THOSE WHO COULD NOT WANDER AND THE CREATION OF A STATE: THE JEWS AND THE PALESTINIANS

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> "We must remind ourselves that the Holocaust was not six million. It was one, plus one, plus one..."[1]

I. INTRODUCTION

When Jesus was in Jerusalem carrying his Cross to Cavalry, he took a moment to pause on a man's doorstep. The man drove him away and cried aloud for Jesus to "Walk Faster!" As Jesus walked away bearing the Cross, he

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1. JUDITH MILLER, ONE BY ONE BY ONE: FACING THE HOLOCAUST 287 (Simon and Schuster 1990).

replied "I go, but you will walk until I come again!"[2] Accordingly, the Jews were cast to walk eternally. However, the Jews had already begun to wander and they would continue to seek refuge until they were almost annihilated.

The purpose of this paper is to examine the pragmatism and possibility of creating a state as the necessary remedy for a large group of refugees, the Palestinians. Towards that end, the historical persecution, treatment under modern legislation, and the genocide during the Holocaust of the Jews will be considered as relevant to the formation of the State of Israel and used as a guide from which the Palestinian contention might be measured. This paper will explore the peril and plight of the Palestinians in the occupied territories of Israel in the attempt to answer the question as to whether their struggle should be alleviated by the creation of a state.

Accordingly, Part I of this paper will examine the historical persecution of the Jews. Part II will focus on the effect that legislation had on the Jews. Part III will profile the creation of the Jewish state. Finally, Part IV will explore the requirements and possibilities for the establishment of the Palestinian state.

II. HISTORICAL PERSECUTION

A. From Nomads to Wanderers

In and around the year 3000 Before the Common Era (B.C.E.), Egypt already had built the pyramids and Sumer and Akad were world empires. During the 1400s, Phoenicia was colonizing while the Jews were merely a tiny band of nomads wandering through the upper regions of the Arabian Desert. The Jews were for a time too inconspicuous and transient to be noticed. Reflecting on the words from the Torah, "Let them make Me a sanctuary; that I may dwell among them," the Jews settled in Palestine.[3]

After the death of his father, David, Solomon issued the orders for the building of the First Temple to commence.[4] The building of the First Temple was a monumental task. Phoenician craftsmen were employed to build the Temple. Construction began in the fourth year of Solomon's reign and took seven years. King Solomon dedicated the Temple in 953 B.C.E.[5] Amongst a great many other things, the Temple was also a place of refuge for the stranger:

> Moreover concerning a foreigner, who is not of Your people Israel, but has come from a far country for Your name's sake. (for they will

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2. GEORGE K. ANDERSON, THE LEGEND OF THE WANDERING JEW 11 (Brown University Press 1965).

3. *See Exodus* 25: 8 (New Catholic Edition, hereafter NCE). *See also* Lambert Dolphin, *Does God Need a Temple?* at http://www.templemount.org/whytemp.html (n.d.).

4. HENRY CATTAN, PALESTINE AND INTERNATIONAL LAW 6 (Longman Group, Ltd. 1973).

5. *Id.* at 6-7.

> hear of Your great name and Your strong hand and Your outstretched arm), when he comes and prays toward this temple, hear in heaven Your dwelling place, and do according to all for which the foreigner calls to You, that all peoples of the earth may know Your name and fear You, as do Your people Israel, and that they may know that this temple which I have built is called by your name.[6]

For many years Solomon evidently wandered away from fellowship with His God, returning only much later, near the end of the life, to record in his book, Ecclesiastes, what he had learned about the emptiness of all of life apart from God. When Solomon died, his son Rehoboam became king of Israel. The nation, however, was on a spiritual decline and Rehoboam's policies caused the kingdom to be divided into separate regimes of the north (Israel) and the south (Judah). The northern kingdom remained in idolatry until it was overrun and taken captive in 721 B.C.E. by the Assyrians. With the Jews falling from grace, the Temple would now continue to decline in wealth, splendor, and importance for the next 367 years. The first Temple was destroyed in 586 B.C.E. and the Jews were exiled and sent wandering throughout Babylon.

Israel's exile for seventy years in Babylon marked a new era of government for God's chosen people. They had entered what Jesus would later call "the times of the gentiles."[7] The majority of Jews living in Babylon were prosperous and had assimilated. They were unwilling to undertake the hardship and danger of moving back to their ruined homeland. For those who took it, the journey was "530 direct miles, but about 900 miles by road and took about four months."[8] After the Jews arrived in Jerusalem, they worked toward building the second Temple, which was then completed four years later in 516 B.C.E. According to Jesus, not one stone would be left upon another when the Temple was destroyed.[9] When the Temple was set on fire, the Roman soldiers tore apart the stone to get the melted gold. The Menorah and vessels were carried to Rome and the treasury was robbed. The destruction of the second Temple in the year 70 of the Common Era (C.E.), for the Jews, marked the period of the second exile. The Jewish people were soon to be scattered throughout the earth.

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6. *See* 1 *Kings* 8: 41-43 (NCE). *See also* Lambert Dolphin, *The Temple of Solomon* at http://www.templemount.org/solomon.html.

7. *See Luke* 21: 24 (NCE). *See also* Lambert Dolphin, *Second Temple Times* at http://www.templemount.org/secondtmp.html.

8. *See* 1 *Esdas* 7: 8-9 (NCE). *See also* Dolphin, *supra* note 7.

9. *See Luke* 21: 20-22 (NCE). *See also* Dolphin, *supra* note 7.

B. Middle History

The Jews were persecuted and displaced throughout the crusades. There were periods during the beginning of each Crusade where Jews were killed as they were "blamed that the Holy Land was not in Christian hands."[10] While the Jews wandered, many headed North and West into Europe. They attempted to settle in various places in Europe prior to the Crusades, however, the Jews could not own land because the feudal system made it impossible. They were barred from the guilds of artisans and were left without the avenues of farming and handicrafts. Due to the feelings of filth associated with handling money, commerce and money lending were areas left open to the Jews.[11] During the Crusades, the large number of Christians that were in contact with foreign lands increased the trade in foreign commodities. Not interested in competing with the Jews, the Christian tradesmen secured the enactment of laws that effectively took the Jews out of trade.[12]

During the crusades, many Jews faced the ultimatum of Baptism or death. In England, the Jews received a modicum of refuge from the cruelty beset on their brethren in the rest of the world. Henry I had granted the Jews a charter of rights and privileges as traders, and although their status was not to increase beyond a modest living as ensured by the levying of special taxes for Jews, there was not a rampant hatred of the Jews in England.[13] However, this changed a century later in 1290 C.E. when Edward I ordered an edict to the effect that all Jews must leave England or die.[14]

Many of the exiles from England found refuge in France. However, this was a very short stop for the Jews. In 1306 C.E., Philip IV ordered not only the Jews who recently relocated to France to leave, but he ordered the expulsion of all Jews including those native Jews whose ancestors had lived in France for a thousand years.[15] Similar to the expulsion in England, the Jews were permitted

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10. *See* G. L. Esterson, *Ashkenazic, European Given Names, Judaism, And Jewish History* at http://www.jewishgen.org/databases/GivenNames/midlages.htm (n.d.).

11. RUFUS LEARSI, ISRAEL: A HISTORY OF JEWISH PEOPLE 276 The World Publishing Co. 1949). *See also* D. Brecher and J. Kniesmeyer, *Usury* at http://historymedren.about.com/gi/dynamic/offsite.htm?site=http%3A%2F%2Fwww.friends-partners.org%2Fpartners%2Fbeyond-the-pale%2Fenglish%2F06.html.

12. LEARSI, *supra* note 11, at 276.

13. *Id.* at 277.

14. *See* D. Brecher, *Expulsions and the Black Death* at http://historymedren.about.com/gi/dynamic/offsite.htm?site=http%3A%2F%2Fwww.friends-partners.org%2Fpartners%2Fbeyond-the-pale%2Fenglish%2F06.html (n.d.).

