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Fall November, 2017

"The 'Right to Have Rights':
Partition and Palestinian Self-
Determination"

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Available at: https://works.bepress.com/leila_farsakh/20/

The “Right to Have Rights”: Partition and Palestinian Self-Determination



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This paper reexamines the Palestinian struggle for self-determination and the extent to which a viable two-state solution to the Israeli-Palestinian conflict was ever truly possible. Such a reexamination seems all the more pertinent today on the hundredth anniversary of the Balfour Declaration. It is also seventy years since the United Nations Partition Plan to divide historic Palestine and fifty years since UN Security Council Resolution 242, which has been the basis for every peace agreement between Israel and its neighbors but makes no mention of or reference to the Palestinian people. The paper argues that the history of the past fifty years reinforces the claim that a State is central to any attempt to fight Palestinian erasure and ensure “the right to have rights,” as Hannah Arendt put it, but it argues that such an entity needs to be elevated above the nation, rather than made subservient to it if it is to protect the rights of Palestinians and all those living on the land of Palestine.

IN HIS “REMARKS ON THE MIDDLE EAST” made in December 2016, then outgoing U.S. secretary of state John Kerry warned that “the status quo is leading towards one state and perpetual occupation.” The growth of settlements in the West Bank, Kerry cautioned, was putting the two-state solution “in serious jeopardy,” making “a contiguous Palestinian state impossible.” Kerry reminded his audience that such a state had been endorsed by the international community and was in the interest not only of Israel and the region as a whole but also of the United States.¹

A careful reexamination of the past fifty years reveals, however, that a two-state paradigm was never a viable option to solve the Israeli-Palestinian conflict, and that partition could not deliver the Palestinians their basic political rights. Such a reexamination is all the more pertinent as we commemorate not only the hundredth anniversary of the Balfour Declaration but also fifty years since United Nations Security Council (UNSC) Resolution 242, which has formed the basis of every peace settlement between Israel and its neighbors after the 1967 June War. UNSC Resolution 242 makes no mention either of the Palestinians or of their internationally protected rights. It is also silent about UN General Assembly (UNGA) Resolution 181, known as the Partition Plan, whose seventieth anniversary is also commemorated in 2017.

This paper argues that the two-state paradigm was never a viable option because rather than hold Israel accountable to international law, the international community accepted Zionism’s

Journal of Palestine Studies Vol. XLVII, No. 1 (Autumn 2017), p. 56, ISSN: 0377-919X; electronic ISSN: 1533-8614. © 2017 by the Institute for Palestine Studies. All rights reserved. Please direct all requests for permission to photocopy or reproduce article content through the University of California Press’s Reprints and Permissions web page, <http://www.ucpress.edu/journals.php?p=reprints>. DOI: <https://doi.org/10.1525/jps.2017.47.1.56>.

colonial project. That acquiescence has its roots in the Balfour Declaration, which compromised the Palestinian right of self-determination; and it was further enshrined in the 1947 UN Partition Plan, which failed to protect Palestinian rights. The Oslo peace process, while significant in providing a de facto Israeli recognition of the Palestinian right to self-determination,² emptied this right of its content by fragmenting the Palestinians' territory and their body politic. To reverse this trend by proposing a democratic one-state alternative requires articulating how such an option would protect the political rights of *all* those living in Israel/Palestine rather than merely consolidate the reality of "perpetual occupation."³

Self-Determination, Colonialism, and the Balfour Declaration

The concept of self-determination has been at the heart of the international system since the 1917 Bolshevik Revolution and Woodrow Wilson's famous Fourteen Points, issued in 1918.⁴ It is a political notion that remains with us in the twenty-first century, one that acknowledges the rights of people to define themselves as a nation, however imagined, and ties individual political rights, or citizenship, to a national collectivity.⁵ Although its status as a norm of law is no longer challenged, the *content* and *application* of self-determination remain contested.⁶ In particular, the link between self-determination, territoriality, and sovereignty has often been called into question, with many legal scholars arguing that sovereignty is tied to the notion of "people" rather than to that of land, and that it therefore does not need to be expressed in terms of territorial apportioning or boundaries. Moreover, while it has been common for the colonized to invoke the right of self-determination in their quest for independence, the term has also been used as a tool for asserting imperial domination.⁷

