

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 5 | Issue 2

2022

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When the battle is Lost and Won

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ABSTRACT

This article summarizes one of the oldest controversies prevailing on the face of this earth, the conflict between Israel and Palestinian Arabs. The writer has tried to trace the events from the 1800s to 2021 in light of History and International Laws. The article briefly describes some of the important events such as the persecution of Jews before and after the regime of Hitler, the immigration plan of the Zionists, the invasion of the Britishers and how the Britishers double-crossed the respective stakeholders, the geopolitics prevalent in the region of the Middle East, the collapse of The League of Nations, etc. This article further describes the significant role played by the United Nations over the years and how at times, they were able to maintain peace, and how, at times, they failed. The writer has tried her earnest efforts to write an unbiased account and introspect it under the microscope of law.

Keywords - Israel, Palestine, Arab, United Nations, International Laws

I. INTRODUCTION

A battle that has been stretched for far too long is an infamous battle between Israel and Palestine. It has been going on and on for centuries affecting the Middle Eastern region. To demarcate accurately, the Middle East consists of Egypt, Sudan, Jordan, Syria, Lebanon, Iraq, Saudi Arabia, Kuwait, Iran, Turkey, the Yemen Republic, United Arab Emirates (UAE), and Oman.² It is a popular myth that this entire region has been in turmoil due to its ethnicity. But the truth is that, it is of importance to western as well as communist powers for two significant reasons; firstly, the area is rich in oil resources, and secondly, the strategic position acts as a crossroad between the western nations, the communist bloc and third world nations of Africa and Asia.³

II. HISTORICAL BACKGROUND

The origination of the Israel-Palestine conflict can be traced back to 71A.D, when a sizeable population was driven out of Palestine, which was the place of their inhabitation, by the Romans.⁴ During this era, Jews, Christians, and Muslims resided amicably in this region. Since

¹ Author is Research Scholar at University of Lucknow, India.

² Norman Lowe, Mastering Modern World History, pg 225 (5th ed. 2013)

³ Ibid.

⁴ Norman Lowe, Mastering Modern World History, pg 230 (5th ed. 2013)

it would be a little impractical to trace down all the events from 71 A.D, the writer would like to begin with the 1800s. During 1821-1906, various anti- Jewish pogroms took place in the Russian empire after Imperial Russia acquired territory with a large Jewish population from the Polish–Lithuanian Commonwealth and Ottoman Empire from 1772–1815⁵. The Dreyfus Affair was a political scandal that divided the Third French Republic from 1894 until it passed; a resolution in 1906 was another event that led to the persecution of Jews. "L'Affaire," as known in French, has come to symbolize modern injustice in the Francophone world, and it remains to be one of the most notable examples of a complex miscarriage of justice and anti-Semitism⁶. The role played by the press, and public opinion proved influential in the conflict leading to the victimization of Jews in France⁷. The term “anti-Semitism” means hostility to, prejudice, or discrimination against Jews⁸ and those people who hold such feelings are called “Anti-Semites." As per United Nations General Assembly, Session 53, Resolution 133, *Measures to combat contemporary forms of racism, racial discrimination, xenophobia, and related intolerance, 1 March 1999*, Anti-Semitism is considered a form of racism. During World War II, under the regime of Hitler, numerous Holocausts were carried out in Germany and parts occupied by Germany across Europe. Even the Soviet Union did not stop harassing and exploiting the Jews and carried out anti-Jewish policies. Under such stringent situations, the Jews started migrating.

In 1897, an Austro-Hungarian journalist named Theodor Herzl started a new political movement through his pamphlet "Zionism." Although this idea was propagated by the "Lovers of Zion" much earlier, it gathered momentum only after the publishing of the pamphlet. In the heat of the moment, some Jews living in Europe founded the "World Zionist Organization," Basel in Switzerland.⁹ ‘Zionist’ were the people who believed in establishing a 'national homeland for Jews, i.e., a Jewish state since the Jews had already suffered persecution from Russia, France, Germany, etc. In their eyes, a Jewish state meant a ‘safe heaven’ a refuge for Jews all around the globe¹⁰. This idea led to a catastrophe as, during this time, Palestine was inhabited by Arabs¹¹. As mentioned earlier, the Jews were driven out by the Romans from this region. The Arabs were greatly alarmed at the prospect of losing their homeland to Jews. The question that pours forth is why did Jews choose Palestine as a site for ‘safe heaven’ or to create

⁵ Pogroms in the Russian Empire, Wikipedia, https://en.wikipedia.org/wiki/Pogroms_in_the_Russian_Empire

⁶ Dreyfus Affair, Wikipedia, https://en.wikipedia.org/wiki/Dreyfus_affair

⁷ Ibid.

⁸ Oxford Dictionary

⁹ Norman Lowe, *Mastering Modern World History*, pg 230 (5th ed. 2013)

¹⁰ Ibid.

¹¹ Ibid.

their national homeland? The answer to this question lies in the city of Jerusalem. They believed Jerusalem to be a holy site. Jerusalem is a sacred site not only for Jews but also for Christians and Muslims.

In 1882, Britain invaded Egypt and ruled it till 1922, when the country was given semi-independence under its own king while maintaining its presence. This is how Britain set its foot in this region. In 1915, World War I began. The French, British and Arab revolutionaries initiated an insurgent against Ottoman Empire. The British ‘pulled out’ an ingenious card. They asked Arab revolutionaries to support them against the Ottoman Empire forming a Britain-Arab alliance, also known as “Hussein-McMahon correspondence.”¹² In return, the Arab revolutionaries were promised Palestine. This served the interest of the Arabs revolutionaries since they wanted to establish a unified Arab country from Syria to Yemen.

