

## CHAPTER 2

### IMMIGRANTS AND REFUGEES

#### (A.) THE DEMOGRAPHIC BATTLE

The literature on the Arab-Jewish conflict in the Middle East repeatedly refers to the conflict between two nationalist movements over the same territory, Palestine.<sup>1</sup> Before the full-scale war of 1948, before the United Nations recommended partition in 1947, the focus of the conflict was on demography,<sup>2</sup> the aspiration of the minority national group, the Jews, to increase its numbers in Palestine, and the resistance of the majority national group, the Arabs, to that increase.<sup>3</sup>

In the first twenty years of the conflict, the central issue was over the rights of Jews to immigrate to Palestine. Ben Gurion said that "the only problem that matters (is) Jewish immigration".<sup>4</sup> In the final decade before the partition resolution, the conflict shifted to the rights of Jewish refugees to flee persecution and seek a safe haven in Palestine. Though their victory on the first battle produced a critical mass of Jews within Palestine, they were insufficient to win the much more critical battle -- the battle to save the lives of the millions of Jews threatened in Europe. In addition to the 400,000 increase in population in the 1930's, all they could eventually save was the small remnant of Jewish refugees left from the devastation of the Holocaust.

Though immigrants and refugees are both populations moving from one territory to another, the situations of refugees and immigrants are quite dissimilar<sup>5</sup>, a dissimilarity increasingly recognized in law and practice, particularly since the end of World War II. Immigrants are voluntary migrants, people who choose to move from one political jurisdiction to another. The political jurisdiction to which they choose to move must also choose them. A state sets the rules for entry and membership for migrants

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<sup>1</sup>

<sup>2</sup>The Arabs also insisted on self-government and restrictions of land purchases by Jews.

<sup>3</sup>fn. on population statistics of Palestine

<sup>4</sup>Rebirth and Destiny of Israel, p. 122.

<sup>5</sup>ref. to Tony R\_\_\_\_\_.

applying to join the indigenous population and become members of the State.

## **(B.) REFUGEES**

The extent to which an individual is a refugee rather than just an immigrant depends on whether the individual was coerced to migrate and the nature of the coercion. When the coercion is natural -- floods, drought, hurricanes -- we find disaster refugees, but these normally are migrations within a political jurisdiction. When the coercion is man-made -- impoverishment and starvation because of the political mismanagement of the state -- we usually find economic migration. When there is political tyranny produced by the government in power, sometimes accompanied by a disastrous domestic economic situation, we find thousands flee as humanitarian refugees. The humanitarian refugees are dependent on the assistance of the international community and willingness of some countries to voluntarily admit them. Political refugees are a different category again. These are individuals with a well-founded fear that they will be persecuted as individuals because of their politics, race, religion, etc.<sup>6</sup> Unlike humanitarian refugees, who depend on the moral compassion of other states to be resettled, and unlike economic migrants, who depend on the self-interest of other states who see a benefit from the membership of the economic migrants, political refugees have a right of some sort to claim membership in another body politic.<sup>7</sup> Immigrants, economic refugees and humanitarian refugees have no such rights to claim membership. It is the indigenous population through its instrument, the state, that sets the rules for entry and membership for those applying to enter a territory -- including economic migrants and humanitarian refugees.

In Palestine, there was an indigenous population, but no state representing the interests of the Arab majority or the Jewish minority of that indigenous population.

In the 1930's, hundreds of thousands of European Jews became refugees with very few havens

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<sup>6</sup>fn. on Rel. Cow.

<sup>7</sup>ref. to my article

to take them in.<sup>8</sup>

### **(C.) NATIONAL SELF-EXPRESSION, SELF-DETERMINATION AND NATIONAL INTERESTS**

After the war, the unwillingness of the world to take the Jews in was coupled by the refugees' own unwillingness to go to any other state but Palestine. However, Palestine at the time was not a separate state with sovereign control over who could enter as members. Palestine came into existence as a political entity separate from the Turkish Empire, as a territory placed under the political jurisdiction of the United Kingdom. The League of Nations had assigned the mandate over Palestine to Britain.<sup>9</sup> Further, the League of Nations confirmed the promise of the British Balfour Declaration<sup>10</sup> for "the establishment in Palestine of a National Home for the Jewish people", but qualified that pledge to assert that "nothing shall be done which may prejudice the civic and religious rights (note: not political rights) of the existing non-Jewish communities, or the rights and political status enjoyed by Jews in any other country".<sup>11</sup>

Clearly, when the Balfour Declaration referred to "rights" of the indigenous population, it referred to non-political rights. (Political rights were assured for Jews in other countries.) The Declaration already circumscribed the most basic sovereign right. The indigenous population was not given the basic right of members of a state, the right to determine who and how many others could become members of its community.

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<sup>9</sup>The Supreme Council at San Remo on April 25, 1920 allotted Britain the mandate for Palestine, with the final terms confirmed by the League Council on July 22, 1922 which repeated the Balfour Declaration in the Mandat<sup>4</sup> and rephrased it in Article 2 while Article 6 explicitly called for facilitating Jewish immigration "under suitable conditions" and without prejudice to "the rights and position of other sections of the population".

<sup>10</sup>ref. to fn, ch. 1 (which one?)

<sup>11</sup>

Further, the period following World War I was an age of rising nationalism. Jews then constituted 7% of the population of Palestine. The influx of co-nationals of that minority could eventually threaten the majority status of the dominant group, particularly since the Jewish emigrants identified themselves with a distinctive Jewish nationalism -- Zionism. The majority of inhabitants of Palestine, to the extent they identified with any nationalism, identified with the Arab nation. Arab nationalists believed that the Arab Nation should be the exclusive or, at the very least, the predominant national identity in Palestine. Given this opposition by Arab Nationalists to Jewish immigration, particularly a Jewish immigration identified with a rival nationalism, conflict was inevitable. The Arabs did not want their territory to be used as a homeland for a nationalist movement, even if that territory had been the ancient homeland of the competing nation. Further, the Arabs denied that the Jews comprised a nation and that the minority indigenous Jewish population had national minority rights.

