

PALESTINE BOOKS – No. 28

THE PALESTINE QUESTION  
AND  
INTERNATIONAL LAW

By

F. Yahia



PALESTINE LIBERATION ORGANIZATION  
RESEARCH CENTER



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Beirut — Lebanon  
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## CORRECTIONS

- p. 74 line 10 read "resolutions" instead of "resolution."
- p. 99 line 13 insert "of" before "water."
- p. 121 line 33 read "his" instead of "its."
- p. 132 line 24 read "they" instead of "the."
- p. 149 line 6 read "Sixth" instead of "Six."
- p. 149 line 33 read "Russell" instead of "Russel."
- p. 150 line 35 read "Israeli regular" instead of "Israel irregular."
- p. 151 line 27 read "Central" instead of "General."
- p. 181 note 2 line 3, read "Nacht" instead of "Wacht."
- p. 197 line 8 read "closest" instead of "closed."
- p. 209 line 4 read "rooted" instead of "rooter."

Note, to be added to details on p. 180:

Since the time of writing, a number of important steps have been taken to consolidate the unity of the Resistance Movement. The most important of these are, the establishment of the Unified Command embracing all the genuine Resistance Organizations in February 1970, the setting up of the Central Committee by the Palestinian National Council, and the appointment on 16 June 1970 of a six-man secretariat to direct the Movement's action. The whole Resistance thereby became unified in one cohesive body.



## **DEDICATION**

To the memory of Bertrand Russell, a courageous upholder of international law and sincere friend of all peoples fighting to overthrow oppression, including the Palestinian people.

## ACKNOWLEDGEMENTS

I wish to express my thanks to the Broadcasting Service of the Hashemite Kingdom of Jordan for kindly permitting me to reproduce in this book some of the material used in the series of programmes called "International Law and Palestine" which I wrote for that Broadcasting Service between 1 March and 30 September 1969. It should be pointed out that the conclusions of this book do not necessarily reflect the policy of the Hashemite Broadcasting Service nor commit it in any way.

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## INTRODUCTION

### *Theory and Practice: the Dichotomy of International Law*

It is hoped that this work may serve some useful purpose because there is widespread public ignorance on the Palestine question and on the doctrines and norms of international law. This dual ignorance has resulted in a great many misconceptions about the rights of the Palestine people, as international law recognizes them. It is very hard for the inadequately informed layman in, say, the Western World, to relate the issue of Palestine to international legal principles when he is ignorant of both subjects.

This relative study is important to a proper understanding of the two subjects. The conflict of Palestine is essentially the outcome of disregard for basic international legal precepts. Likewise, for the broad structure of international law, Palestine is a vital test case. If the fundamental rights at issue in Palestine can be secured, then international law will become meaningful, its moral authority can be strengthened, and humanity can at last begin to build a world order based on legality instead of rapacity. Conversely, if these rights are not secured, then international law will be a laughing-stock, a precedent will be established for flaunting its precepts with impunity, and the dogma of "might is right" will reign triumphant. The matter is no less than this: whether justice can prevail over military and material force, and in this, much is at stake, not only for the Palestine people, but for all humanity.

In this context, the argument is often raised that international law is already a meaningless utopian concept, more honoured in the breach than the observance, with a wide gap between theory and practice: while lofty ethical principles are enshrined in international law, the reality of international relations, with repeated wars, acts of aggression and domination, violations of treaties and so on, is a sad departure from those principles. There is some truth in this, but international law, a human creation, is very much what we make it, and this dichotomy is merely a reflection of deficiencies in present human societies and the international legal structures we have established.

With regard to international legal theory, there has been great progress in this field, particularly following World War Two. This progressive development of international law has resulted in the Geneva Conventions of 1949, the raising of the ethical level in the conduct of war, United Nations initiatives to establish legally recognized independence for many formerly colonized states and the outlawing of racial discrimination. All these are, theoretically, positive achievements.

At the same time, we must not forget that this age which has seen these great strides in international legal theory is also characterized by more violations of international law than any previous age, even including that of the Nazis' depredations. States which are powerful enough can, and often do, commit acts of aggression with impunity; weaker states, even when nominally sovereign, have their sovereignty undermined by the subtle methods of neo-colonialism which are harder to pinpoint as actual violations of international law than those of classical imperialism. This is the age of the power bloc, an age in which campaigns of armed force, undeclared as wars, have caused wider and more systematic death than most declared wars in past history. The killings of over three million Vietnamese (a million of them children),<sup>1</sup> a million Algerians, a million Indonesians, countless thousands in Kenya, the Congo, Angola, Guinea-Bissau, Mozambique, South Africa, Cyprus, Malaya, Latin America, the Middle East, are a serious reminder of the inefficacy of international law as at present constituted.

The history of the United Nations contains a long list of unimplemented resolutions. More of these concern Palestine than any other question, but many are related to similar problems like South Africa, Rhodesia or the Portuguese colonies. A state, if it is powerful enough, simply disregards such resolutions and seldom suffers any penalty. This has given rise to a criticism that the fault of the United Nations is that it is "toothless." Yet when it was fitted with a set of teeth in the Korean War, it bit the wrong people.

Regarding the implementation of international law, the United Nations "provokes the desire, but it takes away the performance," to quote Shakespeare out of context. This is due to the Organization's actual structure which concentrates too much power in the hands of stronger states in the Security Council, and its unrepresentative character in that

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(1) For details of the U.S. military campaign in Vietnam, see Bertrand Russell, *Appeal to the American Conscience* (London, 1966).

the lawful Government of China, the country with the world's largest population, is excluded, as are other popular democratic States in Vietnam, Korea and Germany, whose legality and sovereignty are unquestionable in the civilized norms of international law. Communities which are non-self-governing, such as Namibia, Oman or Zimbabwe, are of course denied representation in the international decision-making process of the U.N., although they may present their case as petitioners and possibly have their right to independence recognized by resolutions.

While many lawful sovereign states, such as China or the Korean Democratic Republic, are excluded, the U.N. has granted membership to the present Israeli and South African regimes, which cannot truthfully be called legal or representative of the lawful peoples of the territories they control.

The U.N.'s inadequacies in representation, as well as the privileges of the permanent members of the Security Council, the body responsible for taking effective measures for enforcing U.N. decisions, prevents the democratic principle being applied in international law. The permanent members already exercise too much power in economic, political and military terms. Their privileges in the Security Council, including their veto rights, place them in a position of being beyond the reach of the law when they can act in agreement. This is a denial of the principle of "equal rights" embodied theoretically in the U.N. Charter. It explains much of what is wrong with the present structure of the United Nations.

While this introduction examines some of the shortcomings of the present structure of international law, it must be emphasized that this work is concerned with the Palestine question in the light of the principles of international law as at present constituted. Only in the concluding chapter will this writer re-examine international law at its present stage and offer some suggestions, in the light of issues raised by the Palestine question, as to how the progressive development of international law may usefully be pursued, so as to prevent similar injustices occurring in future.



## CHAPTER I: LEGAL ASPECTS OF CONQUEST, THE USE OF FORCE AND DISPOSSESSION

There are many misconceptions about the Palestine problem and its origins. It is necessary, therefore, to stress that the prime principle at stake is that of a people's title to ownership of their homeland. In that sense it has parallels with the problems of Rhodesia and South Africa, which have been conquered by alien settlers who have imposed their discriminatory rule on the original inhabitants. An additional complication exists in the case of Palestine in that the dispossession has been more thorough and the majority of the legitimate inhabitants have been driven out by the settlers, the Israelis, and are forced to live outside the confines of their national homeland as refugees.

Zionist propaganda tries, all too often successfully, to convince the Western public that Palestine rightfully belongs to the Israelis, who only want to live peacefully in their little state, but are prevented from doing so by surrounding hordes of bloodthirsty Arabs (that phrase is actually used frequently by one of the more lurid and inaccurate writers in the New York Times, Joseph Alsop). Ordinary Western people are confused with phrases like "an oasis of democracy in a desert of military dictatorship" or "an island of development in a sea of backwardness" which propagandists use to describe the Israeli state. Thus, few Westerners are aware that what has been happening in Palestine for over fifty years is somewhat different from the portrayal in many information media. To understand why there is a Palestine problem, why the peace of the Middle East is disturbed and why the people of Palestine are being compelled to wage a national liberation struggle, it is necessary to trace the whole situation back to its origins.

Zionists use a number of arguments to justify the exclusivist Israeli state. They claim that Palestine should belong to the Jews because God promised it to them, because Jews need a home to escape from persecution, because the land was a desert which they have now developed, because the Balfour Declaration, the League of Nations Mandate and the United Nations Partition Resolution gave it to them, and finally,

because they now hold it by right of conquest. Only the last excuse has any practical logic to it, and that is the sort of excuse that can be reversed. What was seized by the sword can be regained by the sword, and the Zionist justification of the right of conquest implicitly justifies the Palestinian people's use of force to regain what was conquered from them. Let us examine the other arguments historically.

The Biblical promise argument would not concern us were it not that so many are misled by it. The Bible is not, in fact, considered a basis in international law for recognition of the legality of states. Suffice to say, however, that according to the Bible, God promised a land area including Palestine to "the seed of Abraham"<sup>1</sup> which includes the Arabs descended from Abraham's eldest son Ishmael. The Biblical argument, in effect, gives the Arabs a better claim to Palestine than the Zionists, the majority of whom are descended from European converts to Judaism with no relationship to Abraham.

At the time of the First World War, Palestine had about 700,000 inhabitants, of whom the majority, 574,000, were Muslims, 70,000 were Christians and 56,000, or eight per cent, were Jews.<sup>2</sup> Most of these Jews were ethnically Arabs, who followed Judaism. Roughly 12,000 of them were of European origin. They had come to live in Palestine for religious reasons or to escape persecution, and the Palestinians had followed the normal Arab custom of granting them refuge; in the same way, Jews oppressed by the Spanish Inquisition in the 15th and 16th centuries had been given asylum and citizenship in North African Arab countries.<sup>3</sup> Thus Palestine was then an Arab country, almost totally inhabited by Arabs of different religions, with an enlightened attitude of religious tolerance. It is unfortunate that Zionism, which claimed to offer a refuge to the persecuted Jews, in fact undermined the refuge to which thousands of European Jews had turned for centuries, by damaging the good feeling that had previously existed between them and the Arabs who had offered them asylum.

By standards prevailing early this century, Palestine then had a reasonably prosperous agricultural economy. The olive oil industry had been built up over several centuries, and olive plantations covered a fair portion of Palestine's area. Arab citrus fruits, in particular the Jaffa

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(1) Genesis 13:15.

(2) Sami Hadawi, *Bitter Harvest* (New York, 1967), p. 11.

(3) See Rom Landau, *Moroccan Drama* (London, 1956) for details on the history and conditions of Jews in Morocco.



orange, were well known for their quality and were exported to Europe—1,608,570 cases of Jaffa oranges in the year 1912-1913, for example. Grapes, corn and vegetables of various sorts were also grown.<sup>4</sup> The fertile coastal plain, seized almost in its entirety by the Zionists in 1948, had been highly cultivated for generations. While some agricultural and industrial development has been carried out in Palestine under Israeli rule, many Arab states have done far more with far less money than has been poured into the Zionist state by the powers that finance it. The U.A.R.'s Aswan Dam or Syria's Euphrates Dam, for instance, dwarf all Israeli development projects.

### 1. *The Balfour Declaration and the Terms of the Mandate*

The theory of Zionism grew up in the atmosphere of the zenith of European colonization in the latter half of the 19th century. Under the impact of Theodor Herzl's theories, it crystallized into a coherent political movement with the holding of the first Zionist Congress at Basle in 1897. The Congress adopted as its programme:

1. The programmatic encouragement of the settlement of Palestine with Jewish agricultural workers, labourers and artisans;
2. The unification and organization of all Jewry into local and general groups in accordance with the laws of their respective countries;
3. The strengthening of Jewish self-awareness and national consciousness;
4. The preparation of activity for obtaining the consent of the various governments, necessary for the fulfilment of the aim of Zionism.<sup>5</sup>

The last item in fact amounted to a strategy for transforming Zionism from a theoretical movement into a factor that would influence international affairs and relations between states. The achievement of it, would, in fact, place Zionism within the sphere of activities covered by international law. In order to succeed in this, Zionism would have to secure the patronage of at least one of the major Western powers engaged in colonization. The Zionists were not too particular about which empire was to be their ally. Herzl tried the Kaiser of Germany in 1898, but was turned down. He offered Zionism's services to the Ottoman Empire for an anti-Christian campaign and was very properly rebuffed. Perhaps his greatest success was with the Russian Czarist Minister of the Interior, Wenzel von Plehve, well-known for his sponsorship of pogroms. Plehve

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(4) Hadawi, *op. cit.*, p. 10.

(5) Alex Bein, *Theodor Herzl, A Biography* (Philadelphia, U.S.A., 1945), p. 239.

declared his full support for the Zionist programme, doubtless considering it a good means whereby Russia could be rid of its Jews.<sup>6</sup>

Despite the strivings of Herzl, it was a younger and rival Zionist leader, Chaim Weizmann, who succeeded in obtaining the patronage of an imperial power, 20 years after the first Zionist Congress and 13 years after Herzl's death. The imperial power was Britain, the document affirming the patronage was the Balfour Declaration of 1917.

The reasons for Weizmann's success are worth examining. It is erroneously believed by many that the Balfour Declaration was given in a moment of carelessness by the British Government without an awareness of its full implications, in a desperate effort to win Jewish support in the First World War. On the contrary, although some unforeseen complications were to arise from time to time in implementation, the British Government was fully aware of the broad long-term results likely from such an act. It was not aimed at short-term benefits for British policy. Zionism at that time was supported only by a small minority of Jews who were not in a position to influence the war decisively, and the Balfour Declaration risked losing Britain her ally in the Middle East, the Arabs fighting Ottoman Turkey. The real motives of British policy only emerge from a study of the situation of Palestine itself.

Up to the end of the First World War, Palestine was under Ottoman rule. Being a coastal region, its inhabitants were in closer contact with international cultures and ideas, and more educated and organized, than those who lived in more inland and isolated Ottoman-held territories. It was one of the areas where the Arab cultural renaissance took root early this century, and the idea of liberation from imperial control became firmly implanted. Another significant aspect of Palestine was its geographical position, lying at the meeting point between Asia and Africa and at an important strategic spot in the Eastern Mediterranean. Because of this geographical fact, empire builders who sought world domination, whether Alexander the Great or Napoleon, have always made a point of trying to control Palestine and the surrounding area. This idea undoubtedly entered the considerations of the British Government.

The broad strategic implications of a Zionist state were that it would secure imperial domination of the Middle East, slice the Arab World in half and drive a wedge between Asia and Africa, a geographical

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(6) Moshe Menuhin, *The Decadence of Judaism in Our Time* (New York, 1965), pp. 44-47, and Chaim Weizmann, *Trial and Error* (London, 1949), pp. 106-109.

obstacle to the unity of liberation forces in those two continents. While imperialism was concerned with suppressing any anti-colonial revolts, and was particularly anxious that there should be no coordination between anti-colonial movements in different areas, at the same time, it had its own rivalries between the different imperial powers. The imminent collapse of the Ottoman Empire led to a scramble on the part of the British and French Governments to carve up the Ottoman-held territories. The British statesman Asquith, on 28 January 1915, made this comment in his Diary on the project of a Zionist state:

It reads almost like a new edition of 'Tancred' brought up to date. I confess I am not attracted to this proposed addition to our responsibilities, but it is a curious illustration of Dizzy's favourite maxim, 'Race is everything,' to find this almost lyrical outburst from the well ordered and methodical brain of Herbert Samuel. (He added, a few weeks later): Curiously enough, the only other partisan of this proposal is Lloyd George, and I need not say he does not care a damn for the Jews or their past or their future, but thinks it will be an outrage to let the Holy Places pass into the possession or under the protectorate of 'agnostic and atheistic' France.<sup>7</sup>

Despite his perceptiveness regarding the essential racialist nature of Zionism, Asquith failed to grasp its strategic importance for imperialism. However, it was the "imperialist realism" of Lloyd George which eventually prevailed, for he was the Prime Minister responsible for the Balfour Declaration. The Declaration was in the form of a letter from Arthur Balfour, then British Foreign Secretary, to the Zionist, Lord Rothschild. It stated:

His Majesty's Government view with favour the establishment in Palestine of a national home for the Jewish people and will use their best endeavours to facilitate the achievement of this object, it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine or the rights and political status enjoyed by Jews in any other country.<sup>8</sup>

There are three points in the actual text of this document which make it completely meaningless in international law. First, the term "National Home" is unknown in international legal practice. International law is now concerned primarily, and was then concerned totally with states and relations between them, not with fantasy concepts like national

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(7) Quoted by Weizmann, *op. cit.*, p. 193. Dizzy was the nickname of Disraeli, the famous Prime Minister and architect of British imperialism. Tancred was one of Disraeli's novels. Disraeli came from a Jewish family converted to Christianity.

