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## **ON THE RIGHTS OF 'SETTLERS'**

US Ambassador Richard Jones was recently reported to have asked Supreme Court President Dorit Beinisch about the legal status of the 'settlements.'

This is indeed a subject which has long been neglected - or simply ignored. The answer to the question is a simple one, but in view of the obfuscation which has for years gathered around it, it is essential to examine its roots. They lie comfortably in the text of the Mandate for Palestine which was conferred on Britain in 1922 by the League of Nations.

The Mandate's objective was to facilitate the 'reconstitution' of the Jewish National Home in Palestine. It was intended to serve as the legal instrument for implementing Britain's 1917 Balfour Declaration. The essential obligations of the mandatory were to facilitate the immigration of Jews and encourage their 'close settlement' on the land, including state and waste lands. (In accordance with the Balfour Declaration 'the civil and religious rights of existing non-Jewish communities' were to be protected.)

The vision of the Balfour Declaration was encapsulated a couple of years later by cabinet minister Winston Churchill who wrote 'a Jewish state will arise in our day on the banks of the Jordan.'

At that time, too, the League of Nations conferred on Britain a Mandate for Mesopotamia (Iraq); and Mandates for Syria and Lebanon were conferred on France, presaging the establishment of sovereign Arab states. Thus did the Allied nations complete the sharing out of the territories they had captured from the Turks in the Great War of 1914-1918.

ADDED UP, these Arab states-to-be accounted for some 99 percent of the total conquered area. In its capture during the war it may be said the Arabs themselves played practically no part. The so-called Arab Revolt against the Turks, heavily financed by Britain and brilliantly portrayed by T.E. Lawrence (of Arabia), did not in fact take place at all. Eighty percent of the Arabs who fought in the war did so on the side of the Turks. The Jewish people not only fielded a Jewish fighting legion in Palestine but also a most effective intelligence service in Palestine and Syria.

Nevertheless, when peace came Arab voices were raised against the British undertaking to the Jews. Balfour admonished them. He pointed out that it was the British who had established an independent sovereignty in Hejaz (the Mandates came two years later), and he added:

'I hope they will remember that it is we who desire in Mesopotamia to prepare the way for the future of a self-governing Arab state and I hope that, understanding all that, they will not grudge that small notch being given to the people who for all these hundreds of years have been separated from it.'

Yet - in 1922 at the last moment, the British inserted a clause (Number 25) excluding the provision of the Jewish National Home from the area east of the Jordan River.

Zionist protest went unheeded; and so the almost-empty eastern Palestine, renamed Transjordan, ultimately became the Kingdom of Jordan, adding another state to

the tremendous Arab domain. The fact that it was a Palestinian state could not be erased, nor that the majority of its inhabitants have come from western Palestine. Thus was executed the first partition of the Land of Israel.

THE STATUS of Jewish settlement in what remained of Palestine remained unaffected. But as the years went by, the steady British retreat from their obligations, particularly by severe limitations on Jewish immigration, finally led to the White Paper of 1939. Apart from new land laws, it projected that Jewish immigration would be allowed at 15,000 souls a year for five years and then completely frozen. There would be no Jewish National Home. There would be an Arab majority, and some form of British overlordship to protect Jewish minority interests.

The White Paper, fiercely attacked in Parliament, was passed - by a reduced majority. But any change in British policy in Mandatory Palestine was subject to the approval of the League of Nations. The League, it was true, had for some years already been seen as an effete body, but its constitutional authority had remained intact. For monitoring the progress of the various mandates it maintained a kind of watchdog commission, and considered any proposed changes in the terms of the Mandate, only if approved by the Mandate Commission. When in 1939 the British government submitted the White Paper to the commission, it refused its approval on the grounds that it did not conform to the terms of the Mandate.

Angry British Foreign Office senior officials exchanged notes and discussed among themselves the desperate policy of proposing a change in the Mandate itself. But they were stymied. It was too late - nearly the end of August 1939, and on the first of September World War II broke out.

The Council of the League of Nations never met again. With it died the White Paper. The Mandate remained the defining document for governing Palestine.

THE BRITISH government, frustrated, did not relent. It launched a bitter campaign, using diplomatic channels in Europe to prevent Jews escaping and employing the Royal Navy to intercept boats carrying Jewish refugees from Europe and prevent their reaching the Jewish National Home. Indeed, when Churchill was prime minister he wrote in an internal instruction that 'the White Paper stands.'

The Mandate, however, with its injunction to assist Jewish settlement, remained intact and after World War II was 'inherited' by the United Nations. It was a period of considerable unrest which, despite much repressive effort, the British could not subdue. Under the pressure of a highly effective Jewish underground fighting force (and consequent reactive political pressure at home) the Labor government finally returned the Mandate to the UN (in the spring of 1947).

The UN, in a dramatic special session, in effect accepted Britain's resignation and later that year decided to recommend the partition of Palestine between Jews and Arabs. (Not Palestinians. Nobody had heard of such a separate entity.) The Arab states rejected that offer. Thus Palestine, with the rights of Jewish settlement, remained undivided as the Jewish state between the Jordan and the Mediterranean.

The Arab refusal was not a whim. The idea of a non-Arab state (and specifically a hated Jewish state) 'in the heart of the Arab world' was anathema to them. It was reflected by a claim of possession of the whole country. Immediately after the UN session, the League of Arab States decided to go to war to destroy the Jewish state at birth.

In the meantime a preliminary campaign of terror was launched against the Jewish community. Then on May 14, 1948, the day the British left, five well-armed Arab states - Egypt, Syria, Jordan, Lebanon and Iraq - invaded the country. The losses Israel sustained in that war of nine months exceeded, in proportion of population, the losses sustained by Britain and America in World War I. The invasion success was limited not only by the inordinate valor of the youth of Israel, but in time by the supply of much-needed arms by Czechoslovakia (with Soviet permission) and France.

HOWEVER, Jordan succeeded in holding on to the eastern highlands (primarily Judea and Samaria) and then even presumptuously announced their annexation. Egypt captured the Gaza 'Strip.' It is not irrelevant to mention that in the next 19 years of Jordanian and Egyptian occupation, neither Jordan nor Egypt proposed, nor did the Palestinian Arabs demand from Jordan and Egypt, the establishment of a Palestinian state. To the contrary, Palestinian Arab terror continued to operate as before against Israel.

Then in 1967, Egypt, Syria and Jordan again attacked Israel, again with the repeated announcement that the objective was its 'annihilation.' Israel turned the tables and won the war. Soon after that victory, Israel offered the Arabs to hand them all the territory it had regained, in return for peace. At a conference in Khartoum the unanimous Arab reply was: No negotiations. No peace. No recognition.

So once again Jewish settlement rights had been endangered, and once again had been saved by Arab intransigence.

It was shortly afterward that the movement of Jewish settlers was launched. It is noteworthy that the last defining document that underwrites the legality was the Geneva Convention of 1949. It dealt with occupied territories. Its second clause, stating its scope, makes it clear that it does not apply to the Jewish presence in Judea and Samaria - because Jordan was not a sovereign possessor but an illegal invader and similarly was Egypt an illegal invader of Gaza. Israel liberated both areas, restoring them to the territory of the Palestine Mandate of 1922.

From the point of view of international law these settlers are as legal as any resident of Manhattan or of Shreveport, Louisiana.