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LEGAL RIGHTS AND TITLE OF SOVEREIGNTY OF THE JEWISH PEOPLE TO THE LAND OF ISRAEL AND PALESTINE UNDER INTERNATIONAL LAW

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The details for the planned independent Jewish state were set forth in three basic documents, which may be termed the founding documents of mandated Palestine and the modern Jewish state of Israel that arose from it. These were the San Remo Resolution of April 25, 1920, the Mandate for Palestine conferred on Britain by the Principal Allied Powers and confirmed by the League of Nations on July 24, 1922, and the Franco-British Boundary Convention of December 23, 1920. These founding documents were supplemented by the Anglo-American Convention of December 3, 1924 respecting the Mandate for Palestine. It is of supreme importance to remember always that these documents were the source or well-spring of Jewish legal rights and title of sovereignty over Palestine and the Land of Israel under international law, because of the near-universal but completely false belief that it was the United Nations General Assembly Partition Resolution of November 29, 1947 that brought the State of Israel into existence. In fact, the UN resolution was an illegal abrogation of Jewish legal rights and title of sovereignty to the whole of Palestine and the Land of Israel, rather than an affirmation of such rights or progenitor of them.

The San Remo Resolution converted the Balfour Declaration of November 2, 1917 from a mere statement of British policy expressing sympathy with the goal of the Zionist movement to create a Jewish state into a binding act of international law that required specific fulfillment by Britain of this object in active cooperation with the Jewish people. Under the Balfour Declaration as originally issued by the British Government, the latter only promised to use their best endeavors to facilitate the establishment in Palestine of a national home for the Jewish people. But under the San Remo Resolution of April 24-25, 1920, the Principal Allied Powers as a cohesive group charged the British Government with the responsibility or legal obligation of putting into effect the Balfour Declaration. A legal onus was thus placed on Britain to ensure that the Jewish National Home would be duly established. This onus the British Government willingly accepted because at the time the Balfour Declaration was issued and adopted at the San Remo Peace Conference, Palestine was considered a valuable strategic asset and communications center, and so a vital necessity for protecting far-flung British imperial interests extending from Egypt to India. Britain was fearful of having any major country or Power other than itself, especially France or Germany, positioned alongside the Suez Canal.

The term "Jewish National Home" was defined to mean a state by the British Government at the Cabinet session which approved the Balfour Declaration on October 31, 1917. That was also the meaning originally given to this phrase by the program committee which drafted the Basel Program at the first Zionist Congress in August 1897 and by Theodor Herzl, the founder of the Zionist Organization. The word "home" as used in the Balfour Declaration and subsequently in the San Remo Resolution was simply the euphemism for a state originally adopted by the Zionist Organization when

the territory of Palestine was subject to the rule of the Ottoman Empire, so as not to arouse the sharp opposition of the Sultan and his Government to the Zionist aim, which involved a potential loss of this territory by the Empire. There was no doubt in the minds of the authors of the Basel Program and the Balfour Declaration regarding the true meaning of this word, a meaning reinforced by the addition of the adjective “national” to “home”. However, as a result of not using the word “state” directly and proclaiming that meaning openly or even attempting to hide its true meaning when it was first used to denote the aim of Zionism, ammunition was provided to those who sought to prevent the emergence of a Jewish state or who saw the Home only in cultural terms.

The phrase “in Palestine”, another expression found in the Balfour Declaration that generated much controversy, referred to the whole country, including both Cisjordan and Transjordan. It was absurd to imagine that this phrase could be used to indicate that only a part of Palestine was reserved for the future Jewish National Home, since both were created simultaneously and used interchangeably, with the term “Palestine” pointing out the geographical location of the future independent Jewish state. Had “Palestine” meant a partitioned country with certain areas of it set aside for Jews and others for Arabs, that intention would have been stated explicitly at the time the Balfour Declaration was drafted and approved and later adopted by the Principal Allied Powers. No such allusion was ever made in the prolonged discussions that took place in fashioning the Declaration and ensuring its international approval.

There is therefore no juridical or factual basis for asserting that the phrase “in Palestine” limited the establishment of the Jewish National Home to only a part of the country. On the contrary, Palestine and the Jewish National Home were synonymous terms, as is evidenced by the use of the same phrase in the second half of the Balfour Declaration which refers to the existing non-Jewish communities “in Palestine”, clearly indicating the whole country. Similar evidence exists in the preamble and terms of the Mandate Charter.