The British Mandate imposed on Palestine in the aftermath of World War I provides a classic example of the way in which the concept of self-determination has been simultaneously a tool of colonial control and the rationale for claiming the right to national independence. Palestine was considered a Class A mandate, entitled to be recognized as an independent nation, and thus endowed with a right to self-determination, "to be advised and assisted by a mandatory power until it is ready for independence."⁸ Simultaneously, the Mandate embraced the Balfour Declaration and its European Zionist definition of the Jews as a people in need of a national home in Palestine, whose individual political rights in their countries of origin remained intact. At the same time, it denied the Arab population of Palestine equal political rights, referencing only "the religious and civic rights of the non-Jewish population." Although the British authorities in 1918 sought to address Arab rejection of the Balfour Declaration by acknowledging the political rights of the inhabitants of Palestine,⁹ the British Mandate fostered Jewish, and not Palestinian, national independence; it created—and protected the autonomy of—the Jewish Agency, which became the de facto government of the Yishuv (the Jewish community in Palestine) and facilitated Jewish immigration into Palestine, as stipulated by Article 6 of the Mandate.¹⁰

Legal scholars who contest Zionism's political claim to Palestine argue that the Zionist claim to self-determination is based on a colonial document, and not on a "natural" right. Victor Kattan, for example, argues that just like their Muslim, Christian, Armenian, Bedouin or Druze counterparts, Jews living *in* Palestine could make a claim to self-determination but that immigrants could not

do so without becoming citizens of the state. He, among others, contends that the British Mandate acknowledged the principle of self-determination for both the Palestinian and the Jewish nationalist movements.¹¹ The challenge for the superpower of the day, as well as for both the Zionist and the Palestinian leaderships, was rather to define the relationship between the nation and the state.

In this regard, the mainstream Zionist movement maintained that only a Jewish state could protect the Jews, as a nation, from persecution. This view was not shared by Zionist groups such as Brit Shalom and Ihud,¹² who argued that the Jewish people did not "need a Jewish state to maintain its very existence."¹³ It was neither unanimously endorsed by the British. Up until 1929, Britain dealt with Palestine as a unitary State, governed by the High Commissioner in consultation with a legislative council representing Jews, Muslims, and Christians living in the country. The Mandate elevated the State above the nation rather than making it subservient to it by drafting a single constitution for Palestine, and it defined Palestinian citizenship as applicable to all those residing in Palestine for at least two years at the time of their citizenship application.¹⁴ Although Britain privileged Jewish immigrants over native Palestinians, it did not consider them a minority despite their being so in numerical terms, and gave European Jews equal political rights to Palestinians. The Mandate's conception of Palestinian citizenship was one that protected individual political rights for Jews, Muslims, and Christians while acknowledging the collective rights of Jews and "Arabs," as they were called, to self-government.

Any review of British attempts to solve conflicting Zionist and Palestinian national aspirations reveals that partition was not Britain's default option. With the exception of the Peel Commission's proposal in 1937 and the Morrison-Grady Plan of 1946, official British and American proposals from 1918 on sought to keep Palestine united, whether the White Papers of 1922 and 1939, the Anglo-American Committee of Inquiry in 1946, or the U.S.-proposed UN trusteeship of Palestine in February 1947. Despite the support that the Peel partition plan enjoyed within the Zionist leadership and among various British officials, the mandatory government remained hesitant about it until the end of its rule.

For its part, the Palestinian leadership, going back as far as 1922, would not engage significantly with the notion of the rights of the Jews, let alone the notion of minority rights within an Arab or Palestinian state. For the Arab Executive, as well as the Supreme Muslim Council under the leadership of Haj Amin al-Husseini, and the Istiqlal Party, Palestine was part of an Arab nation, that is, an Arab state in which Jews had a place as equal citizens and not as Zionist colonizers. While some political figures, including Istiqlal Party members and notables of the Nashashibi family, were willing to accept the notion of Jewish self-government, the majority viewed the rights of the Jews as being those of Palestinian citizens and not of Jewish nationals.¹⁵

Palestinians, of course, were not the only ones to consider Zionism a form of colonialism. David Ben-Gurion and Vladimir Jabotinsky never denied it, but they justified it in terms of a Jewish national right to self-determination, as well as the urgent need to protect Jews from anti-Semitism and the purported benefits that the Jewish presence would bring to the native population.¹⁶ Hannah Arendt, who was supportive of the idea of a Jewish national home but opposed to Jewish statehood, is perhaps one of the most astute Jewish critics of Zionism as a colonial project. Already in 1945, just as the Holocaust seemed to provide the strongest argument for the creation of a Jewish state, she argued that Zionism was led by European Jewry engaged in an assimilationist

imperial project rather than in a decolonizing revolution. "The Zionists," she writes, ". . . were the only ones who sincerely wanted assimilation, that is, 'normalization' of the people ('to be a people like all other peoples') . . . they neither criticized nor rebelled against the social and political conditions of their time; on the contrary, they wanted only to establish the same set of conditions for their own people."¹⁷

