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All of Palestine for the Inhabitants of Palestine: The Legal Consequences of the Internationally Wrongful Act in the Establishment of Israel

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ABSTRACT

For thousands of years after the settlement of the Israelites in Canaan, the region hosted a small Jewish population by the twentieth century. Claims of persecution, displacement, and historical ties to the land gave rise to the formation of a movement termed "World Zionism," aimed at establishing a Jewish State in Palestine. The Balfour Declaration, issued by Britain in 1917, emphasized the necessity of creating a "Jewish National Home," and the League of Nations Mandate Agreement was subsequently concluded on this basis in 1922. Britain's contradictory promises to Jews and Arabs led it to refer the Palestine question to the United Nations. Negotiations in the UN General Assembly resulted in the adoption of Resolution 181, known as the Partition Resolution, and the establishment of two States, Jewish and Arab, in 1948. However, the creation of these two States appeared to violate the rights of the Palestinian inhabitants. Thus, in addressing the question of the legal consequences arising from the establishment of Israel on land belonging to the Palestinian inhabitants, this study scrutinizes the hypothesis that the formation of Israel involved violations of certain rules of international law, rendering the United Nations and complicit states internationally responsible for this wrongful act. To substantiate this hypothesis, a descriptive-analytical methodology was recruited. The legal framework applicable to Palestine included the Mandate system, the Mandate Agreement, and norms of international law, such as the UN Charter and human rights law. An interpretation of Article 22 of the Covenant of the League of Nations and Article 76 of the UN Charter indicates that sovereignty over mandated/trust territories must be vested in the "indigenous inhabitants" of those territories. Such sovereignty must be exercised over the entire territory. Moreover, the creation of religious or racial states in the region constitutes a breach of the obligation of non-discrimination. Consequently, the establishment of Israel entails the international responsibility of the UN and complicit states in the UN General Assembly. The legal consequences of this responsibility would include restitution in integrum, reparations, non-recognition, and non-cooperation to ensure the return of "the entirety of Palestine's sovereignty to its Palestinian inhabitants."

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Introduction

The world hosts diverse nations within defined political boundaries. The new global order established after World War II, coinciding with the founding of the United Nations, classified the world's territories into existing States, trust territories, non-self-governing territories, and other colonial lands. The UN trusteeship system was created to facilitate the independence of trust territories, with their administration entrusted by the UN to designated States. Palestine, previously placed under British Mandate through a League of Nations Agreement, remained under British Trusteeship within the UN framework.

The organized migration of Jews to Palestine, driven by Zionist lobbying, altered the demographic balance from 7% Jewish and approximately 90% Muslim at the outset of the League of Nations Mandate in 1922, to 33% Jewish and 65% Muslim by 1947.[1] That year, Britain referred the "Palestine Question" to the UN General Assembly. The core issue was determining sovereignty: Zionists demanded sovereignty over the land as a "Jewish State," while Palestinians and some Arab states asserted that, under international law, sovereignty belonged solely to the "Palestinians Indigenous Inhabitants." Article 76 of the UN Charter explicitly vests sovereignty in the "inhabitants of trust territories." Conversely, the British Mandate, influenced by the Balfour Declaration, emphasized the necessity of a "Jewish National Home."

To resolve this dilemma, the UN General Assembly delegated the matter to its First Committee. Draft Resolution 181 was put to a vote and adopted on 29 November 1947. Under this plan, despite Jews constituting one-third of the population, approximately 56% of the land was allocated to a Jewish State, 43% to an Arab State, and 1% (Jerusalem) was placed under UN supervision. During the 1948 Arab-Israeli War, Israel gained control over roughly 80% of Palestinian territory; a de facto expansion implicitly recognized by the UN Security Council after the 1967 Six-Day War.

Now, we confront a paradox: while the UN General Assembly recognizes Israel within about 60% of Palestinian land, and the Security Council tacitly acknowledges its control over nearly 80%, these actions violate international obligations, particularly *the grant of sovereignty*

1 Agent of Lebanon, 'Meeting of Ad Hoc Committee on the Palestine' (29 September 1947) A/AC.14/XX, p. 20.

to indigenous inhabitants and *the prohibition of religious and racial discrimination* under applicable international law. This raises the central question: What are the legal consequences of the internationally wrongful act arising from (1) the violation of the obligation to vest sovereignty in the indigenous inhabitants, and (2) the breach of the duty to prohibit religious-racial discrimination in Israel's establishment?

To demonstrate that the UN and assistant States (notably Britain) bear proportional international responsibility, including *restitution*, *reparations*, and *non-recognition*, this study will:

1. Examine the historical context of Israel's establishment;
2. Analyze breaches of obligations regarding sovereignty of *Palestinian inhabitants* over the *entirety* of Palestine and the prohibition of religious-racial discrimination; and
3. Assess the legal consequences of these violations.

1. Political-Legal Background of Israel's Establishment

With the outbreak of World War I, Britain entered into an agreement with Sharif Hussein of Hejaz in 1915, pledging Arab independence in exchange for their support against the Ottomans and facilitation of Jewish migration, known as the Sir Henry McMahon's Pledge. Subsequent correspondence which passed between Sir Henry McMahon and the Sharif of Mecca revealed that Palestine (west of the Jordan River) was excluded from McMahon's Pledge.

During the war, Britain and France signed the *Sykes-Picot Agreement (1916)*, partitioning the Arab world: Britain gained control over Iraq, Kuwait, and Jordan, while France secured Lebanon, Syria, and southern Turkey.[1] At this time, Herbert Samuel, the only Zionist Jew in the British Cabinet, proposed establishing a Jewish community in Palestine to Chaim Weizmann, a founder of the Zionist Movement. Weizmann's 1916 communications with the British government suggested that a *Jewish Chartered Company* could safeguard Britain's strategic interests (pre-emption) in the region.[2] In return for promises of a Jewish State, Britain secured Jewish support against the Ottomans.[3] Other British motivations included diverting Jewish emigration from Europe[4] and shifting the financial burden of Palestine's development away from British taxpayers.[5]

On 2 November 1917, British Foreign Secretary Arthur James Balfour issued the Balfour Declaration, endorsing a "Jewish National Home" in Palestine. Britain's Mandate over Palestine and Mesopotamia was formalized at the San Remo Conference (25 April 1920), and since then, Britain exercised de facto sovereignty over Palestine.[6] The League of Nations ratified the British Mandate for Palestine on 24 July 1922.[7]

Post-World War II, various trusteeship agreements were proposed. Britain advanced

1 Daniel Mandel, *H.V. Evatt and the Establishment of Israel the Undercover Zionist* (PhD thesis, University of Melbourne 2004) 22.
2 Karl Sabbagh, *Palestine: History of a Lost Nation* (Grove Press 2008) 157.
3 David Fromkin, *A Peace to End All Peace: The Fall of the Ottoman Empire and the Creation of the Middle East* (Holt Paperbacks 2001) 43.
4 Sabbagh (n 3) 163.
5 Gideon Biger, *The Boundaries of Modern Palestine 1840-1947* (Routledge 2004) 69.
6 Sabbagh (n 3) 158-226.
7 The League of Nations mandate system comprised three categories of agreements: First category - former Ottoman territories; Second category - former German territories in Central Africa; Third category - former German territories in Southern Africa and the Pacific. Norman Bentwich and Andrew Martin, *A Commentary on the Charter of the United Nations* (Routledge & Kegan Paul Ltd 1950) 149-150.

the *Morrison-Grady Plan* (Plan for Provincial Autonomy) and the *Bevin Cantonization Plan*, both rejected by Jewish and Arab parties.[1] On 3 April 1947, Britain formally referred the Palestine Question to the UN,[2] requesting a special committee for its resolution.[3] The UN General Assembly's First Committee established a Special Committee (UNSCOP), which submitted two reports: Majority Report Recommending partition into Jewish/Arab States with an economic union; Minority Report Proposing a single Palestinian State. An *Ad Hoc Committee* reviewed these reports, ultimately endorsing the Majority Report's partition plan and two-state solution. After extensive deliberation in committees, the UN General Assembly adopted Resolution 181 (29 November 1947) by 33 votes in favor, 13 against, and 10 abstentions. The plan allocated 56% of land to a Jewish State, 43% to an Arab State, and 1% (Jerusalem) under UN trusteeship.

2. Legal Rules Governing Palestine After the Mandate

Following the establishment of the United Nations, no new trusteeship agreement was concluded for Palestine, unlike other former mandate territories under the League of Nations. This raised a pivotal question: whether Palestine, upon the UN's creation, became subject to the trusteeship system. An analogous issue arose regarding the applicability of trusteeship to South West Africa (Namibia).

