

COUNTERING CHALLENGES TO ISRAEL'S LEGITIMACY

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Of all the nations on the face of the earth, Israel has the most lawful origin. It was conceived in law, born through law, and has survived lawfully. It is not among the nations, such as the United States, born in bloodshed through revolution. Nor has it, like other nations, been expanded through aggressive warfare. It was not settled by outsiders, as were Australia, New Zealand, Canada, the United States, and other countries. It did not, like those countries, rid itself of virtually the entire native population, since Jews were its aboriginal people and approximately a million Arabs now constitute a fifth of its population.

Yet despite its origins in resolutions of the League of Nations, the United Nations, and its own declaration of statehood, recognized by most of the world, Israel is the only country in the world today whose legitimacy is rejected by its enemies and questioned by others. Other countries are criticized, as is Israel, for their policies, their actions, and their omissions. But only with respect to Israel does criticism quickly transform into demonization, delegitimization, and calls for its destruction.

Four unfounded charges represent some of the most recurrent efforts to delegitimize the Jewish state, namely:

1. Israel is an illegitimate “colonial” state.
2. Israel secured its statehood unlawfully.
3. Israel is an apartheid state.
4. Israel and a Palestinian entity must become one state.

These charges must be vigorously refuted wherever and whenever they arise. My responses are based on fact, morality, and law.

1. THE CHARGE THAT ISRAEL IS AN ILLEGITIMATE “COLONIAL” STATE

To believe that Israel is a colonial state is to be naïve. Unlike colonial settlers who served the expansionist, commercial, and military goals of imperial nations such as Great Britain and France, Jewish refugees who settled the Land of Israel were escaping countries that had oppressed them for centuries. These refugees came from places such as Czarist Russia, where they were discriminated against and persecuted – even killed – because of their faith. They retained no connection with their “home” countries, a necessary element of colonization. Moreover, they did not simply establish new “colonies,” but reestablished and joined with native Jewish communities in a place that the Jewish people have called home – and lived in – for more than three thousand years.

Historians believe the Hebrews arrived in present-day Israel sometime in the second millennium BCE. According to Martin Gilbert, “For more than one thousand six hundred years the Jews formed the main settled population of Palestine.”¹ During much of this time, the land was ruled by independent Hebrew kingdoms under King David and his successors. When the Romans finally seized control by suppressing revolts in 70 and 135 CE, they named the land “Palestine” in an explicit attempt to de-Judaize it. Despite continued efforts to rid “Palestine” of Jews throughout the years, however, thousands managed to remain and to immigrate. Among the Jews who lived in Palestine in the seventh century, for instance, were refugees from Muhammad’s bloody massacre of two Arabian Jewish tribes.

After the Crusades, Jews reestablished centers of Jewish learning and commerce in the Land of Israel. From this time on, Palestine was never without a significant and well-documented Jewish presence. When the Ottomans occupied Palestine in 1516, approximately ten thousand Jews lived in the Safed region alone. Many more Jews lived in Jerusalem, Hebron, Acre, and in other locations. Jerusalem, in fact, has had a Jewish majority since the first population figures were gathered in the nineteenth century, and, according to the British consul there, the Muslims of Jerusalem “scarcely exceed[ed] one quarter of the whole population.”²

More than merely a population center, Palestine remained a center of Jewish piety and mysticism throughout the ages. European Jews contributed to the Jewish religious institutions in Palestine and prayed for a return to Zion and Jerusalem. Jews outside the Land of Israel referred to themselves as living in the “Diaspora” and never abandoned their claim to return to the land from which so many of their ancestors had been forcibly driven.

Life in Palestine was difficult for Jews well before widespread immigration. During the Egyptian occupation of Palestine in the 1830s, indigenous Jews were persecuted mercilessly by Muslim zealots for no other reason than religious bigotry. Even so, a return to Zion was the natural choice for oppressed European Jews. In Palestine these Jews could realize, in their own words, their “civil and political rights,” while assisting their Sephardic cousins in mounting a defense against religiously inspired violence. When these new immigrants arrived – or in their words, returned – the land that they lived upon and cultivated was not taken from its rightful owners by force or

confiscated by colonial law. It was purchased, primarily from absentee landlords and real estate speculators, at fair or often exorbitant prices.