In Arendt's view, Zionism was seeking to create a European nation-state, one erected at the expense, not at the service, of the Jewish people. She argued that Zionism was ahistorical in its analysis of anti-Semitism and suicidal in its decision to ally with imperial powers to create a nation-state for the Jews in an Arab region. For her, the nation-state was "neither capable of protecting the existence of the nation nor able to guarantee the sovereignty of the people,"¹⁸ because it would be based on exclusion. It was bound to disenfranchise those who did not belong to the nation, and thereby to produce refugees, people without "the right to have rights."¹⁹

"The right to have rights," argues Arendt, comes from being part of a political community, for only such an affiliation allows one to be recognized by others as a *moral* equal. Such a community could be a municipality as much as a rural council, the nation as well as the State, so long as the foundation of the political community was based on *mutual recognition* of the equal rights and responsibilities of those forming it. Arendt viewed the State as the highest form of political community, by virtue of it being a legal institution with monopoly over the use of violence. In her view, "only the rights of man and citizens are primary rights whereas the rights of nationals are derived and implied in them."²⁰ She argued that the state, not the nation, is sovereign, and maintained that only a federal democratic state in Palestine would protect Jewish collective and individual rights, as it would ensure their recognition and *equality* with Arab political rights. As she put it, "Equality . . . is not given to us, but is the result of human organization insofar as it is guided by the principle of justice. We are not born equal: we become equal as members of a group, on the strength of our decision to guarantee ourselves mutually equal rights."²¹

Partition and Equal Rights

Defining and protecting the "mutually equal rights" of Palestinians and Jews in Palestine was the challenge that the international community needed to address when Great Britain handed it the Palestine file in 1947. The UN Special Committee on Palestine (UNSCOP) was formed by the General Assembly at the Mandate's request to "make recommendations under Article 10 of the charter, concerning the future government of Palestine"²² and thereby provide a solution to the conflict between native-born Palestinians and Jewish refugees and immigrants pouring into Palestine in the aftermath of the European Holocaust. While they unanimously acknowledged that Palestine could not be the only solution to the refugee problem,²³ UNSCOP members could not agree on whether two nation-states or a single democratic state would best protect the rights of Palestinians and Jews. UNSCOP's recommendations are particularly interesting insofar as they provide a glimpse into how the international community dealt with the notion of self-determination when it pertained to Europeans and non-Europeans, and to refugees versus indigenous populations. They also provide insight into individual members' views on the possibility of territorial partition and their attempts to reconcile between collective and individual citizen rights.

Formed in May 1947 of representatives from eleven countries that were not party to the conflict, UNSCOP carried out nearly three months of deliberations, including visits to Palestine and to displaced persons' camps in Europe. The committee issued two reports: the majority report that was endorsed by seven members, all of them representatives of European or Latin American countries; and the minority report, submitted by the representatives of India, Iran, and Yugoslavia. (The eleventh member, Australia, abstained from voting altogether.) The former proposed partition; the latter called instead for a single federal state in Palestine.

1947 PARTITION PLAN

The majority report divided Palestine into two states, with Jerusalem designated as a *corpus separatum*.²⁴ The Jewish state was to include 56 percent of the land, including the main coastal areas and the most fertile agricultural land in order to allow for the intake of new Jewish refugees. Although they represented two-thirds of the population in 1947, the Arabs were allocated only 43 percent of the land area with which to form a state divided into three cantons that intersected with three Jewish cantons. While aware that such a solution would inevitably create a "minorities" problem in each of the Jewish and Arab states, the majority report maintained that the establishment of two democratic nation-states would provide "full protection for the rights and interests of minorities, . . . and full equality of all citizens with regard to political, civil and religious matters."²⁵

Advocates of the partition plan defended it on three main grounds. The first was what UNSCOP's majority report termed as the clash of nationalisms and the legitimate but "irreconcilable" claims of Arabs and Jews to Palestine.²⁶ The World Zionist Organization had declared in 1942 its aim to create a "free and democratic Jewish commonwealth . . . that will embrace the whole of Palestine, undivided and undiminished."²⁷ Although in exile the Palestinian leadership had, for its part, reiterated its demand for the independence of Palestine as an Arab state with limited Jewish immigration, where Jews would enjoy full citizenship, but not self-government rights. The majority report considered both positions unrealistic and only reconcilable through the partitioning of Palestine.

