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International Eminent Domain

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ON MARCH 3, 1919, President Woodrow Wilson stated to a delegation representing the American Jewish Congress:

I am, moreover, persuaded that the allied nations, with the fullest concurrence of our Government and people, are agreed that in Palestine shall be laid the foundations of a Jewish Commonwealth.\(^1\)

The debate controversy between proponents of self-determination vis-à-vis eminent domain was resolved with seeming dispatch. President Wilson was devoted to the principle of self-determination of nations as much as any other person, but in weighing the historical right to a Jewish State in Palestine he confirmed the Mandate status granted by the League of Nations.\(^2\)

The majority and minority reports of the United Nations Special Committee on Palestine recommended the establishment of a Jewish State in Palestine,\(^3\) the former making it politically independent and the latter making it a part of a federation. The Arabs pointed out that the establishment of a Jewish national home or state, in all or a part of Palestine, was contrary to the principle of self-determination of nations. This attitude was quickly disposed of when, after the General Assembly of the United Nations approved the partition of Palestine, it was determined that within the boundaries of the Jewish State as approved by the Assembly, the Jews formed a clear majority—there being 538,000

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\(^{1}\) N.Y. Times, March 3, 1919, at 1, col. 2.


\(^{3}\) Report to the General Assembly by the United Nations Special Committee on Palestine, as reprinted in N.Y. Times, Sept. 9, 1947, at 3.
Jews and 397,000 Arabs in that State. It is obvious therefore that from a standpoint of self-determination, the establishment of a Jewish State in Palestine is justified. It is all the more applicable to the creation of a Jewish State since it was approved by the Assembly. It is irrefutable that the international law applicable in a situation of this kind buttressed the principle of self-determination as it was and is designed to meet the needs of peoples.

Those in support of the Arab position strongly opposed the establishment of a government in Palestine which was free, in the exercise of its sovereign power, to Jewish immigration and by various other means to prevent the establishment of a national home in Palestine. On the other hand, there was the Jewish right to immigrate, settle and work, and, after becoming a numerical majority, the right to establish a government in Palestine. This right was not only based on the Mandate and the Anglo-American Convention of 1924, but arose also out of all the complex circumstances which brought about the Mandate and the Convention. The historical and humane need for a Jewish State so strongly impressed the conscience of mankind that the League of Nations, as well as the United States determined, after the First World War, that Palestine should become the Jewish national home. Both the majority and minority reports asserted that the circumstances entitled the Jews to statehood in Palestine. Some of those circumstances were:

1. Every civilized people constitutes all or a majority of the population in some country, while the Jews are in a minority everywhere. They lacked the opportunity of free development as a people according to their own likes but instead were exposed to all the handicaps and sufferings of minorities.

2. To them Palestine was not merely a piece of land where they might settle. Apart from their connection with Palestine while they inhabited that country, Palestine has been at the core of their cultural life since they were driven out of the country 2,000 years ago. The Jewish religion, rites, festivals, law, poetry, fairy tales, and mysticism were woven around and permeated with references to Palestine, and would not be what they are without this central and essential element.

3. Because of this connection, Palestine was the only country in the world where Jewish settlement had a reasonable opportunity to succeed, and not because it is a big country or because of the fertility of its soil. In 1948 it was a small country, about 10,000 square miles on the western side of the Jordan and about 35,000 square miles on the eastern side. The land was considerably eroded, and, as put succinctly by the majority report, about one-half of Palestine west of the Jordan was uninhabitable

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But the Jewish settlers were willing to work there and were capable of working there harder than anywhere else, and they turned deserts into gardens. Several other attempts at resettling Jews in various parts of the world have failed. Only in Palestine were such attempts successful.

4. There was a need for considerable shifting of occupations among the Jewish people, and especially for the creation of a numerically commensurate class of farmers. For various reasons, originally under compulsion and later voluntarily, Jews have tended to concentrate in a limited range of occupations. Shifting of occupations is a painful process and succeeded only because the Jewish people were, and are willing to suffer the pain that goes with it because of other compensations. In this case, there were such other compensations, psychological in nature, the incomprehensible nightmare of the holocaust and the cremation of six million Jews, all connected with the establishment of a Jewish state in Palestine.

5. Experience prior to and since the development of Israel has shown that the Arabs in Palestine, far from suffering as a result of Jewish immigration, have greatly benefitted because of higher standards of living introduced by the Jews, better wages, and better health conditions. Palestine, and later Israel, has become a magnet attracting Arabs from all the neighboring independent Arab countries.

Israel and the Jewish people have been characterized as intruders into the Middle East, displacing other inhabitants. Even sympathizers for Israel's existence may concede this contention.

The contention is made that Palestine was inhabited by an Arab population, but the Zionists entered and settled on this land, establishing a state with people from outside. As the late Jawaharlal Nehru was reputed to have stated, "But the Arabs lived there." This view is shared by most Middle East scholars, many Christian missionaries, and journalists. For example, it is implicit in the writings of Professor Frances Boudeau of Columbia, who was President Kennedy's ambassador to the United Arab Republic and in Fred Khouri's The Arab-Israel Dilemma, as well as in the somewhat more sympathetic reporting of Arthur Sulzberger of the New York Times. This characterization of Israelis as intruders lay at the root of hostility to Israel by many Asian and African nations at the United Nations. As intruders, Israel and Zionism are regarded as another form of colonialism. To nations where the Judeo-Christian culture has predominated an opposing, more compatible view of Israel tends to counteract this negative image as Israel. Under this view, the homeland of the Jewish people is perceived as

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6 N.Y. Times, Sept. 9, 1947, at 34, col. 2.
a fulfillment of Biblical prophecy with the ingathering of the Jewish people.