As Martin Buber observed in 1939, “Our settlers do not come here as the colonists from the Occident, to have natives do their work for them; they themselves set their shoulders to the plow and they spend their strength and their blood to make the land fruitful.”³ The hardworking settlers whom Buber describes were not the tools of the hated czar of Russia or the anti-Semitic regimes of Poland or Lithuania. They sought not to enrich their European homelands but to leave them permanently. They chose to settle a materially worthless piece of real estate in a backwater of the world whose significance to the Jews was religious, historical, and familial. This type of benign immigration simply cannot, in good faith, be called “colonialism.” To make such a false charge is to ignore history, blink reality, impose a double standard, and promote bigotry.

2. THE CHARGE THAT ISRAEL SECURED ITS STATEHOOD UNLAWFULLY

Another frequent criticism of Israel is that it secured its statehood unlawfully. The criticism is patently false; Israel has the most lawful origin of any country in the world.

Explaining the origins of Israel’s statehood requires an extended historical narrative. Even before World War I, there was a de facto Jewish national home in Palestine consisting of 80,000-90,000 Jews. The Jewish refugees in Palestine had established this homeland without the assistance of any colonial or imperialist power. They had relied on their own hard work in building an infrastructure and cultivating land they had legally purchased. These Jews had the right to determine their own futures consistent with the Wilsonian principle of self-determination. The claim to self-determination was bolstered by the enthusiastic support for a Jewish homeland by other states. The 1917 Balfour Declaration announced that the British government favored “the establishment in Palestine of a national home for the Jewish people.”⁴ The French, Italians, and Americans agreed. In 1922, the League of Nations Mandate for Palestine proclaimed that “The mandatory [Britain] shall be responsible for placing the country under such...conditions as will secure the establishment of the Jewish national home.”⁵

The Jews earned the Balfour Declaration through sweat and blood. The Jewish Legion fought alongside the British army to defeat the Ottoman army during World War I; it was the Palestinian Arabs who had sided with the imperialist, colonialist Turkish Empire against those who favored self-determination. Despite picking the wrong side – which they did again in World War II – the Arabs got 80 percent of Palestine, Transjordan, set aside as an exclusively Arab state, with no Jewish settlement permitted.

Yet Arab opposition to a Jewish home in any part of Palestine, even where Jews were a majority, became increasingly violent. Innocent Jews were brutally murdered and raped. The Grand Mufti of Jerusalem, Haj Amin al-Husseini, preached “Itbah al-Yahud” (“Kill the Jews”) and “Nashrab dam

al-Yahud” (“We will drink the blood of the Jews”). He told his flock that it would violate Islamic law for even a single inch of Palestine to be controlled by Jews. It was he who sought a truly apartheid Palestine. Of course, this meant that agreeing to mutual self-determination would be impossible.

The Peel Commission of 1937 investigated the “causes of the disturbances” in Palestine and concluded that “one side [the Palestinian Arabs] put itself, not for the first time, in the wrong by resorting to force, whereas the other side patiently kept the law.”⁶ The commission realized that it would be unfair to force Jews to take minority status in an all-Muslim state.⁷ By 1937, after all, Tel Aviv had 150,000 Jews and Jerusalem had 76,000. Half of Haifa’s population of 100,000 was Jewish. Jews had their own newspapers, schools, universities, and governance system. The Peel Commission proposed a Jewish home in areas where there was a clear Jewish majority, divided into two noncontiguous sections. The Jews accepted the Peel Commission’s suggestion of a two-state solution; the Palestinian Arabs categorically rejected it. Despite the Peel Commission’s acknowledgments that “Jews enter Palestine as of right and not on sufferance” and that “Jewish immigration is not merely sanctioned but required by international agreements,”⁸ the British issued the White Paper of 1939, limiting Jewish immigration to seventy-five thousand over the next five years. This was, of course, almost precisely the time during which six million European Jews were murdered.⁹

The end of World War II presented the world community with a new set of problems. At the time of the UN partition plan, a quarter-million Jewish refugees were living in deplorable prison camps in the very country that had murdered their parents, children, and siblings. They could not return to Poland because the Poles continued to murder Jews even after the Nazis had been defeated. Nor could they be expected to remain in Germany, where the refugee camps were temporarily located. In addition, there were growing problems in Arab countries with significant Jewish populations. Some of these Arab countries practiced a discriminatory system under which *dhimmis* – a religious category that includes Jews and Christians – were deemed inferior and subject to special unequal rules.