A further rationale for partition was what the report described as the unwillingness of either national group to cooperate with the other. While aware that partition was strongly opposed by the Arabs, the majority report stated that "it is felt that opposition would be lessened by a solution which definitively fixes the extent of territory allotted to the Jews with its implicit limitation on immigration."²⁸ The advocates of partition did not think that the Jewish state would act in bad faith or become expansionist. They also proposed an economic customs union between the two states, under international supervision, which they argued would ensure economic and political success for both peoples.

Last but not least, the report argued that Jews and Arabs were culturally incompatible. "Every practical solution today, even the most extreme is confronted with the actual fact that there are in Palestine more than 1,200,000 Arabs and 600,000 Jews, who, by and large, are from different cultural milieux, and whose outlook, languages, religions and aspirations are separate."²⁹ The document went on to describe how partition would allow each group to unleash its real potential:

The Jews bring to the land the social dynamism and scientific method of the West; the Arabs confront them with individualism and intuitive understanding of life. Here then, in this close

association, through the natural emulation of each other, can be evolved a synthesis of the two civilizations, preserving at the same time, their fundamental characteristics. In each state, the native genius will have a scope and opportunity to evolve into its highest cultural forms and to attain its greatest reach of mind and spirit.³⁰

A FEDERAL STATE

The Orientalist tone of the majority report was probably not lost on the three members that dissented from it. Its underlying assumption, that separate makes equal, did not sway the representatives of India, Iran, and Yugoslavia—the minority members who instead recommended a single federal state in Palestine. Their report, henceforth called the minority report, argued that partition was “impractical, unworkable and could not possibly provide for two reasonably viable states.”³¹ This was due to the fact that the partition plan divided Palestine geographically and demographically into territorially noncontiguous cantons. Partition was also unworkable, the minority report pointed out, because it would not enable the Arab state to be economically viable, an assessment the majority report concurred with and tried to counter by insisting on the idea of an economic customs union. More importantly perhaps, the minority report considered the partition plan unfair for it “out-weighted the aspirations of the Jews” over “the wellbeing of the country and its people as a whole.”³² In other words, the minority report did not consider partition to be based on principles of justice since it would not have been able to guarantee “mutually equal rights” to Palestinians and Jews.

The minority report argued that a federal state in Palestine would provide “the most feasible recognition to the nationalist aspiration of both Arabs and Jews, and to merge them into a single loyalty and patriotism which would find expression in an independent Palestine.”³³ The federated structure would not be much different from the binational state advocated by Ihud or the model used in Switzerland or Belgium,³⁴ one based on bicameral representation, with one chamber elected by proportional representation and the second representing both groups equally. Such a federal state would allow for immigration in line with the country’s absorptive capacity and provide self-government rights and cultural autonomy to both national groups. It called for a Palestinian citizenship, based on that created by the British Mandate, which would be inclusive of immigrants as well as of natives, guaranteeing the collective and individual rights of all citizens, whether Jews or “Arabs.”

In other words, the minority report wanted to avoid the creation of a minority problem that the partition plan predicted. It argued that a federal state was the “most democratic solution” since it required “no undemocratic economic controls,” avoided “the creation of national minority groups,” and afforded “an opportunity for full and effective participation in representative government to every citizen of the state.” The report concluded, “This solution would be most in harmony with the basic principles of the charter of the United Nations.”³⁵ It ensured that the State would be above the nation and its protector, not its servant.

The minority report argued that there was enough historical evidence of cooperation between Arabs and Jews to make a federal state succeed. While aware that its proposal ran counter to Zionist claims to a sovereign Jewish state, the minority report reiterated the arguments of binationalists

who testified to UNSCOP about the reality of cooperation between Arabs and Jews in Palestine. Although aware that the *will* to cooperate was questionable in 1947, given the Zionist-Arab animosity that had grown since the establishment of the Mandate, the authors of the minority report maintained that “if the federal solution were firmly and definitely imposed, the two groups, in their own self-interest, would gradually develop a spirit of co-operation in their common State.”³⁶ What would ensure such “firm” imposition of a federal state was the international community, namely the UN; the minority plan recommended a transition period in which an authority entrusted by the General Assembly would supervise the election of a constituent assembly that would provide for the fullest representation of the population of Palestine. This would have included both Arab and Jewish citizens as well as noncitizens who were resident in Palestine up to three months before the date of the election.³⁷ In other words, the plan gave Jewish refugees and immigrants a right to citizenship. It saw them as part of a political community, one in which they were equal to the indigenous population, not one in which they replaced them.