(8) See Weizmann, *op. cit.*, pp. 256-262, for details of the careful choice of wording for the Balfour Declaration.

homes that have never been properly defined. The very vagueness of this term caused trouble later, as it was uncertain whether a Jewish State was intended, which would alter the entire nature of Palestine, or a place of refuge for Jews to practise their religion freely, which Palestine was anyway without British Government interference. One distinguished scholar makes out a convincing case for saying the ambiguity of the Declaration's wording was intentional:

There is one point upon which there is no doubt. Whatever is to be found in the Balfour Declaration was put into it deliberately. There are no accidents in that text. If there is any vagueness in it this is an intentional vagueness. If it is vague, the admiral is vague who orders his destroyers to emit a smoke-screen.<sup>9</sup>

Secondly, the term "Jewish people" was incorrect. A people, inhabiting an internationally-recognized state area like Great Britain, China, France or Iran, share a heritage that is ethnic, geographical, linguistic, cultural or historical. No such ties bind, say, a Yemeni Jew with an Abyssinian or German of Jewish faith. The only tie between them is religious, and international law does not recognize this as a basis for a nation-state's existence. Imagine the confusion if a "National Home" for the "Christian people" were to be proclaimed! Yet the concept of the "Christian people" is no more absurd than that of the "Jewish people."<sup>10</sup>

Thirdly, to describe some 92 per cent of Palestine's inhabitants as "existing non-Jewish communities" shows a disregard for the majority, whose rights anyway were bound to be affected adversely by a total transformation of their country to their disadvantage. Let us examine a British scholar's analysis of the significance of the Declaration's so-called protective clause:

There is more than mere preposterous nomenclature in the use of the phrase "non-Jewish communities in Palestine" to describe the Arabs. It is fraudulent. It was done in order to conceal the true ratio between Arabs and Jews, and thereby to make easier the supersession of the former . . .

The Arabs were guaranteed civil rights, again because to the unalert ear it sounded as though they were being assured a man's normal rights, the freedom to choose the government of his country which every decent man should enjoy, the common political rights of a democratic regime.

But in fact the Arabs were not assured these at all. The effect, and the aim, of the clause actually was to withdraw from the Arabs (fighting

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(9) J.M.N. Jeffries, *Palestine: The Reality* (London, 1939), pp. 172-173.

(10) For a scientific refutation of the "Jewish race" concept by Jewish writers, consult Abram Leon, *The Jewish Question* (Mexico, 1950), pp. 203-206, and Alfred Lilienthal, *What Price Israel?* (Chicago, 1953), pp. 213-228.

or suffering for us at the time under promise of independence) those very rights of independence for which they had contracted; to say nothing of their natural title to them. By sleight of tongue civil rights were substituted for political rights. If civil rights meant anything, which was uncertain and would take long legal proof (which was never offered) they meant most likely civic or borough rights, or such rights as a foreign householder can exercise in a country of which he is not a citizen. But this was untested theory. As practice went, 'civil rights' was an expression which was left without any interpretation, and so had no existence as a surety or guarantee at all.

When in Jerusalem, once I asked a High Commissioner himself what were civil rights, and the answer of the High Commissioner was that 'Well, they would be very difficult to define.' Which is precisely why they were guaranteed to the Arabs. It was a triumph of draftsmanship, of course, to take everything away from them in terms which appeared to safeguard them. A skilful ruse of the drafters, if a knavish one.<sup>11</sup>

Furthermore, the circumstances in which the Balfour Declaration was issued rendered it a totally illegal document. In 1917, the British Government had no jurisdiction over Palestine, which was an Arab-inhabited territory governed by Turkey. The British Government, through a letter from their Foreign Secretary, were very generously disposing of someone else's property without consulting the lawful owners. As the Jewish writer Arthur Koestler has stated:

In this document one nation solemnly promised to a second nation the country of a third.<sup>12</sup>

Even if the British Government had had jurisdiction over Palestine at that time, the document would still have been invalid, as it violated a previous solemn undertaking to the Arab people, the lawful owners of Palestine. Britain, at war with Germany, Austria and Turkey, had made an agreement with the Arabs in 1916. According to the correspondence between Sharif Husain of Mecca and Sir Henry Macmahon, which constituted a binding agreement between the British Government and the Arab movement of revolt against Ottoman Turkey, Britain would recognize the independence of a unified Eastern Arab State in exchange for a military alliance. There was no mention in this agreement that Palestine was to be excluded from the area of the Arab State. On the contrary, in a letter excluding British recognition of portions of northern Syria and Iraq from the Arab State, the British Government gave specific

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(11) Jeffries, *op. cit.*, pp. 178-180.

(12) Arthur Koestler, *Promise and Fulfillment* (London, 1949), p. 4. The use of the term "nation" to describe the Jews is inaccurate.

recognition to the Arab State's legal right to all the remaining area, including Palestine.<sup>13</sup>

An earlier violation of the agreement in the Husain-Macmahon correspondence had been Britain's secret negotiation of the Sykes-Picot Agreement with France and Russia, providing for parts of Palestine to be placed under "an international administration," as well as for other portions of Arab territory to be detached and placed under French or British rule. The British negotiator, Sir Mark Sykes, was a Zionist.

According to Sykes himself, it was Gaster who converted him to the cause shortly after his appointment to the service of the War Cabinet . . . The Sykes-Picot Agreement was, in a sense, contrary to the desires of the Zionists in that it provided for an international control of Palestine instead of a mandate run by a pro-Zionist British Government. On the other hand, however, it served to negate any implied promises to the Arabs, thus eliminating the possibility of Arab control and affording the Zionists time to wrest Palestine for themselves. In this sense, it served the Zionist cause.<sup>14</sup>

It is axiomatic in international law that no state may undertake any action which is a violation of a previous solemn commitment. This is the whole basis of treaty international law. The prior commitment remains binding until terminated by the parties to it, and any contrary undertaking is automatically null and void. Thus both the Sykes-Picot Agreement and the Balfour Declaration were illegal and invalid, in that they were British violations of prior pledges in the Husain-Macmahon correspondence.

The Sykes-Picot Agreement's provision on the "international administration" for Palestine was not implemented, and the Zionist wish for a British Mandate was fulfilled.

Immediately after the First World War, the principle of self-determination became firmly established in the theory of international relations. US President Woodrow Wilson included it in his 14 points which were to form the guidelines for the Versailles Peace Conference and the establishment of the League of Nations. On 8 January 1918, President Wilson stated specifically:

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(13) See the appendix of George Antonius, *The Arab Awakening* (London, 1938), for texts of the Husain-Macmahon correspondence.

(14) Alan R. Taylor, *Prelude to Israel* (New York, 1959), pp. 16-17. Moses Gaster was a leading British Zionist and colleague of Weizmann.

The other nationalities which are now under Turkish rule should be assured an undoubted security of life and an absolutely unmolested opportunity of autonomous development.<sup>15</sup>

These nationalities, of course, included the Palestinians. Even on 16 June 1918, the British Government made an official declaration applicable to Arab territories. This affirmed:

The policy of His Majesty's Government towards the inhabitants ... is that the future government ... should be based upon the principle of the consent of the governed.<sup>16</sup>

This principle was implied in Article 22 of the League of Nations Covenant. This Article also specifically dealt with communities formerly under Ottoman rule:

Their existence as separate nations can be provisionally recognised subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the Mandatory.

The League's appointment of Great Britain as the Mandatory power for Palestine and the Mandate's terms can be considered irregular in international law on these counts:

1) The separation of Palestine from the rest of the Eastern Arab area and its subjection to British rule constituted a British violation of the agreement in the Husain-Macmahon correspondence.

2) The League of Nations made no attempt to ascertain the wishes of Palestine's inhabitants, and the appointment of Britain was therefore a contravention of Article 22 of the League Covenant as well as the general principle of self-determination.

3) The terms of the Mandate contained the Balfour Declaration as their preamble and as the basis of several of their articles. Since, as has been shown above, the Balfour Declaration was an illegal document, this made these terms of the Mandate invalid in international law.

4) The British Government, in issuing the Balfour Declaration, had committed themselves to a policy detrimental to the Palestine people's interests, which made Britain unfit to exercise mandatory responsibilities

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(15) Point XII of President Wilson's statement; quoted by Harry N. Howard, *The King-Crane Commission* (Beirut, 1963), p. 5.

(16) Cited in Antonius, *op. cit.*, pp. 433-434.



in Palestine. The terms of the Mandate included many provisions on the Mandatory's measures for the setting up of the Jewish "national home." Both these facts made the Mandate contrary to a further provision of Article 22 of the Covenant, that in mandated states, "the well-being and development of such peoples form a sacred trust of civilization."

## 2. *Zionism and the Imperial Powers*

To understand the way in which the British Mandate operated and the Israeli State was established and maintained, it is necessary to examine the relationship between Zionism and imperialism. Like white supremacist colonialism in Africa, Zionism can only survive territorially if it preserves an organic link, a symbiotic relationship, with at least one imperial power or the imperialist bloc as a whole. Because its title to the territory it occupies will continue to be contested by the original owners, a settler state has to face a series of wars until it is either dislodged, as happened with the Crusaders, or else it succeeds in the genocide of the original owners, as did the United States of America. While the outcome of these wars remains in the balance, the settler state must preserve an umbilical cord with the parent imperialism through which economic aid, further settler manpower, Phantom aircraft, and so forth, can be channelled. Nor is this phenomenon invalidated by the contradictions which arise from time to time between imperialism and the settler state. Child and parent may quarrel, but both know that if the umbilical cord is irrevocably cut too early, the settler state will perish.

This was understood by the Zionists from the very start, as is evidenced by Herzl's negotiations with various imperial powers. In 1917, before the Balfour Declaration was issued, "Zionism envisioned the fulfillment of its aim through the medium of British suzerainty alone. This served to reassure the British Government that its own strategic interests in Palestine would receive consideration as an integral part of any agreement reached between itself and the Zionist Organization."<sup>17</sup> The link between Zionism and Britain as the leading imperial power was further strengthened by the appointment of the Zionist Herbert Samuel as the first British High Commissioner for mandated Palestine. On this, Weizmann stated:

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(17) Taylor, *op. cit.*, pp. 18-19.

I was mainly responsible for the appointment of Sir Herbert Samuel to Palestine. Sir Herbert Samuel is our friend. At our request he accepted that difficult position. We put him in that position. He is our Samuel.<sup>18</sup>

Colonel Fred Kisch of British Intelligence, a man "belonging to both worlds. English as well as Jewish,"<sup>19</sup> was appointed to the Palestine Executive of the World Zionist Organization. His position was indicative of the relations between the Zionists and the British Government throughout most of the period between the two world wars. Incidents like the publication of the relatively balanced Haycraft Commission Report, which indicated that the Arabs of Palestine had genuine grievances, or the issuing of the 1939 White Paper, which slowed the pace of Zionist immigration, reflected not so much a basic conflict between Zionism and British imperialism, as a difference of method to be used in the attainment of essentially similar aims. While the Zionists were impatient to build up their manpower and seize as much territory as possible, the British Government preferred a policy of gradualism, which would enable them to maintain some influence over those Arab Governments which still believed in the "honest intentions" of British policy. However, neither British authorities nor Zionists departed from their original intention of establishing the Zionist State as an outpost of Western imperial control.

Zionism's successes under the Mandate were considerable. It succeeded in building up its manpower considerably under British protection; thus "in 1931, there were only 174,616 Jews in Palestine, but by 1939 the number had risen to 445,457."<sup>20</sup> This phenomenal increase was achieved through massive immigration. The manpower was also armed during this time, through the Haganah smuggling in arms and hiding them in kibbutzim. According to a Jewish writer who later became disillusioned with Zionism, this was the position in the 1920's and 1930's regarding arms smuggling:

The authorities were well aware of this, and not only tolerated this practice, but at times even issued 'illegal' arms to Haganah . . . Haganah was still illegal, and was to remain so to the end; but it was a tongue-in-cheek, almost affectionate kind of illegality . . . Had the authorities made a search and found the arms, they would have had to confiscate them and arrest the

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(18) Quoted by Jeffries, *op. cit.*, p. 371.

(19) Weizmann, *op. cit.*, p. 295.

(20) Menuhin, *op. cit.*, p. 92.

settlers. But they made no searches in those days. During the same period scores of Arabs were hanged or sentenced to many years of prison if found in possession of a rifle.<sup>21</sup>

The Mandate administration also allowed the Zionists to carry out a practice of racial discrimination that greatly facilitated the dispossession of the Palestinian people. A Jewish anti-Zionist and former resident of Haifa has described this in the following terms:

Some time in 1944 a rumour spread that a couple of Arab workers were employed at the back of a cafe in Tel Aviv. The result: a crowd of thousands went and smashed the windows and broke up the furniture. As the Arab peasant, out of sheer poverty, was ready to sell his produce for a much lower price than was asked by Jewish agriculturalists, the Zionists prevented the fellaheen from coming and selling their produce in the Jewish market. And when, under pressure of hunger, a fellah dared to break the boycott, he was subjected to beating and spoilation of his produce . . . Not one Zionist party—not even the most extreme 'left' of Hashomer Hatzair, now Mapam—opposed the boycott of the Arab workers and peasants.<sup>22</sup>

The technique of boycott backed up by violence was used also by Nazi Germany against Jewish citizens.

A further gain by the Zionists under the Mandate was their success in preventing the emergence of democratic institutions. Article 3 of the terms of the Mandate had recognized a right of internal autonomy for Palestine, and this was pressed by the five existing Arab political parties in their demand for a democratic parliament in 1935. Although the British High Commissioner was authorized to establish a Legislative Council, this was opposed by the Zionist Congress and its establishment was prevented.<sup>23</sup>

The immigration restrictions in the 1939 White Paper caused a more serious contradiction of method between Zionism and the British Government than had hitherto occurred. At the same time, "many Zionists began to feel that Britain was losing her position as a first class power, and they therefore turned to the United States as the primary source of Gentile support for Zionism."<sup>24</sup> Thus began the period of close cooperation between Zionism and the United States as the new leader of the imperial powers, a cooperation which has continued to this day. The period was ushered in by the Biltmore Programme, adopted in May

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(21) Koestler, *op. cit.*, pp. 70, 72-73.

(22) Tony Cliff, *The Struggle for the Middle East* (International Socialism Pamphlet, London, 1967), p. 1.

(23) Taylor, *op. cit.*, p. 53.

(24) *Ibid.*, p. 61.

1942 by the Extraordinary Zionist Conference in New York. This Programme's most significant feature was its acceptance of David Ben Gurion's thesis "that the concept of bi-nationalism be discarded if it entailed offering Palestinian Arabs equal representation with Jews in the departments of government."<sup>25</sup> This was a clear affirmation of the racially discriminatory content of Zionism.