The negative perception of Israel and Zionism as an intrusion in the Middle East may be counteracted by a consideration of the history of the establishment of the State of Israel—a result of the unique position of the Jewish people, as previously noted.

Many observers will acknowledge this, but claim—whether explicitly or implicitly—that Israel's present position was unjustly achieved through force at the expense of the Arab people. The Arabs claim the existence of Israel is itself an act of aggression in that the Arabs are denied the right of self-determination. They claim the Arabs were driven out of their land and now live as refugees.

Self-determination, a concept developed at the end of World War I, encompasses the right of every people to choose freely such forms of government and political and cultural institutions as it thinks will best correspond to its needs. The principle, recognized in the U.N. Charter and reaffirmed in the Universal Declaration of Human Rights, was designed to meet the needs of a people—a cultural entity molded by a common history, tradition and language. However, the principle does not encompass an absolute right, as evidenced by the need to maintain viable political entities, e.g., the U.N. action in the Congo. Not every locality or region can be accorded the right of self-determination.

In the case of Palestine, two conflicting rights to self-determination arise, that of the Jews and the Arabs. The international community through action of its decision-makers determined that the Jewish people were entitled to a right of self-determination in Palestine because of special ties to the region as expressed in its historical, religious and cultural experience. While other peoples are a majority in some country, the Jews were a minority everywhere and were denied an opportunity to develop freely as a people, as demonstrated by the Nazi holocaust and the inability of Jews to find a haven in any country as well as the need for the survivors of the holocaust to seek a place of refuge. A Jewish homeland became imperative. In making this determination the United Nations did not preclude Arab rights as the 1947 Resolution envisaged both a Jewish and an Arab state. The Arabs rejected this solution.

The decision made by the international community was unique, fitting a unique situation. Nevertheless, Arab sympathizers contend that Arab inhabitants were displaced and thereby deprived of their rights. The dilemma can be resolved by the analogy of eminent domain from Anglo-American law. Eminent domain embraces all cases where, by authority of the state and for the public good, the property of the individual is taken without his consent to be devoted to some particular use, by the state itself, by a corporation, public or private, or by a private citizen for the benefit of the public. Land may be condemned for a hospital, highway or railway. More analogous to Israel's rights is the power of government to take land, with compensation to the owners, for use in

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public renewal projects by low income persons or by other private persons for the benefit of the community. Eminent domain has also been exercised to acquire land for roads or for irrigation. In some states property may be condemned for mineral exploitation.

Applying the analogy to the Middle East, the Arabs have about thirteen independent states extending over a vast region from the western shores of North Africa to the Persian Gulf. The international community appropriately determined that some infringement on this self-determination was justified to permit the establishment of a homeland for the Jewish people. Eminent domain encompasses the principle of just compensation. Accordingly, U.N. resolutions regarding the Arab refugees, while providing for resettlement, also recognized the principle of compensation.

The Arab refugee problem stems, in part at least, from actions of the Arabs themselves. To permit total resettlement would constitute a threat to Israel's existence. Accordingly Israel has offered compensation rather than resettlement. A custodian of Arab property has been appointed to account for Arab property left in Israel. Arab spokesmen reject compensation stressing the sanctity of private property. They argue that the Arab refugees have a right to return and reclaim their property. But their argument ignores the accepted legal principle of eminent domain which permits a state to take private property and make just compensation.

From another perspective international eminent domain may be regarded as an expression of the principle of exchange of populations as practised in central Europe following World War II. Germans from Polish and Czechoslovakian territories moved to settle in the German Federal Republic while Poles and Czechs moved eastward. A similar population exchange occurred in the Middle East as Jews fled from Arab states in numbers which equaled the Arab refugees.

Generally, world public opinion appears to remain sympathetic with Israel. However, there are opinion-makers who are either critical of or hostile to Israel and seek to influence public opinion accordingly. These include: anti-semites and bigots, and partisans of the Arabs, e.g., Arabs living abroad, religious organizations who send missionaries to Arab countries, investors in Arab countries, scholars with personal ties to the Middle East, Arab public relations agents, persons and groups believing American interests would be better served by supporting the Arab position, the so-called New Left elements which identify the Arabs with the "revolutionary struggle against imperialism," and certain other misinformed persons and groups who regard the Arab cause as just.

Aside from the New Left elements, these opponents have existed since the proclamation of the Balfour Declaration. In addition, such small Jewish groups as the American Council for Judaism and the Sattmire Rebbe have also been hostile to Israel and allowed themselves, whether wittingly or unwittingly, to be used by the partisans for the Arab cause. The American Council for Judaism, believing Judaism is a religion and not a nation, and that Israel somehow
or other threatens the Diaspora, and the extreme religious groups, like the Natura Karta and the Sattimere Rebbe, believing Israel is sacrilegious since only the Messiah by the will of God can cause the return of Jews, have been as vehement in attacking Israel as any Arab.