The 1967 War and the Palestinian “Right to Have Rights”

It was partition, however, and not a federal state, which was endorsed by a two-thirds majority of the UN General Assembly on 29 November 1947, mostly Western and Latin American countries, many of them at the urging of the United States. The war that ensued from UNGA Resolution 181 confirmed Israel’s nature as a settler-colonial state that did not confine itself to the UN-demarcated boundaries but conquered instead 78 percent of Palestine and displaced some 750,000 Palestinians. Israel’s imperial grip only tightened and expanded—first, with its refusal to apply UNGA Resolution 194 of 1948 near the end of the first Arab-Israeli war (1947–48), which called for the return, compensation, and repatriation of refugees; and then with the conquests of the June 1967 war in which Israel occupied the Sinai Peninsula, the Gaza Strip, the West Bank, and the Golan Heights.

As predicted by Arendt, the new nation-state rid the non-nationals, namely the Palestinians, of their rights. One of the clearest manifestations of this loss of rights is perhaps UNSC Resolution 242, passed after the 1967 war that formed the basis for all subsequent peace agreements between Israel and its neighbors. This resolution reiterated the “inadmissibility of land acquisition by force” and called on Israel to retreat from land it occupied in the 1967 war in exchange for recognition from all states in the region of its right to live within secure borders. This key resolution, though, made no mention of the Palestinians. It called instead for a just solution to the “refugee problem,” without reference to UNGA Resolutions 194 or 181. It thereby turned the Palestinian question into a humanitarian crisis in need of a humanitarian solution, not a political struggle requiring political recognition and justice.

Since 1967, the Palestinian national movement has focused precisely on restituting the Palestinians’ “right to have rights” by claiming the right to a state, as outlined in the Palestine Liberation Organization’s democratic state slogan in 1971.³⁸ Up until the signature of the 1993 Oslo Accords, the PLO’s trajectory can be read as a coming to terms of the Palestinian national movement with the idea of partition as the only option to establish a Palestinian state (albeit not on the whole of historic Palestine), which would protect the Palestinian right to self-determination.

The PLO's declaration of independence and its recognition of Israel and of UNSC Resolution 242 in 1988 set the stage for the Oslo negotiations between Israel and the PLO. Although the Oslo Accords did not specify an end goal, the agreement provided Israel's first official recognition of the existence of the *Palestinian* (rather than Arab) people. The Israeli prime minister's willingness to recognize a Palestinian state in 2009, albeit under specific conditions, was an acknowledgment of the Palestinians' "right to have rights."

The problem with the Oslo Accords was that they compromised these rights by seeking to "buy the settlement of the 1948 question with the currency of 1967," as Raef Zreik has written.³⁹ Oslo prioritized Israeli security over Palestinian rights and rather than enshrine the principle of moral equality, it consecrated the idea of political separation in the context of Israel's full territorial control. Israeli negotiators required that the Palestinians give up the right of return for the sake of self-government and after 2005 demanded that Palestinians accept Israel's claim to be a Jewish state rather than a state for all of its citizens.⁴⁰ The Oslo negotiations could not bring about a viable partition or two-state solution, despite all the international support the accords received, legally and economically, because they reformulated, rather than ended, Zionist colonization. The doubling of the settler population in the West Bank between 1993 and 2017 to over 560,000, the construction of 708 kilometers of the separation wall, and the institutionalization of population control through the siege in Gaza in addition to the network of bypass roads and some one hundred checkpoints in the West Bank⁴¹ have created an apartheid reality that has fragmented Palestinian society and land. It has compromised, if not trivialized, the idea of a Palestinian state.⁴² The "one state" about which Kerry expressed concern on behalf of the U.S. government has been consolidated over the past fifty years. And its binational dimension, to use Meron Benvenisti's term,⁴³ has only been reinforced by Israel's imperial grip, which ensures that 6.1 million Israeli Jews have full citizenship rights while an equal number of Palestinians remain without freedom of movement, or political equality, or right to sovereignty.

Alternative to Partition

The death of the Palestinian state project is forcing the Palestinian national movement to confront a major existential crisis, unprecedented since 1967. Mounting pressure by scholars and activists is pushing the Palestinian leadership to redefine its project of political liberation and reinstitute it within a rights paradigm. Such scholars and activists argue that a democratic or a binational state is superior to, or more legitimate than, any other model because it allows for the reinvigoration of the concept of popular sovereignty, which is tied to the rights of the original inhabitants of the land. A single democratic or binational state, they contend, is better placed to fulfill Palestinian rights, both political and civil, as it acknowledges and protects the right of return, as mandated by UNGA Resolution 194, paving the way for over six million Palestinian refugees to return home.⁴⁴ Moreover, it is an option that would encompass every Palestinian political constituency, whether in the diaspora or inside Israel, rather than privilege Palestinians in the West Bank and Gaza. For Omar Barghouti, a unitary democratic state would also provide relative justice, as it would enable Palestinian victims to live with their victimizers on an equal basis despite all the injustices of the past.⁴⁵

