

SUBMISSION

**That the term “Occupied Palestinian Territory” is a Damaging
Misnomer**

**To members of the United Nations Independent Commission of
Inquiry on the 2014 Gaza Conflict,**

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and Dr. Doudou Diène**

By email to coigaza@ohchr.org

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This Submission is not confidential

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1. Introduction

This memorandum is submitted in response to your call for submissions by individuals as outlined in your summary, including all violations of international humanitarian law and international human rights law in the specified territories in the context of the military operations conducted since 13 June 2014, WHETHER BEFORE, DURING OR AFTER. The Commissioners have made it clear that they interpret this mandate to include investigations of the activities of Palestinian armed groups in Gaza, including attacks on Israel, as well as the Israeli military operation in the Gaza Strip and Israeli actions in the West Bank, including East Jerusalem. Further, the Commission of Inquiry will be looking at a broad range of alleged violations committed by all parties, and will be considering the full range of human rights, including economic, social and cultural rights.

In its resolution [A/HRC/RES/S-21/1](#) adopted on 23 July 2014, on “Ensuring respect for international law in the Occupied Palestinian Territory, including East Jerusalem”, the United Nations Human Rights Council requested the UN High Commissioner for Human Rights to “to urgently dispatch an independent, international commission of inquiry, to be appointed by the President of the Human Rights Council, to investigate all violations of international humanitarian law and international human rights law in the Occupied Palestinian Territory, including East Jerusalem, particularly in the occupied Gaza Strip,.

This submission strongly disputes the incorrect and misleading wording of the mandate. The mandate as phrased indicates bias, partiality and prejudice and is damaging to the prospects of peace or to a fair and impartial report. This submission avers that there is no “Occupied Palestinian Territory, including East Jerusalem” or an “occupied Gaza Strip” in any legal sense. Thus it would appear that legally the mandate is null and void ab initio since no legal territory has been indicated for the Commission to investigate. With respect to the Commission, emotionally charged terms for political use, bias, partiality and prejudice are no substitute for legal terminology and judicial review. The terms in themselves imply wrongdoing on the part of Israel which is rejected.

This submission avers that international law is fully respected by Israel, there is no “occupation” in the legal understanding of the term, that Israel is entitled to remain in the areas which are the subject of this submission, that there are no “Palestinian Territories” occupied by Israel and that it is fully and legally entitled to build in Jerusalem and in areas over which it has been internationally agreed that Israel exercises civilian control, all until it is otherwise agreed.

2. The Mandate for Palestine

An independent Arab ruled state never existed in Palestine. Never. The last independent state was Jewish which fell about the start of the current era, about two thousand years ago. Without going too far back into history, the Ottoman Turks captured Palestine in 1516. The Ottomans held Palestine (with a brief loss to Egypt 1832 – 1840) until captured by Britain in 1917 towards the end of World War I. The Ottoman empire did not recognize "Palestine" or "Syria" as separate unitary entities. Rather, it arbitrary divided the lands of the Levant into governorates districts (Sanjak) and sub-districts (Kaza). Maps reviewed by me do not even describe the area as Palestine but by the administrative districts.

Ottoman Levant



The Geography department, The Hebrew University of Jerusalem.

Administrative division under Ottoman rule
between the years 1864-1871

Following World War I, the victorious powers, including the USA, the UK and France, allocated territory which previously formed part of the Ottoman Empire at a conference held in 1920 referred to as San Remo. **Title to all that area (specifically including Jerusalem) west of the Jordan river**, which formerly formed part of the Ottoman Empire, **was assigned, by way of a mandate to Britain** under the San Remo Convention, granted first under Article 22 of the League of Nations in 1922 and subsequently confirmed under Article 80 of the United Nations Charter. It is noteworthy that at San Remo the Arabs also made substantial claims to Ottoman territory, but not to Jerusalem or indeed to Palestine to which it appears the Arabs at that time had no

interest. The Arab claims at San Remo resulted in the establishment of Lebanon, Iraq and Syria.

It is therefore obvious that the legitimacy of Syria, Lebanon, Iraq and a Jewish state in Palestine as defined before the creation of Transjordan, all derive from the same binding international agreement at San Remo, an agreement that has never been abrogated. Subsequent to the creation of Transjordan, the Mandate for Palestine extended from the Mediterranean to the Jordan River.

3. The Mandate Terminates and no Palestinian State is Established

At all times both before and specifically after San Remo, the population of Palestine was usually described as Jews and Arabs. Collectively, the two groups were referred to as Palestinian. Often Palestinian was applied to Jewish activities.

Historically, no such group referred to as the Palestinian people existed and therefore could not have had a claim to territory.

Countless official British Mandate-vintage documents speak of 'the Jews' and 'the Arabs' of Palestine - not 'Jews and Palestinians.' Ironically, before local Jews began calling themselves Israelis in 1948 (the name 'Israel' was chosen for the newly-established Jewish state), the term 'Palestine' applied almost exclusively to Jews and the institutions founded by Jewish immigrants in the first half of the 20th century, before Israel's independence.

Some examples include:

- The *Jerusalem Post*, founded in 1932, was called the *Palestine Post* until 1948.
- Bank Leumi L'Israel was called the "Anglo-Palestine Bank, a Jewish Company."
- Today's Israel Philharmonic Orchestra, founded in 1936 by German Jewish refugees who fled Nazi Germany, was called the "Palestine Symphony Orchestra," composed of some 70 Palestinian Jews.

The Arabs in Palestine were referred to as Arabs and not Palestinians in both in the Peel Commission and Resolution 181 of the United Nations General Assembly.

Thus in Chapter V of the Peel Report headed: "The Present Situation" is summarized as follows:

"The Arab population shows a remarkable increase since 1920, and it has had some share in the increased prosperity of Palestine. Many Arab landowners have benefited from the sale of land and the profitable investment of the purchase money. The *fellaheen* are better off on the whole than they were in 1920. This Arab progress has been partly due to the import of Jewish capital into Palestine and other factors associated with the growth of the National Home. In particular, the Arabs have benefited from social services which could not have been provided on the existing scale without the revenue obtained from the Jews."

The Peel Report refers to the remarkable increase since 1920 of the Arab population. This confirms that to a large extent, there was no local population controlling territory and confirms the validity of travelers who reported, as set out later in this submission, on the absence of any substantial local Arab population.

In the 1830`s, following the short-lived Egyptian capture of Palestine, Arabs arrived from Egypt, Sudan, Libya and Yemen. The British Palestine Exploration Fund documented that Egyptian neighborhoods proliferated in the Jaffa area. By 1917, the Arabs of Jaffa represented at least 25 nationalities.

Arab migrant workers were imported by the Ottoman Empire and subsequently by the British Mandate (which defeated the Ottomans in 1917) to work on infrastructure projects: The port of Haifa, the Haifa-Qantara (1918), Haifa-Edrei (1905), Haifa-Nablus (1914) and Jerusalem-Jaffa (1892) railroads, military installations, roads, quarries, reclamation of wetlands, etc. Legal and illegal Arab laborers were also attracted by the relative economic boom, stimulated by the annual Jewish immigration beginning in 1882. of Jewish settlements, which enhanced the infrastructure and employment base.

There is a report in the internet that in the 1931 census, at least twenty-three different languages were reported in use by "Moslems," and most of those plus an additional twenty-eight were in use by "Christians" - many of whom were known as, or represented as "Arabs" -- a total of at least fifty-one languages.

And the *non*-Jews in Palestine in 1931 listed as their "birthplaces" at least twenty-four different countries, in addition to the Americas and Europe. In Jerusalem alone, twenty different places of

birth (outside the Americas and Europe) were reported by the "Moslems"; those plus another four countries were listed by "Christians."

Due diligence: I was able to establish that there was a British census in 1931 but the results are not available on the internet and while there is no reason to disbelieve this important report, I could not substantiate its correctness.