On the other hand, support for Israel is to be found among partisans of Israel, including world Jewry overwhelmingly, persons attracted to the democratic and progressive tendencies of the State of Israel, investors in Israel, Christians who regard the return of Jews to Israel as the fulfillment of Biblical prophecies and the forerunner of the Second Coming, persons and groups who regard support of Israel as expiation for guilt in failing to act to save the six million Jews murdered by the Nazis, those who see the support of Israel as a bulwark against Soviet penetration, and those who believe in the justice of the Israeli position.

To both Arab and Israeli partisans the issues in the controversy are emotional and viewed in almost black and white terms, though some observers, like Quincy Wright, attempt an objective approach. A program for support of Israel must be cognizant of the make-up of both the support and opposition. Polarization should be avoided. Dialogue between supporters of Israel and moderate Arab partisans should be encouraged.

Obviously, Israeli support can be achieved through education, through an understanding of the facts as they happened. The presentation should be objective, without ignoring the unfavorable. In some cases, as regards Poland and the attitude of some Arab groups, the opposition to Israel clearly reflects an anti-semitic or bigoted outlook.

Anti-Zionism has been used as a cloak for anti-semitism. It is difficult to determine in every case the motivations of persons who take a position on the Arab-Israeli conflict, but not every critic of Israel is necessarily an Anti-Semite or a bigot. Clearly, opposition to Israel, as such, should not be equated with anti-semitism. However, to many Jews, such a distinction may be difficult to comprehend because Judaism, as generally understood by Jews encompasses more than a religious concept in the notion of peoplehood—the survival and interrelation of the Jewish people—which is today expressed in a relationship to Israel. This is a concept which may not be easily understood by a non-Jew who may not hold any animosity towards Jews but still opposes Israel.

Familiarity with Judaism and the Zionist movement demonstrates Israel's right to exist. A thriving Jewish community existed in Palestine until the Eleventh Century when it was destroyed by the Crusades. A smaller Jewish community remained continuously and later was augmented by the Zionist migrations. In a sense, the Jewish people never really left Palestine, as Jewish religious practices, prayers and cultural expressions were identified with the Holy Land, the Return, and the special Law of Return passed by the Knesset in 1950. The Jewish people never relinquished their claim to Palestine.

In truth, Jewish settlement in Palestine predated the Arabs, who conquered the region in the Seventh Century during the
first Caliph. A large Jewish community flourished even after this conquest. The Turkish conquest occurred in the Ninth Century and, in 868, Ahmed b. Tulun, a Turkish general founded a dynasty in Egypt and later in Syria. In the tenth and eleventh centuries the Seljuq Turks intruded from the East to be followed by the Crusaders who were defeated by Saladin in retaking Jerusalem in 1187. In the Sixteenth Century the Ottoman Turks conquered the region. At no time was there ever an Arab State in Palestine or an independent Palestine state. Under the Ottomans, Palestine was governed as part of Syria. The makeup of the population constantly shifted.

In 1870, when the first Jewish homeland movements began under what may be broadly regarded as Zionism; there were only 30,000 Jews and 300,000 Arabs in a land where three to four million people had once lived, where once vine-clad hills had become bare stone and the once rich valleys turned into malarial swamps. Succeeding waves of Jewish migration improved the country and drew Arab immigration from surrounding lands, so that when the British left in 1947 there were 600,000 Jews and 1,500,000 Arabs, though during the period of the Mandate the Jewish population increased at a greater rate proportionately. The Arabs were and are still attracted by the greater economic opportunities generated by Jewish migration and development.

Zionism has been characterized by Professor Talmam, an authority on nationalist movements, as being the most humanistic and idealistic of all such movements. Its premises stemmed from Jewish ideals and western humanist, democratic and universalistic aspirations, including the ideals of socialist utopianism and Marxism. The goal was to establish the ideal society.

No major Zionist ideologist ever advocated the displacement of the Arab population, nor was this the intent of the Jewish settlement movement. On the contrary, as stressed by Ahad Haam, the goal was envisaged as one of living in harmony and in cooperation with the Arab community. Groups like the Hashamir Hatzair and the Ichud Movement advocated the establishment of a bi-national Arab-Jewish state and jointly cooperated with Arab settlements. Ben Gurion stated there was room in Palestine for both Jews and Arabs. The Zionist movement further envisaged the purchase of land for redemption. Large tracts of this land were owned by absentee land owners residing in Turkey. The Jewish National Fund was established to collect money from Jews throughout the world and to buy land and undertake reforestation and other reclamation projects. No Zionist ever contemplated the forcible occupation of Arab land.

When the Jewish migration first began, no nationalist consciousness was encountered. Jewish settlements did, however, encounter attacks by marauding Bedouins intent only on robbery and mayhem. However, by the time of the Balfour Declaration, a strong national consciousness had developed among Arab intellectuals and there
was opposition to the establishment of the Mandate. Nevertheless, during the first decade of the Mandate relative calm and harmony existed between the Jewish settlers and the Arabs. Unlike the Jewish community, which, through the establishment of the Jewish Agency, in effect, maintained an autonomous government, the Arab leaders could not unite due to the bitter struggle ensuing between al-Haj Muhammad Amin al-Husssi, the Grand Mufti of Jerusalem, and the more moderate Raghib Nashashibi, mayor of Jerusalem.