Arab nationalism, perceived itself as having a predominant, if not exclusive, jurisdiction over the territory. To Arab nationalists that predominance was threatened by Zionist nationalism as the influx of Jews challenged not only that exclusivity, but potentially that predominance. The Arabs backed up their claim for possession of the territory and the right to determine its future with reference to a series of international agreements and commitments for Arab independence and self-determination in Palestine -- British government pledges during the First World War, as set out in the correspondence between Sir Henry McMahon and Sherif Hussein of Mecca, the Wingate telegrams, the Hogarth assurance re the Balfour Declaration, General Allenby's communication to Prince Feisal, the Basset Letter, the Declaration to the Seven, and the Anglo-French Declaration of 1918.<sup>12</sup>

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<sup>12</sup>Sharif Hussein of the Hejaz negotiated with the British on the basis of the Damascus Protocol whose terms were set by Arab nationalists from Syria and Mesopotamia skeptical of Britain. In the ten letters exchanged, beginning on July 14, 1915, Hussein set forth the demands for independence. In the responses, dated October 24 to December 23, 1915, McMahon agreed to recognize and uphold the independence of the Arabs in regions which excluded some Arab areas -- such as Aleppo, Beirut, and Adam -- but not Palestine. On the basis of these understandings, the Arab revolt began against the Ottoman Empire. The secret Sykes-Picot Agreement of May 16, 1916 dividing the Arab world into French and British administered areas and zones of influence as well as an internationalized Palestine clearly contradicted the Hussein-McMahon correspondence. When Hussein learned of the secret treaty when it was published by the Bolsheviks in December of 1917, Sir Reginald Wingate, the High

Those pledges and commitments contradicted the Balfour Declaration. The pledges and commitments were not endorsed by the League of Nations. Though Article 22 of the Paris Peace Conference of 1919 had provided that until the community was able to stand alone, a Mandatory power would provide administrative advice, assistance and "the wishes of these communities must be a principle consideration in the selection of the Mandatory". (my italics) The pledge in the Balfour Declaration was.<sup>13</sup> At the time of the Arab riots of 1922, the Zionists had the world's greatest power --

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Commissioner in Egypt in early 1918, confirmed Britain's pledges to the Arabs. When the Balfour Declaration was published in November, Commander David Hogarth assured Hussein that Jewish settlement in Palestine would only be allowed insofar as would be consistent with the political (my italics) and economic freedom of the Arab population. When Arabs were recruited to join the revolt they were assured they were fighting for national liberation. The British on June 16, 1918 formally and publicly confirmed that the future government of the territories would be based upon the consent of the governed. Seven Arab spokesmen drew the open conclusion, not refuted by the British, that Britain would not dispose of Palestine without regard for the wishes and inhabitants of Palestine. The final confirmation of British and French policy was contained in a November 8, 1918 press communique assuring that the national governments in liberated areas "shall derive their authority from the free exercise of the initiative and choice of the indigenous population".

cf. Fred J. Khouri's The Arab-Israeli Dilemma (Syracuse: Syracuse University Press, 1968) which provides an excellent summary of the series of reassurances about self-determination by the Arabs in Palestine. The McMahon-Hussein correspondence itself can be found in the British Command Papers (Cmd.) 5957, 1939 and in E.L. Woodward and R. Butler, eds., Documents on British Foreign Policy, 1919-39 (London, 1952), iv, 487. George Antonius, The Arab Awakening (London, 1946), pp. 257, 288, 431f., 433f. quotes or cites the Wingate telegram, the Hogarth communique, the Declaration to the Seven and the Anglo-French Declaration of 1918. cf. both The Institute of Palestine Studies, The Partition of Palestine 29 November, 1947: An Analysis (Beirut, 1917, p. 2) and the UNSCOP subcommittee report written by Sir Muhammed Zeffrullah which both cite this history of pledges to provide a political, legal, and ethical basis to the Arab claims.

<sup>13</sup>When the Palestine Mandate Agreement between Britain and the League of Nations was signed with the Balfour Declaration incorporated into it, the Zionists acquired their first international binding pledge of support; consequently, their political claims to Palestine were greatly strengthened. In fact the mandatory agreement was framed largely in the interests of Jews. For example, it provided for (1) the incorporation of the whole of the Balfour Declaration; (2) the recognition of the 'historical connection of the Jewish people with Palestine'; (3) the establishment of a Jewish agency to be 'recognized as a public body for the purpose of advising and cooperating with the Administration of Palestine in such economic, social, and other matters as may affect the establishment of the Jewish population in Palestine'; (4) the facilitation of Jewish immigration and 'close settlement by Jews on the land' provided

Great Britain -- and international legal authority on their side.

But the Arabs had a political claim based on a fundamental imperative. For the issue was not simply two nationalisms in conflict, but two principles as well. One principle was that each nation in the world had the right to self expression in a specific territory and the protection of a state to guarantee and secure the collective well-being of that nationality. The second principle was the right of an indigenous population to self-determination in the territory in which it lived.

The primary principle on which the League of Nations was founded was the right of nations to self-expression in a territory. Self-determination, though an important principle for the League of Nations, was subsidiary to the principle of national self-expression. Further, both were subject to the reality of state power. The League of Nations was not set up to destroy or challenge the power of existing states on the principles of extra-national self-expression or self-determination. These principles were only applicable in areas where a vacuum in state authority had been created as a result of the dissolution of empires following World War I.

The Arabs, for obvious reasons, made the principle of self-determination of an indigenous population primary. The Arabs considered the Balfour Declaration and its endorsement by the League of Nations invalid since it contradicted the various commitments the British had made to them, since it was made without the consent and knowledge of the indigenous population and ran contrary to the principle of self-determination. Further, the Arabs considered the British Mandate to be an interim measure until the resident population could develop the instruments of a state. The League of Nations had designated Palestine a "Class A" Mandate, meaning that the mandatory power was just to render temporary administrative advice and service.

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that the mandatory ensures 'that the rights and position of other sections of the population are not prejudiced'; (5) the right of each community to maintain its own schools; and (6) the use of Hebrew, as well as Arabic and English as official languages. Fred J. Khouri, The Arab-Israeli Dilemma (Syracuse, 1968) pp. 16-17. See also J.C. Aurewitz, Diplomacy in the Near and Middle East (Princeton, 1956) pp. 106-111. G. \_\_\_\_ implies that the assumption was made that this policy could only be accomplished by a population transfer. Quoting Churchill in correspondence with Lloyd George he states that Jews, "take it for granted that the local population will be cleared out". (M. Gilbert, Winston S. Churchill, Vol. IV, The ? World, 1916-1922, Boston, 1975, p. 610.)