Nevertheless, the reliability of the above appears to be confirmed by the following passage from the Hope Simpson Report dated October 1st, 1930 and the Yale study of 1947.

"The Chief Immigration Officer has brought to notice **that illicit immigration through Syria and across the northern frontier of Palestine is material.** This question has already been discussed. It may be a difficult matter to ensure against this illicit immigration, but steps to this end must be taken if the suggested policy is adopted, as also to **prevent unemployment lists being swollen by immigrants from Trans Jordan.**"

A Yale study in 1947 of differences between the 1922 census and the 1931 census revealed that the increase in the Arab population was most marked in urban areas, affected by Jewish development. A comparison of the census returns in 1922 and 1931 showed that within nine years, the increase percent of the Arab population in Haifa was 216%! (from 19,000 to 58,200), in Jaffa 134%, in Jerusalem 97%! - from 28,600 to 56,400, while in purely Arab towns such as Nablus and Hebron it was only 7%, and in Gaza there was actually a decrease of 2 percent.

The cumulative effect of the foregoing is that historically there never existed a single group of Arabs with a common history or traditions or culture who at any time "occupied Palestinian territory".

In Chapter XXII Headed "A Plan of Partition", the Peel Report recommended:

"Treaties of alliance should be negotiated by the Mandatory with the Government of Trans-Jordan and representatives of the Arabs of Palestine on the one hand and with the Zionist Organization on the other. These Treaties would declare that, within as short a period as may be convenient, **two sovereign independent States would be established** - the one an Arab State consisting of Trans-Jordan united with that part of Palestine which lies to the east and south of a frontier such as we suggest in Section 3

below; the other a Jewish State consisting of that part of Palestine which lies to the north and west of that frontier.”

The Jews accepted and the Arabs refused and accordingly no Arab state controlling territory came into being west of the Jordan River.

On 29 November 1947, Resolution 181 (II) of the United Nations General Assembly recommended: Future government of Palestine

A (3). TERMINATION OF MANDATE, PARTITION AND INDEPENDENCE

Independent Arab and Jewish States and the Special International Regime for the City of Jerusalem, set forth in part III of this plan, **shall come into existence in Palestine** two months after the evacuation of the armed forces of the mandatory Power has been completed but in any case not later than 1 October 1948. The boundaries of the Arab State, the Jewish State, and the City of Jerusalem shall be as described in parts II and III below.

The Jews accepted and the Arabs refused and accordingly no Arab state controlling territory came into being west of the Jordan River.

On 14th May 1948 the Mandate, which covered Palestine between the Mediterranean and the Jordan River, terminated and the British withdrew from Palestine. Following Israel's Declaration of Independence on 15 May 1948, Trans-Jordan forces entered Palestine. The subsequent illegal occupation of Jerusalem and that part of Palestine known as Samaria, now renamed by the illegal occupiers as the West Bank, by Trans-Jordanian forces in 1948 was never recognized internationally **nor did such illegal occupation result in a change of title to the West Bank or Jerusalem which under San Remo remained with Israel.**

The 1948/49 War was launched by Arab countries, against the newly-born Jewish State, at the expense – and not on behalf – of the Arabs in Palestine. Thus, Iraq leveraged the war to advance its goal of intra-Arab hegemony and control the oil pipeline from Kirkuk to Haifa; Jordan joined the assault on Israel to expand all the way to the Mediterranean; Egypt was more interested in foiling Jordan's expansionist plans than the annihilation of the Jewish State; and Syria aspired to advance its vision of Greater Syria.

The 1948 War was not a war of, for, or even by, Palestinian Arabs. The 1948 pan-Arab invasion of Israel was a classic scramble for territory and not a battle for the national rights of Arabs in Palestine. As the first Secretary General of the Arab league, Abdel

Rahman Azzam, admitted, the goal of Jordan was to swallow up the central hill regions of Palestine.... The Egyptians would get the Negev. The Galilee would go to Syria, except that the coastal part as far as Acre would be added to Lebanon."

What is interesting is that between 1948 and 1967 **NO ARAB/PALESTINIAN STATE WAS ESTABLISHED IN THE TERRITORIES NOW KNOWN AS THE WEST BANK AND GAZA** nor did any group of Arabs, whether living in the West Bank or Jerusalem or elsewhere ever claim the areas illegally occupied by Trans-Jordan for the establishment of a Palestinian state.

In fact, in its first charter of 1964, there was no claim to establish a Palestinian state.

"We, the Palestinian Arab people, dictate and declare this Palestinian National Charter and swear to realize it.

Article 1. Palestine is an Arab homeland bound by strong Arab national ties to the rest of the Arab Countries and **which together form the great Arab homeland.**

On the contrary, in Article 24 of the PLO charter adopted at its first conference in 1964, the **Palestinians explicitly waived all rights to the West Bank and Gaza:**

Article 24: **This Organization does not exercise any territorial sovereignty over the West Bank in the Hashemite Kingdom of Jordan, on the Gaza Strip or in the Himmah Area.** Its activities will be on the national popular level in the liberational, organizational, political and financial fields.

In this 1964 charter, the PLO does not mention or claim any rights to Jerusalem. The reference to West Bank implicitly included that part of Jerusalem illegally occupied by Trans-Jordan, now renamed Jordan.

I trust the irony is not lost on the Commission. The Palestinians only initiated a claim for the West Bank, Gaza and Jerusalem after Israel reclaimed the West Bank, Gaza and Jerusalem in 1967. Before then, it was not regarded as Palestinian territory by any country whatsoever **and the Palestinians themselves had no interest or claim for purposes of establishing a state in the area now referred to as the West Bank!!!**

So on what basis does the United Nations Human Rights Council (UNHRC) declare Israel's legal presence in the West Bank and parts of Jerusalem to be illegal and the territory as "occupied"?

On what legal basis does the UNHRC support the Palestinians claim to the West Bank, which only arose at some unknown date after June 1967, after Israel had reclaimed the West Bank and Jerusalem, and is not based on title or any other legal right before 1967 or since or even on the PLO's then prevailing charter? As shown above, the PLO itself specifically denied, in writing, in its charter, it had any claim to the West Bank.

Following the 1967 Six Day War, Israel offered to withdraw from most of the territories captured in the 1967 war – land for peace. The Arab reply was the infamous three “no`s” of Khartoum.

The Khartoum Resolution of September 1, 1967 was issued at the conclusion of the 1967 Arab League summit convened in the wake of the Six-Day War, in Khartoum, the capital of Sudan. The summit was attended by eight Arab heads of state: Egypt, Syria, Jordan, Lebanon, Iraq, Algeria, Kuwait and Sudan. The resolution called for a continued state of belligerency with Israel. It is famous for containing (in the third paragraph) what became known as the "Three No's": **"no peace with Israel, no recognition of Israel, no negotiations with it..."**

Accordingly no Arab state controlling territory came into being west of the Jordan River.

In 1995, Israel and the Palestinian Liberation Organization signed the Oslo Accords II under which the Palestinian Authority was granted the right, for the first time, to exercise civilian control in Areas A & B. The Oslo Accords did not establish a Palestinian State nor were the Palestinians granted a sovereign state. This aspect was to be the subject of further negotiations.

In 2000, Arafat was offered over 97% of the West Bank, all of Gaza, East Jerusalem as a capital, breathtaking concessions on the sovereignty of the Temple Mount, and the removal of all Jewish settlements from territory to be ceded to the new Palestinian state (i.e., 97% of the West Bank and 100% of Gaza). Arafat rejected all offers put to him, made not a single counter-offer, and launched a terror war that would kill thousands of Israeli and Palestinian innocents.

Accordingly no Arab state controlling territory came into being west of the Jordan River.

In 2005 the Israelis unilaterally withdrew from Gaza; the result was the creation of a Hamas-ruled terror regime that has launched thousands of rockets at Israeli civilians and committed scores of brutal atrocities against their own, to the utter indifference of the UN or the UNHRC.