Attempts at defining the constitutional and institutional shape of this one-state polity have remained vague, however. On the one hand, there are echoes of the PLO's 1971 democratic state position among those seeking to reconstitute the Palestinian struggle within a rights paradigm. While the revival of that long-ago one-state option provides it with a Palestinian source of legitimacy, advocates of the liberal democratic state model do not address the risks of majoritarian rule for minorities nor do they acknowledge the collective rights of Jews in Palestine. They consider self-determination an individual—not a collective—right⁴⁶ and assume that such a state will be Arab. They thereby fail to address how Israeli Jews can be part of such a state without losing their collective identity.

On the other hand, advocates of a binational democratic option today acknowledge identity politics and the collective rights to self-determination of both Israeli Jews and Palestinians. Their position effectively recapitulates elements of the UNSCOP minority report as they call for power-sharing mechanisms such as decentralizing authorities, federal state structures, and proportional representation in various institutional settings. They consider the binational option as the one most able to accommodate the present-day reality and to protect the rights of refugees, whether Palestinians or Jews, as well as the collective rights of natives, whether Palestinian or Israeli.⁴⁷ The Palestinian citizens of Israel (PCI) remain the most prominent advocates of such a binational state. Azmi Bishara in the 1990s, Israel's Balad Party, the 2007 Haifa Declaration, and the Arab Joint List elected to the Knesset in 2015 have all led initiatives calling on Israel to become a state of all its citizens, and thereby not to prioritize Jewish collective rights over Palestinian ones. The ability of the PCI to take the lead on the one-state solution and to sway the Palestinian national movement remains limited, however. Their influence, just as that of all other Palestinian advocates of the one-state solution, will hinge on their convincing the Palestinian leadership that the abandonment of the nation-state project is not a surrender of Palestinian rights but rather the only way to fulfill them.⁴⁸

The challenge is all the greater given the international support for the two-state solution and yet the failure of the international community to stop Israel's colonial expansion as well as the absence of an Israeli movement willing to cooperate with Palestinians on a democratic alternative. Calling for a one-state solution without dealing with the individual and collective rights of all those living in Israel/Palestine can be particularly risky today as right-wing Israeli advocates of the one-state alternative insist on Israel being recognized as a *Jewish* and democratic state. While many Likud Knesset members and representatives of the settler movement have expressed willingness to accept Palestinian individual and human rights, they will not acknowledge their national rights, for they want to assure that "between the sea and the Jordan [River] there is room for one state, a Jewish state."⁴⁹ In this respect, the Israeli Right is not much different from the Palestinian advocates of the 1971 democratic state; both acknowledge that the enemy exists and has individual political rights, albeit under a single national order. For the Israeli Right, the nationality of the one state must be Israeli, both for realpolitik considerations and what they consider to be a moral imperative; the *Jewish* democratic state being the only guarantee against another Holocaust, or what they consider the exceptionality of the Jewish predicament. Palestinian advocates of the one state and their supporters need to unpack and address these Zionist arguments, rather than shun them as being simply paranoid and/or imperialistic in design.

Moving Forward

The fifty-year legacy of what is tantamount to perpetual occupation of Palestinian land is one that points to the need for a state that affirms the right of people to have rights. Yet the past fifty years have also shown that the state needs to be elevated above the nation rather than subservient to it. They clearly demonstrate that no solution is possible that does not address the root cause of the Israeli-Palestinian conflict, namely the iniquity sowed by the 1917 Balfour Declaration, the injustice of the Nakba, and the refugees' right of return. To paraphrase Arendt, moving forward would entail defining a human organization that is not an ethnic state, but one guided by principles of justice in which the "mutually equal rights" of all are recognized and protected. The challenge lies in how to achieve such an outcome within the context of grave power inequalities and the absence of the will to live together among Israelis and Palestinians.

The international community undoubtedly has a role in holding Israel accountable to international law, be it to halt settlement expansion, bring about Israel's retreat from land it occupied in the 1967 war in conformity with UNSC Resolution 242, or implement the right of return in accordance with UNGA Resolution 194. Such outcomes could be achieved through persuasion, as advocated by the United States, or via sanctions as called for by the Boycott, Divestment and Sanctions movement and its supporters worldwide. That pressure alone would not be sufficient, however, and both Israelis and Palestinians would need to confront the ethical and political limitations of their nationalist struggles, undertaking two difficult tasks: first, to address the "other" as an equal in rights and responsibilities, which means acknowledging the national tragedy of each people without reifying one over the other; and second, facing the common history and destiny of Israeli Jews and Palestinians.

