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1

Self-Determination

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1. Disputes over territory

Disputes over territory are among the most contentious in human affairs. Throughout the world, societies view control over land and resources as necessary to ensure their survival and to further their particular life-style, and the very passion with which claims over a region are asserted and defended suggests that difficult normative issues lurk nearby. Questions about rights to territory vary. It is one thing to ask who owns a particular parcel of land, another who has the right to reside within its boundaries and yet another to determine which individuals or groups have political rights of citizenship, sovereignty, and self-determination within it. It must also be asked how these rights—if ‘rights’ is the correct term—are acquired.

When attention turns to the territorial rights of communities, national groups or states, sovereignty is the principal concern. Within international law, *de facto* power over a territory, say, of occupying forces or trustees, is insufficient to possess or acquire sovereignty (Brownlie, 1990, p. 111). The central conceptions underlying modern democratic thought are that sovereignty over a politically demarcated territory is vested in the resident population, and that governmental authority is derived from the consent of that population. It is simple enough to identify the latter with the citizenry of a state, but demographic and political flux makes this a loose criterion. States come and go, and sometimes a territory is stateless. Also, large-scale demographic shifts during upheavals and peacetime immigrations change the assessments of who belongs where. Does everyone residing in a place at a particular time have a right to share in its governance then? What about illegal immigrants? Presumably, sovereignty rests with the established population or

legitimate residents of a territory, the most obvious candidates being those inhabitants who were born and raised to adulthood therein and whose discernible ancestors were equally indigenous. Those born and living on the outside, lacking historical, cultural or legal ties to the region, are the clearest cases of non-residents. In between is a significant gray area consisting of expatriates, exiles, refugees, voluntary emigrants and immigrants, each with varying degrees of entitlement to residency depending upon the conditions under which they entered or left the territory. One thing is clear, a person does not lose the right to reside in a territory and participate in its governance simply because he or she has been forcibly removed from that territory.

Which individuals or groups have the right to inhabit Palestine? Who owns its fields, cities and seaports? Who has the right to determine which legal and political structures are to prevail therein? Most importantly, who are its legitimate residents, and who possesses sovereignty? Answers to these questions depend upon the time frame; the considerations offered in late 1917 or 1947 could draw upon factors absent in 1897, and the same holds for the interval between 1947 and 2007. Differences in population distributions, in prevailing institutions and in political developments are all relevant in approaching these difficult questions.

In the aftermath of the World War I, both Arabs and Jews claimed political legitimacy in Palestine. Zionists then argued as follows. There is a historical connection of Jews to Palestine that extends over three millennia, maintained by a 'thin but crucial line of continuity' (Eban, 1972, p. 26). The cultural roots of Jews in Palestine are universally acknowledged, and having never established a state elsewhere, there is no other place to which they can claim an original organic link (Shimoni, 1995, pp. 352–9). Palestine is also the center of the Judaism and owes 'the luster of its history' to the Jewish connection (Jewish Agency for Palestine, 1947, p. 105). Despite having been unjustly exiled from Palestine since Roman times, Jews have a unique claim to the land that they have never abandoned, one which implies that their political reestablishment would not be a matter of conquest and domination by an external entity, but of restoration (Eban, 1956) or return (Fackenheim, 1988) of a people to what was originally theirs.

By contrast, the Zionist argument continued, Arabs have other centers of culture and religion, and the region including Jerusalem was never as monumental to them as were the holy cities of Mecca and Medina, or their traditional capitals of Damascus, Baghdad and Cairo. Nor did Arabs ever establish an independent state in Palestine and, hence,

Palestine's Arabs did not constitute a political unit with an entitlement to sovereignty in Palestine (Gorny, 1987, p. 145, pp. 213–4). They are part of a larger Arab entity with ties to the entire Arab world, not themselves a distinct people with claim to Palestine as such. Jews, on the other hand, currently constitute a single identifiable nation in need of a territory to further its culture. Moreover, their right to establish themselves as a political community in Palestine is not simply a matter of their preference. Finally, in late 1917, the *de facto* ruler of Palestine, Great Britain, issued the Balfour Declaration (see Introduction) in which it committed itself to establishing a Jewish national home in Palestine, a promise that was incorporated into the League of Nations Mandate for Palestine in 1922. For these reasons, Zionists concluded that historic title to Palestine and sovereignty over its territory belongs to the Jews.

In response, the Arabs argued that their right to dwell in Palestine, to possess and establish dominion over its territory, derived from the fact that they constitute not only the majority of its current inhabitants but have maintained this majority during the 13 centuries since the Islamic conquest—if not longer given their descent from ancient Canaanites, Hittites and Philistines. The predominant language and culture of the country have remained Arabic throughout this period, including under Turkish rule. Even if Jews have a 'historical connection' to Palestine, the inference that they have an exclusive 'historic title' which gives them the right to return, establish a state and possess it forever 'contains more of poetry in it than logic.' By that reasoning, 'Arabs should claim Spain since once upon a time they conquered it and there developed a high civilization.'¹ All systems of law include a statute of limitations by which a legal title expires after a considerable duration; without it, the world would face a cacophony of irresolvable claims and counter-claims. Jews native to Palestine are entitled to reside there and share in the determination of its future (Porath, 1974, p. 61), but sovereignty belongs to the predominantly Arab indigenous population.

Arab spokesmen insisted that the Balfour Declaration was invalid, and that the Mandate for Palestine violated Article 22 of the League of Nation's Covenant which dealt with newly liberated territories. Its fourth paragraph stated:

Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognized subject to the rendering of administrative advice and assistance by a mandatory until such time

as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the Mandatory.²

Exceptions were specified in subsequent paragraphs of the Article, and since Palestine was not mentioned by name, the presumption is that it was covered by this paragraph. More importantly, when an existing state power is removed from a territory, as was the Ottoman Empire from Palestine in 1917, then sovereignty reverts back to the established population. Arabs insisted that the fact of British military occupation neither transferred sovereignty to the occupying power nor removed it from the legitimate residents. Nor did Britain have a right to give Palestine as a 'gift' to anyone and, therefore, its commitment has no binding force. If any credence is to be given to promises made by external powers then it must be remembered that Britain had also pledged its support for Arab independence throughout the Middle East prior to issuing the Balfour Declaration, and reiterated it again in 1918.³ Since this pledge was made with an established monarch, it was superior to the Balfour Declaration which was given to 'an amorphous body lacking political form and juridical definition' (Porath, 1974, p. 52). Britain countered that Palestine was a special case, though in a 1922 White Paper it was careful to qualify its position by stating that the Jewish national home is to be in Palestine and that there would be no disappearance or subordination of the Arab population or customs.

2. The principle of self-determination

... once you appeal to the principle of self-determination, both Arabs and Zionists are prepared to make every use of it they can. No doubt we shall hear a good deal of that in the future, and, indeed, in it we may find a solution of our difficulties.

Lord Curzon in 1918 (reported in Lloyd-George,
1939, pp. 739–40)

Towards the end of the World War I, a 'principle of self-determination' was proposed as a foundation for international order. In the words of its chief advocate, U.S. President Woodrow Wilson, it specified that the 'settlement of every question, whether of territory, of sovereignty, of economic arrangement, or of political relationship' is to be made 'upon the basis of the free acceptance of that settlement by the people immediately concerned and not upon the basis of the material interest or advantage of any other nation or people which may desire a different settlement for sake of its own exterior influence or

mastery' (Wilson, 1927, p. 233). The principle played a significant role in deliberations about lands newly liberated by the World War I, and, in the aftermath of the Second, it was enshrined within Article 1 of the United Nations Charter which called upon member nations 'to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples.' Its status within international law was further heightened by the 1966 Covenants on Civil and Political Rights and on Economic Social and Cultural Rights, whose first articles specify the following: 'All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development.' In 1970, General Assembly Resolution 2625 added that, 'every state has the duty to respect this right in accordance with the provision of the Charter.'

Upon its emergence in international diplomacy, both Arabs and Jews appealed to the principle at once, each group claiming the prerogative to be self-determining in Palestine. Zionists claimed that the Balfour Declaration and the Palestine Mandate constituted recognition of the Jewish right to self-determination in Palestine. Arabs countered that those who actually owned and long inhabited a territory had the right to self-determination within it, and in Palestine this could only be the Arab majority. This clash of claims requires a closer look at what is packed into the concept of self-determination and into the moral status of the so-called principle of self-determination. The basic philosophical issues are the following:

- What is the content of a request or demand for self-determination, that is, what is it that an entity possesses in being a self-determining unit?
- What are the relevant moral norms concerning self-determination, that is, is self-determination to be construed as a right, a privilege, an ideal, a recommendation, a regulative principle, a maxim of diplomacy, and so on?
- Who are the proper beneficiaries of self-determination, that is, who or what is entitled to be self-determining?

In general terms, self-determination is nothing more than an entity's autonomy, viz., managing its own affairs as it sees fit independently of external interference. It is not surprising that people should seek to be self-determining, and the desire of entire societies to gain or

preserve autonomy has often been the occasion for conflict, war, migration, peaceful separation, and inspiring literature, from ancient times to the present. Individuals almost never gain complete self-rule, unless, perhaps, they achieve the status of absolute dictators, or absolute hermits. But societies can achieve significant measures of autonomy within limited areas. In the strict sense usually intended, self-determination is a matter of statehood (Copp, 1997, p. 278), that is, of a political community's possessing and exercising sovereignty over its territory. This is how self-determination is conceived when established states are taken to be the self-determining units. There are lesser degrees of autonomy that fall short of state sovereignty, however, and these might take various forms of localized autonomy, whether we are speaking at the level of provinces, municipalities, neighborhoods, or culturally or economically defined minorities (Tamir, 1993; Buchanan, 1997a, pp. 306–7).

The normative importance of self-determination is indisputable within modern democratic thought given its doctrine of popular sovereignty. The moral imperative is that institutions of governance within a territory must be responsive to what its established inhabitants take to be in their legitimate interests. People exercise autonomy by voluntarily binding themselves to a social-political arrangement, and in so doing, they impose upon themselves a moral obligation to abide by its terms. In this way, chances are heightened that the arrangement will conform to what they perceive as just, if not to what actually is just, thereby enhancing prospects for stable peace and orderly development. By contrast, imposing an arrangement upon the inhabitants against their will, or independent of their will, is likely to create resentment that promises future instability, whether domestically or internationally—regardless whether the source of that imposition is an internal tyrant or an external power. In this way, not only is the observance of self-determination the crucial mechanism for legitimizing governmental authority and the rule of law within a given territory, it is also fundamental in promoting orderly international relations.

Whether the principle of collective self-determination is best conceived as formulating a legal right, a moral ideal, or a maxim of political prudence is a more difficult matter. Wilson spoke of 'an imperative principle of action which statesmen will ignore at their own peril' (Wilson, 1927, p. 180), in which case the principle is envisioned as a maxim binding upon those who possessed *de facto* control over 'unsettled territories,' namely, to allow the people 'immediately concerned' to determine their own future. Yet, this norm is difficult to separate from the claim that such

peoples are entitled to be self-determining, and since World War II, the language of a 'right' to self-determination has increasingly appeared in documents codifying international law. These facts have not ended the debate (Philpott, 1995; Kapitan, 1997, p. 43; McKim & McMahan, 1997; Dahbour, 2003, pp. 63–8), and some argue that a call for self-determination is not so much a single principle as a 'placeholder for a range of possible principles specifying various forms and degrees of independence' (Pomerance, 1984, p. 337; Buchanan, 1991, p. 50).

Restricting ourselves to the strict political meaning of 'self-determination,' different entitlements jump to the fore. Perhaps the most obvious holder of a right of self-determination is a state, that is, a politically organized collective with a delegated authority controlling territory inhabited by that collective. The simplest and most straightforward instance of a right to self-determination is the following:

Self-determination of states: Each state has a right to exercise rule in its territory through the operations of governmental institutions without external intervention.

This is a claim-right placing a demand upon all other states, groups, and individuals—including its own citizens—for recognition of its sovereignty over its territory and non-intervention in its internal affairs. It is limited in three ways. First, it can be overridden if the state is exclusionary, that is, if it does not accord citizenship to some of the legitimate residents of the territory it governs. Second, the right of sovereignty can be overridden whenever intervention by external agents is called for, for example, when a state engages in rampant human rights abuses within its own territory. For both of these reasons, some confine the right of self-determination to legitimate states, viz., non-exclusionary states with effective institutional safeguards of human rights, thus, not engaged in systematic social, economic, legal, or political discrimination over a segment of its population, and not pursuing a campaign of belligerent aggression against external populations (Rawls, 1993, pp. 68–71; Copp, 1997, 1999; Buchanan, 1997b). But even a legitimacy restriction does not overcome yet a third limitation stemming from a people's right to reconstitute the political institutions under which it exists (Copp, 1997, p. 281), whether by replacing the existing constitution or basic laws, dissolving the state into separate sovereignties, or merging with a larger political entity. The 'people' in question consists of the legitimate residents of the territory in which the state is constituted.

This third limitation on a state's right to be self-determining is derived from the doctrine of popular sovereignty and, hence, from a more general right of self-determination, namely,

Self-determination of legitimate residents: The collective consisting of the legitimate residents of a politically independent territory has a right to establish, maintain, and alter the political institutions under which it is to live and be governed, (viz., sovereignty belongs to the people and is to be exercised collectively).

When this collective is already organized into a state in that territory, then this right of self-determination may also be spoken of as a right of the citizenry of a state to be self-determining. A state has its right to be self-determining only when the legitimate residents in the territory—ideally, its citizenry—are exercising their right of self-determination. As such, when an external agent violates a legitimate state's sovereign right it thereby violates the right of the citizenry—a people—to constitute and maintain itself as a self-governing political entity in that territory (Simmons, 2001, pp. 307, 313). Obviously, by definition, this right of collective self-determination is not limited in the first or the third way, though it remains subject to the second limitation.

Does a collective's right of self-determination derive from anything more basic? One source is the fact that a collective's self-determination is the best means for protecting the human rights of its members and, thereby, improving the quality of their lives. Also, if a collective's right over its members derives from the latter's consent, then an individual's right to self-governance provides a further basis for the collective's right. This does not mean that each individual is entitled to sovereignty over a territory, but, minimally, that he or she has a right to meaningfully participate in decisions about sovereignty over the territory in which he or she resides. Insofar as individuals exercise autonomy at the political level only through voluntary participation in a self-governing collective, then violating a citizenry's right to self-governance is *ipso facto* denying individual citizens the right of political participation. In this way, an established citizenry has a right of collective self-determination only because individuals have the right to be self-governing in the sense specified.⁴

The issue of how collective self-governance is to be implemented is another matter, and it is left unspecified by both the mentioned international covenants. A citizenry's right of self-determination requires that governing institutions are to derive from the consensus of the

entire community, not by the preferences of internal minorities or agencies, or by external communities or nations. But once the decision is effected, the precise mode of subsequent citizenry participation in the governing institutions is open to debate. While it has become customary to expect that institutions regulating public life be freely determined through popular consent and operate on democratic principles, it is less clear that the notions of 'popular consent to' and 'free determination of' a particular political order require democracy (MacCallum, 1987, pp. 50–2; Moore, 2001, pp. 214–7). For example, a society might have an established and widely supported tradition whereby significant political decisions are deliberated upon and made by an unelected council of elders. Although decisions are not made within a democratic system characterized by universal suffrage, so long as the society enjoys freedom from external intervention, there is no automatic violation of the mentioned rights of self-determination.

3. The problem of exceptional beneficiaries

While the principle of self-determination confers a right 'to acquire or continue to possess the status of a state' (Copp, 1997, p. 278), existing states and their peoples are only its default or standard beneficiaries. In debates about international law and morality, self-determination has also been taken as a prerogative of yet other agents, if not principally of other agents, for instance, indigenous people under colonial rule (Bhalla, 1989). The most contested appeals to the principle have concerned exceptional applications to non-autonomous groups desirous of self-governance, whether recently liberated from previous rulers as a result of war, de-colonization, or the break up of a state, or, currently engaged in secessionist struggles.