In 2008 Mahmoud Abbas was offered virtually the entire West Bank in return for a full peace with Israel; he rejected it without discussion or counter-offer, just as his predecessors had been doing for the last 60 years.

In summary, Israel accepted, and the Arabs rejected, the two-state solution proposed in 1938 and 1948. Israel offered land for peace in 1967, only to be greeted with the three "no's": no peace, no negotiation, and no recognition. It offered generous proposals in 2000-01, 2008, and it is understood, most recently in 2014, none of which was accepted.

The Commission needs to clarify how Israel “occupies” that which never was. There has never been a Palestinian state and the illegal Jordanian occupation was never recognized.

4. Israel`s Legal Rights are Irrefutable

It is thus clear that title to the West Bank and all of Jerusalem vested and continues to vest in Israel and its presence in the West Bank and Jerusalem is legal. As referenced below, prominent jurists agree.

In 1995, Israel and the Palestinian Authority signed the Oslo Accords, witnessed by the USA, EU and Russia, **under which Israel`s presence in Area C and Jerusalem is recognized by the Palestinians, the EU, USA and Russia** and that the dispute is to be resolved in accordance with the principles provided in UN Resolution 242 and the Oslo Accords.

Oslo Accords II is clear and unambiguous. **Israel has no civilian control in Areas A & B so Israel is clearly not “occupying” Palestinian Territory.**

Israel`s civilian control in Area C (including Jerusalem) is under the provisions of an internationally acknowledged agreement so Israel is clearly not “occupying” Palestinian Territory.

The preamble to Oslo II refers to the aim of the Israeli-Palestinian negotiations within the current Middle East peace process is, among other things, to establish a Palestinian Interim Self-Government Authority, i.e. the elected Council (hereinafter "the Council" or "the Palestinian Council"), and the elected Ra'ees of the Executive Authority, for the Palestinian people in the West Bank and the Gaza Strip.

Jerusalem, and let it be emphasized, all of Jerusalem, remains **legally** under Israel's control. Palestinians living in Jerusalem have the right to vote for the Palestinian Authority. There are two substantive references to Jerusalem in Oslo Accords II. The first is that Palestinians of Jerusalem who live there may participate in the election process.

The second references are in Articles XVII and XXXI where it is provided that permanent status negotiations will commence as soon as possible, but not later than May 4, 1996, between the parties. The Accords provide that it is understood that these negotiations shall cover remaining issues, including: Jerusalem, refugees, **settlements**, security arrangements, borders, relations and cooperation with other neighbors, and other issues of common interest.

Until the negotiations are finalized, Israel does not "occupy" either the West Bank or "Eastern" Jerusalem, a term which does not appear in Oslo Accords II or indeed in any other relevant document nor are settlements "illegal".

Further, the Gaza strip is not "occupied" by Israel. Occupation is defined in the Geneva Convention IV Article 6(1) and (3) as interpreted by the International Red Cross.

Territory is considered occupied when it is placed under the authority of the hostile army. The occupation only extends to the territory where this authority has been established and can be exercised. The law of occupation applies to all cases of partial or total occupation, even if such occupation does not encounter armed resistance.

The essential ingredient for the applicability of the law of occupation is therefore the actual control exercised by the occupying forces.

Occupation ceases when the occupying forces are driven out of or evacuate the territory. https://www.icrc.org/eng/assets/files/other/law9_final.pdf

In 1995, Israel transferred control of areas A & B to the Palestinian Authority.

In 2005, Israel evacuated the area known as the Gaza Strip and withdrew to the 1948 armistice lines.

In short, for the UNHRC to refer to the Gaza Strip or Areas A & B as "occupied" is totally incorrect under the Geneva Convention definition and the International Red Cross interpretation which are the only relevant and applicable legal authorities.

For the UNHRC to refer to Israel's LEGAL presence in Area C or Jerusalem as illegal or to call for Israel's unilateral withdrawal to the 1967 armistice lines in the light of Israel's clear legal title under San Remo and its right to be present in Area C and Jerusalem under the Oslo Accords or to refer to Jerusalem or Area C as "occupied Palestinian Territory" is prejudicial, biased and one-sided, damaging to the prospects of a peaceful settlement and a deliberate disregard of the provisions of international law (San Remo), Resolution 242 and the Oslo Accords.

Resolution 242 was introduced to the Security Council by Lord Caradon of Great Britain. He made the interpretation of Resolution 242 clear: "It was not for us to lay down exactly where the border should be. I know the 1967 border very well. It is not a satisfactory border, it is where troops had to stop in 1948, just where they happened to be that night, that is not a permanent boundary..." "We didn't say there should be a withdrawal to the '67 line; we did not put the 'the' in, we did not say all the territories, deliberately. We all knew - that the boundaries of '67 were not drawn as permanent frontiers, they were a cease-fire line of a couple of decades earlier... We did not say that the '67 boundaries must be forever; it would be insanity."

It is noticeable that, with regard to the Israel-Palestinian dispute, the UNHRC, by use of the term "occupying" demands an Israeli withdrawal but with respect to the Palestinians, is silent on and ignores the important and vital additional requirements of Resolution 242 (which governs Oslo II as specified in the Preamble), namely Israel's right to recognition, acknowledgement of Israel's sovereignty and secure borders (NOT the 1967 armistice lines as declared by Lord Caradon as set out above) free from claims and threats of force with a demilitarized Palestinian territory.

Until its capture by illegally invading Trans-Jordanian forces in 1948, invading in unlawful contravention of UN resolution 181, Jerusalem had never been a divided city. It has a recorded Jewish majority since the early 19th century. Following the San Remo agreements and the League of Nations and United Nations charters, legal title clearly vests in Israel. Prior to 1967, Jerusalem was never the capital of any sovereign state other than Israel nor was Jerusalem ever claimed as a capital by any other entity (and specifically not by the Palestinians), nor, except for the short period 1948 to 1967, was it ever a city divided into an artificial West and East Jerusalem.

The use of the word "occupied" has a purpose. It is intended to express a finding and issue a verdict, before any investigation has taken place, that Israel is already in contravention of the Geneva Convention and these violations need to be "punished" by

the Commission. As has been shown, there is no “occupation” and therefore there are no violations of the Geneva Convention.

It is submitted that the Commission cannot both use the term “Occupied Palestinian Territory” and issue a neutral, fair and unbiased report.

5. Legal Opinions

Following the expulsion of the illegal Jordanian invading forces by Israel, the UNHRC, a political body, now sees fit to give legitimacy to the illegal capture of part of Jerusalem by an invading force and deny Israel its legal rights to Jerusalem.

Dr. Jacques Gauthier, a Canadian lawyer who specializes in international law, has stated that if a court that was 100-percent objective were to study the legally relevant facts, ignoring politics, it would find unequivocally that only Israel possesses the exclusive title to Jerusalem. Gauthier concluded his analysis by rejecting the idea that any later events such as the UN Partition Plan, UN Resolution 242, or the Oslo Accords superseded Israel’s title to Jerusalem.

Gauthier has written a doctoral dissertation on the topic of Jerusalem and its legal history, based on international treaties and resolutions of the past 90 years. The dissertation runs some 1,300 pages, with 3,000 footnotes. Gauthier's main point is that a non-broken series of treaties and resolutions, as laid out by the San Remo Resolution, the League of Nations and the United Nations, gives the Jewish People title to the city of Jerusalem. The process began at San Remo, Italy, when the four Principal Allied Powers of World War I - Great Britain, France, Italy and Japan - agreed to create a Jewish national home in what is now the Land of Israel.

After the Six Day War in 1967, Israel regained Jerusalem and other land west of Jordan. Gauthier notes that the UN Security Council then passed Resolution 242 **authorizing Israel to remain in possession of all the land until it had “secure and recognized boundaries.”**

In short, there is no legal basis to declare that Israel’s presence in all of Jerusalem is illegal or that “eastern” Jerusalem is “occupied”.