15. *See* LEARSI, *supra* note 11, at 281-82. *Compare with* Speaking of Jews at http://www.rfcnet.org/newsletter/jan2002b.htm (January 2002) where it states that there has been a rising tide of anti-Semitism in Europe and particularly in France. Moreover, in France alone, there were 350 attacks against Jews since the beginning of the "infitada" in Israel in October, 2000.

to leave effectively with only the clothes that they wore, with the rest of the Jews' accumulated wealth to replenish the royal coffers.[16]

On the bitter road of exile, many Jews had stopped and settled in Spain because in many ways, "Spain resembled Palestine."[17] The climate of central and southern Spain was largely subtropical, "with hot rainless summers and mild winters."[18] While in Spain, the Jews prospered despite the ill will of the clergy. The Jews in Spain favored well during the Black Death in 1348-49 C.E. while other Jews and non-Jews suffered throughout Europe. The Jews of Spain owed their safety to the Kings, who softened the laws that were passed against the Jews because of the service they had received from the Jews in their capacity as doctors during the plague.[19] Once again, this favor was short lived and in 1371 C.E. a decree was ordered that the Jews must identify themselves by wearing a yellow patch.[20] The clergy felt that they had gained a victory in further prohibiting the Jews to live among Christians or to employ Christians.[21]

The treatment by the Church of the Jews culminated in disaster for the Jews of Spain in 1391 C.E. It started in Seville, which was famous for its beautiful synagogues and scholars, when the citizenry stormed the ghetto from all sides to burn and loot the houses and killing more than 4,000 of the inhabitants.[22] The situation worsened in one community after another. Settlement and ghettos throughout Spain were devastated and the number of forced converts went well into the thousands. Only in Granada, which was controlled by the Muslims, were the Jews safe. The flame of the Spanish Jewry was nearly extinguished, and the persecution created a group that would soon be ripe for more persecution. These people were the New Christians, and they were forced by the sword to accept Jesus Christ. These New Christians were called "Marranos," which means "the damned," and they were seemingly more hated by the clergy than the Jews before them.[23]

In 1412 C.E., a law passed in Spain that prohibited Jews from trimming their hair or beards, to own nice fabrics, to engage in handicrafts, or to carry arms.[24] Most of the Jews that remained tended to practice in secret, as did many of the so-called New Christians, since they did not willfully denounce their

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16. Brecher, *supra* note 14.

17. LEARSI, *supra* note 11, at 243.

18. *Id.*

19. *Id.* at 302. *See also* Esterson, *supra* note 10.

20. LEARSI, *supra* note 11, at 306. *See also* D. Brecher, *Patterns of Discrimination* at http://historymedren.about.com/gi/dynamic/offsite.htm?site=http%3A%2F%2Fwww.friends-partners.org%2Fpartners%2Fbeyond-the-pale%2Fenglish%2F06.html.

21. LEARSI, *supra* note 11, at 307.

22. *See* Beth Randall, *The Secret Jews* at http://historymedren.about.com/gi/dynamic/offsite.htm?site=http%3A%2F%2Fwww.mcs.drexel.edu%2F%7Egbrandal%2FIllum_html%2FSecret.html (n.d.).

23. LEARSI, *supra* note 11, at 308.

24. *Id.* at 309.

religion. Subsequently, the New Christians were not under the jurisdiction of the new prescriptions against the Jews. Thus, these New Christians began to prosper and they aroused bitter resentment. In 1440 C.E., and again in 1467 C.E., mobs unleashed their anger in Toledo and many New Christians were slain and their homes set ablaze.[25] In 1479 C.E., the rulers Ferdinand and Isabella united the Castile and Aragon thrones and adopted the policy of absolutism at home and expansionism abroad for their Catholic way. On 30 March 1492 C.E., the edict of expulsion was issued from the Alhambra in the newly conquered Granada.[26] The ultimatum given to the Jews, as well as to the Muslims, was to surrender their faith or surrender their life or leave. Some Jews stayed under the terms of the Crown, but most of the Jews had heard such promises before and once again, the Jews set off to wander.

Over the next several centuries and throughout Europe, the walls of the ghettos were strong as to separate the Jews who lived within from the world outside and there was ostensibly no place for the Jews to go. In many cities, Jews were altogether excluded from the daily ways of life and they were considered to be a people without natural rights, and any freedom they paid for came to an end at any of the many borders. The procreation of Jews was kept in check by an elaborate system of restrictions that taxed marriages and births and prohibited more than one son to remain with his family.[27] After the expulsion of all the Jews from Austria in 1670 C.E., Fredrick William, the Elector of Brandenburg, permitted some of the exiles to settle in Berlin. By 1712 C.E., in spite of several restrictions including the separation of Jews in categories of "protected" Jews and "tolerated" Jews, the Jews had built their first synagogue in Berlin and their numbers began to grow.[28]

As people and their ideas were on the forefront of enlightenment, the French Assembly proclaimed the *Declaration of the Rights of Man* on 26 August 1789 C.E. Eventually, these rights were even thought to extend to the Jews, almost as an admonition that a Jew was indeed a "Man." In November of 1799 C.E., Napoleon Bonaparte became the master of France and through his skill and leadership, the Jews were emancipated as a matter of course throughout France's victories.[29] With the fall of Napoleon after losses in Russia in 1812 C.E. and in Germany in 1813 C.E., the rights that the Jews had barely realized were in the hands of the Congress of Vienna. Hope turned into nightmare as German cities became the scene of anti-Jewish pogroms, and

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25. *Id.* at 312-13.

26. *See* Beth Randall, *Tomas de Toquemada* at http://historymedren.about.com/gi/dynamic/offsite.htm?site=http%3A%2F%2Fwww.mcs.drexel.edu%2F%7Egbrandal%2Flllum_html%2FTorquemada.html (n.d.).

27. LEARSI, *supra* note 11, at 370.

28. *Id.* at 372.

29. *Id.* at 404-5.

citizens proclaimed the superiority of their blood while they murdered Jews who were thought of as inferior. And there were other pogroms in Europe against the Jews in the Common Era: three waves of pogroms occurred in Russia, each worse and broader than the last, in 1881-1884, 1903-1906, and in 1917-1921; and also in Poland in 1919, in Hungary in 1919, in Romania in 1926, and more as the Nazi ideology permeated and gained acceptance. It was this patchwork of instability in the name of hatred for the Jews that left the Jews searching for a home and continuing to wander.

C. The Turn of the Twentieth Century

Ever since there was passage to the "New World," if for no better place to go, the Jews have immigrated to America. Many Jews escaped not only the Spanish Inquisition but also the pogroms by finding passage to America. Before 1825, fewer than 10,000 immigrants entered the United States annually. "By the early twentieth century America was receiving an annual average of more than one million immigrants," while two-thirds arrived from Eastern and Southern Europe.[30]

Those who arrived in the United States during the years after 1820 brought with them discontent with their status at home as well as the desire to improve their conditions and quality of life. Some entered the United States under the pressure of great disasters in their native homeland, while others entered under the threat of more gradual economic and social change. The unifying principle for America's last great migratory wave, which began in the middle of the nineteenth century, was America's need for labor combined with the widespread belief that the United States was a land of opportunity and a refuge for the oppressed. The Jewish community that had preceded them welcomed the Jews who came to America during this period and they continued to grow and prosper. The number of Jews that were new arrivals seemed to mimic the plight of the Jews abroad and the ghettos of New York, Philadelphia, Chicago and other large cities continued to increase. It was a time where there was a demand for labor and an ample supply of immigrant workers. During this time, the Jews who wanted to wander had a place to take refuge and work. However, attitudes and market forces changed and United States immigration law changed with them. The next section looks at the impact of this evolving legislation on the new immigrants, the wandering Jews.

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30. *See* Jay M. Brown, *From The Shtetl To The Tenement: The East European Jews and America, A Social History 1850-1925* at http://www.cis.yale.edu/ynhti/curriculum/units/1979/2/79.02.02.x.html (n.d.).

