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THE MYTH THAT ISRAEL'S PRESENCE IN JUDEA AND SAMARIA IS COMPARABLE TO IRAQ'S PRESENCE IN KUWAIT

Malvina Halberstam*

I. INTRODUCTION

One of the myths that grew out of and was deliberately propagated during the Gulf Crisis—and with considerable success—is that Iraq's taking of and continued presence in Kuwait is similar to Israel's taking of and continued presence in the West Bank—or Judea and Samaria, as the area was known for some 2,000 years and was still referred to in League of Nations and United Nations documents up to 1948.¹ The attempt to equate the two was first made by Saddam Hussein in response to the United States demand that he withdraw from Kuwait.² It has been embraced by the P.L.O., by representatives of various Arab organizations and by the Arab states, both those supporting and those opposing Iraq's invasion of Kuwait.³ From every Arab interviewed on television, to scholars of the stature of Burns Weston,⁴ to the National Council of Churches,⁵ the argument was heard that it was hypocritical for the United States to demand that Iraq get out of Kuwait while it condoned

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1. Judea and Samaria are not only the Biblical names, as is frequently stated, *see, e.g.*, ALLAN GERSON, *THE KIRKPATRICK MISSION, DIPLOMACY WITHOUT APOLOGY: AMERICA AT THE UNITED NATIONS 1981-1985*, at 58 (1991), but also the historical names, used in League of Nations and British Mandatory documents up until 1948, *see, e.g.*, *A SURVEY OF PALESTINE 948* (1927, reprinted 1991); Palestine Royal Commission Report 383, Command Paper 5479 (1937), *cited in* 3 *THE ARAB-ISRAELI CONFLICT: DOCUMENTS 170* (John Norton Moore ed., 1974). Julius Stone states, "[i]t is incorrect to assume that the names 'Judea' and 'Samaria' are archaic revivals by Israel authorities" and points out that Sir John Glubb ("Glubb Pasha"), Commander of the Arab Legion and responsible for Jordan's capture of those territories in 1948, used the terms Judea and Samaria in his 1957 book, *A Soldier with the Arabs*, when referring to this area. *See* JULIUS STONE, *ISRAEL AND PALESTINE: ASSAULT ON THE LAW OF NATIONS 188-189 n.29* (1981).

2. *Confrontation in the Gulf: Proposals by Iraqi President: Excerpts From His Address*, N.Y. TIMES, Aug. 13, 1990, at A8.

3. Youssef M. Ibrahim, *Confrontation in the Gulf; Arafat's Support of Iraq Creates Rift in P.L.O.*, N.Y. TIMES, Aug. 14, 1990, at A9; John Kifner, *Confrontation in the Gulf; Mirage of Arab Unity*, N.Y. TIMES, Aug. 12, 1990, § 1, at 1.

4. Professor Weston made the argument at the annual meeting of the American Association of Law Schools held in Washington, D.C., January 3-5, 1991, as a participant on a panel on Teaching National Security Law: The Gulf Crisis.

5. Ari L. Goldman, *Council of Churches Condemns U.S. Policy in Gulf*, N.Y. TIMES, Nov. 16, 1990, at A13.

Israeli presence in the West Bank. Such statements were quoted repeatedly by the media,⁶ generally without critical comment, thus subtly reinforcing the position that a parallel exists. Yet, the two can be equated only if one totally ignores the distinction in international law between the use of force in self-defense and the use of force for aggressive purposes and the clear moral basis for that distinction. For Israel's entry into the West Bank resulted from the use of force in self-defense and was therefore lawful, and its continued presence in the West Bank is clearly consistent with international law and U.N. Security Council Resolution 242; whereas, Iraq's entry into Kuwait involved the use of force for aggression and was therefore unlawful, and its continued presence in Kuwait is in violation of international law and numerous U.N. Security Council resolutions.