In the case of South West Africa, *UN General Assembly Resolution 449* explicitly states:

> *"The UN trusteeship system applies to all mandate territories that have not attained independence," and "It is evident from the UN Charter's terms that the international trusteeship system replaced the former League of Nations mandate system, with no provision allowing their coexistence."*[4]

The General Assembly reaffirmed this in Resolutions 65, 141, and 227, emphasizing that South West Africa continued to be administered under the trusteeship framework. Resolution 88 further clarified that Chapters XI, XII, and XIII of the UN Charter embody the principles of Article 22 of the League Covenant (on mandates). Resolution 2145 identified three international obligations governing South Africa's administration: i) The Mandate Agreement, ii) The UN Charter, and iii) The Universal Declaration of Human Rights.[5]

In the *1950 Advisory Opinion on International Status of South West Africa (South West Africa Case)*, the ICJ ruled that "the provisions of Chapter XII of the Charter are applicable to the Territory," though it did not obligate South Africa to place it under formal trusteeship.[6] This apparent contradiction was resolved in the *1971 Advisory Opinion on Legal Consequences for States of the Continued Presence of South Africa in Namibia* (*Namibia Case*). The ICJ held the "sacred trust" expanded to all mandate territories and those that had not acquired

1 United Nations Special Committee on Palestine, 'Report to the General Assembly' (3 September 1947) UN Doc A/AC.13/XX, p. 36.
2 UNGA, 'Question of Palestine: Termination of the Mandate over Palestine and Recognition of its Independence as a Jewish State' (3 April 1947) UN Doc A/286.
3 Thomas A Green and Hendrik Hartog, 'Law and Identifying Mandate Palestine' in Thomas A Green and Hendrik Hartog (eds), *Law in the Liberal Arts* (Cornell University Press 2006) 23.
4 UNGA Res 449 (V) (13 December 1950).
5 UNGA Res 2145 (XXI) (27 October 1966) GAOR 21st Session Supp 16, 2.
6 *International Status of South-West Africa* (Advisory Opinion) [1950] ICJ Rep 128, 144.

independence were placed under the Trusteeship System.[1] The ICJ emphasized that all such territories not yet ready for independence would be converted into trust territories under the United Nations International Trusteeship System;[2] coexistence of the two systems (the mandate and trusteeship) was legally untenable and in otherwise it would lead to colonization or annexation.[3] The Court underscored that Mandatory Powers remained bound by Charter obligations,[4] and no provision of Chapter XII could diminish the rights of peoples under mandates.[5] In essence, former mandate territories had only two lawful paths: *independence* or *trusteeship*.[6] The ICJ explicitly cited South Africa's breaches of UN Charter and human rights law.[7] These facts demonstrate that mandate territories became subject to UN Charter provisions prior to the conclusion of new trusteeship agreements.[8]

For Palestine, these precedents established that after Britain's termination of the mandate and referral to the UN, the territory became subject to: the League Covenant, the UN Charter, the right to self-determination,[9] and other international norms. Britain's declaration referring the decision-making to the UN General Assembly did not extinguish the international obligations of the administering power (whether Britain or the UN General Assembly)[10] under international law.

3. Violation of International Obligations in the Establishment of Israel

The establishment of Israel occurred at a time when "the sovereignty right of inhabitants" of non-self-governing territories had been recognized in international instruments, including paragraphs 1 and 6 of Article 22 of the League Covenant and paragraph (b) of Article 76 of the UN Charter, while "religious and racial discrimination" had been prohibited under international documents, including paragraph 3 of Article 1 and paragraph 3 of Article 76 of the UN Charter. The breach of these international obligations in Israel's establishment will be examined.

3.1. The Right to Sovereignty of "*Palestinian Inhabitants*"

Sovereignty over mandated and trust territories belongs to their indigenous populations. This refers specifically to native inhabitants residing in these territories at the commencement of the

1 *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)* (Advisory Opinion) [1971] ICJ Rep 16, para 52.

2 ibid para 56.

3 ibid para 57.

4 The mandatory Powers also bound themselves to exercise their functions of administration in conformity with the relevant obligations emanating from the United Nations Charter, which member States have undertaken to fulfil in good faith in a11 their international relations. ibid para 90.

5 ibid para 66.

6 Dissenting Opinion of Judge Álvarez, *International Status of South-West Africa* (Advisory Opinion) [1950] ICJ Rep 128, 174.; Judge Álvarez, in his separate opinion, considered this decision to be in accordance with the spirit of the Charter.
Dissenting Opinion of Mr. Alvarez, ICJ Rep. 1950, p. 60.

7 *Namibia* (Advisory Opinion) (n 15) para 69.

8 The concept of "no-automatic transfer" from the mandate system to trusteeship refers to the discretionary nature of territorial administration under UN Charter obligations, requiring formal conclusion of an international agreement.

9 For instance, the Indian representative during UN General Assembly debates stated that the Arab request [for establishing a unified Palestinian state] was grounded in the same principle of self-determination.
Victor Kattan, 'The Empire Departs: The Partitions of British India, Mandate Palestine, and the Dawn of Self-Determination in the Third World' (2018) 12(3) Asian J Middle E & Islamic Stud 21, 21; JF Etiger, 'From Sacred Trust to Self-Determination' (1977) 24 Netherlands Intl L Rev 85, 85.

10 For reference to various perspectives regarding sovereignty over mandate territories, see: Donald S Leeper, 'International Law-Trusteeship Compared with Mandate' (1951) 49 Mich L Rev 1199, 1207.

mandate or trusteeship system. The exercise of sovereignty must occur through consultation and elections involving these inhabitants. The following analysis addresses these points.

3.1.1. The Rights of Indigenous Inhabitants at the Commencement of the Administration

Article 22(1) of the League Covenant refers to territories detached from state sovereignty after World War I that are "inhabited by peoples." Similarly, Article 76 of the UN Charter states that one objective of administering authorities is to promote "the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples." The core dispute in Israel's establishment concerns the interpretation of "inhabitants" in these provisions.

During debates in the Special Committee and Ad Hoc Committee, some members interpreted "inhabitants" to include all residents present during negotiations (both migrants and natives), while others restricted it to "indigenous inhabitants" residing prior to the trusteeship system. The objectives of relevant instruments and state practice demonstrate that the Charter's intended meaning of "inhabitants" unequivocally refers to "indigenous inhabitants" - those native to the territory before the mandate/trusteeship's administration.

The relevant documents of the League Covenant and UN Charter, along with subsequent practice, clarify the intended meaning of this concept.[1] Article 22(1) of the Covenant explicitly references "peoples inhabiting [the territories] at the time of the mandate system's establishment," while paragraph 6 refers to the interests of "native populations." Article 23 further mandates equitable treatment for "local populations" in controlled territories.

Significantly, Article 9 of the British Mandate for Palestine distinguishes between "foreigners" (applied to Jews) and "locals," confirming that the term "inhabitants" in its ordinary meaning excludes foreign settlers. Some Members of the *Permanent Mandates Commission (PMC)*[2] maintained that the Mandate was conditional upon preserving "the rights of Palestine's native inhabitants."[3]

The British representative affirmed that UK policy granted sovereignty to indigenous populations in all African Mandates. Switzerland's delegate noted the Mandate's drafters intended a *Jewish National Home* only if it did not prejudice *existing inhabitants'* political/social rights, stating Palestine could not become a homeland for others without violating locals' freedoms. Portugal's representative deemed the Jewish National Home politically untenable absent consent from *Palestine's prior inhabitants*. The Dutch delegate emphasized that political rights belonged solely to each mandate's *local populations*, arguing a Jewish State would exempt Palestine from this foundational trusteeship principle.[4]

According to the 1924 Treaty of Lausanne, persons who were Turkish nationals at the time

1 The trusteeship system was established based on two core principles: first, the "sacred trust" to protect indigenous populations, and second, the concept of "international accountability" to ensure this protection was effectively implemented. Bruno Simma, Hermann Mosler, Andreas Paulus and Eleni Chaitidou, *The Charter of the United Nations: A Commentary* (2nd edn, OUP 2002) 1100.

2 This Commission, a League of Nations body, comprised 12 members representing Mandate Powers, other States, and the International Labour Organization.

3 Permanent Mandates Commission, *Minutes of the Thirty-Sixth Session* (829- June 1939) League of Nations Doc C.250.M.150.1939.VI.