III. TREATMENT UNDER MODERN LEGISLATION

A. Immigration Policy: the Effect on the Jews

In the 19th century, when immigration consisted of admitting enough immigrants to fill the capitalist needs for the proletariat, a more open immigration policy was beneficial to meet those exploitive needs. However, American economic policy changed at the beginning of the 20th century as the United States was a changed nation before and after World War I. Organizations formed and spoke out at Congressional hearings to voice their opinions on immigration and the relative effects.[31] Although often concerned that Jewish immigration could provoke anti- Semitism in America, Jewish leaders fought a long and largely successful delaying action against restrictions on immigration during the period from 1891-1924, "particularly as they affected the ability of Jews to immigrate."[32] While other religious groups such as Catholics and ethnic groups such as the Irish remained divided and ambivalent on their attitudes toward immigration and were poorly organized and ineffective in influencing immigration policy, and while labor unions opposed immigration in their attempt to diminish the supply of cheap labor, "Jewish groups engaged in an intensive and sustained effort against attempts to restrict immigration."[33] Despite the efforts to keep a more open immigration policy, Congress passed a literacy test that required all immigrants to be literate in order to pass through at Ellis Island.[34] Immigration in the United States was substantially lower, but this was also due to the interruption to life caused by the Great War.

After World War I, feelings of nationalism and protectionism ran rampant.[35] The heightened distrust of foreigners, the fear of labor unions and the influx of cheap labor, provoked hostility from the earlier Americans toward the newer, more-hyphenated foreign-Americans. The Ku Klux Klan revived to antagonize the immigrants when the War ended and Henry Ford's newspaper warned that there was a Jewish conspiracy to take over the world.[36]

In 1921, over 800,000 immigrants arrived with most able to pass the literacy requirements. Rumors spread that all 3,000,000 Jews in Poland would escape to America if there were a boat big enough to take them.[37] Accordingly, the issue of immigration policy in the United States during the 1920s was not

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31. ROBERT A. DIVINE, AMERICAN IMMIGRATION POLICY, 1924-1952 10-11 (Da Capo Press 1972).

32. *See* Kevin MacDonald, *Jewish Involvement in Shaping American Immigration Policy, 1881–1965: A Historical Review* at http://www.p-m-s.freeserve.co.uk/texts/USpol-2.htm (n.d.).

33. *Id.*

34. DAVID M. REIMERS, UNWELCOME STRANGERS 18 (Columbia University Press 1998). President Wilson vetoed this bill but the Congress overrode the President and it became law.

35. *Id* at 20.

36. *Id.*

37. *Id.*

whether to radically restrict the immigrants from entering but how to effectively legislate such restrictions. In 1920, the House and Senate split on a bill to suspend all immigration.[38]

The Quota Act of 1921 established the first numerical restrictions on European immigration. The Quota set the level of immigrants permitted to enter the United States at three percent of the number of foreign born from each European nationality residing in the United States according to the 1910 census.[39] The 1910 census was favored over the 1920 census because it minimized the proportion of southern and eastern Europeans in the population.[40] The Immigration Act of 1924 further restricted the entry of immigrants, while in 1929 a maximum quota of 153,774 was adopted from which 83,575 of those immigrants were designated from Great Britain and Ireland. The Jews were finding that there was less and less room to wander.

B. The Treaty of Versailles and the Great Depression

The enforcement of the Treaty of Versailles in Germany, which called for Germany to accept the blame for the war and pay heftily in reparations, created hardship in Germany and fostered general and targeted feelings of resentment. In 1921-22, the German mark fell in value from four to the United States dollar to seventy-five. Since Germany was unable to keep up with the repayment schedule from the Versailles Treaty and since the Treaty blocked Germany from many export markets, the mark then plummeted to four-hundred marks to the dollar.[41] By 1923, German economic life was grinding to a standstill, and while some reverted to the practice of bartering, many of the farmers stopped putting their crops up for sale and people throughout Germany were going hungry. During the rest of the 1920s in Germany, there became increasing needs for individuals to emigrate from Germany.

The Wall Street stock-market crash of 1929 precipitated the Great Depression, the worst economic downturn in the history of the United States. The depression had devastating effects on this country as well as others. The bottom fell out of the stock market, many banks could not continue to operate, farmers went into bankruptcy, and many were unemployed. With hundreds of thousands of Americans losing their jobs, businesses failing, and financial institutions collapsing, the immigrants were not wanted.

In September of 1930, President Hoover addressed the plight of the nation and instructed that immigrants "likely to become a public charge" were not to

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38. ARTHUR D MORSE, WHILE SIX MILLION DIED 134 (Random House 1967).

39. *Id.*

40. *Id.*

41. *Id.* at 37-39.

be admitted into the United States.[42] There was another major obstacle for the Jews who would try to escape tense times in Europe: the recent enforcement of Section 7(c) of the 1924 Act. Section 7(c) required that applicants furnish police certificates of good character for the past five years and other such documents.[43] Accordingly, the Jews were put in a position that required them to request certificates of good character from their persecutors in order to escape persecution. Thus, the 1920s were becoming the 1930s and after the prosperity of the 1920s, which was enjoyed throughout much of the world, there were many factors that made this time very difficult for the Jews. This combination of factors included but was not limited to the Depression in the United States and in Europe along with the manner in which the Treaty of Versailles had affected those in Germany.[44] Accordingly, power was shifting, ideologies were changing, and darkness was approaching for the Jews.

C. The Nazis and the Holocaust

During World War I, Adolph Hitler was twice recognized for valor in his service with the German Army. Although he only reached the rank of Corporal, he remained in the full-time employment of the Army after the War. One September night in 1919, Hitler received orders to attend a German's Worker Party meeting and report back on the "well intentioned" group.[45] The gathering of fifty was the first public forum that heard Hitler speak about his ideas of nationalism. As the party gained support and influence, the name was changed to the National Socialist German Workers' Party (the Nazis). The Nazi ideology was born from the belief that most of the Communist leaders were Jews, that it was the Jews who were responsible for the Revolution in Russia and Germany's defeat, and that the Jews "sold the nation into the slavery with the Versailles Treaty."[46] In December 1920, the Nazis bought their first newspaper and from this platform they announced to Germany that the Nazis were present as a "weapon for Germanism."[47] The Nazis through the newspaper went on to make many other statements.

As Germany suffered throughout the 1920s, the Nazis advanced their ideology, gained support, and became powerful by making the Jews vulnerable. The Nazis had found in anti-Semitism a consolation and a program. The Nazi

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42. *Id.* at 135.

43. *Id.* at 137.

44. *See Modern World History: The Treaty of Versailles* at http://www.bbc.co.uk/education/modern/versaill/versahtm.htm#q3 (n.d.) where it describes the terms of the Treaty and the particularly costly and devastating effect on the Germans.

45. JAMES POOL, WHO FINANCED HITLER 5-6 (Pocket Books 1978).

46. *Id.* at 24.

47. *Id.* at 32.

program consisted on the power of hatred and a plan toward the extermination of the Jews for the betterment of mankind and the glory of Germany. The words of Joseph Goebbels, who served as the Nazi Minister of Propaganda, help illustrate the contempt that was felt for the Jews. Certainly the Jew is a human being,"[But then] the flea is a living thing too; only not a pleasant one. Since the flea is not a pleasant thing, we are not obliged to keep it and let it prosper...but our duty is rather to exterminate it. Likewise with the Jews."[48]

On 30 January 1933, Franklin D. Roosevelt's fifty-first birthday, Adolf Hitler was appointed Chancellor of Germany. It was not long after the appointment that Hitler was able to put his plan for the extermination of the Jews into effect. There were more Christians than Jews among the initial victims of the Nazi terrorism, but as they were Socialists and Communists, Hitler thought of them as Jews.[49] As the Nazis launched their campaign against Jews through laws and brutal physical attacks, American diplomats and foreign correspondents began to report of the onslaught.[50] It started with public book burnings. Then, with much persecution in between, the Nuremberg Laws were passed in September 1935. These laws deprived all Jews of their citizenship, subjected the Jews to forced labor, deprived them of property and their possessions, and horded them into ghettos.[51]

The pre-war persecution culminated on 10 November 1938 on the Night of Broken Glass, *Kristallnacht.* It was that night that the vision of hell was unleashed on the Jews. Throughout hundreds of cities and towns, Jewish homes and shops were systematically looted and destroyed, over five hundred synagogues were burned, thousands of men, women, and children were beaten, maimed and murdered. While there was a genuine feeling of uneasiness throughout democratic governments, there was no planned intervention as this event was a matter of German "internal policy."[52] Many Jews fled both legally and illegally, while many Jews stayed.[53] In Germany, there was no secret about the Nazis plan, only disbelief that it could be real. The Jews would bitterly joke that when the Nazis came to power, there were two sorts of Jews living in Germany: the optimists and the pessimists. The pessimists went into exile; the optimists went to the gas chambers.[54]

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48. C.C. ARONSFELD, THE TEXT OF THE HOLOCAUST: A STUDY OF THE NAZIS' EXTERMINATION PROPAGANDA 1919-1945 12 (Micah Publications 1985).

