

Book Reviews

INTERNATIONAL LAW AND THE ISRAELI- PALESTINIAN CONFLICT- A RIGHT BASED APPROACH TO MIDDLE EAST PEACE

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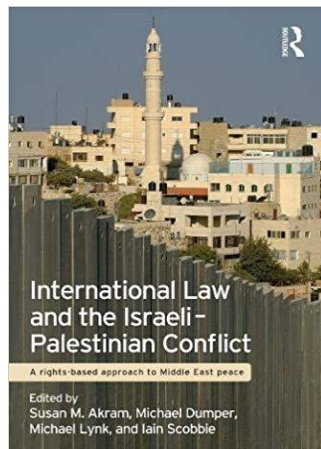
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Palestine-Israel conflict has puzzled the whole world by its unique features, which one can find nowhere else. Since the inception of the issue, the international organizations, jurists, political leaders, social scientists have been wondering on how to bring peace to the Middle East Asia. Multiple agreements, conventions, resolutions have been passed to bring a durable solution to the Palestine-Israel conflict however none have been lasting enough.

This collection of essays by the prominent academicians and social scientists have been focusing on one particular way through which they hope that by application of 'right based approach' a durable solution can be achieved, subsequently, peace and harmony can be at power for a change.



The edited collection consists of eleven essays divided into four different parts namely Core Issues: Refugees & Jerusalem, Security, Legal & Political Frameworks for a Durable Peace and finally Debating the future.

In the first three essays of the book the authors give a detailed conditions of the Palestine refugees. The authors make critical notes on the complex and unique characteristics of the Palestine Refugees and attributing specific definitions to them. The role and scrutiny of the functioning of UNRWA, UNCCP also feature within the first three essays of the book. The authors reflect upon the intentional misconstruction of UNGAR181, followed by a series of unfortunate events and failed negotiations and mediations. However, at this juncture one is left to wonder that if UNSC have not been taking actions to make UNGAR181 binding then what would be the reason for such reluctant behaviour on part of the UNSC. Furthermore, if the author of the first essay intended to dispel the myths through the essay, then why one could not find a narrative on the myth, which the author intended to dispel. One is also left to wonder that exactly whom the authors referred to as 'donor' or 'interested party'. In the third essay while comparing with other regions in conflict and refugees in respect to compensation and restitution, the authors express that how the Israel-Palestine

status have been constantly snubbed and ignored by UNSC specifically, but if one is looking for a theory or an explanation for such ignore from these essays then he/she is going to be disappointed.

The book strategically and correctly places 'Jerusalem' the fourth essay within the 'Core Issues'. The religious sentiment attached to the city has made it the bone of contention for not two but three different religions. The closest city which offers similar controversial status is Ayodhya. Both Jerusalem and Ayodhya are contested sacred centers, between Jews and Muslims in the first case, Hindus and Muslims in the second. In Jerusalem, the same sixty-square-acre platform to which Jews refer to as *har ha-bayit* or the Temple Mount and Muslims/Palestinians refer to as *al-haram al-sharif* or the Noble Sanctuary.³⁹ The author notes that the nature of conflict between Israel-Palestine puts Jerusalem in such unique state that to the city those traditional methods may not be very useful. Amongst the various solutions to the author makes a special reference Professor Walid Khalidi's peace proposal 'Joint Inter-State Great Municipal Council' for Jerusalem being a well-known and balanced peace proposal for Jerusalem amongst others.

Under the second heading "Security", the authors talk about legal strategies at the United Nations

³⁹The Bodies of Nations: A Comparative Study of Religious Violence in Jerusalem and Ayodhya Author(s): Roger Friedland and Richard Hecht Source: History of Religions, Vol. 38, No. 2 (Nov., 1998), pp. 101-149 Published by: The University of Chicago Press Stable URL: <http://www.jstor.org/stable/3176671> Accessed: 02-09-2015 23:53 UTC.

while comparing, the UNSC's position which with the Namibian - South African crisis, not being oblivious to the fact that UNGA did have special status of being the supervisory authority in Namibia case and the author in fifth essay rightly points it out, but, the essay misses out providing the key information that under what motivation the UNSC thought it's 'better' for the world peace to block the self-determination scope of Palestine. Further, in the following essay the author aptly discusses & examines the varied approaches of the parties towards the promotion of security in details, before dwelling into identification of rights & interest of the parties while keeping the international norms in loop, so that a right based approach to security issue can be implemented and remain hopeful for a possible solution someday. However, that would be subject to the trust and binding international norm over the whole region including the neighbouring nations and mutual negotiations.

In the next part the edited collection plunges into the critical question of what possible would be the Legal and Political framework for durable peace? Three primary essays formed the tripod to provide answer to the critical question first related to the issue of self-determination followed by Natural Resources & Belligerent Occupation and Building Rule of Law.