In 1929 and during the 1930's, the extremist faction, led by the Grand Mufti and manifesting anti-semitism and perpetrating pogroms and other attacks upon Jews, led a revolt against the Mandate. By the assassination of moderate Arabs who sought to cooperate with the Jews, this faction induced polarization. The Arab community leaders comprising the upper class rejected all compromises, including proposals for a bi-national or federal state.

In 1938 the Peel Commission proposed the establishment of a Jewish and an Arab state which the Arabs rejected. The Arab leaders even refused to come to London to testify before the Commission or to negotiate with Jews. They insisted on the establishment of an all Arab state.

With the continuance of this rigid position after World War II, the United Nations found that the Partition Plan, as finally adopted by the General Assembly, was the only alternative—at least the only one having the merit of receiving the acceptance of the Jewish community. The Jews had previously accepted an Anglo-American commission proposal calling for the admission of 100,000 Jews, but this was also rejected by the Arab leaders. They consistently refused to make any concessions to produce an equitable resolution.

The situation which developed was, to a great extent, beyond the control of either the Israelis or the Arabs, resulting from inadvertent or wilful British Machiavellianism. In the McMahon Declarations of 1915 Arab leaders were promised independence and control of the Middle East, excluding the region encompassing Palestine, in return for revolting against the Ottoman Empire. In the Sykes-Picot Agreements Britain and France agreed to carve out the area and the Balfour Declaration was issued providing for a Jewish homeland in Palestine. These agreements were clearly contradictory.

Subsequently, the Balfour Declaration was affirmed by the Allied powers at Versailles and in the League of Nations with Britain acting as the Mandatory power. The British administrators were prejudiced against the Jews and favored the Arab leaders, encouraging division and discouraging tendencies to promote cooperation. The British failed to protect the Jewish community and attempted to seize arms acquired by Jewish settlers who sought to protect themselves. The administration tended to surrender to the demands of the extremists and, after 1938, Britain, with the adoption of the White Paper, pursued a policy of appeasement. At the time when Nazi persecutions were in full fury, Britain imposed barriers on Jewish immigration and actually thwarted efforts to save Jews from the Nazi gas chambers. Jewish
refugees were forced to drown in leaky ships, such as the Struna, which were prevented from landing in Palestine.

Following World War II the British, with Ernest Bevin as foreign minister, continued this policy, manifesting total insensitivity to the need of the survivors of the concentration camps for a place to migrate and to obliterate the effects of the holocaust. These policies led to terrorist activities by Jewish groups against British authorities and the undertaking of illegal immigration to Palestine. The Jewish cause attracted the support of public opinion in the United States and other Western countries and in Britain itself.

Britain, weakened by the war and finding itself beleaguered, could not maintain the Mandate and finally referred the matter to the United Nations for guidance. The General Assembly referred the controversy to a United Nations Special Committee on Palestine which heard testimony and investigated the matter. The majority of the Committee proposed the Partition Plan while a minority proposed a federal state.

The Arab groups rejected both proposals while the Jews accepted the Partition Plan which was adopted as a recommendation by the General Assembly on November 29, 1947. Both the United States and the Soviet Union supported the Plan. The Arab groups announced their opposition. Britain opposed the Plan and refused to allow a United Nations Commission to enter Palestine to implement it. Arab terrorist groups committed acts of violence, such as attacking an Hadassah ambulance convoy near Jerusalem, killing doctors and nurses. The British interfered with the efforts of Jews to protect themselves, while either looking the other way or aiding and abetting Arab acts of terrorism, thus allowing the situation to deteriorate. The British announced that they would leave on May 14, 1948, and did leave in a manner calculated to create the greatest amount of chaos.

During this period the American position vacillated towards abandoning the Partition Plan and proposing a United Nations Trusteeship. However, when the British left abruptly, the Jewish community proclaimed the State of Israel which was quickly recognized by the United States and the Soviet Union. This was immediately followed by an invasion of armed forces from neighboring Arab states allegedly to protect the Arab inhabitants of Palestine. Trygve Lie, the then Secretary General of the United Nations, characterized the Arab action as an aggression contrary to the U.N. Charter and urged the Security Council to take whatever action necessary, including sanctions, against the Arab states. The Security Council and the International Community failed, both before and after May 14, 1948 to take any concrete action to maintain peace in the Middle East. No international police force was sent into the area.

The result was that the maintenance of order had to be accomplished by the newly proclaimed state of Israel, forced to defend itself from extinction by Arab armies. Propagandists in the Arab states threatened to perpetrate a great massacre. The Israelis, who were better organized and had a greater will to fight, proved to be militar-
ily superior to the Arab armies. The conflict ended with a cease-fire and armistice agreements.

A by-product of the conflict was the Arab refugee problem. Even before the State of Israel was proclaimed, the leaders of the Palestine Arab community left, leaving their people leaderless and in confusion. Arab propagandists called on the Arab inhabitants to leave, proclaiming that the Arab armies would quickly drive out the Jews and that they would then return to claim Jewish properties. Despite the urgings of Jewish leaders that the Arabs remain, such as in Haifa, the Arab community left en masse.