6. A search in NEXIS shows that this comparison was made 22 times in the New York Times between August 3, 1990, and February 7, 1991. Youssef M. Ibrahim, *The Iraqi Invasion: A New Gulf Alignment; Iraqis Bargaining on Anti-U.S. Sentiment, May Profit by Intimidating the Monarchies*, N.Y. TIMES, Aug. 3, 1990, at A1; Joel Brinkley, *Confrontation in the Gulf; Palestinians Give Passionate Support to Hussein as a Hero and a Liberator*, N.Y. TIMES, Aug. 12, 1990, § 1, at 14; *Confrontation in the Gulf; Proposals by Iraqi President: Excerpts from His Address*, N.Y. TIMES, Aug. 13, 1990, at A8; Youssef M. Ibrahim, *Confrontation in the Gulf; Arafat's Support of Iraq Creates Rift in P.L.O.*, N.Y. TIMES, Aug. 14, 1990, at A9; Craig R. Whitney, *Confrontation in the Gulf; Thatcher Prepares for Costly and Patient Struggle*, N.Y. TIMES, Sept. 6, 1990, at A18; Paul Lewis, *Confrontation in the Gulf; U.N. Seeks Wider Embargo in Vote Assailing Iraqi Acts*, N.Y. TIMES, Sept. 17, 1990, at A11; Paul Lewis, *Confrontation in the Gulf; Iraq, at U.N., Accuses U.S. of 'Western Imperialism'*, N.Y. TIMES, Oct. 6, 1990, § 1, at 5; John F. Burns, *The Middle East; In Baghdad, Few Signs of War Ahead*, N.Y. TIMES, Oct. 9, 1990, at A13; Thomas L. Friedman, *Mideast Tensions: A Parting of Paths?*; *Israelis and Americans Reach a Point Where their Interests may Veer Off*, N.Y. TIMES, Oct. 11, 1990, at A12; Paul Lewis, *Mideast Tension; U.N. to Weigh Iraqi War Crimes Inquiry*, N.Y. TIMES, Oct. 21, 1990, § 1, at 12; Paul Lewis, *Mideast Tensions; U.N. Council Holds the Iraqis Liable on Kuwait Damage*, N.Y. TIMES, Oct. 30, 1990, at A1; Joel Brinkley, *Mideast Tensions; Arabs Kill Israeli on Bus Near Tel Aviv, Police Say*, N.Y. TIMES, Dec. 3, 1990, at A12; Patrick E. Tyler, *Confrontation in the Gulf; Hussein Visited Troops at Front for New Year, Iraqi TV Says*, N.Y. TIMES, Jan. 2, 1991, at A1; Paul Lewis, *Standoff in the Gulf; U.S. Delays a Vote in U.N. on Middle East Resolution*, N.Y. TIMES, Dec. 11, 1990, at A18; Philip Shenon, *Confrontation in the Gulf; Saudis Step Up Civil-Defense Effort*, N.Y. TIMES, Jan. 2, 1991, at A8; Peter Steinfels, *Beliefs*, N.Y. TIMES, Jan. 5, 1991, § 1, at 8; Thomas L. Friedman, *Confrontation in the Gulf; Baker Spurns European Plan on Gulf*, N.Y. TIMES, Jan. 7, 1991, at A11; Thomas L. Friedman, *Confrontation in the Gulf; Baker-Aziz Talks on Gulf Fail; Fears of War Rise; Bush is Firm; Diplomatic Effort to Continue*, N.Y. TIMES, Jan. 10, 1991, at A1; *Iraq's Untenable Argument*, N.Y. TIMES, Jan. 11, 1991, at A28; Alan Cowell, *War in the Gulf: Jordan; Jordanian Pleads for a Cease-Fire*, N.Y. TIMES, Jan. 20, 1991, § 1, at 17; Anthony Lewis, *Abroad at Home; The Old Order*, N.Y. TIMES, Feb. 4, 1991, at A17; Thomas L. Friedman, *War in the Gulf: Washington; Baker Sketches Future Gulf Role*, N.Y. TIMES, Feb. 7, 1991, at A1.