The San Remo Resolution on Palestine combined the Balfour Declaration with Article 22 of the League Covenant. This meant that the general provisions of Article 22 applied to the Jewish people exclusively, who would set up their home and state in Palestine. There was no intention to apply Article 22 to the Arabs of the country, as was mistakenly concluded by the Palestine Royal Commission which relied on that article of the Covenant as the legal basis to justify the partition of Palestine, apart from the other reasons it gave. The proof of the applicability of Article 22 to the Jewish people, including not only those in Palestine at the time, but those who were expected to arrive in large numbers in the future, is found in the Smuts Resolution, which became Article 22 of the Covenant. It specifically names Palestine as one of the countries to which this article would apply. There was no doubt that when Palestine was named in the context of Article 22, it was linked exclusively to the Jewish National Home, as set down in the Balfour Declaration, a fact everyone was aware of at the time, including the representatives of the Arab national movement, as evidenced by the agreement between Emir Feisal and Dr. Chaim Weizmann dated January 3, 1919 as well as an important letter sent by the Emir to future US Supreme Court Justice Felix Frankfurter dated March 3, 1919. In that letter, Feisal characterized as “moderate and proper” the Zionist proposals presented by Nahum Sokolow and Weizmann to the Council of Ten at the Paris Peace Conference on February 27, 1919, which called for the development of Palestine into a Jewish commonwealth with extensive boundaries. The argument later made by Arab leaders that the Balfour Declaration and the Mandate for Palestine were incompatible with Article 22 of the Covenant is totally undermined by the fact that the Smuts Resolution – the precursor of Article 22 – specifically included Palestine within its legal framework.

The San Remo Resolution on Palestine became Article 95 of the Treaty of Sevres which was intended to end the war with Turkey, but though this treaty was never ratified by the Turkish National Government of Kemal Ataturk, the Resolution retained its validity as an independent act of international law when it was inserted into the Preamble of the Mandate for Palestine and confirmed by 52 states. The San Remo Resolution is the base document upon which the Mandate was

constructed and to which it had to conform. It is therefore the pre-eminent foundation document of the State of Israel and the crowning achievement of pre-state Zionism. It has been accurately described as the Magna Carta of the Jewish people. It is the best proof that the whole country of Palestine and the Land of Israel belong exclusively to the Jewish people under international law.

The Mandate for Palestine implemented both the Balfour Declaration and Article 22 of the League Covenant, i.e., the San Remo Resolution. All four of these acts were building blocks in the legal structure that was created for the purpose of bringing about the establishment of an independent Jewish state. The Balfour Declaration in essence stated the principle or object of a Jewish state. The San Remo Resolution gave it the stamp of international law. The Mandate furnished all the details and means for the realization of the Jewish state. As noted, Britain's chief obligation as Mandatory, Trustee and Tutor was the creation of the appropriate political, administrative and economic conditions to secure the Jewish state. All 28 articles of the Mandate were directed to this objective, including those articles that did not specifically mention the Jewish National Home. The Mandate created a right of return for the Jewish people to Palestine and the right to establish settlements on the land throughout the country in order to create the envisaged Jewish state.

In conferring the Mandate for Palestine on Britain, a contractual bond was created between the Principal Allied Powers and Britain, the former as Mandator and the latter as Mandatory. The Principal Allied Powers designated the Council of the League of Nations as the supervisor of the Mandatory to ensure that all the terms of the Mandate Charter would be strictly observed. The Mandate was drawn up in the form of a Decision of the League Council confirming the Mandate rather than making it part of a treaty with Turkey signed by the High Contracting Parties, as originally contemplated. To ensure compliance with the Mandate, the Mandatory had to submit an annual report to the League Council reporting on all its activities and the measures taken during the preceding year to realize the purpose of the Mandate and for the fulfillment of its obligations. This also created a contractual relationship between the League of Nations and Britain.