4 ibid.

of the treaty's implementation and were "*habitually resident*" in Palestine were considered Palestinians. This territorial connection at that specific time served as the sole criterion, while other connections such as *jus sanguinis* were disregarded. Subsequent documents from UN organs have significantly contributed to interpreting the concept of "inhabitants." For instance, the General Assembly in Resolution 229 recognized the right to self-determination of "*indigenous peoples*" in Spanish Sahara and emphasized measures to ensure participation exclusively by "*indigenous peoples*" in referendums. Resolution 459 maintained that *in pursuance of the objectives of the Trusteeship System as set forth in the Charter, it is indispensable that Trust Territories be developed in the interests of the indigenous inhabitants*. Resolution 522 affirmed *the principle that the interests of the indigenous inhabitants must be paramount in all economic plans or policies*. Resolution 55/80, referencing Article 76 of the Charter, highlighted the necessity of *the progress of the indigenous inhabitants... towards a position of equality with Member States of the United Nations*. Resolution 1412 stressed the need for training "*indigenous civil cadres*" in trust territories. Resolution 2145 *declared that South Africa has failed to fulfil its obligations in respect of the administration of the Mandated Territory and to ensure the moral and material well-being and security of the indigenous inhabitants of South West Africa* (Namibia) *and has, in fact, disavowed the Mandate*. Resolution 2590 called on administering authorities to provide administrative training to "*indigenous peoples*" of the territory.[1]

Numerous reports from the Trusteeship Council regarding the liberation of trust territories further corroborate this interpretation of "inhabitants" as meaning "indigenous and native inhabitants" as opposed to immigrants and non-indigenous.[2]

The ICJ, in the *Namibia Case* interpreting the term "peoples" in Article 80(1) of the UN Charter concerning trust territories, clarified that "peoples" specifically refers to "indigenous populations."[3] In another opinion, the Court required Morocco to consider the wishes of "indigenous populations" in decolonization processes and mandated administering authorities to "consult" with "indigenous peoples" regarding referendums, enabling free exercise of self-determination.[4]

During General Assembly debates on the Palestine issue, various terms were used to describe pre-1922 inhabitants of Palestine: "*indigenous population*," "*native inhabitants*," "*original inhabitants*," "*loyal inhabitants*," "*existing inhabitants*," "*rightful inhabitants*," "*local population*," "*dependent peoples*," "*descendants of local and regional peoples*," "*legitimate inhabitants*," and "*legal inhabitants*." In contrast, post-1922 Jewish immigrants were described as: "*immigrants*," "*somebody else from outside*," "*alien minority*," "*homeless Jews*," "*company of colonization*," "*stranger*," "*newcomers*" "*foreign power*," "*Jewish communities*," and "*non-indigenous workers*."

For instance, the Iraqi representative stated that Palestinian Arabs were the "*legal/rightful inhabitants of Palestine*."[5] Egypt's delegate asserted Palestine belonged to "*original inhabitants*

1 'Repertory of Practice of United Nations Organs, Art 76' (1966-1969) vol IV Suppl No 4, 216.

2 Trusteeship Council, 'Report of the Trusteeship Council Covering the Period from 23 July 1955 to 14 August 1956' (14 August 1956) UN Doc A/3170, 4.

3 *Namibia* (Advisory Opinion) (n 15) para 59.

4 *Western Sahara* (Advisory Opinion) [1975] ICJ Rep 12, para 62.

5 Agent of Iraq, 'Forty Fifth Meeting to Thirty-Fourth Meeting in First Committee' (1947) UN Doc A/C.1/XX, p. 28.

of Palestine" not to "*an invading foreign racial group*."[1] Syria's representative considered Palestine the right of Palestinians as "*loyal citizens*" and their "*ancestral homeland*."[2] Even the Jewish representative himself stated that Jewish presence would not create problems for "*the existing inhabitants"*[3] and acknowledged their immigrant status, citing Torah passages referring to themselves as "*stranger*".[4]

As confirmed by the UN Secretariat's compilation of practices regarding the interpretation of Article 76, there remains no doubt that "inhabitants" in this context typifies "indigenous inhabitants."[5] Legal scholars have unanimously endorsed this interpretation.[6]

Having established that "peoples inhabiting" in Article 22 of the Covenant and "inhabitants" in Article 76 of the Charter refer to "indigenous inhabitants," a precise definition is required.[7] ILO Convention 169 defines "indigenous peoples" as "peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions."

The UN Special Rapporteur identifies these key elements of indigeneity: i) historical continuity with pre-invasion/colonial societies, ii) lack of dominance over social sectors (absence of sovereignty), iii) will to transmit ancestral territories and ethnic identity to future generations,[8] iv) occupation of at least part of ancestral lands, and v) residence in specific territories or regions.[9]

The most objective criterion remains the special spiritual connection to ancestral lands.[10] Thus, indigenous peoples are "resident populations" with "geographical ties" to specific territories predating colonization or trusteeship. Evidently, Palestine's indigenous inhabitants were Arabs and Jews residing there prior to the mandate/trusteeship, distinct from later immigrants.[11]

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1 Agent of Egypt, 'United Nations Special Committee on Palestine' (1947) UN Doc A/AC.13/XX, p. 186.

2 Agent of Syria, 'United Nations Special Committee on Palestine' (1947) UN Doc A/AC.13/XX, p. 220.

3 Agent of Jewish Agency, 'United Nations Special Committee on Palestine' (1947) UN Doc A/AC.13/XX, p. 252.

4 "*But the stranger* that dwelleth with you shall be unto you as one born among you, and thou shalt love him as thyself, and shall not vex him" (Leviticus 19,34). Agent of Jewish Agency, 'United Nations Special Committee on Palestine' (1947) UN Doc A/AC.13/XX, p. 129.

5 It may be noted that although Article 76(b) refers simply to "the inhabitants" of the Trust Territories, there has been a tendency on the part of United Nations organs to refer specifically to "the indigenous inhabitants" in the course of resolutions and recommendations. 'Repertory of Practice of United Nations Organs, Art 76' (1945–1954) vol IV, para 107.

6 Simma and others (n 25) 1109.

7 See Irene Watson, *Aboriginal Peoples, Colonialism and International Law: Raw Law* (Routledge 2015) 9; United Nations Declaration on the Rights of Indigenous Peoples (adopted 13 September 2007) UNGA Res 61295/.

8 José Martínez Cobo, 'Study of the Problem of Discrimination against Indigenous Populations' (5 December 1986) UN Doc E/CN.4/Sub.2/1986/7/Add.4, para 379.

9 ibid para 380.

10 Katja Göcke, *Indigenous Peoples in International Law* (Göttingen University Press 2013) 19.

11 At the trusteeship system's establishment, Palestine's population was approximately 1,900,000, including about 500,000 Jews (two-thirds being immigrants). Thus, even using the trusteeship's commencement as reference, the indigenous inhabitants comprised roughly 200,000 Jews and 1,200,000 Arabs. See Justin McCarthy, *The Population of Palestine: Population History and Statistics of the Late Ottoman Period and the Mandate* (Columbia University Press 1990) 171; 'United Nations Special Committee on Palestine' (1947) UN Doc A/AC.13/XX, p. 37; Agent of Iraq, 'Forty Fifth Meeting to Thirty-Fourth Meeting in First Committee' (1947) UN Doc A/C.1/XX, p. 28; Agent of Jewish Agency, 'United Nations Special Committee on Palestine' (1947) UN Doc A/AC.13/XX, pp. 1-3.

3.1.2. The Model of Indigenous Inhabitants' Participation in Sovereignty

The manner of participation by Palestine's indigenous inhabitants requires careful examination. The British representative to the PMC maintained that disregarding the "strongly expressed will" of Palestine's population violated the spirit of the League Covenant. Political and territorial changes should not be imposed by force but rather achieved through "consultation, negotiation, and consent" among the people.[1] Article 76 of the UN Charter expressly stipulates that the realization of self-determination for inhabitants of trust territories must be "in conformity with the freely expressed wishes of the peoples concerned and as may be provided by the terms of each trusteeship agreement."

The *1960 Declaration on the Granting of Independence to Colonial Countries* similarly emphasizes that power transfer must respect "the freely expressed will and desire" of trust territory populations. The Security Council has insisted on "plebiscite" to determine the status of non-self-governing territories like Jammu and Kashmir.[2] The General Assembly conditions the choice between independence or autonomy[3] on "consultation" with inhabitants. While advocating universal adult suffrage, the Trusteeship Council acknowledged that voting modalities should respect indigenous traditions, even if limited to traditional heads of families.[4]

International instruments' emphasis on elections demonstrates that decisions must reflect the majority will of indigenous inhabitants. In the *Southern Rhodesia Case*, when Britain departed in 1962 leaving *European Settlers* in control, the General Assembly declared permanent minority rule incompatible with political equality and self-determination principles for the African majority.[5] The ICJ has repeatedly referenced "expression of the free and genuine will of the peoples" as essential to self-determination.[6] The *South Cameroons Case* established that extending voting rights to immigrants depends on the indigenous population's consent.[7]

Nevertheless, UN jurisprudence contains instances of sovereignty changes without popular consultation. Bangladesh and Kosovo gained independence without plebiscites, later becoming UN membership. Essentially, unlike Palestine, these cases did not possess peoples who could constitute a "*people*" entitled to self-determination, but they were secession cases.[8]

Therefore, sovereignty exercise by Palestine's indigenous inhabitants should have occurred through "consultation and elections" respecting their cultural traditions to achieve "independence or self-governance." Not only had Britain failed to conduct such consultation, but it also facilitated the establishment of a Jewish State contrary to Palestinian inhabitants' consent.[9]

1 Permanent Mandates Commission (n 27).
2 UNSC Res 47 (1948) (21 April 1948) UN Doc S/RES/47; UNSC Res 51 (1948) (3 June 1948) UN Doc S/RES/51.
3 The term "autonomy" in this context refers to self-governing powers exercised under the sovereignty of the administering authority, not under a foreign state's sovereignty.
4 'Repertory of Practice of United Nations Organs, Art 77' (1954–1955) vol IV Suppl No 2, para 15.
5 UNGA Res 1747 (XVI) (28 June 1962) GAOR 16th Session Supp 17, 65.
6 *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965* (Advisory Opinion) [2019] ICJ Rep 95, para 157.
7 Trusteeship Council (n 30).
8 *Western Sahara* (Advisory Opinion) (n 32) para 59.
9 Permanent Mandates Commission (n 27).