On the other hand, the Arabs, while opposing the Balfour Declaration, interpreted its provisions incorporated in the Mandate provisions as favouring them. The Mandate's terms guaranteeing the "position" and "rights" of the indigenous majority went further, they contended. This included the right of the Arabs to remain a majority and the political right eventually to have a state that would express the Arab nationality of that majority. Within the state that would emerge, the Jews would be viewed as individuals with minority rights, but not national rights. Thus, on the one hand, they considered the Balfour Declaration invalid. On the other hand, they considered that the way it was incorporated in the Mandate protected their own position.

The Churchill Memorandum of July 1, 1922 clarifying the Balfour Declaration, prevented "the disappearance of the subordination of the Arabic population, language or culture in Palestine". Further, the Jewish national home was defined as "the development of the existing Jewish community" as a source of national pride for Jews everywhere. Earlier, Churchill had summed up the contradiction between considering the 'rights' of the indigenous population and creating a homeland in Palestine for the Jews. "The difficulty about this promise of a national home for the Jews in Palestine is that it conflicts with our regular policy of consulting the wishes of the people in the mandated territories and of giving them representative institutions as soon as they are fit for them, which institutions, in this case they would use to veto any further Jewish immigration."<sup>14</sup>

The three latter claims -- the right to guaranteed permanent majority status, the right to a state representing that majority nation and the granting of only minority and not national rights to the Jews -- whatever their validity, were clearly not part of the Mandate. But they were the heart of the Arab claim and the Arab vision for Palestine.<sup>15</sup>

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<sup>14</sup>House of Commons, Debates, 5h sec., vol. 143 requoted from (Michael J. Cohen, (1988), p. ?).

<sup>15</sup>A contemporary equivalent situation to the Arab claim can be imagined, if, in the face of a large Francophile immigration into Canada to reinforce and strengthen the Franco-Canadian nationality, the Anglophone majority tried to ensure that it would remain a majority and that the state created would reflect only the majority nationality. The religious, civilian and linguistic rights of the Franco-Canadians would be protected, but the state would reflect only the Anglo-Canadian nationality. The State would respect minorities, but would not express the minority national identity. In essence, it is a position which denies the right of others with different ethnic backgrounds to integrate, to have others of that ethnic

#### **(D.) THE BATTLE OVER IMMIGRATION**

Jewish immigration was the major threat to the Arab vision. The right of Jews to immigrate to Palestine to reinforce a minority as a national presence was indeed incompatible with the Arab majority's desire eventually to have the state eventually express its national identity exclusively.

The Arabs in Palestine had risen in violent protest in the 1920's to defend their convictions.<sup>16</sup> They fought Britain in a full scale revolt in 1937 after Jewish immigration from Europe in the early 1930's had increased the Jewish percentage of the population to over one-third and just when the politics of immigration shifted to the issue of refugees.<sup>17</sup> For Jews were not simply suffering in Europe from a heritage of persecution which periodically manifested itself in pogroms. Hitler had come to power in Germany in 1933. By 1937, it was clear that the anti-semitism of the Nazis was now dictating government policy. Jews, who had suffered government-instigated discrimination, were now being persecuted. Jews in flight from persecution were becoming refugees in desperate need of a safe haven.

The Arabs, driven by their opposition to Jewish nationalism, opposed the use of Palestine as a

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background immigrate, or immigrate in large numbers, lest they grow into a majority or to have the nationality of that group expressed and defended by the state. This was the position of the Sinhalese majority in Sri Lanka until the accord was signed with India in July of 1987. It is the position of then military leader of the coup in Fiji in 1987 who deposed the constitutional government to preserve the political hegemony of native Fijians over the Fijians of Indian descent who had recently achieved majority status.

<sup>16</sup>The Shaw Commission in 1929 and the Hope-Simson Royal Commission in 1930 noted that Arabs feared that Jewish immigration would make them a minority in their own country.

<sup>17</sup>"The Arab approach to the immigration issue surfaced in other areas. In the Fall of 1946, when the United Nations considered the Western Samoan trusteeship agreement, China and India pressed for an amendment specifically spelling out equality of immigration rights. The chief interests of the indigenous inhabitants were paramount and if immigration conflicted with those interests, immigration would have to be controlled." On the basis of this argument and the more general consideration that the U.N. charter already spoke of equality of rights (without mentioning immigration), the proposal was defeated (Murray, p. 60). The significant difference between the Western Samoan and Palestine cases was that the League Mandate incorporated the Balfour Declaration's undertaking to assist Jewish immigration and create a Jewish homeland in Palestine.



sanctuary for Jewish refugees. In fact, the riots of 1936 which became a full-scale revolt in 1937 was in part motivated by the fear that the plight of the Jewish refugees in Europe and the reluctance of other countries to take in those refugees would inevitably result in the Jewish minority becoming a majority.<sup>18</sup>

The British Cabinet, on July 4, 1936, agreed to suspend immigration into Palestine in 1936 and merely hold off the announcement until certain conditions were met. Ormsby-Gore, the new Colonial Secretary had proposed that the suspension of immigration would last for the term of the Royal Commission and would be announced following the restoration of law and order and the commencement of the Commission's work. For the first time, and against the principle of a Mandatory policy accepting advice from an outside power -- a policy which would be reversed with the creation of the Anglo-American Committee of Inquiry -- Arab states were introduced to mediate the conflict. Initially a representative of Ibn Saud and, subsequently, Nuri Said of Iraq almost reached a successful conclusion. But the Jewish Agency successfully managed to exploit the delays and conflicts and obtain the Colonial Secretary's official denial and repudiation of the premature publication of the results of the negotiations -- which included the suspension of immigration.<sup>19</sup>

Britain set up the Peel Commission in 1936 to examine the conflict between Arabs and Jews in Palestine and the political future of Palestine. Was the Jewish homeland to develop as an independent state, a part of a federal state or within a binational territorial state? Was the Arab nation, which still constituted the majority, to be given control over the territory given their absolute denial of any national rights whatsoever to the Jews?

In the Report of July of 1937, the Peel Commission attributed the underlying cause of the Arab revolt to the desire of the Arabs for national independence and their hatred and fear of the establishment of a National Jewish Home. They recommended freezing immigration at 12,000 per year for five years. The Peel Commission also recommended partition.<sup>20</sup>

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<sup>18</sup>cf. Khouri (1968), p. 211.