II. ISRAEL'S ENTRY INTO AND PRESENCE IN JUDEA AND SAMARIA
ARE LAWFUL; IRAQ'S INVASION OF AND PRESENCE IN
KUWAIT ARE IN VIOLATION OF INTERNATIONAL
LAW

A. *Israel's Entry into the West Bank was Lawful; Iraq's Entry into
Kuwait was not*

Article 2(4) of the U.N. Charter prohibits "the threat or use of force against the territorial integrity or political independence of any state."⁷ Article 51 of the U.N. Charter provides that nothing in the Charter "shall impair the inherent right of . . . self-defense."⁸ The distinction between the aggressive use of force and the use of force in self-defense is the cornerstone of the U.N. Charter. It is one of the most fundamental moral principles and is recognized by every municipal legal system. It would be a perversion of justice, both legally and morally, both with respect to the individual and to states, to equate the aggressor with the victim.

That Israel's use of force in 1967 was in self-defense is clear beyond peradventure of doubt. When the state of Israel was established on May 14, 1948, the armies of seven Arab states attacked it, vowing to destroy it.⁹ Although they did not succeed in doing so, and an armistice was eventually declared, none of the Arab states agreed to a peace treaty with Israel.¹⁰ All considered themselves in a state of war with Israel, a situation that, with the exception of Egypt, persists to this day. It was also in that war that Trans-Jordan, as it was then known, captured Judea and Samaria, or the West Bank.¹¹ Trans-Jordan annexed the territory and changed its own name to Jordan.¹²

In 1967, Egypt had not yet entered into a peace treaty with Israel. Quite the contrary, Gamel Abdul Nasser, then President of Egypt, hoped to establish himself as the Arab leader by threatening to destroy Israel. He closed the Straits of Tiran to Israeli shipping, proclaimed a blockade on the Israeli port of Eilat, massed Egyptian troops in the Sinai, and ordered the U.N. troops, which had been stationed there to prevent hos-

7. U.N. CHARTER art. 2, ¶ 4.

8. *Id.* art. 51.

9. 2 MENAHEM MANSOOR, POLITICAL & DIPLOMATIC HISTORY OF THE ARAB WORLD 1900-1967: A CHRONOLOGICAL STUDY, at Mar. 13, 1948 (1972). "The Arab League proclaimed a state of war between the seven Arab States and Palestine Jewry and announced that the Arab States would invade the Holy Land as soon as the United Kingdom gave up the Mandate." See *also id.* at June 25, 1948. "King Abdallah of Transjordan announced that the Arab States, headed by Egypt, had decided to continue the struggle in Palestine with the aim of abolishing the Jewish State." *Id.*

10. SIDNEY N. FISHER, THE MIDDLE EAST, A HISTORY 665 (1969).

11. MANSOOR, *supra* note 9, at May 16, 1948, and May 18, 1948.

12. 9 FACTS ON FILE Y.B. 1949, at 139, §§ M-N (1950).

tilities between Egypt and Israel, to leave. He made no secret of his purpose. On May 27, 1967, President Nasser of Egypt stated: "Our basic objective will be the destruction of Israel. The Arab people want to fight. The mining of Sharm El Sheikh is a confrontation with Israel. Adopting this measure obligates us to be ready to embark on a general war with Israel."¹³ Seeking to avoid a war on two fronts, Israel sent a request to Jordan through the Secretary General of the United Nations that it not join with Egypt in the war against Israel, and assured Jordan that if it agreed, Israel would not attack Jordan. Jordan rejected that request. In the war that ensued, Israel captured the West Bank, which Jordan itself had seized illegally in 1948.¹⁴

The evidence that Israel's use of force in 1967 was justified self-defense was so overwhelming that Professor Richard Falk of Princeton University, who is not known for his defense of Israel, stated that he had decided to revise his earlier views on the law of self-defense "in light of [his] conviction that Israel was entitled to strike first in June of 1967, so menacing and imminent was the threat of aggression being mounted against her."¹⁵

In contrast, on August 2, 1990, when Iraq invaded Kuwait, Kuwait had not massed its troops on the border with Iraq, had not threatened to destroy Iraq, and, of course, did not consider itself in a state of war with Iraq. Iraq's invasion of Kuwait was clearly a violation of Article 2(4) of the U.N. Charter, not an act of lawful self-defense under Article 51 of the Charter.

