

ISRAEL & WILLIANDER PALESTINE: FRANÇA A TWO-STATE SALOMÃO SOLUTION

SELF-DETERMINATION, INTERNATIONAL LAW AND HISTORY



editora
D'PLÁCIDO

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GRUPO
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*
Rodapé



*To the Palestinian and Israeli people:
I hope their wishes are crowned by peace.*

I dedicate this book to my family, my beloved parents, my dearest brothers, my lovely sister-in-law and nephews that are inexhaustible sources of affection and understanding. To my friends and family for all the support and encouragement that they offered me always.

SPECIAL THANKS

To my beloved arab brothers: Khamis, Adil, Tarek, Redwane and Driss, for all the teachings, adventures, care and support. You all have showed me the true brotherhood values that has no boundaries, which made me a better person. Shookran shookran jazeelan! I am blessed by God for making all of you part of my life. I am the luckiest! Je suis le plus chanceux!

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I am grateful to the Pontifical University of Minas Gerais (PUC-MINAS) for the opportunity to develop my researches in the PhD

Program of International Law, and my dear friends from the PhD, where we share experiences and dreams.

My special thanks go to all my students and alumni, the main reason for my sacred mission as a Professor. Impossible to thank all the positive results of our partnership.

I thank everyone at the University of Itauna, including the Dean, Professors and staff.

Finally, I thank God for providing me with the chance to continue my studies about the situation involving Israel and Palestine, as a humble project to look towards peace and understanding.

“Now, as we celebrate together the first sign of the crescent moon of peace (...)

Palestinians, whose national cause protects the gates of Arab-Israeli peace, await, like their Arab brothers, this comprehensive, just and lasting peace based on the “land for peace” and on the fulfillment of international legitimacy and resolutions.

Peace, for us, is our interest. (...) restores the innocent nature of Arab-Israeli relations (...)

Let us protect this newborn from the winter winds, nourish it with milk and honey, the land of milk and honey, and in the land of Salem, Abraham, Ishmael and Isaac, the Holy and the Peace Land. I assure you, ladies and gentlemen, that we will discover more in peace than in war “(...)

(Part of Yasser Arafat's speech during the Nobel Peace Prize in December 1994 as part of the Oslo Peace Agreements with the Israelis)

“We will follow the course of peace with determination and strength.

We will not give up.

Let's not give in.

Peace will triumph.

We will prevail because we see the building of peace as a great blessing for us and for our children after us.

We wake up every morning, now, as different people. Suddenly, peace. We see hope in the eyes of our children. We

see the light on our soldier's faces, on the streets, on the buses, in the fields.

We must not disappoint them.

The Lord will give strength to his people, the Lord will bless his people, all of us, with peace.”

(Part of Yitzhak Rabin's speech during the Nobel Peace Prize in December 1994 as part of the Oslo Peace Agreements with the Palestinians)

LIST OF

ABBREVIATIONS AND ACRONYMS

CDI..... Commission on International Law
of the United Nations

IAF..... Israeli Air Force

GAA..... General Armistice Agreement

ICC..... International Criminal Court

ICJ..... International Court of Justice

IDF..... Israel Defense Force

OPEC..... Organization of the Petroleum Exporting Countries

PCA..... Permanent Court of Arbitration

PFLP..... Popular Front for the Liberation of Palestine

PLC..... Palestinian Legislative Council

PLO..... Palestine Liberation Organization

PNA.....Palestinian National Authority

PNC.....Palestinian National Council

UN.....United Nations

UNEF.....United Nations Emergency Force

UNGA.....General Assembly of the United Nations

UNOSPT.....United Nations Office for the Supervision
of the Palestinian Truce

UNRWA.....United Nations Refugees Watch Agency

UNSC.....United Nations Security Council

UNSCOP.....United Nations Special Committee on Palestine

USA.....United States of America

VCLT.....Vienna Convention on the Law of Treaties

ZWO.....Zionist World Organization

WW I.....World War I

WW II.....World War II

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INTRODUCTION

Isaac and Ishmael struggle to draw attention from their father. They do that to win the heart of Abraham. In that historical analogy, Abraham is all *Palaestina* not yet pacified. Isaac and Ishmael still live in the division, failed to co-inhabit their land. The tent of Abraham is there, open all the time to shelter his children, but invisible to their eyes that need to be opened and they will only be when both could see each other, so that peace finally happens.

In the context of this history, for several decades, numerous peace agreements and several negotiations were formulated by the international society to put an end to the conflicts between Palestinians and Israelis. And why has not this happened yet? Why do conflicts exist?

At the outset, it should be stressed on the whole core of this problem is linked to the self-determination of peoples.

This book was the result of my PhD thesis in Public International Law from the Pontifical Catholic University in Brazil, June 2017, which got the higher grade and *Magna Cum Laude* distinction from the Examination Board. This study was aimed to find a satisfactory and viable answer to elucidate this issue. For the edition of this book, other data were added.