The war as such, like all wars, inevitably caused a population displacement. The desire of many Arabs to leave, particularly the elite, may also have been prompted by the fear that, if triumphant, they would massacre or commit terrorist acts on Jews, the Jews would treat them the same way. The Grand Mufti, who was by then in Egypt, had been a guest of Hitler during World War II and assisted in promoting the Nazi extermination. Some Arab factions conceived of making the Grand Mufti the head of an Arab government in Palestine and he had actively promoted Arab terrorist activities.

Professor Fred Khouri, a sympathizer of the Arab cause and an opponent of Israel admits the Arab leaders bear at least some responsibility for the refugee problem;

The Arabs—if only because of their own ineptness, overconfidence, and lack of flexibility—shared responsibility for the refugee situation with Israel and others. The shortsighted Palestine Arab leaders failed to prepare their own people either to be victorious in any armed struggle with the Zionists or to live with Zionist aspirations. Shortly after the passage of the UN partition resolution in November, 1947, many frightened and selfish Palestine Arab leaders fled at the first sign of trouble, leaving their people disorganized and an easy prey to rumors and fears. The armed Arab intervention on May 15, 1948, precipitated such widespread and large-scale fighting throughout Palestine that many other Arabs fled their homes to avoid the dangers of warfare. Moreover, this intervention had been so badly planned and executed that it had led to a humiliating defeat which prevented most of the refugees from returning to their homes. The Arabs had, therefore, helped to create the refugee problem.¹⁰

Israel has feared the mass return of the refugees as constituting a potential Trojan Horse. The Israelis have sought a regional solution of the problem. A considerable number of refugees who were members of immediate families remaining in Israel were repatriated. Though the refugees in Jordan were accorded full citizenship status, in many instances the refugees were not integrated with the general community but forced to live in camps. The political leaders sought to use the refugees for political purposes insisting on repatriation to Israel, citing U.N. resolutions to that effect. However, as Professor Khouri observes:

Since the overwhelming majority of UN members had repeatedly voted for resolu-

¹⁰ F. KHOURI, supra note 7.
tions reaffirming paragraph 11 of Resolution 194(III), the Arabs stood on strong legal and moral grounds whenever they called upon the UN to carry out the terms of this paragraph. But they weakened their position whenever they stressed only those parts of the resolution which they favored and when they tried to demand more than it actually provided for. For instance, although some Arab governments had formally agreed to accept those refugees who did not wish to be repatriated, too frequently Arab officials, fearful of antagonizing the refugees and their supporters, emphasized only the principle of repatriation, largely ignoring the provision for resettlement in Paragraph 11. By taking this position, these officials not only supplied a strong basis for Israel's charge that the Arabs were deliberately seeking a mass return of the refugees in order to undermine Israel's security, but they also made it far more difficult to obtain support within the UN for the implementation of the repatriation and compensation provisions of UN resolutions. In addition, Arab leaders generally neglected to mention the fact that paragraph 11 specifically stated that only those refugees “wishing to . . . live in peace with their neighbors should be permitted” to return to their homes in Israel.\(^\text{11}\)

Israel was willing to compensate the refugees for the property which they had left and appointed a custodian to be in charge of the property. Bank accounts were unblocked. But Arab leaders insisted on repatriation. At the same time Arab government leaders, particularly after 1954, called for the destruction of Israel. There were expressions that the returning Arab refugees would not accept “alien rule”, and, since the June War, leaders of Arab terrorist groups recruited from the refugees stated openly that they do not accept the existence of the State of Israel. The displacement of population caused by the June War increased the number of refugees. Israel's occupation of the West Bank and Gaza resulted in placing refugees under Israel jurisdiction.

The international community, in recognizing the Jewish right to self-determination, also recognized the rights of the Arab inhabitants. The Balfour Declaration provided for the establishment of a national home, respecting the civil and religious rights of existing non-Jewish communities. The rights of the non-Jewish communities were also recognized in the Mandate for Palestine. The Partition Resolution also provided for Arab rights in providing for the establishment of both an Arab and Jewish state in Palestine. However, the Arab leaders refused to abide by these declarations which provided for both Jewish and Arab self-determination as called for by the international community.

If the Arab armies had triumphed doubt exists as to whether an Arab state would have been established. King Abdullah of Jordan envisaged conquering Palestine and perhaps Syria to establish a greater Syria. Jordan, in controlling the West Bank from 1948 to 1967 did not establish a Palestine state for this area and resisted such efforts. The Arab states have themselves failed to adhere consistently to the principle of self-determination. In the West Irian Case, when Indonesia threatened to use force to take over territory, a proposal to resolve the matter on the basis of self-determination was opposed by the United

\(^{11}\) Id. at 170-71.
INTERNATIONAL EMINENT DOMAIN

Arab Republic, Syria, Iraq, Jordan, Lebanon and the Soviet Union.12

The international community has imposed limits on the principle of self-determination as demonstrated by the Congo operation. Regionalism must not be carried to extremes, but must be compromised with overriding needs for the existence of larger governmental units as conducive to international peace and territorial viability. The Arab peoples have been accorded self-determination through the establishment of about thirteen Arab states. The Jewish people, as recognized by the international community, are entitled to national determination in that particular region to which they have a peculiar historical, religious and cultural attachment.