In 1917, the Britain foreign minister Arthur Balfour announced that Britain supported the idea of a Jewish national home in Palestine¹³; this is also known as Balfour Declaration, November 2, 1917. The pact was entered to appease the American Jews and win their support because this would have increased Britain’s chances to maintain an influence on American politics. The whole idea was bitterly opposed by the Arabs as they wanted an independent Palestine¹⁴. It doesn’t shock the world that Britain entered into a third agreement with France, agreeing to divide the Middle East between themselves after the crumbling of the Ottoman Empire at the end of World War I. Abiding by their agreement, the region was divided between France and Britain to look after as mandated by the Treaty of Versailles settlement at the end of the First World War¹⁵.

In 1922, the British government stated that there was no intention of the Jews to occupy the whole of Palestine, and there would be no hindrance to the rights of the Palestinian Arabs.¹⁶ Arthur Balfour, in his declaration himself, stated, "nothing shall be done which may cause prejudice to the civil and religious rights of the existing non-Jewish communities in Palestine."¹⁷ The right to self-determination was vested with the people of Palestine when the Mandate was created in 1922 as per *Article 22 of the Covenant of the League of Nations*. The first paragraph of *Article 22* provided:

¹² Hussein-McMahon correspondence, Britannica, The Editors of Encyclopedia (12 August 2021) <https://www.britannica.com/topic/Husayn-McMahon-correspondence>

¹³ Norman Lowe, *Mastering Modern World History*, pg 230 (5th ed. 2013)

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ *Ibid.*

To those colonies and territories which, as a consequence of the late War, have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by people not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilization and that securities for the performance of this trust should be embodied in this Covenant.

From the year 1936 onwards, there were violent protests by Arabs and revolts which were curbed and suppressed by the Britishers by brutality killing over 3000 Arabs.¹⁸ In the year 1937, the British Peel Commission proposed dividing Palestine into two separate states, one Arab and one Jewish, but the Arabs strongly condemned this proposition¹⁹. Once again, in 1939, the British tried offering an independent Arab state within ten years, and the Jewish immigrants were limited to 10,000 a year. This time the Jews rejected the proposal²⁰.

The Second World War worsened the situation. Thousands of Jews started migrating to escape Hitler's holocaust. In 1945, the United States of America (USA) pressurized Britain to allow millions of Jews into Palestine, but for the delight of the Arabs, the Britishers denied this proposition.²¹ After all the hell broke loose upon the Jews, they were headstrong to fight for their 'national home'.²² They began a terrorist campaign against both Arabs and British²³. A spectacular incident that took place was the blowing up of the King David Hotel in Jerusalem, which was used by the Britishers as their headquarters; 91 people were killed²⁴. The Britishers retaliated by arresting Jewish leaders²⁵.

III. ROLE OF UNITED NATIONS AND APPLICATION OF INTERNATIONAL LAWS

After World War II concluded, Britain's position weakened and heavily strained its resources. Britishers were unable to cope with the situation prevalent in the Middle East; thus, Ernest Bevin, the labor Foreign Secretary asked the United Nations to intervene in the crisis.²⁶ By May 1948, Britishers 'completely' withdrew from the region²⁷.

The question that stands froth before us is, what happened to the League of Nations Mandate

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ibid.

²² Ibid.

²³ Ibid.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Ibid.

²⁷ Ibid.

system under which Britain and France two-forked Middle East? Chapter XII of the UN Charter (Articles 75-85) sets out the framework for the UN International Trusteeship System, which was a corollary of the League's Mandates system²⁸. Chapter XIII (Articles 86-91) created the Trusteeship Council, the body charged with the supervision of the administration of Trust Territories²⁹. In practical terms, the Trusteeship System ended when the final UN Trust Territory, the Republic of Palau, achieved its independence on 1 October 1994³⁰. *Article 75* of the *UN Charter* provides, "The United Nations shall establish under its authority an international trusteeship system for the administration and supervision of such territories as may be placed thereunder by subsequent individual agreements. These territories are hereinafter referred to as trust territories". *Article 77(1(a))* of the same expressly envisaged the territories held under Mandate. The United Nations shall establish under its authority an international trusteeship system for the administration and supervision of such territories as may be placed thereunder by subsequent individual agreements. These territories could be transferred to the trusteeship system, but *Article 77(2)* cautions: It will be a matter of subsequent agreement as to which territories in the foregoing categories will be brought under the trusteeship system and upon what terms. Under *Article 79*, the terms of trusteeship agreements were to be agreed upon by "the States directly concerned, including the mandatory power in the case of territories held under mandate by a Member of the United Nations." Further, the agreements were to be approved by the Security Council in the case of territories deemed to be strategic areas as per *Article 83* and by the General Assembly in all other cases as per *Article 85*. *Article 80(1)* contained a transitional provision for mandated territories pending the conclusion of trusteeship agreements. This saving clause provides, "Until such agreements have been concluded, nothing in this Chapter shall be construed in or of itself to alter in any manner the rights whatsoever of any states or any peoples or the terms of existing international instruments to which Members of the United Nations may respectively be parties."

The sole solution that the General Assembly was competent to recommend concerning Palestine was that it should be independent, but the determination of its system of government was a matter solely for the people of Palestine³¹. In particular, The United Nations cannot make a disposition or alienation of territory. Nor can it deprive the majority of the people of Palestine

²⁸ Ian Scobbie and Sarah Hibbin, *The Israel-Palestine conflict in International Law- Territorial Issue*, pg.26,(2009)

²⁹ *Ibid.*

³⁰ Security Council Resolution 956/1994, 10 November 1994.

