

Secretary of State Pompeo: West Bank Annexation is Israel's Decision (Part 1)

by Hugh Fitzgerald



It is a great relief to realize that Israel no longer has to endure being bullied on matters of life and death by its American ally, as has happened in the past, especially during the administrations of distinctly unfriendly presidents, including Jimmy Carter and Barack Obama. At last we have an administration that recognizes Israel's need for strategic depth in the West Bank, and also understands that Israel has the historic, legal, and moral right, should it wish, to annex the entire West Bank.

Here, as reported by [Reuters](#), is Secretary Pompeo's most recent restatement of this recognition:

U.S. Secretary of State Mike Pompeo said on Wednesday it was up to Israel whether to annex parts of the West Bank and said that Washington would offer its views privately to Israel's new government, drawing a warning from Palestinians who vowed not to "stand handcuffed" if Israel formally took their land.

"As for the annexation of the West Bank, the Israelis will ultimately make those decisions," Pompeo told reporters. "That's an Israeli decision. And we will work closely with them to share with them our views of this in (a) private setting."

Secretary Pompeo knows that there are two independent bases for Israel's claim to Judea and Samaria (which the Jordanians renamed the "West Bank" in order to efface, toponymically, the Jewish connection to the land). The first is the Mandate for Palestine itself. That Mandate was created by the League of Nations for the sole purpose of establishing the Jewish National Home. A review of the system of mandates should prove useful, given how many now overlook the Mandate for Palestine's intent. When the League of Nations established the Mandates system, following the collapse of the Ottoman Empire after World War I, several mandates were created exclusively for the Arabs. France held the Mandate for Syria and Lebanon, Great Britain held the Mandate for Iraq. Those European powers were responsible for guiding the local populations to achieve independence. In the end, as we all know, the Arabs have managed to acquire 22 separate states, far more than any other people, states where they treat non-Arab Muslims – Kurds, Berbers, black Africans – with contumely or worse. And in many of those Arab states, non-Muslims are often humiliated, persecuted, and sometimes killed.

The territory reserved for the Mandate for Palestine originally extended from the Golan in the north to the Gulf of Aqaba in the south, and from an area east of the Jordan River "out into the desert" to the Mediterranean. The British then

unilaterally decided that all the territory east of the Jordan – 78% of the original territory of the Mandate – would be closed to Jewish immigration, so that it would become part of the newly-created Emirate of Transjordan (later the Kingdom of Jordan). What was left in the Palestine Mandate for the Jews was 22% of the territory that was originally to have been included. This was the sliver of land that went from the Jordan River to the Mediterranean, and from the Golan to the Gulf of Aqaba. That Mandatory territory, that was to have formed part of the future Jewish state, included all of what became known as the West Bank.

What did the Mandate itself say about its purpose? Look at the Preamble to the Mandate:

Whereas the Principal Allied Powers have also agreed that the Mandatory should be responsible for putting into effect the declaration originally made on November 2nd, 1917, by the Government of His Britannic Majesty, and adopted by the said Powers, in favour of the establishment in Palestine of a national home for the Jewish people, it being clearly understood that nothing should be done which might prejudice the civil and religious rights of existing non-Jewish communities in Palestine, or the rights and political status enjoyed by Jews in any other country.

The declaration of November 2, 1917, which is referred to in the preamble, is the Balfour Declaration, which declared British support for the establishment of the Jewish National Home.

Note the phrase, too, about how “nothing should be done which might prejudice the civil and religious rights of existing non-Jewish communities in Palestine.” The drafters quite deliberately left out any mention of “political rights” because, of course, a Jewish National Home, leading to the establishment of a Jewish state, would necessarily impinge on

the political rights of local Arabs.

Article 4 of the Mandate makes clear that it is to lead to the creation of a single Jewish National Home, and not to the creation of two states, Jewish and Arab, in the territory west of the Jordan that was ultimately assigned to the Mandate:

An appropriate Jewish agency shall be recognised as a public body for the purpose of advising and co-operating with the Administration of Palestine in such economic, social and other matters as may affect the establishment of the Jewish national home and the interests of the Jewish population in Palestine, and, subject always to the control of the Administration to assist and take part in the development of the country.