Israelis hoping to get out of the present impasse will need to confront what is often referred to as the Arab question, which would entail taking responsibility for the Nakba, rather than excusing it on a variety of grounds. Equally, the incompatibility of Israel's claim to be a Jewish and democratic state will have to be faced along with the injustices done to Jews of Arab descent. Such a conversation will not be easy as it will require of the Israelis to undo the colonial and Orientalist foundation of Zionism. At a fundamental level, such a reckoning demands that Israelis confront the Arab dimension of their Jewishness. Zionism cannot confront that reality since it has defined itself as a civilizing enterprise seeking to universalize the Jew, including the Arab Jew, and turn him into an enlightened, that is, Western-style Ashkenazi Jew, who has his own state just like anyone living in a civilized world.⁵⁰ Recognizing the injustices done to Arab Jews both within Israel and in several Arab countries will be central to healing and creating a state of rights.

Palestinians, for their part, will have to confront what could be termed the Jewish question, namely Jewish attachment to Palestine and the fact that colonialism was not Zionism's only outcome. This does not mean that Palestinians should accept Zionism or give up dismantling Israel's settler-colonial structure. It does mean, however, that Palestinians need to articulate what decolonization might look like without negating the national culture and heritage that Israel has created over the past seventy years. Jews will need to have their rights recognized to live in and continue to migrate to Palestine, speak Hebrew, have political autonomy, and remain linked to their origins, whether in Western countries, through their Ashkenazi lineage or, in the case of Mizrahis, in various parts of

the Arab world. Such a vision implies that the democratic state cannot be an Arab nation-state in the narrow sense of the word, or that the Jews who are part of it need to become Arab nationals, or otherwise live as residents with limited rights. In other words, Palestinians and Israelis need to elevate the state over the nation and embrace a multiethnic and multicultural discourse that honors the diversity of Palestine rather than confining it to an essentialist Islamic or Arab identity.

Reclaiming a state of rights is precisely what the Arab uprisings were about. Although these failed to bring down authoritarian regimes, whether in the Palestinian territories or in Egypt, or to dismantle ethnocracies in Israel and Syria, they affirmed people's determination to reclaim their rights and to remind the state of its responsibility to ensure equality for all. If Israeli colonialism is to end and refugees are to return home, be they Syrians or Palestinians, Jews or Yazidis, a state of rights that is inclusive of all its citizens in their multiple identities remains the only answer. It is also what international law has promised to protect and needs to uphold.

About the Author

Leila Farsakh is associate professor and chair of political science at the University of Massachusetts. She is the author of, among other works, *Palestinian Labour Migration to Israel: Labour, Land and Occupation*, 2nd ed. (London: Routledge, 2012).

ENDNOTES

- 1 John Kerry, "Remarks on the Middle East," U.S. Dept. of State, Washington, 28 December 2016, <https://www.state.gov/secretary/remarks/2016/12/266119.htm>.
- 2 With the signing of the Oslo agreements, Israel provided a de facto, rather than a de jure or official recognition of the Palestinian right to self-determination by recognizing the PLO as the representative of the Palestinian people, accepting the return of many of its members to the West Bank and Gaza, and holding elections in the West Bank and Gaza for the establishment of a Palestinian authority, even if the agreement did not amount to an Israeli recognition of Palestinian sovereignty or statehood. These were left to the final status negotiations. Israel officially acknowledged the Palestinian right to statehood in 2009.
- 3 Kerry, "Remarks on the Middle East."
- 4 Victor Kattan, *From Coexistence to Conquest: International Law and the Origins of the Arab-Israeli Conflict, 1891-1949* (London: Pluto Press, 2009), pp. 118-19.
- 5 Eric D. Weitz, "Self-Determination: How a German Enlightenment Idea Became the Slogan of National Liberation and a Human Right," *American Historical Review* 120, no. 2 (2015): pp. 462-96, <https://doi.org/10.1093/ahr/120.2.462>.
- 6 Kattan, *From Coexistence to Conquest*, chap. 5.
- 7 Timothy Mitchell, *Carbon Democracy: Political Power in the Age of Oil* (London: Verso, 2011).
- 8 Article 22 of the League of Nations Covenant, by virtue of Palestine being formerly part of the Ottoman Empire. "The Covenant of the League of Nations," 1924, available at Lillian Goldman Law Library, http://avalon.law.yale.edu/20th_century/leagcov.asp.
- 9 Kattan, *From Coexistence to Conquest*, pp. 131 (emphasis in original). See the Hogarth message to Sherif Hussein in 1918, in which the British general clarified that the Balfour Declaration to Sherif Hussein "His Majesty's government" recognized in Palestine "the freedom of the existing population both economic and political."
- 10 Rashid Khalidi, *The Iron Cage: The Story of Palestinian Struggle for Statehood* (Boston: Beacon Press, 2006).