Throughout the period of the British Mandate, the Zionist gains can be attributed to the fact that neither the establishment nor the execution of the Mandate accorded with the principles of international law. The legal questions of establishment have been considered above. The execution of the Mandate, involving the drastic alteration of the character of Palestine's population against the majority's wishes, and the arming of the new settlers with a view to dispossession of the original inhabitants, involved a serious violation of the self-determination principle. Also, the failure to implement Article 3 of the Mandate's terms and the toleration of practices such as racial discrimination proved that the British Government was unfit to exercise "a sacred trust of civilization."

Nor can the course of events of the Mandate be considered to be mitigated by the fact that the contradiction of methods between Zionism and the British authorities became sharpened to the point of violence in the 1940's. This was not caused by the British Government relenting and wishing to make amends, as some writers have attempted to suggest. Had the British Government really wished to change their policy, they would have respected the principle of self-determination and granted Palestine independence in the form desired by the majority of its inhabitants. The fact that the British Government at no stage took this step indicates that the aim of policy remained essentially the same as it had been from 1917 onwards; namely, the dispossession of the Palestinians.

Certain Zionist writers have also given an erroneous picture of history by referring to Zionism's disagreement with the British authorities as "Israel's war of independence." In fact it was nothing of the sort. The Israelis' position at the close of the Mandate was similar to that of the white settlers in Rhodesia when they issued their unilateral declaration of independence; a position of more impatient extremism than that of the suzerain imperial power. To speak of "Israel's war of independence" is as misleading as it would be to describe Mr. Ian Smith as an anti-imperialist liberation fighter.

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(25) *Ibid.*, p. 59.

### 3. *The Arab Legal Position up to 1947*

In 1919, President Woodrow Wilson of the United States sent a fact-finding body, the King-Crane Commission, to the Middle East, to study the Arab province of Syria (of which Palestine had historically been a part) which had formerly been under Ottoman rule. The most important question the Commission had to consider was the problem raised by the Zionist efforts to colonize Palestine. The Commission's report included these observations:

The Commissioners began their study of Zionism with minds predisposed in its favour, but the actual facts in Palestine coupled with the force of the general principles proclaimed by the allies and accepted by the Syrians have driven them to the recommendation here made . . .

This fact came out repeatedly in the Commission's conferences with Jewish representatives, that the Zionists looked forward to a practically complete dispossession of the present non-Jewish inhabitants of Palestine . . .

In his address of 4 July 1918, President Wilson laid down the following principle as one of the four great 'ends for which the associated peoples of the world were fighting': 'The settlement of every question, whether of territory, of sovereignty, of economic arrangement or of political relationship, upon the basis of the free acceptance of that settlement by the people immediately concerned and not upon the basis of the material interest or advantage of any other nation or people which may desire a different settlement for the sake of its own exterior influence or mastery.' If that principle is to rule, and so the wishes of Palestine's population are to be decisive as to what is to be done with Palestine, then it is to be remembered that the non-Jewish population of Palestine—nearly nine-tenths of the whole—are emphatically against the entire Zionist programme . . .

To subject a people so minded to unlimited Jewish immigration, and to steady financial and social pressure to surrender the land, would be a gross violation of the principle just quoted, and of the people's rights, though it kept within the forms of law.<sup>26</sup>

The importance of this statement is that it pointed to the sort of principles that should be respected in relation to Palestine, and gave an accurate forecast of the course of events that would ensue if these principles were disregarded. That the Commission's warning was ignored by the League of Nations and its creation, the British Mandate, is now part of history. The King-Crane Commission also observed clearly that the Palestinians' apprehensions were justified, and that the aim of Zionism was not so much to find a refuge for persecuted Jews, but rather to dispossess a people of their homeland. These facts revealed by the King-Crane Commission enable one to understand the motivation of Arab policy during the Mandate period. The Arabs in general had given ample

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(26) See Howard, *op. cit.*, pp. 349-350, and *Official Documents, Pledges and Resolutions on Palestine* (Palestine Arab Refugee Office, New York, 1959), pp. 20-21.

evidence of their hospitality towards persecuted Jews, but the Arabs of Palestine, like any other people, were unwilling to sit idly by and watch their country being usurped.

A severe disadvantage from which the Palestinians suffered was their lack of means to present their case where international decisions were being made. While the Zionists possessed a large and sophisticated international organization, often assisted by imperial interests, which was able to lobby for support in most important capitals, the Palestinians had no such amplifier for their voices. The recognition by a number of states of the Zionist movement as a body with an "international personality" by their endorsement of the Balfour Declaration was irregular in many respects;<sup>27</sup> yet the Palestinians, as a non-self-governing community, were unable at that time to secure any international recognition of their personality. The presentation of their case on an international level was thus generally left to the Arab States, which were ill-equipped for the task. Most Arab States did not attain independence until after the Second World War, and even those that were able to raise their voices in the League of Nations, or the United Nations in the crucial days of 1947, were hopelessly outweighed by the pressure which powerful states brought to bear in favour of Zionism.

For the Palestinians under the Mandate, only one course of action was open: to take up arms. The odds were weighted against them by the Mandate policy, referred to above, of disarming the Palestinians and arming the Zionist settlers. Nevertheless, in 1936 the Palestinians did launch a national liberation struggle. It ended not through military defeat, but because the Palestinians made the political error of heeding a plea for peace by Arab Heads of State friendly to Britain.<sup>28</sup> They also did not take advantage of Britain's delicate military situation in the Second World War; later events were to show how unwise it was to display chivalry when dealing with an imperial power.

The national liberation struggle was launched after the Mandatory Power's failure to honour its obligations on the granting of internal autonomy. The Palestinian policy in this struggle was similar to that of

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(27) Taylor, *op. cit.*, p. 26. See also Jeffries, *op. cit.*, pp. 184-185 for details of the unwillingness of France and Italy to announce their complete endorsement of the Declaration.

(28) Jeffries, *op. cit.*, p. 663. For a military account of successive Palestinian attempts to resist British rule, see Lt.-Col. Muhammad Al Shair, *Al Harb al Fidaiyya fi Falastin* (Beirut, 1967), pp. 145-153.

many peoples in Africa: seeking self-determination to free themselves from imperial control and to remove the racial domination of foreign settlers over the rightful inhabitants of the land.

A British reaction to the Palestinians' resort to arms was the appointment in 1937 of the Peel Commission which recommended the Partition of Palestine.<sup>29</sup> This became the policy which was pressed for by the Zionists on the international scene.

By the end of the Second World War, the problem had become extremely serious. Accordingly, on 30 September 1946, the Arab States proposed a constitutional scheme, the essential aims of which were to provide a peaceful solution and to preserve the non-racialist character of Palestinian society. In essence, this scheme proposed that Palestine should be granted independence as a democratic and secular state, with an elected Head of State and parliamentary system. The Arab States' document specified:

Palestine should be a unitary state.

It should have a democratic constitution, with an elected legislature.

The constitution should provide guarantees for the sanctity of the Holy Places, covering inviolability, maintenance, freedom of access and freedom of worship in accordance with the status quo.

The constitution should guarantee, subject to suitable safeguards, freedom of religious practice in accordance with the status quo throughout Palestine (including the maintenance of separate religious courts for matters of personal status).

In order to safeguard all inhabitants of Palestine, whether Arabs or settlers, against racial discrimination in any form, the Arab States proposed a number of provisions ensuring equality on questions of nationality and citizenship, amendment of laws, and so forth. The electoral law was recommended to provide for Jewish members to occupy up to one third of the total seats in the legislative body. This reflected the proportion of Jewish inhabitants at that time. Other safeguards included:

The right of any resident of Palestine to apply for and acquire Palestinian citizenship on the same terms and conditions without discrimination on grounds of race, religion or language.

The guarantees concerning the rights of the Jewish citizens . . . should not be subject to amendment without the consent of the Jewish citizens of Palestine as expressed by a majority of the Jewish members of the Legislative Assembly.

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(29) The Palestine Royal (Peel) Commission's Report was published as Command Paper 5479.



Machinery should be provided, through the establishment of a Supreme Court, for determining whether any legislation is inconsistent with the provisions of the constitution, and it should be open to any citizen of Palestine to have recourse to that tribunal.

To safeguard the rights of the Arab Palestinians, the Arab States recommended a halt to the influx of Zionist settlers, with the provision that any change in this would require the assent of a majority of Arab members in the Legislative Assembly.<sup>30</sup>

These proposals put forward by the Arab States were designed, as is clear from their text, to ensure the equality of all Palestinian residents, whether Jews, Christians or Muslims, and their freedom from racial or religious discrimination. The Arab States' proposals also took into account the special nature of Palestine as a land sacred to three great religions, whose legitimate interests must be preserved with regard to their holy places. Zionism, by seeking to establish a monopoly for Judaism over Palestine, was a departure from the precedent of religious tolerance towards Jews and Christians during the centuries of Muslim guardianship. It is ironical that Jews earlier were victims of an exclusivist policy of the Byzantine occupation, which banned them from Jerusalem. The Muslims removed this ban after they entered the city in the 7th century.<sup>31</sup> The Zionist demand for an exclusively Jewish state in Palestine, as expressed in documents like the Biltmore Programme, was an attack on the legitimate interests of Christians and Muslims not only in Palestine but also elsewhere in the world.

The Arab States' proposals offered an opportunity for the preservation of Palestine as a land of equality, where Jews could continue, despite their artificially-inflated numbers, to live in peace with Muslims and Christians as they had for centuries past. The Zionist rejection of these proposals has resulted in three wars and over 20 years of instability in the Middle East, and has upset the pattern of equality and integration which in the past had characterized the life of Jews in Arab countries. Time and subsequent events were to prove the correctness of the Arab position, from the legal, moral and political viewpoints.

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(30) Proposals of Arab Delegations to the Palestine Conference in London; full text in *Malaff Waibaiq Falastin* (U.A.R. Ministry of National Guidance, Cairo, 1969), pp. 849-851.

(31) Stewart Perowne, *Jerusalem* (London, 1965), p. 8.

#### 4. *The U.N. Partition Resolution*

With the virtual collapse of the British Mandate's authority in Palestine as a result of the deteriorating situation in the country after World War Two, the Palestine problem was placed before the United Nations. The legal implications of this can best be understood if certain principles are considered on which the United Nations Organization is said to have been founded.

On 14 August 1941, the United States President, Mr. Roosevelt, and the British Prime Minister, Mr. Churchill, issued the declaration known as the Atlantic Charter, outlining "certain common principles in the national policies of their respective countries on which they base their hopes for a better future for the world." On behalf of their countries, the two leaders declared:

They desire to see no territorial changes that do not accord with the freely expressed wishes of the peoples concerned.

They respect the right of all peoples to choose the form of Government under which they will live; and they wish to see sovereign rights and self-government restored to those who have been forcibly deprived of them.

After the final destruction of the Nazi tyranny, they hope to see established a peace which will afford to all nations the means of dwelling in safety within their boundaries, and which will afford assurance that all the men in all the lands may live out their lives in freedom from fear and want.<sup>32</sup>

When 26 Governments met in Washington on 1 January 1942 and formed the embryo of what was to grow into the United Nations Organization, their "Joint Declaration by United Nations" (the first time this term was used in an official document) accepted the principles, including those on self-determination and territorial integrity quoted above, contained in the Atlantic Charter.<sup>33</sup> In 1945, the founder members of the United Nations Organization itself met at San Francisco and drew up the Charter of the United Nations, which also included the principle of self-determination, this time clearly enunciated. The Charter's first Article, for instance, includes among the aims of the Organization:

To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples.

Article 73 regarding non-self-governing territories stated "that the interests of the inhabitants of these territories are paramount." This

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(32) Andrew Boyd, *The U.N.O. Handbook* (London, 1946), pp. 167-168.

(33) *Ibid.*, p. 27.

article is considered to "impose on all member states who have colonies an administrative code which is morally binding on them."<sup>34</sup> Non-self-governing territories is a term that also includes mandated territories.

It was on the basis of principles such as those quoted above that the United Nations pledged itself to act from the time it began to function. It was particularly important from the start that the United Nations should always adhere to the letter and spirit of these ideas in any action it took regarding peoples who had not yet attained independence, including the Palestinian people. It has been noted that the League of Nations acted contrary to its own Covenant in appointing Britain as the Mandatory power over Palestine without consulting the country's inhabitants. How did the United Nations act towards Palestine?

The problem was raised at the U.N. when "the British Government announced on 14 February 1947 its decision to refer the whole problem to the United Nations without recommending any particular solution. Britain's decision was formally communicated to the Secretary General on 2 April 1947."<sup>35</sup> The British Government requested the inclusion of Palestine on the agenda of the General Assembly's next regular session, and the summoning of a special session of the Assembly to discuss "constituting and instructing a special committee to prepare for the consideration of the question of Palestine."<sup>36</sup> Five Arab States shortly afterwards requested the inclusion on the special session's agenda of "the termination of the Mandate over Palestine and the declaration of its independence."<sup>37</sup> The Arab request was most clearly in accordance with the principle of self-determination in the U.N. Charter. Notwithstanding this, the United Nations rejected it, and accepted the British request. On 15 May 1947 it adopted a resolution setting up the United Nations Special Committee on Palestine."<sup>38</sup> It is interesting to note the arguments adduced by the United Kingdom Representative Sir Alexander Cadogan in pleading for this step to be taken:

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(34) H.G. Nicholas, *The United Nations as a Political Institution* (London, 1959), p. 17.

(35) Geoffrey L. Goodwin, *Britain and the United Nations* (Royal Institute of International Affairs, London, 1957), p. 90.

(36) *U.N. Doc A/364 Add. 1, Suppl. No. II, Annex II, p. 1.*

(37) *Ibid.*, Annex II, pp. 1-2.

(38) Res. 106 (S-I).

We have tried for years to solve the problem of Palestine. Having failed so far, we now bring it to the United Nations in the hope that it can succeed where we have not. All we can say is that we should not have the sole responsibility for enforcing a solution which is not accepted by both parties and which we cannot reconcile with our conscience.<sup>39</sup>

It must be recalled that no "problem of Palestine" existed before the British Government decided to take the territory away from its inhabitants and hand it to someone else. The British Government's discovery that they possessed a conscience came too late to undo the damage. While it is no doubt pleasant for them to feel that their conscience is that much clearer because they no longer bear the "sole responsibility" for dispossessing the Palestinians, for them to thrust the problem on the United Nations was apparently an attempt to give a pretence of legality to a situation which had been created illegally.

The United Nations Special Committee submitted its report and recommendations to the Assembly on 31 August 1947.<sup>40</sup> The most far-reaching of its recommendations consisted of two alternative plans. The first, a "Plan of Partition with Economic Union," known as the "Majority Plan," was supported by seven members of the Committee.<sup>41</sup> This envisaged dividing Palestine into two separate states, one Arab and one Jewish, and an international zone of Jerusalem under United Nations jurisdiction. The second, a "Federal State Plan," the "Minority Plan," supported by three Committee members,<sup>42</sup> suggested a federal Palestine composed of an Arab State and a Jewish State with Jerusalem as the federal capital. The Zionists declared their desire to have the first plan implemented, as it would grant the theoretical acceptance of their aim of statehood, even though in a smaller area than they had at first envisaged.<sup>43</sup> One is tempted to see a similarity between the Zionist attitude and that of the false mother, who accepted Solomon's judgement to partition a baby who was not rightfully hers.<sup>44</sup>

Neither plan was satisfactory for the Palestine people, since both undermined the non-racialist and non-sectarian principles on which they

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(39) *Official Records of 1st. Session of General Assembly*, Vol. III, pp. 183-184.

(40) *U.N. Doc A/364*, Add. 1, Vol. I.

(41) Canada, Czechoslovakia, Guatemala, Netherlands, Peru, Sweden and Uruguay.

(42) India, Iran and Yugoslavia.

