



PALESTINIAN REFUGEES AND INTERNATIONAL LAW

The International Legal Framework Governing
Assistance, Protection and Durable Solutions

Amjad Abu Khalaf

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The International Legal Framework
Governing Assistance, Protection and
Durable Solutions

Palestinian Refugees and International Law:
A Study on the International Legal Framework Governing Durable Solutions,
Aid, Protection and the Right of Return of Palestinian Refugees

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NOTE: The names and/or other details of refugees photographed in this study have been altered to protect their identities and security.

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Abbreviations

CDHRI	Cairo Declaration on Human Rights in Islam
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
CESCR	UN Committee on Economic, Social and Cultural Rights
CPIUN.....	Convention on the Privileges and Immunities of the United Nations (1946)
CRSR.....	Convention Relating to the Status of Refugees (1951)
GA.....	General Assembly (of the UN)
HRC	UN Human Rights Committee (of the ICCPR)
IASC	Inter-Agency Standing Committee
ICCPR.....	International Covenant on Civil and Political Rights
ICERD.....	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDF	Israeli Defense Forces
OHCHR.....	Office of the UN High Commissioner for Human Rights
OIC.....	Organisation of Islamic Cooperation
oPt.....	Occupied Palestinian territories
PA	Palestinian Authority
PLO.....	Palestine Liberation Organization
Refugee Convention..	Convention Relating to the Status of Refugees (1951)
Refugee Protocol	1967 Protocol Relating to the Status of Refugees
SC	Security Council (of the UN)
UDHR	Universal Declaration of Human Rights
UN.....	United Nations
UNAT	United Nations Appeals Tribunal
UNCCP	UN Conciliation Commission for Palestine
UNCRC	UN Convention on the Rights of the Child
UNDT	United Nations Dispute Tribunal
UNHCR.....	Office of the United Nations High Commissioner for Refugees
UNHRC.....	United Nations Human Rights Council
UNRWA	UN Relief and Works Agency for Palestinian Refugees in the Near East
VCDR.....	Vienna Convention on Diplomatic Relations (1961)

Chapter 1. Historical Overview of the Palestinian Refugee Problem

A. The Roots of the Modern State of Israel

The roots of the modern State of Israel can be traced back to nineteenth and twentieth-century Zionism. Dr. Theodor Herzl, the main architect behind the Zionist movement, argued that the only solution to anti-Semitism, which was pervasive in nineteenth century Europe, was the establishment of a Jewish state. The First Zionist Congress was held in Basel, Switzerland, in 1897, to search ways to legally establish a Jewish state in Palestine. At the time, the indigenous population of Palestine was 92% Arab (Muslim and Christian), with Jews and other groups constituting 8% of the population.

After the Basle Congress, the Zionist movement approached the British government to support the creation of a Jewish state. In the midst of World War One, the British found Jews to be helpful allies and embraced their cause. The support of the British culminated with the 2 November 1917 Balfour Declaration, issued by Foreign Secretary Arthur James Balfour to 2nd Baron Walter Rothschild, a leader of the British Jewish community, that stated the government's favorable view with respect to the establishment in of a Jewish state. The Balfour Declaration expressed that "His Majesty's Government view with favour the establishment in Palestine of a national home for the Jewish people."

B. Demise of the Ottoman Empire; The Balfour Declaration and Mandate Palestine

With the demise of the Ottoman Empire after World War I, Britain was confirmed as the League of Nations Mandatory Power in Palestine. Mandate Palestine was carved out of the defunct Ottoman Empire after World War I and placed under British administration from 1920 until the 1948 creation of Israel. The Council of the League of Nations issued its

consent to Mandate Palestine on 24 July 1922, followed by the 16 September 1922 Transjordan Memorandum. The British Mandate of Palestine, a legal instrument that formalized British rule over Mandate Palestine, came into effect in 1923, following the ratification of the Treaty of Lausanne.