*B. Israel's Continued Presence in Judea and Samaria is Lawful;
Iraq's Presence in Kuwait is not*

Israel's continued presence in Judea and Samaria is justified by its historic ties to these territories, by the provisions of the League of Nations Mandate for Palestine, by the manner in which Israel acquired possession of these territories, and by Resolution 242 of the U.N. Security Council.

1. Israel's Historic Ties to Judea and Samaria

Judea and Samaria were the heart of ancient Israel. Many places in Judea and Samaria are the site of important events in Jewish history.

13. STONE, *supra* note 1, at 141.

14. Only Great Britain and Pakistan recognized Jordan's annexation of the West Bank. See METZ, H.C. ED., JORDAN, A COUNTRY STUDY 29 (Area Handbook Series, 4th. ed. 1989). For a summary of the events preceding the 1967 war which established that Israel acted in self-defense, see, e.g., ELIHU LAUTERPACHT, JERUSALEM AND THE HOLY PLACES 46-47 (1968).

15. Richard A. Falk, *Reply to Professor Julius Stone*, 64 AM. J. INT'L L. 162, 163 (1970).

The tombs of the patriarchs Abraham, Isaac and Jacob, and the matriarchs Sarah, Rebecca and Leah, are located in Hebron.¹⁶ Hebron is also the city in which "David was anointed King . . . and where he reigned for nine years before he established Jerusalem as the capital."¹⁷ Bethlehem was the birthplace of David and is the site of the Tomb of Rachel, one of the matriarchs of the Jewish people.¹⁸ Samaria served as the capital of the Israelite Kingdom in the ninth century B.C..¹⁹ (Subsequently, the whole northern portion of the West Bank was known as Samaria.) Modiin, the site of the Maccabean revolt and struggle for independence, commemorated on Hanukkah, is also on the West Bank.²⁰ In fact, almost all of the areas of historical or religious significance to Jews are in these territories.

2. *The League of Nations Mandate for Palestine*

Following the defeat of Germany and the Ottoman Empire in World War I, the Allies did not annex the territories they captured from Germany and the Ottoman Empire, as victors had done historically. Instead, they established a number of independent states and mandates to implement the goal of "self-determination" espoused by Woodrow Wilson. They recognized the claims of the "Arab nation" (including Palestinian Arabs) and allocated the overwhelming share of territory and resources of the Middle East—an area large enough to later form the territorial basis of a dozen Arab states—to the Arabs. They also recognized (in the words of the Enquiry Commission established by President Woodrow Wilson to draw a map of the world based on his Fourteen Points) that Palestine was "the cradle and home" of the Jews, and that "Palestine should become a Jewish state," and allocated some 46,000 square miles, on both sides of the Jordan, for the Jewish national home.²¹ This was done by establishing a Mandate for Palestine,²² to be administered by Great Britain, which had itself earlier recognized Jewish rights to Palestine in the Balfour Declaration.²³ The League of Nations Mandate for Palestine recognized "the historical connection of the Jew-

16. See Mordecai S. Chertoff, *The Jewish Presence on the West Bank*, in *THE HASHEMITE KINGDOM OF JORDAN AND THE WEST BANK* 205, 205-06 (Anne Sinai & Allen Pollack eds., 1977).

17. *Id.* at 206.

18. *Id.*

19. *Id.* at 207.

20. GWYN ROWLEY, *ISRAEL INTO PALESTINE* 12 (1984).

21. STONE, *supra* note 1, at 15-17.

22. *The Mandate for Palestine* was confirmed by the Council of the League of Nations on July 24, 1922. League of Nations Doc. C. 614, M. 368 1922 VI (1922), cited in 3 *THE ARAB-ISRAELI CONFLICT: DOCUMENTS* 74 (John Norton Moore ed., 1974).