3.2. Right to Sovereignty Over "*the Entire Territory of Palestine*"

The indigenous inhabitants' sovereignty extends to the entirety of Palestine. Counterclaims requiring examination include: (1) alleged Jewish majority in certain regions, (2) the 1922 Mandate's provision for a Jewish National Home, (3) Jewish land ownership claims, and (4) the Oslo Accords effects on the issue.

3.2.1. Jewish Majority in Certain Areas and the Right to Establish a Jewish State?

Some argue that the Jews constituted the majority in the proposed Jewish State area while Arabs dominated the Arab State area.[1] This argument is flawed for three reasons. First, it erroneously included both indigenous inhabitants and immigrants in demographic calculations. Second, had Bedouin and nomadic Palestinian populations been properly counted in the "Jewish State" area, the Jewish immigrants and Arab populations would have been numerically equal.[2] Third, all Palestinian inhabitants collectively held sovereignty over undivided Palestine, as Palestine existed as a whole under both British Mandate and prior Ottoman rule, without internal colonial borders.

The principle of "respect for colonial boundaries" (*uti possidetis juris*) prohibits divisions beyond established colonial administrative boundaries.[3] Palestine never had formal Arab/Jewish administrative units, functioning as a unified single territory.[4] The ICJ in the *1986 Frontier Dispute Case* affirmed that new states inherit pre-existing international frontiers in the event of a State succession.[5] Palestine's temporary division into six districts and eighteen subdistricts (by 1939) served tax and census purposes without creating genuine administrative units.[6] International law does not recognize unilateral territorial modifications by colonial powers; instead, evaluating the "colonial heritage" through multiple factual lenses.[7] Palestine maintained singular administration throughout.[8]

Security Council Resolution 264 (1969) declared that "the actions of the Government of South Africa designed to destroy the national unity and territorial integrity of Namibia through the establishment of Bantustans are contrary to the provisions of the United Nations Charter." Similarly, General Assembly Resolution 1514(VI) states:

> *"Any attempt aimed at the partial or total disruption of the national unity and*

1 The proposed Jewish state territory contained 498,000 Jews and 497,000 Arabs.

2 Agent of Pakistan, 'Ad Hoc Committee on the Palestinian Question' (1947) UN Doc A/AC.14/XX, p. 38; Agent of Syria, Ibid, p. 195.

3 It has been argued that the colonial borders principle was not limited to colonized territories, having been applied to new states like the Soviet Union, Czechoslovakia, and Yugoslavia. Both Kosovo's separation from Serbia and Crimea's separation from Ukraine invoked this principle. However, the Badinter Commission maintained that self-determination implementation should not alter existing borders at independence. Abraham Bell and Eugene Kontorovich, 'Palestine, Uti Possidetis Juris and the Borders of Israel' (2016) 58 Ariz L Rev 633, 642.

4 Bell and Kontorovich, Ibid, 685.

5 *Frontier Dispute (Burkina Faso/Republic of Mali)* (Judgment) [1986] ICJ Rep 554, para 24; In the *Chamizal Arbitration* (1911) concerning U.S. claims over the Chamizal tract, the arbitral tribunal ruled the alleged possession failed to meet the requirements of being "undisturbed, uninterrupted and unchallenged." Reports Of International Arbitral Awards, *The Chamizal Case (Mexico v United States)* (1911) 11 RIAA 309. Malcolm Shaw maintains the critical date for determining rights is when they crystallize. Just as treaty formation dates matter for treaties, colonial borders unquestionably reference independence dates. The Badinter Commission used Yugoslavia's dissolution date as the potential independence benchmark - the last moment of exercised administrative jurisdiction by the prior sovereign. Bell and Kontorovich (n 56) 645.

6 Despite various partition proposals like cantonization, Britain never implemented territorial divisions during the Palestine Mandate. Biger (n 6) 191.

7 *Frontier Dispute (Burkina Faso/Republic of Mali)* (Judgment) [1986] ICJ Rep 554, 30.

8 The British initially established the Administration of the Palestine Mandate, later forming an Advisory Council and then a Legislative Council including Palestinian Arabs and Jews. Victor Kattan, *From Coexistence to Conquest: International Law and the Origins of the Arab-Israeli Conflict, 1891-1949* (Pluto Press 2009) 13.

the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations."

The ICJ's *Chagos Opinion* confirmed that non-self-governing territories' integrity constitutes customary international law alongside self-determination, with no UN precedent legitimizing colonial power-imposed partitions. Territorial integrity stands as a key element of the exercise of the right to self-determination and any detachment by the administering Power of part of a non-self-governing territory, unless based on the freely expressed and genuine will of the people of the territory concerned, is contrary to this right.[1]

The Rwanda-Urundi's partition under Belgian trusteeship or the British Cameroon's division are different from the Palestine situation legally. First, both territories had distinct pre-existing administrative systems. Second, their indigenous populations differed demographically. Third, inhabitants participated in subsequent state formation;[2] conditions never met in Palestine. The India-Pakistan partition also differs substantively, as it reflected pre-existing demographic majorities and resulted from inter-communal agreements absent in Palestine.[3]

Moreover, Palestine's partition violated Article 5 of the Mandate prohibiting territorial fragmentation. This explains Egypt's subsequent proclamation of the "All-Palestine Government" post-1948.[4] Even assuming that internal colonial borders existed, the UN's obligation remained transferring sovereignty to indigenous inhabitants, not immigrants, in respective areas.[5] Thus, Palestine's partition breached international law.

3.2.2. The "Jewish National Home" and the Right to Establish a Jewish State?

The reference to a "Jewish National Home" in the Mandate cannot serve as legal justification for partitioning Palestine's territorial integrity. The chairman of the UN Special Committee made clear that the Mandate specifically refers to a "Jewish Home" rather than a "Jewish State," while consistently describing Palestine itself as a single State.[6] This distinction was reinforced by India's representative, who emphasized the fundamental difference between a "Jewish Home" as a cultural concept and a "Jewish State" as a political entity.[7] Yemen's delegate further noted that creating a Jewish State would directly violate Article 5 of the Mandate, which prohibited placing the territory under foreign power.[8]

The most authoritative interpretation comes from the British government's own 1939 White Paper,[9] which stated:

"His Majesty's Government believe that the framers of the Mandate in which the

1 *Chagos* (Advisory Opinion) (n 50) para 160.
2 UNGA Res 1608 (XV) (21 April 1961) GAOR 15th Session Supp 16, 44, para 6.
3 Agent of Pakistan, Meeting of Ad Hoc Committee on the Palestine', A/AC.14/XX, p. 38.
4 Issam Mohammad Ali Adwan, 'The Palestinian Right to Self-Determination' (PhD thesis, University of Durham 1983).
5 Plebiscites may provide a preferable alternative to border demarcation based solely on ethnicity, as demonstrated in the Nagorno-Karabakh referendum case and the Jura region elections in Switzerland. Christian Walter, Antje Von Ungern-Sternberg and Kavus Abushov, *Self-Determination and Secession in International Law* (OUP 2014) 135.
6 'United Nations Special Committee on Palestine' (1947) UN Doc A/AC.14/XX, p. 53.
7 Agent of India, 'United Nations Special Committee on Palestine' (1947) UN Doc A/AC.14/XX, p. 199.
8 Agent of Yemen, 'Ad Hoc Committee on the Palestinian Question' (15 October 1947) A/AC.14/XX, p. 91.
9 Agent of Lebanon, 'Ad Hoc Committee on the Palestinian Question' A/AC.14/XX, p. 22.

Balfour Declaration was embodied could not have intended that Palestine should be converted into a Jewish State against the will of the Arab population of the country."[1]

This official position confirms that interpreting "national home" as referring to "cultural or spiritual" connections would be consistent with international law, while equating it with sovereign statehood violates several fundamental principles.