Thus in 1947 the United Nations attempted to solve the problem once and for all by proposing a final partition of Palestine. The Palestinians were offered nearly the same deal they had rejected in 1937 (with the exception of the barren Negev). This was despite the fact of Palestinian and widespread Arab support for the Nazis and despite Winston Churchill’s warning that Nazi support meant the Arabs were “owed...nothing in a postwar settlement.” The United Nations found, however, “[T]he claims to Palestine of the Arabs and Jews, both possessing validity, are irreconcilable... It is a fact that both of these peoples have their historic roots in Palestine... Only by means of partition can these conflicting national aspirations find substantial expression and qualify both peoples to take their places as independent nations in the international community and in the United Nations.” The General Assembly adopted Resolution 181 on November 27, 1941, calling for “Independent Arab and Jewish States and the Special International Regime for the City of Jerusalem.”¹⁰

Israel accepted the partition plan’s offer of a majority-Jewish, noncontiguous state. The Palestinians again rejected partition. When the British Mandate expired, the Jews declared independence and promised to “guarantee freedom of religion, conscience, language, education and culture... safeguard the Holy Places of all religions... [and] be faithful to the principles of the Charter of the

United Nations.”¹¹ Just as soon, Egypt, Jordan, Syria, Iraq, and Lebanon, with help from Saudi Arabia, Yemen, and Libya, attacked the newborn state, including its civilian population centers. Israel won the war and was recognized by numerous countries, including both the United States and the Soviet Union. In the course of defeating Arab armies, it also captured more land than allocated to it by UN partition. Much of this land had significant Jewish populations and settlements; its capture was necessary to assure the safety of Jewish residents. The Egyptians and Jordanians also captured land, but for no other reason than to increase their own territory and control Palestinian residents. The Jordanians, occupying the West Bank, and the Egyptians, occupying the Gaza Strip, denied Palestinians the right of self-determination in those lands. Yet this occupation was neither subject to UN condemnation nor widely protested by the Palestinians. Regardless, Israel was accepted as a member state of the United Nations on May 11, 1949.¹²

Israel’s statehood was secured lawfully by, among other instruments and acts, the Balfour Declaration of 1917, subsequent declarations to the same effect by other countries, the 1922 League of Nations Mandate, the 1937 Peel Commission Report, the 1947 United Nations partition resolution, Israel’s Declaration of Independence, subsequent recognition of the state of Israel by numerous world powers, and Israel’s acceptance into the United Nations. I challenge anyone to show me another country that has its origins so steeped in international law.

3. THE CHARGE THAT ISRAEL IS AN APARTHEID STATE

Apartheid, an evil system of racial subjugation, has zero relevance to the Israeli-Palestinian conflict; the concept’s use in this context is simply inflammatory provocation. Yet the apartheid charge is leveled again and again by Desmond Tutu, John Dugard, Jimmy Carter, and numerous radical groups that host the annual Israel Apartheid Week on college campuses.¹³ The apartheid charge is not a constructive call for change in Israeli policies; it is meant to strike at the very foundations of Israel’s legitimacy as a nation. It associates the Jewish state with a system declared a “crime against humanity.” It implies –and many of those who make the accusation declare openly – that Israel is illegitimate, racist, and deserving of destruction. Just as the apartheid system in South Africa had to be dismantled entirely, the analogy posits, “apartheid Israel” must be utterly destroyed. It suggests that academic boycotts and divestment campaigns, the tools used against apartheid South Africa, are appropriate for use against Israel.

Institutionalized racism is the sine qua non of apartheid, and without it the word has no accepted meaning. The Rome Statute of the International Criminal Court, for instance, defines apartheid as “inhuman acts...committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime.” Those who accuse Israel of this type of racism exhibit a fundamental misunderstanding of the nature of the Jewish state. The Jews of Israel themselves comprise *multiple* racial and ethnic groups. Jewish Israelis comprise Europeans, Africans, Ethiopians, Georgians, Persians, and other groups. Race, therefore, cannot form the basis for alleged institutionalized discrimination in Israel because the alleged discriminators (Jewish Israelis) are multiracial themselves.