It is important to set some considerations about the name “Palaestina”: in this book, the name “PALAESTINA” will be used to designate the territory that shelters *both countries – Palestine and Israel*. It is extremely necessary to make this distinction because it always causes misunderstandings when it is mentioned in several essays about the “Palestinian conflict”. No, the conflict is not *only* in Palestine, but in Israel as well. Using the ancient name “*Palaestina*”, will provide a better understanding for the current subject.

No other subject has engaged the attention of the international relations over the decades about the Israeli-Palestinian conflict. The question has been on the agenda of the United Nations since the beginning of the Organization and had produced an intensive debate to solve the problem.

The Israeli-Palestinian conflict is one of the longest. The struggle to secure a right of ownership over the entire territory included in the right to self-determination is still a matter of no satisfactory outcome for both Israelis and Palestinians, taking into account certain rules of International Law created after the end of World War I, the Ottoman Empire and by the United Nations.

The present book aims at analyzing the historical, political and legal ties of the Palestinian and Israeli people that give them the right to live in the territory connected to the right of self-determination of peoples, as well as the analysis of the two-State formula created both by the British Mandate in the 1930's and the UN in 1947, to end these conflicts through a partition plan of the whole territory into two independent Nations.

This question is related to the referred rights, to establish them in the land as independent States granted by the International Law.

The Arab people had already inhabited Palaestina prior to the times of Christ. In the fifth century, the Ottoman rule was hampered by the imposition of Turkish culture and customs, as well as by the atrocities committed when the resistance movements intensified.

Arab nationalism reached its climax in the early twentieth century, with the Syria-sponsored resistance movement aided by the British government, which during World War I succeeded in defeating the Ottomans by promising to establish an Arab State in that region and a New Caliphate.

At the same time, the Jewish people were suffering severe persecutions in the countries where they had already had settled since the diaspora, especially in Russia and Eastern Europe. They suffered discrimination because they were treated as different people and often attributed to a lack of Jewish roots.

The British Mandate in Palaestina, whose administration replaced the Ottoman Empire after World War I, found it difficult to succeed in the beginning of the hostilities between Arabs and Jews in the 20's and 30's.

In order to find a viable solution to the problem, it was agreed by the Peel Commission that there would be a division of the Palestinian lands between the two peoples, with the creation of two sovereign States, which was accepted by the Zionists but refused by the Arabs that considered the Jewish people part of the western imperialism. Under International Law and under the Mandates system, England was solely responsible for resolving the issues in Palaestina during their administration on behalf of the League of Nations.

As the British government had proved incapable of managing the Mandate after World War II, they restrained the existing conflicts by transferring that issue to the newly created United Nations.

The organization of the Zionist movement, well articulated internationally, managed to get more support for the creation of the Jewish nation from the diaspora occurred more than two thousand years ago.

In 1947, the United Nations General Assembly opened the special sessions for the debate on the division of Palaestina. The establishment of the United Nations Special Commission on Palestine (UNSCOP) and the deliberation on two issues: the creation of two independent countries or the creation of a single one and the internationalization of Jerusalem in the same intention adopted by the Peel Commission in the 30's during the British Mandate.

Zionist leaders then asserted that partition would be invalid as the Treaty of San Remo would have recognized the Jewish right to inhabit the whole Middle East, especially after the secret terms of the Sykes-Picot Agreement, which would eventually lead to serious conflicts throughout the territory.

The question of the legitimate existence of this right of possession over Palaestianian lands for the realization of one or two national States has never found satisfactory understandings over the decades. The focus of the current conflicts in the region is related to the self-determination.

The defense of Jewish law over "all" Palaestina would be in the rules of the 1920 Treaty of San Remo and the UN Partition Plan. Decades later, the difficult to create the Palestinian State in the face of political differences in Israel seems to demonstrate this.

There is still a great deal of controversy about the lawfulness of the UN Partition Plan to effect this right of self-determination under international provisions in relation to the Arab and Jewish longings about Palaestina's right to an independent Country.

The most pessimistic ones indicate that the two-State solution would be impossible to happen and that the solution of only a single State in the territory is consolidated, generating, therefore, inefficacy of the old UN resolution.

In that sense, dividing the territory have created events that changed the entire Middle East scenario, especially after the establishment of the State of Israel in which there were four wars with the Arab countries: Independence War in 1948/49, conflict in Sinai in 1956, Six Day War in 1967, and the War in 1973.

In this context, the present book will analyze whether these historical rights of both peoples, in the context of self-determination, were granted by International Law, and whether the two-State solution would be the most appropriate alternative to end these conflicts.

