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## “The Legal Invalidity of Resolution 181”

### A Presentation at a Hague Conference on International Law

On June 28<sup>th</sup> and 29<sup>th</sup>, 2017, I represented the Legal Grounds Campaign at an international law conference at the Peace Palace in The Hague, Netherlands. The conference was entitled “*Toward a New International Law Paradigm for the Israel/Palestine Conflict*” and was sponsored by two groups, **Thinc**, (The Hague Initiative for International Cooperation) and **TP International Conference for Truth and Peace**.

The professors and attorneys at the conference seemed especially interested in the international law course that Legal Grounds offers to Israeli law students. Acutely aware of the manner in which international law is being used to delegitimize and undermine Israel, they understand and appreciate the important role education plays in combating the distortion and misinterpretation of international norms.

One of the attendees, Professor Jeremy Rabkin, spoke of his challenge to a political officer from the Swedish embassy in Washington at a US Institute of Peace conference. He asked what her sources were for stating that the settlements are illegal. She answered, “Everyone knows that the settlements are illegal. Everyone knows that.” It is difficult to penetrate this mentality. For this reason, Legal Grounds’ program—designed to effectively convey facts that counter *the false narrative of the Palestinian Arabs*—is exceedingly valuable.

My goal at The Hague was to challenge one portion of this false narrative that remains so pervasive today. My lecture, “The Legal Invalidity of Resolution 181” presented documented facts to negate a misperception regarding this 1947 resolution, commonly referred to as the “partition plan.” Although the facts dispel this allegation, it is commonly argued that Israel’s failure to act in accordance with the partition plan is a continuing violation of international law.

PA President Mahmoud Abbas made this very accusation before the UN General Assembly as recently as September 22, 2016. Abbas presented the false narrative that Israel has unlawfully usurped the area “allotted to the Palestinian State according to the partition resolution.” In his speech, Abbas blamed Israel for not implementing Resolution 181, yet conveniently omitted the fact that when it was proposed on November 29, 1947 Israel accepted the resolution, while the Arabs rejected it in the strongest of terms: seven Arab armies launched a war to obliterate Israel.

The UN records of 1947 clearly document the opposition:

“The Arabs of Palestine will never recognize the validity of the extorted partition recommendations or the authority of the UN to make them; no Arab will cooperate. They made a solemn declaration before the UN, before G-d and history, that they will never submit or yield to any power going to Palestine to enforce partition...The only way to establish partition is first to wipe them out – man, woman and child.”

The Palestinians argue (and this has become the widespread narrative) that they retain the rights offered in the resolution despite the fact that they rejected it and despite the passage of 70 years. They maintain that the resolution remains valid, with the option being held open for them *ad infinitum*, promising them a state. This argument, although widespread, is blatantly false both legally and substantively.

First, one who rejects an agreement does not retain any rights based on that agreement. As the ICJ noted in the Namibia decision : “one of the fundamental principles governing the international relationship...is that a party which disowns or does not fulfill its own obligations cannot be recognized as retaining the rights which it claims to derive from the relationship.”

Second, Resolution 181 consisted of **A Plan for Partition with Economic Union; the original proposal in that resolution did not resemble the partition plan as it is commonly represented today**. No resolution was ever passed to create two detached states; rather, the resolution proposed states **joined by economic union**, with a myriad of conditions and requirements. To so grossly misrepresent the text as merely proposing two detached states, without economic union, is tantamount to attempting to create a new resolution and call it Resolution 181. It is a misnomer and inaccurate to call Resolution 181 merely a “partition plan”.

Instead, the resolution was composed of a lengthy, elaborate and multi-point arrangement. The resolution required, *inter alia*, that both states be democratic. Resolution 181 discusses elections, protection of civil and religious rights, and promoting education. Both states were required to prohibit discrimination on the basis of religion or sex. The resolution planned a joint currency system, a joint international exchange rate, a customs union, a joint Economics Board, common transportation systems (a railway system, inter-state highway system), joint postal, telephone and telegraphic services, common ports and airports and shared water and power facilities, irrigation.

Israel accepted partition under the conditions set forth in the resolution. Israel never agreed to disregard the nature of the Arab state to be created on its border. Legally and logically, Israeli acceptance, which has lapsed, was premised upon that which was included in the resolution, namely, partition of the land with economic cooperation and peaceful coexistence.

Third, it is clear that resolutions of the General Assembly are not binding without agreement of the parties and are only recommendations, as defined in Chapters 10 and 14 of the UN Charter. In fact, the representatives of Egypt and other Arab countries expressed that very sentiment when the resolution was passed and they argued that this “recommandation was not binding upon the parties. In February 1948, the representative of Syria said that “in the first place, the recommendations of the General Assembly are not imperative on those to whom they are addressed.”

Fourth, Resolution 181 was abandoned and never came to fruition. The UN Palestine Commission was charged with facilitating and finalizing the resolution, including its first charge to determine the final borders. The Commission never even began this work. No final borders were ever determined, although a general map was included.

The Security Council abandoned Resolution 181 and refused to enforce it despite the Commission’s request for help. Britain as Mandatory refused to cooperate with the Commission, and worked to sabotage efforts that could perhaps have prevented the war. The Commission was officially relieved of its duties to implement Resolution 181 on May 14, 1948. It is indeed ironic that Israel, the sole party that accepted the resolution and actually carried out its preliminary obligations, is not only blamed for its failure but stands accused of violating international law for not complying with the resolution.

In conclusion, it remains vital to teach accurate legal and historic facts. Falsehoods can be easily negated by presenting relevant documents and objective historic accounts. It should also be noted that ultimately, distortion of history and law undermines the international Rule of Law for the entire world, not just Israel. Ultimately this is also a battle for the supremacy of Rule of Law. An attendee from Singapore, Dr. Li-ann Thio, felt strongly that this perspective would appeal to smaller countries, which would strongly identify with this battle and support Israel on this basis as well.

Perhaps most important is that it becomes clear that Israel is not violating international law and that education be promoted to explain that history and international law support Israel’s rights.

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