49. MORSE, *supra* note 38, at 104.

50. *Id.* at 105.

51. *See The Nuremburg Laws* at http://www.skalman.nu/third-reich/nurnberg-lagarna.htm (n.d.).

52. LEARSI, *supra* note 11, at 597.

53. *See* the article by W. Michael Blumenthal at http://www.unhcr.org/ (n.d.) where he talks about the "Shanghai Jews." It says: "A large part of Shanghai's Jews, estimated at 20,000, escaped from Germany, Austria and Poland between 1938 and 1941. It was the last haven for those who had no visas."

54. RABBI JOSEPH TELUSHKIN, JEWISH WISDOM 561 (William Morrow and Co. 1994).

D. The Jews Who Went Into Exile and Those That Could Not

While the Nazis spread throughout Germany and into Europe, many Jews and other potential refugees looked to the United States for a safe haven. The number of refugees that fled Germany during the 1930s was about 25,000 a year.[55] These numbers were significant enough to raise the question of whether the United States would provide refuge for these persecuted people. The immigration laws had been erected high as a hurdle with only a little room to crawl underneath during the 1920s. Therefore, the laws obfuscated the asylum ideal that had made America what it had become.

The pre-war era was not a time where diversity was celebrated, merely exploited. During that period, the refugees were not distinguished from other immigrants in the existing legislation but for one exception.[56] The one exception was the literacy test and "it could be waived for persons fleeing political or religious oppression."[57] Thus, refugees had the same hurdles to jump as all other immigrants and that included quotas, moral character qualifications that required paperwork, and the public charge clause. It was not until after World War II that for the first time the United States engaged "in the massive resettlement of refugees."[58] As a result, there were relatively few wandering Jews because many Jews went to the camps when Hitler unveiled his final solution to the world.

E. The Laws that Followed the War and the Definition of Refugee

The Nazi war machine required labor. Accordingly, the Nazi policy was that of importing forced laborers from conquered territories. When the Allies surveyed the liberated enemy territory in 1945, they ascertained that there were about eight million people in Germany, Austria, and Italy who had been displaced from their homes in other parts of Europe.[59] The Jews that survived the camps and the exterminations were a part of this group of displaced persons.[60] On 13 February 1945 at the Yalta Conference, the Allied governments agreed on procedures for the repatriation of displaced persons. Close to seven million people returned to their homes per this agreement while over one million refused to return to their countries of origin because they

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55. DIVINE, *supra* note 31, at 93.

56. *Id.*

57. *Id.*

58. MICHAEL S. TEITELBAUM AND MYRON WEINER, THREATENED PEOPLE, THREATENED BORDERS 47 (W.W. Norton and Co. 1995).

59. DIVINE, *supra* note 31, at 110.

60. *Id.*

feared persecution from the newly instituted Communist governments.[61] However, over three million people where gathered and forcibly resettled.[62] In the United States , the 1948 Displaced Persons Act was the first policy for admitting persons fleeing persecution and the quota under the Act was 205,000 persons over two years.[63]

The escalating refugee crisis after World War II prompted the world community to develop certain norms and protections. The 1951 United Nations Convention relating to the Status of Refugees, which was drafted as a result of a recommendation by the newly established United Nations Commission on Human Rights, was a landmark in setting standards for the treatment of refugees. The Convention, in its article 1, provides a general definition of the term "refugee." The term applies to any person who

> ...as a result of events occurring before 1 January 1951 and owing to *well-founded fear of being persecuted* for reasons of *race*, *religion*, *nationality*, membership of a particular *social group* or *political opinion*, is outside the country of his nationality and is unable, or owing to such fear, is unwilling, to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.[64]

Many universally recognized human rights are directly applicable to refugees. These include the right to life,[65] protection from torture and ill-

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61. *Id.* See also http://www.ess.uwe.ac.uk/genocide/yugoslav-hist1.htm for allegations that many of the repatriations were forced.

62. *See* Punished peoples: the mass deportations of the 1940s at http://www.unhcr.org/ (n.d.) where it says that from ...1936 and 1952, more than 3 million people were rounded up, for the most part along the Soviet Union's western borders, strictly on the basis of their 'foreign' origins or culture, and dumped thousands of kilometers away in eastern and central Siberia or in the Central Asian republics. In all, more than 20 major groups suffered in this way.... [These included] ...non-Orthodox Christian (the Volga Germans), ...Buddhist (the Kalmyks), and ...Muslim (Chechens, Ingush, Karachai, Balkars, Crimean Tatars and Meskhetians). The Soviet Union's 2.5 million Jews were only saved from a similar fate by Stalin's death in March 1953.

63. TEITELBAUM, *supra* note 58, at 47. In 1950, the quota was increased to 415,744 persons and then complemented in 1953 by the Refugee Relief Act. In 1957, the Refugee-Escapee Act removed all quotas and allowed for refugees to be admitted without the limits of immigration law.

64. *See* Convention relating to the Status of Refugees (adopted 28 July 1951) art. 1(A)(2), 189 U.N.T.S. 150 [hereinafter 1951 Convention]. *See also* the Note on Determination of Refugee Status under International Instruments, (EC/SCP/5) at **http://www.unhcr.org/** (n.d.).

65. *See* the Universal Declaration of Human Rights (U.D.H.R.) (G. A. Res. 217, U.N. Doc. A/810) art. 3 (1948) [Hereinafter U.D.H.R.].

treatment,[66] the right to a nationality,[67] the right to freedom of movement as well as the right to leave any country including one's own and to return to one's country,[68] and the right not to be forcibly returned to persecution.[69]

The most essential component of refugee status is protection against return to a country where a person has reason to fear persecution. This protection has found expression in the principle of *non-refoulement*. The principle of *non-refoulement* is articulated in Art. 33(1) of the 1951 Convention which provides that: "No Contracting State shall expel or return (*refouler*) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion." This provision constitutes one of the basic Articles of the 1951 Convention, to which no reservations are permitted."[70] Unlike various other provisions in the Convention, its application is not dependent on the lawful residence of a refugee in the territory of a Contracting State.[71] While *non-refoulement* is not an entitlement to asylum, it does forbid forcible return.[72] Moreover, the principle of non-refoulement applies not only in respect to the country of origin but to any country where a person has reason to fear persecution.

The logic inherent in the non-derogable norm of *non-refoulement*, as it stood in Article 33 of the 1951 Convention and Article 12 of the International Covenant on Civil and Political Rights, was indicative of the logic set forth in the creation of the State of Israel as a place for the wandering Jews to go.[73] Many of these rights echoed the cries of the Jews in their treatment before, during and after the Holocaust. While the world number of Jews was considerably lower after World War II and the Holocaust, there were more Jews

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66. *See* U.D.H.R., *supra* note 65, art 5.

67. *See* U.D.H.R., *supra* note 65, art 15.

68. *See* U.D.H.R., *supra* note 65, art 13.

69. *See* 1951 Convention, *supra* note 64, art. 33(1).

70. *See* Note on Non-Refoulement (Submitted by the High Commissioner) (EC/SCP/2) at para. 4 at http://www.unhcr.org/_(n.d.).

71. *Id.*

72. GUY GOODWIN-GILL, THE REFUGEE IN INTERNATIONAL LAW 122-23 (Clarendon Press 1983), where it states:

> [f]reedom to grant or to refuse permanent asylum remains, but save in exceptional circumstances, states do not enjoy the right to return refugees to persecution or any situation of personal danger. Protection against the immediate eventuality is the responsibility of the country of first refuge. In so far as a state is required to grant that protection, the minimum content of which is ***non-refoulement*** through time, it is required also to treat the refugee in accordance with such standards as will permit an appropriated solution, whether voluntary repatriation, local integration, or resettlement in another country.