First, the concept contains an inherent contradiction by attempting to merge religious identity (a subjective matter of belief) with national identity (an objective historical and cultural reality). Second, such interpretation conflicts with Article 80 of the UN Charter, which explicitly prohibits construing mandate provisions in ways that would infringe upon the rights of peoples.[2] Third, it violates the indigenous population's inalienable right to self-determination.

3.2.3. Jewish Land Ownership and the Right to Establish a Jewish State?

Jewish land ownership in Palestine did not constitute legal grounds for establishing a Jewish State. Documented ownership ranged between 6-10% of territories, with discrepancies arising from disputed classifications of uninhabitable and state-owned lands.[3] At Israel's founding, 65% of lands were public or state-owned and thus excluded from Jewish ownership calculations. This limited ownership fails to establish territorial rights for three legal reasons: First, many transactions violated Ottoman land laws then in force and potentially contravened Article 46 of the 1907 Hague Regulations prohibiting property transfers in occupied territories.[4] Second, Articles 7-8 of Model UN Trusteeship Agreements, reflecting Article 22 of the League Covenant, prohibited transfers of land without indigenous consent and interest. Third, what is essentially transferrable in such sale transaction is proprietary right, but not sovereignty by no account. Recognizing proprietary claims as sovereign would enable individual-level secession claims globally.

3.2.4. The Oslo Accords and the Right to Establish a Jewish State?

The Oslo Accords between the Palestinian Authority (PA) and Israel cannot be construed as Palestinian inhabitants relinquishing sovereignty over any part of Palestinian territory for three fundamental reasons: First, irrespective of the PA's representative[5] validity for all Palestinians,[6] the agreement may be considered void ab initio under Articles 51 and 52 of the 1969 Vienna Convention on the Law of Treaties due to duress during its conclusion. Second, when a treaty is concluded to regulate the legal consequences of violating a peremptory norm like self-determination, rather than accepting those consequences, this not only invalidates the agreement but renders the act itself unlawful.[7] Third, the Oslo Accords constituted primarily a five-year interim Ceasefire agreement rather than Cession treaty. It terminated prematurely due to fundamental change of

1 Great Britain, Parliament, *Palestine: A Statement of Policy* (Cmd 6019, 1939) (White Paper 1939).
2 Bentwich and Martin (n 8) 152.
3 Tom Segev, *One Palestine, Complete: Jews and Arabs under the Mandate* (Metropolitan Books 2000) 502.
4 Dov Gavish, *A Survey of Palestine under the British Mandate, 1920–1948* (RoutledgeCurzon 2005) 24.
5 Golamali Ghasemi, 'The Palestinian People's Right to Armed Resistance from the Perspective of International Law' (2024) 2(1) Iranian J Intl & Comparative L 1, 11.
6 For instance, the Palestinian Arab representative in both the Special Committee and Ad Hoc Committee negotiations came from a body known as the Arab Higher Committee.
7 Enzo Cannizzaro (ed), *The Present and Future of Jus Cogens* (Sapienza Università Editrice 2015) 142.

circumstances. Some legal scholars contend it merely created an obligation to negotiate internal self-determination (*pacta de contrahendo*).[1]

3.3. Prohibition of Religious and Racial Discrimination

The United Nations' establishment of a Jewish State violated fundamental principles of international law, particularly the prohibition against religious and racial discrimination. Article 1(3) and Article 76(c) of the UN Charter explicitly endorse "respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion"[2] This non-discrimination obligation was further enshrined in Article 15 of the Palestine Mandate, which prohibited religious or racial discrimination among Palestine's inhabitants. The creation of a religious Jewish State and an ethnic Arab State in Palestine constituted a flagrant violation of these anti-discrimination principles. The following section examines claims regarding the establishment of a state based on the Jewish religion.

3.3.1. Statelessness and Claim to a Jewish State?

Jewish representative argued that establishing a state for the historically persecuted Jewish people constituted a unique exception, as Arabs and Romans allegedly already possessed their own states.[3] This argument fails on multiple grounds. First, Jewish communities have historically existed in various regions worldwide, including Birobidzhan in Russia and Venetian ghettos.[4] Second, should religious affiliation justify statehood, then all religious groups - including Druze Muslims in Syria, Maronite Christians in Lebanon, or various Jewish denominations - would equally qualify for sovereign states.[5] What emerged in Israel constitutes not a Jewish state per se, but rather a Zionist state predicated on a particularist interpretation of Jewish identity.[6] Third, there is no logical basis for privileging religion over ethnicity as a criterion for sovereignty; a standard that would require returning America to American Indians and Canada to the Inuit. Fourth, as noted by several delegates during Special Committee and Ad Hoc Committee debates, Zionism represents a political movement rather than a religious denomination.

3.3.2. Displacement and Claim to a Jewish State?

The historical displacement of Jewish populations[7] cannot justify exceptional treatment in territorial claims. The primary responsibility for Jewish refugees fell to the International Organization for Migration (IOM) and secondarily to all UN member States collectively; not exclusively to Palestine's inhabitants.[8] UN General Assembly Resolution 62 expressly prohibited refugee resettlement in non-self-governing territories without indigenous consent.[9] Moreover, homelessness is not exclusive to Jews.[10] Ironically, Palestinians now constitute the world's largest

1 See Antonio Cassese, 'The Israel-PLO Agreement and Self-Determination' (1993) 4 EJIL 564, 564-581.
2 Ad Hoc Committee on the Palestinian Question, 'Summary Report of the Thirty-Fourth Meeting' (1947) UN Doc A/AC.14/XX, p. 7.
3 Agent of Jewish Agency, 'United Nations Special Committee on Palestine' (1947) UN Doc A/AC.14/XX, p. 57.
4 Walter Laqueur, *A History of Zionism* (Tauris Parke Paperbacks 2003) 4648-.
5 See Agent of Saudi Arabia, 'Ad Hoc Committee on the Palestinian Question' (1947) UN Doc A/AC.14/XX, p. 94.
6 Derek J Penslar, *Israel in History: The Jewish State in Comparative Perspective* (Routledge 2007) 67.
7 Diaspora/ Exile / Golah
8 The Annex to the Statute of IOM provides that refugees or displaced persons may be transferred to: (1) Neighboring states of their country of origin, or (2) Non-self-governing territories; contingent upon consent from the indigenous population of such territories.
9 Agent of Syria, 'Ad Hoc Committee on the Palestinian Question' (1947) UN Doc A/AC.14/XX, p. 129.
10 Agent of Iraq, 'Ad Hoc Committee on the Palestinian Question' (1947) UN Doc A/AC.14/XX, p. 30.

and most protracted refugee population, projected to reach 8 million by 2025; [1] that necessitate to attract undivided attention of IOM to this reality.

3.3.3. Persecution and Claim to a Jewish State?

The argument that historical persecution justifies Jewish settlement anywhere fundamentally misrepresents both history and law.[2] Jewish communities in Europe (Ashkenazim or German Jews) largely descend from Khazar Origin who migrated to Poland and Russia, facing antisemitism with the rise of Western nationalism. By contrast, Sephardic Jews in Iberia (including Andalusia) comprised part of Palestine's indigenous Jewish community (Old Yishuv). These groups shared neither ethnic nor historical ties with the Ashkenazi and European Jews who formed Zionism's core after 1920.[3] Moreover, persecution often targeted individuals rather than collective Jewish identity.[4]

3.3.4. Historical Connection and Claim to a Jewish State?

The historical argument regarding Jewish ties to this territory collapses under scrutiny. The Jewish representative at UN General Assembly negotiations first declared representation of all Jews globally,[5] then reframed this as representing "oppressed Jews."[6] This position asserted that historical claims justifying border changes apply exclusively to Jews, citing a 2000-year history while ignoring that almost all nations possess territorial claims, with none making comparable demands.[7]

This argument contains inherent contradictions: the Jewish arrival 3500 years ago displaced existing inhabitants whose descendants hold prior historical rights.[8] Moreover, historical claims require proof of forced displacement, whereas most Jews left voluntarily over centuries. Notably, Jews demonstrated no sustained effort to return until the Zionist movement,[9] with under 50% of world Jewry migrating to Israel despite post-Holocaust claims[10].