How do we demarcate the class of exceptional beneficiaries? Speaking of *peoples* helps little, for either this is just another name for a collective (thus, Rawls, 1999a) or it is ambiguous (Michalska, 1990, pp. 72–4). Plainly, not just any such group qualifies. Individual families do not, nor do business organizations, sports teams, professional associations, religiously affiliated convents, or social clubs, even if they aspire to political autonomy. At least two minimal conditions must be met. First, a beneficiary must be politically coherent, that is, it must be an intergenerational community capable of political independence whose members share adequate means of communication and enough normative moral ideals capable of sustaining their adherence to the same political and legal institutions.⁵ Second, a beneficiary must have an appropriate

connection to a territory that is both geographically unified—where any point in it is accessible from any other point without having to pass through foreign territory—and politically integrable—that is, a region in which the exercise of normal state functions (e.g., maintaining a police force) would not violate the sovereign rights of existing states in distinct regions outside its boundaries. Geographical unity might not be necessary for political integrability, but departures from it weaken an aspirant's claim for self-determination (Berg, 1991, p. 214).

Yet, even this is not enough to single out a viable class of exceptional beneficiaries. If every politically coherent collective residing in a politically integrable region claimed a right of self-determination in that region, the world would be faced with a bewildering justification not only for conflicting claims between populations and sub-populations, but also for the fragmentation of virtually all existing states. There must be a mean between such extreme liberality and the restriction to standard beneficiaries, but attempts to locate it are complicated by a significant divergence of opinion about how to demarcate exceptional beneficiaries. The problem stems from the two historical sources of the principle of self-determination, namely, the doctrine of popular sovereignty on one hand and the nationalist sentiments underlying national liberation movements on the other. According to the former, the right of self-determination is a demand of self-governance on the part of the communities of legitimate residents of politically defined territories. According to the national source—a view popularized under the nineteenth century call for the *Selbstbestimmungsrecht* (sovereign right) of peoples (Umozurike, 1972, p. 3)—the right of self-determination is predicated on the idea that cultures or nations are worth preserving, and that the furtherance and protection of cultures is the very purpose of the principle. Here, the appropriate claimants of a right to self-determination are nations or national groups, that is, collectives whose members share various objective characteristics such as language, history, religious and moral beliefs, and distinctive cultural traits, and, perhaps, subjective features, for example, recognition of one's own cultural identity, a desire to live with others of one's group, and so on.⁶

A given collective might be both a community and a nation, in which case the regional and the national versions of self-determination would converge when a culture is 'preserved' through the exercise of popular sovereignty by a population consisting of members of a single national group. But convergence is the exception. Typically, not every regionally identifiable population is a single people, and not every national group is

a regionally identifiable population. Moreover, just as state preservation of a culture can occur without popular sovereignty of its population, the converse is equally true. Failure to distinguish these two distinct interpretations of beneficiaries is partly due to the common perception that while the principle of self-determination calls for national autonomy, the terms 'nation,' 'national,' and 'people' are ambiguous between a purely political interpretation and a cultural interpretation. In the former sense, rights of self-determination are nothing beyond what is accorded to states and their citizenries, while in the latter sense, autonomy is mandated for culturally defined groups.

Are there, then, two further rights of self-determination, one calling for popular sovereignty within any region, the other for self-governance for any nation or national group? Admitting this would generate conflicts of rights, especially since a 'nation' cannot be self-determining except in a 'region.' A national group's bid for self-determination in a territory might be insensitive to the interests of the established majority of that territory or of a larger territory of which it is a part, just as a demand for regional autonomy might be oblivious to the cultural diversities and rivalries that prevail within a given region. Rather than speaking of two conflicting principles under the same title, it is better to avoid contradiction by adjudicating between rival interpretations of a single principle.

Before attempting this, however, it must be observed that neither the notion of a community or of a national group, as such, suffices to demarcate the remaining class of beneficiaries. Granting a right of self-determination to every people, under either interpretation, would generate the problems of conflict and fragmentation noted above. Plainly, not every regionally defined population merits self-determination and not every national group, or sub-group, can claim a privileged connection to territory that would warrant being self-determining *qua* that group.⁷ Regardless of which interpretation we take, we still need a specification of the precise conditions under which a non-standard collective is deserving of self-determination. This is the problem of demarcating exceptional beneficiaries.

4. A regional interpretation of exceptional beneficiaries

Perhaps we can make some progress by inquiring into what conception of beneficiaries was operative in Wilson's own conception of his principle. As indicated in Section 2, he maintained that the required mechanism for settling questions of sovereignty, boundaries,

economic and political institutions, and so on is the free acceptance of the relevant proposals 'by the people immediately concerned,' not by the interests of external parties. Unless Wilson was merely reiterating the doctrine of popular sovereignty, then the emphasis should be that 'free acceptance . . . by the people immediately concerned' is the deciding factor whenever there is a question to be 'settled,' specifically, when territories have been liberated from previous rulers and political structures are yet undetermined. Wilson's focus on such regions in the aftermath of WWI shows that he was concerned with more than standard beneficiaries when it comes to self-determination.

Still, the question remains: in any given instance of an outstanding question about the political settlement in a region, who are 'the people immediately concerned'? Many have construed Wilson's principle along nationalistic lines (e.g., Cobban, 1945, pp. 19–22; N. N. Feinberg, 1970, p. 45; Bassiouni, 1978, pp. 2–3; and, more recently, Amstutz, 1999, p. 59; Moore, 2001, p. 143). But there are others who find a regional interpretation to be the most accurate rendition of Wilson's intent, especially in relation to the question of Palestine.⁸ To illustrate, in 1919, Wilson dispatched a commission to the Near East to report on the political situation there. At the Paris Peace Conference on August 28, 1919, its commissioners, Dr. King and Mr. Crane, claimed that only a 'greatly reduced Zionist program' would be compatible with the principle of self-determination. The British government, as if in agreement, decided to deliberately ignore the principle (Lloyd-George, 1939, p. 750; Khalidi, 1971, p. 208).

While Wilson's language was unclear, what is certain is that he viewed observance of this principle as both a natural extension of democratic theory and an essential measure for preventing future wars and 'making the world safe for democracy.'

... no peace can last, or ought to last, which does not recognize and accept the principle that governments derive all their just powers from the consent of the governed, and that no right anywhere exists to hand peoples about from sovereignty to sovereignty as if they were property. (Pomerance, 1976, p. 2)

The easy transition from 'the governed' to 'peoples' in this passage together with the occurrence of 'freely accepted' suggests that he was stressing the importance of popular sovereignty rather than the preservation of cultures. This same orientation is conveyed in an

earlier speech in 1918 when Wilson first employed the term 'self-determination' in public:

People are not to be handed about from one sovereignty to another by an international conference or an understanding between rivals and antagonists. National aspirations must be respected; peoples may now be dominated and governed only by their own consent. 'Self-determination' is not a mere phrase. It is an imperative principle of action, which statesmen will henceforth ignore at their peril. (Wilson, 1927, p. 180)⁹

Despite the reference to 'national aspirations,' the contrast he drew between being 'handed' from one sovereignty to another and self-determination suggests, once again, that he conceived of the latter it as a moral precept rooted in the ideal that political institutions gain legitimacy only from the consent of the governed. Wilson opposed the notion that a community may take any direction that its then dominant or ruling voices might demand, and urged, instead, that the community must follow the preferences of its significant majority. While not quite a call for the establishment of liberal democratic institutions, it is an unmistakable endorsement of popular sovereignty for every group constituting a 'governed.'

Two final points are relevant in determining what Wilson's intent might have been. First, he wrote as though his principle were more of a political maxim, designed to guide those 'statesmen' entrusted with making decisions about the future status of given territories, rather than a 'right' of peoples. Second, despite use of terms like 'peoples' and 'national,' Wilson spoke in regional terms in commenting upon the role of the principle in securing a peace treaty at the Paris Peace Conference of 1919:

... the principle underlying the treaty was that every land belonged to the native stock that lived in it, and that nobody had the right to dictate either the form of government or the control of territory to those people who were born and bred and had their lives and happiness to make there. (Wilson, 1927, vol. II, p. 49)

If we underline the phrases 'the native stock that lived in it' and 'born and bred,' then the principle is that self-determination must be accorded to the inhabitants of territories under discussion. The 'territories' he was speaking about were those that are 'unsettled' by

recent conflict or 'newly liberated' from foreign domination, and the very occurrence of the phrase 'by the people immediately concerned' suggested a regional democratic emphasis rather than a national or cultural one. It was regional concerns that prevailed in the Paris Peace Conference, and the applicability of the principle of self-determination was contested in certain 'unsettled' regions, e.g., Alsace-Lorraine, Upper Silesia, and Palestine, because of nationalistic pressures. Again, after World War II, it was in circumstances occasioned by international conflict and colonial breakup that the paradigmatic applications of the principle occurred, often oblivious to various national and tribal distributions (Umozurike, 1972, p. 14; Espiell, 1980, pp. 46–8). Thus, the historical record does not substantiate the common perception that Wilson had national self-determination in mind, but suggests, instead, that a regional criterion was foremost in his thinking.

Here, then, is one way of demarcating the remaining class of beneficiaries along regional lines. The key is to define the relevant regions and populations in political terms. There are two types of exceptional beneficiaries. In the first, self-determination applies to the populations of politically defined regions that are *unsettled*, namely, regions where issues of sovereignty and the nature of the governing political, economic, social, and cultural institutions are as yet unresolved. Such regions include those that (i) were formerly dominated by another community but are currently free from that domination, due to wars or decolonialization; (ii) are currently under some form of internationally sanctioned trusteeship; (iii) have been accorded the right of secession by a larger state of which it is presently a part or (iv) are presently under the control of an illegitimate state. The legitimate residents of such territories have a right to be self-determining in those territories, though they might choose to exercise that self-determination in different ways, for example, by becoming an independent state, merging with a neighboring state, or dissolving into separate states.¹⁰

This way of describing exceptional beneficiaries of the right of self-determination does not address the concerns of those who are anxious to press secessionist demands but do not meet any of the conditions, i–iv, for unsettled regions. Of course, a mere demand does not create a right to secession, especially if secession would violate the self-determination rights of existing legitimate states, as Buchanan (1991, 1997b) has persuasively argued. But when the existing sovereign is unable to protect the rights of a given population under its control, for example, through weakness or negligence, or, it threatens those rights through severe discrimination, persecution, or other forms

of injustice, then the region may be classified as *endangered* and its inhabitants constitute the second type of exceptional beneficiaries. Their right of self-determination is a prerogative of a population to take steps to protect the human rights of its members, steps that may go beyond the measures of political and legal redress allowed within that state. This right derives from the right of individuals to appeal to collectives to which they belong, and whose other members might face similar abuse, to take collective action in the defense of individual rights. When the collective is regionally defined, then it may decide, on behalf of its members, to seek (i) political independence in the form of a politically autonomous region within the state or as a separate state, (ii) political dissolution into smaller states, or (iii) political merger with another state. Unlike the right of populations in unsettled territories, this right is not absolute or unconditional; its exercise gains legitimacy only when there is a clear and present danger to the human rights of its members.

Combining these two considerations—that of endangered regions under an ineffective or threatening sovereign and that of unsettled regions under no present sovereignty or under some form of trusteeship—we obtain a general description of a right of self-determination for exceptional beneficiaries understood in regional terms:

Self-determination of exceptional beneficiaries: The legitimate residents of an unsettled or endangered region have a right to determine their political future either by constituting themselves as an autonomous political unit, or by merging with another state, or by dissolving into smaller states.

In the case of endangered regions, merger and dissolution would imply secession from an existing state, though political independence falling short of strict sovereignty would not. Secession is not the issue in the case of unsettled regions.

Once again, this right of self-determination is derivative from individual human rights, both the right of political participation and other human rights whose observance and protection is recognized within international law. Moreover, since human rights are the chief moral constraints upon the exercise of governmental authority, the exercise of self-determination in troubled regions is justified to the extent that it complies with these constraints.¹¹ Thus, the right of self-determination is never a *carte blanche* for majorities to establish objectionable forms of discrimination and, therefore, it is not the sole or overriding norm relevant to decisions concerning the political status

of disputed territories. For example, a community has no overriding right to constitute itself as a slave-holding society; other societies have the right to intervene to stop the practice in the interest of protecting human rights (see Emerson, 1971, pp. 466–7; Umozurike, 1972, p. 192; Pomerance, 1984, pp. 332–7; Etzioni, 1992–3, p. 34). Respect for individual human rights is one of the most essential features of the liberal democratic philosophy that has been developed over the past four centuries, and, as John Stuart Mill pointed out (*On Liberty*), such respect means protection from the ‘tyranny of the majority’ as much as from the intrusion of government. No matter how vigorously a community presses its bid for autonomy or self-rule, both its justification and its limitations are rooted in those human rights that have emerged in the developing system of international justice.

The three rights of self-determination present a philosophical interpretation of what the principle of self-determination calls for. The questions with which we began are now answered: self-determination is a matter of right to self-governance on the part of (i) existing states, (ii) the legitimate residents of politically independent territories, and (iii) the legitimate residents of unsettled or endangered regions. The philosophical and historical considerations raised above give reason why these rights should be recognized as norms governing international relations. This said, it remains that a right of self-determination cannot be appealed to in establishing objectionable forms of discrimination and, therefore, it is neither the sole nor the overriding normative principle relevant to international order (Emerson, 1971, pp. 466–7; Umozurike, 1972).

5. An argument for a right of national self-determination

Can a case be made for an additional right of national self-determination within a viable framework of international justice? The traditional nationalist argument for the existence of a nation-state, say, in Fichte’s famous ‘Address to the German Nation,’ derives from the importance of survival and protection of national cultures. But in recent years, an additional consideration has been made that appeals directly to the rights of individuals to enjoy the fruits of membership in national cultures, and it is for this reason that national cultures are worth preserving. So understood, arguments for national self-determination can be given that are also based on the human rights of individuals.

I have already cited the conventional skepticism about a blanket right of all national groups to strict self-determination. Since different

national groups and subgroups are interspersed throughout nearly every region, however small—the ‘Russian doll phenomenon’ (Tamir, 1993, p. 158)—then any attempt to accommodate the world’s 5000 or so national groups through the principle ‘a state for every nation’ would lead either to massive population shifts or to a series of smaller and smaller states to satisfy the demands of each national group that dominates a given sub region. Moreover, as Alan Buchanan (1991, pp. 22–80, 151–62) has argued, such a program would conflict with the self-determination rights of standard beneficiaries, specifically, the principle of territorial integrity—one component of the right of self-determination for existing states. This being said, the question is open whether a national construal of exceptional beneficiaries might not replace, or be added to, the foregoing regional demarcation.

Several writers have stressed that every individual has a moral right to determine for himself or herself the sort of person he or she wants to be, in particular, to identify with certain cultural traditions. This is so because having a cultural identity is a vital human interest worth preserving (Tamir, 1991, 1993; Moore, 2001). There is a public dimension to this right; individuals need not conceal the national self-identification they have a right to possess, but, instead, are entitled to express it publicly in order to reinforce it, enjoy its full benefits, and receive recognition for who they are. In turn, each of these requires being allowed to participate publicly in the cultural life of one’s nation within a ‘shared public space’ (Tamir, 1993, p. 73). Moreover, an individual’s public expression of cultural identity is best protected when the cultural group or nation to which the individual belongs enjoys a sufficiently high degree of cultural autonomy, that is, when the members of that group have as much freedom from external interference as possible to develop their cultural life. Accordingly, from the right of an individual to seek, develop, express, and enjoy a cultural identity, we derive a right to seek participation in a culturally autonomous group with which he or she identifies.¹²

Since the very existence of culturally autonomous groups is the product of coordinated collective efforts, and since an individual’s enjoyment of a moral right of participation in a culturally autonomous group implies some such collective efforts, then such efforts are themselves morally legitimate. Thus, the developing and sustaining an autonomous culture is itself a moral right of culturally defined collectives. Whether this right is reducible to the rights of individuals within that group is a distinct matter; the point is that the normative status of the group’s collective effort is based on the rightness of individual

actions. As with any right, correlative duties are imposed upon other agents, whether individuals, groups, or states, to respect and tolerate a group's seeking and exercising cultural autonomy.

