

A Treatise on Jewish Sovereignty over the Land of Israel

**The Legal Foundation
and
Borders of Israel
under
International Law**

by

Howard Grief



Mazo Publishers

Jerusalem, Israel

The term "Israel" appearing in the title of this book is used to denote all areas of the historical Land of Israel, including both Cisjordan and Transjordan that were part of the mandated area of Palestine. It also includes those parts of the historical Land of Israel that were illegally excluded when the boundaries of Palestine were determined by Great Britain and France in 1920 and 1922: Southern Lebanon up to the bend of the Litani River, the Bashan (including the Golan) north of the Yarmuk River, and at least half of the Sinai Peninsula.

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ISBN 978-965-7344-52-1

Published by:

Mazo Publishers

Chaim Mazo, Publisher

P.O. Box 36084

Jerusalem 91360 Israel

Israel Tel: 054-7294-565

USA Tel: 1-815-301-3559

Website: www.mazopublishers.com

Email: mazopublishers@gmail.com

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About The Author

Howard Grief was born and educated in the city of Montreal where he attended and graduated from Baron Byng High School, McGill University and McGill Law School, obtaining degrees in Arts and Law. He became a member of the Bar of the Province of Quebec in 1966 and was a self-employed practicing attorney for 23 years, principally in the fields of civil and commercial law. A fervent Zionist and advocate of the Land of Israel all his life, he was appointed in 1980 the representative in Canada of the newly formed *Tehiya* Party. After a hard struggle, he gained recognition for *Tehiya* as a separate grouping in the Canadian Zionist Federation, the first official branch outside Israel to receive such recognition. As *Tehiya's* representative in Canada, he arranged trips and speaking engagements for Professor Yuval Ne'eman, Moshe Shamir, Shmuel Katz and Professor Edward Teller.

In August 1989, Grief left Canada to settle in Israel to fulfil his own personal vision of Zionism, together with his Jerusalem-born wife, Ilana, and their two sons, Ariel and Elad. In May 1991, he was admitted to the Bar of Israel and subsequently became a notary. On December 29, 1991 he was formally appointed by Professor Ne'eman, then the Minister of Energy and Infrastructure in the Yitzhak Shamir Government, to be his legal adviser in international law on matters pertaining to the Land of Israel.

In the wake of the Israel-PLO agreements, Howard Grief filed several petitions and applications before the Israel Supreme Court based on substantive constitutional and criminal grounds, challenging the legality of those disastrous agreements, the aim of which was to partition the Land of Israel once again, a step he strongly opposed. In this respect, he was the first to call for a state commission of inquiry to investigate all the illegalities committed by the Rabin Government in concluding secretly the Declaration of Principles with the terrorist and criminal organization, the Palestine Liberation Organization.

He has authored many articles on legal topics that have appeared in the Hebrew language journal, *Nativ*, and several position papers of his have been published by the Ariel Center for Policy Research. In the mid-1980s, Howard Grief formulated the original thesis never previously voiced that de jure sovereignty over the entire Land of Israel and Palestine was vested in the Jewish People as a result of the San Remo Resolution adopted at the San Remo Peace

Chapter 1

The San Remo Peace Conference and the San Remo Resolution on Palestine

The legal title of the Jewish People to the mandated territory of Palestine in all of its historical parts and dimensions was first acknowledged and recognized under modern international law on April 24, 1920. That is when the Supreme Council of the Principal Allied Powers, consisting of Great Britain, France, Italy and Japan, after a heated debate between the highest British and French representatives, decided to approve the Balfour Declaration of November 2, 1917, and thereby give international legal effect to its provisions. This decision was taken at a session of the San Remo Peace Conference, convoked to complete the work of the earlier Conference of London in February 1920¹ to prepare a treaty of peace with the shattered Ottoman Empire and make an authoritative settlement for the ex-Turkish territories in Asia. By virtue of this decision, known as the San Remo Resolution on Palestine, the Balfour Declaration was to constitute and became the legal basis for administering Palestine, in conjunction with the general provisions of the newly-established Mandates System.