(43) Taylor, *op. cit.*, p. 26. The Zionists presented the Versailles Peace Conference (1919) with a demand for Palestine, Transjordan, Hermon and South Lebanon.

(44) I. Kings, 3, 16-28.

wished their society to continue to be based. The proposal of these two plans of racial separation by a United Nations Committee, and the subsequent acceptance of one of them by the General Assembly, accords ill with the U.N.'s repeated and quite correct condemnations of apartheid in South Africa in later years.

The Special Committee's report was then considered by an Ad Hoc Committee to which the matter was referred by the Assembly. The British Representative declared his Government's "substantial agreement" with the partition proposal.<sup>45</sup> The Representative of the Palestinian Arab Higher Committee was invited to outline the Palestinian viewpoint. He made the valid point that a purpose of the United Nations' existence is to assist self-defence against aggression,<sup>46</sup> and that the Palestinian people were defending themselves against a Zionist campaign to seize their country by force. To solve the problem, he proposed application of the right of self-determination recognized in the U.N. Charter, so that the Palestinians could establish a democratic non-racialist state, with full guarantees in its constitution for the rights and equality of all its citizens.

The Ad Hoc Committee on 22 October 1947 appointed two Sub-Committees. The first of these, consisting exclusively of delegates favouring partition, "slightly modified the boundaries recommended in the majority plan, strengthened the provisions for economic union, and asked the Trusteeship Council to work out a statute for the City of Jerusalem."<sup>47</sup> The second Sub-Committee, composed of advocates of a unitary Palestinian State, noted that the structure of the two Sub-Committees was unfortunate, since each contained the supporters of only one viewpoint. It recommended to the Ad Hoc Committee Chairman the appointment of two neutral members to the Second Sub-Committee in place of two Arab members who were willing to step aside, so that a disinterested viewpoint could at least be represented in one Sub-Committee. The Chairman did not accept the recommendation. This incident gave ample evidence of Arab willingness to bring impartiality to bear on the problem.

Despite the irregularity of United Nations procedure, the Second Sub-Committee carried out its study of the problem and presented its recommendations. It criticized the Special Committee's investigations as incom-

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(45) Goodwin, *op. cit.*, p. 92.

(46) *U.N. Charter*, Art. 1, Para. 1; Art. 2, Paras. 3 and 4.

(47) Goodwin, *op. cit.*, p. 92.

plete, in not having considered a number of important issues like the validity of the Balfour Declaration and terms of the Mandate, British pledges to the Arabs, or the meaning of a "Jewish national home." In particular, the Special Committee's recommendations were less reliable and authoritative, in the Second Sub-Committee's view, because they were based on a premise that the claims of Zionist settlers from Europe and of the country's lawful inhabitants were of equal validity. This, the Second Sub-Committee stated, was demonstrably against the weight of all available evidence.<sup>48</sup>

The partition proposal was, in fact, a recommendation that the United Nations should take a further step to sanction a situation, namely the alteration of the whole character of the Palestinians' homeland. This situation arose out of a number of actions in the past which were illegal, or at least highly dubious in international law, according to the Sub-Committee. Such actions included the British Government's disregard of their agreement with the Arabs in the Husain-Macmahon letters, the issuing of the Balfour Declaration and the establishment of the British Mandate. The Sub-Committee proposed that such questions be submitted to the appropriate United Nations organ, the International Court of Justice, for an authoritative pronouncement on their legal aspects. It also recommended that a pronouncement by the International Court be sought on points regarding the United Nations' lack of competence to intervene in Palestine.<sup>49</sup>

The Sub-Committee further considered the partition proposal in the light of the League of Nations Covenant and the terms of the Mandate, and declared:

The United Kingdom took over Palestine as a single unit. Under Article 5 of the Mandate, the Mandatory power was responsible for seeing that no Palestine territory shall be leased to, or in any way placed under the control of the government of any foreign power. Article 28 of the Mandate further contemplated that at the termination of the Mandate, the territory of Palestine would pass to the control of the Government of Palestine. So also by virtue of Article 22 of the Covenant, the people of Palestine were to emerge as a fully independent nation as soon as the temporary limitation on their sovereignty imposed by the Mandate had ended.<sup>50</sup>

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(48) *The Partition of Palestine* (Institute for Palestine Studies, Beirut, 1967), pp. 1-3.

(49) *Ibid.*, pp. 4-10.

(50) *Ibid.*, p. 10.

The Sub-Committee likewise observed:

The United Nations is bound by Article 1 of the Charter to act in conformity with the principles of justice and international law and to respect the principle of equal rights and self-determination of peoples. Under Article 73, concerning non-self-governing territories and mandated areas, the United Nations undertakes to promote to the utmost . . . the well-being of the inhabitants of these territories and to take due account of the political aspirations of the peoples. The imposition of partition on Palestine against the express wishes of the majority of its population can in no way be considered as respect for or compliance with any of the above-mentioned principles of the Charter.<sup>51</sup>

The Sub-Committee also issued a solemn warning:

The existence of a Jewish minority does not invalidate the establishment of a unitary state in Palestine. There have been, and still are, minorities in many countries. Some minorities existed originally as part of the indigenous population, while other minorities were created by immigration. The United Nations cannot subscribe to the principle that a racial or religious minority . . . can insist upon the breaking up of a homeland or shatter the political, geographical and economic unity of a country without the consent and against the wishes of the majority. The acceptance of such a principle would constitute a dangerous precedent which might be adopted by dissident elements in many States and thus become a source both of internal conflict and international disorder.<sup>52</sup>

The major powers who voted for the partition of Palestine might have paused to reflect that they were introducing a precedent which could justify the secession of, say, Wales from Britain, Lithuania from the Soviet Union, or regions with a large Afro-American population from the United States. In each of these three cases, there would have been much stronger legal, moral and historical arguments than existed for the establishment of a Jewish State in Palestine.

When the issue of partition came up for the vote in the General Assembly, it looked at first as if the resolution would just fall short of the required two-thirds majority. The United States President of that time has related:

The facts were that not only were there pressure movements around the United Nations unlike anything that had been seen there before but that the White House, too, was subjected to a constant barrage. I do not think I ever had as much pressure and propaganda aimed at the White House as I had in this instance. The persistence of a few of the extreme Zionist leaders—actuated by political motives and engaging in political threats—disturbed and annoyed me. Some were even suggesting that we pressure sovereign nations into favourable votes in the General Assembly.<sup>53</sup>

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(51) *Ibid.*, p. 11.

(52) *Ibid.*, pp. 36-37.

(53) *Memoirs of Harry S. Truman* (New York, 1965), Vol. II, pp. 186-187.

Despite its President's horrified tone in the last sentence, the United States resorted to such pressure. "Haiti, Liberia, the Philippines, China, Ethiopia, and Greece, all of which had shown opposition to partition, became the objects of the most intense Zionist pressure. This pressure was applied indirectly, and in large part, through American channels. The Zionists importuned Congressmen to communicate directly with the governments of the six target countries. The Firestone Tire and Rubber Company, which had a concession in Liberia, was telephoned and urged to persuade the Liberian Government to vote in favour of partition . . . Herbert Swope and Robert Nathan of the White House staff actively solicited the support of leading officials, and allegedly Justices Frankfurter and Murphy also participated in the Zionist campaign by communicating with the Philippine delegate and urging him to support partition . . . When the final hour came, all of the six target countries, with the exception of Greece, had agreed either to vote for partition or to abstain, and on November 29th, the General Assembly endorsed the partition of Palestine."<sup>64</sup>

The techniques used to obtain the two-thirds majority for partition were, on an international level, the equivalent of "fixing" a jury by bribery or blackmail to decide a court case in the favour of the party who was in the wrong. Such practices are condemned by all civilized societies as perversions of the course of justice.

A further irregularity was the behaviour of the then Secretary General of the United Nations, Mr. Trygve Lie, who actively supported partition, and "used his political powers with more exuberance than discretion."<sup>65</sup> For a Secretary General thus to campaign for an issue before the U.N. had taken a stand on it, while the matter was still, so to speak, *sub judice* before the General Assembly, was an improper extension of his functions.

The just do not have to resort to immoral practices when presenting their case before a forum of justice, and the impropriety of the methods used to secure the resolution on partition are merely a reflection of the status in law of the resolution itself.

The United Nations decision to partition Palestine was contrary to the principles of self-determination and the paramount character of the interests of the peoples of non-self-governing territories, as contained in

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(54) Taylor, *op. cit.*, pp. 103-104. The Resolution was No. 181 (II).

(55) Nicholas, *op. cit.*, p. 154.



the Charter and quoted above. Furthermore, it was a violation of the provisions of Chapter II (Articles 75-85) on the International Trusteeship System, in which the U.N. laid down the conditions under which it could take action in regard to certain territories including Mandates. By this, according to Article 75, the United Nations could administer and supervise "such territories as may be placed thereunder by subsequent individual agreements." Article 80, Paragraph 1, specifies:

Except as may be agreed upon in individual trusteeship agreements . . . placing each territory under the trusteeship system, and until such agreements have been concluded, nothing in this Chapter shall be construed in or of itself to alter in any manner the rights whatsoever of any states or any peoples or the terms of existing international instruments to which Members of the United Nations may respectively be parties.

The United Kingdom had raised the question of Palestine under Article 10 of the Charter, which states:

The General Assembly may discuss any questions or any matters within the scope of the present Charter.

However, Article 80 implicitly excluded from the scope of the Charter any measure which would alter the rights of a state or people under Mandate or an existing international instrument thereof, unless and until a trusteeship agreement is drawn up and presented to the General Assembly. No such agreement had been drawn up in the case of Palestine; thus for the General Assembly to vote for partition, which unquestionably altered the rights of the state and people of Palestine, was a violation of Article 80 of the Charter. This is supported by the precedent of a General Assembly ruling that it could take no action regarding the Mandate of South West Africa until South Africa, the Mandatory power, submitted a trusteeship agreement.<sup>56</sup> The lack of equity in applying this principle by adopting contradictory decisions which in both cases favoured the interests of the respective Mandatory power, suggests that the United Nations was more interested in preserving Western imperial dominion over the Afro-Asian World than in serving justice.

There were two actions which the United Nations could have taken, in accordance with its Charter, regarding the Palestine question. Under Article 96, the General Assembly could have requested the International

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(56) Res. 9 (I). Subsequently, the U.N. revoked this Mandate from South Africa because of its violations of international law regarding racial discrimination.

Court of Justice to give an advisory opinion on legal questions relating to Palestine, as the Second Sub-Committee recommended. Also, the Assembly, in accordance with the self-determination principle in Article 1, could have recognized the independence of Palestine within its existing territorial boundaries, and according to the wishes of its inhabitants, as the Arab States proposed.

The fact that the United Nations chose instead to go beyond its competence and violate provisions of its own Charter by voting for partition shattered a dream that the United Nations was a means to a new world order based on justice and respect for international law. By adopting this resolution, and allowing itself to be manipulated through the disreputable methods whereby a majority for partition was obtained, the United Nations set itself on the same sort of path which led to the failure of the League of Nations.

As for the Palestinian people, they consider the U.N. Partition Resolution to be null and void because of the obvious illegalities both in its content and its method of adoption. It is in no way a legal solution to the Palestine problem, nor are the Palestinians in any way bound by it.

##### 5. *The 1948 War*

The United Nations Partition Resolution opened the door to chaos in the Middle East. An examination of its provisions will explain why it led to an immediate outbreak of bloodshed, which culminated in war between neighbouring Arab States and the Zionists the following year. It is also relevant to examine how far the Zionists actually kept to the provisions of the resolution once they had accepted it for reasons of establishing their aim of racial separation and supremacy, since it is one of the main justifications they put forward for their state's existence.

Partition was proposed on a basis that would be of maximum benefit to the Zionists. In 1947, Jews in Palestine owned 1,491,699 dunums out of a total land area of 26,323,023 dunums—5.66 per cent in fact.<sup>57</sup> Yet under the partition, 56 per cent of the country was to go to the Jewish State. Thus, even in the Jewish State, by far the greater part of the land area would be Arab-owned. The Jewish State was to cover most of the

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(57) Henry Cattán, *To Whom Does Palestine Belong?* (Institute for Palestine Studies, Beirut, 1967), p. 5. Statistics quoted were submitted by the British Mandate to the United Nations and refute the Zionist claim that the Palestinians sold out their land. (1 dunum equals 1,000 square metres).

fertile coastal plain, the Negev, and the area around Galilee, including Baisan. The remainder of the country, namely, what later formed the West Bank of Jordan plus extensions westward to Lydda and Ramle and southward to Beersheba, as well as the Acre region and Nazareth, a coastal strip including Gaza extending to a point north of Isdud, a small part of the Negev, and the enclave of Jaffa, were to form an Arab State. Jerusalem, under the partition plan, was to be a U.N.-administered international zone.

The plan was, to say the least, chaotic, for it established two states in a country that could naturally only contain one or be part of a larger whole. Furthermore, each state was composed of disjointed bits and pieces instead of one compact bloc of territory, and a map of the partition plan looked like a jigsaw puzzle gone wrong. This was an open invitation to the Zionists to seize some of the areas not allotted to them by the plan, in order to make their state more homogeneous and strategically stronger.

The plan did not satisfy the Zionists on two other counts, as their subsequent actions were to show. First, it did not give them enough to satisfy their territorial ambitions, and secondly, even in the areas it did give them, they were faced with the problem of a large Arab minority of 497,000, only about 1,000 less than the number of Jews, in a state they wished to make exclusively "Jewish." So, while the Zionists outwardly announced their acceptance of the Partition Resolution, since it gave them something to which they had no valid claim, their true intentions were best expressed by their first Prime Minister, who stated: "Force of arms, not formal resolutions, will decide the issue."<sup>58</sup>

The Partition Resolution also provided for the establishment of a Palestine Commission which was to assume responsibility for the country gradually as the British Mandate authorities evacuated their forces and transferred their powers to it. The two partitioned states were to be set up within two months of the ending of the Mandate. However, the British Government did not allow this UN Commission to function effectively, on the grounds that there could not be two governing authorities in one country at the same time.<sup>59</sup> The Mandatory power, however, handed over control increasingly to the Zionists in areas allotted by the Partition Resolution to the Jewish State, while at the same time maintaining its occupa-

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(58) David Ben Gurion, *Rebirth and Destiny of Israel* (New York, 1954), p. 227.

(59) Goodwin, *op. cit.*, p. 94.

tion of other areas to prevent the Arab inhabitants from defending themselves.<sup>60</sup>

The closing months of the Mandate had seen a steady build-up of violence. The Zionist terrorist organizations, the Irgun Zvai Leumi and the Stern Gang, who represented the most extreme settler viewpoint, had mounted a campaign against the British Mandate authorities to wrest control of the country from them. In actions against the Arab population, these were joined by a third terrorist group, the Haganah, which had put on a more "respectable" front for public relations purposes. According to the British authorities, the Zionist terrorist groups by 1946 had built up organized forces of nearly 70,000 armed and trained men—some 62,000 in the Haganah, between 3,000 and 5,000 in the Irgun and between 200 and 300 in the Stern Gang.<sup>61</sup> It was these forces which in 1947 and 1948, under the rule of the Mandate's closing period, were to take the actions to determine control of most of Palestine. The Palestinians, due to Mandatory policy it must be recalled, at that time had no organized defence forces and virtually no weapons on the individual level.

Almost immediately after the Partition Resolution was adopted, the Zionists began a military campaign to seize territory allotted by the Resolution to the Arab State. As early as December 1947 they attacked and seized Qazaza village; then Salama in March 1948, Saris, Qastal, Biyar Adas and Jaffa enclave in April and Acre in May.<sup>62</sup>

In the area assigned by the Partition Resolution to the Jerusalem International Zone, the Irgun on 9 April 1948 attacked Deir Yasin village. "They captured the village after a fierce fight, and what happened was terrible, they massacred two hundred and fifty-four men, women and children."<sup>63</sup> This action proved decisive in provoking a mass exodus of the unarmed Palestinians, who became refugees in surrounding countries. The Deir Yasin massacre convinced most Palestinian villagers that their wives and children were not safe, and that they could only be protected from massacre by evacuation. Official Israeli attempts to disown the Irgun's action carry little conviction, in view of the later use of similar methods by the Israeli Army in incidents like the Qibya massacre, which

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(60) Hadawi, *op. cit.*, pp. 100-101; see also Erich W. Bethmann, *Decisive Years in Palestine 1918-1948* (Washington, 1959), pp. 38-41.