³¹ Report of Sub-Committee II of the Ad Hoc Committee on Palestine, UN Doc.A/AC.14/32 (11 November 1947), 13, para.18

of their territory and transfer it to the exclusive use of a minority in the country, i.e., Jews.³²

In the year 1947, United Nations took over the matter. The organization came up with a partition plan carving out how much area was to be allotted to each party for the establishment of a Jewish country and a Palestinian country³³. The General Assembly adopted resolution 181 (II) on 29 November 1947. Out of the total area of Palestine, 45% was allotted for the Arab state and 55% for the Jewish state³⁴. The General Assembly decided to grant Jerusalem the status of *corpus sepratum* (a separate entity) and keep it under international control because of its importance in Judaism, Christianity, and Islam. 33 nations voted in favor of this proposition, 13 voted against it, including India, and ten abstained from voting, including China and U.K³⁵. The resolution was accepted by the Jewish community in Palestine, which formed the base for the establishment of a new country called Israel in 1948. But the Arabs resented this plan which led to the outbreak of violence and unrest between the Arabs and the Jews. The Arabs thought of the settlement plan to be another way to maintain colonial dominance by Jews. This is also designated as the first Civil War or First Arab-Israeli war, in which the Jews emerged victoriously. When the first civil war ended, some of those areas which were supposed to be Palestine's, according to the UN resolution 181, were occupied by Israel, including the west Jerusalem. The Gaza strip area went to Egypt, and the West Bank area was occupied by Jordan.³⁶ This meant that Palestinians were left with no land which they could call 'home.' More than 700,000 had to leave their home and seek refuge in neighboring countries³⁷. Palestinians called this event "Nakba," the catastrophe. Certain international commentators label Arabs' resentment of Resolution 181 as one of their grievous mistakes.

The Israeli leaders often demanded Palestinians to make 'concessions' that match would Israeli 'concessions'; it is important to note that Palestinians have not asked Israel to make any territorial concessions – i.e., give up any of the territories Israel acquired in the war of 1948 – nor has Israel ever indicated that it would under any circumstances consider doing such a

³² Report of Sub-Committee II of the Ad Hoc Committee on Palestine, UN Doc.A/AC.14/32 (11 November 1947), 17, para.23

³³ Britannica, The Editors of Encyclopedia. "United Nations Resolution 181", Encyclopedia Britannica, 2 Nov. 2014, <https://www.britannica.com/topic/United-Nations-Resolution-181>

³⁴ Ibid.

³⁵ UN General Assembly Resolution 181, Israel Ministry of Foreign Affairs, <https://www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/un%20general%20assembly%20resolution%20181.aspx#:~:text=United%20Nations%20General%20Assembly%20Resolution,list%20at%20end%20of%20document>).

³⁶ Norman Lowe, *Mastering Modern World History*, pg 231 (5th ed. 2013)

³⁷ Simha Flapan, "The Palestinian Exodus of 1948." *Journal of Palestine Studies*, vol. 16, no. 4, 1987, JSTOR, www.jstor.org/stable/2536718

thing.³⁸. What Palestinians have asked is that Israel returns the Palestinian territory on which Israelis have illegally established their settlements and to which it has transferred its own population, in violation of treaty obligations and international law. To describe the return of illegally confiscated Palestinian territory as Israeli concessions not only enrage Palestinians but compromises their rights even before negotiations for a peace agreement begin.³⁹ Israel was admitted to the United Nations as a full member on May 11, 1949, by General Assembly Resolution 273 (III)⁴⁰. As one commentator pithily observed, “Israel was born in an informal ‘manner’ and ‘came into existence, by its own act.”⁴¹ The representative of the Arab Higher Committee, Makhleh, informed the UN Secretary-General that it refused to participate in the work of the Palestine Commission because the United States of America had placed an undue influence, which was “nothing short of political blackmail,” on States to vote in favor of resolution 181⁴² and that any decision which was taken under pressure, undue influence, or duress was null and void⁴³. Furthermore, partition was contrary to the letter and spirit of the UN Charter; accordingly, the UN was incompetent to order partition, and thus, resolution 181 was an *ultra vires* act devoid of legal validity⁴⁴.

Experiencing such horrific incidents, Palestinians started craving for their own separate nation. This led to the formation of the Palestinian Liberation Organization (PLO) on 28 May 1964 in Jerusalem. It was an umbrella political organization claiming to represent the world’s Palestinians—those Arabs, and their descendants, who lived in mandated Palestine before the creation thereof the State of Israel in 1948⁴⁵. Out of desperation and believing that there was no other resort, PLO adopted the means of armed struggle. In retaliation, the United States of America and Israel designated it as a terrorist organization. In 1967, the second Israeli-Arab war took place. This war is often referred to as the Six-Day war of 1967. Once again, overcoming all the odds, the Israelis won the war, and this time they not only occupied the Gaza strip and the West Bank area but also captured the Egyptian Peninsula. This meant that

³⁸ Ian Scobbie with Sarah Hibbin, *The Israel Palestine Conflict in International Law- Territorial Issue*, pg viii (2009)

³⁹Ibid

⁴⁰ Admission of Israel to the United Nations-General Assembly Resolution 273, 11 May 1949 <https://mfa.gov.il/MFA/ForeignPolicy/MFADocuments/Yearbook1/Pages/Admission%20of%20Israel%20to%20the%20United%20Nations-%20General.aspx>

⁴¹ O’Connell DP, *State succession in municipal law and international law*, Volume II, International relations, Cambridge UP: Cambridge: 1967 pg 152 and 155

⁴² UN Palestine Commission, Statement of 6 February 1948 communicated to the Secretary-General by Mr. Isa Makhleh, Representative of the Palestine Higher Committee, (16 February 1948) <https://unispal.un.org/DPA/DPR/unispal.nsf/0/B9EE848FD989E7AF85256FB00075C092>

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Palestine Liberation Organization, Britannica, 15 Jul. 2020, <https://www.britannica.com/topic/Palestine-Liberation-Organization>

Israel captured all of the historical places in Palestine and expelled hundreds and thousands of people from their homeland.

