

A Short Course for the Biden Administration on Israel's Claim Under International Law to the 'Occupied Territories'

by Hugh Fitzgerald



The Biden Administration seems to think that the way to bring peace between Israelis and Palestinians is to push Israel back within what it describes as the “1967 lines,” which is a more acceptable way of saying “the 1949 armistice lines.” Those lines were not recognized borders; they merely reflected where the respective armies, of Israel and its Arab enemies, when the shooting stopped in 1949.

Let's give the misinformed Biden Administration the necessary Short Course it clearly needs about Israel's claim under international law to the West Bank, about the misnomer “occupied territories, ” and about the Palestinian Arabs and a

“two-state solution.”

There are two sources for Israel’s claim to the West Bank. The first, and the most important, is the Mandate for Palestine, set up by the League of Nations in 1922, for the sole purpose of creating the Jewish National Home that in time, sympathetically nurtured by the holder of the Mandate, Great Britain, would become the Jewish state. The Arabs were well-provided for, too, by the League of Nations. They were given several mandates – for Iraq, for Syria, and Lebanon. Furthermore, all of Palestine east of the Jordan River “out to the desert,” which had originally been intended for inclusion in the Palestine Mandate, was closed to Jewish immigration by the British, and given to the Hashemite Emir Abdullah to rule over, as the Emirate of Transjordan. And as we know, the Arabs now have twenty-two independent states, far more than any other people, while the Jews have exactly one, a tiny sliver so small that it can scarcely be discerned on a world map.

The Mandate for Palestine – see the Preamble and Articles 4 and 6 – was meant to create “the national home for the Jewish people” by “encouraging Jewish immigration” and “close settlement by Jews on the land.” That was its only purpose: not “two states” but one. The Arabs were already well provided for, by the mandates, and would be even more provided for outside the mandates system. At present, the Arabs have twenty-two independent states, far more than any other people, while the Jews have exactly one, a tiny sliver so small that it can scarcely be discerned on a world map.

The Mandates system of the League of Nations was never thought to “flagrantly violate international law.” It became part and parcel of international law. It did not cease to be relevant, either, when the League dissolved, to be replaced by the United Nations. Article 80 of the U.N. Charter – known as “the Jewish people’s article” – committed the U.N. to bring to a successful conclusion any mandates that still remained.

The Mandate for Palestine is the indispensable document for comprehending the history of modern Israel, yet is too rarely discussed, even by many of Israel's well-wishers, who may not comprehend its significance. Joe Biden, Tony Blinken, Jake Sullivan et al must take it upon themselves to study that document. And then they should look at the Mandate maps, that clearly show the territory included in the Mandate. Mandatory Palestine extended from the Golan Heights in the north, to the Red Sea in the south, and from the Jordan River in the east, to the Mediterranean Sea in the west. That was the territory assigned to the Jewish National Home. When Jordan seized almost all of Judea and Samaria during the 1948-1949 war, renaming them "the West Bank" in 1950, that did not extinguish Israel's claim to that land. From 1949 to 1967, Jordan held the "West Bank" as military occupier. When Israel took possession of that territory after the Six-Day War, this did not create its claim but allowed that claim to be acted upon. Israel took control, and began to build settlements, according to the Mandate's express provisions. Now Israel proposes to annex not all of the West Bank – as it is entitled to, under the Mandate – but only 30%, including the Jordan Valley, critical for the country's defense, and the towns and small cities (called "settlements," which suggests impermanence) where half a million Israeli Jews now live. There are pros and cons to such annexation; the wisdom or folly of it may be legitimately discussed, but what is illegitimate is to describe such extension of Israeli sovereignty over territory it was assigned by the League of Nations as a "violation of international law." It would be a good thing for Joe Biden – and for many others in his administration – to grasp that.

There is a second, independent claim that Israel has to the "West Bank" and the Golan Heights. This is U.N. Resolution 242, which was adopted unanimously by the General Assembly on November 22, 1967. It was intended to deal with the disposition of territories that Israel won in the Six-Day War.

The chief drafter of Resolution 242 was Lord Caradon (Hugh M. Foot), the permanent representative of the United Kingdom to the United Nations from 1964 to 1970. At the time of the Resolution's discussion and subsequent unanimous adoption, and on many occasions since, Lord Caradon always insisted that the phrase "from the territories" quite deliberately did not mean "all the territories," but merely some of the territories:

His discussion of Resolution 242 follows:

Much play has been made of the fact that we didn't say "the" territories or "all the" territories. But that was deliberate. I myself knew very well the 1967 boundaries and if we had put in the "the" or "all the" that could only have meant that we wished to see the 1967 boundaries perpetuated in the form of a permanent frontier. This I was certainly not prepared to recommend.

