
International Legal Issues of the Arab-Israeli Conflict

An Israeli Lawyer's Position

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The Jews and Palestinians are entitled to self-determination in the historical area of Palestine. An Arab state, the Kingdom of Jordan, has been established in Eastern Palestine and a Jewish state, Israel, in part of Western Palestine. The status of the intermediate area, known as the West Bank is as yet undetermined. It was part of Palestine which the League of Nations destined for a Jewish national home, since, however, the majority of the population of the West Bank are Palestinian Arabs, who are entitled to a right of self-determination, Israel will have to relinquish its claims to this area. The Palestinians for their part will have to accept the Jewish right of self-determination in the state of Israel. Among the issues that will need to be negotiated between the parties are borders, the status of Jerusalem, security arrangements, refugees, settlements and water issues.

Keywords

Jewish People, Palestinian People, Self-Determination, Palestine, Israel, Jordan, Refugees

1. Introduction

International law has played a central role in attempts to solve the Arab-Israel conflict. Both Arab and Jewish societies are based on strict written legal codes and in both

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cultures great respect is given to legal matters. Both parties to the conflict tend to base their narratives, their information campaigns and negotiating positions on international law, on the premise that “legitimacy and lawful authority are key components of political power.”¹ Israel is an open pluralistic society so there is no one monolithic Israeli view and all this paper can attempt to do is to present some of the major international law issues from the perspective of one individual Israeli jurist. The paper first deals with the fundamental issues of: the right of self determination and Arab and Jewish nationalism; sovereignty over Palestine and the proposed Jewish national home; the territory allocated for the Jewish national home; the end of the mandate and Israel's declaration of independence; the borders of Israel and the status of the West Bank. The paper then examines some of the following issues in international law: occupation; Israeli settlements in the West Bank; international law as an internal element of Israel law; Arab refugees and the claim to a right of return to Israel; refugee property; the law of the return; the Israeli security fence and Israeli measures against Hamas in the Gaza Strip. The final section presents a vision for peace.

2. The Right of Self-Determination and the Arabic and Jewish Nationalism

Among the major international law issues involved in the conflict is the question of the right of self-determination. The author would maintain that international law recognize the right of self-determination of both the Jews and Palestinians.² The constitutive elements of a ‘people’ have been defined as “a history of independence or self-rule in an identifiable territory, a distinct culture, and a will and capability to regain self-governance.”³ The Jews share a distinct identity which includes the Hebrew language, the Jewish religion, a complex legal code, national and religious holidays, common cultural icons, a body of literature, a shared historical narrative and a continuing sense of common destiny and people-hood. The Bible was written in Hebrew and is mostly set in the territory of modern day Israel. The Jews have a history of independence and self rule in the land of Israel going back thousands of years. During the long period of

¹ ROGER FISHER, *POINTS OF CHOICE: INTERNATIONAL CRISES AND THE ROLE OF LAW* 12 (1978).

² The right is recognized in both the 1966 International Covenant on Civil and Political Rights (“ICCPR”) and International Covenant on Economic, Social and Cultural Rights (“ICESCR”).

³ AURELIU CRITESCU, *THE RIGHT TO SELF-DETERMINATION*, U.N. Doc. E/CN.4/Sub.2/404/Rev.1 U.N. Sales No. E.80.XIV.3 (1980), and HECTOR GROS ESPIELL, *THE RIGHT TO SELF-DETERMINATION*, U.N. Doc. E/CN.4/Sub.2/405/Rev.1. U.N. Sales No. E.79.XIV.5 (1980).