C. The Interwar Period

Between World War I and World War II, the Palestinians emerged out of the Ottoman Empire and immediately faced British control and a Zionist movement. Within this backdrop, the Palestinians went on strike in 1936. Growing unrest was complicated by Great Britain's conflicting obligations to both Jews (the 1917 Balfour Declaration) and Arab Nationalists (the 1915 Hussein/McMahon letters). While Zionists fully expected a Jewish state to be established in Palestine, the Arab Nationalists expected Palestine to become a Palestinian Arab nation.

This tension resulted in the 1936 British Peel Commission to investigate the situation, make recommendations and draw conclusions. The Commission concluded in 1937 that a Palestinian Arab/Zionist entente in Palestine to reconcile the contrary British obligations was not feasible. In light of this difficulty, it suggested partition.

Zionist leader Ben Gurion accepted the partition notion, but the Palestinian Arabs rejected it. After the Peel Commission report, sporadic violence broke out involving various paramilitary forces. Meanwhile, plans for a partition of Palestine continued at the international level.

D. General Assembly Resolution 181 (II): The UN Partition Plan for Palestine

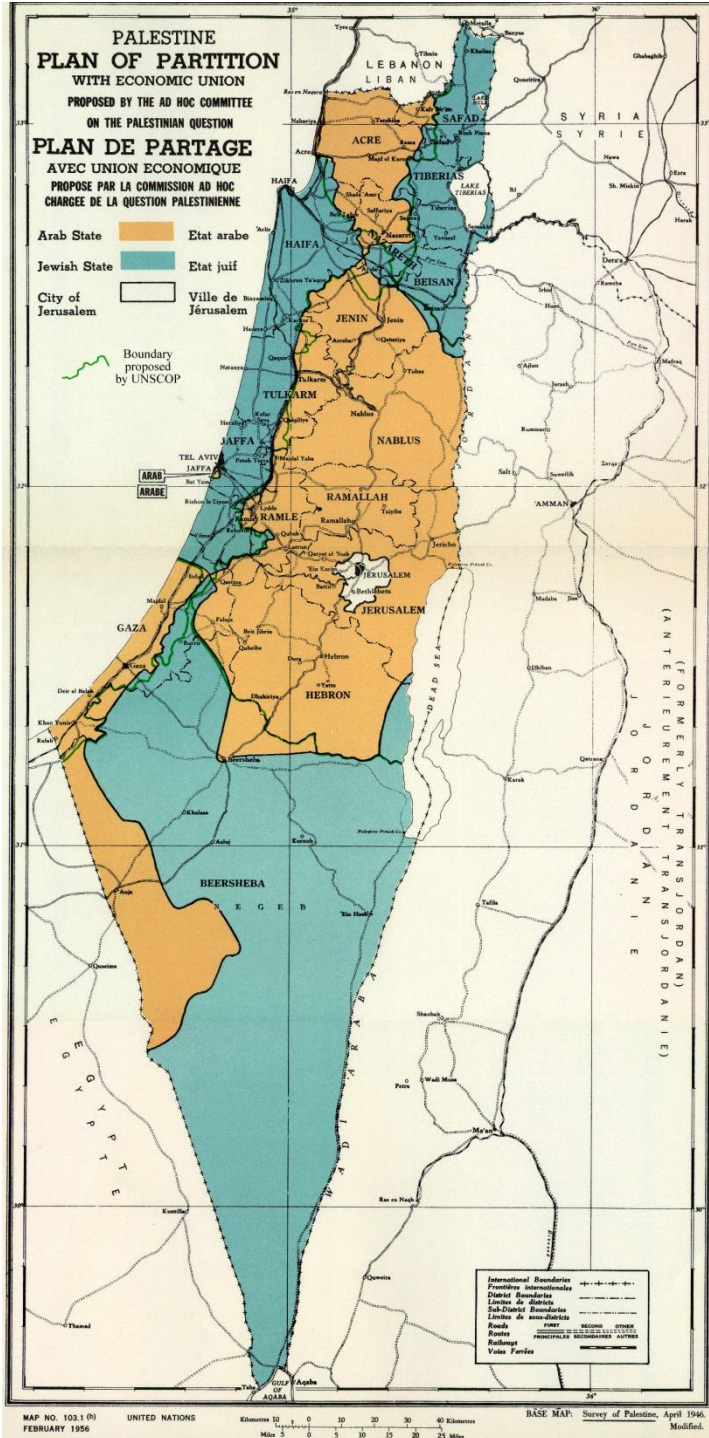
1. Overview

On 29 November 1947, the UN GA adopted Resolution 181 (II), recommending the adoption and implementation of the Partition Plan for Palestine, a proposal that recommended a partition with economic union of Mandate Palestine to follow the termination of the British Mandate of Palestine. Resolution 181 (II) was passed with 33 nations in favor, 13 opposed and 10 abstentions.

The Palestinians and other Arabs challenged the UN's authority to partition Palestine and they argued that Palestine was to be included in the Arab territories that had been promised independence through an agreement with Great Britain in 1915 in exchange for Arab support in confronting the Ottomans and Germans in World War I. Despite Arab opposition, the Partition Plan passed. Fighting between Palestinians and Jews began upon the passing of the Partition Plan, eventually followed by the full-scale Arab-Israeli War after the British ended their Mandate of Palestine on 15 May 1948.

2. Terms of the Partition Plan