73. *See* 1951 Convention, *supra* note 64, art. 33(1). *See also* the International Covenant on Civil and Political Rights (adopted 19 Dec. 1966) art. 12, 999 U.N.T.S. 171 [hereinafter ICCPR].

that legitimately sought refuge than there were places for them. This was because the Jews were not wanted in many of the places of would-be asylum, as made obvious by the attempt to exterminate them. The right to not be forcibly returned, or *non-refoulement*, while different than an affirmative right to be resettled, left the nations of the world without the option of [forcibly] returning the Jews to their former homes and nightmares. Consequently, the pervasive and ongoing phenomenon of Jewish persecution cried out for the creation of a Jewish state.

IV. THE CREATION OF A JEWISH STATE

Following World War II, escalating hostilities between Arabs and Jews over the fate of Palestine and between the Zionist militias and the British army compelled Britain to relinquish its mandate over Palestine.[74] The Zionists believed that all Jews constitute one nation and that the only solution for anti-Semitism was the creation of a Jewish state.[75] The British requested that the recently established United Nations determine the future of Palestine.[76] On 29 November 1947, the UN General Assembly voted to partition Palestine into two states, one Jewish and the other Arab. The UN partition plan divided the country in such a way that each state would have a majority of its own population, although some Jewish settlements would fall within the proposed Palestinian state and many Palestinians would become part of the proposed Jewish state. The territory designated to the Jewish state would be slightly larger than the Palestinian state (56 percent and 43 percent of Palestine, respectively) on the assumption that increasing numbers of Jews would immigrate there.

According to the UN partition plan, the area of Jerusalem and Bethlehem was to become an international zone. While this was the plan for the geographic boundary of Israel, it was not the boundary for long as the neighboring Arab

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74. *See* The British Mandate at http://www.arab.net/palestine/history/pe_britishmandate.html (n.d.).

75. *See* http://www.merip.org/palestine-israel_primer/zionism-pal-isr-primer.html (n.d.) where it defines *Zionism*: Zionism, or Jewish nationalism, is a modern political movement. Its core beliefs are that all Jews constitute one nation (not simply a religious or ethnic community) and that the only solution to anti-Semitism is the concentration of as many Jews as possible in Palestine/Israel and the establishment of a Jewish state there.

76. *See* Question of Palestine at http://www.un.org/Depts/dpa/ngo/history.html (n.d.) where it speaks to the years of the Palestine Mandate. From 1922 to 1947, large-scale Jewish immigration from abroad, mainly from Eastern Europe took place, the numbers swelling in the 1930s with the notorious Nazi persecution of Jewish populations. Palestinian demands for independence and resistance to Jewish immigration led to a rebellion in 1937, followed by continuing terrorism and violence from both sides during and immediately after World War II. Great Britain tried to implement various formulas to bring independence to a land ravaged by violence. In 1947, Great Britain in frustration turned the problem over to the United Nations.

countries attacked the one-day old state on 15 May 1948.[77] In 1949, the war between Israel and the Arab states ended with the signing of armistice agreements. The country once known as Palestine was now divided into three parts, each under separate political control. The State of Israel encompassed over 77 percent of the territory. Jordan occupied East Jerusalem and the hill country of central Palestine (the West Bank). Egypt took control of the coastal plain around the city of Gaza (the Gaza Strip). The Palestinian Arab state envisioned by the UN partition plan was never established. The creation of the Jewish state largely alleviated the Jewish refugee problem, as it was a place that any Jew could go. However, the creation of the Jewish state and the subsequent attack by the Arab neighbors displaced many Palestinians and created a whole new problem.

V. THE CRITERION FOR THE ESTABLISHMENT OF A STATE AND THE PALESTINIAN PROBLEM

A. Conflicts in the Region

There was a good deal of power brokering, political influence, and design in relation to the establishment of Israel as the Jewish state. The historical persecution, treatment under modern legislation, and the genocide during the Holocaust of the Jews was certainly relevant to the formation of the State of Israel. All of these factors contributed to the creation of a significant number of stateless people with religion as a unifying feature. These same criterions would seem to be an appropriate starting point from which the Palestinian claim to the formation of a separate state should be examined. However, what follows in this inquiry will illustrate why such a comparison is not appropriate and why the factors that contributed to the formation of the State of Israel will not be the same factors that have been brought out in the Palestinian struggle.

The Palestinians had lived in the country in question since the dawn of history.[78] Both Muslim and Christian people comprised the Palestinian people and they constituted the main element of the population until the reintroduction of the Jews displaced the majority of this population in and around 1948.[79] In the period since World War II, the Middle East has been the scene of one

77. CATTAN, *supra* note 4, at 23.

78. *Id.* at 13.

79. *See* Palestinian Society in Gaza, West Bank and Arab Jerusalem: A Survey of Living Conditions at http://almashriq.hiof.no/general/300/320/327/fafo/reports/FAFO151/2_2.html (n.d.) where it states: "'Palestinians' will be understood as patrilineal descendants of Moslems, Christians, Druse and other 'non-Jewish' citizens who were residents in this area [Palestine] prior to 1947/48" [hereinafter Palestinian Society]. *Compare with* The History and Meaning of "Palestine" and "Palestinians" at http://www.tzemach.org/fyi/docs/nopal.htm where it refers to the British Mandate and states: "...it was the Jewish population that was known as 'Palestinians'" [hereinafter Meaning of "Palestinians"].

conflict after another. Tensions both between nations and within nations have erupted into wars, revolutions, and terrorist plots that have had widespread diplomatic, military, and economic ramifications throughout the region and the rest of the world. The victory for the Jews in the War of 1948 helped them to acquire more land for settlements, but at the expense of the Palestinians who lived there before. The United Nations Relief Works Agency for Palestine Refugees (UNRWA) faced the staggering task of caring for more than 750,000 refugees from this first exodus of 1948-1949, which put a considerable burden on the available UNRWA resources. In 1967 the Arab countries, Egypt, Syria, and Jordan, upset at the confiscation of land that went to form Israel, increased pressure on Israel by mobilizing their armies and threatening to attack the new country in order to reclaim the land. Israel was overwhelmed at the prospect of this seemingly imminent attack, and quickly launched a preemptive strike that pierced nearly to Cairo, Egypt.[80] The Six-Day War, as it came to be known, led to an additional half-million new refugees who comprised 1967's "second exodus" from Palestine.[81] "More than one-fifth of the inhabitants had fled when Israeli soldiers seized East Jerusalem and the West Bank during the six-days of fighting."[82]

The Jews were viewed by the Palestinians to have come into Israel as invaders historically and once again in the Zionist movement after World War II. The defense of Israel seemed to have the effect of expanding its territory. As a result, many Palestinians were displaced, but unlike the Jews, they were without religion as a unifying factor.[83] Nevertheless, does the displacement of Palestinians or the creation of Palestinian refugees rise to the level of persecution, or the type of persecution that the world witnessed with respect to the Jews prior to the recognition of the State of Israel? Is this level of persecution necessary? Does the non-derogable norm of *non-refoulement* entitle the Palestinian refugees a way out of the camps and a way into either the lands of their Arab neighbors or into their own state? Moreover, should the treatment of the Palestinians in the camps and the consequential standard of living by the Palestinians that resulted from their displacement be included in part of the analysis?

This paper is now at the point where one could say that any such comparison between the Jews and the Palestinians for the purpose of establishing a Palestinian state is absurd. This is because pain is pain and suffering is suffering, and it is the distinguishing of degrees that is absurd. It is

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80. *See* The 1967 War (The Six-Day War) at http://www.infoplease.com/ce6/history/A0856668.html (n.d.).

81. *See* Question of Palestine at http://www.un.org/Depts/dpa/ngo/history.html (n.d.).

82. *See* Andrew I. Kilgore, *Israeli Terror Tactics Drive Out Palestinians in 1948 and 1967* at http://www.washington-report.org/backissues/0390/9003017.htm (n.d.).

83. *See* Palestinian Society and Meaning of "Palestinians", *supra* note 79.

certain and unfortunate that Palestinians have suffered. Accordingly, it is more relevant to ask how the persecution of the Palestinians might cease and how their suffering might be remedied. This inquiry in turn will pose the question of whether the Jews and Palestinians can coexist.