The analogy still fails even if we extend the apartheid concept to religion. Israeli Jews themselves are not a single religious group. Some actively practice Judaism, many do not. But Israel, unlike neighboring Arab nations, does not use religious coercion; neither is there segregation or discrimination against minorities who are not Jewish. In fact, Israel has consistently maintained and defended sites that are holy to Christians and Muslims, as well as Jewish sites, while Jordan destroyed synagogues – including an ancient Jewish site that was the Jewish equivalent of the Dome of the Rock – and other Jewish institutions as soon as it unlawfully conquered the Jewish Quarter of Jerusalem in 1948.¹⁴

Apartheid means pervasive racial segregation laws, media censorship, banning of political parties, torture and murder of human rights activists in detention, indoctrination of children with racial ideology, removal of voting rights, and use of the death penalty for political crimes. But in Israel, Muslim and Christian citizens (of which there are more than a million) have the right to vote and regularly elect members of the Knesset, some of whom even oppose Israel's right to exist. There is an Arab member of the Supreme Court, and have been Arab members of the cabinet. Numerous Israeli Arabs hold important positions in businesses, universities, and the cultural life of the nation. There is complete freedom of dissent in Israel and it is practiced vigorously by Muslims, Christians, and Jews alike. And Israel is a vibrant democracy.

That Israel is not an “apartheid state” does not mean that there is not some *de facto* discrimination against its Arab citizens. Most Arabs cannot serve in the army, but few would choose to fight against fellow Arabs even if given that option. In the past, Arabs could not buy homes in certain Jewish areas, just as Jews cannot buy homes in Arab villages. The Israeli Supreme Court, however, ruled that the government may not allocate land based on religion or ethnicity and may not prevent Arab citizens from living wherever they choose.¹⁵ It is fair to say that Israel is making considerable progress in eliminating the vestiges of anti-Arab discrimination that were largely a product of the refusal of the Arab world to accept a Jewish state. It is also fair to say that despite some lingering inequalities, there is far less discrimination in Israel than in any Middle Eastern, Arab, or Muslim nation.

What is true of Israel proper, including Israeli Arab areas, is not true of the occupied territories. Israel ended its occupation of Gaza several years ago, only to be attacked by Hamas rockets. Israel maintains its occupation of the West Bank only because the Palestinians walked away from a generous offer of statehood on 97 percent of the West Bank, with its capital in Jerusalem and with a \$35 billion compensation package for refugees. Had they accepted that offer by President Bill Clinton and Prime Minister Ehud Barak – or a later, even more generous offer by former Prime Minister Ehud Olmert¹⁶ – there would be a Palestinian state in the West Bank. There would be no separation barrier. There would be no roads restricted to Israeli citizens (Jews, Muslims, and Christians).¹⁷ And there would be no “illegal” civilian settlements. Many Israelis and others have opposed, and continue to oppose civilian settlements in the West Bank. But to call an occupation, which continues because of the refusal of the Palestinians to accept the two-state solution, “apartheid” is to misuse that word.¹⁸ As those of us who fought in the actual struggle against apartheid well understand, there is no comparison between what happened in South Africa and what is now taking place on the West Bank.



Left to right: Dr. Maha Atwan and Dr. David Zangen with the mother of an Arab child suffering from diabetes, at the Pediatric Endocrinology Department at Hadassah Mount Scopus Hospital in Jerusalem, May 17, 2007. In apartheid South Africa, there were separate hospitals for blacks and whites. (Ariel Jerozolimski)

4. THE CHARGE THAT ISRAEL AND A PALESTINIAN ENTITY MUST BECOME ONE STATE

Because the two-state solution requires recognition of Israel's right to continue to exist as a Jewish democracy, those who oppose Israel's existence have been trying to sell the "one-state" or "binational" solution. I first challenged this ploy – and that is all it is – in a debate with Noam Chomsky in 1973. Chomsky's proposal at that time was consistent with the PLO party line. He wanted to abolish the state of Israel and to substitute a "secular, binational state," based on the model of binational "brotherhood" that then prevailed in Lebanon. Chomsky repeatedly pointed to Lebanon, where Christians and Muslims "lived side by side," sharing power in peace and harmony. This was just two years before Lebanon imploded in fratricidal disaster. Chomsky also used to point to the former Yugoslavia as a model of a one-state solution.¹⁹ This was before it too blew up into five separate states.