(61) Command Paper 6873. Statement of Information Relating to Acts of Violence, 24 July 1946.

(62) Hadawi, *op. cit.*, pp. 107-108.

(63) Michael Bar-Zohar, *The Armed Prophet (Biography of Ben Gurion)*, p. 115.

will be discussed below. Haganah was then "the official 'legal' army of the coming state of Israel, and Irgun was the 'dissident' branch of the army that generally did the dirty work for and with Haganah."<sup>64</sup> After Deir Yasin, the Zionist forces seized the Arab quarter of Qatamon, also in the Jerusalem area, on 29 April.

It should be stressed that the Zionists carried out all these attacks in areas not allotted to them by the Partition Resolution, and were therefore violations of that resolution which they had proclaimed that they accepted. It must also be remembered that these events occurred before the armies of some Arab States entered the war against the Zionists on 14 May 1948. Zionist propaganda has claimed that the Arab States started the 1948 war. In fact, the war had been started much earlier by the above-mentioned Zionist attacks on Arab towns and villages. In order to understand the legalities of the Arab States' action in going to war, one must be aware of the sequence of events which led up to that action. For, prior to the entry of Arab States' armies into Palestine, the Zionists had carried out three acts which were not only violations of general principles of international law, but more specifically were also contrary to the partition resolution for whose implementation the Israelis had called.

First, there was the seizure of those towns and villages mentioned, and many others, which had not been allotted to the Jewish State.

Secondly, there was the expulsion of Arab inhabitants from areas seized, which had resulted in the number of refugees reaching some 300,000 by 14 May 1948.

Thirdly, the proclamation of the Israeli State on 14 May 1948 as soon as the British had completed their evacuation was also contrary to the Partition Resolution, which specified that the Arab and Jewish States should be set up by the U.N. Palestine Commission within two months of the ending of the Mandate, from which the Commission was to have assumed authority.

A further violation of international law arising from these actions, namely the establishment of the Israeli State as a racialist entity in which the remaining Arabs were subjected to second-class citizenship and the majority of their lands were confiscated, was also contrary to these provisions in Chapter 22 of the Partition Resolution:

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(64) Menuhin, *op. cit.*, p. 97.

No discrimination of any kind shall be made between the inhabitants on the ground of race, religion or sex.

All persons within the jurisdiction of the State shall be entitled to equal protection of the laws.

No expropriation of land owned by an Arab in the Jewish State (by a Jew in the Arab State) shall be allowed except for public purposes. In all cases of expropriation full compensation as fixed by the Supreme Court shall be paid previous to dispossession.

It must be emphasized that reference to Zionist acts contrary to the Partition Resolution here should in no sense be interpreted as recognition of that illegal resolution as legal, nor as support for its implementation. These examples are simply quoted to illustrate Zionist disregard of international legal principles even when they are contained in a document which the Zionists claim justifies their statehood.

By 19 March 1948, it became clear to the United Nations that partition would certainly not bring peace to Palestine, and the Security Council met. The United States recommended a temporary trusteeship. This the Zionists rejected, since they had secured the political gain they wanted with partition. To present the United Nations with a *fait accompli*, they accelerated their territorial seizures. Their proclamation of statehood was immediately recognized by President Truman,<sup>65</sup> while the United States official policy at the United Nations was still in theory committed to the trusteeship proposal.

With the Zionist proclamation of statehood, the United Nations placed the Palestine Commission's functions in the hands of a Mediator, Count Folke Bernadotte. The Commission had been inoperative anyway, due to the Mandate authorities' obstruction.

Until 14 May, the presence of British troops in Palestine had prevented the Arab States from coming to the aid of the inhabitants. Under the Mandate's protection, the Zionists had been strengthening their position, even building up a light arms industry known as the Sonneborn Institute, financed by American millionaires.<sup>66</sup> During the period up to the British evacuation, a conflict had arisen which threatened the peace of the region as a whole, apart from the harm it did to the Palestinians and the refugee problem it created in neighbouring states. The Mandate authorities who claimed responsibility for order in Palestine took no action to halt this threat to peace; nor did the United Nations Security Council. Article 24 of the U.N. Charter states that:

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(65) Taylor, *op. cit.*, p. 105.

(66) Bar Zohar, *op. cit.*, p. 84.

In order to ensure prompt and effective action by the United Nations, its members confer on the Security Council primary responsibility for the maintenance of international peace and security.

The only action envisaged by the United Nations following the Partition Resolution was action which would only have disrupted international peace and security further, namely, action to enforce the resolution. One of its clauses, "on Soviet initiative, . . . requested the Security Council to take the necessary measures for the implementation of the plan."<sup>67</sup> This was not carried out, although "on 15 January 1948, the Jewish Agency advised the United Nations that an international police force would be required to put Partition into effect,"<sup>68</sup> thus calling for implementation of the Soviet-inspired clause at the expense of the Palestinians who were seeking to preserve the unity of their homeland. However, the clauses remained without implementation.

The Arab States were thus left with no alternative but to try to maintain international peace and security themselves, after a series of acts of war by the Zionists against the Palestinians. The Arab States' action was thus similar in principle to the declaration of war by Britain and France in 1939, after Nazi Germany had posed a threat to the peace of Europe as a whole. Such action is perfectly legal, where the declaration of war is for the purpose of protecting an innocent party from aggression or of removing a threat to peace. As a noted American authority has written:

If there are rules of international law prohibiting war, imposing upon the states the legal obligation not to resort to war, there must be a sanction provided for in case a state resorts to war in violation of this obligation. If there are no effective collective sanctions provided for by an international organization, the only effective sanction is war, that is to say, counterwar as reaction against an illegal war. The counterwar may be resorted to by the state against which the illegal war has been directed—the immediate victim of an illegal war—as well as by third states, assisting the victim in its reaction against the delict . . . War and counterwar are in the same reciprocal relation as murder and capital punishment.<sup>69</sup>

The Arab States' action was thus a counterwar against the initial illegal acts of war on the part of the Zionists. This was confirmed by the message of 15 May 1948 to the U.N. Security Council from the Secretary General of the Arab League. In it, he pointed out that "the Arab States

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(67) Goodwin, *op. cit.*, p. 93.

(68) Menuhin, *op. cit.*, p. 114.

(69) Hans Kelsen, *Principles of International Law*, 2nd. Ed. (New York, 1967), p. 25.

Members of the League, recognizing that the independence and sovereignty of Palestine became a fact upon the termination of the Mandate, were compelled to intervene in Palestine because the disturbances there constituted a serious and direct threat to peace and security within the territories of the Arab States, and in order to restore peace and establish law in Palestine.”<sup>70</sup>

The U.N. Security Council began to carry out its functions under Article 24 of the Charter by issuing calls for a cease-fire on 22 May and 29 May. On 11 June, the Mediator, Count Bernadotte, arranged a four-week truce on the basis of the 29 May call, which both sides declared that they accepted. This Security Council directive specified that both sides should undertake that they would not “introduce fighting personnel” and would “refrain from importing or exporting war material” during the cease-fire.<sup>71</sup>

The Israeli attitude to the question of honouring truces or precepts of international law regarding war is most aptly described by a Zionist writer, Mr. Ben Gurion’s biographer:

Ben Gurion won his greatest victory during that first week of July 1948, when a state of truce was in force. And this turning-point in his career was also the turning-point of the whole war. ‘After 11 June, when the first truce began,’ wrote Ben Gurion later, ‘the initiative passed to us.’ From then on until the end of the war it was the Jews who dictated the course of events. The battles which took place in July would show that the fortunes of war had definitely changed sides.

During the truce the Jews had successfully hoodwinked the United Nations’ observers. Several ships from France and Italy had secretly landed hundreds of tons of war material in Israel. A large number of immigrants had found ways and means of slipping through the net which was strung to prevent any additions to the Jewish population during the truce. New brigades had been formed, equipped and trained in feverish haste, and squadrons of fighters and bombers were manned by volunteers who had come from all parts of the world. When the truce ended, the Israeli armed forces were much stronger than before and could go over to the attack . . . in Ben Gurion’s hands, the army became transformed into an offensive force whose aim was to extend Israel’s frontiers. Ben Gurion still clung to his methods of *faits accomplis*. He had a ready answer to the proposals of United Nations’ missions and other mediators—the positions of the Israeli Army marked the real frontiers of the State.

The original partition plan, which gave the Jews much of the Negev, the coastal plain and eastern Galilee, was only the starting-point of Ben Gurion’s territorial policy. He wanted the rest of Galilee, to extend the coastal plain as far as the Jordan, to have Jerusalem as the capital, and to include the Judean hills . . .<sup>72</sup>

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(70) Official Documents, Pledges and Resolutions. p. 119.

(71) Res. S/50 (1948).

(72) Bar Zohar, *op. cit.*, p. 154.



It is the verdict of many historians that the Israeli violations of that first truce decisively affected the course of the 1948 war. This is borne out by the fact that in the period immediately following the truce, the Israelis embarked on a drive of territorial expansion, seizing the Arab towns of Lydda, Ramle, Nazareth and a number of strategically-located villages. During the truce period, no fresh arms reached the Arab States, who thus lost the initiative because they observed the truce and respected the conditions called for by the Security Council, while the Israelis had no such scruples.

As a result of these Israeli violations, the U.N. Security Council "found that the ignoring of one of its recommendations under Chapter VI (The Pacific Settlement of Disputes) led it on into the territory of Chapter VII (Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression), where its powers of enforcement come into play."<sup>73</sup> The Council called on the parties "to desist from further military and paramilitary action," and added:

Failure by any of the Governments or authorities concerned to comply . . . would demonstrate the existence of a breach of the peace within the meaning of Article 39 of the Charter, requiring immediate consideration by the Security Council with a view to such further action under Chapter VII of the Charter as may be decided upon by the Council.<sup>74</sup>

These bold words remained empty as no action was taken to prevent many subsequent violations of the truce which on 18 July came into force as a result of this resolution. Such violations consisted of the Israelis launching military operations to expand the territory under their control, taking advantage of the fact that the Arab armies' ability to act was hindered by Arab compliance with the directive of the Security Council. The resolution also declared:

The truce shall remain in force in accordance with the present Resolution and with Resolution 50 (1948) of 29 May 1948, until a peaceful adjustment of the future situation of Palestine is reached.

The truce in effect remained in force until 11 August 1949, when the Security Council declared it superseded by the Armistice.<sup>75</sup> Theoretically, whenever such a truce is in force due to a U.N. decision, "resumption of hostilities is, in such cases, legally subject to the action of international

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(73) Nicholas, *op. cit.*, p. 80.

(74) Res. 54 (1948).

(75) Res. 73 (1949).

organs, and not at the discretion of the parties.”<sup>76</sup> Any military action by either party after enforcement of the truce with a view to changing the situation then existing was therefore a contravention of the truce and the Security Council directive. That such contraventions occurred is evidenced by the fact that the Security Council had to issue no fewer than seven cease-fire orders in the immediate period after the second truce came into force. On 19 August 1948, it specified:

No party is entitled to gain military or political advantage through violation of the truce.<sup>77</sup>

Indications of the Israeli attitude to truce obligations and U.N. cease-fire orders can be seen in the map which resulted from the 1948 war. On 14 October 1948 the Israelis broke the truce by attacking and seizing Beersheba and Al Auja area, both of which had been allotted to the Arab State under the Partition Plan and were held by Egyptian forces at the time of the truce. Subsequently, the Israelis were to carry out similar actions even after the conclusion of an Armistice Agreement with Egypt.

It is now generally recognized in international law that conquest is not a legally valid basis for territorial change, and many accepted international documents like the Atlantic Charter and U.N. Charter affirm that territorial changes should only come about through self-determination and that international disputes should not be settled by force. In this particular instance, since the conquest came about through Israeli violation of a truce which the Arabs were upholding, it has even less validity. Such actions are an easy way of making a conquest, but they are certainly not legal, nor are they particularly honourable or courageous. Their purpose was to create a *fait accompli* which would prevent the carrying out of measures recommended by the U.N. Mediator, Count Bernadotte. After discussions with representatives of both sides, Bernadotte issued his progress report on 16 September 1948.<sup>78</sup> In it he stated:

The Jewish state was not born in peace as was hoped for in the Resolution of November 29, but rather . . . in violence and bloodshed.

This hope referred to in the Partition Resolution was probably an

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(76) Julius Stone, *Legal Controls of International Conflict*, 2nd. Imp. (New York, 1959), p. 646.

(77) Res. 56 (1948).

(78) *U.N. Doc. A/648*.

impossible one anyway, as it is difficult to understand how a people can peacefully be dispossessed of their homeland. The 29 November 1947 Resolution had made violence and bloodshed inevitable. Count Bernadotte's terms of reference did not bind him to the letter of the Partition Resolution;<sup>79</sup> however, mediation, specified by Article 33 of the Charter as a means of seeking a solution to a dispute, implies reconciling two opposing views. Where one of these is just and the other is unjust, the attainment of justice through mediation becomes extremely difficult. The Bernadotte plan aimed not at ending an illegal situation, which would have meant calling for the renunciation of the whole idea of partition, but at mitigating some of the more glaring evils caused by that illegality. Thus he "proposed the replacement of the truce by a formal peace or armistice; the revision of the frontiers of the original partition plan and the merger of Arab Palestine with Jordan; an international regime for Jerusalem (with the right of unimpeded access to it); assistance to Arab refugees with recognition of their right to return home and compensation for their loss of property; and the creation of a United Nations Conciliation Commission."<sup>80</sup> His revision of the partition plan was designed to make the areas allotted to the Arab and Jewish States into two homogeneous entities instead of several disjointed ones; thus he recommended that the Negev area be designated Arab and the Jaffa enclave and Galilee be designated Jewish. The Israelis were extremely eager to seize the Negev as "it had strategic advantages. Firstly, it cut off Asia from Africa, leaving no landbridge between Egypt and the Arabs. And secondly, it gave Israel a port on the Red Sea, which at some date in the future would enable her to trade alike with Europe and with Asia, without using the Suez Canal. These were imperialist objectives; the seizure of territory belonging to someone else, in order to strengthen her military and economic position."<sup>81</sup>

The most important aspect of Count Bernadotte's report, in which he did touch on the question of elementary justice and thereby thoroughly annoyed the Israelis, was his statements on the rights of those who had been driven out of their homes by Zionist military force or threats. Notably, he said:

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(79) *Official Records of General Assembly*, 2nd. Special Session, Supplement No. 2, Res. 186 (S-2).

(80) Goodwin, *op. cit.*, pp. 95-96.

(81) Lt.-Gen. Sir J. Glubb, *A Soldier with the Arabs* (New York, 1957), p. 148.

I am deeply concerned with the plight of some 300,000 Arab refugees scattered in Arab countries and Arab-controlled areas of Palestine. Their suffering will be intensified when winter comes. Most of them left practically all of their possessions behind and have no means at their disposal. For humanitarian reasons and because I consider the principle sound and the danger to Jewish security slight, I make the following proposals:

1. That without prejudice to the question of the ultimate right of all Arab refugees to return to their homes in Jewish-controlled Palestine if they desire, the principle be accepted that, from among those who may desire to do so, a limited number, to be determined in consultation with the Mediator, and especially those formerly living in Jaffa and Haifa, be permitted to return to their homes as from 15 August;

2. That, among those who may wish to return, differentiation may be made between men of military age and all others in recognition of security considerations;

3. That the Mediator undertake to enlist the aid of appropriate international organizations and agencies in the resettlement and economic and social rehabilitation of the returning refugees.