In conclusion, five substantive rebuttals exist: First, historical connections based on religious affiliation are meaningless, as conversion permits anyone globally to become Jewish. Second, while Jewish history was highlighted, Palestinian history was disregarded. Archaeological evidence confirms 3000 years of continuous Palestinian habitation.[11] Third, diverse populations inhabited the region pre-Islam - Seljuks, Kurds, Crusaders, Egyptians, and

1 UNHCR, 'The UN Refugee Agency' https://www.unhcr.org/ accessed 1 May 2025.

2 Agent of Poland, 'Forty Fifth Meeting to Thirty-Fourth Meeting in First Committee' (1947) UN Doc A/C.1/XX, p. 245.

3 Agent of Arab Higher Committee, 'Ad Hoc Committee on the Palestinian Question' (1947) UN Doc A/AC.14/XX, p. 116.

4 Laqueur (n 81) 468.

5 Agent of Jewish Agency, 'Forty Fifth Meeting to Thirty-Fourth Meeting in First Committee' (1947) UN Doc A/C.1/XX, 109; Agent of Jewish Agency, 'Forty Fifth Meeting to Thirty-Fourth Meeting in First Committee' (1947) UN Doc A/C.1/XX, p. 179.

6 Agent of Jewish Agency, 'United Nations Special Committee on Palestine' (1947) UN Doc A/AC.14/XX, p. 85.

7 ibid 57.

8 Historical Jewish sources reference an ethnic group called the Amalekites (or 'Amāliq) inhabiting this territory, who may share ethnic connections with contemporary Palestinian people.

9 Abraham B Yehoshua, *Between Right and Right* (Doubleday 1981) 9196-.

10 'Jewish Population by Country 2024' (*World Population Review*) https://worldpopulationreview.com/country-rankings/number-of-jews-in-the-world accessed 1 May 2025.

11 Nur Masalha, *Palestine: A Four Thousand Year History* (Zed Books 2018) 3035-.

Turks -[1,2] whose descendants could equally claim statehood.[3] Fourth, extending this logic[4] would legitimize Zionist territorial ambitions[5] in Jordan, Syria, and Lebanon,[6] as evidenced by the representative's claim to "all Palestine and Trans-Jordan"[7] and the biblical slogan "From Dan to Beersheba."[8] Fifth, genetic studies (e.g., 23andMe's 7 million samples) indicate that only 10% of Jews and 8% of Ashkenazim have Levantine ancestry,[9] undermining "birthright" claims.[10] Historically, many considered Germany the Jewish homeland,[11] making preference for Israel illogical.[12]

3.3.5. Jewish Nationhood and Claim to a Jewish State?

The Guatemalan representative's assertion that Jews constitute a nation more than Arabs reflects a fundamental misunderstanding of international law.[13] Judaism represents a religious affiliation, not a national identity in the legal sense. The nation-state relationship operates in one direction only: statehood may create national identity, but national identity cannot create statehood. This principle was confirmed by the Special Rapporteur of the African Commission on Human and Peoples' Rights.[14] The Israeli Supreme Court defines Jewishness solely as being born to a Jewish mother; for instance, it rejected the citizenship application of someone who was Jewish but had converted to Catholicism. Israel's Knesset, in its Law of Return, defines a Jew as "one born to a Jewish mother or who has converted to Judaism and not converted to another religion."[15] This view has been endorsed by the U.S. government.[16] Moreover, many Ashkenazi Jews in Europe were Europeans who had converted to Judaism, while conversely many original Jewish inhabitants of Palestine had converted to Islam or Christianity.[17] Therefore, the nation claimed by Israel derives

1 Agent of Jewish Agency, 'Ad Hoc Committee on the Palestinian Question' (1947) UN Doc A/AC.14/XX, p. 12.

2 Palestinians are descendants of an extensive mixing of local and regional peoples, including the Canaanites, Philistines, Hebrews, Samaritans, Hellenic Greeks, Romans, Nabatean Arabs, tribal nomadic Arabs, some Europeans from the Crusades, some Turks, and other minorities; after the Islamic conquests of the seventh century, however, they became overwhelmingly Arabs. Samih K Farsoun, *Culture and Customs of the Palestinians* (Greenwood Press 2004) 4.

3 This raises the question of why Kurdish peoples were unable to establish a state in the Mesopotamian mandate territory. Bell and Kontorovich (n 56) 684.

4 Bernard Reich, *A Brief History of Israel* (2nd edn, Facts on File 2008) 1.

5 Laqueur (n 81) 463.

6 Agent of Iraq, 'Ad Hoc Committee on the Palestinian Question' (1947) UN Doc A/AC.14/XX, p. 27.

7 Agent of Jewish Agency, 'Ad Hoc Committee on the Palestinian Question' (1947) UN Doc A/AC.14/XX, p. 16.

8 The ancient city of Dan is located in southern Lebanon (the northernmost point of present-day Israel), while Beersheba lies in southern Israel. The territory between these two points encompasses significant portions of contemporary Palestine.

9 https://www.palestineremembered.com/Articles/General3/Story38728.html

10 Agent of Arab Higher Committee, 'Ad Hoc Committee on the Palestinian Question' (1947) UN Doc A/AC.14/XX, p. 6.

11 German fatherland, Germany our mother, Native Town

12 Laqueur (n 81) 51-55.

13 Agent of Guatemala, 'Ad Hoc Committee on the Palestinian Question' (1947) UN Doc A/AC.14/XX, p. 56.

14 African Commission on Human and Peoples' Rights, 'The Right to Nationality in Africa' (Study by Maya Sahli Fadel) (2015) ACHPR/Draft/Study/4, 13.

15 Laura Robson, *Colonialism and Christianity in Mandate Palestine* (University of Texas Press 2011) 162.

16 In *Shalit v. Minister of the Interior* (1968), the Israeli Supreme Court denied citizenship under the Law of Return to a Jewish convert to Christianity, a decision later upheld by Israel's High Court of Justice. The Jewish representative to UN negotiations similarly stated that religious conversion nullifies Jewish identity. Subsequently, the Knesset amended the Law of Return accordingly. In diplomatic correspondence with the Jewish Representative Rabbi Elmer Berger, the U.S. government clarified: *"No legal or political relationship exists with American citizens' religious identities. Accordingly, the Department of State does not regard the Jewish People concept as a concept of international law."* John Quigley, *Palestine and Israel: A Challenge to Justice* (Duke University Press 1990) 128129-.

17 Masalha (n 98).

neither from bloodline (*jus sanguinis*) nor from birth in the territory (*jus soli*).[1] Some argue that the Jewish people as a nation ceased to exist 2,000 years ago.[2]

3.3.6. Colonial Development and Claim to a Jewish State?

In the General Assembly's First Committee, the Jewish representative gave two reasons for creating a Jewish state: the large number of homeless Jews and the existence of unused land in Palestine.[3] As the Iraqi representative noted, Zionism sought to create political rights from economic development through dollar diplomacy and extraterritorial claims, whereas economic development by foreigners in another country does not create political rights for them.[4] The Palestinian representative pointed out that this would allow any developed nation to invade less developed nations worldwide.[5]

Therefore, Israel's establishment based on religious and racial discrimination[6] violated several provisions of international instruments, and the defenses presented to justify exceptional treatment for a Jewish State are untenable.

4. Legal Consequences

The legal consequences of an internationally wrongful act arise following the breach of an international obligation attributable to an international actor. International organizations, as active subjects of international law, may commit internationally wrongful acts, in which case both the international organization and its member States may bear legal responsibility. Regarding member State responsibility for wrongful acts of international organizations, several theories exist.

Draft Articles on the Responsibility of International Organizations (Draft 2011) while recognizing the separate legal personality of international organizations, acknowledges derivative responsibility for member States under certain circumstances, including: (a) circumvention by the organization, (b) aid or assistance, (c) direction and control, and (d) circumvention by States.[7]

Article 17 of Draft 2011 addresses responsibility arising from "circumvention through decisions of international organizations." Paragraph 1 establishes that when an organization with binding decision-making authority pushes a member State or organization to commit a wrongful act violating the organization's obligations, the decision-making organization bears responsibility.[8] Such decisions create standing for third parties to claim reparations even before the wrongful act occurs. Paragraph 2 provides that when an organization authorizes member States to act in ways that circumvent its obligations through non-binding decisions, it incurs international responsibility if member States subsequently act accordingly; No direct causal link between decision and wrongful act need be established.[9] The *Youssef Nada v. Switzerland*

1 Eric Fripp, *Nationality and Statelessness in the International Law of Refugee Status* (Hart Publishing 2016) 25.
2 Laqueur (n 81) 51-55.
3 Agent of Jewish Agency, Forty Fifth Meeting to Thirty-Fourth Meeting in First Committee, p. 274.
4 Agent of Iraq, 'Ad Hoc Committee on the Palestinian Question' (1947) UN Doc A/AC.14/XX, p. 29.
5 Agent of Arab Higher Committee, 'Ad Hoc Committee on the Palestinian Question' (1947) UN Doc A/AC.14/XX, p. 196.
6 Agent of Lebanon, 'Ad Hoc Committee on the Palestinian Question' (1947) UN Doc A/AC.14/XX, p. 22.
7 Seyyed Ghasem Zamani, 'A Reflection on the International Responsibility of International Organizations' [1997] Law J 236 [In Persian].
8 *Yassin Abdullah Kadi v European Commission* (Joined Cases C-58410/ P, C-59310/ P and C-59510/ P) EU:C:2013:518, para 128.
9 Natasa Nedeski and Andre Nollkaemper, 'Responsibility of International Organizations "in Connection with Acts of States"' (2012) 9 Intl Orgs L Rev 33, 13.