Some of the Arab groups mention the goal of a state in Palestine which is neither Jewish nor Arab, but both. However, this approach was rejected by Arab leaders when first proposed by some Jewish leaders during the period of the Mandate. Moreover, the acts of terrorism committed by these groups are not likely to evoke the kind of trust to make such an approach possible. Experience elsewhere does not hold promise for bi-nationalities.

There has also been a proposal for the establishment of a federal state with Israel in a federal relation with the Arab states. The Arab leaders rejected such an approach before 1948, and, though there may be some Arabs who now favor this solution, it does not appear to have widespread support. Moreover, efforts for uniting or federalizing the Arab states have not been successful.

The overriding problem in the Middle East is the refusal of the Arab leadership to accept the existence of the State of Israel and to negotiate a peace settlement. They sought to strangle Israel at birth. The Israeli victory resulted in territory which exceeded that allotted by the Partition resolution. The Arab leaders conditioned peace on limiting Israel to the area allotted by the Partition Plan and in calling for the repatriation of Arab refugees, ignoring that the Partition Plan envisaged the peaceful resolution of the conflict and also the establishment of an Arab state. For Israel to have ceded territory would have meant occupation of additional territory by Egypt and Jordan. Furthermore, the then existing boundaries were insecure so that the ceding of territory would only have created further insecurity. However, it may be granted that in some instances Israel set the boundary lines as reflected in the Armistice Agreement a bit sharply, particularly vis-à-vis Lebanon.

Statements by Arab leaders, particularly after 1953, indicated that their goal was not the Partition boundaries but the destruction of Israel. The Arab position amounted to a zero sum game with Israel making all concessions, including its very right to exist. Border attacks increased and Israel shipping through the Suez Canal and the Gulf of Aqaba was blocked. A huge infusion of arms from the Soviet Union increased tension culminating in continual terrorist activity and finally in the Sinai

12 Halderman, Some International Constitutional Aspects of the Palestine Case, 33 LAW & CONTEMP. PROB. 78, 80 (1968).
Campaign. Israel, after occupying the Sinai, Gaza and Sharm el Sheik, agreed to withdraw in accordance with an agreement providing for the stationing of a United Nations Emergency Force along its border with Egypt and, at Sharm el Sheik, to protect free navigation through the Gulf of Aqaba. Israel was also assured the right to navigate through the Suez Canal, a right which the international community refused to implement. However, even after Sinai the Arab leaders continued to call for the destruction of Israel.

Terrorist raids continued and by 1967 equaled in intensity that which prevailed prior to the Sinai Campaign as the Arab states again received a heavy infusion of Soviet arms. The events leading up to the June War are still a bit obscure, but appear to have emanated from Israel’s response to Syrian border raids leading to a penetration of Syrian air space and the shooting down of six Syrian planes. Statements by Israeli leaders warning Syria of reprisal were distorted by Arab propagandists to imply Israel threatened to overthrow the Syrian government.

A rivalry and intrigue existed between Nasser, supported by Soviet assistance, and King Hussein of Jordan and King Feisal of Saudi Arabia who were supported by the United States. The latter goaded Nasser to take a stronger stand against Israel. At the same time the Soviets disseminated false intelligence that Israel was mobilizing against Syria. Arab propagandists mobilized public opinion to a frenzy calling for the destruction of Israel. Nasser was ridiculed for hiding behind the skirts of the United Nations Emergency Force. To maintain his influence in the Arab world Nasser was compelled to call for the withdrawal of United Nations forces. Secretary General U Thant immediately and arbitrarily acceded unilaterally, contending that the forces were present subject to Egyptian consent and because contingents from Yugoslavia and India demanded to be withdrawn. This, however, was in contravention to prior agreement between Israel and Dag Hammarskjold to the effect that the forces would not be withdrawn pending consideration by the Security Council.

Nasser sent military contingents into the Sinai and the Gaza strip with his authorized terrorist activities creating havoc. With the withdrawal of UNEF from Sharm el Sheik Nasser reimposed his blockade on Israel shipping. Nasser’s spokesman Huhamed Hassan Hey Kahl, writing in Al Ahram, proclaimed that Israel now faced the alternative of economic strangulation or of going to war and facing destruction in battle, while another Arab writer stated it would be necessary to attack. Nasser made an alliance with Jordan and Feisal of Saudi Arabia who stated there could be no peace in the Middle East as long as Israel exists. Arab statesmen called for no mercy to Israeli civilians.

The international community again proved ineffective and shockingly indifferent. The Security Council, beset with the Soviet and French vetoes, was incapable of taking any action, nor was there any inclination for the United States, despite the Eisenhower Doctrine, to come to Israel’s assistance. After procrastinating for almost a month to await international action Israel invoked its right of self-defense by bombing Egyptian airports and
invading the Sinai to open navigation in the Gulf of Aqaba. Pursuant to agreement with Nasser, Hussein invaded Jerusalem and other parts of Israel despite Israel's assurance of no desire to attack Jordan. The victory has eliminated the threat to Israel's existence. Evidence had indicated Nasser did have plans to invade Israel and had ordered his troops to kill all Israelis sparing no one. King Hussein had issued similar orders. United Nations politicians ignored these sickening facts.

