though the referente is to social awareness rather than to a political one”. Cfr. Haim Gerber, “‘Palestine’ and Other Territorial Concepts in the 17th Century”, in *International Journal of Middle East Studies*, Vol. 30, No. 4 (November 1998), p. 563.

⁶¹ Gregory S. Mahler and Alden Mahler, *The Arab-Israeli Conflict. An Introduction and Documentary Reader*, London and New York, Routledge, 2010, p. 66.

⁶² In 2003 alone, four million shekels, over a million dollars, have been invested in just two outposts built on private Palestinian land by Israel’s Housing Ministry. See “Construction in Judea and Samaria” (in Hebrew), in the State Comptroller *Annual Report 54 for the Year 2003 and for Fiscal Year 2002*, <http://www.mevaker.gov.il/serve/showHtml.asp?bookid=404&id=157&contentid=7510&parentid=7504&mpage=398>.

1907.⁶³ Nazmi Jubeh, director of the Department of the History of Birzeit University, clarified some of the main arguments just outlined with the following words:

Any Jew who wants to live in our community, following the rules which this entails, must be free to do so. It's quite a different story, however, to request that the settlers who arrived here by force and in defiance of international law can ipso facto be entitled to see their actions justified. In other words, those who want to live in a future Palestinian state must do so under the law and not as colonialists. When Israel was created, the Palestinians were already here, and accounted for the vast majority of the local population. This is why there are now over one million Palestinians in Israel, many of whom are known as 'internally displaced persons' [IDPs]. In contrast to this, settlers arrived in the Palestinian territories through violence and incentives received in recent years from Israeli governments. Equating the former to the latter is not only simplistic, but also morally reprehensible.⁶⁴

The occupation of the Palestinian territories and the related settlements do not represent the only hindrance for the definitive pulling-down of the mental and physical walls that affect the region. Before the Six-Day war of 1967 no occupation and settlement was in place and the general situation was far from stabile. Still, until 1966 the Palestinian cause was "hijacked" by the "Arab brothers" (the Gaza Strip was in Egyptian hands, the West Bank was occupied by Jordan), while almost all Arab Israelis, internally displaced refugees included, were subject to martial law and their freedom of movement was restricted. Freedom of movement was granted only once every year on Israel's Independence Day, allowing Palestinian refugees to visit their obliterated villages then. Once again, thus, one of the main problems was connected to the denial of self-determination and to the lack of freedom of millions of human beings. This further supports the claim that the end of the occupation of the Palestinian Territories and a firm condemnation of the "E1 approach"⁶⁵ will not *ipso facto* lead to

⁶³ The Fourth Hague Convention of 1907, recognized by the International Court of Justice as "customary international law", pointed out that an occupier can use the resources in the occupied land only for the needs and benefits of the occupied people (about 94 percent of the materials produced nowadays in the Israeli quarries in the West Bank is transported to Israel). The legal definition of the term "occupation" is applied to a territory in which a foreign military force is able to exercise complete or partial military control, as well as civil-administrative control over infrastructures and the daily life of local residents. This helps to clarify the reason why no state or international organization recognizes as "legal" the settlements in the occupied territories, East Jerusalem included. See United Nations Security Council resolution 476 (S/RES/476), 30 June 1980, <http://unispal.un.org/UNISPAL.NSF/0/6DE6DA8A650B4C3B852560DF00663826>. The Israeli High Court of Justice itself established that the application of the regulations on the matter of occupation depends on the effective military control exercised from outside the nation's borders, and not from previous sovereignty over the territory of a specific state. See Israel High Court of Justice, Judgment on the case *Abd Al Nasser Al Aziz v. Commander of IDF Forces* (HCJ 785/87), 10 April 1988, http://elyon1.court.gov.il/files_eng/87/850/007/z01/87007850.z01.pdf. Therefore, the fact that the West Bank was occupied by Jordan until 1967 - an occupation which was opposed by the local population at the time, most of all by Fatah militants, to the point that King Hussein felt obliged to impose martial law - does not justify the use of the expression "disputed territories" in place of "occupied territories".

⁶⁴ Nazmi Jubeh, interview with the Author, Birzeit University, 12 January 2012.

⁶⁵ At the end of November 2012 Netanyahu's government gave green light for the colonization of area E1, on the hills between Ma'aleh Adumim - a settlement nearly equivalent in size to Tel Aviv - and Jerusalem. This move was mainly, but not only, a response of the Palestinians' UN bid. The area between the so-

the resolution of long-standing problems that plague the region, but would represent two significant steps in that direction.

3. Two souls of Israel

We began by asking what explains Israel's shift to the right. Demographic, regional and Palestinian related factors remain relevant aspects for a comprehensive understanding of the issue. However, only a deeper analysis that takes on board the way in which religion, security and international law have been (mis)used in order to negate the right of the other can provide a full-fledged and, perhaps, helpful answer.

In October 1995, when Prime Minister Benjamin Netanyahu was leader of the Likud in opposition, he addressed then Prime Minister Yitzhak Rabin⁶⁶ in the Knesset: "You said the Bible is not our land registry. I say: The Bible is our registry, our mandate, our proof of ownership"⁶⁷.

Rabin and Netanyahu offer two different visions. In the first, international law takes precedence over "biblical legitimacy"; in the second, the opposite is true. Despite the recent political and historical developments and the untimely death of Rabin, the "two souls of Israel" are still alive today. Only if the first - embodied by Rabin and his memory - will ultimately gain the upper hand, will a defusion of the current "zero-sum game" be possible: a "game" that strengthen the Palestinian extremist fringes, tears apart the big majority of the Palestinian people, and makes Israel increasingly isolated from the rest of the international community.

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called E1 area and the Dead Sea is neither devoid of settlements and bypass roads, nor of a local population. Moreover, despite the widespread claim that the E1 area "doesn't cut the West Bank in two", this very land is necessary to avoid an almost complete detachment of the key network connections between the Northern and Southern portions of the West Bank; one of the few viable passages left would be placed near Jericho. Very few other options would remain for the Palestinians, among them the problematic and extremely onerous construction of a highway in the natural reserve of Wadi Qelt. These alternatives, however, are no more than links for traffic and do not represent territorial continuity. Lorenzo Kamel, "The Israeli political spectrum: polarization and foreign policy continuity", in *Aspenia online*, 9 January 2013, <https://www.aspeninstitute.it/aspensia-online/it/article/israeli-political-spectrum-polarization-and-foreign-policy-continuity>.

⁶⁶ At the height of the Oslo process Prime Minister Yitzhak Rabin had the smallest Knesset majority possible (61 out of 120 Knesset members).

⁶⁷ Cit. in Robert C. Rowland and David A. Frank, *Shared Land/Conflicting Identity. Trajectories of Israeli and Palestinian Symbol Use*, East Lansing, Michigan State University Press, 2002, p. 197.

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