<sup>19</sup>cf. Michael J. Cohen, Palestine to Israel: From Mandate to Independence (London, 1988) Ch. 9, pp. 68-77 for an excellent account of this issue.

<sup>20</sup>Royal Commission Report, p. 80.

For the Arabs, resolving the conflict by partition was anathema. They escalated the rebellion and claimed that the Mandate was invalid. In any case, they argued, partition ran directly counter to the terms of the Mandate.

It was not, and could not have been, the intention of the framers of the mandate that the Jewish immigration to Palestine should result in breaking up the political, geographic and administrative economy of the country. Any other interpretation would amount to a violation of the principles of the Covenant and would nullify one of the main objectives of the Mandate.<sup>21</sup>

The Peel Commission, however, went further. It advised that "the most strenuous effort should be made to obtain an agreement for the exchange of land and population" (my italics) (this echoed Churchill's early characterization that the implementation of Zionism presumed a policy of population transfer -- cf. fn. 13) and suggested that in the last resort, "the exchange would be made compulsory."<sup>22</sup> The precedent cited was the Convention of Lausanne (1923), which provided, on paper, international legal sanction for the compulsory exchange of populations between Greece and Turkey.<sup>23</sup>

The Peel Commission was not the first or only body to consider an exchange of populations as part of the solution to the Palestine dilemma. Chaim Weizmann and the British Colonial Secretary<sup>24</sup> discussed an exchange of populations. The \_\_\_\_\_ in reply to a question from the Royal Commission on January 12, 1937 implied that the country would not be able to assimilate the 400,000 Jews already present. (Ben Gurion cited this answer at the Biltmore conference as one explanation for his own political views -- Rebirth and Destiny of Israel, p. 121.) Ben Gurion also, after tremendous agonizing

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<sup>21</sup>Institute for Palestine Studies, 1967, op. cit., pp. 10-11.

<sup>22</sup>Peel Commission

<sup>23</sup>In fact, the Convention simply sanctioned an exchange of populations that had already taken place and the resettlement of those refugees. the Convention did not sanction forced expulsion, but resettlement once expulsion took place, an important though subtle difference.

over the issue, concluded, "We must uproot from our hearts the assumption that the thing is not possible. It can be done...we must prepare ourselves to carry out the transfer provision."<sup>25</sup> The Labour Party Executive of Britain in 1944 recommended that "the Arabs be encouraged to move out as the Jews move in."<sup>26</sup> Ex-President Hoover conceived an even more grandiose scheme in 1945 -- sending Palestinian Arabs to Iraq for resettlement on a huge irrigation scheme.<sup>27</sup> Hoover's suggestion was remarkably prescient of what the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) would attempt when the question arose about what to do with people displaced from the territory that had been de facto partitioned. In February of 1947, when Roosevelt met Weizmann for the first time he "tried out his idea about moving the Arabs out".<sup>28</sup> Roosevelt independently came to the same conclusion as Hoover. "An ambitious plan was taking shape in his mind, a plan calling for the transfer of the entire Arab population of Palestine to a weaker Arab land." American dollars with a dollop of British pounds and French francs would pay the development and resettlement costs.

At its simplest, the Arabs were faced with a Jewish nationality which wanted, as a minimum, a national homeland and a state to protect and develop that nation. The state could be an Arab-Jewish federal or unitary binational state or, preferably, a Jewish state. But it had to ensure the right of Jews to come to Palestine. At the extreme, Arabs were faced not simply with a division of their homeland -- horrific enough to them -- but possibly also the uprooting of their nationals from their homes, possibly by a compulsory exchange of populations.

Though in private there existed minority Arab support for a federated state or a cantonal arrangement on Swiss lines, the Arab revolt resumed and intensified. It was repressed by the British

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<sup>25</sup>Ben Gurion, July 12, 1937; 2BG, vol IV, p. 299 as quoted in \_\_\_\_\_, Ben Gurion and the Palestinian Arabs (New York, 1980, p. 182).

<sup>26</sup>National Executive Committee of the Labour Party, "International Post-War Settlement Report," 1944. Labour Party Conference Report, London, December 1944.

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<sup>28</sup>cf. Peter Grose (1983) pp. 138-139.

who declared the Arab Higher Committee unlawful, arrested and deported its leaders and disarmed the Arabs. The battle would be fought in the United Nations, in the capitals of the Great Powers, in the hearts and minds of the other states which constituted the United Nations, and most importantly, in the violent clashes and civil war in Palestine.<sup>29</sup>

The Jews were even more desperate, for population transfer was not just a hypothetical possibility, but a reality. The Jews of Germany were being forced out of Germany and there was no where for them to go. The Jews in the rest of Europe were threatened in a rising tide of anti-semitism. The problem was no longer the right to immigration and the realization of a national rebirth. The problem became the plight of Jewish refugees. The problem would become the very survival of the Jewish people. The Zionist Congress in 1937 agreed to accept the principle of partition, but on condition the area allocated to the Jews was sufficiently large.

In any case, the Peel Commission recommendation for partition, let alone a consideration of an exchange of populations, was moot. The British Government rejected the Peel Commission recommendations. The British government went even further in recoiling from the recommendations. In the 1939 White Paper, the limitation on Jewish immigration was made permanent. Seventy-five thousand Jewish immigrants would be allowed to enter Palestine over a five year period and any subsequent increase would require the acquiescence of the Arabs. The British repudiated the Balfour Declaration and their commitments under the League of Nations just at the time of greatest need for a sanctuary for Jewish refugees. The issue was no longer merely an opportunity for Jewish immigration and national aspirations. The Jews were desperate. The British denied the Jews a haven from Nazi atrocities they so desperately needed at the time, though Britain did not endorse the principle of self-determination of the majority.

The League of Nations, which had failed the Ethiopians so badly when faced with the brute force of Mussolini's fascists to take over the country, a League which not only lacked the physical clout to oppose overt aggression, but failed even to use legal means or moral sanctions to deal with the rape of a country by external aggression, it was in no position to challenge the largest empire of the time and

rescind the Mandate. No real effort to withdraw the legal Mandate from Britain or even to suggest a moral censure was made or could be expected to have been made given the depths to which the League had sunk. However, in the report of the Permanent Mandates Commission to the Council of the League, the Commission unanimously stated that "the policy set out in the White Paper was not in accordance with the interpretation which, in agreement with the Mandatory Power and the Council, the Commission had placed upon the Palestine Mandate."<sup>30</sup> However, with the outbreak of World War II, the report and the League itself became irrelevant and the White Paper remained the basis of British policy.