Turning to the political dimension, Margalit and Raz (1990) have argued that since there is value to membership in a national or 'self-encompassing' group, including participation in the political activities of that group, then there is an inherent value in that group's being self-governing (Chen, 1976; Margalit & Raz, 1990, p. 451; Khatchadourian, 2000, chap. 2). As Yael Tamir (1993) stresses, this is not an argument for strict self-determination or sovereignty, but it is the basis for urging, at least, a limited political autonomy sufficient for achieving and sustaining cultural autonomy. That is, the likelihood of a national group's sustaining an autonomous culture and in achieving prosperity, self-respect, and respect from other nations is greatly increased when that nation has adequate political autonomy within the region to which it has the best claim. Will Kymlicka adds that this consideration is especially important when the group's self-esteem had previously been damaged (Kymlicka, 1989, chaps. 9, 10). So, given that a group has a right to seek and sustain cultural autonomy and that cultural autonomy is best achieved and preserved when that group has political autonomy, then the group has the right to adequate political autonomy within the region to which it has the best claim. Again, having a right of political autonomy is not unconditional or overriding, and within the present order of existing states, it is not necessarily a right of sovereignty. Culturally demarcated groups have been able to achieve degrees of local political autonomy, for example, the Inuit people of Canada, even if it falls short of complete political independence.

Establishing a claim for strict self-determination—territorial sovereignty—is the last step in the argumentation. The substantial claim is the familiar nationalist principle that in some cases a national group's cultural autonomy is endangered unless it possesses sovereign power. This can occur if external agents wish to subordinate that group's culture or even eliminate it and have the resources to do so because existing sovereigns are either unwilling or unable to protect the group. Let us call this an *existential threat* to the group's culture. In that case, the political autonomy sufficient for a national group's maintenance of its culture would involve control over the mechanisms for its own protection, specifically, over the police and the military, and this requires territorial sovereignty. If it had no right to establish sovereign political control over its own future and no right to develop and maintain effective means of protection, then the demand that other national and political

groups 'tolerate' them is likely to be ineffective since intolerance would have little political price (Moore, 2001). The more political control the better, that is, when a national culture is under an existential threat, then the adequate political autonomy needed by the national group to achieve and maintain cultural autonomy and, thereby, preserve its culture, is territorial sovereignty in the region to which it has the best claim.

It follows that when a national culture is under an existential threat then the group's right to political autonomy, sufficient to turn back that threat, is a right to territorial sovereignty in the region to which it has the best claim. Here, by 'best claim' is meant a better claim than any competitors. Margalit and Raz place further conditions upon a national group qualifying for strict self-determination, namely, that independence can only be justified when that group (i) forms a substantial majority in the territory in question, (ii) the new state is likely to respect the fundamental interests of its inhabitants, and (iii) that measures are adopted to prevent its creation from gravely damaging the just interests of other countries (Margalit & Raz, 1990, p. 457).

This argument is no justification of the blanket nationalist principle, 'a state for every nation,' for the condition of a severe existential threat is crucial. Similarly, there may be national groups that cannot claim any territory as their own, or, at least, to which they do not have a 'best' claim. Thus, a national group's right to have sovereignty over its territory is not intended to satisfy the demand that each nation possesses territorial sovereignty, but only that there are cases where the right of self-determination can reasonably be interpreted in nationalistic terms.

6. A response to this argument

That there is an inherent value in national self-determination cannot be disputed, but whenever we consider a proposed practical principle, we distinguish what it might yield if people were perfectly impartial from what it is likely to produce in practice. By definition, a nation-state is constituted for the sake of a specific national group, and inevitably, its institutions, laws, and policies reflect the culture and interests of that people. Here is where the dangers lie; since few areas of the world are culturally homogenous, and since human beings are unlikely to abandon the habit of identifying with groups to which other collectives are unfavorably compared, then the *de jure* favoring of one group's

cultural values is bound to be feared and resented by other groups who see it as a threat to their interests.

Let us develop these reflections in examining the nationalist argument. Everything flows smoothly up through the claim that a cultural group has a right to achieve and sustain cultural autonomy, but problems emerge with the subsequent inferences to a right of sovereignty. First, a blanket right to national self-determination would generate inconsistent demands for sovereignty in culturally heterogeneous regions. Within them, there is always cultural competition and a fear of culturally based discrimination, for when one group within such a region makes a bid for national self-determination, other groups become fearful. By the logic of the nationalist argument, they have the prerogative of raising their own claims for self-determination. But, plainly, not all these conflicting claims could be satisfied. For this reason, even if political autonomy enhances a national group's cultural autonomy, it does not follow that it has a right to political autonomy, and even less that it has a right to sovereignty.

Second, a state that institutionalizes the values of a particular culture and not those of others invokes the dual risk of intolerance and officially sanctioned discrimination within any culturally diverse region. Even if assurances are given to protect the human rights of cultural minorities, international law has not evolved to the point where there are reliable mechanisms to ensure such protection. Those individuals who are outside the favored group are in real threat of being disenfranchised or, at least, discriminated against in the distribution of benefits and privileges. For this reason, a national state can easily become non-democratic and non-representative by undermining equality and threatening the exercise of other individual rights.¹³ We see this happening even when the state prides itself on its supposed democratic character. Israel, for example, proclaims in its Declaration of Independence that the state 'will uphold the full social and political equality of all its citizens without distinction of religion, race, or sex.' But Israel remains a *Jewish* state—by law it is a state *of* the Jewish people—even though nearly 20 percent of its citizens are non-Jews. Its official symbols are Jewish religious symbols, and statutes governing land ownership and the Law of Return explicitly favor Jews over non-Jews.¹⁴ Successive Israeli governments have discriminated against Arabs in areas of education, municipal funding, and economic development (Jiryis, 1976; Lustick, 1980). The concern for keeping the state predominately Jewish is the primary reason why it has not annexed the West Bank, with the result that the Arab population in that area have been subject to four decades of a debilitating military

occupation. Democratic safeguards prove hollow if a majority supports the notion that the state exists for the sake of a single national group.

Third, almost a century ago, Lord Acton pointed out that a multinational pluralistic state affords the best protection for the liberty of individuals, including their freedom of cultural expression because different cultural groups provide a system of checks and balances upon the political ambitions of the others, and will jointly act as a deterrent for excessive governmental intervention and the institutionalization of culturally specific values (Acton, 1967). Moreover, a state is more stable when it pursues the common good, that is, if 'it gives all its citizens a political stake in its stability and can count on their collective pride and gratitude' (Parekh, 1999, p. 321). If a group is treated unfairly, its allegiances to the country are damaged and potential sources of dissent and weakness emerge within the body politic. Infusing politics with competing nationalist ambitions is the surest way to divide people along national lines, and adding this layer of competition can poison relations among these individuals and groups in both the political and social arenas. Tolerance and respect for cultural diversity are better promoted if nationality is kept from having any legal or political status for, typically, groups have discriminated unfairly against each other when politics is influenced by nationalistic sentiment and one group finds itself with an upper hand politically. The more that laws and institutions abstract from cultural, ethnic, and religious identifications, the greater the assurance that nationality of another poses no threat and that the state apparatus will protect individual rights regardless of national organs. There is no reason why cultures cannot flourish under the mantle of state neutrality and freedom from fear of subordination. Cultural diversity does exist and flourish within some pluralistic states. The chances of officially sanctioned cultural suppression are lowered in the truly liberal democratic state, yet raised significantly when nationalist sentiments are at their strongest.

Fourth, to divide cultural groups into separate states will generate new interstate political rivalries. The threat of national determination to world peace must also be considered, not only because a proliferation of claims for self-determination threatens world order, but because the call for national self-determination has often been coupled with nationalistic chauvinism, persecution of minorities, ethnic cleansing (Petrovic, 1994), and interstate belligerency, for example, with Nazi Germany during World War II and, recently, in the Balkans.¹⁵ In today's world, there is an increasing need for individuals to identify themselves as members of the global community, to work for the

common interest, and to recognize that the world and its resources belong to peoples of diverse cultural backgrounds. Too frequently, the demand for national allegiance is exclusivist, pointing an individual in an opposite direction, threatening both the prospects for global cooperation and the very existence of weaker national groups.

Fifth, the marriage of government to culture also threatens to inhibit the freedom of individuals within that culture who might choose alternative expressions of that culture or seek alternative sources of identity. This danger is nicely expressed in a passage from James Joyce's *Portrait of an Artist as a Young Man*:

The soul is born, he said vaguely, first in those moments I told you of. It has a slow and dark birth, more mysterious than the birth of the body. When the soul of a man is born in this country there are nets flung at it to hold it back from flight. You talk to me of nationality, language, religion. I shall try to fly by those nets.¹⁶

The principal human rights agreements that emphasize the importance of individual liberty call for limits upon social as well as state intervention. Participation in the cultural life of a nation can limit freedom, as does participation in almost any social endeavor. This is not to speak against such participation, obviously, but to insist that it be as voluntary as possible, and this is further reason to limit the legal authority of purely cultural institutions.

In sum, there is an alternative for protecting cultures and achieving cultural autonomy, namely, democratic pluralistic states with constitutional guarantees for the protection of human rights—constitutions that abstract from culturally specific values. It is through observance of such a legal framework that national groups as well as individuals stand to receive their best protection. If adhered to then even though a right to national self-determination might seem appropriate, for example, when the nation in question is an overwhelming majority, national sovereignty is not only dangerous but unnecessary. When such a constitutional safeguard is lacking, then any existential threat to a national group might call for drastic protective action in the form of international sanctions, humanitarian intervention, or, if feasible, regional secession. The principle of self-determination, therefore, is not to be interpreted as giving a collective a right to sovereignty *qua* national group; to do so is to threaten the autonomy of cultural minorities, the rights of individuals, and interstate harmony. The argument that attempts to generate

a national group's right to sovereignty from the importance of cultural identification and cultural expression is a *non-sequitur*.

7. The mandate for Palestine, 1917–47

In 1917–18, combined British and Arab forces ended over 400 years of Turkish administration in various parts of the Arab world, including Palestine. The nationalities in these territories, stated Wilson in his famous 'Fourteen Points' speech of January 1917, 'should be assured an undoubted security of life and an absolutely unmolested opportunity of autonomous development.' Yet nothing of the sort took place in the Near East; in the aftermath of World War I, the newly formed League of Nations placed much of the region under mandatory rule by the British and French, Palestine going to the British. The terms of the Palestine Mandate typified the extent to which the international community has been willing to consistently ignore the rights of self-determination for the past eighty years.

At the end of World War I, there was uncertainty in Western capitals about the precise borders of historic Palestine. It was generally agreed that the region extended at least to the Mediterranean on the west, the Jordan River on the east, the southern Golan Heights in the northeast, and the Negev and Sinai deserts in the south, but there was dispute concerning the northern and eastern borders, fueled partly by Zionist aspirations.¹⁷ The area today referred to as 'Palestine' is that classified as such by the terms of the League of Nations Mandate for Palestine granted to the British in 1922. There were approximately 750,000 inhabitants in that region by 1922, with Jews constituting 11.4 percent of the population. Ownership of approximately half of the land was in private Arab hands, 2.6 percent was privately owned by Jews, while the remainder was state property under the Ottoman law, though much of it had been farmed by generations of Arab villagers.¹⁸

By Wilson's principle, Palestine, either in itself or as part of a larger geographical unit, was a region to which the principle of self-determination should have been applied. Yet, despite Arab expectations, this never occurred. Political decisions by the great powers, notably, the British Government in 1917 and the American Administration in 1946, were in the interests of Zionism and eventuated in actions taken by international bodies that entailed a denial of self-determination in Palestine (Cattan, 1976; Bassiouni, 1978; Mallison & Mallison, 1986; Quigley, 1990). The Balfour Declaration (see Introduction) promised Palestine—a land which had been peopled by an Arab majority for centuries—to the Jewish

people, not to the established Jewish minority in Palestine, but to the Jewish people *per se*. Although it did not define the crucial phrases 'civil and religious rights' and 'political status,' it is significant that the document contrasted civil rights with political status while avoiding reference to the political status of Palestinian Arabs, viz., the 'non-Jewish communities' which comprised the substantial majority of inhabitants.¹⁹

The principle of self-determination was explicitly ignored by the British Government at this time; it had no intention of granting the largest segment of Palestine's inhabitants the right to participate in the making of a decision which was to have a monumental impact upon their future. They were not consulted; no referendum, no plebiscite, was ever held, no approval from Palestinian representatives ever secured. From the outset, the Palestinians repeatedly voiced their opposition to the provisions of the Balfour Declaration, and the governments of both Great Britain and the United States were apprised of Arab opposition (Khalidi, 1971, pp. 213–21). In reporting to the Paris Peace Conference on August 28, 1919, Wilson's King-Crane Commission expressed concern about the future of Palestine, claiming that if the principle of self-determination is to rule,

...then it is to be remembered that the non-Jewish population of Palestine—nearly 9/10 of the whole—are emphatically against the entire Zionist Programme. The tables show that there was no one thing upon which the population of Palestine was more agreed than upon this. To subject a people so minded to unlimited Jewish immigration, and to steady financial and social pressure to surrender the land, would be a gross violation of the principle just quoted, and of the people's rights, though it kept within the forms of law.

The commissioners also noted that none of the British officers consulted felt that a Jewish National Home could not be established except by the force of arms, and, citing Article 22 of the League of Nations Covenant, that the inhabitants preferred that the mandate for all of Syria, including Palestine, go to the United States.²⁰

The recommendations of the King-Crane Commission fell on deaf ears. They became no part of the policy of either the United States or Great Britain, and they were ignored by the League of Nations committees which drew up the terms of the mandates for the Near East. In March 1919, and again in April 1919, Wilson reiterated his earlier approval (October 1917) of the Balfour Declaration (Lilienthal, 1982, p. 30; Heckscher, 1991, p. 340) and in 1922 the U.S. Congress concurred

(Stone, 1981, pp. 151–2). Wilson was apparently not pressed upon the apparent conflict of this vision with his principle of self-determination (Lansing, 1921, pp. 104–5; Khalidi, 1971, p. xxxii), and the British took the view that he fully supported Zionism (Lloyd-George, 1939, pp. 734–5). The British Government had already ruled out settlement of the Palestine question by appeal to the principle of self-determination. Lord Balfour was particularly blunt:

...in Palestine we do not propose even to go through the form of consulting the wishes of the present inhabitants of the country... The Four Great Powers are committed to Zionism. And Zionism, be it right or wrong, good or bad, is rooted in age long traditions, in present needs, in future hopes, of far profounder import than the desires and prejudices of the 700,000 Arabs who now inhabit that ancient land. (Khalidi, 1971, p. 208)

An official memorandum of the British Foreign Office Department at the time to the British Cabinet contained an equally explicit suspension of the principle:

The problem of Palestine cannot be exclusively solved on the principle of self-determination, because there is one element in the population – the Jews – which, for historical and religious reasons, is entitled to a greater influence than would be given to it if numbers were the sole test. (Lloyd-George, 1939, p. 750)

These statements underscore the regional interpretation of the Wilsonian principle and proclaim Britain's willingness to ignore that principle. No mention of self-determination was made in the terms of the Mandate for Palestine and, against the wishes of the Arab majority, the gates of Palestine were opened to Jewish immigration so that the percentage of Jews had climbed from less than ten percent in 1918, to 11.4 percent by 1922, to 17 percent by 1931 and to 28 percent by 1936 (see note 2 of Introduction). Even at the height of World War II in 1942, Winston Churchill, echoing the sentiments of Balfour and Lloyd George, expressed concern about the self-determination clause of the Atlantic Charter since it might obstruct Zionist settlement in Palestine (letter to President Franklin Roosevelt, quoted in Khalidi, 1971, p. 49).