B. Remedy for the Palestinian Problem

There seem to be three pragmatic solutions to refugee situations: repatriation to the country of origin, integration or settlement in the country of first asylum, and resettlement in a third country having the capacity and willingness to absorb the refugees.[84] In the case of the Palestinians, one of the largest refugee groups, none of these options have been available.[85] Given Israel's refusal to comply with UN Resolution 194 of 1948, which established the principles of repatriation and compensation, and the Arab states' unwillingness to accept or permanently integrate and resettle the hundreds of thousands of refugees on their soil, the Palestinian refugees have been left in limbo for the last fifty years.[86]

The Palestine Liberation Organization (PLO), formed in 1964, adopted a new covenant in 1968 committing all Palestinians to continue the fight for their rights, claiming that the international community had so far proved unable to discharge the responsibility it had borne for almost half a century. The covenant termed Israel an illegal state, which led to Israel's refusal to deal with the PLO. In 1969, the General Assembly specifically and formally recognized the inalienable rights of the Palestinian people, declaring that the Assembly:

> Recogniz[ed] that the problem of the Palestine Arab refugees has arisen from the denial of their inalienable rights under the Charter of the United Nations and the Universal Declaration of Human Rights,

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84. *See* Report of the United Nations High Commissioner for Refugees, 1992 (A/47/12) at para. 43 at http://www.unhcr.org/ (n.d.) where it states: "The three classical durable solutions are voluntary repatriation, the preferred solution, local integration in the country of first asylum and resettlement in a third country." *See also* http://www.arts.mcgill.ca/MEPP/PRRN/papers/UNH.html (n.d.), where it speaks to the Palestinian Right of Return and Refugee Resettlement.

85. *See* Palestinian Refugees at http://www.incite-national.org/issues/refugees.html (n.d.), where it states that the Palestinians have the unfortunate status of being both the largest single group of refugees in the world, and one of the oldest, having been refugees for some five decades.

86. *See* The Origins and Evolution of the Palestinian Problem 1917-1988 at http://www.un.org/Depts/dpa/qpal/dpr/DPR_pp_2.htm (n.d.) [hereinafter Origins]. *See also* C.W. Gusewelle, *Bungling Arab brethren share blame for plight of Palestinians*, KANSAS CITY STAR, December 2, 2001, where it states that:

> [t]hrough all those 25 years of confrontation and in the 28 troubled years since, the Arab regimes, except for Jordan, refused to allow Palestinians to immigrate in significant numbers, or extend to those they did admit the rights of citizenship, or even to commit serious resources to relieving the misery in the refugee camps.

> Gravely concerned that the denial of their rights has been aggravated by the reported acts of collective punishment, arbitrary detention, curfews, destruction of homes and property, deportation and other repressive acts against the refugees and other inhabitants of the occupied territories...[87]

As a result of the position of the United Nations, it would seem that the only direction to go is forward and toward the creation of a Palestinian state. Moreover, the United Nations has been vocal in questioning Israeli measures against Palestinian terrorist activity, but the United Nations has not once questioned the Palestinian terrorist activities.[88] However, there lies a problem with the creation of a Palestinian state that is bent on the destruction of the Jews and of Israel. There are factions with power and the will to destroy all of the Jews in the Middle East and either eliminate them systematically from the region or provoke them into inviting on their own destruction.[89] Furthermore, the holy book of Islam has been interpreted by these factions to justify both their means and their ends: the use of suicide bombers to rid Palestine of the Jews.[90] Thus, there is the problem of justly dealing with the plight of the Palestinian refugees, which may prove to be mutually exclusive with maintaining any Jews in Israel.

Unfortunately, the goal for peace in the region was not historically facilitated when the Palestinians embarked upon a new three-stage strategy for Israel's destruction, embodied in the PLO's 1974 decision commonly known as the "Phased Plan." The plan called for the "armed struggle" to establish an "independent combatant national authority" over any territory that is "liberated" from Israeli rule. It then called upon the Palestinians to continue the struggle against Israel, using the territory of the national authority as a base of operations

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87. *See* Origins, *supra* note 86.

88. *See* United Nations Demands Israeli Withdrawal at http://www.cnn.com/2002/WORLD/meast/03/30/un.mideast/index.html (March 30, 2002); *see also* Security Council Calls For 'Fact-Finding' Mission In Jenin at http://www.cnn.com/2002/WORLD/meast/04/19/mideast/index.html (April 20, 2002).

89. *See* Interviews With Three Palestinian Militant Leaders at http://www.pbs.org/wgbh/pages/frontline/shows/holy/onground/pales.html (March 27, 2002) where the Islamic Jihad leader Ali Safuri stated:

> [i]f Israel were to annihilate all the Palestinian population here with atomic weapons, Israel itself would be automatically destroyed because of the scope of the atomic destruction. So we are proud to be martyrs and that our sons from outside come and continue our journey and live in this land.

90. *Two Views: Can the Koran Condone Terror?* N.Y. TIMES, October 13, 2001 at http://www.globalpolicy.org/wtc/fundamentalism/1013koran2.htm where it quotes the Koran as follows: "And fight in Allah's cause against those who wage war against you, but do not commit aggression — for verily Allah does not love aggressors" (2:190). "And slay them wherever you may come upon them, and drive them away from wherever they drove you away — for oppression is even worse than killing" (2:191). "Hence, fight against them until there is no more oppression and all worship is devoted to Allah alone" (2:193).

to provoke an all-out war in which Israel's Arab neighbors would then "liberate all Palestinian territory."[91] This Palestinian attitude has produced an oversensitive and sometimes over-reactive Israel, which then must consider the safety of the Jews in regard to any and all aspects of a proposed peaceful settlement.

There are two deal-breaking issues that have prohibited progress with regard to a peaceful settlement between the Israelis and the Palestinians. The first issue is the Palestinian "right of return." This issue has been at the center of the Palestinian position on the refugee issue since 1948.[92] Asserted and implied in this right to return is that all displaced Palestinians have the right to return to Palestine. Palestinian claims in this regard are rooted in the principles of natural justice and the historical experience of Palestinian dispossession. The prohibition against the Palestinian right of return seems to violate both the International Covenant on Economic, Social, and Cultural Rights as well as the International Covenant on Civil and Political Rights by depriving the Palestinian people the right of self-determination.[93]

The right of self-determination is of particular importance because its realization is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights.[94] However, the Israelis are not entirely at fault for the Palestinian refugee problem. While the Palestinians were encouraged to leave Israel by the neighboring Arab invaders, even though they were invited to stay and live in Israel, and while many Jews fled these neighboring Arab countries and were absorbed into Israel, "Jordan was the only Arab country to welcome the Palestinians and grant them citizenship."[95] Accordingly, those other Arab countries that denied asylum and refuge to the Palestinians acted in violation of the right to asylum and nationality as stated in the United Nations Declaration of Human Rights, as well as the right to self determination as stated in the International Covenant on Economic, Social and Cultural Rights and the

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91. *See* The PLO's "Phased Plan" at http://www.netaxs.com/~iris/plophase.htm (n.d.). Specifically look at articles 2, 4, and 8.

92. *See* The Palestinian Diaspora at http://www.en.monde-diplomatique.fr/focus/mideast/question-3-3-1-en (n.d.), where it states that the right of return was recognized for the first time in UN General Assembly Resolution 194 on 11 December 1948. Moreover, Resolution 3236 (22 November 1974) asserted that the right to return became an "inalienable right."

93. *See* International Covenant on Economic, Social, and Cultural Rights (adopted 19 Dec. 1966) art. 1(1), 999 U.N.T.S. 3 [hereinafter ICESCR]. *See also* the ICCPR, *supra* note 73, art. 1(1). *See also* The Right To Self-Determination of Peoples (Article 1) CCPR General Comments 12 at http://www.unhchr.ch/tbs/doc.nsf/(symbol)/CCPR+General+comment+12.En?OpenDocument.

94. *See* The Right To Self-Determination of Peoples (Article 1), *supra* note 93.

95. *See* Mitchell Bard, *The Palestinian Refugees* at http://www.us-israel.org/jsource/History/refugees.html (n.d.).