Judge Schwebel (former President of the World Court):

“As between Israel, acting defensively in 1948 and 1967, on the one hand, and her Arab neighbors, acting aggressively, in 1948 and 1967, on the other, Israel has the better title

in the territory of what was Palestine, including the whole of Jerusalem.” – In “What Weight to Conquest? Aggression, Compliance, and Development”, pg. 521-526.

Professor Julius Stone (one of the 20th century’s leading authorities on International Law):

“...the West Bank at present held by Israel does not belong to any other State, – ISRAEL AND PALESTINE, Assault on the Law of Nations, By Julius Stone, Discourse 2, Page 177.

It is submitted that Israel has the better title in the territory of what was Palestine, **including the whole of Jerusalem. None of the West Bank, “Eastern” Jerusalem or the Gaza Strip is “occupied” by Israel.**

6. Double Standards

There are many territorial disputes worldwide; such as Northern Cyprus, which is illegally occupied by Turkey. Yet the UNHRC wishes to discriminate against only one state and that is Israel, by use of the term “Occupied”. The UNHRC does not refer to Occupied Cyprus, Occupied Tibet, Occupied Gibraltar, Occupied Falkland Islands, Occupied Kashmir or Occupied Western Sahara (or new to this issue, Occupied Crimea). This term is reprehensible and explicitly represents a double standard. Ironically, as distinguished from many other territorial disputes where title is in dispute, title to the West Bank and Jerusalem vests in Israel and is not in dispute. Much of the land in the West Bank and Jerusalem is actually Jewish owned land having been legally purchased several decades previously.

Professor Schabas in an August 15, 2014 article in the Forward wrote that the most common complaint he hears is why the UN is singling out Israel, while human rights are violated in so many other countries and that he agrees that these claims have some merit. He says “One of the great problems of the U.N. human rights system is double standards, and there are double standards throughout the system because of the politics of the human rights council.”

The UNHCR may well be a political body and the mandate reflects this reality. However, the investigation needs to be legal, unbiased and impartial.

It is submitted that the Commission needs to tackle the important and damaging subject of double standards and must utilize the opportunity to put an end to the double standards of the UN human rights system.

7. Jewish Land Ownership and Fiscal Contribution

It would appear, too, that the UNHRC does not recognize human rights when Israelis are involved. Human rights include the right to own property. Thus the Israeli villages of Gush Etzion are regarded as being “occupied” even though they are situated in Area C and even though these villages were first founded as long ago as 1927 and subsequently re-established in 1940 on property legally purchased by Jewish entities between 1920 and 1930. From November 29, 1947, Kfar Etzion was under siege by the illegal invading British-officered Trans-Jordanian forces (the Arab Legion) and cut off from Jerusalem. On May 13, 1948, (before Israel’s Declaration of Independence on 15 May 1948) when the village surrendered, 127 Jewish inhabitants were massacred by the Arab Legion. The other villages surrendered the next day. The inhabitants were taken prisoner and the homes were plundered and burned.

The Gush Etzion area, which is an area owned by Jews, was illegally occupied by Trans-Jordan and there is no valid reason for disputing the legitimacy of their re-establishment after 1967 on Israeli-owned land and in Area C. After capturing areas west of the Jordan river, the illegal occupiers changed the name of the territory unlawfully occupied from Samaria to West Bank to distinguish Jordanian territory east of the Jordan River and in April 1949 changed the name of its own country from Trans-Jordan to Jordan.

Without going into details, substantial areas in the West Bank and “Eastern Jerusalem” are actually Jewish-owned. To refer to the West Bank as Occupied Palestinian Territory is not only, as has been shown, legally incorrect but appears to be an attempt to conceal Jewish ownership and interests.

Land ownership before Israel’s independence which covered mandatory Palestine between the Mediterranean and the Jordan River confirms the extensive Jewish ownership of land. 8.6% of these lands were owned by Jews, 3.3% by Arabs, 16.6% had been abandoned by Arabs (before 1946 and therefore nothing to do with Arabs fleeing Israel; probably by Bedouin moving on) and 70% had been vested in the Mandatory Power which now belonged to Israel as its legal heir. This information was published by the then British government of Palestine in its Survey of Palestine 1946.

Where, it is both asked and submitted, is the “Palestine Territory” which is now claimed to “belong” to Palestinians and to be occupied?

Tax payers before Israel’s independence which covered mandatory Palestine between the Mediterranean and the Jordan River confirms that little tax was paid by Arab tax payers. There were four times as many Jewish as Arab taxpayers in Palestine and their per capita tax was five times that paid by the Arabs, according to the 1945 issue of the Statistical Bulletin of the Palestine Government. The publication reported that there were 4,947 taxpayers Arabs in the country, paying a per capita tax of 260 mills while there were 17,527 Jewish taxpayers, resulting in a per capita tax of 1,390 mills.

It is submitted that not only was there no “Palestinian Territory” which could be occupied, there was no economic or fiscal base to support this “Palestinian Territory”.

8. Israel’s Presence in Area C and Jerusalem is Legal

The agreements and memoranda between the Palestinian leadership and the government of Israel have produced a special regime, a *lex specialis*, that governs all aspects of the relationship between them, the relationship of each one of the parties to the territory under its responsibility and control, and its rights and duties in that territory. These documents cover all the central issues between them including governance, security, elections, jurisdiction, human rights, legal issues, and the like.

In this framework, when referring to the rights and duties of each party in the territory that remains under its jurisdiction pending the outcome of the permanent status negotiations, **there is no specific provision either restricting planning, zoning, and continued construction by either party, of towns, settlements, and villages, or freezing such construction.** Article 27 of Annex III (Civil Affairs Annex) to the 1995 agreement sets out the agreed terms for planning and zoning, and construction powers in the territories, **and places no limitation on either side to build in the areas under its respective jurisdiction.**

With regard to Israel’s settlement activity, it cannot be emphasized sufficiently that **the Oslo Accords do not prohibit or restrict the establishment or expansion of Jewish communities in the West Bank and Gaza.** In fact, there is no requirement in any of the signed agreements between Israel and the PA that either side cease or freeze

settlement activity or any other building or economic activity until the final disposition of territories, which either party may claim and thus be in dispute, is negotiated between the sides.

The opposite is in fact the case. The above-noted 1995 interim agreement enables each party to plan, zone and build in the areas under its respective control. **Israel exercises the same rights in all respects in the area under its civilian control known as Area C as well as Jerusalem as the Palestinian Authority exercises in areas under its civilian control in the West Bank known as Areas A & B.** The use of the word “occupied” in the mandate of the Commission is clearly intended to find in advance of any investigation that Israel is in violation of international law by building in Jerusalem and Area C of the West Bank. In fact, title vests in Israel, the rights are not restricted in any way under the Oslo Accords and Israel is entitled to build communities and infrastructure in Jerusalem and Area C.

It is again emphasized that, under the Oslo Accords, Israel’s continued presence in Area C and Jerusalem, pending the outcome of the permanent status negotiations, has been agreed by the Palestinian Authority, of the PLO. It cannot, by any measure of political manipulation or legal acrobatics, be considered “occupied territory,” and hence, Israel cannot be termed “the occupying Power.” Israel’s presence in the territory of the West Bank is with the full approval of, and written agreement, with the Palestinian leadership.

Rather the issues of Jewish settlements, as well as Jerusalem and secure borders, are to be addressed in the final status negotiations between the parties themselves (Article XXX1(5)). It is reasonable to ask on what grounds the UNHRC has arrogated to itself the right to determine Israel's borders, even prior to the establishment of demilitarized zones as contemplated by Resolution 242, in contradiction of the agreement between Israel and the Palestinian Authority when the parties themselves have agreed that final borders will be determined by negotiations together with all the other requirements of UNSC 242. **The Oslo Accords, signed between Israel and the Palestinians and witnessed by the USA, Russia and the EU, contain no requirement that prohibits, limits, or freezes construction by Israel in Area C or Jerusalem.**

The Commissioners have made it clear that they interpret this mandate to include investigations of Israeli actions in ... East Jerusalem. The Commission is reminded that from 1948 to 1967 Jews were prevented from worshipping at the Western Wall, that the area under Jordanian control was ethnically cleansed of Jews, that 58 synagogues were destroyed and the ancient Jewish cemetery on the Mount of Olives severely

vandalized. Jordan already in 1949 applied its own laws to prevent any Jews from living in the territory, thus beating South Africa by being the first country (since the Nuremberg laws) to legislate on the basis of race and religion.