At the end of 1946, Jews constituted almost one-third of the Palestine's population of approximately 1.9 million people—'by the might of England, against the will of the people' (Toynbee, 1954, p. 306). The

majority of Jews had immigrated since 1919, yet only in the district around the city of Tel Aviv did Jewish numbers exceed that of the Arabs. Most of the land was privately owned by Arabs, save in the southern desert region. Jews had acquired roughly six percent of mandated territory, though their percentage was higher in the agricultural areas along the coast and in the Galilee (W. Khalidi, 1997, pp. 12–3). By 1947, despite explicit assurances from Zionist leaders like Weizmann that Jews had no intention of turning the Arabs out of their homes and land, Zionist political rhetoric in the streets and exclusivist policies on Jewish-owned land revealed other intentions.

For their part, the Palestinian Arabs requested the establishment of a democratically elected legislative council and the eventual establishment of an independent Arab state.²¹ In 1937, the British Peel Commission, noting that turning Palestine into a Jewish state would mean withholding self-determination from the majority, indicated that the Arabs wished ‘to emulate their successful fellow nationalists in those countries just across their northern and southern borders’ (*Palestine Royal Commission Report*, London, 1937, p. 94). Committed to the terms of the Mandate, the British Government rejected the Peel Commission’s recommendation of partition as impractical. Only after the Arabs resorted to armed insurrection in 1936–39 did Britain finally change its policy. In the 1939 MacDonald White Paper, the Government renounced the Balfour Declaration, restricted further Jewish immigration, and advocated establishment of a singular secular state throughout Palestine in which Arabs and Jews would share authority in government (Khalidi, 1971, pp. 461–75; Khalidi, 2006, pp. xx–xxi). This met with approval among many Arabs (though not all), but was angrily rejected by the Zionist movement (Laqueur, 1976, pp. 76–7; Gal, 1991; Hirst, 2003, pp. 220–1).

With the onset of the World War II, Zionists shifted their diplomatic efforts to the United States. In August 1946, they secured their the most significant political victory since the Balfour Declaration as President Truman endorsed Zionist proposals, setting in motion American diplomatic efforts to secure a partition of Palestine into a Jewish and an Arab state (Khalidi, 1971, p. lxiv). In the meantime, the political situation in Palestine had grown more intense. With greater international sympathy for the establishment of a Jewish state and increased demands for Palestine to be opened to Jewish immigration, British authorities came into direct conflict with Jewish underground militias, the Irgun Z’vai Le’umi and Lehi groups. Assassination, hangings, and bombings—the most spectacular of which was the

Irgun's demolition of British headquarters in 1946—marked the conflict. Britain responded by applying a stringent set of Defense Laws, initially devised to counter the Arab Revolt, and accusing the Jewish Agency of condoning terrorism. Opposition of Palestinian Arabs to Zionism remained as strong as ever, their hopes lifted by the 1945 formation of the Arab League which supported their aspirations. However, the Palestinian militia had been largely disarmed by the British during the 1936–39 revolt, Palestinian leadership was fragmented, and a leading spokesman, the exiled Al-Hajj Amin Husseini, had discredited himself by backing Germany during the war—though Palestinians leaders had generally favored Britain (Najjar, 2003; date of access: January 15, 2007). The Palestinians were decidedly less successful than the Jewish Community in preparing for future conflict.

8. The debate at the United Nations

In May 1946, an Anglo-American Committee of Inquiry recommended that until Arab–Jewish hostility diminishes, the government of Palestine should be continued under mandate pending execution of a UN-sponsored trusteeship agreement. It added that Palestine should be neither a Jewish nor an Arab state, a recommendation that satisfied neither party. When the Truman Administration renewed calls for immediate immigration of 100,000 Jewish refugees into Palestine, Britain, exhausted by war and frustrated by opposition, announced it would end its administration of Palestine by May 1948. Foreign Secretary Ernst Bevin declared that there was no prospect for compromise between the two communities. In 1947, the problem of Palestine was taken up by the United Nations which created a special committee (UNSCOP) to make recommendations to the General Assembly. A number of arguments were heard that continue to be relevant to on-going normative debates and are worth rehearsing.

The Zionists advanced a number of considerations in favor of a Jewish state. The argument from 'historical connection,' mentioned above, was reiterated, but now additional factors were relevant. Of central importance was the Zionist contention that the Palestine Mandate constituted legal recognition of Jewish national rights in Palestine: 'The Balfour Declaration became a binding and unchallengeable international obligation from the moment when it was embodied in the Palestine Mandate' (Feinberg, 1974, pp. 75–6; Feinberg, 1979, p. 242). This 'right' to establish a 'national home' in Palestine, the Zionists argued, was preserved by the UN Charter whose Article 80 stipulates

nothing be done to alter the rights 'of any states or any peoples' in territories currently under mandate. Hence, the world community is obligated to honor the commitments of the Mandate. Weizmann added a balance of justice argument. While both Arabs and Jews have a legitimate claim to Palestine, in depriving the Jews of a state you deprive all the world's Jews of independence and nationhood, whereas in refusing to create an Arab state in Palestine you do not deprive all Arabs of political independence. According to N. Feinberg (1970, p. 53), this reasoning 'turned the scale in favour of the Zionist solution of the Palestine Problem,' for the minute territorial allocation that a Jewish state entailed would not be a hardship placed upon Arabs in the context of the Arab Middle East. Moshe Shertok (Sharett) added that its Arab citizens would not only retain their association with the Arab world but would enjoy the rights of citizenship in a Jewish commonwealth as 'there is nothing inherent in the nature of either the native Arab or the immigrant Jew which prevents friendly cooperation' (Robinson, 1947, p. 213). When the Arab claim is weighed against the international promises to Jews, the achievements of 50 years of Jewish settlement, recurrent anti-Semitism, and the current plight of Jewish refugees, then the route of least injustice favors establishment of a Jewish state.²²

But an older argument resurfaced with greater weight than ever before. The Nazi persecution of the Jews strengthened the moral case for the Zionist insistence that as perpetual outsiders without sovereign power of their own, the survival of the Jews will continually be under threat. 'Hitler is gone now,' argued Shertok 'but not anti-Semitism... Anti-Semitism in Germany and in many other parts of Europe is a rife as ever and potentially militant and fierce.... The very age of European Jewry serves only to accentuate the basic historic insecurity of Jewish life in the dispersion' (Robinson, 1947, p. 212). Since it is a matter of 'life or death' that Jews be allowed into Palestine (Jewish Agency for Palestine, 1947, p. 514), and since the Jewish community there has proved itself capable of political and economic independence, then Palestine is the natural place for a sovereign Jewish state. This state would be able to absorb an influx of some 400,000 Jewish refugees from Europe and soon become a 'pillar of progress in the Near East' (Robinson, 1947, p. 214).²³

For their part, the Arabs repeated that no credibility can be given to the argument for historical title on the basis on distant historical connection. Aside from the statue of limitations consideration, most modern day Jews cannot claim descent from the Jews of biblical times and, hence, have not inherited a claim from those who were previously dispossessed.²⁴ Before the General Assembly, Arabs like Henry Cattan

(Palestine), Faris al-Khouri (Syria), and Fadhil Jamali (Iraq) argued that appealing to historical connection in settling international issues,

... would mean redrawing the map of the whole world. It has been said you cannot set back the hands of the clock of history by twenty years. What should then be said when an effort is made to set the clock of history back by twenty centuries in an attempt to give away a country on the grounds of a transitory historic association? (Robinson, 1947, p. 227)

If historical connection is relevant at all, it is certainly the Arabs who have the stronger case since they have been the established majority in Palestine during the more recent centuries. No amount of propaganda, said Cattani, can alter the Arab character of Palestine's history and culture. Arabs have done the greater part in developing the land, establishing its citrus and olive groves, and building its terraces, its villages, its cities. The assumption that they had let its land lay fallow and the country undeveloped is as much a distortion as the earlier myth that the land was 'empty.' Even if Jews have done well with the sectors they own, the argument that development grants title could be used to justify any aggression of a technologically advanced society against a more 'backward' people.

As for the lesser injustice, while it may be true that Jewish refugees need a home, this is not to be granted at the expense of those who were not responsible for Nazi actions. That the refugees be settled in Palestine against the wishes of Arab residents would be an injustice to the majority and a violation of a 1946 General Assembly resolution concerning resettlement of displaced persons. In measuring the injustice of alternative proposals, Arabs would stand to lose more by creation of a Jewish state since they outnumber Jews by two-to-one and hold the bulk of its property. The 1919 King-Crane commission had correctly predicted that the pressures of Jewish capital would result in the displacement of many poorer Arabs, while others would find economic and political opportunities blocked. 'No room can be made in Palestine for a second nation,' concluded Albert Hourani in 1946, 'except by dislodging or exterminating the first' (Smith, 1996, p. 130). Not only would Palestinian Arabs be affected; the Anglo-American Committee emphasized that a Jewish state in Palestine would give a non-Arab power control of the only land bridge between the western and eastern halves of the Arab world, disrupting the latter's communications and territorial unity.²⁵

The most significant argument of the Arabs appealed directly to the principle of self-determination. Sovereignty is an inalienable possession of the inhabitants of a territory and a Trusteeship only temporarily suspends its exercise (Cattan, 1969, pp. 252–3). The ‘commitments’ and ‘guarantees’ of the Balfour Declaration and Palestine Mandate cannot override the rights of the indigenous Palestinian inhabitants which derive from more fundamental principles. Neither Great Britain nor the League of Nations had any moral authority to ‘give’ Palestine to a non-indigenous group and thereby deprive the original inhabitants of their right to exercise self-determination therein. In 1946, Akram Zuaiter, a prominent Palestinian politician, appealed to self-determination as a moral principle, insisting that Palestinians have a ‘natural right’ to self-governance that is not dependent upon the promises of the British, the Americans, or international bodies (Zuaiter, 1994, p. 272). The philosopher W. T. Stace argued in the same vein: self-determination provides ‘the only “abstract” or “moral” principle which is needed for the adjudication of the Palestine controversy,’ and it ‘will not be outdated a year from now or in fifty years’ (Stace, 1947, p. 83). It is ‘aggression’ for an external agent to neglect the wishes of the majority and their ‘natural right of self-determination’ in favor of an alternative arrangement. The Arab Higher Committee added that Jews legitimately entitled to reside in Palestine have every right to share in its self-determination, but,

...foreign residents of diverse nationalities, mostly of the Jewish faith, can under no legal or moral justification, be entitled to a say in the formation of this government...This, in short, is our legal position in Palestine. As the overwhelming majority, we possess the unquestionable right of sovereignty over the country. (1948, pp. 11–2)

Since Palestine’s legitimate residents opposed both the Balfour Declaration and the Mandate provisions from the very outset and have persisted in their opposition to the present day, then imposition of a Jewish state upon them would be an unmistakable denial of self-determination.

Yet, the appeal to self-determination was double-edged. At times, Ben-Gurion argued that the right of self-determination may be over-ridden (Jewish Agency for Palestine, 1947, p. 384), but other members of the Jewish Agency maintained that it is a misconception to view the Palestine Mandate as violating the principle of self-determination. Any beneficiary of self-determination must demonstrate itself to be a viable

political unit, and unlike the Arabs of Palestine, the Jews have been recognized by the international community as having achieved this status. Echoing earlier arguments of Jabotinsky (Shimoni, 1995, p. 367), the Agency contended that the right of self-determination should not be looked upon as applying to static populations alone, but as a mechanism for rectifying ancient wrongs and giving dispossessed peoples a share in the world's land and resources.

If there was justice in the general concept of self-determination, there was also justice in the particular expression of that concept in terms of the 'historic reparation' to Jewry. No man of liberal spirit could deny that it was justice long-delayed. Nor could he gainsay the right of his people to find its way once more into the society of nations.²⁶

The Zionist argument for self-determination can be summarized as follows: (i) Jews, as a people capable of political independence, meet the necessary and sufficient conditions for being a beneficiary of self-determination. (ii) The Zionist demand for a Jewish state can now more poignantly than ever given that Jews have once again been singled out for persecution. (iii) Palestine is the only territory to which Jews as such have historical, cultural, legal, and moral ties. (iv) Palestine is not the only area to which Arabs have such linkages (Gorny, 1987, pp. 213–4). (v) There is (in 1947) 'no identifiable Palestinian Arab people' who have emerged as a viable political unit with international recognition whose own national aspirations for independence would suffer upon creation of a Jewish state (Jewish Agency for Palestine, 1947, pp. 325, 384). Therefore, by the principle of self-determination, Jews are entitled to a sovereign state in Palestine.

Is this argument convincing? The first premise of the argument is plausible only on a principle of national self-determination, that is, only if a deserving beneficiary in Palestine is to be described in national or cultural terms. On a regional interpretation, the premise is false since self-determination is not a right of cultural groups but, instead, of resident populations. In Palestine in 1947, that right belonged to the entire community of legitimate residents and at that time the Jewish inhabitants of Palestine—barely one-third of the population at best—were not the exclusive beneficiary. In fact, the claim for regional self-determination in Palestine by the majority of Palestine's inhabitants had been strengthened during the period of the Mandate. In 1919, it was by no means clear that the inhabitants of Palestine were entitled to self-determination *qua* inhabitants of Palestine rather than

being part of a larger regional unit. The effect of the British Mandate was to isolate Palestine, keeping it under trusteeship while the rest of the Arab world gradually gained political independence. Since the vast majority of Palestine's population contested the Mandate's provisions, Palestine remained a paradigm case of an *unsettled* area for the next quarter century. If a regional interpretation of deserving beneficiaries is to be upheld, not only is the first premise false, but the argument is invalid due to the presence of a majority of Arabs who would have turned the vote against a Jewish state.

Yet, even if one insists upon a national reading of the exceptional beneficiaries, by 1947 the Arab inhabitants of Palestine had acquired 'national aspirations' of their own (Muslih, 1988; R. Khalidi, 1997) and were as capable of other Arabs of political independence. This discredits the fourth premise of the argument even if the logic of national self-determination is retained. Moreover, it renders the third premise inoperative, for Jews were not the only nationality with unique and distinctive claims to Palestine that they had to no other region. Given their longer and more recent presence in that land, the Palestinians had the stronger claim. Thus, in 1947, the proposal for making Palestine into a Jewish state could not be justified on either interpretation of the right of self-determination.

9. The partition resolution and its aftermath

In the autumn of 1947, UNSCOP issued both majority and minority recommendations. The minority proposal, claiming that the provisions of the Mandate were inconsistent with the League of Nations Covenant, called for a binational state. That proposal was rejected by both Arabs, who denied any parity between Arab and Jewish political claims, and by the Jewish Agency (the political arm of the Zionist movement in Palestine) which argued that a binational solution would result in constant political deadlock and reliance upon external parties (Jewish Agency for Palestine, 1947, pp. 130–5, 345, 549). The majority proposal recommended partition of Palestine into two states; a Jewish state on approximately 55.5 percent of the mandated territory and an Arab state on little more than 43 percent, with Jerusalem to be a *corpus separatum* under international administration (see Map A and Map B). Arabs would lose control of the rich coastal plain which produced their most valuable export, citrus fruit, as well as the interior plains, while the central highlands would be excluded from the Jewish state. Approximately 500,000 Jews would be within the boundaries of the

proposed Jewish along with 438,000 Arabs, excluding 71,000 Arabs in the Jaffa enclave that was to be surrounded by the Jewish state. In no administrative district did Jews own a majority of the land, and only in the Jaffa-Tel Aviv district did they constitute a majority of the population. Even though Jews owned but 5.8 percent of the land at the time, the majority of the land was to be incorporated into the Jewish state, including the most fertile lands along the coast and in the central plains (see landownership percentages in Khalidi, 1997, pp. 11–4).