International Covenant on Civil and Political Rights.[96] Moreover, the problem for the Jews with allowing the Palestinians the full realization of the right of return is that the return and replacement of such large numbers of Palestinians would certainly make the Jews a minority population in their state and have an effect on the Jews in Israel with regards to security.

The second deal-breaking issue is the withdrawal of Israel from territories occupied beyond its 1967 border. Unfortunately, the attitude that Israel has failed to return to living within its pre-1967 border does not accurately portray the movement of the Jews on this issue. There have been numerous occasions that "Israel has withdrawn from certain parts of these areas."[97] These withdrawals include but are not limited to: As part of the 1974 disengagement agreement, Israel returned territories captured in the 1967 and 1973 wars to Syria. Under the terms of the 1979 Israeli-Egyptian peace treaty, Israel withdrew from the Sinai Peninsula for the third time and Israel had already withdrawn from large parts of the desert area it captured in its War of Independence. After capturing the entire Sinai in the 1956 Suez conflict, Israel relinquished the peninsula to Egypt a year later. In September 1983, Israel withdrew from large areas of Lebanon to positions south of the Awali River. In 1985, Israel completed its withdrawal from Lebanon, except for a narrow security zone just north of the Israeli border. After signing peace agreements with the Palestinians on 4 May 1994,[98] and a treaty with Jordan on 26 October 1994,[99] Israel agreed to withdraw from most of the territory in the West Bank captured from Jordan in 1967, a small area was returned to Jordan, and the rest was ceded to the Palestinian authority. The agreement with the Palestinians also involved Israel's withdrawal in 1994 from most of the Gaza Strip, which had been captured from Egypt in 1973.

The possible elements of a resolution to the unfortunate Palestinian refugee situation may call for a plan of Palestinian repatriation achieved through Palestinian statehood, the ability of refugees to gain Palestinian citizenship and return to national soil in the land seized from the 1967 War in the West Bank and Gaza, as well as the return of a limited or targeted number of 1948 refugees to their homes within Israel under the rubric of family reunification. However, these plans must respect the national security of Israel and guarantee security in

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96. *See* U.D.H.R., *supra* note 65, arts. 14 and 15. *See also* ICESCR, *supra* note 93, art. 1(1). *See also* ICCPR, *supra* note 73, art. 1(1).

97. Mitchell Bard, *Defensible Boundaries* at http://www.us-israel.org/jsource/Peace/Boundaries.html (n.d.).

98. *See* Agreement On the Gaza strip and the Jericho Area at http://www.us-israel.org/jsource/Peace/gazajer.html (May 4, 1994).

99. *See* Treaty Of Peace Between The State Of Israel and The Hashemite Kingdom Of Jordan at http://www.us-israel.org/jsource/Peace/isrjor.html (October 26, 1994).

consideration because the Jews in Israel seem to always be on defense from the constant aggressive activity of neighbors that harbor intrinsic hatred.

While the recent recognition of Israel as a state by Palestinian leader Yasser Arafat helps illustrate that Palestinians and Arabs alike value Jews as human beings, wave after wave of terrorist activity has kept Israeli land-for-peace deal-brokers apprehensive to give away too much too soon.[100] "The right to life and security of the person allows for no derogation, and must be applied with no exception in all circumstances. Israeli and Palestinian civilians are not presently enjoying this right..."[101] Accordingly, there is a clear and present need for action. The establishment of a viable and independent Palestinian state is a sufficient remedy to resolve the refugee issue as far as the moderate Palestinians are concerned. However, as the creation of the Palestinian state would permit Palestinian repatriation and security for their own people, any remedy must fully address the legitimate security concern of the Israelis.[102] Although these concerns may not be the same today as they were in 1967, with the present state of the world and the state of technology these security concerns may be much greater.

C. The Present Conflict

Peace talks slowed after the assassination of Israeli Prime Minister Yitzhak Rabin by an Israeli radical in 1995.[103] Following several interim agreements and lengthy discussions about Israeli withdrawals from occupied territories, there was a shift of control from the Israeli government to the Palestinian authority. The United States brokered an agreement between Israeli Prime Minister Binyamin Netanyahu and Palestinian leader Yasser Arafat to reopen peace talks in October of 1998. The Wye River Accord set the parameters for an Israeli withdrawal from more territory in exchange for promises that

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100. *All Things Considered (NPR September 9, 1993)*, when it was reported that the PLO has finally recognized Israel's right to exist. *See also* Interviews With Three Palestinian Militant Leaders at http://www.pbs.org/wgbh/pages/frontline/shows/holy/onground/pales.html (March 27, 2002) where the Islamic Jihad leader Ali Safuri stated that the Jews have no right to live anywhere in Palestine and that the Islamic Jihad will not cease terrorist activity until Israel leaves the occupied territory, i.e. the entire region.

101. *See* High Commissioner For Human Rights Calls On Israeli, Palestinian Leaders To Show Political Will To End Violence at http://www.unhchr.ch/huricane/huricane.nsf/view01/554DFAA20AB48C21C1256B720059BAB0?opendocument (n.d.).

102. See Bard, *supra* note 97, where it states that Israel cannot withdraw from all the territories it captured. As the United States Joint Chiefs of Staff concluded in a 29 June 1967 memorandum for the Secretary of Defense: "From a strictly military point of view," the Joint Chiefs wrote, "Israel would require the retention of some captured Arab territory in order to provide militarily defensible borders."

103. The assassination illustrates the fact that there exists extremism on both sides. However, there is no Israeli mandate to destroy or kill all Palestinians.

Palestinian officials would work to ensure the security of Israel.[104] The Wye River Accord also laid the groundwork for discussions about the formal creation of a Palestinian state and other so-called "final status" issues, such as who controls Jerusalem.

After the election of Labour Party leader Ehud Barak in May 1999, the peace talks moved into high gear. Barak quickly moved to expedite a new accord, and his government accepted the idea of a Palestinian state with a strategy generally known as "land for peace."[105] The idea of "land for peace" required that the Israeli government surrender more territory to the Palestinian Authority in exchange for sustained security. Barak also opened negotiations with Syria and finished the Israeli withdrawal from southern Lebanon.

In March of 2000, a series of negotiations opened outside Washington with a framework for peace talks on the "final status" issues as the goal.[106] These "final status" issues include agreement on borders, the refugee situation, and control over Jerusalem. The meetings culminated in another meeting at Camp David in July 2000 between Arafat and Barak, while a self-imposed deadline of 13 September 2000 loomed over the discussions. At the talks, Barak offered the most sweeping peace plan ever put forward by the Israeli government. However, United States efforts to broker a deal finally failed when Arafat refused Barak's offer and failed to make any counter-offer.

Soon after the talks failed, the visit by Ariel Sharon to the Temple Mount in Jerusalem sparked days of protests.[107] The violence spread and intensified as Palestinians vented anger at the continued presence of Israel in the occupied territories. As the Palestinian protests continued and daily clashes intensified, Prime Minister Barak was defeated by conservative Ariel Sharon in February of 2001. In May 2001, Senator George Mitchell issued his report saying the actions of both Israel and Palestinian authorities sparked the violence that had

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104. *See* Israelis, Palestinians Break Deadlock on Wye River Accord at http://www.cnn.com/WORLD/meast/9909/04/mideast.04/index.html (September 4, 1999).

105. *See* Barak Looks to Friends and Rivals to Form New Government at http://www.cnn.com/WORLD/meast/9905/19/israel.02/index.html (May 20,1999).

106. *See* United States to Call for Israeli Withdrawal at http://www.cnn.com/2001/US/11/14/powell.mideast/index.html (November 14, 2001).