23. The Balfour Declaration was issued on 2 November 1917 by British Foreign Minister, Arthur James Balfour, to Lord Rothschild. The Balfour Declaration provided in pertinent part:

ish people with Palestine"²⁴ and "the grounds for reconstituting their national home"²⁵ in Palestine. It instructed Great Britain to place "the country under such political, administrative and economic conditions as will secure the establishment of the Jewish national home . . . ,"²⁶ to "facilitate Jewish immigration," to "encourage . . . close settlement by Jews on the land,"²⁷ and to "[enact] a nationality law . . . framed so as to facilitate the acquisition of Palestinian citizenship by Jews who take up their permanent residence in Palestine."²⁸

In 1922, Great Britain, for its own political reasons and contrary to the original terms of the Mandate, established Trans-Jordan in four-fifths of the Palestine Mandate, reducing to 10,871 square miles—or about one two-hundredth of the entire territory distributed—the territory left for the Jewish National Home.²⁹ Sir Alec Kirkbride, Britain's envoy to Eastern Palestine, subsequently explained the establishment of Trans-Jordan on territory that had been designated for the Jewish National Home on the ground that it was necessary for the resettlement of Arabs from Western Palestine once a Jewish state was established. He wrote, "[a]t the time of the issue of this mandate the areas which lay to the east of the river . . . were intended to serve as a reserve of land for use in the resettlement of Arabs once the National Home for the Jews of Palestine . . . became an accomplished fact."³⁰ But Trans-Jordan did not include Judea and Samaria, the heart of ancient Israel.

The International Court of Justice has ruled in a number of cases, most prominently those dealing with the South West African Mandate (Namibia), that a League of Nations mandate is "a binding international

His Majesty's Government view with favour the establishment in Palestine of a national home for the Jewish people, and will use their best endeavors to facilitate the achievement of this object, it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine, or the rights and political status enjoyed by Jews in any other country.

2 JACOB C. HUREWITZ, *THE MIDDLE EAST AND NORTH AFRICA IN WORLD POLITICS; A DOCUMENTARY RECORD, BRITISH-FRENCH SUPREMACY, 1914-1945*, at 106 (1979).

24. League of Nations Doc. C. 529, M. 314, 1922 VI (1922), Preamble, para. 3; see Moore ed., *supra* note 22.

25. *Id.*

26. *Id.* art. 2.

27. *Id.* art. 6.

28. League of Nations Doc. C. 529, M. 314, 1922 VI (1922), art. 7.

29. See STONE, *supra* note 1, at 17. There are some 21 Arab states with a territory of over 5,000,000 (five million) square miles. See LEONARD J. DAVIS, *MYTHS AND FACTS 1989: A CONCISE RECORD OF THE ARAB-ISRAELI CONFLICT* 5 (1989). There is one Jewish state, with a territory of 8,572 square miles, or a little over 10,871 square miles if the West Bank, or Judea and Samaria are included. See *id.* at 303; see STONE, *supra* note 1, at 17.

30. SIR ALEC SEATH KIRKBRIDE, *A CRACKLE OF THORNS* 19 (1956).

instrument, like a treaty.”³¹ In the words of Professor Rostow, it “continues as a fiduciary obligation of the international community until its terms are fulfilled. All states, the Court, and the Security Council have responsibility for seeing to it that the terms of the Mandate are respected and carried out.”³²

3. *The Acquisition of Territory by the Use of Force in Self-Defense*

Historically, almost every state has either come into existence or acquired territory through the threat or use of force. Thus, Jennings stated: “[I]f old roots of title are to be dug up and examined against the contemporary rather than the intertemporal law there can be few titles that will escape without question.”³³ It is argued, however, that that was changed by the U.N. Charter, that since the U.N. Charter prohibits the “threat or use of force against the territorial integrity or political independence of any state,”³⁴ the acquisition of territory by the use of force is illegal. Thus Jennings argues:

To brand as illegal the use of force against the ‘territorial integrity’ of a state, and yet at the same time to recognize a rape of another’s territory by illegal force as being itself a sort of legal title to the sovereignty over it, is surely to risk bringing the law in contempt. . . . The question is *whether an international crime of the first order can itself be pleaded as title* because its perpetration has been attended with success.³⁵