Abba Eban has indicated Israel's willingness to withdraw from the occupied territories after negotiation of a peace treaty achieved through direct negotiation. U.N. Security Resolution No. 242 (1967) of 22 November 1967 emphasized the inadmissibility of the acquisition of territory by war and affirmed the establishment of a just and lasting peace, including the application of the principles of "withdrawal of Israeli armed forces from territories of recent conflict" and "termination of all claims or states of belligerency and respect for and acknowledgement of the sovereignty, territorial integrity and political independence of every state in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force." The Resolution significantly did not call for withdrawal to the armistice lines as claimed by the Arab leaders and provides for "recognized boundaries," meaning boundaries based on negotiation.

The Arabs had repudiated the Armistice agreements. Previously the Arabs had treated them as perpetuating a state of war, though the Charter precludes the acceptance of such a state. Thereby border raids and the blocking of the Suez Canal and the Gulf of Aqaba had been justified. In other words, the Arab states had treated the Armistice Agreements as limiting Israeli action but not curtailing their activities. The Security Council Resolution in omitting reference to the Armistice Agreements implicitly supported the Israel position. Israel could not withdraw to "recognized boundaries" unless they were first agreed upon.

The Arab states have not themselves consistently opposed the seizure of territory by force as manifested by the Jordanian occupation of the West Bank and part of Jerusalem until 1967 and also by Egypt's occupation of Gaza. Furthermore, the U.A.R. and the U.S.S.R. supported India's taking of Goa in the Security Council and the Arab states supported Indonesia's threat to force with respect to West Irian. An issue which has served to antagonize some sectors of public opinion has been the Israeli retaliatory raids such as the raid on the Beirut Airport. However, retaliatory raids by Israel are intended as retaliation to an organized campaign of terror by Arab terrorist groups who are aided and abetted by the Arab governments. The purpose is to influence Arab decision-makers to discourage such raids, to communicate a claim with respect to future

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14 Halderman, *supra* note 12.
behavior. Israel has significantly refrained from pursuing a policy of counter terror, either in the adjacent Arab states or in the occupied territories. The retaliatory raids stem from the problem forced upon the Israeli government by Arab terrorist activity.\textsuperscript{15}

To many left wing groups Israel has erroneously come to symbolize imperialism. This outlook stems partly from Israel's association with Britain and France in the Sinai-Suez crisis. However this can be refuted by pointing out that Israel's objectives differed from those of France and England in that Israel was motivated by considerations of self-defense.

The imperialist argument can also be met by stressing that Israel herself is a victim of imperialism, having had to struggle against British rule. Indeed, the pattern of the Israeli struggle was adopted by the Egyptians in driving the British out of Suez and in Cyprus. Another form of imperialism, the big power politics, has victimized both Israel and the Arab states. Both the United States, by sending arms to Iraq and forming the Baghdad Pact, by supporting King Feisal of Saudi Arabia and Hussein of Jordan and by opposing Nasser, and the Soviet Union, by its support of the U.A.R., Syria and Iraq, have exacerbated the Middle East conflict and exploited it for their own ends.

Israel herself is the product of a radical tradition reflected in the Kibbutz movement and the idealism of labor Zionists. Certainly, monarchist regimes like Hussein, Feisal, and that in Kuwait cannot be regarded as revolutionary. Nasser, despite his rhetoric, maintained a police state and his policies in Yemen smacked of imperialism. Furthermore, he recruited former Nazis as advisors and came to power with the support of moderates, hardly credentials for a revolutionary. Syria, despite the fact that the regime calls itself socialist, is ruled by a military clique. The Arab societies, despite extensive reforms in the U.A.R., remain stratified and fragmented with a small upper class and a huge number of Fallah or peasants. Those who compare the struggle to Viet Nam would find the Arab society analogous to South Viet Nam. Accordingly, the revolutionary rhetoric of the El Fatah should be taken with skepticism.

Actually, Israel, particularly since the six-day June War of 1967, has become the symbol of liberalism and progressivism behind the Iron Curtain, constituting the catalyst for the liberal movement in Czechoslovakia and student unrest in Poland. It was for no small reason that the Communist regimes have so bitterly opposed "Zionism." The defeat by Israel of Arab forces heavily armed by the Soviets constituted an important symbol of triumph over oppression to the countries of Eastern Europe. This is a fact which should be stressed in appealing to the New Left and to other groups.

Accordingly, Israel has been compelled to take matters into its own hands since its birth by resorting to war, because the international community through the United Nations has been incapable of undertaking concrete action to maintain

peace in the area and to implement its decisions. Past experience has demonstrated that international guarantees cannot be relied upon. Israel, both in 1956 and 1967 was forced to make the first strike because if it waited for the other side to fire the first shot, the result could well have been disastrous, due to its then limited territory and truncated boundaries. Present boundaries, pending a peace treaty, provide Israel with a greater margin of safety.