I believe now about the one-state solution what I believed then: "Why do not considerations of self-determination and community control favor two separate states: one Jewish and one Arab? Isn't it better for people of common backgrounds to control their own life, culture, and destiny (if they choose), than to bring together in an artificial way people who have shown no ability to live united in peace?"

The consequences of a one-state solution are all too clear. Forcibly integrating Israel proper and the occupied territories into a single political entity would be the surest way to destroy Israel's secular, democratic character. There would be an immediate struggle for demographic superiority. Every death would be seen as a victory by the other side and every birth a defeat. Within decades, the different birthrates would ensure that Palestinians would outnumber Jews, and the binational state would become another Islamic state – Greater Palestine. Israel would thus be destroyed politically, diplomatically, and demographically, rather than by armed struggle – but it would be destroyed nonetheless. The one-state solution is thus an attempt to accomplish by law and demography what Hamas seeks to achieve by terrorism: the extinction of Israel. The practical consequences of such a state would be to leave millions of Jews geographically isolated, politically powerless, and physically defenseless. The one-state solution is rejectionism, pure and simple.

An Arab majority would bode ominously for a Jewish minority. Jewish life within Arab nations, as well as within the British Mandate of Palestine, has been marked by discriminatory laws against *dhimmi*s (Jews and Christians), expulsions, and pogroms.²⁰ Considering the close proximity and history of hostilities between Israeli Jews and Palestinians, it is more than likely that Jews would fare even worse in a Greater Palestine than they have elsewhere in the Arab world. There would be, as Benny Morris puts it, “old scores” to settle.²¹ And the wide economic gap between Jews and Palestinians would certainly not “make for peaceful co-existence.”²² It is for good reason that I have likened the proposed one-state solution in the Middle East to Hitler's one-state solution for Europe. Only this time, the Jews would be geographically concentrated and easier to identify.

Five hundred thousand Hindus and Muslims died in the process of partitioning the Indian subcontinent. No one today recommends that those two ethnicities be reintegrated into a binational state so as to resolve the Kashmir dispute. Likewise, Israelis and Palestinians are already, for the most part, geographically distinct. It would be absurd to suggest that they both forgo their separate aspirations to self-determination as a testing ground for failed multicultural fantasies.

What is certain, though, is that neither Israeli Jews nor Palestinians want to be subsumed in a Greater Palestine. A binational state would not only imperil its Jewish population, but would eradicate the one state in the Middle East that affords its Muslim citizens more expansive civil liberties and political prerogatives than any other. Israeli Arabs are better off – as measured by longevity, health care, legal rights, even religious liberty – than other Arabs in the Middle East.

Israel is the nation-state of the Jews and not a Jewish state in the sense that the Vatican is a Catholic state or in the sense that Saudi Arabia is a Muslim state. Israel is a secular state, comprised largely of Jews, and a place of asylum for Jews all over the world. If one people deserve to have a state of their own it is the Jewish people. Israel is not – and it should not become – a theocracy or a state in which freedom of religion is lacking.

In a world with numerous Muslim states, there is surely room for one Jewish state. The one-state solution will fail, but it is also important that it be taken off the table immediately, because its very advocacy – at best a tactical ploy, and at worst a deliberate attempt to sabotage any real prospect for peace – poses a serious barrier to the only peace that has any realistic chance for success: peace based on the two-state solution.