It is submitted that the Commission should applaud Israel for making and keeping Jerusalem as a city open to all religions despite continuous incitement and physical attacks on Israelis and Jews. Under Israeli control, Jerusalem is now open to all faiths and only recently the representative of the Organisation of Islamic Conference worshipped on the Temple Mount.

As has been shown above, it is submitted that, as stated unambiguously in the opinions of respected jurists and under the provisions of the Oslo Accords II, all Israeli activities in any part of Jerusalem is legal specifically including building.

Meanwhile, the UNHRC overlooks and ignores completely statements by PA officials denying the right of Israel to exist. Just one example: Mahmoud Abbas himself in 2009: "The Palestinian people will never accept the right of the Jewish people to their own state. Not for 1000 years". This is in addition to his well-publicized racist statement that not one Israeli will be allowed to live in Palestine.

In direct contravention of Resolution 242, the PA's statements to its people in Arabic continue to delegitimize Israel's existence, deny Israel's right to exist, define the conflict with Israel as a religious war for Allah, promote hatred through demonization and promote and incite terror and violence. On official PA TV, Israel is referred to as Palestine and maps of the area between the Mediterranean and the Jordan in PA offices, schoolbooks and TV display the whole area as Palestinian.

It is submitted that the Commission needs to investigate the ongoing and continuous Palestinian incitement.

9. Israel is accused of "Occupying" the Territory of a People who historically never Existed and a State that Never Was

This Submission does not deny the right of any people or group of people to move and change countries as they wish. It is a basic human right. Thus a well known Foreign

Secretary of the USA was born in Germany, the father of the present President of the USA immigrated into the USA from Kenya and Israelis immigrated from many countries. Most citizens of the USA, Canada, Australia and New Zealand arrived from many other countries. Migration between countries is legitimate and has been occurring since time immemorial.

It is equally legitimate for individuals from many backgrounds to unite as a single entity as have the English, Irish, Scandinavians, Germans, Central Europeans and countless others to form the USA, Canada, Australia and others, replacing the indigenous people as the controlling authority.

What is not legitimate, and only applies in the case of Israel, is to claim that Israel is occupying the territory of another people. This claim is the pretext under the term "Occupied Palestinian Territories". This claim is totally illegitimate and, as has been shown, historically incorrect. A group of people are entitled to live in a given area and may decide to declare a state. But such group cannot state that the existing situation then becomes illegal only by virtue of their demand. Any change to the existing situation must then be negotiated and agreed (or disagreed). In the case of Israel and the Palestinians, the imperative to negotiate underlies UNSC 242 and the Oslo Accords II.

It is therefore necessary to submit why the claim that there exists "occupied Palestinian Territory" is wrong as briefly as possible but to bring relevant material to the attention of the Commissioners.

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Palestine Liberation Organization executive committee member Zahir Muhsein (1977):
"**The Palestinian people does not exist.** The creation of a Palestinian state is only a means for continuing our struggle against the state of Israel for our Arab unity. In reality today there is no difference between Jordanians, Palestinians, Syrians and Lebanese. Only for political and tactical reasons do we speak today about the existence of a Palestinian people, since Arab national interests demand that we posit the existence of a distinct "Palestinian people" to oppose Zionism. Yes, the existence of a separate Palestinian identity serves only tactical purposes. **The founding of a Palestinian state is a new tool in the continuing battle against Israel**". Zuheir Muhsin, late Military Dept leader of PLO and member of its Executive Council, Dutch daily Trouw, March 1977

A number of historical sources indicate that in previous centuries, wide swaths of the Land of Israel were abandoned and left desolate. Charles William Eliot, the president of

Harvard University, visited the country in 1867. During his trip, he described the Galilee as a place of emptiness and misery.

In his famous book "Innocents Abroad," Mark Twain recalls not seeing a living soul throughout his journey. In 1874, the Reverend Samuel Manning wrote: "But where were the inhabitants?" In 1857, James Finn, who served as British consul in Jerusalem, noted that to large extent the country was empty of inhabitants. Even a German encyclopedia that was published in 1827 describes the country as "a deserted land in which bands of Arab robbers roam around in every part."

"The Palestinians," Bartal declares, "are not the 'farmers who have lived in Palestine for generations,' but rather immigrants who only arrived recently. It was only toward the latter stages of the 19th century that the country began to blossom thanks to the emergence of a new presence -- Zionism -- and the amazing results.

"Various studies done over a span of years by Moshe Brawer, Gideon Kressel, and other scholars clearly show that most Arab families who settled in the villages along the coastal plain and the area that would later become the State of Israel originated from Sudan, Libya, Egypt, and Jordan," said Bartal. "Other studies show that the waves of immigrants came here in droves from Arab countries during the period of the British Mandate."

There are a number of interesting passages in "**The Inner Life of Syria, Palestine, and the Holy Land: From My Private Journal, Volume 1**" 1876 by Lady Isabel Burton, who was the wife of explorer Richard Francis Burton. The following extract is abridged.

"At Jerusalem the fourteen Christian sects wrangle over the Holy Places, except, of course, those who doubt the truth of the sites, and who have come to teach us better. Meanwhile, the Moslems stand over them to flog them into order. If one unhappy Jew were to risk crossing the court of the Sepulchre during Holy Week, the fourteen would for once unite to tear him into threads. **The Palestine Moslems are considered by Thomson, and those who have made researches into their history, to have come from Egypt. My husband says they are a collection of all races,** and that the Crusaders drew them from every part of the East. The Maronites claim to be descended from the ancient Syrians. The Metawalis are emigrants from Persia, as their physique proves. Thomson truthfully says "No country in the world has such a multiplicity of antagonistic races. They can never form a united people, nor combine for any important purpose. They will therefore remain weak and incapable of self-government, and exposed to the invasions and oppressions of foreigners—a people trodden down." This

state of affairs results from and perpetuates a babel of tongues. English, French, Italian, German, and Spanish are the languages imported by the foreign Consulates. Turkish is the official tongue, and Arabic the national; Persian, Hindostani, and Greek are also common. The Consul has to converse every day with Jews, Maronites, Arabs, Turks, Bedawin, Druzes, Kurds, Afghans, Persians, and Algerines; and he must, or rather he should, understand all their religions and customs....These various religions and sects live together more or less, and practise their conflicting worships in close proximity. Outwardly you do not see much, but **in their hearts they hate one another**. The Sunnites excommunicate the Shiahs, and both hate the Druzes; all detest the Ansariyyehs; the Maronites do not love anybody but themselves, and are duly abhorred by all; the Greek Orthodox abominate the Greek Catholics and the Latins; **all despise the Jews**. It is a fine levelling school, and teaches one, whatever one's fanatical origin or bigoted early training may have been, to respect all religions, and to be true to one's own. **Except the Bedawin, the Druzes, and the Jews, only a few families can pride themselves on tracing their origin to any antiquity.**

In 1878, an Ottoman law granted lands in Palestine to the Moslem refugees from Bosnia and Herzegovina in the Carmel region, in the Galilee and in the Plain of Sharon and in Caesarea. The refugees were further attracted by 12-year tax exemptions and exemption from military service.

"Who can challenge the rights of the Jews to Palestine? Good Lord, historically, it is really your country." Yusuf Diya al-Khalidi, Mayor of Jerusalem, in 1899.