The first drafts of the Mandate for Palestine were formulated by the Zionist Organization and were presented to the British delegation at the Paris Peace Conference in 1919. The content, style and mold of the Mandate was thus determined by the Zionist Organization. The British Peace Delegation at the Conference produced a draft of their own and the two then cooperated in formulating a joint draft. This cooperation which took place while Arthur James Balfour was Foreign Minister came to an end only after Lord Curzon, the Foreign Secretary who replaced Balfour on October 24, 1919, took personal charge of the Mandate drafting process in March 1920. He shut out the Zionist Organization from further direct participation in the actual drafting, but the Zionist leader, Chaim Weizmann, was kept informed of new changes made in the Draft Mandate and allowed to comment on them. The changes engineered by Curzon watered down the obvious Jewish character of the Mandate, but did not succeed in suppressing its aim – the creation of a Jewish state. The participation of the Zionist Organization in the Mandate drafting process confirmed the fact that the Jewish people were the exclusive beneficiary of the national rights enshrined in the Mandate. No Arab party was ever consulted regarding its views on the terms of the Mandate prior to the submission of this instrument to the League Council for confirmation, on December 6, 1920. By contrast, the civil and religious rights of all existing religious communities in Palestine, whether Moslem or Christian, were safeguarded, as well as the civil and religious rights of all the inhabitants of Palestine, irrespective of race and religion. The rights of Arabs, whether as individuals or as members of religious communities, but not as a nation, were therefore legally assured. In addition, no prejudice was to be caused to their financial and economic position by the expected growth of the Jewish population.

It was originally intended that the Mandate Charter would delineate the boundaries of Palestine, but that proved to be a lengthy process involving negotiations with France over the northern and northeastern borders of Palestine with Syria. It was therefore decided to fix these boundaries in a separate treaty, which was done in the Franco-British Boundary Convention of December 23, 1920. The borders were based on a formula first put forth by the British Prime Minister David Lloyd George

when he met his French counterpart, Georges Clemenceau in London on December 1, 1918 and defined Palestine as extending from the ancient towns of Dan to Beersheba. This definition was immediately accepted by Clemenceau, which meant that Palestine would have the borders that included all areas of the country settled by the Twelve Tribes of Israel during the First Temple Period, embracing historic Palestine both east and west of the Jordan River. The very words “from Dan to Beersheba” implied that the whole of Jewish Palestine would be reconstituted as a Jewish state. Though the San Remo Resolution did not specifically delineate the borders of Palestine, it was understood by the Principal Allied Powers that this formula would be the criterion to be used in delineating them. However, when the actual boundary negotiations began after the San Remo Peace Conference, the French illegally and stubbornly insisted on following the defunct Sykes-Picot line for the northern border of Palestine, accompanied by Gallic outbursts of anti-Semitic and anti-Zionist sentiments, though they agreed to extend this border to include the Galilee but not any of the water sources from the Litani valley and the land adjoining it. As a result, some parts of historic Palestine in the north and north-east were illegally excluded from the Jewish National Home. The 1920 Boundary Convention was amended by another British-French Agreement respecting the boundary line between Syria and Palestine dated February 3, 1922, which took effect on March 10, 1923. It illegally removed the portion of the Golan that had previously been included in Palestine in the 1920 Convention, in exchange for placing the Kinneret (Sea of Galilee) wholly within the bounds of the Jewish National Home, and made other small territorial adjustments. The British and French negotiators had no legal right to remove or exclude any “Palestine territory” from the limits of Palestine, but could only ensure that all such territory was included. The exchange of “Palestine territory” for other “Palestine territory” between Britain and France was therefore prohibited as a violation of the Lloyd George formula accepted at the San Remo Peace Conference.

The 1920 Convention also included Transjordan in the area of the Jewish National Home, but a surprise last-minute intervention by the US Government unnecessarily delayed the confirmation of the pending Mandate. This gave an unexpected opportunity to Winston Churchill, the new Colonial Secretary placed in charge of the affairs of Palestine, to change the character of the Mandate: first, by having a new article inserted (Article 25) which allowed for the provisional administrative separation of Transjordan from Cisjordan; second, by redefining the Jewish National Home to mean not an eventual independent Jewish state but limited to a cultural or spiritual center for the Jewish people. These radical changes were officially introduced in the Churchill White Paper of June 3, 1922 and led directly to the sabotage of the Mandate. Thereafter, the British never departed from the false interpretation they gave to the Jewish National Home which ended all hope of achieving the envisaged Jewish state under their auspices.