Case before the European Court of Human Rights confirmed that States cannot evade their international obligations by resorting to UN Security Council resolutions.[1]

Article 58 of Draft 2011 covers "aid or assistance" by States enabling organizational wrongdoing. When a state votes for organizational measures violating international law (e.g., human rights), both organization and State bear responsibility. Article 59 addresses "direction and control" constituting effective dominance over wrongful acts; established when the act would not have occurred without State action. Some scholars even extend responsibility to States capable of preventing organizational violations.[2]

Article 61 of Draft 2011 concerns "circumvention by states," applying when Members delegate to organizations the competence to act in ways that would constitute violations if committed directly by States. This requires demonstrating definite intent to circumvent obligations through deception of the organization.[3]

Under Article 8 of Draft 2011, organizational conduct is attributable when performed by organs acting officially, even if ultra vires. The ICJ's *Certain Expenses* and *Namibia opinions* confirm that acts reasonably serving organizational purposes remain attributable.[4] Thus, decisions violating express or implied organizational powers still constitute attributable wrongful acts if adopted through proper internal procedures.

The Palestine Mandate violated provisions protecting the "sovereign rights of inhabitants," constituting the first internationally wrongful act attributable to both the League of Nations and Britain as parties to this agreement. If evidence established Britain's deliberate referral of the Palestine Question to the UN to facilitate Jewish statehood, this would additionally qualify as "state circumvention" under Article 61 of the Draft.

Following referral to UN committees, the majority proposals in both the Special Committee and Ad Hoc Committee became the basis for General Assembly Resolution 181 (Partition Plan) and Security Council Resolution 242. The General Assembly committed an internationally wrongful act through three principal violations: first, by distorting the concept of "inhabitants" - replacing the requirement of indigenous status with mere "Palestinian citizenship"; second, by partitioning Palestinian territory contrary to its territorial integrity; and third, by implementation of religious and racial discrimination.

Member States supporting partition through their votes in the Special Committee (7 States)[5], Ad Hoc Committee's Sub-Committee I (25 States),[6] and General Assembly Resolution 181 (33

1 *Nada v Switzerland* App no 1059308/ (ECtHR [GC], 12 September 2012).

2 I Seidl-Hohenveldern, 'Responsibility of Member States of an International Organization for Acts of that Organization' in *International Law at the Time of Its Codification: Essays in Honour of Roberto Ago* (Giuffrè 1987) vol 3, 420.

3 S F Moosavi and N Khodaparast, 'Responsibility of Member States of International Organizations In light of International Law Commission Draft Articles on the Responsibility of International Organizations' (2023) 18(64) Q J Judicial L Views 159 [In Persian].

4 *Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter)* (Advisory Opinion) [1962] ICJ Rep 151, 168; *Namibia* (Advisory Opinion) (n 15) 22.

5 Seven members (the representatives of Canada, Czechoslovakia, Guatemala, the Netherlands, Peru, Sweden, and Uruguay), while reserving their positions on boundaries and on the status of Jerusalem, voted in favor of the principle of partition with economic union. United Nations Special Committee on Palestine Report to the General Assembly, UNSCOP Majority Plan, 1947, para. 75.

6 Australia., Bolivia., Brazil, Byelorussian Soviet Socialist Republic, Canada, Chile, Costa Rica, Czechoslovakia., Denmark, Dominican Republic, Ecuador, Guatemala, Iceland, Nicaragua, Norway, Panama, Peru, Poland, Sweden, Ukrainian Soviet Socialist Republic, Union of South Africa, Union of Soviet Socialist Republics, United States of America, Uruguay and Venezuela.

States)[1] and all supporting and recognizing States[2] incurred responsibility under international law. Consequently, the said States and the UN (itself and as successor to the League), bear international responsibility for two fundamental breaches: the violation of Palestinian self-determination rights over the entirety of their territory, and the breach of non-discrimination obligations through the creation and recognition of Israel. This responsibility is based on the Articles 17, 58 and 62 of the Draft 2011.

The legal consequences flowing from these wrongful acts include six specific obligations: first, the immediate cessation of ongoing violations; second, full restitution through re-establishment of the pre-mandate status; third, comprehensive reparations for material and moral damages; fourth, satisfaction through formal acknowledgment of the violations; fifth, the duty of non-recognition of the illegal situation; and sixth, the duty of non-assistance in maintaining this illegality.

The ICJ in its 2004 and 2024 Advisory Opinions established relevant precedents by: declaring Israel an occupying power in territories taken after 1967;[3] ordering restitution and compensation; and imposing non-recognition obligations. This legal framework applies with equal force to all Palestinian territory since 1948.

Two critical factors negate any temporal defenses: first, the principle that prescription (laps of time) cannot legitimize violations of international obligations;[4] and second, consistent international practice maintaining non-recognition of illegal situations over extended periods, including Rhodesia/Zimbabwe (15 years), Northern Cyprus (20 years), the Golan Heights (25 years), and the Baltic States (51 years).[5]

The first legal consequence of the internationally wrongful act in Palestine is the *restitution of sovereignty* to the indigenous inhabitants at the time the Mandate began. However, the political, social, and humanitarian implications of this transfer of sovereignty must be carefully studied by the United Nations.[6] Resorting *full sovereignty over all of Palestine to its indigenous inhabitants* could involve granting decision-making authority to them over the status of Jewish

1 Australia, Belgium, Bolivia, Brazil, Byelorussian Soviet Socialist Republic, Canada, Costa Rica, Czechoslovakia, Denmark, Dominican Republic, Ecuador, France, Guatemala, Haiti, Iceland, Liberia, Luxembourg, Netherlands, New Zealand, Nicaragua, Norway, Panama, Paraguay, Peru, Philippines, Poland, Sweden, Ukrainian Soviet Socialist Republic, Union of South Africa, Union of Soviet Socialist Republics, United States of America, Uruguay, Venezuela.

2 The UN Secretariat characterized General Assembly Resolution 181 (II) of 29 November 1947 as *recommendatory* under Article 10 of the UN Charter, thereby affirming its non-binding nature for Member States. UN Palestine Commission, 'Relations between the UN Commission and the Security Council' (Working Paper, 9 February 1948) UN Doc A/AC.21/13, s 3, para 4.

3 *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion) [2004] ICJ Rep 136, para 159; *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem* (Advisory Opinion) [2024] ICJ Rep, para 278.

4 ILC, 'Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries' (2001) UN Doc A/56/10, 122-123; Henry Cattan, *The Palestine Question* (Croom Helm 1988) 33.

5 Stefan Talmon, 'The Duty Not to 'Recognize as Lawful' a Situation Created by the Illegal Use of Force or Other Serious Breaches of a Jus Cogens Obligation' in Christian Tomuschat and Jean-Marc Thouvenin (eds), *The Fundamental Rules of the International Legal Order* (Martinus Nijhoff 2005) 122.

6 An analogous situation occurred regarding South West Africa (Namibia). Following the UN General Assembly's declaration of South Africa's presence as illegal (GA Res 2145 (XXI)), the Assembly established its subsidiary organ - the UN Council for Namibia (GA Res 2248 (S-V)). Concurrently, the Security Council formed a Contact Group (SC Res 385 (1976)) to mediate between South Africa and the South West Africa People's Organization (SWAPO). The process culminated in the UN Transition Assistance Group (UNTAG), established under SC Res 435 (1978), which supervised Namibia's Constituent Assembly elections. Namibia achieved independence on 21 March 1990 after adopting its Constitution. Nele Matz, 'Civilization and the Mandate System under the League of Nations as Origin of Trusteeship' (2005) 9 Max Planck UNYB 47, 82-84.

immigrants, or relocating of Jewish settlers, as implied by the ICJ's 2024 advisory opinion which suggested the evacuation of Israeli settlers from occupied Palestinian lands.[1]

In the relocating assumption, the *fairest option*, as proposed by the Indian government, would be *Germany*.[2] Unlike alternative proposals such as Uganda or Soviet Birobidzhan, Germany, as the state primarily responsible for the persecution of Jews, would be the most appropriate choice.[3] Jewish representative, when asked why Germany would not be a better option, dismissed it as the worst possible solution, citing historical German treatment of Jews.[4] However, their objection was based on the assumption of Jews remaining a minority in Germany, whereas India's proposal envisioned an *independent Jewish State within German territory*. Moreover, the post-WW1 transfer of German territories to League of Nations administration under the Treaty of Versailles provides historical precedent.[5] Why, then, should refugees not resettle in their "natural homeland" of Germany - where they speak the language and feel greater cultural affinity - rather than in Palestine?[6]

Full restitution must also include reparations for damages incurred. Given the UN's role in these violations, the *primary responsibility for compensation* lies with the UN and the States that directed and supported its decisions regarding Palestine. As the Permanent Court of International Justice stated in the *Chorzów Factory Case*,

> *"[R]eparation must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed."*[7]

The ICJ's 2024 opinion affirmed that Israel must compensate all natural and legal persons harmed in occupied Palestinian territory.[8] This principle would apply equally to *all of historic Palestine* if the illegality of its partition is recognized.