On another occasion, to an interviewer from the Journal of Palestine Studies (Spring-Summer 1976), he again insisted on the deliberateness of the wording. Lord Caradon was asked:

The basis for any settlement will be United Nations Security Council Resolution 242, of which you were the architect. Would you say there is a contradiction between the part of the resolution that stresses the inadmissibility of the acquisition of territory by war and that which calls for Israeli withdrawal from "occupied territories," but not from "the occupied territories"?

Nota bene: "from territories occupied" is not the same thing as "from occupied territories" – the first is neutral, the second a loaded description. And Resolution 242 refers only to "territories occupied in the recent conflict."

Lord Caradon answered:

I defend the resolution as it stands. What it states, as you

know, is first the general principle of inadmissibility of the acquisition of territory by war. That means that you can't justify holding onto territory merely because you conquered it. We could have said: well, you go back to the 1967 line. But I know the 1967 line, and it's a rotten line. You couldn't have a worse line for a permanent international boundary. It's where the troops happened to be on a certain night in 1948. It's got no relation to the needs of the situation.

Had we said that you must go back to the 1967 line, which would have resulted if we had specified a retreat from all the occupied territories, we would have been wrong.

Note, too, how Lord Caradon says that "you can't justify holding onto territory merely because you conquered it," with that "merely" applying to Jordan, but not to Israel, because of the Mandate's explicit provisions allocating the territory known now as the "West Bank" to the Jewish state. Note, too, the firmness of his dismissal of the 1967 lines as nothing more than "where the troops happened to be on a certain night in 1948," that is, nothing more than armistice lines and not internationally recognized borders.

Nothing could be clearer than Caradon: Israel has a right to hold onto territories that it requires if it was to have, as the key phrase in the Resolution 242 puts it, "secure [i.e. defensible] and recognized boundaries." That would require, at the very least, the annexation of both the Golan Heights and of the Jordan Valley. This is not the opinion only of Israeli military men, but also that of the American officers who, in 1967, were sent by the Chief of the General Staff to Israel, at the direction of President Johnson, to see what territories Israel would have to retain. Their report made clear that the Golan Heights needed to be kept by Israel to prevent Syrian forces from once again using those looming heights to fire on Jewish farmers far below, and that the Jordan Valley needed to

remain in Israel's hands in order to thwart or slow down potential invaders from the east, who might otherwise send armored columns able to slice Israel in two at its pre-1967 nine-miles-wide waist.

The Biden Administration should stop talking about using the "1967 lines" (a deceptive way of referring to "the 1949 armistice lines") as a plausible guide for negotiations, and instead discuss the Mandate for Palestine and U.N. Resolution 242 as the essential bases for direct negotiations – no busybody "Quartet," hopelessly biased against Israel, should be involved in discussions between Israel and the Palestinian Arabs. If the Palestinian Arabs don't like that arrangement, too bad. Israel is willing to discuss giving up part of the "West Bank," to which it has full title under the Palestine Mandate, for a future Palestinian state that will look a lot like the one so carefully crafted by Jared Kushner and others for the Trump Administration's "Peace-To-Prosperity" plan. It's a generous deal for the Palestinians. Israel will be giving up 30% of the West Bank, as well as two large swathes of territory in the Negev. And that's not all the Palestinians will receive. Under the Trump Plan, \$50 billion in aid would be given to the Palestinians. That would be the largest aid package for a single country in history. By contrast, the largest aid package prior to this was the Marshall Plan, which was worth \$60 billion, but had to be shared among 16 countries. Perhaps something like this aid package could be revived by the Biden people, once they recognize Israel's inviolable right to retain, if it wishes, all of the West Bank, and thus should better appreciate the sacrifice the Jewish state is making in giving up 70% of that territory to the Palestinians.

Lobbying, and protesting, against the Biden Plan is to be encouraged. But what is needed most of all is the educating of Biden and his foreign policy team about the Palestine Mandate and U.N. Resolution 242. There's a good deal they need to

learn. And chastened by that knowledge, they should then be unwilling to any longer support the Palestinian agenda that right now, they seem – unacceptably – to have embraced.

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