- 11 Kattan, *From Coexistence to Conquest*, pp. 121–31. This is born out of his interpretation of the Article 22 of the Covenant of the League of Nations, the classification of Palestine as Class A state, and the fact that the Mandate did not negate Palestinian political rights, but rather sought to prioritize the Jewish national project. Kattan also argues that Britain explicitly recognized Palestinian political rights once it began administering Palestine, be it with the Hogarth message or the 1939 white paper, among other examples.
- 12 Brit Shalom was an organization of Jewish intellectuals, formed in 1925, which advocated for a binational state in Palestine. It had dissolved by the early 1930s with many of its members going on to form the Ihud party in 1942 that also advocated for binationalism.
- 13 Judah L. Magnus, *Like All the Nations?*, pamphlet, reproduced in *Jewish Daily Bulletin*, 24 January 1930, http://pdfs.jta.org/1930/1930-01-24_1573.pdf.
- 14 Charles D. Smith, *Palestine and the Arab-Israeli Conflict: A History with Documents* (Boston: Bedford/St. Martin's Press, 2013); and Kattan, *From Coexistence to Conquest*, chap. 5.
- 15 Susan Lee Hattis, *The Binational Idea in Palestine during Mandatory Times*, PhD diss., Université de Genève (Haifa: Shikmona Publishing, 1970).
- 16 Avi Shlaim, *The Iron Wall: Israel and the Arab World* (New York: W. W. Norton, 2001).
- 17 Hannah Arendt, "Zionism Reconsidered," in *Zionism Reconsidered: The Rejection of Jewish Normalcy*, ed. Michael Selzer (London: Collier-Macmillan, 1970), p. 230.
- 18 Hannah Arendt, *The Jew as Pariah: Jewish Identity and Politics in the Modern Age*, ed. Ron H. Feldman (New York: Grove Press, 1978), p. 173.
- 19 Hannah Arendt, *The Origins of Totalitarianism* (New York: Harcourt Brace, 1979), pp. 296–301.
- 20 Hannah Arendt, "The Nation," *Review of Politics* 8, no. 1 (1946): pp. 138–42.
- 21 Arendt, *The Origins of Totalitarianism*, p. 301.
- 22 Question of Palestine, Letter from the UK delegation to the United Nations to UN Assistant Secretary-General Dr. Victor Chi Tsai Hoo, 2 April 1947, UNGA, A/286, 3 April 1947, <https://unispal.un.org/DPA/DPR/unispal.nsf/0/87AAA6BE8A3A7015802564AD0037EF57>.
- 23 UNSCOP, Report to the General Assembly, vol. 1, Lake Success, New York, 1947, chap. 5, Recommendations (1), Recommendation 12, The Jewish Problem in General.
- 24 In Latin "separate body," to be placed under an international regime to protect its shared religious importance.
- 25 UNSCOP, chap. 5, Recommendation 7, Democratic Principles and Protection of Minorities, Section B.
- 26 UNSCOP, chap. 6, Recommendations (2), pt. 1: Justification, Plan of Partition with Economic Union Justification, para. 1.
- 27 World Zionist Organization, *The Atlantic City Resolution*, Atlantic City, October 1946 (quoted in Arendt, "Zionism Reconsidered," p. 213).
- 28 UNSCOP, Chapter 6, Recommendations (II), pt. I, para. 9.
- 29 UNSCOP, Chapter 4, The Main Proposals Propounded for the Solution of the Palestine Question, para 16.
- 30 UNSCOP, chap. 6, Recommendations (II), pt. 1, A Commentary on Partition.
- 31 UNSCOP, chap. 7, Recommendations (III), Plan for a Federal State, para. 4.
- 32 UNSCOP, chap. 7, Recommendations (III), Plan for a Federal State, para. 5.
- 33 UNSCOP, chap. 7, Recommendations (III), Plan for a Federal State, para. 7.
- 34 See Leila Farsakh, "A Common State in Israel-Palestine: Historical Origins and Lingering Challenges", *Ethnopolitics* 15, no. 4 (2016), pp. 380–92.
- 35 UNSCOP, chap. 7, Recommendations (III), para. 8.
- 36 UNSCOP, chap. 7, Recommendations (III), para. 16.
- 37 UNSCOP, chap. 7, Recommendations (III), pt. I, The Independent State of Palestine, para. 5.

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