These proposals were rejected by the Provisional Government of Israel . . . I reported to the Security Council on the question, reiterating that, notwithstanding the views expressed by the Provisional Government of Israel, it was my firm view that the right of the refugees to return to their homes at the earliest practicable date should be affirmed . . . It is . . . undeniable that no settlement can be just and complete if recognition is not accorded to the right of the Arab refugee to return to the home from which he has been dislodged by the hazards and strategy of the armed conflict . . . There have been numerous reports from reliable sources of large scale looting, pillaging and plundering, and of instances of destruction of villages without apparent military necessity. The liability of the Provisional Government of Israel to restore private property to its Arab owners and to indemnify those owners for property wantonly destroyed is clear.

The publication of such conclusion by the U.N. Mediator caused fear in Israeli circles that with the international prestige he carried, the U.N. might accept his proposals. Accordingly, the day after the report was published, men in Israeli Army uniform assassinated Count Bernadotte in Israeli-occupied Jerusalem. "No action was taken by the Israeli authorities for twenty-four hours to apprehend the murderer. Then Ben Gurion roused himself and took action. Most of the members of the Stern Group were rounded up and many were arrested, but the assassins were never caught."<sup>82</sup> The Stern members were released shortly afterwards. The Israeli authorities piously disassociated themselves from the deed which rid them of the embarrassment of the Mediator's unfavourable recommendations.

Despite Count Bernadotte's unquestioned personal integrity and courage, the United Nations' prior illegal endorsement of partition probably made it impossible for him to offer a really just and workable solution

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(82) Bethmann, *op. cit.*, p. 50.

as a representative of that Organization. Nevertheless, his report achieved something of value, in showing how the Israelis rejected even the slightest demands for a measure of justice for the refugees. This was incontestable proof, for those who still needed it, of the Israeli intention to set up a racially-exclusive state based on the dispossession of the Palestinian people.



## CHAPTER II: THE STATE OF BELLIGERENCY

After Count Bernadotte had been assassinated, some of his proposals were carried out; not, it is true, those proposals which the Zionists considered unfavourable, such as the territorial readjustments to the partition plan or the refugees' right of return. His recommendations for an armistice to replace the truce and the establishment of a Conciliation Commission were implemented, although neither actually worked as he had intended.

The signing of the Armistice Agreements ushered in the period of belligerency, in which activities of hostility were intended to come to a halt, but no peace was established because the problems that had arisen in Palestine were not solved. This was made clear in the texts of the Armistice Agreements, which in fact simply froze the situation as it was, with all the illegalities and injustices it contained. In view of the subsequent Israeli refusal to implement United Nations resolutions or to honour the Lausanne Protocol commitments signed before the Conciliation Commission, no progress could be made towards any solution even of a matter of urgency like the refugees' right of return, let alone the overall problem created by the illegal partition of Palestine. Thus, the refugees waited two decades for justice with no result, and Israeli forces stayed firmly on all the territory they had illegally seized, often in violation of U.N. decisions. Thus, the area they held from the time of the Armistice until June 1967 constituted 77 per cent of the area of the country, as opposed to 56 per cent allotted to them by the Partition Resolution. By freezing the status quo, the Israelis hoped to give the Armistice Demarcation Lines a character of permanent boundaries until they were ready for their next war of expansion.

The situation prevailing in Palestine from 1949 to 1967 was partly due to an attitude much in evidence at the United Nations of stressing the maintenance of peace for its own sake, without placing adequate emphasis on justice or the ending of situations likely to cause further hostilities. The Security Council's natural reaction to threats to the peace, breaches of the peace, and acts of aggression, if they lead to hostilities,

seems to be to call for a cease-fire. While, under Chapter VI, the Council may "make recommendations to the parties with a view to a pacific settlement of the dispute," such recommendations may generally be ignored with impunity. Chapter VII provides for the use of sanctions, including military action "as may be necessary to maintain or restore international peace and security." This, however, would require a unanimity among the Permanent Members that has never yet been achieved on such an issue. The result is that an appeal "at all costs, stop the shooting," may result in higher costs than an immediate continuation of hostilities would have caused: namely a totally unsatisfactory and unjust situation in which lie the seeds of even bloodier future hostilities.

This factor is an open encouragement to an aggressor to strike quickly and occupy a favourable position before a cease-fire can be called, and then to sit tightly on what he has gained in the hope that it will be turned in time into a more favourable status quo. This is a lesson that the Israelis learnt quickly and have applied to their advantage. In the Middle East, justice is generally the first casualty of a cease-fire.

### *1. The Armistice*

The truce which the United Nations intended in July 1948 to halt the fighting in Palestine proved unsuccessful because of persistent Israeli violations of it. By these violations the Israelis managed, in October and December, to extend their territorial annexations southwards in the Negev desert. Security Council directives that forces should be withdrawn from positions not held before 14 October were disregarded by the Israelis, who intended to hold onto the fruits of their truce violations. Accordingly, on 16 November 1948, the Security Council adopted a resolution, in which it decided:

That, in order to eliminate the threat to the peace in Palestine and to facilitate the transition from the present truce to permanent peace in Palestine, an armistice shall be established in all sectors of Palestine.<sup>2</sup>

This armistice was to provide for "the delineation of permanent armistice demarcation lines beyond which the armed forces of the respective parties shall not move," and for "withdrawal and reduction of armed forces."

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(1) *U.N. Doc. S/1044*; Res. 61 (1948).

(2) Res. 62 (1948).



In the period from February to July 1949, four Arab States, Egypt, Lebanon, Jordan and Syria, in that order, signed General Armistice Agreements providing for a cessation of hostilities with the Israelis. These Agreements contained a number of important provisions, as follows:

The injunction of the Security Council against resort to military force in the settlement of the Palestine question shall henceforth be scrupulously respected by both Parties.

No aggressive action by the armed forces—land, sea or air—of either Party shall be undertaken, planned or threatened against the people or the armed forces of the other.

The principle that no military or political advantage should be gained under the truce ordered by the Security Council is recognized.

It is also recognized that no provision of this Agreement shall in any way prejudice the rights, claims and provisions of either Party hereto in the ultimate peaceful settlement of the Palestine question, the provisions of this Agreement being dictated exclusively by military considerations.

The basic purpose of the Armistice Demarcation Lines is to delineate the lines beyond which the armed forces of the respective Parties shall not move.

Wherever villages may be affected by the establishment of the Armistice Demarcation Line, the inhabitants of such villages shall be entitled to maintain, and shall be protected in, their full rights of residence, property and freedom.

The Armistice Agreements also provided for the establishment of demilitarized zones and no-man's land areas. The application of the Agreements was to be supervised by Mixed Armistice Commissions under the Chairmanship of the Chief of Staff of the United Nations Truce Supervision Organization (UNTSO) or a senior official of that organization nominated by him.<sup>3</sup>

These Agreements were arranged through the good offices of the U.N. Acting Mediator Dr. Ralph Bunche, who assumed his post after the Zionist murder of Count Bernadotte. The U.N.'s purpose in bringing about these Agreements, as defined by the texts both of the Agreements themselves and of the resolutions which gave rise to them, was to prevent further outbreaks of violence until a solution of the Palestine problem could be attained. It is idle to speculate whether they could have served their purpose had they been properly observed, for they were never given a chance to function by the Israelis, who began to contravene them in letter and spirit from soon after they had been signed to the present day.

The first such Armistice Agreement was signed by Egypt on 24 Feb-

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(3) *Official Records of General Assembly*, Fourth Session (Special Supplements Nos. 1, 2, 3 and 4).

ruary 1949. Annex 2 Section b of this Agreement specified this line which was to demarcate the Eastern Front:

From point 402 down to the southernmost tip of Palestine, by a straight line marking half the distance between the Egypt-Palestine and Transjordan-Palestine frontiers.

Point 402 was north of the village of Bir Aslup, in the Negev, while the southernmost tip of Palestine was the point of contact of the Egypt-Palestine frontier and the Red Sea coast, near Taba. This meant that the Armistice Agreement excluded from Israeli control the eastern part of the Negev desert down to and including the short stretch of coastline of Palestine on the Red Sea. The Arab village of Umm Rashrash and the site of the present Israeli port of Eilat came within this area from which the Israelis were excluded by this Armistice. The area in question was then defended by Jordanian troops.

On 10 March 1949, just over two weeks after signing this Armistice, the Israelis violated it by attacking and seizing this area and taking control over the eastern Palestinian Negev and the Red Sea coastal stretch. As well as contravening the Egypt-Israel Armistice, the Israeli action was also a disregard for numerous Security Council cease-fire directives and a violation of the truce which had been accepted by both sides on 18 July 1948 and was supposed to be in force. These facts are extremely important to bear in mind, as this particular Israeli action was to have wide repercussions, whose rights and wrongs have not been generally clearly understood. The existence of the Security Council cease-fire directives, the truce and the Egypt-Israel Armistice Agreement demolishes any claims by the Israelis that they had any legal right to establish their presence in the eastern Palestinian Negev or on the Red Sea coast.

As essential point which is often ignored and which led to frequent violations, and in June 1967 to a total breakdown, of the Armistice is that the Israelis never intended it to fulfil its stated purpose. This purpose, as the Security Council stated on 16 November 1948, was "to eliminate the threat to peace in Palestine and to facilitate the transition from the present truce to permanent peace." It was on the basis of the Security Council definition that the Arab States understood and accepted the Armistice. The Agreements established a demarcation line, as well as demilitarized zones, no man's land areas and defensive areas, in an

effort to deter further outbreaks of fighting. The Armistice did not establish borders, and it is therefore incorrect to use the term "borders of Israel," as no such borders have ever been created or recognized in any valid instrument of international law. Likewise, the Armistice did not attempt to solve the Palestine problem or establish a permanent status quo, but to "facilitate the transition from truce to permanent peace." Their aim was, therefore, to leave the situation in suspended animation and prevent further hostilities until, by some unspecified and probably miraculous means, conditions enabled a just and satisfactory peace to be attained. The Agreements pass no judgements on the rights or wrongs of the issue, and in fact specify that "no provision . . . shall in any way prejudice the rights, claims and position of either Party hereto in the ultimate peaceful settlement of the Palestine question."

After the Agreements had been signed, the Israelis began to refer to the Armistice Demarcation Lines as the "borders of Israel" from which they would not retreat. In the words of the Israeli Ambassador in London, "Israel does not admit any claims on the part of the Arabs, whether alone or supported by other powers, to any of the territory Israel now holds."<sup>4</sup> This was a "heads I win, tails you lose" argument, as the Israelis in the June war had no objection to altering these so-called borders to their own advantage. In this way, they showed that they had merely accepted the Armistice in order to consolidate their gains and to give a permanent character to what they had seized by force. Furthermore, they alleged that the Armistice had now ended the state of war, and that the Arab States should conclude peace treaties. This allegation clearly had no basis either in the Agreements themselves or in the U.N. decisions which had led to them. This Israeli position also differed from the concept of an armistice as generally accepted by the leading authorities in international law.

A distinction must be drawn between the termination of hostilities and the termination of war. Whereas the termination of war necessarily implies the termination of hostilities, the termination of active hostilities between belligerents does not necessarily imply the termination of war. Thus the conclusion of a general armistice, even though resulting in the suspension of all armed operations, does not of itself bring war to an end . . . Even if it suspends all active hostilities for an indefinite period, an armistice does not restore all of the relations of the belligerents to a peacetime basis.<sup>5</sup>

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(4) *The Times* (London), 12 November 1955.

(5) Kelsen, *op. cit.*, p. 92.

In the words of a distinguished authority from Cambridge:

Armistices or truces, in the wider sense of the term, are all agreements between belligerent forces for a temporary cessation of hostilities. They are in no wise to be compared with peace, and ought not to be called temporary peace, because the condition of war remains between the belligerents themselves, and between the belligerents and neutrals, on all points beyond the mere cessation of hostilities.<sup>6</sup>

The nature of an armistice, as distinct from a peace treaty, can be very clearly defined thus:

An armistice is a war convention, that is, an agreement or contract concluded between belligerents. Its primary and traditional purpose is to bring about a temporary suspension of active hostilities. A truce, to all intents and purposes, is identical with an armistice although in former days it usually had a shorter duration. While particular armistices, more commonly termed 'truces,' call for cessation of hostilities in a portion of a theatre of war, general armistices cause a general temporary cessation of hostilities between the belligerents concerned . . . From the days of Greece and Rome until today, writers, statesmen, and military men have been of the same opinion that neither type of agreement resulted in the termination of a state of war. The courts of numerous states have affirmed equally that the conclusion of an armistice does not end a war.<sup>7</sup>

Any such arrangement designed to halt hostilities needs an essential condition to be fulfilled if it is to function according to its avowed purpose: namely, a desire by both sides to observe the terms of the arrangement. If one side wishes to halt the hostilities while the other continues to have hostile intentions, one can be reasonably sure that sooner or later the arrangement will break down. This happened in the case of the Armistice Agreements in question, as the cases in the next section will demonstrate.

## 2. *Israeli Violations of the Armistice*

Israeli actions, shortly after the signing of the Agreements, revealed the Israelis' motivations in concluding them: not a desire to see peace restored to the region, but rather an intention to consolidate what they had gained militarily in the 1948 war, and also to secure further gains politically which they had been unable to obtain by military means. The Israelis' attitude to the Armistice can be summed up as one of seeking to gain the maximum advantage out of it. Where this necessitated contra-

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(6) L. Oppenheim, *International Law*, Vol. II (7th ed. New York, 1952), pp. 546-547.

(7) Gerhard von Glahn, *Law Among Nations* (New York, 1965), p. 575. See also U.S. Dept. of the Army, *The Law of Land Warfare*, Para. 479.

vention of its provisions, they simply contravened them and established a new status quo more advantageous to themselves. This is well illustrated by Israeli actions in the Demilitarized Zones. As a typical example, we may take those zones on the Syria-Israel Armistice Demarcation Line.

The Syria-Israel Armistice Agreement of 26 July 1949 provided for Demilitarized Zones on the eastern shore of Lake Tiberias and to the north and south of Lake Hula. Article V, Paragraph 5 (a) stated:

Where the Armistice Demarcation Line does not correspond to the international boundary between Syria and Palestine, the area between the Armistice Demarcation Line and the boundary, pending final settlement between the Parties, shall be established as a Demilitarized Zone from which the armed forces of both Parties shall be excluded and in which no activities by military or para-military forces shall be permitted.

Paragraph 5 (e) of the same Article stated that the Chairman of the Mixed Armistice Commission is empowered "to authorize the return of civilians to villages and settlements in the Demilitarized Zone and the employment of limited numbers of locally recruited civilian police in the Zone for internal security purposes."

Paragraph 2 had also provided for "the gradual restoration of normal civilian life in the area of the Demilitarized Zone."

The status of the Demilitarized Zones had been clearly defined by the U.N. Acting Mediator, Dr. Ralph Bunche:

Under the provisions of the Armistice Agreement, neither party could validly claim to have a free hand in the demilitarized zone over civilian activity, while military activity was totally excluded.<sup>8</sup>

The Demilitarized Zones contained Arab villages. Far from allowing the return of inhabitants displaced by the war, the Israelis in fact began deporting those villagers who still remained. Thus, for example, 785 Arabs were expelled from their homes on the night of 30-31 March 1951.<sup>9</sup>

The Israelis refused to attend a meeting of the Mixed Armistice Commission to consider Syria's complaint, and alleged that the Zones were Israeli territory. The U.N. Chief of Staff, General Riley, gave the Security Council his interpretation of the status of the Zones as established by the Armistice. His conclusion was: "It follows, that neither party to

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(8) Quoted in Report by General Vagn Bennike (General Riley's successor as U.N. Chief of Staff) to Security Council, 27 October 1953.