In order to find a satisfactory answer for this research, it is necessary to analyze several documents approved over the last decades to establish definitive points about the validity of this right to the possession of Palaestinian lands. It seeks to justify the legitimacy of this right by the rules created by the Allied Council of the World War I and the UNSCOP at the United Nations.

At the same time, it is necessary to observe the developments in the field of politics, law and even religion in defense of this right that originated the current conflicts and provoked a permanent instability throughout the Middle East.

There is much question in the political circles whether the formula for the existence of two States in Palaestina is still viable and for the defense of joint sovereignty between Israelis and Palestinians over the same territory, so that discussions on the effectiveness and existence of this self-determination aiming to find the solution for the said subject.

For some Israeli leaders, especially the religious ones, the biblical land of Israel covers the whole Palaestina. For the Palestinians, the partition itself would have recognized their right to effect their national State in the territory.

Likewise, the establishment of the Palestinian State, in the face of the right of self-determination and sovereignty, depends on the political scenario in Israel, where the old Askenazian Left-wing policy by Ben Gurion and Rabin finds strong resistance by the conservatism of the Likud Nationalist ideology. This political division is also seen

before the Palestinian Authority which finds in Hamas its most serious opponent of any kind of agreement with Israel.

There is a need to define the true scope of the right to self-determination of the Jewish and Arab Palestinian people in relation to the dividing the territory.

For the Arab world, there is no Jewish sovereignty in Palaestina, referring to the territory where the State of Israel is “Occupied Palestine”.

The core of the question raised is related to the Partition Plan that attempted to establish equal points on the right to self-determination for the construction of a self-government without outside interference, but without its effectiveness being satisfactorily seen on both sides, where Israel continues to fight for the preservation and recognition of its rights over the territory, while Palestinians try to defend the same rights.

This political and legal scenario has put Palaestina in an endless cycle of conflicts without an effective resolution, where the issues that govern the right of possession of these lands are pending since the conflicts began in the 20’s.

The delimitation of the aforementioned right is the formula to close the conflicts in the present and that allowed the arms race in the Middle East, the breakdown of the local economy, the aggravation of the social life, popular revolts, terrorist attacks, among other situations.

It is necessary to analyze the facts from the standpoint of the United Nations Charter, the Security Council Resolutions, the International Law, the Balfour Declaration, the measures adopted for Jewish and Arab autonomy during the administration of Palaestina for England, the Oslo Accords that gave autonomy to a government, and so many other international documents in an attempt to point out viable solutions to these events.

Following this understanding, it is worth noting the intention of the Palestinian Authority to seek international support in the pursuit of its self-determination, which culminated in its change of *status* as an Observer State by the United Nations, representing a new reality in the whole panorama of conflicts that gain new political contours by this measure.

Thus, this book seeks to draw a legal profile on this right of self-determination of the Jewish and Arab-Palestinian people in the justification regarding the possession of Palaestianian lands in the analysis of the celebrated treaties that would or would not have sus-

tained this right, whose reflections are observed since the intention to give legal effect to the Balfour Declaration for the construction of the Jewish State, added to the legality of the UN Partition Plan, the Oslo Accords in 1993 and all legal mechanisms in this regard produced and not yet accepted by the Jewish minority and the Arab majority in the Middle East.

It is much debated whether the solution would not be in a single State, as it exists today.

We hope that these contributions will be able to built an knowledge able to produce an effective understanding of a unique situation since the end of World War I.

CHAPTER ONE

THE HISTORICAL AND RELIGIOUS CONNECTION ON PALAESTINIAN LAND

For both peoples, this is the most important pillar that nurtured the whole basis for self-determination in the territory. It was from these historical facts that many international legal documents were produced such as the Balfour Declaration, English support for resistance Arabic against Ottomans, and Resolution 181/47 itself, among many other acts.

1.1. THE JEWISH HISTORICAL CONNECTION

According to biblical facts, the history of Israel, and the connection of its people with Palaestina, began with the arrival of Abraham from Mesopotamia, at the request of his God - *Yahweh*, to the Promise Land to his offspring, in the second millennium BC.

Abraham was the first ancestor of the Hebrews, a nomadic people who lived in tents and submerged in their own world by way of life and religion distinct from other peoples.

But, in fact, it was in ancient Egypt that the leading Hebrew/Israeli personalities began to form from Jacob's successors¹, such as Joseph, Moses, and Joshua that had returned to the Promised Land and made possible the creation of structures so that the Israeli Nation would be created one day. However, not all that community was formed by the descendants of Jacob, where many Egyptians, for example, joined the Hebrew values and customs in the future Nation.

¹ The ancient Israelite people had their origins through the twelve sons of Jacob (Gen 46:27) who immigrated to Egypt for years to return by thousands to the land of Canaan.