Between the conclusion of the General Armistice Agreements with Egypt, Lebanon, Jordan, and Syria in February-July 1949 and the conclusion of the Six-Day War in June 1967, the land area under Israeli jurisdiction was defined by the demarcation lines (the Green Lines) set out in the 1949 General Armistice Agreements⁴⁶. The Armistice Agreements were concluded according to Security Council Resolution 62 (16 November 1948), which was adopted under Chapter VII of the United Nations Charter as a provisional measure under *Article 40*⁴⁷. As the International Court noted in the *Legal Consequences of the Construction of a Wall* advisory opinion⁴⁸,

The Security Council decided that ‘an armistice shall be established in all sectors of Palestine’ and called upon the parties directly involved in the conflict to seek agreement to this end. In conformity with this decision, general armistice agreements were concluded in 1949 between Israel and the neighboring States through mediation by the United Nations.

Thus, at the Security Council's 433rd meeting, which took place on 4 August 1949, the Israeli foreign minister, Abba Eban, stated that the armistices were “a provisional settlement which can only be replaced by a peace agreement” and that the demarcation lines “have the normal characteristics of provisional frontiers until such time as a new process of negotiation and agreement determines the final territorial settlement.” He continued that the Armistice Agreements are not peace treaties. They do not prejudice the final territorial settlements. On the other hand, the provisional settlement established by the Armistice Agreements is unchallengeable until a new process of negotiation and agreement has been successfully consummated.⁴⁹ *Shabtai Rosenne*, in the journal titled “*Israel's Armistice Agreements*,” argued,

That the Armistice Agreements differed from other armistice agreements because they resulted from negotiations undertaken according to an invitation backed by a threat from an outside body, the Security Council, and under the continuous supervision and active intervention of the Secretariat. Accordingly, the provisions of Articles 36 and 37 of the Regulations annexed to 1907 *Hague Convention IV* respecting the Laws and Customs of War on Land were of little guidance in determining their import: The Hague Convention...had proceeded on two

⁴⁶ Ian Scobbie and Sarah Hibbin, *The Israel-Palestine conflict in International Law- Territorial Issue*, pg 58, 2009

⁴⁷ *Ibid*.

⁴⁸ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, International Court of Justice, 2004, <https://www.icj-cij.org/en/case/131>

⁴⁹ Ian Scobbie and Sarah Hibbin, *The Israel-Palestine conflict in International Law- Territorial Issue*, pg 61, 2009

assumptions. The first was that the armistice was nominal of limited duration. The second was that the contents of an armistice agreement are a matter for the belligerents alone, in which the outside world is not interested. It is precisely those two assumptions that were absent from our negotiations...For our Armistice Agreements were always subordinate to the obligation contained in the Charter to refrain from the threat or use of force and to settle international disputes by peaceful means.

On 22 November 1967, Security Council resolution 242 was adopted in an attempt to provide a framework for peace negotiations after the Six-Day War; it contained a directive on the territorial settlement but consciously did not refer to Jerusalem. Para 1(i) of this resolution talks about the "withdrawal of Israeli armed forces from territories occupied in the recent conflict,"; and Para 1 (ii) provides "termination of all claims or states of belligerency and respect for and an acknowledgment of the sovereignty, territorial integrity and political independence of every State in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force." Resolution 242 was adopted under Chapter VI of the UN Charter and accordingly had a force of a recommendation rather than the binding decision⁵⁰. Resolution 242 served as a base for the 1991 Madrid conference and the 1993 Declaration of Principles. What was construed out of the resolution was that Israel is only expected to withdraw "from territories" to "secure and recognized boundaries" and not from "the territories" or "all the territories" captured in the Six-Day War. This deliberate language resulted from months of painstaking diplomacy. Israel reiterated that its reference to "secure and recognized boundaries" precluded a return to the armistice lines, which never had been regarded as boundaries. To require Israel to do so, it had "no logical or moral international basis."The establishment of a peace settlement, which included secure and recognized boundaries, could not lie in a withdrawal "without final peace, to demarcation lines."⁵¹.

The third civil war between Israel-Arab took place in the year 1973, which is also known as the Yom Kippur war. This brought no significant changes in the situation between Israelis and Palestinians. Although by the end of this war, the oil-producing states of Arabs decided to decrease the oil supply to the United States of America and Western European countries, which were supporting Israel⁵². This led to inflation and energy crisis in the developed nations⁵³. Resolution 338, which was adopted on 22 October 1973, called for a cease-fire in the Yom

⁵⁰ Shapira, The Security Council resolution of November 22, 1967—its legal nature and implications, 4 *Israel Law Review* 229 (1969)

⁵¹ Ian Scobbie and Sarah Hibbin, *The Israel-Palestine conflict in International Law- Territorial Issue*, pg 79,2009

⁵² Norman Lowe, *Mastering Modern World History*, pg 237 (5th ed. 2013)

⁵³ *Ibid.*

Kippur War. The second paragraph of this resolution states that the Security Council “calls upon the parties concerned to start immediately after the cease-fire the implementation of Security Council resolution 242 (1967) in all of its parts⁵⁴” and the third paragraph states, “Decides that, immediately and concurrently with the cease-fire, negotiations shall start between the parties concerned under appropriate auspices aimed at establishing a just and durable peace in the Middle East⁵⁵”. While some argue that the use of the word “decides” in the third operative paragraph of Resolution 338 makes Resolution 242 binding, this is rather a strained interpretation because the second operative paragraph uses non-mandatory language. Although Resolution 242 was adopted under Chapter VI of the UN Charter, if it embodies legal principles which are binding in themselves, their obligatory force is independent of, or not dependent upon, the nature of the instrument in which they are contained. This is of particular relevance to the affirmation in the preamble to resolution 242 of the principle that territory cannot be acquired through the use of force. The incremental prohibition of the use of force in international relations which culminated in the adoption of *Article 2(4)* of the United Nations Charter and the emergence of the principle of self-determination as “one of the essential principles of contemporary international law⁵⁶.” As this embodies aspects of international public order, they may be viewed as *ius cogens* norms which are norms from which no derogation is allowed, which also obligations are owed to the international community as a whole. The core implications of these norms for the States is that they are under a duty not to recognize territorial changes brought about by the use of force, which is essentially a negative duty of abstention, but they also have a positive duty to promote the realization of the right of self-determination in non-self-governing territories.⁵⁷ Concerning these fundamental norms, General Assembly passed resolution 2625 (XXV) on 24 October 1970, which was entitled as a *Declaration on principles of international law concerning friendly relations and cooperation among States, following the Charter of the United Nations*, which stated:

Every state must refrain from the threat or use of force to violate the existing international boundaries of any State or as a means of solving international disputes, including territorial disputes and problems concerning the frontiers of States. Every State likewise has the duty to refrain from the threat or use of force to violate international lines of demarcation, such as armistice lines established by or pursuant to an international agreement to which it is a party

⁵⁴ United Nations Security Council Resolution 338, Wikipedia, https://en.wikipedia.org/wiki/United_Nations_Security_Council_Resolution_338

⁵⁵ Ibid.

⁵⁶ East Timor case (Portugal v Australia), ICJ Rep, 1995, 90 at 102, para.29 <https://www.icj-cij.org/en/case/84>

⁵⁷ Ian Scobbie and Sarah Hibbin, *The Israel-Palestine conflict in International Law- Territorial Issue*, pg.85,2009

or which it is otherwise bound to respect...Every state has the duty to refrain from any forcible action which deprives peoples...of their right to self-determination and freedom and independence...No territorial acquisition resulting from the threat, or use of force shall be recognized as legal... Every state has the duty to promote, through joint and separate action, the realization of the principle of equal rights and self-determination of peoples, following the provisions of the Charter, and to assist the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of the principle...

Resolution 2625 is generally accepted to be an authoritative interpretation of the fundamental legal principles expressed in the provisions of the UN Charter. About the acquisition of territory by States, the doctrine of *terra nullius* is no longer operative: territory open to acquisition by any State no longer exists. In principle, all territories are either a subject to the sovereignty of a State (or at least sovereignty may be contested by two or more States) or, in the case of a non-self-governing territory, by virtue of self-determination, to the residual sovereignty of the indigenous inhabitants.⁵⁸

On 14 October 1974, PLO was granted official status by the United Nations General Assembly through Resolution 3210 (XXIX), titled "*Invitation to the Palestine Liberation Organization.*" Here the General Assembly recognized Palestine as an integral party to the disputes between Israel and Palestine and also recognized PLO as the representative of the people of Palestine. On 22 November 1974, the General Assembly adopted resolution 3237 (XXIX), granting observer status to the PLO. The PLO has established a permanent observer mission since 1974 at U.N.⁵⁹ After the recognition, PLO was considered to be the official representative of the Palestinian people. By the year 1980, it had been more than ten years since Israel had illegally occupied the Gaza Strip and the West Bank. The international community considered this settlement an illegal settlement because it went against the United Nation's partition plan, and on the other side, the Palestinians saw it as colonization. The Security Council reaffirmed Israel's establishment of settlements in the Palestinian territory occupied since 1967, including East Jerusalem, had no legal validity, constituting a flagrant violation of international law and a major obstacle to the vision of two States living side-by-side in peace and security, within internationally recognized borders.⁶⁰ As per *Article 2(4) of the United Nations Charter*, "All members shall refrain in their international relations from the threat or use of force against the

⁵⁸ Ian Scobbie and Sarah Hibbin, *The Israel-Palestine conflict in International Law- Territorial Issue*, pg.87,2009

⁵⁹ Status of Palestine, Permanent Observer Mission of the State of Palestine to United Nations New York, 1 August 2013, <https://palestineun.org/status-of-palestine-at-the-united-nations/>

⁶⁰ Israel's Settlements Have No Legal Validity, Constitute Flagrant Violation of International Law, Security Council Reaffirms, United Nations, 23 December 2016, <https://www.un.org/press/en/2016/sc12657.doc.htm>

territorial integrity or political independence of any state, or any other manner inconsistent with the Purposes of the United Nations." The question that arises is, should state territory in whole or part be occupied by another State as the result of hostilities? The law of belligerent occupation precludes its annexation. This is a consequence of *Article 43* of the *Regulations annexed to 1907 Hague Convention IV* respecting the Laws and Customs of War on Land, which provides in part, "The authority of the legitimate power having in fact passed into the hands of the occupant...". This entails that the occupant's authority in the territory occupied replaces that of the legitimate displaced sovereign as a practical matter, but this cannot amount to a claim to sovereignty over the territory. As a consequence of self-determination, the occupation of territory which is not self-governing, where sovereignty is not vested in any State, cannot give a license for annexation by the occupying power. This would amount to an attempt to deprive the inhabitants of that territory of the exercise of their right to self-determination through the use of force, thus contradicting one of "the essential principles of contemporary international law." If a State uses force to settle a territorial dispute, it cannot claim that this is justified as an exercise of self-defense.⁶¹ Under both *Article 51* of the UN Charter and customary international law, to be lawful, forcible measures taken in self-defense must be necessary and proportionate to meet the immediate threat posed to the State attacked. As Jennings observed, the force used in self-defense...must be proportionate to the threat of immediate danger, and when that threat has been averted, the plea of self-defense can no longer be available. Indeed, it may not be easy to say when this point is reached and that, to some extent, at least it is a matter of the judgment of the actor. But when all allowance is made for the "rough jurisprudence of nations," it must still be said that it would be a curious law of self-defense that permitted the defender in the course of his defense to seize and keep the resources and territory of the attacker.⁶²

Usually, such a stand is based on Stimson Doctrine, a policy of non-recognition of states created as a result of aggression⁶³. The doctrine is an application of the principle *ex injuria jus non-oritur* which means 'illegal acts do not create laws.' Adopting resolution 2334 (2016) by 14 votes, with the United States abstaining, the Council reiterated its demand that Israel should immediately and completely cease all settlement activities in the occupied Palestinian territory, including East Jerusalem⁶⁴. It underlined that it would not recognize any changes to the 4 June