The Jewish Agency accepted the Recommendation's provision for a Jewish state, though some Zionists rejected its partition of Palestine (Flapan, 1987, pp. 32–3). Arabs overwhelmingly rejected its provisions, arguing that the United Nations had no right to grant any portion of Arab territory to the Zionists, and that the Western world was unfairly making them pay for the suffering of Jews. Palestinian leaders urged that the legality of the plan be tested in the newly found International Court of Justice, but this never happened (Pappe, 2006a, p. 34). It was, at the time, unreasonable to expect Arabs to accept what they regarded as a 'grotesquely skewed misallocation' (Khalaf, 1991, pp. 245–6; Ball & Ball, 1992, p. 21; Pappe, 2006a, pp. 34–5) whereby the minority would acquire control over the bulk of the territory, and thus, implementing the plan would be a gross violation of the rights of the Arab majority in Palestine. While Great Britain abstained in the voting, the United States led the fight for approval, resorting to pressure diplomacy to secure the necessary votes (Khalidi, 1971, pp. 709–30). The plan was adopted by the General Assembly on November 29, 1947 as Resolution 181 (II) with a vote of 33 in favor, 13 against, and ten abstentions.

The immediate effects of the partition proposal were dramatic. After its passage of the proposal, there were no negotiations between the two communities in Palestine—neither Jew nor Arab would acknowledge the existence of the other (Cunningham, 1948, p. 481)—and fighting immediately broke out. By April 1948, the better equipped and more numerous Jewish forces established a clear superiority, securing their recommended allotment while capturing territory assigned to the proposed Arab state. Civilians on both sides were targeted, but massacres of Arab villagers by Jewish irregulars precipitated an exodus of some 300,000 Arabs from their homes and villages.

On May 15, the day after Israel declared its independence, forces from Egypt, Syria, Lebanon, Jordan, and Iraq entered the fighting. Despite population differences, Israelis placed more soldiers in the field and had the advantage of working in familiar terrain under unified control. UN-sponsored truces in the summer provided belligerents the opportunity

to re-arm, while the UN mediator, Count Folke Bernadotte of Sweden, recommended immediate repatriation of the Arab refugees as a condition for any just and lasting peace. His assassination in September by members of the Jewish underground was followed by renewed fighting in October which lasted until early 1949. When the last armistice was signed in July, the Israel Defense Forces (IDF) had taken approximately 78 percent of mandated Palestine, including the western part of Jerusalem and the Galilee. The remainder was occupied by Jordan (West Bank and East Jerusalem) and Egypt (Gaza Strip). Despite the fact that Resolution 181 called for a partition of Palestine into a Jewish state and an Arab state, Palestinian Arabs were not permitted to establish a state, neither in the portion of Palestine allotted to them in Resolution 181, nor in the remaining 22 percent of the territory that remained outside Israeli control.

At least 750,000 people—70 percent of the Palestinian Arab population—became refugees through flight or expulsion by Israeli forces.²⁷ The long-debated ‘transfer’ alternative (see Chapter 3, Section 3) had now become reality, and for Israeli Jews, it was the crucial opportunity for Judaizing the country. For the majority of Palestinian Arabs, the massive dislocation meant the loss of a homeland and destruction of a community: it was, quite simply, their Catastrophe (*al-Nakba*). A General Assembly Resolution 194 of 1948 stated that refugees ‘should be permitted to return to their homes and live at peace with their neighbors,’ and Bernadotte added: ‘It would be an offence against the principles of elemental justice if these innocent victims of the conflict were denied the right to return to their homes, while Jewish immigrants flow into Palestine’ (UN Doc Al 648, 1948). Chances for such peace in 1949 were lost when Israel refused Arab demands for withdrawal to the partition plan boundaries and return of refugees.²⁸

In the area that fell under its control, Israel destroyed hundreds of Palestinian villages—531 by some estimates (Pappe, 2006a, p. xiii). Vast stretches of Palestinian land—nearly one quarter of the territory of Israel—were expropriated under the Absentees’ Property Law (1950) which allowed the government to confiscate land vacated by owners after passage of the UN Partition Plan and transfer it to the control of the Jewish National Fund (Jiryis, 1981, pp. 83–7). Half the Palestinians who remained under Israeli control but were separated from their property as a result of hostilities were classified as ‘present absentees’ and lost their land in this fashion.

There can be little doubt that the political decisions of 1946–47 prohibited the legitimate residents of Palestine from exercising their

right of self-determination, for the majority opposed a Jewish state on any part of Palestine. Even if one favors a national interpretation, it is arguable that the Palestinian Arabs had the better claim in 1947 since they constituted a two-to-one majority, had developed a national consciousness (Muslih, 1988; Khalidi *et al.*, 1991), and had a firmer and more recent historical association with the territory than the Jews, most of whom had only recently immigrated. The claim that General Assembly Resolution 181 conformed to the principle of self-determination because it recommended a partition with both sides receiving sovereignty over a portion of Palestine ignores the fact that the wishes of the majority of the population in 1947 were opposed to that plan, regardless if that majority is defined regionally or nationally. Although the International Court of Justice declared in 1950 that the Assembly was the legally qualified successor to the League of Nations with a right to carry out supervisory functions over the mandated territories, it emphasized that mandates were created in the interests of the inhabitants of the mandated territory (Toynbee, 1961–62, pp. 10–11; Brownlie, 1990, p. 567). Lacking sovereignty over Palestine, and lacking even the power to convey sovereignty, the recommendations of the General Assembly concerning Palestine are not binding (Brownlie, 1990, pp. 172–3). Resolution 181, like the League of Nations Mandate before it, violated the principle of self-determination (Cattan, 1969, 1976; Bassiouni, 1978; Mallison & Mallison, 1986)—one of the few mechanisms for establishing states by law rather than force (Crawford, 1979, pp. 84–5). At the very least, adherence to that principle would have called for a referendum or plebiscite on the partition proposal by the entire population of legitimate residents (Kapitan, 1995).

One cannot rightly argue that the moral claims of the opposing sides balanced each other out, and that while one group did not receive its due the other side did. Justice is a global property of a system, whether that system is a society, a social or political institution, or a solution to an outstanding dispute. It is not a distributive property of the parts, and it cannot be partial, attending to the interests of one party alone while ignoring the remainder. Resolution 181 did not conform to the demands of justice by granting one side in the dispute over Palestine its 'due,' because so doing entailed that the other side would not receive its 'due.' Without the consent of the majority of inhabitants, this skewed allocation of benefits laid the groundwork for Middle East tensions that have endured to this day.²⁹

10. The expansion of Israel

The acceptance of partition does not commit us to renounce Transjordan. One does not demand from anybody to give up his vision. We shall accept a state in the boundaries fixed today—but the boundaries of Zionist aspirations are the concern of the Jewish people and no external factor will be able to limit them. David Ben-Gurion (Flapan, 1987, pp. 52–3)

The first century of the Israeli–Palestinian conflict was marked by explicit violations of the principle of self-determination. The same pattern has been perpetuated throughout the next six decades as well, despite negotiated agreements and the passage of numerous United Nations resolutions calling upon the world community to recognize the Palestinians' right to self-determination.³⁰

By contrast, in the years since Israel's declaration of statehood, the Jewish citizens of Israel have enjoyed a considerable measure of self-determination: they have constituted themselves as a nation-state with membership in the UN, they are self-governing in the territory controlled by that state, and they enjoy democratic rights of political participation. Similarly, the Palestinian Arabs who became citizens of Israel—now constituting almost 20 percent of Israelis—have gained rights of political participation and legal representation within the Israel political and legal systems. However, the Palestinians lack many of the privileges and benefits allowed to the Jewish majority, and their status as citizens is not as secure as that of Jews. By law, Israel is a state *of* the Jewish people, and on January 24, 2007, the Knesset passed a law allowing the Israeli government to revoke the citizenship of citizens considered unpatriotic to the Jewish state of Israel, a measure that the Israeli Attorney General called 'a drastic and extreme move' that harms civil liberties and that violates international law ('Jewish State Passes New Racist Law against Arab Israelis,' January 22, 2007, 'Israeli Knesset passes law to revoke citizenship of unpatriotic Israelis,' <http://www.palestinecampaign.org/archives.asp?xid=1878>; date of access: July 23, 2007).

Nothing approaching sovereignty was gained by a Palestinian community either inside or outside Israel. The refugees from the 1947 to 1949 war lost their land and homes and political rights in their homeland, and no Palestinians have been incorporated into a state governed by Palestinians. Some individual Palestinians gained political prominence in neighboring Jordan, and from 1967 to 1982, the PLO

exercised some measure of political power in selected regions of Jordan and Lebanon, but in neither case did this occur through the exercise of equal political participation or popular sovereignty. Despite the establishment of a Palestinian Authority in the occupied territories in 1993, Palestinians have been largely excluded from governing themselves apart from limited municipal control in their cities and villages.

During the 1967 war, the area under Israel's control expanded as the Gaza Strip, the Golan Heights, the West Bank, and East Jerusalem came under Israeli military occupation. The occupation of the West Bank and Gaza Strip ushered in a new era of restrictions upon the Palestinian residents of these areas and an ever-increasing loss of control over their own destiny. While Israel has justified its occupation in terms of security, it has effectively amounted to a series of steps towards Judaizing the entire territory of mandated Palestine. Some of the more apparent features of this occupation illustrate how it, thereby, constitutes a further denial of self-determination for Palestinians in their homeland:

- Confiscation of Palestinian land, both private and public. As of 2006, over half the land of the West Bank is directly controlled by Israel and reserved for exclusive Israeli use.
- Destruction of Palestinian private property (e.g., houses, business establishments, and trees).
- Establishment of Jewish settlements. Over 42 percent of the West Bank is part of the settlement network containing over 210,000 Jewish settlers with at least another 180,000 living on the outskirts of Jerusalem. The settlement network is served by an extensive road system that Arab residents are prohibited from using.
- Control over resources; Israel obtains one-third of its water from West Bank aquifers which also supplies its settlement network, while restricting the availability of water for Palestinian use.
- Restrictions on the Palestinian economy.
- Restrictions on movement by Palestinians within the territories.
- Human rights abuses in the form of extra-judicial killings, torture, deportations, collective punishment, and imprisonment without trial.
- Taxation without representation.
- Restrictions on Palestinians' rights to equal political participation in deciding upon the political and legal institutions and policies that determine their own future.³¹

The policies and practices that constitute Israel's occupation stand in direct violation of international humanitarian law, specifically, the Fourth Geneva Convention dealing with the rights of civilians in wartime, instituted to criminalize formally the sorts of crimes committed by the Nazis in occupied Europe. Israel has denied that the Convention applies to the occupied territories because the legal status of these 'disputed territories' is *sui generis* and Palestinian residents there are neither partners nor beneficiaries of the Geneva conventions (Hajjar, 2006, p. 26). Yet, its applicability to the Israeli-occupied territories has been repeatedly affirmed by all other states that have indicated a view on the matter (Quigley, 2005, p. 170) and by UN Security Council resolutions, for instance, 446 (1979), 465 (1980), and 1322 (2000).

With its extensive settlement network, its refusal to withdraw to the 1949 armistice lines, its hostile treatment of the Palestinian residents, and its reluctance to enter into meaningful negotiations with the Palestinians (see Chapter 3), Israel shows every intention in remaining in the West Bank. The real question is the extent of the territory it will attempt to incorporate into the Jewish state. One political faction has traditionally supported the Alon Plan which involves retention of up to 40 percent of the West Bank, while the other plan is to incorporate all the territory into Israel and work for the eventual 'transfer' of the Palestinians to locations outside the country, thereby completing the ethnic cleansing that began in 1948 (Reinhart, 2002, p. 197). But aside from ultimate intent, the net effect of Israeli occupation policies has been to perpetuate the systematical denial of the rights of self-determination belonging to the Palestinian residents of the territories.³²

11. The façade of self-determination

On November 15, 1988, by the Palestinian National Council, the legislative body of the PLO, prompted by the outbreak of the Intifada in the Occupied Territories, unilaterally declared a Palestinian state, an acceptance of the UN Partition Proposal, and a readiness to recognize the State of Israel. Ten years later, the PLO Central Council reaffirmed Arafat's earlier pledge to the American President Clinton that 'all of the provisions of the [PLO] Covenant which are inconsistent with the PLO commitment to recognize and live in peace side-by-side with Israel are no longer in effect.' (Abraham, 2006, pp. 120–1). In 1991, under American pressure, the two sides faced each other across the negotiating table, and the first tangible compact was the Declaration of Principles signed in Oslo in 1993, followed by subsidiary agreements

within the next five years. These agreements set forth a framework that to some observers, represented a genuine change in the opportunities for self-determination by Palestinians in the occupied territories. Palestinians were granted increased autonomy over their own local affairs, specifically, over the day to day matters of local government, economy, education, police, and so on. As Israeli troops were redeployed outside the Palestinian population centers, Palestinians gained direct control of 17.2 percent of West Bank and 60 percent of Gaza, and another 23 percent of West Bank fell under joint Israeli–Palestinian control. Most importantly, there was a call for a five-year period of negotiation on a final settlement.

The promise of progress towards a peaceful resolution of the conflict soon turned sour. The Oslo agreements of 1993 and 1995 guaranteed nothing concerning the removal of Israeli settlements, the establishment of a Palestinian state, or the return of Palestinian refugees. Israel, the stronger party, fully backed by an even stronger party, the United States, was able to determine how the Oslo principles were to be realized, if at all. It retained control over half the West Bank and a third of the Gaza Strip it had already confiscated, and during the years 1993–2000, it strengthened its settlement network, nearly doubling the number of settlers, expanding the road system connecting the settlements with each other and Israel, and approving the construction of new settlements outside Jerusalem. By controlling movement between the areas governed by the Palestinian Authority, Israel was able to restrict the movement of goods—in violation of the Oslo accords (Pappe, 2004, p. 246)—with the result that Palestinians’ freedom of movement, access to markets, and overall economy diminished significantly during these years (Roy, 2007, chaps. 5, 10, 15). The percentage of Palestinian living below the poverty line increased, and because a fewer number of Palestinians were allowed to work in Israel and the Palestinian work force grew, unemployment rates tripled. The gross domestic product in the territories declined while in all surrounding countries it increased. In effect, the Oslo Accords gave Palestinians in the territories limited control over their internal affairs while allowing the Israelis to consolidate their hold on the West Bank, expand their settlements, and stifle the Palestinian economy. As one observer put it, the ‘lasting legacy of the Oslo process is that far from advancing the two-state solution, it in fact laid the groundwork for the fragmentation of the occupied territories’ (Abunimah, 2006, p. 67).

It is significant that the Oslo Accords did not mention a right of self-determination for Palestinians. According to Shlomo Ben-Ami,

former foreign minister of Israel, neither Yitzhak Rabin nor Shimon Peres want a Palestinian state (Ben-Ami, 2006, p. 220), and Rabin 'never thought this will end in a full-fledged Palestinian state' (interview in *Democracy Now!* February 5, 2006). To use the words of Israeli Prime Minister Ehud Barak, the agreements were a recipe for Israeli establishment of a 'permanent neocolonial dependency' (Chomsky, 2003, p. 215).