Brownlie argues to the same effect. He writes:

Moreover, the essential *criminality of wars of aggression and analogous forms of the use of force* as an instrument of national policy has altered the nature of recognition in such circumstances and given it the character of *complicity in criminal activity*. . . . Thus recognition of annexation would be a delict, *a violation of the sovereignty* of the state which was *a victim* of the use or threat of force.³⁶

Manifestly, this rationale for barring the acquisition of territory by the use of force does not apply if the use of force is not in violation of Article 2(4) of the Charter but is in lawful self-defense under Article 51 of the Charter.

31. Eugene V. Rostow, “*Palestinian Self-Determination*”: *Possible Futures for the Unallocated Territories of the Palestine Mandate*, 5 YALE STUD. WORLD PUB. ORD. 157 (1979).

32. *Id.* at 156-57.

33. ROBERT YEWDFALL JENNINGS, *THE ACQUISITION OF TERRITORY IN INTERNATIONAL LAW* 53 (1963).

34. U.N. CHARTER art. 2, ¶ 4.

35. JENNINGS, *supra* note 33, at 54 (emphasis added).

36. IAN BROWNLIE, *INTERNATIONAL LAW AND THE USE OF FORCE BY STATES* 418-419 (1963) (emphasis added).

Moreover, an interpretation of the U.N. Charter that would bar a state from acquiring territory not only when it was the aggressor, but also when it acted in self defense, would remove a great deterrent to aggression: the possibility that the aggressor state might lose territory. It would thus undermine, rather than serve, the purposes of the Charter. As Julius Stone noted:

International law forbids acquisition by unlawful force, but not where, as in the case of Israel's self-defense in 1967, the entry on the territory was lawful. It does not so forbid it, in particular, where the force is used to stop an aggressor, for the effect of such prohibition would be to guarantee to all potential aggressors that, even if their aggression failed, all territory lost in the attempt would be automatically returned to them. Such a rule would be absurd to the point of lunacy.³⁷

Elihu Lauterpacht similarly stated:

This proposition [that the acquisition of territory by the use of force is impermissible] . . . is an erroneous distortion of a well-known and well-established principle. The correct principle [is] . . . *ex injuria jus non oritur*, out of a wrong, no right can arise. . . . [T]erritorial change cannot properly take place as a result of the *unlawful* use of force. But to omit the word 'unlawful' is to change the substantive content of the rule and to turn an important safeguard of legal principle into an aggressor's charter.³⁸

Schwebel also stressed the need to distinguish between "aggressive conquest and defensive conquest" and between the taking of territory which the prior holder held lawfully and that which it held unlawfully.³⁹ He wrote:

[T]hat principle [that the acquisition of territory by war is inadmissible] must be read in particular cases together with other general principles. . . . [N]amely that no legal right shall spring from a wrong, and the Charter principle that the Members of the United Nations shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state. So read, the distinctions between aggressive conquest and defensive conquest . . . become no less vital and correct than the central principle itself.⁴⁰

This interpretation of the Charter, permitting the acquisition of territory resulting from the use of force when that use of force is in response

37. STONE, *supra* note 1, at 52.

38. LAUTERPACHT, *supra* note 14, at 51-52.

39. Stephan M. Schwebel, *What Weight to Conquest?*, 64 AM. J. INT'L L. 344, 345-46 (1970).

40. *Id.* at 345.

to aggression, is consistent with the action taken following World War II by the states that drafted the Charter and established the United Nations. In fact, all of the states guilty of aggression in World War II—Germany, Japan, and Italy—were forced to give up territory which they held prior to World War II. For example, Germany was forced to give up land east of the Oder and Niesse Rivers to Poland and to the former U.S.S.R..⁴¹ Italy was forced to give up former Italian territory to France and to the former Yugoslavia in the modification of pre-war borders.⁴² Japan was forced to give up Korea, the islands of Quelpart, Port Hamilton and Dagelet, Formosa, the Pescadores, the Kurile Islands, part of Sakhalin and the Islands adjacent to it, and the Spratly Islands.⁴³