⁶¹ Ian Scobbie and Sarah Hibbin, *The Israel-Palestine conflict in International Law- Territorial Issue*, pg.93,2009

⁶² Ian Scobbie and Sarah Hibbin, *The Israel-Palestine conflict in International Law- Territorial Issue*, pg.95,2009

⁶³ States in International Law, *Encyclopedia Britannica*, <https://www.britannica.com/topic/international-law/States-in-international-law#ref794950>

⁶⁴ *Ibid.*

1967 lines, including of Jerusalem, other than those agreed by the two sides through negotiations⁶⁵. The authoritative official *International Committee of the Red Cross Commentary on Geneva Convention IV* states that the purpose of *Article 49(6)* is to prevent the repetition of the practice of “certain powers” during WWII, “which transferred portions of their own population to occupied territory for political or racial reasons or in order, as they claimed, to colonize those territories.”⁶⁶”

During the year 1992, Yitzhak Rabin became the Prime Minister of Israel. He was the first person who thought of establishing good and friendly relations with Palestine. For his earnest efforts, he received a Nobel Prize for Peace in 1994⁶⁷. His stand on PLO was different as compared to previous Prime Ministers. Rabin did not believe PLO to be a terrorist organization. He was empathetic towards the view that the Palestinians wanted their country and Israel should let them have it⁶⁸. In 1993, under the leadership of Yasser Arafat, PLO recognized Israel’s right to exist in peace and accepted United Nations Security Council resolutions 242 and 338; in return, Israel officially recognized PLO as the representative of the Palestinian people⁶⁹. This just strengthened the right to self-determination of the Palestinian people. The establishment of a sovereign and independent state, the free association or integration with an independent state, or the emergence of any other political status freely determined by the people constitutes modes of implementing the right of self-determination by those people. In the same year, Oslo Accords were also signed. The first Oslo Accord was signed between Israel and PLO in Washington D.C.⁷⁰. This was the first time that both the parties came together and had a talk, discussing the issues as to how the country could be divided peacefully and 'correctly.' The second Oslo Accord was signed in Taba, Egypt⁷¹. As a result, in 1994, the people of Palestine were able to establish self-government for the very first time. They named it as Palestinian National Authority (PNA). On both sides, the radicals were not happy with the peace talks. This led to the uprising of Hamas in Palestine. Although Hamas was founded in the year 1987 and did not have any significance in politics, it started taking up the center stage as time passed. On the other hand, the Israelis had established a permanent settlement in many parts of the West Bank, which was supported by the Israeli government. This reduced the

⁶⁵ Ibid.

⁶⁶ Ian Scobbie and Sarah Hibbin, *The Israel-Palestine conflict in International Law- Territorial Issue*, pg.105,2009

⁶⁷ Yitzhak Rabin, *Encyclopedia Britannica*, 25 February 2021, <https://www.britannica.com/biography/Yitzhak-Rabin>

⁶⁸ Ibid.

⁶⁹ Kim Murphy, *Israel, and PLO, in Historic Bid for Peace, Agree to Mutual Recognition*, Los Angeles Times, 10 September 1993, http://articles.latimes.com/1993-09-10/news/mn-33546_1_mutual-recognition

⁷⁰ Oslo Accords, *Wikipedia*, https://en.wikipedia.org/wiki/Oslo_Accords

⁷¹ Ibid.

population of the Palestinians in the aforesaid region. It was further decided to divide the West Bank area into three parts- Area A, Area B, and Area C. Area A was to be under the control of the Palestinian government, Area B was supposed to be under the mutual control of Israel and Palestine and Area C was supposed to be retained by Israel. But in reality, the Palestinian government received only parts and parcels in West Bank and Gaza Strip to form their own nation. In 1995 Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip referred several times to the Palestinian people and their "legitimate rights" (Preamble, paras. 4, 7, 8; Article II, para. 2; Article III, paras. 1 and 3; Article XXII, para. 2)⁷². The International Court of Justice considers that those rights include the right to self-determination, as the General Assembly has moreover recognized on many occasions, for example, resolution 58/163 of 22 December 2003⁷³.

But in the year 1995, all these peace efforts went down the hill when the Israeli Prime Minister Yitzhak Rabin was shot by a Jewish fanatic⁷⁴. Yigal Amir, a 25-year old lad, shot twice the Prime Minister using a pistol at a point-blank range, in a very similar manner, to how Nathuram Godse assassinated Mahatma Gandhi.

It wouldn't be out of place to mention that once in a few years, clashes break out between Israel and Palestine, either on land or in the air. In 2002, one such major clash took place on the ground, causing injury to more than hundreds of people on both sides. People had become so skeptical of one another that Israel started building walls around its settlement.⁷⁵ Military checkpoints have been created, and security guards are deployed in West Bank, which is now illegally occupied by the Israelis⁷⁶. Israel High Court judges have themselves ruled that East Jerusalem has been annexed and made part of Israeli territory⁷⁷. This has now increased the difficulty of the Palestinians to live a peaceful life. *International Court of Justice (ICJ), in its 2004 ruling, Legal consequences of the construction of a wall in the occupied Palestinian territory*, gave an advisory opinion,

The Court observed that the construction of the wall and its associated régime created a "*fait accompli*" on the ground that could well become permanent and hence tantamount to a *de facto* annexation. Noting further that the route chosen for the wall gave expression in loco to the

⁷² Ian Scobbie and Sarah Hibbin, *The Israel- Palestine Conflict in International Law- Territorial Issue* pg.2,2009

⁷³ Ibid.