107. *See* http://www.templemount.org/allah.html (n.d.) where it states that the significance of the Temple Mount for the Palestinians is that the shrine was deliberately built as a political, economic, and religious counter attraction to Mecca because Medina and Mecca, the two cities holy to Islam, were under the control of a rival Caliph. Moreover, the holy spot of Judaism was now to be identified with the spot where Mohammed's horse ascended to heaven. *Compare with* http://ds.dial.pipex.com/ritmeyer/temple.ark.html where it proposes that the Temple Mount is the resting place of the Ark of the Covenant, and http://www.templemount.org/bitterend.html where it underscores the importance of the site to the Jews as the place where it connects the Jews to God. *See also* Israeli Troops, Palestinians Clash After Sharon Visits Jerusalem Sacred Site at http://www.cnn.com/2000/WORLD/meast/09/28/jerusalem.violence.02/index.html (September 28, 2000).

raged for eight months, and that neither party was specifically to blame.[108] The report also outlined a multi-step process for the violence to end and talks to reopen.[109] Both Israel and the Palestinians have been slow to endorse the report, each side saying it does not trust the other side to uphold its part of the deal. Nevertheless, the United States accepted Mitchell's recommendations.

After the failure of the talks, and the non-implementation of the Mitchell proposal, the Al-Aqsa brigade launched an *infitada* and began to conduct suicide bombings against the Israeli military and civilians alike.[110] The Al-Aqsa Martyrs brigade is the military wing of Yasser Arafat's Fatah organization, which includes both secular and Islamic ideologies and militias.[111] Also, there have been several armed incursions by the Israelis into the occupied territories. These Israeli transgressions include but are not limited to the systematic assassinations and arrests of individuals believed to have been involved in terrorism, the deployment of troops, and the destruction of Palestinian property such as the Palestinian Radio station and Arafat's own compound. Both the radio station and Arafat's compound were thought to be used for terrorist planning and terrorist propaganda.

Between suicide bombings and Israeli military action, it is not known which is the chicken and which is the egg, or if they are even rationally connected. The Palestinians refer to it as the "balance of terror," and some of them do not differentiate Israeli or American military action from suicide bombings.[112] In any event, the terrorist attacks by the Palestinians and the armed incursions by the Israelis have spiraled out of control and this has invited intellectuals to debate the "moral equivalence" of the acts.[113] It seems that Arafat cannot stop the suicide bombings, although there are allegations that he

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108. *See* Mitchell: No Such Thing 'As Conflict That Can't be Ended' at http://www.cnn.com/2001/WORLD/meast/05/21/mitchell.cnna/index.html (May 21, 2001).

109. *See* Bush Said Ready to Take 'Active' Role in Mideast at http://www.cnn.com/2001/WORLD/meast/05/27/mideast.mitchell/index.html (May 27, 2001).

110. *See* The Cycle of Violence at http://www.pbs.org/wgbh/pages/frontline/shows/holy/cron/ (n.d.) for a chronology to the escalation of violence. *See also* Interviews With Three Palestinian Militant Leaders at http://www.pbs.org/wgbh/pages/frontline/shows/holy/onground/pales.html (March 27, 2002) where the leader of the Al Aqsa Martyrs Brigade Ibrahim Abayat stated that the group, which the United States designated a terrorist organization, was a national liberation movement that "...derives the legitimate right to resist the occupation of the Israelis from the United Nations Geneva Convention." Moreover, he stated that: "...the United States has proven it is not the shepherd of peace but the shepherd of the Israelis." *See also* Intifada Has United All Palestinians at http://www.arabnews.com/Article.asp?ID=9601 (Apr. 5, 2002).

111. *Id.*

112. See Interviews With Three Palestinian Militant Leaders at http://www.pbs.org/wgbh/pages/frontline/shows/holy/onground/pales.html (March 27, 2002) where the Islamic Jihad leader Ali Safuri stated that the fear needs to be instilled on the Jewish people.

113. *See* The Peace Encyclopedia: Moral Relativism, Moral Equivalence, Ethical Relativism, Cultural Relativism, Egalitarianism at http://www.yahoodi.com/peace/mrelativism.html (n.d.)

does not adequately try. It is charged that he talks with two tongues, speaking English and condemning an act while also speaking Arabic and encouraging the same act. Others allege that he encourages the acts by financing the terrorists.[114] Moreover, neither the United Nations nor individual nations can influence Israel to stop its offensive campaigns, because it is widely believed in Israel that these campaigns are the only means of preventing future terrorist acts.

A United States-sponsored resolution adopted on 12 March 2002 endorsed the creation of a Palestinian state, demanded an immediate cease-fire, and called for renewed efforts by both parties to resume negotiations on a political settlement.[115] Also, there has recently been a proposal from the Arab community championed by Saudi Crown Prince Abdullah for a resolution to the conflict. What is significant about the Arab proposal is that the Arab community offered an implied recognition of the right of Israel to exist.[116] While the Israelis would no doubt insist upon normal diplomatic relations in light of some of the concessions they are asked to make, it is important that the Arab community recognize that they will have an important role in resolving this conflict.

Compounding the problem, the United States has debated military intervention to remove the Iraqi leader Sadaam Hussein, who has allegedly awarded the families of terrorist martyrs twenty-five thousand dollars for the completion of each terrorist attack.[117] Thus, it does not appear that the entire Arab community recognizes Israel's right to exist, which stems from ancient problems in the region. Arab intransigence and militancy are obstacles to peace and stability in the region, and also threaten the call for the creation of a Palestinian state. Moreover, given the extreme hatred of some Arabs for not only the Jews, but the United States as well, there seems little hope for a cease fire by Palestinian militants either before or after any agreement.[118] Thus, the cycle of violence will continue.

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114. *See* Interviews With Three Palestinian Militant Leaders at http://www.pbs.org/wgbh/pages/frontline/shows/holy/onground/pales.html (March 27, 2002) where the leader of Islamic Jihad said that he would not follow any order from Arafat for a ceasefire, however, the leader of Al Aqsa would follow any command from Arafat. *See also* Israelis Say Documents link Arafat to Terrorists at http://www.cnn.com/2002/WORLD/meast/04/04/arafat.documents/index.html (April 4, 2002).

115. *See* Highlights of Bush News Conference at http://www.cnn.com/2002/ALLPOLITICS/03/13/bush.hilights/index.html (March 13, 2002).

116. *See* Bush: 'The World Finds Itself at a Critical Moment' at http://www.cnn.com/2002/US/04/04/bush.transcript/index.html (April 4, 2002).

117. *See* Put the Blame On ... at http://www.foxnews.com/story/0,2933,49563,00.html (April, 4 2002).

118. *See* Interviews With Three Palestinian Militant Leaders at http://www.pbs.org/wgbh/pages/frontline/shows/holy/onground/pales.html (Mar. 27, 2002) where the Islamic Jihad leader Ali Safuri stated that the Jews and the Americans are terrorists and that by God's hand America will fall. Moreover, that "[i]n the Palestinian lexicon, Israel has no place on the map."

VI. CONCLUSION

The creation of the State of Israel gave the wandering Jews a place to take refuge, but in doing so a new group of wanderers were created. It took a long time for the Jews to have the place that they call Israel; a place where they are permitted to be Jews; a place where the internal government is not trying to remove them or persecute them.

> First they came for the socialists, and I did not speak out—because I was not a socialist. Then they came for the trade unionists, and I did not speak out—because I am not a trade unionist. Then they came for the Jews, and I did not speak out—because I was not a Jew. Then they came for me—and there was no one left to speak for me.[119]

It is unfortunate that history can be cruel, as it seems that the Jews to a certain extent have not spoken out for the Palestinians. If the Palestinians cannot take refuge in Israel, their situation calls for an affirmative duty by the Israelis and the Arab community to assist in their resettlement elsewhere. This is because the Palestinian refugees, like the Jews before them, have no place to wander. Accordingly, they are stateless, they are refugees, and they have rights.[120]

The establishment of a Palestinian state is a possible remedy for the refugee problem, and it is arguably necessary to prevent the Palestinians from becoming marginalized and hated as the Jews have been historically. However, the creation of a Palestinian state seems to be as problematic as peace between the Jews and the Palestinians, or between the Jews and the larger Arab community. The failure to affect a meaningful and lasting solution between the peoples of two of the most ancient cultures is disheartening in the hope for peace in other parts of the world. Moreover, the continuation of the conflict between the Arabs and the Jews effectively treats the three million Palestinian refugees as nothing more than a group, rather than the one plus one plus one that should represent each and every individual among them.

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119. TELUSHKIN, *supra* note 54, at 536, quoting the Reverend Martin Niemoller, leader of the Confessional Church.

120. *See* 1951 Convention, *supra* note 65.