As early as October 1919, Musa Kazim Hussein, a former Ottoman official, elected Jerusalem mayor under the British, told a Zionist acquaintance that "we demand no separation from Syria." (Daniel Pipes, "Palestine for the Syrians?" *Commentary*, Dec. 1986.)

Six months later, in April 1920, his peers instigated the first anti-Jewish pogrom in Jerusalem—not in the name of Palestine's independence but under the demand for its incorporation into the (short-lived) Syrian kingdom headed by Faisal ibn Hussein of Mecca, the celebrated hero of the "Great Arab Revolt" against the Ottoman Empire and the effective leader of the nascent pan-Arab movement.

In 1924, in a special report to the League of Nations, the Arab Executive Committee (AEC), the umbrella organization of the Palestinian Arabs, still referred to Palestine as the unlawfully severed southern part of "the one country of Syria, with its one population of the same language, origin, customs, and religious beliefs, and its natural boundaries."

(Jamal Husseini, "Report submitted to the Mandate's Commission of the League of Nations through H.E. the High Commissioner for Palestine, by the Executive Committee of the Palestine Arab Congress—Extract," Oct. 6, 1924)

And in June 1926, the league's permanent mandates commission was informed of an Arab complaint that "it was not in conformity with Article 22 of the Mandate to print the initials and even the words 'Eretz Israel' after the name 'Palestine' while refusing the Arabs the title 'Surial Janonbiah' ['Southern Syria']." ("Minutes of the Ninth Session, Held at Geneva from June 8th to 25th, 1926, including the Report of the Commission to the Council," 22nd meeting, Permanent Mandates Commission, League of Nations, June 22, 1926.)

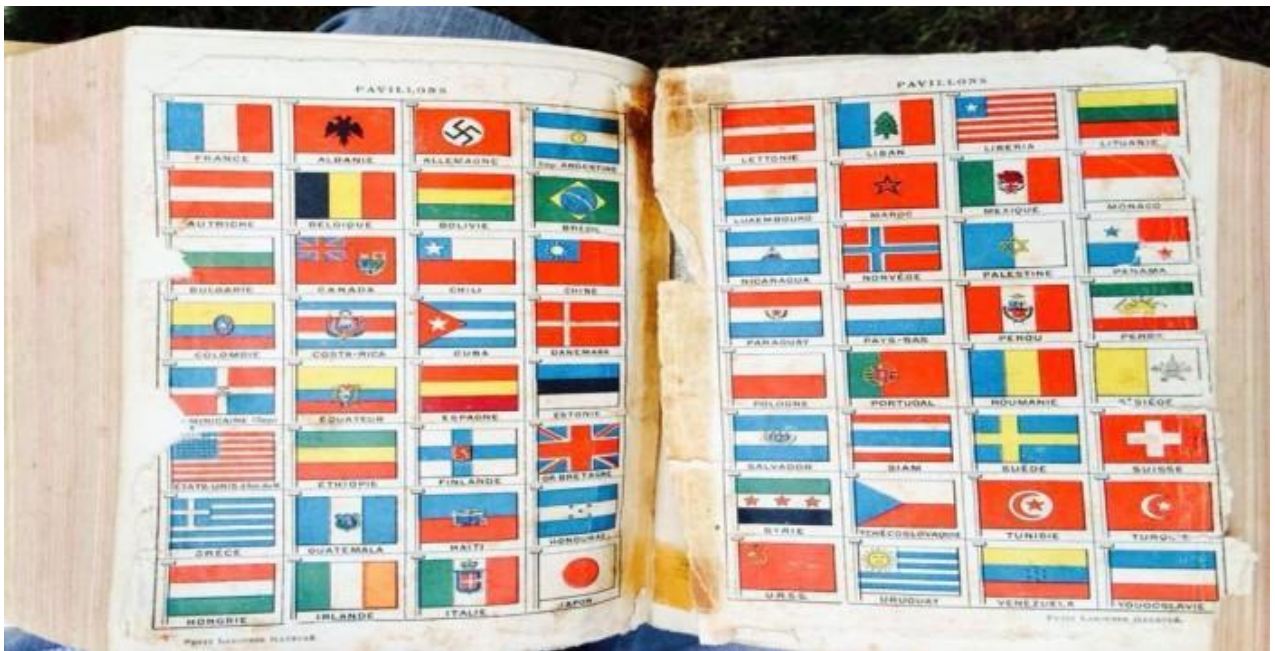
In July 1937, the Arab Higher Committee (AHC), the AEC's successor, justified its rejection of the Peel Commission's recommendation for the partition of Palestine on the grounds that "this country does not belong only to [the] Palestine Arabs but to the whole Arab and Muslim Worlds." _"The Arabs Reject Partition," quoted from *Palestine & Transjordan*, July 17, 1937

As late as August 1947, three months before the passing of the U.N. resolution partitioning Mandate Palestine into Arab and Jewish states, the AHC's mouthpiece *al-Wahda* advocated the incorporation of Palestine (and Transjordan) into "Greater Syria." *The New York Times*, Aug. 25, 1947.

It is hardly surprising that the PLO's founding document, the Palestinian Charter, adopted upon its formation has little to say about the Palestinians themselves. Devoting about two-thirds of its thirty-three articles to the need to destroy Israel, it defines the Palestinians as "an integral part of the Arab nation" rather than a distinct nationality and vows allegiance to the ideal of pan-Arab unity—that is to Palestine's eventual assimilation into "the greater Arab homeland".

It is now easier to understand why the Palestinian`s movement, the PLO, in its charter in paragraph specifically disavowed any claim to the West Bank (which at the time included Jerusalem) and only claimed Israel within the 1967 armistice lines.

“There is no such country [as Palestine]. Palestine is the term the Zionists invented! There is no Palestine in the Bible. Our country was for centuries part of Syria”. Auni Bey Hada, a local Arab leader, to the Peel Commission, March 1937



This is the Larousse French dictionary from 1939. It lists all the then current flags of the world in alphabetical order. It will be noticed that for Germany at that time, the flag was the Nazi one replete with the Swastika which proves that this was pre-1945.

It will be noticed that the Palestinian flag are the colours of modern Israel, blue and white, with the magen david – the Shield of David. Due diligence: It is not submitted that this was the official flag of Palestine. The official flag was the Union Jack with the words “Palestine”. However the official flag was almost never used with the result that the Jewish Palestinian flag was perceived to be the official flag of Palestine.

In 1939, then-U.S. President Franklin D. Roosevelt said that the immigration of Arabs to Palestine since 1921 was outpacing the immigration of Jews during that same period. Winston Churchill, who would later become prime minister of Britain, commented on the massive waves of Arab immigration into the country during that time. "Despite the fact that they were never persecuted, masses of Arabs poured into the country and multiplied until the Arab population grew more than what all of world Jewry could add to the Jewish population," Churchill observed.

Researchers have shown that those who claimed to be Palestinian Arabs were Balkans, Greeks, Syrians, Latins, Egyptians, Turks, Armenians, Italians, Persians, Kurds, Germans, Afghans, Circassians, Bosnians, Sudanese, Samaritans, Algerians, Motawile, and Tartars.

Fathi Hamad, the interior minister in the Hamas government in the Gaza Strip, who cried out for Egyptian assistance during the IDF's operations in the area in March 2012: "When we ask for your help, it is so that we can continue the jihad," he said. "Praise God, we all have Arab roots and every Palestinian in Gaza and all over Palestine can prove their Arab roots, whether they be in Saudi Arabia and Yemen, or anywhere else. We have blood ties."

"Speaking personally, half of my family is Egyptian," he said. "Where is your mercy? There are over 30 families in the Gaza Strip with the surname Al-Masri, 'Egyptian.' Brothers, **half of the Palestinians are Egyptian, and the other half are Saudi.** Who are the Palestinians? We have many families called Al-Masri whose roots are Egyptian! They come from Alexandria, Cairo, and Aswan. We are Egyptians. We are Arabs. We are Muslims." *Fathi Hammad, Hamas Minister of the Interior and of National Security, March 23, 2012*

More blunt statements were made by Walid Shoebat. Shoebat, who immigrated to the United States from Jordan, claims that everyone he met in Palestine "knew to trace the roots of their families to the country from which their great-grandfathers came."