Neither legal authority nor moral principles (either of natural self-expression or of self-determination) but the self-interest of the powerful to keep the Arab states on side in the face of the aggression of the Axis powers governed the outcome. Even when faced with the most pressing humanitarian issue -- the plight of refugees with no sanctuary to take them in -- the policy limiting immigration remained in force. European Jews had been condemned to death.

Those concerned with virtue might hope that the world war which followed and the death of six million Jews through the Holocaust would make a difference to both the Arab and the British positions. Only one hundred thousand debilitated skeletons of European Jews were left in the camps at war's end. The determination of the Arabs, and their ally, Britain, was revealed in their combined fight to resist transferring the international responsibility for the remnants of European Jewry to Palestine.

To the roughly 100,000 Jews left in the Nazi concentration camps at war's end would soon be added another 100,000 - 150,000 Jews fleeing different parts of Eastern Europe that were under or about to come under Soviet control. What was to be done with these refugees? For the Jewish refugees with Zionist convictions, who believed Zion was the only place where they would be both safe and fulfilled, Palestine was the obvious destination. Practically speaking, Palestine was also the only option as well for most Jewish refugees who were not ardent Zionists given the reluctance of Western countries at that time to resettle Jews. The only other option was repatriation to the countries from which the Jews had fled, an unacceptable option for the Jews.

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<sup>30</sup>Permanent Mandates Commission, Minutes of the 36th Session, Geneva, 1939.

The Arabs, assisted by the British, fought the pressure for entry of Jewish refugees from Europe into Palestine by two means in the international diplomatic arena. They fostered the idea of repatriation of the Jews and they tried to prevent Jewish resettlement in Palestine. The battle took place in the discussions in the Economic and Social Council (ECOSOC) over the draft constitution of the International Refugee Organization (IRO).<sup>31</sup>

#### **(E.) THE CONSTITUTION OF THE IRO**

The Arabs fought to make the objective of the IRO, in dealing with the Jews, repatriation and not resettlement. To prevent resettlement in Palestine, they tried to introduce conditions to resettlement, namely the consent of neighboring countries and of the indigenous population. They also wanted the IRO to have exclusive authority to settle European refugees, largely through repatriation. They suggested that all private organizations working for resettlement transfer their assets to the IRO for that purpose. In the IRO constitution, a distinction was made between refugees -- pre-or post- war victims of Nazi or fascist regimes or of racial, religious or political persecution -- and displaced persons (D.P.s) who were displaced in the course of or after World War II. As far as the D.P.s were concerned, the IRO was "to encourage and assist in every possible \_\_\_\_\_ the early return to their countries of origin".<sup>32</sup> If Jews were classified as D.P.s, that classification would direct the IRO to arrange for their repatriation.

If Jews were classified as refugees, then Palestine was the obvious place for them to be resettled, given the terms of the Mandate and the limitation of other options. As the Report of the High Commissioner for Refugees submitted to the Twenty-First Ordinary Session of the League of Nations Assembly had noted, "Palestine alone has made a contribution of any size' in reference to large-scale or

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<sup>31</sup>For a more detailed account of the Arab efforts to keep the Jews from moving to Palestine via the debates over the IRO constitution and in the United Nations, cf. Jacob Robinson, Palestine and the United Nations (Westport, Conn.: Greenwood Press, 1947), chapter 2.

<sup>32</sup>Annex 1, para. 1(b), Draft Constitution of the IRO, A/127.

group settlement of Jews.<sup>33</sup>

The Arab countries, led by Egypt, attempted to set repatriation as the goal of the IRO for all persons, whether refugees or D.P.s. Mr. Kamel, the delegate of Egypt<sup>34</sup>, proposed amending paragraph 2 of the Preamble of the Draft Constitution of IRO to require serious reasons to justify resettlement. Though defeated, on November 19, 1946, Kamel tried again unsuccessfully by proposing the deletion of the phrase "concerning displaced persons" from Annex I section IB. Passing the amendment would have meant repatriation was advisable for both refugees and displaced persons.<sup>35</sup>

These attempts to dry up the source of Jewish immigration to Palestine were not restricted to the Arab countries. The United Kingdom played a leading role. The British delegate, supported by the Lebanese delegate, opposed the provision<sup>36</sup> (which passed) defining German and Austrian residents of Jewish origin as "refugees". The opposition was argued on what could be said to be very high moral principle -- the ostensible high ground that this was merely a backhanded attempt to clear Europe of its Jews, in other words to accomplish Hitler's goal of making the German-speaking parts of Europe "Judenrein".<sup>37</sup> Though the British acknowledged the difficulty Jews would have in living in places where they had been so persecuted, they admitted their real motives when they declared their "fear that the new provision might well involve the new IRO in schemes for Jewish immigration into Palestine, a matter which is being separately dealt with by bodies specially concerned with that problem".<sup>38</sup>

The main Arab effort, however, was not focussed on repatriation but on the attempts to prevent

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<sup>33</sup>Records of the Twenty-First Ordinary Session of the League of Nations, p. 232.

<sup>34</sup>21st meeting of the Third Committee of the United Nations General Assembly of the United Nations on November 12, 1946.

<sup>35</sup>cf. Robinson, op. cit., p. 15.

<sup>36</sup>of Annex 1, Part 1, Section H, para. 3.

<sup>37</sup>A/C.3/61; A/C.3/68, p. 5, 9.

<sup>38</sup>E/REF/87, May 30, 1946.

resettlement of Jews in Palestine by placing specific conditions on resettlement. Dr. Malik of Lebanon<sup>39</sup> attempted to qualify where the IRO could resettle refugees. He proposed that refugees could not be resettled where they "will create political difficulties in the countries of resettlement or in neighboring countries" or "without the consent of the peoples of the countries of reception and without full consultation with the States members of the United Nations most directly concerned".<sup>40</sup> These efforts were defeated.

In September 1946, the Lebanese representative brought forward an Egyptian proposal in the following form:

No group of refugees should be moved with a view to temporary or permanent settlement into any state or territory contrary to the wishes of the Government or the people of that state or territory.<sup>41</sup>

This new principle was to be added to the general principles of the Constitution of the IRO. Further, the Lebanese delegate added the following amendment to a proposal previously submitted by the United Kingdom:

In case of admission of refugees to trust territories, the wishes of the people of these territories should be taken into account.<sup>42</sup>

Both proposals were defeated.