The Partition Plan for Palestine allotted to Jews 55% of Palestine. The proposed Jewish state would have had a population of 499,000 Jews, and 438,000 Palestinians. Jerusalem was designated as a *corpus separatum* to be administered by the United Nations (*i.e.*, an international city).



E. Palestine after the 1948 Arab-Israeli War

On the basis of Resolution 181 (II) of 1947, the British ended their Mandate of Palestine on 15 May 1948. The same day, Zionists declared statehood on the basis of the section of Resolution 181 (II) that called for a Jewish State (see ¶¶ 2-4, 7, etc.). By the time the 1949 Armistice was signed, Israel possessed 78% of Palestine in place of the original 55% envisioned by the Partition Plan.

F. 1967 Conquest and Occupation of Gaza, the West Bank and East Jerusalem

The remaining parts of Palestine, territories which were known in 1948 as Gaza and Eastern Palestine (including the unconquered part of Jerusalem) and are today known as the Gaza Strip, the West Bank and East Jerusalem, came under Egyptian and Jordanian control, with Egypt taking over Gaza administratively and Jordan taking over what remained of Jerusalem and the West Bank. Jordan eventually annexed them, which many Palestinians viewed as occupation. The UN also admonished Jordan for transforming East Jerusalem. The UN and the international community continued to recognize all of Jerusalem as defined by UN GA 181 (II) as an international *corpus separatum*. The majority of expelled Palestinians became refugees in Lebanon, Jordan, Syria, Iraq, Kuwait, Egypt, and in the remnants of Palestine, Gaza and the West Bank.

Israel conquered and occupied the remaining 22% of Palestine, the Syrian Golan Heights, and the Egyptian Sinai in the June 1967 war. UN Security Council Resolution 242 of 1967 called for Israel's withdrawal from the occupied territories, but Israel did not comply.

Eventually, the Sinai was returned to Egypt under security agreements. Jordan relinquished any claims to the West Bank and East Jerusalem in 1988 in a peace treaty with Israel in 1978. The West Bank and East Jerusalem became Palestinian territory under the responsibility of the Palestine Liberation Organization. In 1991, the Madrid/Oslo peace process was initiated based on acceptance by both parties of UN Security Council Resolution 242 of 1967. To date, however, the peace

process between Israel and Palestine has been marked by a failed succession of attempted negotiations.