(9) *Ibid.*

the Armistice Agreement therefore enjoys rights of sovereignty within the zone."<sup>10</sup>

The situation having led to fighting, the Security Council on 18 May 1951 adopted a resolution. This, *inter alia*, declared that the Israeli refusal to attend Mixed Armistice Commission meetings was "inconsistent with the objectives and intent of the Armistice Agreement." It also stated:

That Arab civilians who have been removed from the Demilitarized Zone by the Government of Israel should be permitted to return forthwith to their homes and that the Mixed Armistice Commission should supervise their return and rehabilitation in a manner to be determined by the Commission (and) that no action involving the transfer of persons across international frontiers, armistice lines or within the Demilitarized Zone should be undertaken without prior decision of the Chairman of the Mixed Armistice Commission.<sup>11</sup>

Despite this clear vindication of the Syrian position, nothing was done by the U.N. to ensure compliance with the Armistice Agreement. On the contrary, throughout the 1950's, the Israelis were able to militarize the Zone. "The Israelis in fact exercised almost complete control over the major portion of the demilitarized zone through their frontier police in the area. This was directly contrary to Article V of the GAA and the 'authoritative interpretation' of it (by Dr. Bunche) which formed part of the proceedings of the committee negotiating the armistice . . . The frontier police in Israel are more than an ordinary police-force, concerned with the enforcement of the internal laws of the state. They are a paramilitary force . . . They have pistols and rifles, which is normal armament for police in the Middle East, but they also have machine-guns and mortars, which they frequently deploy and use. They are all trained soldiers. Hence their introduction into the demilitarized zone was essentially a violation of the demilitarization principle, although not perhaps one easy to demonstrate with legal precision."<sup>12</sup>

Incidents became increasingly serious. On 11 December 1955, "several companies of Israeli troops crossed the demarcation lines at the northern end of Lake Tiberias, and attacked Syrian military posts at Buteiha Farm and Koursi, some eight kilometres to the south. Some troops forded the Jordan River; some crossed by boats; another small

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(10) *U.N. Doc. S/2049*, Section IV, Para. 3.

(11) Res. 93. (1951).

(12) Lt.-Gen. E.L.M. Burns, *Between Arab and Israeli* (London 1962), p. 114. General Burns was General Bennike's successor.

force, including armoured vehicles, advanced northward from the Israeli settlement of Ein Gev, on the east shore of the lake. The attack was covered by mortar and heavy machine-gun fire."<sup>13</sup> On 19 January 1956 the Security Council condemned the attack as a "flagrant violation of the cease-fire provisions of its resolution 54 (1948), of the terms of the General Armistice Agreement between Israel and Syria, and of Israel's obligations under the Charter of the United Nations."<sup>14</sup> The casualties given by the U.N. Chief of Staff were, on the Syrian side, three officers and 38 other ranks killed, seven policemen and eight civilians (including three women) killed; nine wounded and 32 missing.<sup>15</sup>

General Carl von Horn, who became U.N. Chief of Staff in 1958, related that he was given "advice" by the Israeli Foreign Office shortly after his appointment. "The gist of the advice 'to assist me in my task' was that I should refrain from sticking to the rules of the Armistice Agreement,"<sup>16</sup> he wrote. This encounter was followed by further Israeli provocations in the Demilitarized Zone including the total destruction of the village of Tawafiq. The Israelis were again condemned by the Security Council on 9 April 1962 for aggression against Syria.<sup>17</sup>

According to the Jordan-Israel Armistice Agreement, two No-Man's Land areas, one in Jerusalem and one in the Latrun region, and two Demilitarized Zones, both in Jerusalem, on Mount Scopus and Jabal Al Mukabbir, were established. The Mount Scopus Zone had been fixed in an earlier agreement signed between the Jordanian and Israeli military commanders in Jerusalem on 7 July 1948. It contained the Hebrew University and Hadassa Hospital, and the Augusta Victoria Hospital, which came to be used for refugees. The Israeli-held installations on Mount Scopus could easily have been captured by Jordanian forces, who were dissuaded from doing so by the promise that the area would be demilitarized and placed under U.N. protection.<sup>18</sup> This was written into the Agreement, to which the U.N. was a third party.<sup>19</sup> The Zone was to be under a U.N. commander and garrisoned only by Jordanian and Israeli civilian police. The Agreement provided, under U.N. supervision,

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(13) *Ibid.*, pp. 107-108.

(14) Res. 111 (1956).

(15) Burns, *op. cit.*, p. 108.

(16) Gen. Carl von Horn, *Soldiering for Peace* (London 1966), p. 75.

(17) Res. 171 (1962).

(18) Hadawi, *op. cit.*, pp. 128-129; Glubb, *op. cit.*, p. 146.

(19) Full text in E.H. Hutchison, *Violent Truce* (New York, 1956), pp. 151-153.

for supplies and relief of personnel for the Israeli institutions in the Zone, which was within the Jordanian side of the Demarcation Line.

The Agreement soon came to be violated by the Israelis, who declared the Hebrew University and Hadassa Hospital an "enclave of Israel" and denied U.N. personnel access. They also used this area as a point for sniper fire at people on the Jordanian side of the Demarcation Line.<sup>20</sup> Even more serious were their attempts to militarize the Zone contrary to the Agreement. A U.N. Observer, Commander Hutchison, stated that on 4 June 1952, an Israeli supply and relief convoy to Mount Scopus was being checked by U.N. guards before crossing the Demarcation Line through Jordanian territory. One guard checking oil barrels struck a metal object in one of them with his test rod. He had the barrel removed from the truck on which it was loaded, whereupon the Israelis pushed the truck out of the reach of U.N. personnel so that its load could not be checked further. In Commander Hutchison's own words, "before the cutting tools could be obtained, the Israelis, in direct violation of the Armistice Agreement, moved soldiers into no-man's land and demanded the return of the remaining barrel."

The barrel was taken to the Mixed Armistice Commission Office, to be held pending orders from the Chief of Staff, General Riley. All members of the UNTSO present, according to Commander Hutchison, felt it should be opened and its contents thoroughly inspected. This was also the Jordanian view. Orders then came from General Riley that the barrel should be cut open.

Half an hour before the opening was due, Israeli troops broke into the Mixed Armistice Commission Office and barred access to the room in which the barrel was held. They placed another lock on the door of that room and also removed the key of the Commission's building. General Riley subsequently condemned the Israeli forces' action, but the barrel was not opened for a thorough search. Only a further rod test was carried out, and General Riley then returned the barrel to the Israelis, with the comment that it contained "extraneous matter." It is worth noting Commander Hutchison's summary of the incident:

Israel was guilty of falsifying records submitted to the United Nations; Israel was guilty of attempted smuggling and had revealed to the world it was contravening the Mount Scopus Agreement; Israel had ignored the inviolability of the United Nations Mixed Armistice Commission Headquarters

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(20) Hadawi, *op. cit.*, pp. 129-130.



and had taken it over by armed force; Israel had broken the General Armistice Agreement by ordering troops into no-man's land. All of this should have been flashed round the world—not only by Jordan but by the United Nations. Instead, the United Nations kept quiet.<sup>21</sup>

Commander Hutchison, an American officer who served a period as Mixed Armistice Commission Chairman, cannot be accused of anti-Israeli bias; indeed the whole tone of his writing indicates his objectivity and impartiality. He testified further that on 13 December 1952, Israeli troops tried to smuggle a quantity of ammunition across the Demarcation Line to Mount Scopus. It included 1,000 rounds of rifle ammunition, 2,000 rounds of Sten ammunition, six 81 mm. mortar shells, six 2" mortar shells, 24 grenades, electric batteries and detonators. The smuggling was thwarted when the Israelis were intercepted by the Jordanian National Guard. The Mixed Armistice Commission condemned this Israeli violation of the Mount Scopus Agreement.<sup>22</sup>

Successive Chiefs of Staff of the UNTSO attempted to assert the U.N.'s authority over this Demilitarized Zone as provided for by the Agreement, and in particular to carry out a thorough inspection to ensure that the Zone was not being militarized. As General Burns wrote:

In the course of the six years that had elapsed since the signing of the agreement up until when I took over as Chief of Staff UNTSO, there had been a gradual erosion of the observance of the terms of the agreement . . . The principal point at issue, when I came, was that the Jordanians were sure that the Israelis had improved the fortifications around the buildings, and had brought in considerable additional munitions and warlike stores. They wanted me to conduct a thorough inspection of the premises, to determine that no such violations of the agreement had occurred—or to correct them, if they had. The Israelis after a while agreed to my inspection, but they did not produce the keys to the doors of several rooms in the hospital, which might have contained munitions or arms. It was pretty certain that they had smuggled a good deal of stuff in, from one or two attempts that were detected . . .

The significance of all this was that Mount Scopus absolutely dominated the roads into Jerusalem from the east (the Jordan) and the north (Ramallah and Nablus). Jerusalem was the nexus of all important roads connecting the larger towns in the Arab-held Palestine. If the Israelis could connect up with the sort of fortress held by the detachment of Israeli police (who were probably soldiers) they would dominate and could eventually compel the surrender of Jerusalem, and probably cause the collapse of Jordanian control of the area west of the Jordan River . . . The seizure of Mount Scopus, if the politically favourable moment arrived, would be equivalent to guaranteeing their eventual control of the whole of Jerusalem—a scarcely concealed objective of the State.<sup>23</sup>

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(21) See Hutchison, *op. cit.*, pp. 20-29 for a full account of the barrel incident.

(22) *Ibid.*, pp. 39-41.

(23) Burns, *op. cit.*, p. 158.

The June war proved that General Burns was all too accurate at predicting the future.

The Israelis also attempted to exert sovereignty over the Jabal Al Mukabbir Demilitarized Zone in which the UNTSO Headquarters was located. These encroachments reached a point where the Security Council on 22 January 1958 had to assert that "the status of the zone is affected by the provisions of the Israel-Jordan General Armistice Agreement and that neither Israel nor Jordan enjoys sovereignty over any part of the zone (the zone being beyond the respective demarcation line)."<sup>24</sup>

A similar situation grew up on the Egyptian Demarcation Line. Article VIII, Paragraph 1 of the Egypt-Israel Armistice stated that "the area comprising the village of El Auja and vicinity shall be demilitarized, and both Egyptian and Israeli armed forces shall be totally excluded therefrom." Israeli forces shortly afterwards occupied Bir Qattar within the Zone, and also expelled a number of people from the Zone. According to General Riley, the Israeli military drove out some 4,000 people on 2 September 1950, and expulsion operations had involved the use of armoured cars, the burning of these people's property and the killing of 13 persons.<sup>25</sup> After some wrangling, during which the occupation of Bir Qattar was condemned by the Mixed Armistice Commission, the Israelis promised to withdraw their forces. On 17 November 1950 the Security Council called upon "the Governments concerned to take in the future no action involving the transfer of persons across international frontiers or armistice lines without prior consultation through the Mixed Armistice Commissions," and took note "of the statement of the Government of Israel that Israel armed forces will evacuate Bir Qattar pursuant to the 20 March 1950 decision of the Special Committee, provided for in Article X, paragraph 4, of the Egyptian-Israel General Armistice Agreement, and that the Israel armed forces will withdraw to positions authorized by the Armistice Agreement."<sup>26</sup>

The Israeli failure to comply regarding expulsion of inhabitants was indicated by General Bennike's statement that a total of 6,000-7,000 people had been driven out of the El Auja Zone by May 1951; and that a further 200-250 were driven out in 1953.<sup>27</sup> The familiar pattern was

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(24) Res. 127 (1958).

(25) *U.N. Doc. S/1797*.

(26) Res. 89 (1950).

(27) *U.N. Doc. S/PV 635*, pp. 27-28.

followed of an Israeli claim to sovereignty over the Zone, in a letter to the Mixed Armistice Commission Chairman,<sup>28</sup> the establishment of a paramilitary kibbutz, the entry of Israeli "police," and on 21 September 1955 the re-militarization of the Zone "because it was the strategic intersection of all key roads leading into the heart of the Sinai desert, on the way to the Suez Canal."<sup>29</sup> This last act transpired as a sort of opening shot to the invasion of Sinai the following year. It was accompanied by the Israeli seizure of the Mixed Armistice Commission Headquarters and the capture of the Commission's Egyptian personnel, two of whom were wounded.<sup>30</sup> Having in effect annexed the Zone, the Israelis from then on prevented the holding of meetings of the Mixed Armistice Commission in its Headquarters there.<sup>31</sup>

While the militarization of the Demilitarized Zones constituted a "flagrant violation" in the wording of all the relevant Armistice Agreements, the Israeli actions in El Auja went even beyond those in the Demilitarized Zones on the Jordanian and Syrian Demarcation Lines. For the Israeli seizure of El Auja involved, in addition, an attack on the Mixed Armistice Commission Headquarters and its personnel. With the expulsion of the Commission from the Zone, the Israelis in effect made the machinery for the carrying out of the Armistice Agreement with Egypt inoperative. That this was their deliberate intent was shortly proven. While all the Israeli encroachments on the Demilitarized Zones led to bloodshed, the seizure of El Auja was, as noted earlier, the prelude to the most serious of all Armistice violations prior to June 1967: namely, the 29 October 1956 invasion of Sinai.

Shortage of space does not permit a full discussion of all the events leading up to that violation. It was doubly deplorable in that the Israeli action was aided and abetted by Britain and France, two of the signatories to the May 1950 Tripartite Declaration, in which, together with the United States, they had declared "their unalterable opposition to the use of force or threat of force between any of the states in that area (i.e. the Middle East), and that, consistently with their obligations as members of the United Nations, they would immediately take action, within and outside the United Nations, to prevent any attempt by either

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(28) *Ibid.*, p. 36.

(29) Menuhin, *op. cit.*, p. 173.

(30) Burns, *op. cit.*, p. 95.

(31) *Ibid.*, p. 149.

side to violate frontiers' (sic).<sup>32</sup> Far from taking action to prevent such a violation, they in fact encouraged it by joining the attack against the victim of the aggression, Egypt.<sup>33</sup> The British and French Governments' "unalterable opposition to the use of force" altered very quickly when it was a matter of preserving their economic privileges against the Egyptian people's perfectly legitimate assertion of sovereignty over their own economic resources.

The Israelis unilaterally declared their abrogation of the Armistice with Egypt and their intention to hold Sinai and the Gaza Strip. In the words of Mr. Ben Gurion, "the Armistice with Egypt is dead; as are the armistice lines, and no wizards or magicians can resurrect these lines."<sup>34</sup> The Israelis "asked for the U.N. personnel of the Mixed Armistice Commission to be withdrawn from the Strip, on the grounds that as the armistice no longer existed there were no functions for them."<sup>35</sup> The U.N. Secretary General resisted these demands, and General Burns related that the Israelis imposed restrictions on the U.N. Observers and broke into their office in Gaza and removed their radio transmitter.

On 2 November the U.N. General Assembly called for an immediate cease-fire and urged "the parties to the armistice agreements promptly to withdraw all forces behind the armistice lines, to desist from raids across the armistice lines into neighbouring territory, and to observe scrupulously the provisions of the armistice agreements."<sup>36</sup> The United Nations had to repeat its call for withdrawal in no less than ten resolutions before the Israelis complied.<sup>37</sup> Even so, they attempted to extort conditions for their withdrawal. On 20 February 1957, President Eisenhower commented on this:

If we agree that armed attack can properly achieve the purposes of the assailant, then I fear we will have turned back the clock of international order. We will have countenanced the use of force as a means of settling international differences and gaining national advantages . . . If the United Nations once admits that international disputes can be settled by using force, then we will have destroyed the very foundation of the organization, and our best hope for establishing a real world order.

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(32) *Ibid.*, pp. 297-298, note 13.

(33) For details of Anglo-French-Israeli collusion described by a British Minister at that time, see Anthony Nutting, *No End of a Lesson* (London 1967).

(34) *New York Times*, 8 November 1956.