⁷⁴ Jonathan Freedland, *The assassination of Yitzhak Rabin: 'He never knew it was one of his people who shot him in the back*, *The Guardian newspaper*, <https://www.theguardian.com/world/2020/oct/31/assassination-yitzhak-rabin-never-knew-his-people-shot-him-in-back>

⁷⁵ Rebecca Stead, *7 Myths about Israel's Separation Wall*, *MEMO- Middle East Monitor*, 16 October 2018, <https://www.middleeastmonitor.com/20181016-7-myths-about-israels-separation-wall/>

⁷⁶ Ibid.

⁷⁷ Ian Scobbie and Sarah Hibbin, *The Israel-Palestine conflict in International Law- Territorial Issue* pg.67,2009

illegal measures taken by Israel with regard to Jerusalem and the settlements and entailed further alterations to the demographic composition of the Occupied Palestinian Territory, the Court concluded that the construction of the wall, along with measures taken previously, severely impeded the exercise by the Palestinian people of its right to self-determination and was thus a breach of Israel's obligation to respect that right.

In this very case, the *ICJ* reaffirmed that the Palestinian Arabs constitute people entitled to exercise the right to self-determination. It is heavily argued that the aforesaid judgment is not enforceable because it is merely an advisory opinion that was rendered only after the request of the international body for an authoritative interpretation of Law⁷⁸. The substantive content of self-determination has changed since 1922, and only its contemporary content is now relevant in determining the subsisting rights which it confers on the Palestinian Arab population. This is in accordance with the inter-temporal rule, sometimes expressed in the Latin maxim *tempus regit factum*, which is a structural principle of international law.⁷⁹ Although subject to further jurisprudential development, the classic enunciation of this doctrine is that of Judge Huber in the *Island of Palmas arbitration* case; he stated:

“A juridical fact must be appreciated in the light of the law contemporary with it and not of the law in force at the time when a dispute in regard to it rises or falls to be settled⁸⁰”. It has been rightly pointed out by *Scobbie and Hibbin* in “*The Israel-Palestine conflict in International Law- Territorial Issue, 2009*” that,

This type of ruling is “non-binding” only in the sense that there are no litigants before the Court to be bound by its decision. This does not mean, however, that the ruling is without legal effect. On the contrary, the Court's opinion possesses the highest legal authority and stands as a precedent for any future proceedings involving actual litigants. The fact that such rulings are called “advisory opinions” in no way detracts from their status as fully authoritative statements of the law.

In the *Western Sahara advisory opinion of 1975*, *International Court of Justice Judge Gros observed*⁸¹:

I shall merely recall that when the Court gives an advisory opinion on a question of law, it states the law. The absence of binding force does not transform the judicial operation into a legal consultation that may be made use of or not according to choice. The advisory opinion

⁷⁸ Article 65(1), Statute of International Court of Justice

⁷⁹ *Island of Palmas Case (United States/Netherlands, 1928)* https://legal.un.org/riaa/cases/vol_II/829-871.pdf

⁸⁰ *Ibid.*

⁸¹ *Western Sahara*, International Court of Justice, 21 December 1974, <https://www.icj-cij.org/en/case/61>

determines the law applicable to the question put; it is possible for the body which sought the opinion not to follow it in its action, but that body is aware that no position adopted contrary to the Court's pronouncement will have any effect whatsoever in the legal sphere.

Based on these rulings, a frame of legal relationship exists between Israel and Palestine – namely, *international humanitarian law*, including the *1949 Geneva Convention IV* relative to the *Protection of Civilian Persons in Time of War*, and *international human rights law* applied in the occupied Palestinian territory; that the Palestinian people have a right of self-determination that must be fully protected; and that Israeli settlements in the occupied territories are unlawful, as they breach *Geneva Convention IV, Article 49 (6)*.

In 2006, Hamas ran for the Palestinian election and secured a shocking victory⁸². It defeated the PLO (Fatah) party. In 2007, a civil war broke out between Hamas and Fatah. The supporters of one party became bloodthirsty toward the supporters of the other party. This was also known as the Battle of Gaza or Hamas. The battle resulted in the dissolution of the unity government and the de facto division of the Palestinian territories into two entities, the West Bank, governed by the Palestinian National Authority, and Gaza, governed by Hamas.⁸³ In the eyes of international media and Israel, Hamas has always been designated as a terrorist organization.

IV. THE CURRENT SITUATION

Back in October 2020, an Israeli court ruled that several Palestinian families living in Sheikh Jarrah, a neighborhood in East Jerusalem, were to be evicted by May 2021 with their land handed over to Jewish families⁸⁴. In February 2021, several Palestinian families from Sheikh Jarrah filed an appeal to the court ruling and prompted protests around the appeal hearings, the ongoing legal battle around property ownership, and demanding an end to the forcible displacement of Palestinians from their homes in Jerusalem⁸⁵. In early May 2021, the court of Israel upheld the decision of eviction, which escalated the tensions, and the Israeli police force was deployed against the demonstrators⁸⁶. During the holy month of Ramadan, violence broke out at the al-Aqsa Mosque compound in Jerusalem, with Israeli police using stun grenades, rubber bullets, and water cannons against the people offering prayers, unarmed. It left hundreds of Palestinians wounded. After the clashes in Jerusalem's Old City, tensions increased

⁸² Simon Jeffery and agencies, Hamas Celebrates Election Victory, The Guardian, 26 January 2006 <https://www.theguardian.com/world/2006/jan/26/israel1>

⁸³ Battle of Gaza (2007), Wikipedia, [https://en.wikipedia.org/wiki/Battle_of_Gaza_\(2007\)](https://en.wikipedia.org/wiki/Battle_of_Gaza_(2007))

⁸⁴ Israel-Palestinian Conflict, Global Conflict Tracker, Council on Foreign Relations, 19 August 2021 <https://www.cfr.org/global-conflict-tracker/conflict/israeli-palestinian-conflict>

⁸⁵ Ibid.