In these events, many other communities already inhabited that territory and some political forces threatened the Hebrew people union to establish themselves in the foreign land, in which Gary Rashba portrays that: “When Joshua died, Canaan was far from being under Israeli control. The coastal zone was in the hands of the Philistines and a strong Canaanite enclave was among them.” (RASHBA, 2011, 27)

The Hebrews were nomadic and lived in tribes, but after Joshua’s death, Israeli society lacked effective leadership in a fragmented society, making each tribe independent and disunited, which only strengthened other peoples who fought for more territorial power such as the Canaanites and the Philistines (the “people of the sea”), who always advanced in the territory, causing diverse wars.

In this period, there was no Israelite nation conceived in political and legal terms, since its old tribes were not unified under a political entity. The leaders of these tribes, after Joshua, were the Judges. The tribes were linked by the religious factor around the Tabernacle and the Ark of the Covenant.

The texts of the Gospels tell a number of facts about the conquest of Canaan and other territories by the Israelites as a long process and through countless wars. The political force around a State only occurred through Saul and consolidated by David who made the kingdom one of the most powerful in the ancient Middle East (2 Sam 5: 6-10).

But the political strength of that new born State by the power of *Yaveh* could not be separated from the religion history. The Israeli territorial connection began with a call from *Yahweh* to Abraham.

The religious culture among the Hebrew people was their primary source of union and strength whose first organization into a society was through the rules of *Yahweh* to Moses, consolidating the alliance between the divine and human, as reported in the Book of Exodus and Leviticus.

In this sense, the Israeli reality changed when the last Judge, Samuel, at the request of the people, inquired divine intervention to indicate a new leader. It was in this way that Benjamin Saul (whose meaning of the name is “request to God”) was chosen as King and ruler of all tribes.

This political unity brought together an Israeli nation in the land of Canaan. The State entity was established itself for the first

time around a single governing power for all the tribes, generating a strong Israeli sovereignty.

The Israelite self-determination was established by the monarchy, breaking with the tribal period and the necessity of it to become a power in order to prevent its destruction by other peoples, such as the Canaanites, Jebusites, Philistines, among others². The emergence of the nation along with the other kingdoms had the firm intention of providing a clear goal to advance in the territory and to conquer important political field.

The Israeli State faced several difficulties from its establishment by the great number internal divisions. The fall of the Saul's kingdom made the rise of David possible, a young man from Bethlehem (1 Samuel 16: 14-23), who gained great prominence in Israeli society for the death of the giant Goliath. Saul, in spite of ruling his people, could not avoid the separation of his town and definitively weakening the previous leadership.

As a result of those facts, David was crowned the new King and Saul died, and a new reality began. David conquered important political positions over the territory, defeated enemies, made political alliances and turned Hebron, former Canaanite territory, into the first capital of the Israeli State and united all communities, putting an end to internal divisions³.

David conquered Jerusalem, and bought the Mount Moria from the Canaanites, considered the place where Abraham would have sacrificed his son Isaac (according to the Torah) or his son Ishmael (according to the Coran), where the Jewish Temple would eventually be erected. By the government of David, the nation definitively was consolidated as a strong sovereign State, whereas it also took place the establishing of the political structures of the kingdom that happened to head almost entirely the land of Canaan.

The religious symbol as a source of power for the Israeli nation came from the Ark of the Covenant introduced into the new capital, Jerusalem, definitively sealing the connection of the Holy City with the Israelite State itself to the present day.

² There is a vast material that narrates these events as the whole Book of Samuel and the First Book of Kings.

³ Jewish sovereignty was established by the kingdom of Israel and Judea in 3,500 years ago. Israel was a sovereign country in 1312 bc. The Philistines were not Arabs or Semites, but Greeks.

IN WAR THERE ARE NO WINNERS.

Isaac and Ishmael struggle to draw attention from their father. They do that to win the heart of Abraham. In that historical analogy, Abraham is all Palaestina not yet pacified. Isaac and Ishmael still live in the division, failed to co-inhabit their land. The tent of Abraham is there, open all the time to shelter his children, but invisible to their eyes that need to be opened and they will only be when both could see each other, so that peace finally happens.

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No other subject has engaged the attention of the international relations over the decades about the israeli-palestinian conflict. The question has been on the agenda of the United Nations since the beginning of the Organization and had produced an intensive debate to solve the problem.

The present research aims at analyzing the historical, political and legal ties of the Palestinian and Israeli people that give them the right to live in the territory connected to the right of self determination of peoples, as well as the analysis of the two-State formula created both by the British Mandate in the 1930's and the UN in 1947, and international documents such as the British Mandate, the Peel Report, the UN Partition Plan, the Oslo Accords, and many others. In this context, the present book will analyze whether these historical rights of both peoples, in the context of self-determination, were granted by International Law, the status of Palestine as a Nation, and the two-State solution as the most appropriate alternative to end these conflicts.