Israel’s existence is morally and legally justified. It is the only place homeless Jews can go. The absence of Israel in the 1930’s and early 1940’s deprived the Jews of a place of refuge where hundreds of thousands, if not millions, might have been saved from the Nazi crematoria. Migration to the United States or other Western countries was blocked by bureaucratic bigotry and other factors. The international community turned its face from saving the Jews of Europe. The Vatican and even Jewry at large failed to raise their voices to express moral indignation. Jewish apathy is a shocking trait, but it is attributable to misguided leaders. The experience demonstrated that the Jewish people must be masters of their own fate, and this can be achieved through the State of Israel. The ghosts of Auschwitz, Dachau, Buchenwald, Bergen-Belsen, and Treblinka, and other horror centers of atrocities point accusatory fingers at world society. Israel has evolved from the holocaust. The very fact of the holocaust and the failure of international society to prevent it justifies the existence of Israel.

Proposed International Public Relations Program For Israel

I. The following ideas should be expressed:

A. The Jewish state began originally as a revolutionary movement intent not only on establishing a homeland for the Jewish people, but also on creating new forms of social justice expressed in terms of Kibbutz, socialism, dignity of labor, conquest of the desert.

1. This will attract the New Left. However, the point should be acknowledged that to some Israelis the long controlled dominance of the labor parties has led to a smug conservatism. Efforts should be undertaken within Israel to reevaluate its programs. The role of the Israeli Left should be brought out in this context.

2. The fact that Israel is not a utopian society should be admitted, but that efforts for improvement are being undertaken.

B. Stress should be given the fact that to Zionism the idea of forcible eviction of the Arabs out of Palestine was abhorrent and that some Zionist groups, even today, visualize a bi-national state. The Arab refugee problem is not the responsibility of Israel alone.

C. The issue of self-determination for

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the Arab people in Palestine or of Arab rights is a false issue. International decision-makers had determined that the Jewish people as well as the Arab inhabitants had a right in Palestine. The Arab leaders refused to cooperate within this framework by insisting on an exclusive Arab state despite the existence of about thirteen other Arab states according self-determination to the Arab people. Arab leaders today refuse to accept the rights of Jewish self-determination despite recognition of such rights by international law.

D. The Arab leaders have in fact sought the disintegration of the State of Israel through military invasion or by mass repatriation of Israel refugees whose leaders have openly proclaimed would result in dissolving the State of Israel. The Arab states have in effect assumed a position of a zero sum game whereby they demand the complete surrender of their opponent, including its very existence.

E. Both the Israelis and the Arab states are victims of outside forces.

1. Both have been victimized by British duplicity.

2. The Jews were greatly affected by the Nazi holocaust.
   a. The demand for Jewish immigration to Palestine was greatly increased. A more gradual migration, absent the holocaust, might not have evoked as much tension with the Arab community.
   b. The failure of other countries to provide a refuge for Jewish victims or to act to protect the Jews caused the Jewish people to lose faith on reliance upon Western goodwill and to act on their own through establishment of a Jewish state.
   c. The memory of the holocaust makes Jews determined that never again can this happen as demonstrated by Jewish reaction to Arab threats. Since the June War, Israeli Jews no longer rely on others nor on international institutions for protection, but seek to be masters of their own fate.

3. Russian and American rivalries have exacerbated the conflict by exploiting rivalries between Arab states, thereby inducing more extreme positions against Israel, and by selling arms and thus promoting an escalating arms race. The big powers have exploited the Israel-Arab conflict to maintain a diplomatic position in the region. Big power rivalries, as reflected in the Security Council, has prevented the imposition of the rule of law for the region.

4. The present problems stem directly from the cynical failure of Britain and the United Nations in 1948 to exert influence
to discourage the Arab states from invading Palestine and going to war with Israel. The Arabs, a proud people, find it psychologically difficult to accept the fact they were defeated; the acceptance of the existence of Israel means recognizing defeat. That the Arab armies would be unable to triumph over Israeli forces was prognosticated by British military intelligence a year in advance, a fact the British colonial and foreign offices, blinded by bigotry, refused to accept, hoping the Arab armies would eliminate Zionism as a factor and thereby advance British imperialist goals, in the Middle East. Neither Britain, the United States, nor the United Nations were willing to act to avoid an armed conflict and the ensuing consequences. The British practically invited the Arab armies, particularly Jordan, to invade, but later imposed an arms embargo on the Arab states, thereby double-crossing them.

F. The international community, neither through the United Nations nor through other means, has ever shown a willingness to take affirmative action to maintain peace in the region or to assure the survival of the State of Israel. The world community in 1948, 1956 and 1967, demonstrated an inability to act affirmatively to prevent destruction of the State of Israel, prevent border raids and terrorist activities, assure free navigation to Israeli shipping, or promote peace. Israel has been compelled to act alone for her survival.

II. The following measures should be undertaken:

A. The salient facts should be published and disseminated.

B. The utterances of Arab propagandists and writings of Arab sympathizers should be carefully monitored. The Arab position and that of the other critics of Israel should be analyzed and refuted point by point. Scholarly study must be undertaken.

C. Jews, Israelis, diverse sections of the general public, Arabs and Arab sympathizers have differing images of Israel and the Middle East conflict. Accordingly, inquiries and seminars should be undertaken to determine the manner in which Israel is perceived by differing groups and the means for projecting a favorable image. This involves the application of anthropological, psychological, sociological, legal, political and historical studies.

D. The general public should be informed of Jewish history and culture and of the ideology of the Zionist movement in relation to Israel.