

# The Palestinian Territories and The (Self)legitimizacion of the Settlements

Written by Lorenzo Kamel

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LORENZO KAMEL, FEB 14 2014

Australia's Foreign Minister Julie Bishop suggested to The Times of Israel in January 2014, contrary to conventional diplomatic wisdom, that Israeli settlements may not be illegal under international law. In recent years a growing number of politicians and scholars have expressed similar positions. Many of them argue that the results of the 1920's San Remo Conference, and the inclusion of the principles contained in the Balfour Declaration in the text of the Mandate of Palestine, assured to the Jewish people the exclusive right to create their "national home" on "the whole country of Palestine, not a mere part of it".

In this respect, the Levy Report – released on 9 July 2012 by a special committee appointed by Israeli Prime Minister Benjamin Netanyahu – has represented a watershed of sorts. It clarified that

with the establishment of the United Nations in 1945, the principle of recognizing the validity of existing rights of states acquired under various mandates, including of course the rights of Jews to settle in the Land of Israel by virtue of the above documents, was determined in article 80 of its charter.

According to the Levy Report, Article 80 of the UN Charter implicitly recognizes the Mandate for Palestine.

The late Eugene Rostow, former dean of Yale Law School, also known for being a key drafter of UN resolution 242, further clarified these aspects explaining that "a trust" – as in Article 80 of the UN Charter – "does not end because the trustee dies". Rostow's argument, which is repeated in the Levy report, is that although the League of Nations had ceased to exist, its commitments remain binding.

These claims are marred by several inaccuracies, starting from the fact that the term "national home" had no mutually agreed upon meaning or scope and that the British government was under no definite obligation, since the Mandate made any Jewish immigration subject to "suitable conditions" and contained safeguards for the rights and position of the non-Jewish communities.

Furthermore, as David Ben-Gurion clarified in July 1947 in front of the UNSCOP commission:

The Mandate, in fact, does not exist because it was violated by the Mandatory. We are not in favour of renewing it. [...] we say that the original intention and the need, and what in our conviction is just, should be decided upon by the United Nations [...] I said we do not ask for a Mandate any more, so it is not a question. The question does not arise on the Mandate.

Also the assertion that Article 80 of the UN Charter implicitly recognizes the Mandate for Palestine is more complex than often claimed. One of the legal advisors to the Jewish Agency, Jacob Robinson, published a book in 1947 that presented a historical account of the Palestine Question and the UN. He explained that when the Jewish Agency learned that the Allied Powers had discussed at the Yalta Conference (February 1945) a new system of international supervision to supersede the system of mandates, the Agency decided to submit a formal request to the San Francisco Conference (April-June 1945) to obtain a safeguarding clause in the UN Charter. The proposed clause

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would have prevented a trusteeship agreement from altering the Jewish right to nationhood secured by the Balfour Declaration and the Mandate for Palestine. The UN Conference ignored the Agency's request and stipulated in article 80 of the Charter that the UN organization did have the necessary power to conclude trusteeship agreements that could alter existing rights held under a mandate.

Robinson tried to portray a legal setback as a victory and convince everyone that Article 80 of the Charter accomplished the Agency's stated objective. Indeed, the final text adopted by the working paper for international trusteeship contained an exception that allowed trusteeship agreements to do exactly what the Jewish Agency had tried to prohibit. In Article 80's words: "Except as may be agreed upon in individual trusteeship arrangements placing each territory under the trusteeship system, nothing in this chapter should be construed in and of itself to alter in any manner the rights of any state or any peoples in any territory".

Article 1 of General Assembly resolution 24(I) reserved the right of the UN to decide not to assume any function or power of the League of Nations. On the 19th March 1948, during the 271st meeting of the Security Council, US Ambassador Warren Austin cited UN General Assembly resolution 24(I) and pointed out:

The United Nations does not automatically fall heir to the responsibilities either of the League of Nations or of the Mandatory Power in respect of the Palestine Mandate. The record seems to us entirely clear that the United Nations did not take over the League of Nations Mandate system.

On top of all these considerations, the above mentioned thesis of "exclusivity", besides being unjustified from an historical point of view – Palestine did not belong in an exclusive way to one single population in its entire history – is incorrect also from the legal perspective imposed since the early stage by London. Hubert Young, an important figure of the Foreign Office, wrote in November 1920 that the commitment made by London "in respect of Palestine is the Balfour Declaration constituting it a National Home for the Jewish People". Lord Curzon corrected him: "No. 'Establishing a National Home in Palestine for the Jewish people' – a very different proposition".

The British White Paper of June 1922 – the first document that *officially* clarified the interpretation of the Mandate's text – clarified that the Balfour Declaration does "not contemplate that Palestine as a whole should be converted into a Jewish National Home, but that such a Home should be founded 'in Palestine'". Furthermore, it stressed – and this is perhaps the most relevant aspect – that the "Zionist congress" that took place in Carlsbad in September 1921 had officially accepted that "the determination of the Jewish people to live with the Arab people on terms of unity and mutual respect, and together with them to make the common home into a flourishing community, the upbuilding of which may assure to each of its peoples an undisturbed national development".

It is only in light on these clarifications that the preamble as well as Article 2 of the Mandate text can and should be understood. It is noteworthy that Zionist consent to such interpretation was requested, and received, *before* the Mandate was confirmed in July 1922. In Weizmann's words: "It was made clear to us that confirmation of the Mandate would be conditional on our acceptance of the policy as interpreted in the White Paper [*of 1922*], and my colleagues and I therefore had to accept it, which we did, though not without some qualms".

Israel's right to defend itself against terror and discrimination is something that any person interested in peace cannot but support. Equally true is that the attempt to exploit and colonize the Palestinian territories through a misleading use of history, international law, and international consensus is a dangerous threat that requires better public understanding.

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## About the author:

**Lorenzo Kamel** teaches Global History at the University of Turin. He is also the director of the Istituto Affari Internazionali's Research Studies and a faculty member of the PhD programme in Global History of Empires. Among

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his books are *The Middle East from Empire to Sealed Identities* (Edinburgh UP) and *Imperial Perceptions of Palestine: British Influence and Power in Late Ottoman Times* (I.B. Tauris).