New amendments were proposed as a compromise requiring that the IRO consider as one factor in resettlement

evidence of genuine apprehension and concern ...  
by the indigenous population of the non-self-

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<sup>39</sup>on June 19, 1946, at the Fifth Meeting of the Committee of the Whole on Refugees and Displaced Persons of ECOSOC.

<sup>40</sup>E/86, p. 6.

<sup>41</sup>E/134, E/135 Add. 1, p. 1.

<sup>42</sup>E/AC.13/1, p. 3-4.



governing country in question.<sup>43</sup>

This amendment was passed and included in paragraph 1(g) of Annex 1 of the IRO constitution. With reference to settlement in Palestine, the amendment was pointless. Though Palestine might appear in ordinary language to be a "non-self-governing territory", Palestine, in fact, did not fall under the United Nations Charter's or IRO constitution's definition of a "non-self-governing territory"<sup>44</sup>, for the latter excluded Class "A" Mandates.

It was clear to all that all these legal manoeuvres were aimed specifically at stopping Jewish migration to Palestine. An attempt was even made to give the IRO exclusive jurisdiction over the D.P.s and refugees by transferring the assets of the Jewish Agency and the JOINT (the American Jewish Joint Distribution Committee) to the IRO. All these proposals failed. The clearest indication of support for the Jewish refugees going to Palestine emerged in the Committee on Finances of the IRO which, in its 1947 budget, provided for the use of German reparation funds to resettle 100,000 Jewish refugees, with the funds to be transferred to the JOINT and the Jewish Agency.

All attempts to inhibit resettlement of Jewish refugees in Palestine via the IRO constitution having failed, the Arabs made a final attempt to keep the refugees in Europe in the first session of the United Nations General Assembly. The Egyptian delegate, again supported by the British, introduced a resolution against persecution and discrimination against religious minorities in Central Europe, arguing that these minorities had "an absolute right to be on equal footing" with other citizens of the country.<sup>45</sup> The implication, of course, was that the Jewish refugee problem should be dealt with at its source and not through resettlement. The attempt to bar discrimination ended up being so watered down that it was eventually passed as a motherhood clause without any particular applicability to Jews in Europe.

The Arabs, backed by the British, were defeated in the attempt to make repatriation the exclusive function of the IRO or to include Jews in those slated for repatriation. Even when repatriation

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<sup>43</sup>A/C.3/61.

<sup>44</sup>cf. Robinson, op. cit., p. 19-20.

<sup>45</sup>A/BUR/51.

was argued on the highest morals grounds of equality, non-discrimination and the opposition to a Europe free of Jews, the Arabs and British were unable to succeed in targeting the Jews for repatriation. When the major efforts focussed on resettlement, they were unable to hedge the resettlement plans with conditions which would exclude Palestine as a target area for resettlement of the remnants of European Jews. The Jews, who had no votes in the U.N., won every single moral and legal battle in the issue of resettling Jews in Palestine.

But Britain was in charge of Palestine. Britain controlled the gates of entry. And whatever sympathy existed for the Jews, Britain stubbornly clung to its commitments of the White Paper restricting Jewish entry into Palestine. Power, not law, and certainly not moral principles, would seem to be the determinant of the fate of the remnant of European Jewry.

Further, though the series of decisions on repatriation and resettlement were clear and unequivocal, the Arabs and their British ally continued to interpret the IRO constitution in such a way as to restrict the access of the Jews to Palestine. For example, in the committee examining the minority report of the UNSCOP, the following section was included:

The following guiding principles emerge from the discussion of the refugee problem as a whole and from the decisions adopted by the United Nations:

- (a) Genuine refugees and displaced persons constitute a problem which is international in scope and character (see first paragraph of preamble to the Constitution of the IRO);
- (b) Refugees and displaced persons should return to their countries of origin (see second and third paragraphs of preamble and article 2, paragraph I(a);
- (c) Only in case where refugees cannot be repatriated should steps be taken to resettle them elsewhere than in their countries of origin (see article 2, paragraph I(b);
- (d) In the performance of its functions, the IRO should act in accordance with the purposes and

the principles of the United Nations, in particular as regards the resettlement or refugees and displaced persons in countries able and willing to receive them (see article 2, paragraph (I);

- (e) In addition, the IRO should carry out the functions set forth in its Constitution in such a way as to avoid disturbing friendly relations between nations (see Annex I to the Constitution, paragraph I(g);
- (f) The IRO should exercise special care in resettling refugees or displaced persons either in countries contiguous to their respective countries of origin, or in non-self-governing territories, and should also give due weight to any evidence of genuine apprehension and concern felt in regard to such plans, in the former case by the country or origin of the persons involved, in the latter case by the indigenous population of the non-self-governing territory in question (see Annex I, paragraph I(g)).<sup>46</sup>

Subcommittee 2 was the committee set up by the General Assembly of the U.N. meeting as an Ad Hoc Committee following the receipt of the UNSCOP majority and minority reports and was not bound by the recommendation of partition. The subcommittee included representatives of Afghanistan, Egypt, Iraq, Lebanon, Pakistan, Saudi Arabia, Syria and Yemen under the chairmanship of Sir Muhammed Zafrullah Khan of Pakistan with its final report drafted by Khan and Fares Bey al-Khoury of Syria. Only a small part of the report dealt with the IRO. It succinctly expressed and summarized the long-held views of the Arabs on Jewish immigration, including the migration of refugees.