The Zionist organization, so long as its organization and constitution are in the opinion of the Mandatory appropriate, shall be recognised as such agency. It shall take steps in consultation with His Britannic Majesty's Government to secure the co-operation of all Jews who are willing to assist in the establishment of the Jewish national home.

Article 6 of the Mandate calls on the mandatory authority to “facilitate Jewish immigration” and “encourage...close settlement by Jews on the land, including State lands and waste lands”:

The Administration of Palestine, while ensuring that the rights and position of other sections of the population are not prejudiced, shall facilitate Jewish immigration under suitable conditions and shall encourage, in co-operation with the Jewish agency referred to in Article 4, close settlement by Jews on the land, including State lands and waste lands not required for public purposes.

So to repeat yet again – and it deserves this constant

repetition – the West Bank (Judea and Samaria) was always supposed to constitute part of the Jewish National Home. Thus it was intended by the Mandates Commission, headed by the Swiss law professor William Rappard, who was greatly distressed when the British unilaterally ended Jewish immigration east of the Jordan. Had the Jews managed to hold onto the West Bank in the 1948-49 war, it would have become, as the Mandate always intended it to be, part of Israel, every bit as much as Tel Aviv or Haifa or Ashdod. When the Jordanian army seized and held territory west of the Jordan in the 1948-49 war, Jordan emulated the Romans, who had renamed “Judea” as “Syria Palaestina” or “Palestine” to efface the Jewish connection to the land. The Jordanians renamed the parts of Judea and Samaria it now controlled as “the West Bank.”

Jordan was the illegal “occupier” of the West Bank from 1948 to 1967; its only claim was that of military possession. The juridical situation was quite different for Israel, its claim was based on the Mandate for Palestine itself. But, someone might object, hadn’t the Mandates system expired when the League of Nations, which had created the system of mandates, ceased to operate in 1946 and was soon replaced by the United Nations?

No, because by its own charter, the United Nations recognized the continued relevance of the Mandates system. The UN Charter, and specifically Article 80 of that Charter, implicitly recognize the “Mandate for Palestine” of the League of Nations. This Mandate granted Jews the irrevocable right to settle in the area of Palestine, anywhere between the Jordan River and the Mediterranean Sea.

Professor Eugene Rostow, then the Dean of Yale Law School, explained the significance of Article 80:

This right [of settlement by the Jews] is protected by Article 80 of the United Nations Charter. The Mandates of the

League of Nations have a special status in international law, considered to be trusts, indeed 'sacred trusts.'

Under international law, neither Jordan nor the Palestinian Arab 'people' of the West Bank and the Gaza Strip have a substantial claim to the sovereign possession of the occupied territories.

To sum up: the Jewish claim to the "West Bank" is based clearly on the Palestine Mandate of the League of Nations, which gave Jews the right to settle anywhere between the Jordan and the Mediterranean. That right was not extinguished when the League of Nations came to an end. Article 80 of the U.N. Charter recognized the continuing relevance of the Mandate's provisions. The West Bank always formed part of the territory assigned to the Jewish National Home, where the British were to "facilitate Jewish immigration" and to "encourage close settlement by Jews on the land." Jordan was an "illegal occupier" of the West Bank from 1948 to 1967. In 1967, through its military victory, Israel at last became able to enforce the claim it had never relinquished. Even though the British had closed off the territory immediately to the east of the Jordan to Jewish settlement, effectively taking it out of the Mandate, the territory from the Jordan River westward to the Mediterranean (and from the Golan in the north to the Gulf of Aqaba in the south) remained, without further alteration, as the territory which was assigned to become the Jewish National Home. That is why Pompeo knows that it is up to Israel alone to decide how much of the West Bank it will annex.

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