"We knew full well that our origin was not Canaanite, despite what they tried to teach us," he said. "My grandfather would often remind us that our village, Beit Sahour, near Bethlehem, was empty when his father arrived there with six other families. Today, there are over 30,000 residents in the village."

"Even their Arab surnames give clear clues that they immigrated here," the professor said. "In Umm al-Fahm, there are four large clans who originated in Egypt. In the Old City of Jerusalem, one can find the Moroccan Quarter, which was home to Muslims who came from North Africa, the Maghreb, and settled in the Land of Israel."

"Furthermore, the Ottoman Empire transferred populations from place to place in order to tighten its control over those areas," he said. "Take, for example, the Circassians, Muslims from the Caucuses who were brought here and have settled here since."

"It is common knowledge that Palestine is nothing but southern Syria". - said to the UN Security Council in 1956 by Ahmed Shukeiry, who later founded the PLO - the Palestine Liberation Organization.

" There is no Palestinian nation! There is an Arab nation, but no Palestinian nation. This was invented by the colonial powers. When are the Palestinians mentioned in history? Never." - Azmi Bishara, former Arab Knesset member, on Israel television.



Jerusalem mufti Hajj Amin Husseini (left), in one of his letters to Hitler (right), did not speak of Palestinian aspirations, but rather, pan-Arab goals: "[T]he Arab people ... confidently expects that the result of your final victory will be their independence and complete liberation, as well as the creation of their unity, when they will be linked to your country by a treaty of friendship and cooperation."

It is submitted that the statement by Zuheir Muhsin quoted above is exactly correct: **The founding of a Palestinian state is a new tool in the continuing battle against Israel.** The only validity to the term "Occupied Palestinian Territories" is as an emotional tool against Israel with the intent to damage existing relations and to inflame hostility. It is most certainly not applicable to a people who only recently collectively decided they have a name (Palestinian) and only recently decided to claim a geographical area within which to establish a state which had never previously existed.

It is submitted that in order to arrive at the conclusion that there is "Occupied Palestinian Territory", the Commission needs to ask fearlessly, honestly and openly:

1. When was the country of "Palestine" founded and by whom?
2. Bearing in mind that the British recorded Arabs to own only 3% of the total land ownership, where exactly was the country of Palestine situated?

3. Where were its borders and whether the borders complied with the provisions of the Montevideo Convention?
4. What was its capital and where was its seat of government located?
5. Bearing in mind that the British recorded the Arab tax base to be comprised of 4,947 tax payers, what was its main economic activity, its income sources and annual budgets?
6. Bearing in mind that the first bank to be opened in Palestine was opened in Jerusalem in 1848 by the Jewish banker Jacob Valero, the Valero bank, what were the financial institutions established by Arabs in Palestine, when were they established and where were they located?
7. Was there a Reserve Bank in Palestine?
8. Which countries recognized Palestine and exchanged ambassadors?
9. Who were the prime ministers and presidents of Palestine and during which years?
10. What was the flag of Palestine prior to its "occupation"?
11. Since there is no such country of "Palestine" today but it is referred to as "occupied", what caused Palestine`s demise and when did it occur?
12. Why was the Territory today referred to as the West Bank not referred to as "Occupied Palestinian Territory" between 1948 and 1967?
13. Why did the Territory now referred to as the West Bank not become the independent state of Palestine at any time between 1948 and 1967 with Jerusalem as its capital?

10. Human Rights Situation in Territories Controlled by the Palestinians.

During my research for this submission, I came upon the Report of the United Nations High Commissioner for Human Rights A/HRC/25/40 January 2014 Human rights situation in Palestine which is submitted to the Commission since all violations of human rights are being investigated.

Violations by Hamas against Palestinians (November 2012 to November 2013)

Palestinians were also victims of Hamas indiscriminate rocket fire. Hamas fired 65 rockets and 15 mortar shells from Gaza towards Israel, with an additional 19 rockets and five mortars landing within Gaza and 20 rockets exploding at the launching site. The rockets are indiscriminate and a violation of international law.

No measures have been taken to investigate violations of international humanitarian law by Hamas or other armed groups in Gaza, including the direct targeting of civilians and the indiscriminate firing of rockets towards Israel.

Widespread cases of arbitrary detention, torture and ill-treatment.

Many detainees were subjected to *shabeh* (stress position for extended periods of time) and sleep deprivation, with their heads covered with a bag up to a few weeks.

Members of political parties, journalists, social media activists and academics were arbitrarily detained. They were ill-treated and, in some cases, tortured because of opinions expressed through different media platforms, including social media, and their involvement in activities considered to be political and against Hamas or their policies.

Restrictions to the enjoyment of the rights to freedoms of expression and opinion and of peaceful assembly.

Dispersion of a number of peaceful demonstrations using excessive or unnecessary force.

Since 2008, Hamas courts have issued 60 and upheld eight death sentences previously issued by the courts of the Palestinian Authority in Gaza. Hamas executed three persons, bringing to a total of 17 the number of executions since its takeover of Gaza.

Denial of the right to receive legal assistance, the use of ill-treatment and torture during interrogations and violations of the right to a fair trial by both civilian and military courts of persons later sentenced to death.

Recommendations to the de facto authorities and Palestinian armed groups in Gaza

The de facto authorities in Gaza must respect international humanitarian law, especially in relation to the principle of distinction, and ensure accountability for violations.

Palestinian armed groups in Gaza must respect international humanitarian law.

The de facto authorities must refrain from unlawful restrictions on free speech and peaceful assembly, including closing entire media outlets, and must allow journalists, political activists, social media activists, academics and others to carry out their work and exercise their public freedoms without hindrance, including freedom from arbitrary arrest, torture and ill-treatment. The authorities must investigate any violations against such persons.

The de facto authorities must take all necessary measures to ensure that detentions are in line with international human rights norms and standards, and must ensure the immediate end of the use of torture and ill-treatment by its security forces. They must promptly, thoroughly, effectively, independently, impartially and transparently investigate all allegations of torture and ill-treatment, as well as impose appropriate sanctions against those responsible based on fair trials, and provide victims with adequate, effective and prompt reparations for the harm suffered.

The de facto authorities in Gaza should impose an immediate moratorium on executions, and cease the use of military tribunals to try civilians.

Violations by the Palestinian Authority against Palestinians (November 2012 to November 2013)

Arrest and questioning of journalists for work deemed to be critical of the PA.

Palestinians arrested for distributing political leaflets, branding this action as criminal.

Dispersion of a number of peaceful demonstrations using excessive or unnecessary force, some resulting in deaths.

Arbitrary detention, torture and ill-treatment of detainees including detainees linked to political opposition groups.

Lack of effective and transparent investigation into cases of unlawful killing, torture and ill-treatment involving the Palestinian security forces.

Lack of measures to curtail widespread cases of violence against women, including “honour killings,” and dozens of cases of gender-based killings.

Recommendations to the Government of the State of Palestine

Ensure that the use of force and treatment of detainees by all security forces is in compliance with international human rights law and principles, including the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and that the new PPS Code of Conduct is applied in practice. Conduct regular training on international human rights law, the Basic Principles and the PPS Code of Conduct for security officers, and investigate and review operations to ensure regular compliance.

Conduct prompt, thorough, effective, independent and impartial investigations into allegations of unlawful killing, injury, torture and ill-treatment by security forces, including, for example, the killing of Amjad Odeh at Askar refugee camp. Ensure that such investigations are transparent, that the results are made public and that those responsible are brought to justice in fair trials.

Publish in full the reports of investigative committees.