The subcommittee report proposed a Draft Resolution specifically on Jewish Refugees and Displaced Persons to read in part:

Considering that Palestine, despite its very small

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<sup>46</sup>Institute for Palestine Studies, 1967, op. cit., p. 19-20.

area and limited resources, has absorbed a disproportionately large number of Jewish immigrants and cannot take any more without serious injury to the economy of the country and the rights and position of the indigenous population;

Considering that many other countries with much greater area and larger resources have not taken their due share of Jewish refugees and displaced persons,

1. The countries of origin should be requested to take back the Jewish refugees and displaced persons belonging to them, and to render them all possible assistance to resettle in life;
2. That those Jewish refugees and displaced persons who cannot be repatriated should be absorbed in the territories of Members of the United Nations in proportion to their area, economic resources, per capita income, population and other relevant factors;
3. That a special committee of the General Assembly should be set up to recommend for acceptance of the Members of the United Nations a scheme of quotas of Jewish refugees and displaced persons to be resettled in their respective territories, and that the special committee should as far as possible, work in consultation with the International Refugee Organization or its Preparatory Commission.<sup>47</sup>

It was clear that as far as Britain and the Arabs were concerned, the wishes of the refugees themselves counted for nothing. The rulings of international bodies counted for little more. Law and moral claims seemed to be mere backdrops. When the law and moral issues conflicted with political, military and material interests, a rhetoric of higher moral principles might be used -- equality, universality

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<sup>47</sup>Institute for Palestine Studies, 1967, op. cit., p. 47-8.

-- but the law was construed to support the positions already adopted. Further, there would be no recourse to morality or law to resolve the dispute, particularly when the series of rulings on the IRO constitutional disputes about refugees had been so clear.

#### **(F.) THE ANGLO-AMERICAN COMMITTEE AND THE CONFLICT OVER THE REMNANT OF THE HOLOCAUST**

Whatever the case in the 1920's, by the late 1930's, morality was on the side of the Jewish refugees. In the aftermath of World War II, so was international law. But Britain, which had political control over Palestine, continued to bar entry to the Jewish refugees despite the unequivocal expression of international will that the refugees be allowed to settle there. If the Jews' and the international community's demands for immigration would not be met by the ruling power in Palestine, the only alternative was to wrest control from Britain.

Though the full history of the Great Powers' dealings on Palestine in the post-war period are outside the immediate focus of this analysis, both the issue of political control over Palestine and the refugee issue were central concerns. These issues continued to haunt Great Britain's attempt and failure to forge a united front with the United States to resolve the thorny issue of Palestine along the lines of a solution favourable to British interests.

As Britain became more and more impotent in handling its mandatory responsibilities over Palestine while pursuing its own self-interests, Britain increasingly saw the U.S. as the vehicle for helping to solve its dilemma. In 1936 it had, for the first time, called on other sovereign states -- Saudi Arabia and Iraq -- to help mediate the conflict. During and after World War II, Britain increasingly turned to Americans to help bridge the gap between its overextended responsibilities and interests and its increasingly limited economic and military capacities.

But it did not do so without trepidation. The U.S. had a record of isolationism. Britain was a World Power. The U.K. was reluctant to cede influence let alone authority when Britain alone would

continue to bear the economic, military and diplomatic responsibilities for the territory.<sup>48</sup> It wasn't simply that the two states had different interests. They had different outlooks. Britain was an imperial power. The U.S. took the morally superior ground that Britain's strategy was determined by those imperial goals without regard to the wishes of the inhabitants of the region. It was precisely such an American outlook that made Britain suspicious that involvement of such a naive partner would do more harm than good.

However, Britain's increasingly limited military and economic capabilities forced Britain to involve the U.S. and gradually cede increasing influence and power. Just after America entered the war, the Joint Military and Planning Staff did agree that the Middle East would be Britain's responsibility, but this was very soon qualified to apply to the defence of the U.K. and not the defence of British 'interests'.

By 1943, the 'sphere of responsibility' agreement had given way to a tacit understanding that American influence, if Washington chose to assert it, was predominant. For financial reasons, the British government was unable to take major decisions in defiance of American wishes or even to resist proposals likely to substitute American for British influence.<sup>49</sup>

Though the officials of the Foreign Office in Britain and those in the State Department shared, as we shall see, a pro-Arab perspective, the politicians were governed by other perspectives -- their convictions and the influence of the electorate which was a much more significant factor in Washington

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<sup>48</sup>As Churchill phrased it in anticipation of surrendering the Mandate to the U.S. or to the U.N., "I do not think we should take the responsibilities upon ourselves of managing this very difficult place while the Americans sit back and criticize." July 1, 1945; E 4939/15/31, FO 371/45378, PRO

<sup>49</sup>Michael J. Cohen (1988), p. 141. For this conclusion, Cohen cites Michael Howard, The Mediterranean Strategy in the Second World War (New York, 1968), pp. 24ff. and Sir Llewellyn Woodward, British Foreign Policy in the Second World War (London, 1970) Vol. I, p. 386, op. cit., p. 99. cf. Eden to Halifax, Aug. 8, 1943, E 4462/2551/65, FO 371/34975, PRO where he refers to the American view that "Great Britain has in the past exploited the middle Eastern territories for her own imperialist ends and has retarded political progress contrary to the wishes of its inhabitants".

than in London. In May of 1942, the Extraordinary Zionist Conference, the famous Biltmore meeting, called for both a Jewish Commonwealth in Palestine and unrestricted immigration into Palestine. Thus, when the officials of the two departments tried to counteract perceived Zionist pressure and formulate a joint statement on Palestine to allay Arab fears that Palestine would be turned over to the Jews by assuring that no decisions would be made until after the war and only then when both Jews and Arabs were consulted, (in effect, obtaining an American endorsement of the British White Paper of 1939) the Zionist lobby was able to torpedo the publication of the statement at the last minute.<sup>50</sup> It did not, however, stop President Roosevelt from reassuring King Saud in private on precisely the same lines, in spite of his public expressions of support for unrestricted Jewish immigration and a Jewish state in Palestine.<sup>51</sup>

The diplomatic and political battle lines that emerged after the war were set during the war -- between mandarins in Washington and London who by and large shared a pro-Arab stand for 'reasons of state' even when the interests of the U.S. were not always congruent with those of Britain, and a vacillating President (Roosevelt, then Truman) who were also held to account by their principles, then in public statements and particularly by the Jewish electorate.

Thus, the creation of the Anglo-American Committee (AAC)<sup>52</sup>, announced to look into the Palestine issue and make recommendations to both governments was the last real attempt for a joint British-American policy on Palestine. The Harrison Report to President Truman detailing the desperate plight of the Jewish refugees in Europe, their numbers and their desire to go to Palestine had just been issued and released at the end of September advocating 100,000 Jews be admitted to Palestine. President Truman sent Prime Minister Atlee a copy of the report and urged immediate action. Even prior to the release of the report, Truman, in an August 16th press conference, had stated "that we want

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<sup>50</sup>cf. the analysis of Isaiah Berlin, F.O., Aug. 9, 1943, in E 5043/87/31, FO 371/35036, PRO, cited in Michael J. Cohen (1988), pp. 156 ff.