In July 2000, U.S. President Clinton brought the two sides together at Camp David in an ill-prepared attempt to achieve a final agreement. According to some reports, Israel offered the Palestinians limited sovereignty in approximately 86 percent of the West Bank and Arab neighborhoods surrounding East Jerusalem, but insisted on keeping the major settlements in place and retaining security control over those settlements, the roads connecting them, and the borders (Swisher, 2004, pp. 318–9). In principle, this would mean that Israel would continue to control all movement in the territories to and from the regions under the limited Palestinian sovereignty. The Palestinians rejected that plan. While much of the English-speaking media declared that the Palestinians blew the very 'generous' Israeli offer, in truth, there was no way that the Palestinians could have accepted that plan, for the degree of control that Israel would have retained would have prohibited the establishment of a viable, contiguous Palestinian state. The West Bank territory that Israel insisted on annexing would completely surround East Jerusalem, effectively splitting the West Bank into two main cantons with access between them and to Jerusalem under Israeli control. Thus, the 'state' that Palestinians were offered would be characterized by,

- no territorial contiguity;
- no control of external borders;
- limited control of its own water resources;
- no full Israeli withdrawal from occupied territory as required by international law;
- no sovereignty over East Jerusalem;
- a right of Israeli forces to be deployed in the Palestinian state at short notice;
- the continued presence of fortified Israeli settlements and Jewish-only roads within the heart of the Palestinian state.

As John Mearsheimer wrote, 'it is hard to imagine the Palestinians accepting such a state. Certainly no other nation in the world has such

curtailed sovereignty.³³ President Clinton's assistant for Israeli–Arab affairs, Robert Malley, who was present at the talks, blamed Israeli Prime Minister Barak for the failure, claiming that 'Barak's tactics helped to ensure that the parties never got there' (Malley & Agha, 2001, Section 7). In an article entitled 'Fictions About the Failure of Camp David' (*The New York Times*, July 8, 2001), Malley wrote:

Many have come to believe that the Palestinians' rejection of the Camp David ideas exposed an underlying rejection of Israel's right to exist. But consider the facts: The Palestinians were arguing for the creation of a Palestinian state based on the June 4, 1967, borders, and living alongside Israel. They accepted the notion of Israeli annexation of West Bank territory to accommodate settlement blocs. They accepted the principle of Israeli sovereignty over the Jewish neighborhoods of East Jerusalem—neighborhoods that were not part of Israel before the Six Day War in 1967. And, while they insisted on recognition of the refugees' right of return, they agreed that it should be implemented in a manner that protected Israel's demographic and security interests by limiting the number of returnees. No other Arab party that has negotiated with Israel—not Anwar Sadat's Egypt, not King Hussein's Jordan, let alone Hafez al-Assad's Syria—ever came close to even considering such compromises.

Talks between the two sides continued until the end of January 2001. Some progress was made, as the Israelis and Palestinians edged closer to a negotiated settlement. The principle of a return of the equivalent of 100 percent of the territory captured in 1967 was agreed upon and the Palestinians agreed that major West Bank settlement blocks could remain in exchange for land in Israel. The Palestinians would recognize a Jewish state on 78 percent of mandated Palestine, far beyond the 56 percent allotted in 1947 UN Partition Resolution, and would agree that their own state, with limited arms, would be established in Gaza and at least 92 percent of the West Bank. Both sides would have capitals in Jerusalem, with Palestinians having sovereignty over Arab neighborhoods in East Jerusalem and Israel retaining control of Jewish neighborhoods. Both sides agreed that a just settlement of the refugee issue was essential (Moratinos, 2001; date of access: March 4, 2007). However, before any agreement was reached, the Israeli Government withdrew from these talks on January 27, 2001, and two weeks later, the Likud bloc, which had been opposed even to the concessions of

the Oslo Accords, unseated Prime Minister Barak's government in Israeli elections.

There are competing accounts of what happened during the negotiations that lasted from the summer of 2000 to January 2001 (see, e.g., the contrasting descriptions in Ross, 2004; Ben-Ami, 2006, on one hand, Malley & Agha, 2001; Reinhart, 2002; Swisher, 2004 on the other). But in the end, despite the agreements during the decade of negotiations that began in Madrid in 1991 and ended in Taba in 2001, the facts remain that (i) the Palestinians expressed a willingness to recognize a Jewish state within 78 percent of Palestine in exchange for a Palestinian state in the remaining 22 percent, and (ii) the Israeli Government has steadfastly refused to allow Palestinians to establish a viable state throughout the occupied territories. Bent on territorial expansion, Israel has always been a 'reluctant partner to peace' (Moaz, 2006, p. 479 and chap. 10, *passim*), Oslo or no Oslo.

Some have seen signs of Israel's willingness to allow Palestinian self-determination with its evacuation of its settlements and troops from the Gaza Strip in 2005. But this observation must be balanced against facts on the ground. For one thing, Israel continues to control the borders, airspace, and territorial waters and has not allowed the international airport in Gaza to open. It retains control of the Palestinian population registry enabling it to determine who is a resident of Gaza and who can come and go. Israel manages most elements of the taxation system and regulates the goods that go in and out of Gaza, and its frequent closures of the main cargo terminal at the Karni crossing point have had a devastating impact on the Gazan economy. By mid-2006, more than half of Gaza's population was on emergency food aid. Israel regularly shells and conducts armed incursions into Gazan neighborhoods, killing over 400 Gazans in 2006 alone including 88 children.³⁴

More significantly, the withdrawal of 8500 Jewish settlers from Gaza was paralleled by expansion in the West Bank as the Israeli Government seized more land, enlarged some existing settlements, and moved some 14,000 Jewish settlers into the West Bank (*Guardian*, October 18, 2005). Since 2002, Palestinian self-determination in the West Bank has been further eroded by the construction of a massive eight-meter high wall, the bulk of which is within the West Bank—not on the Green Line (the border between the West Bank and Israel)—that will eventually extend for some 720 kilometers. Israeli officials portray the wall as a defensive measure for separating the two communities and protecting Israeli citizens from terrorism. In actual fact, it is another intensification of colonial control. By 2005, over 200,000 dunums of Palestinian land

had been confiscated for construction of the wall and 100,000 trees destroyed (Finkelstein, 2005, p. 292). When completed, 14.5 percent of West Bank territory will be carved off, and 274,000 Palestinians will live in a 'closed area' that they cannot move in or out of without special permits, though Israeli settlers living in the same area will be free to move to and from the area without a permit. This is not a 'separation fence,' as sometimes called, since there will be Israelis on both sides of it. It is more akin to a prison wall, with guard towers, having the effect of enclosing centers of Palestinian population within increasingly smaller bantustan-like regions (Carter, 2006, chap. 16). Already, the town of Qalqiliya of some 40,000 people is completely surrounded by this wall, with only one gate that the Israelis can close at will, and Bethlehem is enclosed on three sides. Both communities have been affected by the closure of hundreds of shops and businesses within the proximity of the wall. It is accompanied by permanent checkpoints and sporadic travel bans that severely curtail freedom of movement throughout the West Bank (Amira Hass, 'IDF Cantonizes West Bank, sealing 800,000 Palestinians,' *Ha'aretz*, January 13, 2006). According to reports by B'tselem, the Palestinian economies in these regions will suffer even further as the West Bank becomes increasingly Bantusized and it becomes impossible to move goods without permits. In January 2005, the Israel Knesset agreed to allow the Absentee Property Law to apply to East Jerusalem, allowing the State of Israel to seize land owned by Palestinians who live elsewhere or who are cut-off from their own land by the construction of the wall. This precedent means that the Law could be used to seize land all along the new border being created by the construction of the Wall.³⁵

In 2004, emphasizing the 'inadmissibility of the acquisition of territory by war' and the illegality of Israeli settlements, the International Court of Justice ruled that the wall is 'a violation of the legal principle prohibiting the acquisition of territory by the use of force' and that 'the de facto annexation of land interferes with the territorial sovereignty and consequently with the right of the Palestinians to self-determination.' Moreover, as it contributes to the departure of Palestinians from certain areas, the wall severely impedes the exercise by Palestinians of their right to self-determination and, therefore, constitutes a breach of Israel's obligation to respect that right.³⁶ Yet, Israel rejected the Court's ruling. and the Israeli High Court upheld the 'legality' of the wall on security grounds (Lynk, 2005).

The settlements, the army bases, the roads, and the wall will allow Israel to annex half of the West Bank by 2010. If the past four decades

of occupation are any indication of the future, Palestinians within those areas are likely to be subjected to 'daily abusive and dehumanizing mixed mechanisms of army and bureaucracy' which are 'as effective as ever in contributing its own share to the dispossession process' (Pappe, 2007). It is neither surprising nor inaccurate, then, to see Israel's colonial rule in the West Bank described as a system of apartheid.³⁷

12. What the principle of self-determination calls for

Israel at fifty is undoubtedly one of the greatest success stories of the twentieth century. Communism, fascism, socialism, and so many other 'isms' have crumbled into dust. But Zionism, the national liberation movement of the Jewish people, the one true liberation movement amidst so many false ones, has far from crumbled. It has achieved its central purpose of securing Jewish independence in the Jewish land, and it can look to the future and its challenges with confidence. Benjamin Netanyahu (2000, preface)

The decision to partition Palestine by the creation of the Jewish state is one of the most considerable mistakes of contemporary politics. Some very surprising consequences are going to result from an apparently small thing. Nor is it offensive to reason to state that this small thing will have its part to play in shaking the world to its foundations. Michel Chiha (1969, p. 52)

The systematic violation of the principle of self-determination in Palestine has been both a failure to observe a recognized moral norm and a continuing source of the conflict between Israelis and Palestinians, Jews and Arabs, and the West and Islam. What some see as 'one of the greatest success stories' of the twentieth century, is arguably one of its major political mistakes, for the decision to create a Jewish state in the Near East against the will of the vast majority of people who live in that region, has not only fueled the conflict between Israeli Jews and Palestinian Arabs, it has contributed to tensions between the Western and Islamic worlds that threaten global stability. In this sense, Wilson's warning of the 'peril' of ignoring the principle of self-determination was prophetic; if a political arrangement or settlement of a political conflict is to endure, then the people immediately affected must not view it as unjust, and if imposed from the outside it too easily falls prey to the allegations of injustice. As Wilson said, self-determination is not a 'mere phrase' or an idle expression of an utopian ideal. Deliberately ignoring

the consent of a collective can be disastrous as evidenced by a recent study of Robert Pape that concludes that 'suicide terrorism is mainly a response to foreign occupation' seeking control over 'the territory the terrorists view as their homeland' (Pape, 2005, pp. 23, 79).

suicide terrorist campaigns are directed toward a strategic objective: from Lebanon to Israel to Sri Lanka to Kashmir to Chechnya, the sponsors of every campaign—18 organizations in all—are seeking to establish or maintain political self-determination. (Robert Pape, 'Blowing Up an Assumption,' *The New York Times*, May 16, 2005)

In view of Pape's data, respecting a right of self-determination is as much a matter of prudence as it is of morality.³⁸

While ignoring the principle of self-determination has exacerbated the Israeli–Palestinian conflict, the question now to be considered is whether it is still relevant to resolving this conflict. To an extent, what has been done cannot be erased; the clock cannot be turned back to 1947, nor to 1917, nor, perhaps, to 1967. But despite the League of Nations Mandate, the General Assembly Resolution 181, the creation of the state of Israel, and 40 years of military occupation, there remains opportunity for remedy and repair. There are those on both sides of the conflict that are interested in a just and peaceful compromise. In this respect, the principle of self-determination remains as relevant as ever for the simple reason that denying legitimate demands for self-determination by either party is guaranteed to perpetuate the struggle into the foreseeable future. Even if the principle does not entail a particular solution—for example, various types of two-state solutions or a single binational state (Tilley, 2005; Young, 2005; Abunimah, 2006; Yiftachel, 2006)—it nevertheless places a constraint on what counts as a just solution. No state, institution, or law is legitimate unless it can be anchored within the consent of the people it governs. No solution to a political conflict within a territory is either just or secure unless it is responsive to the wishes of the legitimate residents of that territory. For these reasons, the maximalist proposals for either a Jewish-only state or an Arab-only state throughout Palestine are objectionable, since either would entail a denial of self-determination to substantial numbers of legitimate residents of the region. And, as is patently obvious from the preceding sections, the observance of self-determination is also incompatible with the *status quo* in Palestine.

In what precise region is the principle to be applied? This question is more sensitive. The evidence shows that the West Bank and

Gaza qualify as both unsettled and endangered regions whose residents are non-standard beneficiaries of the right of self-determination distinguished in Section 3 above.³⁹ The situation regarding the rest of Palestine is less clear. One might argue as follows. The rights of self-determination are being realized in what became the state of Israel in 1948–49, for both the Palestine Mandate was itself an application of the principle of self-determination and the General Assembly Resolution 181 merely confirmed the ‘natural and historic right’ of the Jewish people in Palestine (N. Feinberg, 1970; Stone, 1981). That the Arabs of Palestine later distinguished themselves as a national group with a claim for self-determination—and not until the 1960s according to these writers—is ‘neither a juridical nor moral basis for undoing that initial application of President Wilson’s self-determination principle after World War I’ (Stone, 1981, p. 58). That the agreements leading to the establishment of Israel have received international sanction, quite apart from their moral merits, creates a *prima facie* obligation to respect them. For another thing, the citizenry of Israel and hence, its government, do exercise rights to self-determination insofar as enfranchisement, popular sovereignty, recognition, and non-intervention are observed. Any political solution that would deny Israeli citizens their right to determine their political future, or curtail the sovereignty of their government, would violate their rights of self-determination as standard beneficiaries. For this reason, it appears that it is an exceptional application of the principle of self-determination at best that is relevant to the Israel–Palestinian conflict, and this only in regards to the occupied West Bank and Gaza Strip, not to the whole of historic Palestine.

There are at least three shortcomings with this argument. In the first place, it sidesteps the fact that Israel exists only because Palestinian Arabs have been systematically denied self-determination ever since 1917—and Palestine is the only territory placed under a League of Nations Mandate in which the established inhabitants were not granted this privilege. Given the Palestinians’ persistent attachment to their ancient homeland, their outstanding grievances, the unresolved status of Palestinian refugees, and the repeated international recognition of their entitlement to self-determination in Palestine, then the *status quo* in the largest segment of historic Palestine cannot be sanctioned by appeal to a default application of the principle of self-determination to standard beneficiaries. To do so would be a mockery of that principle. Because the Palestinian Arabs constitute a politically coherent group with an acknowledged connection to Palestine as such, and not just to the West Bank and Gaza, then they retain an entitlement to being

self-determining in that region—again, not *qua* Palestinians, but *qua* legitimate residents. That force was used against them has not erased the fact that they are, and are recognized as being, a legitimate unit entitled to participate in their own self-determination (Crawford, 1979, p. 117; Cattán, 2000, chap. 34).⁴⁰

Second, in assuming that the only unsettled or endangered region containing exceptional beneficiaries is the remaining 22 percent of mandated Palestine, the argument ignores the fact that between 3.2 and 4.8 million Palestinians live outside the territory of mandated Palestine, yet, remain as interested parties to the conflict (see Chapter 2). Most of these individuals have no claim to be legitimate residents of the West Bank or Gaza since they either were expelled from the 78 percent of Palestine that became the state of Israel or are the descendants of those refugees. Because expulsion does not remove one's right of residency, then these Palestinians also retain residency rights in those territories from which they were expelled. Since the original General Assembly Resolution 194, numerous other resolutions have recognized the Palestinians right of return, for example, Resolution 3236 (1974) which asserted the 'inalienable right of the Palestinians to return to their homes and property from which they have been displaced and uprooted,' and Resolution 52/62 (1997) stating that 'Palestine Arab refugees are entitled to their property and to the income derived there from, in conformity with the principles of justice and equity.' Rights of leaving and returning to one's country are also affirmed in Article 13 of the Universal Declaration on Human Rights and in Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (1965) which stipulates that states must guarantee a right to return to one's country 'without distinction as to race, colour, or national or ethnic origin.' There may be degrees of such legitimacy, and priorities might have to be set to the disadvantage of those who have comfortably established themselves elsewhere, but the time gaps are not significant enough to deny the claims of dispossessed refugees.