While beginning with issue of self-determination the author talks about the competing claims to sovereignty of the Fatahs, Hamas and Israel. Fatahs would have never imagined that their intention of establishing Gaza and West Bank as Palestine state in order to end 60 year's dispute

would meet with such resistance and be termed as ‘historical compromise’, of course Fatah’s did expect certain resistance, but, uprising of Hamas and completely romping over the Fatah’s wasn’t expected. Hamas came to power primarily questioning the ‘historical compromise’ were to be made while effectuating the self-determination and two state theory. The author provides an account on how the Hamas came to power with their radical and single state claim made a note that in the wake of two states as proposed by Fatahs. Further, what would be the effect on repatriation claim as Israel definitely would be inclined to deny the repatriation claims.

In Chapter 20 of Deuteronomy, some Mosaic rules for the conducts of war are set out. One says: ‘When in the course of war you lay siege to a town for a long time in order to take it, do not destroy its trees by taking an axe to them, for they provide you with food; you must not cut them down’⁴⁰. Eventually after centuries the Hague Regulations on the Laws and Customs of War on Land annexed to 1907 Hague Convention No. IV wherein under Article 55 a provision on the similar lines was incorporated. The world today needs to integrate Human Rights and Humanitarian Rights; can we actually serve one by not serving others? As it is rightly noted by the author that, it may seem bizarre to speak of natural resources right in the same breath with economic, social and cultural right, but on a closer it might not remain that bizarre when once takes cognizance of General Comment No.15 (2002) on the right of Water as adopted by the Committee on

⁴⁰International Law, Vaughn Lowe, OUP Page 266.

Economic, Social and Cultural Rights. The water crisis as per the statistics shows that the level of disparity between the Palestine and Israel reflects that at the occupied territory the Palestinians are facing heavy discrimination with the most basic requirement of Life to exist on this Planet – ‘Water’. While Israel was out to manipulate and misinterpret Article 55 of Hague Regulation, one would wonder why the International Community did not stand up against it? why UNSC appears to be toothless wherein a settled jurisprudence is violated? Ironically the article violated would find its roots in Deuteronomy- the fifth book of Hebrew Bible and of Jewish Torah; one would wonder that if such interpretation stays in sync with the developed and super-powers hidden agenda, hence, the silence? The author in eighth essay, remains silent certain questions of which answers are pertinent to the Solution the Israel Palestine issue.

In the final essay of the third part limits itself to the question of establishing rule of law. The author says that Palestine Administration, which serves as the current political system and self-governing entity in the West Bank and Gaza Strip came on the face of the earth primarily due to Oslo Accord, however it falls short on numerous counts to qualify as Statehood under International law. A Constitutional Framework established under Palestine Administration well might have laws and judicial set up established but the whole arrangement was conditioned by the Israeli Government as it is absurd to expect rule of Law when the basic law of Palestine is subject to Israel’s whims and fancies. The primary sources

of law used by the Palestinian administration are International Laws and Laws of such other countries which had witnessed political and legal transition. However, Palestine Administration has also not given much to cheer about in terms of law and order, as various NGO and others have maintained that rights and freedom of Palestinians have been compromised by the Palestinian Authority themselves. With such challenges of conflicting laws coupled with limited law making power, it would be a Himalayan task to establish rule of law indeed. A strong legal system can't be established without the most elementary pre-requisite-'Sovereignty'.

One State or two State what the future is? Theorists, political scientists, international lawyers, international bodies and 'interested states' all are perplexed with the question of which would bring peace and harmony in the Middle East. Given the divide among the people the Jews and the Palestinians, the history of more than last 60 odd years it is obvious that two states theory is what would come the mind of anyone, especially the people who are living in those areas. The author notes that what each side desires is to greatly reduce its need to encounter 'others' in 'its land.' One -State Solution is virtually impossible to many. But imagination of theorists can do wonders; in this case the author like a mathematician excluded the possibility practical realization of two-state theory in totality, and then verifies and strategized the one-state theory if it is possible. While strategizing numerous arguments and road blocks were considered while coming to the conclusion that he fails to generate enough

support for one state solution even if it is running alone in the race. However, the counter argument in favor of 'single-state solution' as the future of Israelis presented in the final essay of the edited collection. He expresses that how International Law can act as a catalyst to guide negotiations towards resolution recognizing rights for both parties. A rigorous right based solution could bring eventual end to the conflict and for that the author suggested possible invocation of pressure from International Community even though it comes in conflict with the consent of the Palestinian & Jews. However, the whole idea remains legally untenable in addition to the self-contained antithesis provided within the argument by the author and somewhere between the arguments we lost essential rights of the individuals and rather the argument advocating against self-determination in true sense was realized.

The book identifies aptly the critical issues with respect to Palestine-Israel Conflict with plausible arguments and possible solutions. However, it must be noted that the book is not for non-specialist, even though the language is lucid but the issues dealt with are not of common knowledge and warrants basic understanding of United Nations, World Affairs and legal jargon and of course the historical events leading to the Conflict and subsequent events.

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