4. U.N. Security Council Resolution 242

The U.N. Security Council did not pass a resolution requiring Israel to withdraw from the territories it captured in 1967. Resolution 242, often cited for that proposition, provides:

[T]he fulfillment of Charter principles requires the establishment of a just and lasting peace in the Middle East which should include the application of *both* the following principles:

- i) Withdrawal of Israel[i] armed forces from territories occupied in the recent conflict;
- ii) Termination of all claims or states of belligerency and respect for and acknowledgement of the sovereignty, territorial integrity and political independence of every State in the area and their (sic) right to live in peace within secure and recognized boundaries free from threats or acts of force.⁴⁴

It does not provide for a withdrawal of Israel from all the territories, or to the pre-1967 lines. A Soviet proposal, which would have so provided, was not adopted.⁴⁵ Nor does Resolution 242 provide for the es-

41. See Agreement Between Poland and the German Democratic Republic, July 6, 1950, 319 U.N.T.S. 93; Treaty between the Federal Republic of Germany and the Soviet Union, Aug. 12, 1970, 1972 Bundesgesetzblatt, Teil I [BGBl. I] 353, translated in J.A.S. GRENVILLE, *THE MAJOR INTERNATIONAL TREATIES 1914-1973*, at 293-294; Treaty on the Final Settlement With Respect to Germany, Sept. 13, 1990, quoted in Thomas L. Freidman, *Evolution in Europe; Four Allies Give Up Rights in Germany*, N.Y. TIMES, Sept. 13, 1990, at A1.

42. Treaty of Peace with Italy, Feb. 10, 1947, T.I.A.S. No. 1648, 49 U.N.T.S. 126, 126-36. Italy also ceded the Island of Pelagosa and the adjacent islets to Greece. *Id.* arts. 11(2), 14(1), 49 U.N.T.S. at 133.

43. Treaty of Peace with Japan, Sept. 8, 1951, art. 2, T.I.A.S. No. 2490, 136 U.N.T.S. 45, 46-50.

44. S.C. Res. 242, U.N. SCOR, 22d Sess., at 8, U.N. Doc. S/INF/22 Rev. (1967) (emphasis added).

45. The representative of Syria criticized the British formula, which became Resolution 242, on the ground that it did not say that "the withdrawal is to be the pre-June 5 armistice lines." U.N. SCOR, 22d Sess., 1382d mtg., para. 11, U.N. Doc. S/PV.1382 (1967). A resolution proposed by

tablishment of an Arab-Palestinian state in the territories. Rather, Resolution 242 speaks of a need to achieve "a just settlement of the refugee problem."⁴⁶

Finally, the Security Council specifically coupled "withdrawal of Israeli armed forces" with the "[t]ermination of *all claims* or states of belligerency."⁴⁷ Thus, Resolution 242 recognizes Israel's right to remain in the territories until the Arab states terminate "all claims or states of belligerency" with Israel, respect and acknowledge Israel's sovereignty, and its "right to live in peace within secure and recognized boundaries free from threats or acts of force."⁴⁸ So far, only one Arab state, Egypt, has done so.

III. CONCLUSION

Israel's entry into Judea and Samaria was clearly a lawful exercise of the right to self-defense under Article 51 of the Charter. Strong arguments can be made for Israel's right to retain Judea and Samaria based on Jewish roots in that land, on the League of Nations Mandate, and on the fact that the Arab states lost that territory in a war of aggression. But whatever one's views about rights to sovereignty over Judea and Samaria, there is no question that, in the words of a prominent British scholar, "until such time as the Arab nations agree to negotiate a peace treaty, Israel is in legal terms, entitled to remain in the territories she now holds."⁴⁹