Third, the argument assumes that Israel is a legitimate state and, therefore, that any exceptional application of the principle of self-determination to the whole of historic Palestine would violate the right of self-determination possessed by standard beneficiaries. On what grounds could Israel's legitimacy be questioned? From its inception, Israel has satisfied the minimal conditions necessary for the existence of a state, specifically, a permanent population, control over a territory in which that population resides, and sovereign government agencies exercising their powers on behalf of that population. Moreover, the facts

that Israel is a democracy, is recognized by a large number of countries, and is a member of the United Nations are unquestionably strong reasons for concluding that it has acquired the status of a legitimate state. But, are these considerations enough to settle the issue of legitimacy? It is important to understand that a state's legitimacy concerns sovereign right and entitlement to recognition, and this goes beyond the mere factual matter of existence. Legitimacy can be examined on three fronts; whether the state was legitimately established, whether the state is rightly constituted, that is, whether its basic laws and institutions conform to minimal demands of justice, and whether it is inclusive, that is, whether its existence derives from the popular consent established through a mechanism that includes participation by all the legitimate residents of the territory it governs. Israel's legitimacy can be challenged at each levels.

I have argued above that the establishment of a Jewish state in Palestine violated the principle of self-determination. For some, this is enough to undermine any claim to current legitimacy. Yet, the establishment of a great many states has been oblivious to rights of self-determination of indigenous populations. States are born to both cheers and tears. As time passes, the mode of establishment becomes increasingly irrelevant to a state's legitimacy as it gains recognition, is a party to international agreements, develops its institutions, and extends its protection to newly born generations which had nothing to do with its emergence. Thus, failure to be legitimately established does not automatically undermine current legitimacy. After nearly 60 years, and numerous successes both internationally and domestically, doubts about Israel's current legitimacy due to the injustices of its establishment may have been overridden by time.

A state's legitimacy also depends also on its character. The former South Africa was condemned as an illegitimate state on the grounds of its discriminatory system of apartheid, and it was subsequently subjected to international sanctions that precipitated its downfall. Israel prides itself on being both a democracy and a Jewish homeland. While its Declaration of Independence asserts that it is 'the natural right of the Jewish people to lead, as do all other nations, an independent existence in its sovereign State,' it also proclaims that Israel 'will uphold the full social and political equality of all its citizens, without distinction of religion, race, or sex.' Still, Israel remains a Jewish state, even though approximately one-fifth of its citizens are non-Jews. Its official symbols are Jewish religious symbols, and statutes governing land ownership and the Law of Return explicitly favor Jews over non-Jews. As pointed out above, a 1985 amendment to the 1958 Basic Law of the Knesset specified that no

political list of candidates for the Knesset will be permitted if negates 'the existence of the state of Israel as the state of the Jewish people,' and in January 2007, the Knesset passed a law whereby denying the Jewish character of Israel is an 'unpatriotic' act that can lead to the loss of citizenship. These provisions come as close as can be to declaring in law the exclusively Jewish character of Israel. It is a state of the Jewish people, not of all its citizens, a selective democracy that threatens equal protection under the law and equality of opportunity for all citizens. Successive Israeli governments have discriminated against Arabs in areas of education, municipal funding, economic development, and marriage (Jiryis, 1976; Lustick, 1980; Cook, 2006; Yiftachel, 2006), while in the occupied territories, Israel's discrimination and abuses of human rights has been condemned by human rights organizations around the world. The irony which has accompanied Zionism throughout remains; to solve one case of prejudice against a cultural minority it has effectively generated another. Unless some means can be found of harmonizing its national character with equitable relations to the Arabs and, the character of its symbols, laws, institutions, and policies will keep the question of Israel's legitimacy alive. More poignantly, if legitimacy precludes a state's basic institutions and laws from *de jure* discrimination, then the Jewish state—like any state whose institutions systematically discriminate in favor of one religious, ethnic, or national constituency to the detriment of others under its rule—is illegitimate.

Finally, a state's legitimacy also depends on whether it is exclusionary or not, that is, whether its continued claim to sovereignty is derived from the ongoing consent of the legitimate residents of the territory in which it is constituted. The state of Israel fails to meet this condition. The Palestinians who fled or were driven from their homes in 1947–49 did not lose their residency rights by force, nor have they lost them through international law, nor have they voluntarily abandoned their rights through subsequent political agreements. General Assembly Resolution 273 under which Israel was admitted to the United Nations on May 11, 1949, made its membership conditional on a commitment to respect 'unreservedly' U.N. resolutions pertaining to the Arab–Israeli conflict, including Resolutions 181 and 194. The latter concerned the rights of Palestinian refugees to return to their homes, a right that they still retain (as Halwani argues in Chapter 2). Had this resolution been observed, the balance between Jews and Arabs within Israel would likely be so different that the exclusively Jewish character of the state could not have been achieved on the basis of popular consent of the citizenry.

Since these refugees remain legitimate residents, then the state of Israel is exclusionary.

Note the argument. Israel is currently not a legitimate state. The reason is not because its establishment violated the principle of self-determination, nor because Israel is an ethnocracy (Yiftachel, 2006). Instead, its current illegitimacy is based on its continued refusal to allow exercise of the right of self-determination belonging to the legitimate residents of the territory it governs. To deny this conclusion is to deny either that the principle of self-determination places a constraint on state legitimacy or that Palestinians are legitimate residents of region under dispute. The first option is to jettison one of the fundamental tenets of modern political thought, while the second is simply incredulous given that Palestinians constitute half the population of present-day Palestine and that a good many Palestinians on the outside have a claim to being legitimate residents of this area as well.

Israel might become legitimate if it ceases discriminatory practices and gains recognition from the Palestinian population in the wake of a negotiated settlement. For these reasons, and because sovereignty throughout the entire territory of historic Palestine is contested by the parties to the Israeli-Palestinian conflict, then Palestine is both an unsettled and troubled region calling for an exceptional application of the principle of self-determination.⁴¹ This is not to accord a right to Palestinian Arabs that Israeli Jews lack; the principle does not grant the Palestinian people as such a right of self-determination any more than it grants to Jews sovereignty over Palestine *qua* Jews. While both rights can be defended on the national interpretation of the principle, the regional interpretation defended above confers the right of self-determination upon the totality of legitimate residents, however else they might be characterized. To be sure, a full exercise of this right does not rule out recognition of either an Arab or a Jewish state, for though a single regional state might satisfy the requirements of self-determination, the vast majority of 'the people immediately concerned' might prefer a solution in terms of distinct nation-states. But that itself would be a result of applying the principle of self-determination interpreted regionally.

The normative discussion must not be stalemated by the fact that the fundamental principle for resolving disputes over sovereignty leaves us with options, otherwise we open the door to political chaos, violence, and the temporary rule by the strongest. If a reasonable compromise that respects the rights of both Arab and Jewish residents cannot be achieved, then radicalism on both sides is likely to intensify, with

sobering consequences for everyone involved. Over 65 years ago, Alfred North Whitehead warned that the ideal visions of zealots and one-sided bargains in the dispute over Palestine ‘spell disaster for the future’ (Whitehead, 1939), and his predictions have been amply confirmed. If a just and lasting peace in the Middle East is to be achieved before another 65 years elapse, then Palestinian Arabs, like Israeli Jews, must be permitted to meaningfully participate in choosing the political institutions they are to be governed by in Palestine, whether in an independent state of their own or as part of a larger state. Short of that, war and atrocity, beyond what we have already seen, will become increasingly familiar—a prospect that the entire world should shudder to contemplate.

Notes

1. This argument was made in a report by the Executive Committee of the Arab Palestine Congress presented to Winston Churchill on March 28, 1921.
2. Porath (1974, p. 44) writes that Wadi al-Bustani was among the first Palestinian Arabs to publicize the apparent incompatibility of the Mandate with Article 22. In 1948, the Palestinians’ Arab Higher Committee cited this article in justifying entrance of Arab states into Palestinian territory. For contrasting interpretations of the article, see Cattan (1976, pp. 65–8) and N. Feinberg (1970, pp. 41–4).
3. See Antonious (1965, p. 264). There is debate about what was promised to Arabs in the Hussein-McMahon letters. Two days after the agreement, McMahon wrote that the only areas excluded from Arab independence were ‘portions on the Northern Coast of Syria’ (Porath, 1974, p. 322). However, in a 1937 letter by MacMahon to the *Times*, he claimed that Palestine ‘was not or was not intended to be included in the territories in which the independence of the Arabs was guaranteed in my pledge’ and that this was understood by Sheriff Hussein (Stone, 1981, pp. 146–7). This interpretation does not agree with Lord Curzon’s view, nor with the description of Hussein’s views by Lloyd-George who wrote that MacMahon himself was then (in 1915) ‘very reluctant’ to discuss boundaries despite the insistence of Hussein to include all the area along the eastern Mediterranean coast up to Mersina, an area which incorporates Palestine even though it was not mentioned by name (Lloyd-George, 1939, pp. 660–2). See also the discussions in Antonious (1965, chap. 9) and Smith (1996, pp. 43–9, 56–9). On the interpretation of the agreement as a treaty, see Porath (1974, p. 46).
4. An individual’s right to political participation is mentioned in Article 21 (1) of the *Universal Declaration of Human Rights* (1948), and it is noteworthy that item (3) of this article is the principle of popular sovereignty. Article 25 of the *Covenant on Civil and Political Rights* (1966) is the closest that international law comes to granting an individual a right of self-governance. De George (1990) argues that any right of collective self-determination is at

best derived from the moral right of individuals to be autonomous, namely, when individuals autonomously decide to act collectively.

5. See Ofuatey-Kodjoe (1977, pp. 156–9) and Copp (1997, pp. 288–91). Copp adds that the group must have a ‘stable and widespread desire among its members that it constitute a state’ (1997, p. 293). This is more controversial. Not only might there be significant differences within a group with no clear majority for a single state, but majority preference can fluctuate over time, making it dubious as a necessary condition for a group’s right to be self-determining.
6. Margalit and Raz describe national groups as ‘self-encompassing groups’ whose members self-consciously share a cultural identity vital in determining the self-identity of each (Margalit & Raz, 1990). Ernst Renan also mentioned that a group must feel itself to be distinct, and that there must be a desire on the part of its members to live together and interrelate within the framework of their common culture (cited in Dahbour & Ishay, 1995, p. 153). Yael Tamir writes that by belonging to a nation, an individual is consciousness of his or her cultural identity and is able to recognize other individuals as sharing in that identity (Tamir, 1991, pp. 573–4). It is this self-consciousness, she insists, that distinguishes a ‘nation’ from a ‘people.’ Copp argues for another objective characteristic, namely, that a group is a nation only if it ‘has’ a territory within which it could constitute a state (1997, p. 289). There is some doubt about what it is for a group to ‘have’ a territory, but the existence of refugee populations raises a problem if this characteristic is proposed as a necessary condition.
7. This point is made by several writers, for example, Buchanan (1991, pp. 22–80, 151–62) and Gellner (1983), and see also Tamir (1993, p. 158) and Miller (1995, pp. 108–10) which are otherwise supportive of a nationalist principle.
8. Arguments for the regional interpretation of self-determination within international law can be found in both Ofuatey-Kodjoe (1977, chap. VII) and Crawford (1979, pp. 84–106). There is no doubt, however, that Wilson’s own language, for example, his reference to ‘peoples’ and his employment of ‘national aspirations,’ did lend itself to a nationalistic interpretation. Cobban (1945, pp. 19–22) argues that Wilson applied a criterion of nationality in promoting self-determination, an interpretation which he underscores by citing Wilson’s own Secretary of State, Robert Lansing. The latter’s reception of Wilson’s principle was anything but sanguine: ‘The more I think about the President’s declaration as to the right of “self-determination,” the more convinced I am of the danger of putting such ideas into the minds of certain races. It is bound to be the basis of impossible demands on the Peace Congress and create trouble in many lands. What effect will it have on the Irish, the Indians, the Egyptians, and the nationalists among the Boers? . . . How can it be harmonized with Zionism, to which the President is practically committed? The phrase is simply loaded with dynamite. It will raise hopes that can never be realized. It will, I fear, cost thousands of lives. In the end it is bound to be discredited, to be called the dream of an idealist who failed to realize the danger until too late to check those who attempt to put the principle in force. What a calamity that the phrase was ever uttered! What misery it will cause!’ (Lansing, 1921, pp. 97–8). Curiously, while the

reference to 'races' suggests a national interpretation, the passage—which Cobban did not cite in full—can also be read as though Lansing thought that Wilson's 'idealistic' principle was oblivious to national demands for autonomy, especially given Lansing's contrast between Zionism, an exclusively nationalistic movement, and what he took Wilson to be calling for. In a conversation with the American Supreme Court Justice Brandeis, Balfour was reported to have had great difficulty in seeing how President Wilson could possibly reconcile his adherence to Zionism with any doctrine of self-determination and he asked the Justice how he thinks the President will do it (Khalidi, 1971, pp. 197–8). See also Christison (1999, chap. 2), which argues that Zionism and Wilson's principle of self-determination could not be reconciled.

9. Wilson had spoken of self-determination in his own scholarly writings years before. In a 1901 paper, for instance, he spoke of the American Revolution as having 'struck a blow for all the world' for self-determined government (Notter, 1965, p. 118, 69, 100, pp. 110–1).
10. The possibility of dissolution arises when there are rival claims among subgroups of the population. Muhammad Ali Khalidi provides an interesting format for resolving the conflict in terms of what he calls a smallest region principle according to which a population of a region R1 has the right to self-determination if (i) a substantial majority of R1 desires self-determination and (ii) there is no smaller subregion R2 within R1 whose substantial majority desires to exercise self-determination independently of the rest of R1 (M. A. Khalidi, 1997, p. 79).
11. Seen in this way, the right of self-determination in endangered regions is similar to Locke's doctrine of the right to revolt, itself an offshoot of the theory of popular sovereignty, viz., that the legitimacy of government is based on the consent of the governed. Revolt can take the form of overthrowing a tyrannical or negligent government, or seceding from a larger political union. In both cases, the rationale is protection of individual rights from the intrusion of, or volition by, other individuals, institutions and, especially, governments. Buchanan (1997a, pp. 310–1), also lists 'past unredressed unjust seizure of territory,' and 'discriminatory redistribution' as grounds for secession. He calls this the 'remedial' or 'grievance' theory of self-determination (pp. 317–8). Norman (1998) also advocates a just cause theory of secession. Moore (2001, pp. 146–7) is well aware that this 'just case' justification of secession places the latter with a general framework of human rights, but her objections to this approach in favor of a nationalistic reading of self-determination are weak (pp. 147–53). The preferred mechanisms for initiating the exercise of self-determination by exceptional beneficiaries are referenda, specifically, plebiscites (see Cobban, 1945; Johnson, 1967; Umzurike, 1972; Farley, 1986).
12. Articles 18–20 of the Universal Declaration of Human Rights, and Articles 18, 19, 21, 22, and 27 of the Covenant on Civil and Political Rights are the closest that International Law comes to acknowledging an individual's rights to cultural participation. See Lichtenberg (1997) which discusses the attempt to base national self-determination on individual rights.
13. David Copp has argued that democratic philosophy grants self-determination to the entire population of a region, not to a preferred subclass

as the doctrine of national self-determination would have it (Copp, 1997, pp. 290–7). The ideals of democracy require that all individuals have similar rights, privileges, and responsibilities, including the rights and duties that go with of political participation in any society they inhabit. In short, a democratic society is one guided by a fundamental principle of equality, and it is precisely this principle that is endangered when a national state governs a culturally diverse population.