The Allied Supreme Council decision taken on April 24, 1920 converted the Balfour Declaration, which until then had only been a statement of British Government policy or one of future intentions, into a binding legal document. That was accomplished by changing significantly the nature and wording of Britain's pledge or promise to the Jewish People from one of only using "their best endeavours to facilitate the achievement of the object" to establish in Palestine a national home for the Jewish People to one which legally made Britain "responsible for putting into effect" this declared object.

Thus, until April 24, 1920, Britain's promise was not legally binding, but after April 24, 1920 it was. As a direct consequence of this decision, Britain committed herself to establish or more precisely to reconstitute the Jewish National Home in Palestine for an ancient nation most of whose members then lived outside Palestine and only for that specific objective was a mandate

¹ The London Conference, which opened on February 17, 1920, adopted a proposal four days later, on February 21st, that Palestine would be defined in accordance with its ancient limits of Dan to Beersheba and be under British Mandate. However, no decision was then taken to approve the Balfour Declaration although it was alluded to in a preliminary discussion.

then conferred upon it the following day, on April 25, 1920.

The establishment of a Jewish National Home in Palestine simultaneously meant creating the state and country of Palestine which then did not officially exist as a legal entity under international law. That in turn meant Palestine in its entirety was reserved exclusively for the self-determination of the Jewish People. These two new entities in international law, the Jewish National Home and Palestine, were therefore synonymous since they were both created at the very same time and for the very same purpose. The Jewish National Home was to be housed in Palestine and Palestine was to be the Jewish National Home, i.e., the Jewish State – otherwise, Palestine would never have been legally created on April 24, 1920 as a separate country. It must always be borne in mind and emphasized that Palestine was not created to satisfy Arab national aspirations in any part of the country, whether east or west of the Jordan. Those aspirations were duly taken into account at the San Remo Peace Conference in a different paragraph of the San Remo Resolution, but it was decided that they would be satisfied in the adjoining territories of Mesopotamia and Syria, in addition to the already existing state of the Hedjaz in the Arabian Peninsula. Hence the idea of the partition of Palestine into Jewish and Arab States shortly to be introduced by the British in regard to Transjordan and still later in Cis-Jordanian Palestine, was a foreign idea that was never contemplated when Palestine was originally created on April 24, 1920.

As a direct result of the Allied Supreme Council decision on April 24, 1920, the title of sovereignty over Palestine was exclusively vested in the Jewish People and not in any other nation, state or entity, a conclusion which will be more fully discussed in the following pages. The decisions taken by the Allies at the San Remo Peace Conference concerning Palestine, Mesopotamia and Syria were first embodied in a Draft Resolution on April 24, 1920. This Draft Resolution was then submitted to the Supreme Council for final approval at the very next session on April 25, 1920, which was given unanimously by the four Powers who made up the Supreme Council. Both the Draft Resolution and the Final Resolution were duly recorded in the minutes of the Peace Conference and can be lumped together as the San Remo Resolution. This Resolution in regard to Palestine stands on its own merit as an act of basic international law which was the legal source of British power of government in Palestine under the Mandates System. It was, as agreed at the Conference of San Remo, subsequently inserted in the Treaty of Sèvres on August 10, 1920 and then in the Preamble of the Mandate Charter, which was itself approved by 52 nations in 1922, and by additional nations that subsequently joined the League of Nations. Because it was an independent act of binding international law, the San Remo Resolution on Palestine was not diminished in any way by the fact that the Treaty of Sèvres was later replaced by the Treaty of Lausanne which did not mention the Resolution in any way.

As a further consequence of the San Remo Resolution, the secret Sykes-Picot Treaty of May 9 and 16, 1916 – the dates on which it was formally ratified

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