In strong contrast, Iraq's continued presence in Kuwait is in direct violation of U.N. Security Council resolutions. Security Council Reso-

the Soviet Union specifically provided, "(a) [t]he parties to the conflict should immediately withdraw their forces to the positions they held before 5 June 1967 in accordance with the principle that the seizure of territories as a result of war is inadmissible." U.N. SCOR, 22d Sess., 1381st mtg., para. 7, U.N. Doc. S/PV.1381 (1967). Explaining the Soviet proposal, the Soviet representative stated: "Our draft resolution contains a clear clause on the key question, namely, the withdrawal of Israeli troops from all occupied territories. . . ." *Id.* para. 9. But, this proposal was never accepted; it was not even brought to a vote. Yet, much of the discussion since then assumes that that is what Resolution 242 provides. Indeed, a front page article of the New York Times stated that Resolution 242 "provides for a withdrawal from *all* occupied territories." Robert Pear, *U.S. Agrees to Talks with P.L.O., Saying Arafat Accepts Israel and Renounces All Terrorism*, N.Y. TIMES, Dec. 15, 1988, at A1. A correction was printed the following day. *Corrections*, N.Y. TIMES, Dec. 16, 1988, at A3. For further discussion of Resolution 242, see ARTHUR S. LALL, *THE UNITED NATIONS AND THE MIDDLE EAST CRISIS, 1967*, at 246-48, 252-55 (1968); Arthur J. Goldberg, *United Nations Security Council Resolution 242 and the Prospects for Peace in the Middle East*, 12 COLUM. J. TRANSNAT'L L. 187 (1973); Rostow, *supra* note 31, at 147.

46. Resolution 242, art. 2(b).

47. *Id.* arts. 1(i)-(ii) (emphasis added).

48. *Id.*

49. Rosalyn Higgins, *The Place of International Law in the Settlement of Disputes by the Security Council*, 64 AM. J. INT'L L. 1, 8 (1970).

lution 660 “condemns the Iraqi invasion of Kuwait” and “demands that Iraq withdraw *immediately* and *unconditionally* all its forces” from Kuwait.⁵⁰ The demand for immediate and unconditional withdrawal was reiterated in a number of subsequent resolutions calling for economic sanctions, a blockade and an air embargo against Iraq, and ultimately authorizing the use of armed force to dislodge Iraq from Kuwait.⁵¹

IV. EPILOGUE

The myth that Iraq's presence in Kuwait and Israel's presence in Judea and Samaria present parallel situations that warrant similar treatment is reinforced by the media, both by their frequent repetition of these allegations without critical comment and by the media's reference to Judea and Samaria, or the West Bank, as the “occupied” West Bank. First, the use of the term “occupied” to characterize both Israel's presence in the West Bank and Iraq's presence in Kuwait creates a semantic parallel. Furthermore, while the word “occupied” can be used merely to state a fact (as in “this chair is occupied”), its use with respect to territory generally connotes that the presence is illegal (as in occupied France during World War II). Since Israel's presence in the West Bank is legal under Security Council Resolution 242, the reference to it as the “occupied” West Bank is misleading.

Interestingly, the territory in question was not referred to as the “occupied” West Bank during the almost 20 years that Jordan held the West Bank, even though Jordan captured the territory when it illegally attacked Israel in 1948, and Jordan's attempted annexation was not recognized by most other states, including all the Arab states.⁵² Moreover, as between Jordan and Israel, Israel clearly has a better claim to this territory. Not only were Judea and Samaria the heart of ancient Israel, but they are part of the territory that was allocated for the establishment of a Jewish National Home by a League of Nations mandate.

Whatever one's views about the ultimate sovereignty over Judea and Samaria—a question that raises complex legal and political problems—any attempt to equate Israel's conduct with that of Iraq's is totally unwarranted, since the former is consistent with international law and morality, and the latter is in violation of international law and universally recognized moral principles.

50. S.C. Res. 660, U.N. Dep't of Pub. Info. DP1/1104 Add. 1 - Dec. 1990, at 3.

51. See S.C. Res. 661, 662, 664, 665, 666, 667, 669, 670, 674, 677, 678, 686. The official texts of these resolutions may be found in U.N. Dep't. of Pub. Info. DP1/1104 and U.N. S.C. Distr. General 91-07134, 2205e (E).

52. See METZ, *supra* note 14, at 29.