14. Amendment 9 of the Basic Law of the Knesset, passed in July 1985, prohibits a candidate's list from participating in elections if it includes 'negation of the existence of the State of Israel as the state of the Jewish people.' http://www.jewishvirtuallibrary.org/jsource/Politics/Basic_Law_Knesset.html (date of access: January 18, 2007). Emil Fackenheim writes that the Law of Return is next in importance to the Jewish essence of Israel as the Return itself (1988, p. 14). Michael Rice, on the other hand, finds the law to be 'a nakedly racist concept' since it allows any Jew, from the Hungarian Banker to the Yemenite farmer, a right to immigrate to and become a citizen while denying the same to Palestinian indigenes to whom it stands as 'a most cruel affront' (Rice, 1994, pp. 41–2). See the brief, but interesting defense of the law in Margalit and Halbertal (1994, pp. 509–10).
15. Chances for interstate belligerency are raised when a given cultural minority within a state has strong cultural and political links to powerful communities on the outside. This was an important factor in Nazi propaganda towards expanding Germany, and is relevant to understanding the conflict among Palestinians and Israelis, since both parties have strong links to external communities, which give it the international dimension it has.
16. I found this passage from Joyce's novel in Beiner (1999, p. 1).
17. At the Paris Peace Conference in 1919, the World Zionist Organization presented a map of Palestine that incorporated southern Lebanon, the Golan Heights, and the east bank of the Jordan River (Pappe, 2006a, p. 288). Lloyd-George (1939, pp. 721–73) relates some of the controversies concerning the borders of Palestine that occurred during the years 1917–21.
18. See Khalidi 1971, p. 841.
19. This aspect of the Balfour Declaration was not accidental, as argued in Jeffries (1971). The role of the Zionist leadership in drafting the document is discussed in both Jeffries (1971) and Manuel (1971).
20. The King-Crane recommendations are reported is reprinted in Khalidi (1971, pp. 213–8). Zionists are fond of citing a January 3, 1919 agreement between the Emir Feisal of Mecca, a leader of the Arab resistance in 1915–18, and Chaim Weizmann. It called for Jewish immigration into Palestine provided that the rights of Arab farmers be protected and 'no religious test shall ever be required for the exercise of civil or political rights' (Stone, 1981, pp. 147–8). However, Feisal added that the agreement shall be void unless the Arabs achieve independence as promised by the British, and in a subsequent letter to Felix Frankfurter, an American Zionist, Feisal made it clear that Arabs would not accept a Jewish state as such but only a possible Jewish province in a larger Arab state (Khouri, 1976, p. 12). There was neither popular representation of nor support by Palestinian Arabs in the making of this agreement, as the results of the King-Crane Commission pointed out (see Hocking, 1945, reprinted in Khalidi, 1971, p. 502). To the contrary,

- there was outright opposition (Muslih, 1988, chap. 5). In 1925, shortly after the Balfour Declaration had been incorporated into the terms of the 1922 Mandate for Palestine, the international lawyer, Quincey Wright, reported that Palestinian Arabs viewed the Declaration as a political decision constituting 'a gross violation of the principle of self-determination proclaimed by the Allies' (Quigley, 1990, p. 18).
21. In August 1922, the high commissioner of Palestine, Sir Herbert Louis Samuel, proposed establishment of a legislative council composed of 23 members: the high commissioner, ten appointed British members, and 12 elected members—ten Palestinians (eight Muslims and two Christians) and two Jews. The council would not have legislative authority over such central issues as Jewish immigration and land purchases. Palestinian leaders argued that participation in the council would be tantamount to acceptance of the British mandate and Balfour policy, which they opposed. They considered unfair the allocation of only 43 percent of the seats to Palestinians, who constituted 88 percent of the population, and they objected to the limitations placed on the power of the council. A campaign against the proposed council by the Palestine Arab Executive and the Supreme Muslim Council was a potent factor in the Palestinian boycott of the council elections in February 1923. The poor election turnout caused the high commissioner to shelve the proposal. The idea was revived repeatedly from 1923 until 1936. It was discussed, for example, in 1928 when a new high commissioner, Sir John Chancellor, took over, but it was derailed by the disturbances of 1929, only to reemerge as a proposal in the Passfield White Papers of 1930. Although the new proposal was similar to the 1922 proposal, the Palestinians this time did not oppose it, but the Jews rejected their minority role in the council. Intermittent discussions continued until 1935, but there was opposition from both sides to British suggestions. This opposition prompted the British government to once again suspend its implementation, and the concept finally died with the start of the Arab Revolt of 1936–39. See <http://www.answers.com/topic/legislative-council-palestine>.
 22. Ben-Gurion echoed this argument: 'The conscience of humanity ought to weigh this: where is the balance of justice, where is the greater need, where is the greater peril, where is the lesser evil and where is the lesser injustice?' (Jewish Agency for Palestine, 1947, p. 325). In 1937, Jabotinsky made the same point in contrasting Arab preference with Jewish need: 'it is like the claims of appetite versus the claims of starvation' (Hertzberg, 1977, p. 562).
 23. A related argument was anchored on the Lockean premise that the land belongs to those who develop it. It was popularized by Labor Zionists like A. D. Gordon (Taylor, 1974, p. 93) and Ben-Gurion (Gorny, 1987, p. 210), but also impressed the more conciliatory. For instance, Buber wrote, 'Ask the soil what the Arabs have done for her in 1300 years and what we have done for her in 50. Would her answer not be weighty testimony in a just discussion as to whom this land belongs?' (Shimoni, 1995, p. 348), and Hannah Arendt felt this argument was 'better and more convincing' than considerations of the Jews' 'desperate situation in Europe' (1978, p. 173).
 24. There is evidence that a large segment of the Eastern European Jews are descended from the Khazars, a central Asian people who adopted Judaism as their religion and fled westward to escape the Mongol invasions (see the

- sources cited in Quigley, 2005, pp. 70–1, p. 265). Wexler (1996) argues that Sephardic Jews descend from converts to Judaism in Asia, north Africa and the Iberian Peninsula. Thus, any constancy of historical presence or of right to 'return' belongs, at best, to a cultural unit, not to an ethnic community united by historical ancestry.
25. This point was made in the 1946 Anglo-American Committee's report (Esco Foundation, 1947, p. 1225). The American philosopher William Ernest Hocking wrote that the Zionist territorial demands were 'like asking for a microscopic section across one wrist' (1945, p. 222).
 26. See the Jewish Agency for Palestine (1947, p. 110). Margalit (1997, p. 85) cites a similar consideration of Sir Isaiah Berlin, who justified Zionism because 'it would provide a home for a nation that has lost the feeling of being at home.'
 27. The figure of 770,000 is given by Flapan (1987, p. 216), Morris sets it from anywhere between 600,000 and 760,000 (1987, p. 298), and Khalidi at 727,000 to 758,300 (1992, p. 582). For many years, defenders of Israel propagated the notion that the Arab refugees left their homes at the behest of Arab authorities, for example, Abba Eban in a 1958 speech (Laqueur, 1976, pp. 151–64). This myth has since been exposed in several sources, for example, Childers (1961), Khalidi (1971) (Introduction), Flapan (1987), Morris (1987), and Finkelstein (1995).
 28. Israel countered that Arab countries had waged war in defiance of the international community and that they could absorb Arab refugees just as the Israel was now accepting Jewish refugees not only from Europe, but also from the Middle East and north Africa (numbering 335,000 from 1949 to 1952). The issue of 'boundaries' was not fully settled in any case. While officially accepting the principle of partition, Ben Gurion's diaries indicated another vision: 'Take the American Declaration of Independence, for instance... It contains no mention of the territorial limits. We are not obliged to state the limits of our State' (W. Khalidi, 1997, p. 17).
 29. Chaim Weizmann said in 1944, after his meeting with President Roosevelt: 'I maintained the thesis that we could not rest our case on the consent of the Arabs; as long as their consent was asked, they would naturally refuse it' (Weizmann, 1966, p. 395). It is ironic that UNSCOP acknowledged that the League of Nations Mandate had violated the Palestinian Arabs right of self-determination and that the creation of a Jewish National Home in Palestine 'ran counter' to the principle of self-determination. See Quigley (2005, p. 33) who cites the *1947 Report on Palestine, Report to the General Assembly by the United Nations Special Committee on Palestine*, with a foreword by Senator Robert F. Wagner (pp. 115–6).
 30. Since the 1967 War, numerous resolutions have used the language of 'self-determination: for example, G. A. Resolutions 2535 B of Dec. 10, 1969; 2649 of Nov. 30, 1970; 2672 C of Dec. 8, 1971; 2792 D of Dec. 6, 1971; 3210 of Oct. 14, 1974; 3236 of Nov. 22, 1974; 3376 of 1975; 34/65 of Nov. 1979; and more recently, UN-GA 52/114. A more complete list of resolutions on the Palestinian/Israeli conflict can be found in a Wikipedia entry on UN Resolutions Concerning Israel at en.wikipedia.org/wiki/List_of_the_UN_resolutions_concerning_Israel (date of access: January 23, 2007).

31. Information on these and other aspects of the Israeli occupation can be found at several websites, including those of the Israeli human rights organization B'tselem (<http://www.btselem.org>), the Palestine Monitor (<http://www.palestinemonitor.org>), and the Electronic Intifada (<http://electronicintifada.net>).
32. A number of UN Security Council Resolutions which have condemned Israel's settlement program as contrary to Article 49 of the fourth Geneva Convention. Concurring discussions can be found in Mallison and Mallison (1986), Roberts (1990), and Quigley (2005). Israelis have contested these judgments (e.g., Stone 1981, pp. 177–81), but they stand alone on this matter. Eugene Rostow cites Stone in a letter to *The American Journal of International Law* 84 (1990, pp. 717–20), in defending the legality of Israeli settlements. Robert's response to Rostow is gentle, but, for the most part, decisive (Roberts, 1990, pp. 720–2). For a more recent study, see Al-Rayyes (2000, pp. 85–92).
33. John Mearsheimer, 'The Impossible Partition,' *The New York Times*, January 11, 2001. See also the description of the Camp David talks by Clayton Swisher who concluded: 'Because of what was accepted as Camp David orthodoxy, better stated as the untruths of Camp David, the ideological advice provided by Bush's advisers filled the new president's intellectual vacuum, laying the groundwork for a destructive American Middle East policy that gives blanket endorsement to Sharon's unilateralism and refusal to negotiate' (2004, p. 405).
34. These figures, as well as details about Israel's control over Gaza, are available from B'tselem website <http://www.btselem.org/english>. See also the sources cited in Abunimah (2006, pp. 84–6, 203–4) and 'Israel's invisible hand in Gaza' Alex Johnston, BBC News, January 17, 2007, http://news.bbc.co.uk/2/hi/middle_east/6270331.stm (date of access: January 20, 2007).
35. Upon hearing of the Knesset's decision, Hanna Nasser, mayor of Bethlehem, stated: 'This is state theft, pure and simple. . . . When the Israel started building this wall, they stopped letting people use this land.' *The New York Times*, January 26, 2005. Effects of the wall on Palestinians are also documented in a report funded by the British Government ('Israeli separation barrier is cutting off Palestinians from their livelihood,' *The Independent*, January 27, 2007, http://news.independent.co.uk/world/middle_east/article2177982.ece (date of access: January 28, 2007).
36. The Court opined, 'The construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated régime, are contrary to international law,' and that 'all States parties to the Fourth Geneva Convention. . . . have in addition the obligation, while respecting the United Nations Charter and international law, to ensure compliance by Israel with international humanitarian law as embodied in that Convention.' The Court also cited Article 2, paragraph 4 of the UN Charter, the Hague Regulation of 1907, and General Assembly Resolution 2625 (XXV) in which it is emphasized that 'no territorial acquisition resulting from threat or use of force shall be recognized as legal.' That resolution also stated that States have an obligation to promote the realization of the right of self-determination in conformity with provisions of the UN Charter. The Court stated 'international law in regard to non-self-governing territories, as enshrined in the

Charter of the UN, made the principle of self-determination applicable to all [such territories]' and that the right of peoples to self-determination is today a right *erga omnes*. The full text of the Court's ruling is available at <http://www.icj-cij.org> (date of access: September 7, 2006).

37. See, for example, books by Reinhart (2002), Davis (2004), Qumsiyeh (2004), and Carter (2006) and articles by Michael Ben Yair, 'The War's Seventh Day,' *Ha'aretz*, March 3, 2002; Shulamit Aloni, 'Indeed, there is Apartheid in Israel,' *Ynet*. <http://www.ynet.co.il/articles/0,7340,L-3346283,00.html> (date of access: February 27, 2007); Alan Johnston, 'UN envoy hits Israel 'apartheid,' BBC News, February 24, 2007, http://news.bbc.co.uk/go/pr/fr/-/2/hi/middle_east/6390755.stm (date of access: February 27, 2007); Anna Baltzer, 'From Sharpville to Nablus: Tragedies of Ethnic Apartheid,' March 21, 2007, <http://www.AnnaInTheMiddleEast.com> (date of access: March 23, 2007); and Richard Waddington, 'UN rights envoy likens Israeli actions to apartheid,' Reuters, March 22, 2007 (date of access: March 23, 2007).
38. Pape's evidence goes against the suggestion in Halberstam (1994) that self-determination 'was never truly the issue' in the Arab-Israeli conflict, though territory is. Halberstam's mention of 'territory' is difficult to understand what this could mean apart from a dispute about who has the right to govern a territory. Her suggestions go against the three-decade-long international consensus that a two-state solution within mandated Palestine is the only way to end the Israeli-Palestinian conflict. Most of the international community accepts the claim that the Palestinians have a right to self-determination. In December 2003, for instance, the General Assembly passed a resolution 'affirming the rights of all states in the region to live in peace and within secure and international recognized borders,' and 'the right of the Palestinian people to self-determination, including the right their independent state of Palestine.' This passed by a vote of 169 for and 5 against the United States, Israel, Marshall Islands, Micronesia, Palau. A January 2004 resolution of the General Assembly called for self-determination for Palestinians. Both resolutions call for a withdrawal of Israeli forces from 'the Palestinian territory' (Finkelstein, 2005, pp. 293-4).
39. Who are the legitimate residents of the occupied territories? Certainly, the indigenous Palestinians qualify, but what about the Israeli inhabitants of the settlements? The problem is that these people came to populate the region only against the will of the established residents and in violation of international law, specifically, the Fourth Geneva Convention which prohibits an occupying power from relocating its own civilians into occupied territory. Hence, the settlers currently reside in the occupied territories illegally according to international law, and this discredits any claim of legitimate residency they might raise. If the political *status quo* endures, however, then with a sufficient lapse of time, their descendents, who had no choice about where they were born and raised, might acquire the status of legitimate residents of those territories. The settlers are not left out of the equation in any case, for they are currently legitimate residents of Israel and, hence, of any larger territory that might include present day Israel within a comprehensive political solution.

40. Several observers, for example, Cattan (1976), Mallison and Mallison (1986), Quigley (1990), Roberts (1990), and Boyle (2003), have argued that the *status quo* cannot be justified by any other aspects of international justice or law.
41. Even this observation does not settle the matter, for one might raise the question of an exceptional application of the principle of self-determination throughout a much broader territory. Much depends on what counts as an 'endangered' region (see Section 4 of this chapter), and while there is no clear criterion for settling this sticky normative question, it has to be remembered that the division of the Middle East into its current states was largely the result of foreign intervention. If we broaden our domain of concern from historic Palestine to surrounding regions, we cannot neglect the interests of a much larger group of people who may very well decide that their safety and well-being require a more comprehensive unified political arrangement throughout the Fertile Crescent and Arabian Peninsula—the region in which that Sheriff Hussein of Mecca sought self-determination in 1915. Indeed, population numbers, historical association, and the current economic, political, and military threats to the Middle Eastern peoples by aggressive Western powers lend force to arguments that the legitimate interests of Arabs require a measure of political and geographical unity throughout their traditional domain. Plainly, at this point in time, there is nothing in the principle of self-determination itself—as articulated above and as set forth in the relevant international documents—that restricts a potential exceptional application to historic Palestine, much less to the occupied territories alone.

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