NOTES

- 1 Martin Gilbert, *The Routledge Atlas of the Arab-Israeli Conflict*, 7th ed. (London: Routledge Taylor Francis Group, 2002), 1.
- 2 James Finn to Earl of Clarendon, January 1, 1858.
- 3 Buber to Gandhi, quoted in Arthur Hertzberg, *The Zionist Idea* (Philadelphia: Jewish Publication Society, 1997), 464.
- 4 Quoted in Benny Morris, *Righteous Victims* (New York: Vintage Books, 2001), 75.
- 5 League of Nations, Palestine Mandate, July 24, 1922, http://avalon.law.yale.edu/20th_century/palmanda.asp#art1.
- 6 *Palestine Royal Commission Report (Peel Report)* (London: His Majesty's Stationery Office, 1937), 2.
- 7 *Ibid.*, 61.
- 8 *Ibid.*, 147.
- 9 The Palestinian leadership was not blameless for the Holocaust. The Grand Mufti, who Edward Said noted "represented the Palestinian Arab national consensus," formed an alliance with the Nazis and spent the war years with Hitler in Berlin. The Nazis and the Italian Fascists supported the violence against Jews in Palestine, sending the Mufti millions of dollars. Al-Husseini was apparently planning to return to Palestine in the event of a German victory to construct a death camp near Nablus, modeled after Auschwitz. For more on the connection between the Nazis and the Palestinian leadership, see Alan Dershowitz, *The Case for Israel* (Hoboken, NJ: Wiley, 2003), 54-57. See also Alan Dershowitz, introduction to David G. Dalin and John F. Rothman, *Icon of Evil: Hitler's Mufti and the Rise of Radical Islam* (New Brunswick, NJ: Transaction, 2009), ix-xviii.
- 10 UN General Assembly, Resolution 181, "Future Government of Palestine," November 29, 1947, <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/038/88/IMG/NR003888.pdf?OpenElement>.
- 11 Declaration of the Establishment of the State of Israel, May 14, 1948, <http://www.mfa.gov.il/MFA/Peace+Process/Guide+to+the+Peace+Process/Declaration+of+Establishment+of+State+of+Israel.htm>.
- 12 Thomas J. Hamilton, "Israel Wins a Seat in U.N. by 37-12 Vote," *New York Times*, May 12, 1949.
- 13 See, e.g., Desmond Tutu, "An International Campaign: Build Moral Pressure to End the Occupation," *International Herald Tribune*, June 14, 2002, www.ihf.com/articles/2002/06/14/edtutu_ed3_.php; Desmond Tutu, "Apartheid in the Holy Land," *Guardian*, April 29, 2002, www.guardian.co.uk/world/2002/apr/29/comment; John Dugard, "Apartheid: Israelis Adopt What South Africa Dropped," *Atlanta Journal-Constitution*, November 29, 2006; Jimmy Carter, *Palestine: Peace Not Apartheid* (New York: Simon & Schuster, 2006).
- 14 See, e.g., Sam Pope Brewer, "11-Day Fight Over; 350 Israeli Combatants Are Captured – Hurva Synagogue Razed," *New York Times*, May 29, 1948.
- 15 *Quadan v. Israel Lands Administration*, HCJ (Israeli Supreme Court) 6698/95, March 8, 2000.
- 16 See Alan Dershowitz, "Whose Fault Is the Ongoing Occupation of the West Bank?," *Jerusalem Post*, December 5, 2010, <http://www.jpost.com/Home/Article.aspx?id=198096>.
- 17 Despite repeated false claims to the contrary, there are absolutely no "for Jews only" roads in the territories or in Israel, as there are "for Muslims only" roads in Saudi Arabia.
- 18 See Carter, *Palestine*.
- 19 "One thinks at once of Yugoslavia, where in the course of a successful social revolution, the old conflict-provoking ethnic ties (Serb, Croat, and so forth) give some evidence of being less 'irrational' and less binding, with more individuals thereby willing to think of themselves quite simply as individuals operating within a broad Yugoslav context." Noam Chomsky, *Middle East Illusions* (Lanham, MD: Rowman & Littlefield, 2003), 62, quoting George Zaninovich, *Development of Socialist Yugoslavia* (Baltimore: Johns Hopkins University Press, 1968), 105.
- 20 Dershowitz, *Case for Israel*, 42-43 (recounting the Hebron massacre of 1929) and 88-89 (describing in detail Jewish treatment in Arab countries following Israeli independence, culminating in the creation of 850,000 Jewish refugees); Michael Oren, *Six Days of War: June 1967 and the Making of the Modern Middle East* (Oxford, UK: Oxford University Press, 2002), 3-4 (on the 1936-1939 Arab pogrom against Jews in Palestine, Baghdad, Cairo, Tunis, and Casablanca), 306-307 (cataloging the pogroms and expulsions of Jews in Arab countries following the Six Day War).
- 21 Benny Morris, "Politics by Other Means," *New Republic*, March 22, 2004.
- 22 *Ibid.*