The ILC has recognized self-determination as a peremptory norm (*jus cogens*),[9] and the ICJ has frequently affirmed it as an *erga omnes*.[10] According to the Court, the UN, States, and all international actors are obligated not to recognize situations arising from violations of erga omnes. In the ICJ's precedent in cases of illegal situations resulting from breaches of self-determination, States must refrain from transactions or practices legitimizing the unlawful territorial status, avoid establishing diplomatic or consular relations, withdrawing

1 *Legal Consequences* (2024) (n 133) para 285.
2 Agent of India, 'Forty Fifth Meeting to Thirty-Fourth Meeting in First Committee' (1947) UN Doc A/C.1/XX, p. 117.
3 Agent of United Kingdom, 'Ad Hoc Committee on the Palestinian Question' (1947) UN Doc A/AC.14/XX, p. 10; Agent of Saudi Arabia 'Ad Hoc Committee on the Palestinian Question' (1947) UN Doc A/AC.14/XX, p. 10; Other territories including Morocco, Libya, and Argentina were similarly proposed for Jewish statehood. Notably, Jewish-American jurist Manuel Noah advanced a proposal in 1825 to establish a Jewish polity on Grand Island, New York (*Proclamation to the Jews*, 10 September 1825). Laqueur (n 81) 115.
4 Agent of Jewish Agency, 'United Nations Special Committee on Palestine' (1947) UN Doc A/AC.14/XX, p. 79.
5 William Bain, *Between Anarchy and Society: Trusteeship and the Obligations of Power* (OUP 2003) 146.
6 Agent of India, Forty Fifth Meeting to Thirty-Fourth Meeting in First Committee, p. 117.
7 *Jurisdiction of the Courts of Danzig (Pecuniary Claims of Danzig Railway Officials who have Passed into the Polish Service, against the Polish Railways Administration)* (Advisory Opinion) PCIJ Rep Series B No 15, 47.
8 *Legal Consequences* (2024) (n 133) para 285.
9 ILC, 'Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries' (2001) UN Doc A/56/10, 283-284, paras 4-5.
10 *Chagos* (Advisory Opinion) (n 50) para 180.

existing representatives if necessary,[1] and cooperate with the UN to realize the right to self-determination.[2]

The UN Human Rights Council, in Resolution 49/28 (2022), reaffirmed the Palestinian peoples' right to self-determination and obligated States to ensure non-recognition and non-assistance in Israel's serious breaches of peremptory norms. It further emphasized the duty to cooperate in ending violations and reversing Israel's unlawful policies.[3] If implemented universally and comprehensively, these measures could restore the lost rights of Palestine's indigenous inhabitants.

Conclusion

States, after a prolonged period of war, joined the United Nations with aspirations for a world free from war and violence. Among the issues concerning international peace and security was the question of trust territories. Chapter XII of the UN Charter addressed this matter, with perhaps the most significant obligation of the trusteeship system being the granting of self-governance or independence to the inhabitants of these territories, as reflected in Article 76 and before that in Article 22 of the League Covenant. The practice of the United Nations, along with various reports and resolutions, substantiated that the term "inhabitants" in this Article referred to the *indigenous inhabitants*; those who had a territorial connection to the land prior to the establishment of the International Administration. All trust territories were eventually returned to their indigenous inhabitants - *except Palestine*.

The British Mandate over Palestine rooted in the Balfour Declaration which envisioned the creation of a *Jewish National Home.* This Mandate was later approved by the UN Trusteeship Council. Contrary to the interpretation provided in Britain's diplomatic declaration (the White Paper), the UN General Assembly resolved to establish a *Jewish State alongside an Arab State*; a decision that contravened the explicit wording of Article 22 of the Covenant and Article 76 of the Charter. Subsequent recognitions by the Security Council, Israel's UN membership, and widespread international recognition of Israel led to neglected scrutiny of the *legitimacy of Israel's establishment in 1948*.

Rather than following the will of the indigenous inhabitants, the General Assembly *imposed partition*, ordering the creation of two States.[4] The exercise of sovereignty by the *indigenous Palestinian inhabitants* should have been achieved through *consultation and elections* within their own cultural framework, leading to *independence or self-governance*. Thus, the Partition Resolution, which violated both the League of Nations Covenant and the UN Charter, is not only *invalid* but it also entails *international responsibility* for the UN and *derivative responsibility* for member States that directed, controlled, aided, or circumvented obligations.

The right to self-determination applies to peoples under colonial rule, foreign domination, racist regimes, and indigenous inhabitants of trust territories - *not* to religious groups, refugees, persecuted communities, political parties, or other collectives. While Jewish representatives

1 *Namibia* (Advisory Opinion) (n 15) paras 122123-.
2 *Chagos* (Advisory Opinion) (n 50) para 182.
3 UNHRC Res 49/28 (11 April 2022) UN Doc A/HRC/RES/49/28, para 7.
4 UNGA Res 181 (II) (29 November 1947) GAOR 2nd Session Resolutions, 131.

presented arguments for the necessity of a Jewish State, none of these justifications could prevail over the *established rights* under Article 22 of the League Covenant, Article 76 of the UN Charter, or the *customary right to self-determination*. The UN's one-sided focus on the Jewish displacement (*Jewish diaspora*) after half a century reveals that it carried within itself the Palestinian displacement (*Palestinian diaspora*). Similarly, the one-sided focus on the persecution of non-Palestinian Jews (*the Holocaust*) after half a century reveals that it carried within itself the oppression of Palestinians (*the Palocaust*). Even voicing objection to German racism (*the German Gene*) after half a century reveals that it carried within itself Jewish Supremacism (*Chosen People*).

This *exceptionalism* in Israel's creation has, over half a century, exempted Israel from accountability under international law. A re-examination of this historical event, grounded in the obligations of the Mandate and Trusteeship System, reveals that the United Nations itself *stands the primary and principal culprit*. Alongside the UN, Britain and other States that supported the two-state proposal, bear responsibility for the consequences of this wrongfulness, proportionately. The UN must now take steps toward *restitution*; restoring the *inherent sovereignty of Palestine's indigenous inhabitants* through democratic processes. Reparations for material and moral damages must also be provided, by the UN and the concerned States.

Under international law, all actors are obligated to *neither recognize nor cooperate with* an illegal situation. Decades ago, the ICJ, the judicial arm of the UN, condemned South Africa's discriminatory regime in South West Africa (Namibia). The parallels between South West Africa and Palestine are striking: both were former mandates without new trusteeship agreements and both witnessed the emergence of discriminatory regimes: in the former by the administering power and in the latter by the UN General Assembly, *and* in the former through a racial discrimination and in the latter through a religious discrimination. Same storylines, differing courses of action; while one was condemned, the other was not. It is not too late to correct this injustice.

After nearly eight decades, the warnings voiced during the Palestine negotiations have proven prescient. The Palestinian representative cautioned that *"with a view to continuing this injustice, it is argued that the cessation of the mandate might lead to bloodshed between Arabs and Jews."*[1] Lebanon's delegate warned that *"the situation in Palestine is very unstable and contains within it the seeds of possible conflicts which may spread throughout the Middle East."*[2] Syria's representative added that *"the only trouble partition would cause them would be that of raising their hands, whereas the blood of the Arabs would flow and peace would be disturbed in that part of the world."*[3] Today, Israel's aggressions on Gaza, Lebanon, Syria, Yemen, and Iran have tragically validated these predictions.

As Henry Cattan aptly noted, *"Putting a lid on a boiling kettle will not stop it from boiling."*[4]*;* The Palestine issue must be resolved at its root: *the entirety of Palestine must be returned to its indigenous people*.

1 Agent of Arab Higher Committee, 'Forty Fifth Meeting to Thirty-Fourth Meeting in First Committee' (1947) UN Doc A/C.1/XX, p. 195.
2 Agent of Lebanon, 'United Nations Special Committee on Palestine' (1947) UN Doc A/AC.14/XX, p. 244.
3 Agent of Syria, 'Ad Hoc Committee on the Palestinian Question' (1947) UN Doc A/AC.14/XX, p. 176.
4 Henry Cattan, *Palestine and International Law: The Legal Aspects of the Arab-Israeli Conflict* (Longman 1973) 174.

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