Ensure that court decisions ordering the release of detainees are respected and promptly enforced and take appropriate measures against those institutions and individuals not respecting such orders.

Ensure that journalists and political activists are able to carry out their work without hindrance, in particular, ensure that security services refrain from arresting or harassing people for distributing or publishing materials that are critical of the Palestinian Authority. Officially declare a formal moratorium on the death penalty, pending abolition.

Adopt necessary measures to effectively investigate, prosecute and bring to justice perpetrators of all acts involving violence against women and, in particular, amend the

criminal legislation in order to prevent impunity and reduced penalties for so-called “honour crimes”.

See also article:

Hamas, Palestinian Authority Step Up Human Rights Violations

<http://www.gatestoneinstitute.org/5019/hamas-palestinian-authority-human-rights> **January 9, 2015**

Short summary: It would be a good idea if the international community and media stopped turning a blind eye to the suffering of Palestinians at the hands of Hamas and the Palestinian Authority [PA].

Abbas wants the world to support the creation of a dictatorship where people are arrested and intimidated for expressing their views in public. He is also asking the world to support a Palestinian state where Hamas is torturing Palestinians.

While the PA is accusing Hamas of human rights violations, its security forces in the West Bank continue to crack down on freedom of expression. In recent weeks, Palestinian Authority forces in the West Bank have arrested more than 25 university students on charges of criticizing Palestinian leaders in Ramallah.

"You can still see the bruises on their bodies. They were subjected to harsh torture." — Hisham Sakallah, Palestinian writer, on Hamas interrogators beating Fatah officials with plastic hoses.

<http://www.hrw.org/news/2012/10/03/gaza-arbitrary-arrests-torture-unfair-trials>

Summary

Palestinians face serious abuses in the Hamas criminal justice system, including arbitrary arrest, incommunicado detention, torture, and unfair trials.

In 2014, Hamas is introducing a new Islamist legal code to Gaza that's sure to set back national unity efforts. The law stipulates a **minimum of 20 lashes for a minor offense**, with the number of lashes increasing with the seriousness of the offense. A minimum of 80 lashes is to be imposed in criminal cases. **The law also widens the use of the death penalty as per Sharia.** Articles No 289, and 290 of the proposed law **stipulate**

the cutting off of the hand of a thief and a minimum of seven years in jail in case the criminal repeats his crime.

11. Conclusion

Historically, during the Ottoman period and before, no Arab Palestinian state ever existed so historically there is no “Occupied Palestinian Territory”.

During the Period of the British Mandate, no Arab Palestinian state ever existed so during this period, there was no “Occupied Palestinian Territory”.

Following the illegal capture of Samaria and Judea (the then existing names) by Trans-Jordan and Gaza by the Egyptians, the now renamed West Bank and the Gaza Strip were not granted independence so no Palestinian state was established so there is no “Occupied Palestinian Territory” held by Israel since 1967.

Following the illegal capture of Samaria and Judea (the then existing names) by Trans-Jordan and Gaza by the Egyptians in 1948, the PLO in its charter renounced any claim to the now renamed West Bank and the Gaza Strip so by acknowledgement of the Palestinians themselves, there is no territory in the West Bank or the Gaza Strip which may be described as “Occupied Palestinian Territory”.

Following the 1993 and 1995 Oslo Accords, by agreement with the Palestinians witnessed by the international community, Israel withdrew from Areas A & B now controlled by the Palestinian Authority so insofar as Areas A & B are concerned, there is no “Occupied Palestinian Territory” held by Israel.

Following the 1993 and 1995 Oslo Accords, by agreement with the Palestinians witnessed by the international community, Israel remained in Area C and Jerusalem so insofar as Areas C and Jerusalem are concerned, there is no “Occupied Palestinian Territory” held by Israel and Israel’s presence is perfectly legal.

Following the 1993 and 1995 Oslo Accords, by agreement with the Palestinians witnessed by the international community, Israel is entitled to plan, zone and build in Area C and Jerusalem so insofar as Areas C and Jerusalem are concerned, there is no

“Occupied Palestinian Territory” held by Israel and Israel’s building in communities and infrastructure is perfectly legal.

Except for the short period 1948 to 1967, Jerusalem has been an undivided city for about 3,500 years. There is no requirement for Israel to withdraw from Jerusalem under either UNSC 242 or the Oslo Accords so Jerusalem, or any part thereof, is not “Occupied Palestinian Territory”, its presence throughout the whole of Jerusalem is perfectly legal, it is entitled to build subject only to normal building regulations and there is no “Eastern Jerusalem” as a separate political entity.

Following Israel’s withdrawal from the Gaza Strip in 2005 which withdrawal complied with the applicable requirements of the Geneva Convention, there is no “Occupied Palestinian Territory” in Gaza which may be construed as “occupied” by Israel. there is no “Occupied Palestinian Territory”.

In summary, Israel accepted, and the Arabs rejected, the two-state solution proposed in 1938 and 1948, Israel offered land for peace in 1967, only to be greeted with the three "no's" of Khartoum: no peace, no negotiation, and no recognition, Israel offered generous proposals in 2000-01, 2008, and it is understood, most recently in 2014, none of which was accepted so an independent legal Palestine, complying with the Montevideo Convention and recognized by the United Nations Security Council, never came into existence with the result that there was, and is, no “Palestinian Territory” for Israel to “occupy”.

The Commission is invited to investigate the PA’s breach of the Oslo Accords in the PA’s failure to act against, or prevent efficiently and effectively, acts or threats of terrorism, violence or incitement, committed by Palestinians.

The Commission is invited to investigate the serious violations of human rights by both Hamas and the Palestinian Authority as disclosed by the UN report and other sources in Article 10 above.

By its silence on the many other principles of Resolution 242 [in addition to that of territory (not “the” territory)], the UNHRC has allied itself with the rejection by the PA of UNSC Resolution 242 and the Oslo Accords.

By its one-sidedness on the question of secure borders and its incorrect and biased emphasis on “pre-1967 borders” (there were never “borders”, only armistice lines) and

its references to Occupied Palestinian Territory, “Eastern” Jerusalem and “Occupied” Gaza Strip (concepts which do not appear in either governing Resolution 242 or the Oslo Accords), the UNHRC is acting as the advocate for one of the parties to the dispute rather than as an impartial international body.

By its double standards on the use of the terminology referenced above, but ignoring genuine territorial occupations, the UNHRC is clearly evidencing delegitimization of Israel, bias and prejudice against Israel.

For the Commission to issue a report which can be seen as legitimate, serious, legal and impartial:

it will need to avoid the terms “Occupied Palestinian Territory” “Eastern Jerusalem” and “Occupied Gaza Strip”,

demand that all parties cease, with immediate effect, to use the terms “Occupied Palestinian Territory” and “Occupied Gaza Strip”;

understand that the terms “Occupied Palestinian Territory” and “Occupied Gaza Strip” are a damaging misnomer which serve to delay a peaceful negotiated settlement to the Israel – Palestinian issue;

acknowledge the legality of Israel’s presence in Area C and Jerusalem;

accept the equivalence of the rights both of Israel with regard to Area C and Jerusalem and the Palestinian Authority with regard to Areas A & B including specifically the rights of both Israel and the Palestinian Authority to build in their respective jurisdictions in accordance with planning, zoning and building regulations;

confirm Israel’s evacuation of the Gaza Strip;

recognize that Israel does not “occupy” the Gaza Strip;

accept that the Palestinian Authority has civilian control and authority over Areas A & B of the West Bank;

demand an end to incitement and Palestinian violence;

demand the PA`s acknowledgement of the existence of Israel in maps, media under the control of the PA and educational material;

call for the immediate resumption of good faith negotiations without pre-conditions as contemplated under UNSC 242 and Oslo Accords II; and

Insist upon the implementation of all the requirements of UNSC 242, including demilitarization and end of conflict.

Above all, as Professor Schabass appears to be aware, it must avoid the political double standards of the UNHCR and the delegitimization of Israel.