⁸⁶ Ibid.

throughout East Jerusalem, compounded by the celebration of Jerusalem Day.⁸⁷ Jerusalem Day is observed by the state of Israel. It begins on 28 Iyar (Hebrew calendar), commemorating the reunification of Jerusalem and the establishment of Israeli control over the Old City in the aftermath of the June 1967 Six-Day War⁸⁸. After several days of consecutive violence and the use of lethal and non-lethal force by Israeli police on 10 May 2021, Hamas and their supporting organization launched airstrikes against Israel. In retaliation, Israel also launched rockets and later used artillery bombardments. The defense rendered by Israel was that they were targeting Hamas and their operative infrastructure, including tunnels and rocket launchers, but in reality, Israel expanded its aerial campaign and struck targets including residential buildings, media headquarters, and refugee and healthcare facilities.⁸⁹ More than two hundred and fifty Palestinians were killed and nearly two thousand others wounded, and at least thirteen Israelis were killed over the eleven days of fighting⁹⁰. These events caught the attention of the world. The United Nations urged both parties to a ceasefire and settle the issue amicably. Human Rights Watch termed this event as a 'war crime' and a massive violation of human rights⁹¹. On May 21, Israel and Hamas agreed to a cease-fire, brokered by Egypt⁹².

As per the news published by *The Hindu* newspaper on 13 August 2021, under the title "*Israel to approve 2,000 new homes for settlers*," under the newly elected Prime Minister Naftali Bennett's administration, it has been decided to establish more Jewish settlements in the illegally occupied West Bank area. The Palestinians oppose the proposed plan.

V. THE ROAD AHEAD

Professor Ilan Pappé, the Director of the European Centre for Palestine Studies, in his article published in *The Hindu Newspaper*, titled "*One-state solution, the way forward in Palestine*," explained why the whole premise of the two-state solution is wrong, providing Israel the immunity to continue its ethnic cleansing. When the decolonization was achieved in India in 1947, not only the British but the so-called civilized world through the United Nations insisted that the Palestinians should give away half of their homelands to Jews.⁹³ The Palestinians tried convincing the international community that the problem was not only confined to dispensing

⁸⁷ Ibid.

⁸⁸ Jerusalem Day, Wikipedia, https://en.wikipedia.org/wiki/Jerusalem_Day

⁸⁹ Israel-Palestinian Conflict, Global Conflict Tracker, Council on Foreign Relations, 19 August 2021 <https://www.cfr.org/global-conflict-tracker/conflict/israeli-palestinian-conflict>

⁹⁰ Israel-Palestinian Conflict, Global Conflict Tracker, Council on Foreign Relations, 19 August 2021 <https://www.cfr.org/global-conflict-tracker/conflict/israeli-palestinian-conflict>

⁹¹ "Israeli war crimes apparent in Gaza assault says, HRW," *The Hindu Newspaper*, 28 July 2021

⁹² Israel-Palestinian Conflict, Global Conflict Tracker, Council on Foreign Relation, 19 August 2021 <https://www.cfr.org/global-conflict-tracker/conflict/israeli-palestinian-conflict>

⁹³ Ilan Pappé, "One-state solution, the way forward in Palestine," *The Hindu Newspaper*, pg.6, 26 May 2021

half of their homeland, but the Jews would not be contented with half of the country and intended to take as much of it as possible⁹⁴. This ominous prediction turned out to be chillingly accurate⁹⁵. In the present era, a two-state solution is primarily seen through the eyes of Israel, how they interpret it, and there is no one in the world to rectify their interpretation. The Palestinians have no significance in the current balance of power. The concept of two states does not materialize because it is based upon parity and framing the conflict as one fought between two national movements.⁹⁶. But in actuality, it is a "settler-colonial reality." The late scholar, Patrick Wolfe, described colonial-settler movements as motivated by a logic he called "the elimination of the native."

Professor Ilan Pappé offers a solution through his article, which is decolonizing historical Palestine, which would mean to have a state for all its citizens all over the country, based on the dismantlement of colonist institutions, fair distribution of the country's natural resources, compensation to the victims of ethnic cleansing and allowing their repatriation. He further asserts that all this shall be carried out in such a manner so that the settlers and natives should build together a new state that is democratic, part of the Arab world, and not against it.

The second solution that the writer of this article would like to personally propose is the decolonization of the illegally occupied area by the Jews and modification of Resolution 181. Here modification means equal division of historic Palestine between the Jews and Arabs while maintaining the international status of Jerusalem. Jerusalem can be declared as the capital for both nations while strictly prohibiting permanent residency in the city. The maintenance of the historical buildings can be taken up by volunteers from other nations. Israel ought to denuclearize and reduce its arms and ammunition if it wants peace to prevail. Both the parties can establish their administrative, legislative and judicial establishments in Jerusalem and work in a bonhomie environment.

VI. CONCLUSION

We hope peace will find its way in 21 century, and misery will lose the companionship of Israel and Palestine. Any arguments made highlighting the fact that Palestinians did not accept Resolution 181 are futile because the right of self-determination of Palestinians is recognized by the Israeli and authoritatively endorsed by the International Court of Justice.⁹⁷. This right is

⁹⁴ Ibid.

⁹⁵ Ibid.

⁹⁶ Ilan Pappé, "One-state solution, the way forward in Palestine," *The Hindu Newspaper*, pg.6, 26 May 2021

⁹⁷ Legal consequences of the construction of a wall advisory opinion, ICJ Rep, 2004, 171-172, para.88 and 199, paras.155-156

inextricably linked to a territorial space, which can only be found within the territory of the former Mandate⁹⁸. Because the right to self-determination has the status of an *ius cogens* entitlement, it nullifies any countervailing argument that the Palestinian people abandoned its claim by rejecting the Partition Plan contained in Resolution 181⁹⁹.

⁹⁸ Ian Scobbie and Sarah Hibbin, *The Israel-Palestine conflict in International Law- Territorial Issue*, pg.111, 2009

⁹⁹ *Ibid.*