<sup>51</sup>FRUS, 1945, Vol. viii, Washington, 1969, pp. 694-5.

<sup>52</sup>In British documents the AAC is referred to as a Commission.

to let as many of the Jews into Palestine as it is possible"<sup>53</sup> without, of course, involving American troops in policing the territory. Initiated by the British, who now recognized that without American support Britain could no longer conduct an effective Palestine policy, the original intent was not to address the Palestine issue at all, but to isolate the issue of Jewish refugees in Europe from the Palestine question -- a tactical ploy which fitted in with the efforts of the Foreign Office on the IRO issue and elsewhere. American concerns made Britain retreat step by painful step on the terms of reference, whereas Britain had actually proposed three items: the amelioration of the position of the Jews in Europe, reasonable limits to immigration into Palestine and the role of other resettlement countries (the Dominion and the U.S.) in relieving the situation.<sup>54</sup> Under pressure from Truman, the focus of the terms of reference shifted 180 degrees from the Jewish refugees in Europe to Palestine as the focus of the solution. As well, the joint committee of six Americans and six British 'impartial' members was to report within 120 days lest the Committee be seen as another attempt to 'shelve the issue'.<sup>55</sup>

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<sup>53</sup>PRUS, 1945, Vol. viii, p. 739. Earl G. Harrison was the Dean of the University of Pennsylvania Law School who was sent to Europe to report on the conditions of the camps.

<sup>54</sup>E. Munroe, St. Antony's Papers, published in Middle Eastern Affairs, no. 2, 1961, pp. 24-5.

<sup>55</sup>For an excellent account of the genesis of the committee, see M.J. Cohen (1988), ch. 10. Wm. Roger Louis (1984) deals with origins, terms of reference, work and recommendations in the context of British foreign policy in the Middle East. Dan Tschirgi (1983)(pp. 172-192) provides a very extended account in the context of American public opinion, domestic politics, the role of the Zionist lobby and the tension between the White House and the State Department. J.J. Zasloff, (1952), (pp. 29-36) without the benefit of all the subsequent diaries, documents and official records, provides an excellent summary of the origins, work, recommendations and consequences of the committee's report. See also J.C. Hurewitz (1950), The Struggle for Palestine. In his memoirs, (Years of Trial and Hope, vol. 2, 1956, p. 142) Truman wrote, "I suggested that Palestine should be the focus of the inquiry and not just one of many \_\_\_\_...I did not want the United States to become a party to dilatory tactics."

The American members included: Judge Joseph C. Hutcheson of Texas who was designated as the American chairman, Dr. Frank Aydelotte, director of the Institute for Advanced Study at Princeton and former president of Swarthmore College; Frank W. Buxton, editor of the Boston Herald; William Phillips, a veteran diplomat; James G. McDonald, a former League of Nations High Commissioner for Refugees, and Bartley Crum, a California attorney.



In the unanimous<sup>56</sup> recommendations, while conceding on the first one that Palestine alone would not be able to meet the needs of the Jewish refugee remnant, nevertheless followed the Truman line and recommended immediate authorization of 100,000 immigrant certificates to Palestine. It also recommended interim continuation of the Mandate pending reference of the issue to the U.N. which would assume a trusteeship arrangement. The Committee envisioned a non-sectarian state under international guarantees, and, in the interim, efforts to raise Arab economic, educational and political participation to the level of the Jews while removing all restrictions on Jewish land purchases. The repression of terrorism in all forms for all sides was to be repressed.

Truman, in a pre-election statement on the eve of Yom Kippur on October 4, 1946, unilaterally endorsed the recommendation on the admission of 100,000 Jewish refugees to Palestine without consultation with Atlee<sup>57</sup>, an endorsement publicized by the Zionists without reference to the rest of the statement. This upset the Brits and set off a pattern of misunderstanding and division in the American and British approaches to the problem, though the British were always asking for delay after delay. As Truman notes in his diary<sup>58</sup>, Atlee already had unconditionally rejected the immediate admission of 100,000 in a House of Commons speech that stated that large scale Jewish immigration could only be considered when the Jews were disarmed, a condition which was not part of the AAC report. Letters had criss-crossed the Atlantic with Truman stressing the urgency of the refugee problem in contrast to the political one and Atlee offering reasons for further delays. The report had been released almost six months earlier. The plight of the refugees was desperate whatever the political motives for Truman's speech in attempting to preempt Dewey. Britain could, in the 1939 White Paper, totally overturn the conditions of the Mandate, but, given its interests in the Middle East in placating the Arabs, it could not reverse the White Paper in 1946 no matter how much Britain had

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<sup>56</sup>Unanimity was critical since Britain had pledged to implement a unanimous report.

<sup>57</sup>In fact, the media interpreted Truman's speech, as Truman recalled in his memoirs, as supporting 100,000 immediate entrants. In fact, Truman's speech could be read as a retreat since he did not specify a figure but called only for 'substantial immigration'.

<sup>58</sup>op. cit., p. 148-49.

become economically dependent on U.S. support.

The attempt to forge a U.S.-Britain common first in Palestine had failed -- not because of differences over the political resolution of Palestine -- but on the issue of immigration and the immediate problem of the refugees. The Morrison-Grady plan to implement the political recommendations of the Anglo-American Committee by means of a Federal State with provincial autonomy for Jewish and Arab sectors was rejected by both Arabs and Jews and President Truman rejected the plan as well as a retreat for the AAC Report since he "was unable to see that anything could come out of it except more unrest. The plan made the admission of the hundred thousand conditional upon its being accepted by the Arabs, so no relief was offered in that direction either".<sup>59</sup>

Britain and the U.S. approached the problem from different perspectives and with different interests. Their views on the political solution to the Palestine issue reflected the ambivalence of each government and the objective difficulties in solving the problem, but were capable of being mediated. The issue which broke the effort to forge a united front was the problem of providing an immediate solution to the 100,000 refugees. Truman's patience had been tested, his Yom Kippur statement was misinterpreted, but not without foundation given his previous pledges on record and Atlee responded with anger and accusations that Truman was dictated by domestic politics in his commitments. The issue of refugees had destroyed the potential for a British-American alliance on a potential outcome for Palestine.

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<sup>59</sup>op. cit., p. 152.