(35) Burns, *op. cit.*, p. 184.

(36) Res. 997 (ES-I).

(37) Resolutions 998-1003 (ES-I); 1120 (XI); 1123-1125 (XI).

It would have been well had President Eisenhower's predecessor, and the United Nations, applied this principle in 1947 and 1948.

### 3. *The Israeli Policy of "Reprisals"*

From the signing of the Armistice Agreements up to the present day, the Armistice Demarcation Lines, and the cease-fire lines subsequent to the June war, have mainly been the scene of tension and repeated clashes, apart from the Egyptian Demarcation Line from 1957 to 1967 when the U.N. Emergency Force maintained a period of quiet. These clashes have been the most common form of Israeli Armistice violation. In an attempt at self-justification, the Israelis have termed such clashes "reprisals" by Israeli forces for alleged attacks by Arabs on Israeli personnel or installations.

Let us take a parallel from criminal law to illustrate the logic of this. One night a thief broke into a house and began to steal whatever he could find of value. The owner of the house, normally a well-behaved and law abiding person, used physical force in an attempt to protect his property and expel the thief, who drew out a pistol and shot at him. Neighbours attempting to come to the householder's aid were similarly fired at. The thief maintained he was perfectly justified in his action, since he was the victim of a violent attack and only shot in self-defence.

Such incidents are common in criminal law in all countries, and a judge would not normally take a lenient view of the thief's behaviour or accept his justifications for it. If we lift this case from the realm of criminal law into that of international law and multiply its size by over a million times, it is a valid illustration of the Palestine problem.

It must be recalled that the Israelis seized Palestinian territory from its inhabitants in 1948. Despite the courageous attempts of the Liberation Army (assisted by the Arab States' forces after 15 May 1948), the Palestinians did not have the Zionists' advantage of help from the imperial powers, and were unable to prevent the loss of a large part of their homeland and the dispossession of the majority of the people. After the conclusion of the Armistice, the Israelis claimed that many of the dispossessed inhabitants were attempting to "infiltrate" back to their homeland and "causing incidents." "The reasons for this behaviour are not far to seek. People usually love their home and if they are obliged to leave it in time of emergency, they mostly come back when the emergency is over. This is especially true of people who have no other homes to go

to and who, as is the case of the Arab refugees, are living herded together in the proximity of their former homes in the most adverse conditions of poverty and congestion . . . The Israeli government has always taken a stern attitude towards the Arabs who try to come back. They are treated with a severity which is amazing in view of the fact that most of the Israelis are former refugees themselves.”<sup>38</sup>

It is true that the Armistice Agreements contained clauses prohibiting civilians from crossing the Demarcation Lines, and in the years after the conclusion of the Armistice, the Mixed Armistice Commission noted various instances of persons from the Arab side crossing the Demarcation Lines. These incidents generally followed a pattern of refugees crossing to land which they lawfully owned and might have inherited from their ancestors, often in an attempt to retrieve some of their property which they had left behind when they had been expelled. However, these refugees, whose crossing of the Demarcation Line was described as illegal by the Israelis, had had their right to return home affirmed by a U.N. General Assembly decision which the Israelis refused to implement, and which will be examined in detail below.<sup>39</sup> For a Palestine refugee to cross the Demarcation Line to return to his home cannot therefore be described as illegal, but rather as his personal attempt (albeit amateurish) to implement a U.N. Resolution. For the Israelis to demand a rigid application of the Armistice Agreement against the people whose rights affirmed by a U.N. Resolution they refuse to respect is, to say the least, to apply a double standard of international law. For the Israelis then to draw the conclusion that they have a right to retaliate against neighbouring Arab countries for any action the Palestinians may take as a result of their exclusion from their homeland is to carry the thief’s logic of self-defence to its extreme. It is as if the thief exacted reprisals from the house-owner’s neighbours when the house-owner legally sought to recover his stolen property.

The term “reprisal” is misleading, because it was the Israelis who committed the initial wrong of forcibly seizing Palestine. If anyone has a right of reprisal, it is the Palestinians. Let us, however, examine how the Israelis exercise what they term their “right of reprisal.”

The majority of serious incidents on the Demarcation Line have in fact been caused by the Israelis. For example, the Jordan-Israel Mixed

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(38) *Jewish Newsletter*, 6 July 1953.

(39) Res. 194 (III) of 11 December 1948. See Chapter Four, Section 1 below.

Armistice Commission, under a U.N.-appointed Chairman, between June 1949 and 15 October 1954, passed 95 condemnations on the Israelis for violations as against 60 on Jordan. In the same period, the Commission verified that firing across or crossing the Demarcation Line from the Jordanian side caused 34 Israeli deaths, while Israeli violations of the Line caused 127 Jordanian deaths, almost four times as many.<sup>40</sup> General Burns noted that in 1955 and the first nine months of 1956 on all the Demarcation Lines, "the grand total for the twenty-one months showed that Israel had 121 killed, while the Arab States had 496 killed. Israel's retaliatory policy had piled up an impressive balance of corpses in her favour."<sup>41</sup>

Commander Hutchison described a typical Israeli "reprisal," the 6 January 1952 attack on Bait Jala, in which three houses were destroyed. In the first house, they blew up a man and his wife, in the second house, they fired at a pregnant woman who was trying to escape, killing the child in her womb. In the third house, Commander Hutchison related, "a father and his eleven-year-old son, hearing the explosions in the distance, rushed out to see what was happening. As they rounded the house, shots rang out and the boy received a bullet through the arm. The others of his family did not fare so well. The attackers, unable to detonate the large packs of TNT blocks, abandoned them and threw hand grenades in through the open door. As a parting gesture they sprayed the room with rifle and sten gun fire. On entering this room we were brought up short—no person could live long enough to become calloused to such a sight. The mother and her four children, ranging in age from 6 to 14, were sprawled about the room—their bodies riddled by bullets and grenade fragments."

The Israelis claimed that this attack was in revenge for the assault and killing of an Israeli woman. Commander Hutchison wrote:

Nothing, however, had been found to indicate that Jordanians had committed this atrocity. The case had not been discussed by the Commission. Major Loreaux expressed the opinion that the Israeli police would have a better chance of finding the killer than the Arabs would.<sup>42</sup>

Thus it seems this incident, for which the Israelis claimed the right to wreak vengeance on innocent villagers, almost certainly had nothing

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(40) Hutchison, *op. cit.*, pp. 91-92.

(41) Burns, *op. cit.*, p. 174.

(42) Hutchison, *op. cit.*, pp. 12-16. Major Loreaux was a U.N. Observer.

to do with Jordan, being most likely an Israeli-committed crime of the sort handled by police in all countries.

On 27 October 1953 General Bennike submitted a report to the Security Council on events on the Jordan-Israel Demarcation Line, stating:

On 28 and 29 January, Israeli military forces estimated at 120 to 150 men, using 2" mortars, 3" mortars, PIAT (Personnel-Infantry-Anti-tank weapons), Bangalore torpedoes, machine guns, grenades and small arms, crossed the demarcation line and attacked the Arab villages of Falame and Rantis. At Falame the mukhtar was killed, seven other villages were wounded and three houses were demolished. The attack lasted 4½ hours. Israel was condemned for this act by the Mixed Armistice Commission . . .

On the night of 11 August 1953, Israeli military forces using demolition mines, Bangalore torpedoes, 2" mortars, machine guns and small arms, attacked the villages of Idna and Surif and Wadi Fukin, inflicting casualties among the inhabitants and destroying dwellings. The Mixed Armistice Commission condemned Israel for these attacks.<sup>43</sup>

The Israeli massacre of Qibya on 14-15 October was one of the most serious. General Bennike described the investigation by the Mixed Armistice Commission Acting Chairman as follows:

On reaching the village, he found that between 30 and 40 buildings had been completely demolished, among which were the school, the water pumping station, the police station and the telephone office . . . Bullet-riddled bodies near the doorways, and multiple bullet hits on the doors of the demolished houses indicated that the inhabitants had been forced to remain inside until their houses were blown up over them. There were several small craters along the western perimeter of the village and the tails of 2" mortar shells were found. Four gaps, approximately three metres in width, had been blasted in the barbed wire protective fence surrounding the village. Fragments, easily identifiable as parts of Bangalore torpedoes, were found near these gaps. By the time the Acting Chairman left Qibya, 27 bodies had been dug from the rubble. The villagers were digging for others they claimed were still buried beneath the building stones . . . Witnesses were uniform in describing their experience as a night of horror, during which Israeli soldiers moved about in their village, blowing up buildings, firing into doorways and windows with automatic weapons, and throwing hand grenades.<sup>44</sup>

On 28 August 1953, the Israelis attacked Al Burajj refugee camp in the Gaza Strip. General Bennike stated:

Bombs were thrown through the windows of huts in which refugees were sleeping and, as they fled, they were attacked by small arms and automatic weapons. The casualties were 20 killed, 27 seriously wounded, 35 less seriously wounded. The Mixed Armistice Commission, in an emergency meeting, adopted by a majority vote a resolution according to which the attack was made by a group of armed Israelis. A likely explanation is that

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(43) *Ibid.*, pp. 155-156.

(44) *Ibid.*, p. 157.



it was a ruthless reprisal raid. This seems probable in view of the fact that a quarter of the Israeli complaints during the preceding four weeks referred to infiltration in the area.<sup>45</sup>

The prelude to an Israeli massacre was a complaint of incidents—some real, some imaginary, some totally unconnected with the country against which the attack was subsequently launched. Thus, on 13 November 1966 a brigade of Israeli infantry with 50 tanks, supported by an artillery regiment, and 24 Mirage jets covered by 60 Mysteres attacked the village of Sammua, south of Hebron.<sup>46</sup> The Israelis justified this raid, resulting in some 50 deaths, by saying it was a reprisal for operations by commandos who, the Israelis alleged, were operating from Syria. A British newspaper described this raid as characterized by "political futility" and "brutality," and noted that "Jordan had made determined efforts to keep the peace along the border."<sup>47</sup>

It was inevitable that, with no real efforts being exerted to correct the wrongs done to the Palestinian people, and with Israeli attacks resulting in a steadily growing number of innocent victims, the incidents of individual infiltration should give place eventually to organized acts of resistance. It was the natural response of the Palestinians as they became aware that they alone could enforce justice by taking up arms, since no other authority was prepared to do it for them by any other means. This awareness became crystallized in the launching of the first operation by al-Asifah, the military branch of the Palestinian National Liberation Movement (Fateh) on 1 January 1965. The question of resistance in international law will be examined further.<sup>48</sup> It is enough to state here that resistance is a fully recognized right for any people whose country has been forcibly seized and occupied. Nor can the Palestinian people's exercise of that right be considered as contrary to the 1949 General Armistice Agreements, since the Palestinian people and their resistance organizations are not parties to those Agreements. The obligation to observe the Armistice is binding only on those who signed it, namely the Governments of Syria, Egypt, Jordan and Lebanon, and the Israeli authorities.

Furthermore, reprisals by belligerents are admissible only in response to acts of illegitimate warfare.<sup>49</sup> Since the resistance of a people to armed

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(45) *Ibid.*, p. 168.

(46) *The Times*, 16 November 1966.

(47) *The Observer* (London), 20 November 1966.

(48) See Chapter Seven, Section 1, below.

(49) Oppenheim, *op. cit.*, (7th ed.), Vol. II, p. 561 f.

occupation is not illegitimate warfare, it follows that the occupying authority cannot claim a right of reprisal on that ground. Finally, even where reprisals are admissible, they have to be directed against the state responsible for the act for which they are being exacted, not against a third party which is not responsible. The Arab States have no responsibility for the actions of the Palestinian Resistance, which is entirely independent and not answerable to any state.

While the Israelis have no right of reprisals against Arab States because of operations by the Palestinian Resistance, their argument that they can retaliate for the Arab States' failure to prevent so-called infiltration is also, to say the least, highly questionable. The matter of "infiltration" has already been discussed in the light of the Israelis' refusal to implement Resolution 194 (III) on the right of refugees to return; likewise the fact that the Israelis initiated the chain of violence by seizing Palestinian territory in 1948, and have been guilty of by far the greater part of Armistice violations.

While a very clear distinction must be drawn between the aggressor and the victim, a further distinction must also be drawn between two types of action which are both technically called Armistice violations. If an Arab State fails to prevent, say, a refugee farmer from crossing the Demarcation Line to gather fruit in his own orchard which has been seized by the Israelis, that Arab State, technically, has not observed that Article in the Armistice Agreement which forbids civilians from crossing the Line. The majority of "violations" from the Arab side have been of this nature. They are totally different from a crossing of the Line by a large regular army force which massacres a village—the common Israeli type of violation.

Jordan, from the time of signing the Armistice, was extremely concerned to avoid clashes, for two reasons. First, she felt bound by the Agreement, and secondly, she had a number of towns and villages along the Demarcation Line which were extremely vulnerable to attack. The Israelis had no such scruples about honouring agreements, and they had the resources to convert all the villages they held near the Line into well-defended fortresses. Thus "in the ten months from December 1949 to October 1950, 117 incidents of crossing the demarcation line (or of firing across it) were carried out by Israeli forces in uniform. During the same period, not one incident of the crossing of the line by men of the Arab Legion was reported . . . The basic difference between the two sides

continued. From the Jordan side, the infiltrators were all civilians, in nearly every case destitutes. No cases of line-crossing were carried out by the Arab Legion. On the Israeli side, every incident was carried out by Israeli troops in uniform. In 1950 and 1951, the Israeli government was inclined to deny these incursions into Jordan territory by their troops, but in later years, it admitted the policy of reprisals. We, on the Jordan side, never for a moment relaxed our efforts to prevent infiltrations."<sup>50</sup> Further confirmation of this policy came in a Jordanian military spokesman's statement on 13 July 1956 that "recent infiltrations into Israel were merely individual cases which are contrary to Jordan's policy and commitments under the GAA. Orders have been issued to Jordan forces to open fire on any infiltrator."<sup>51</sup>

With regard to the Egyptian Government's intention to honour their Armistice Agreement, General Burns related, "Gamal Abdel Nasser told me, when I first met him on 15 November 1954, that it was his desire that there should be no trouble on the north-eastern border of Egypt." After a violent Israeli attack on the Gaza Strip on 28 February 1955, General Burns added, President Nasser "could no longer maintain such an attitude."<sup>52</sup> Having restrained their forces in the face of repeated international delinquencies by Israeli forces in attacking particularly civilian areas on the Arab side of the Demarcation Lines, the Egyptian Government felt themselves compelled to exact reprisals. After that a series of operations was carried out against the Israelis by commandos under the direction of the Egyptian Armed Forces. Egypt's view of this was: "War is not part of our programme, but we want to teach those who want war how expensive to them war is . . . The commandos have done their duty and punished Israel for her attack on the innocent civilians."<sup>53</sup>

General Burns' successor noted that incidents on Syria's Demarcation Line were initially provoked by Israeli encroachments on the Demilitarized Zones.<sup>54</sup> In that sector also, therefore, the Israelis could not legally use the logic of reprisals to justify their armed attacks.

The Israeli logic of reprisals has in fact been condemned in several

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(50) Glubb, *op. cit.*, p. 285.

(51) Burns, *op. cit.*, p. 159.

(52) *Ibid.*, p. 18.

(53) *Al Akhbar* newspaper, as quoted by Burns, p. 143.

(54) Von Horn, *op. cit.*, p. 115 f.

Security Council resolutions.<sup>55</sup> The real significance of this was understood by General Burns, who wrote: "It was a slightly indirect method of using military power to force the Arab States (primarily Egypt) to accept the Israeli terms of peace. That is to say, it was an attempt to settle an international dispute by military force, in complete disregard of Israel's engagements as a member of the United Nations."<sup>56</sup>

#### 4. *The Conciliation Commission and the Lausanne Protocol*

From 1948 the Middle East situation, legally a state of belligerency regulated by an Armistice between the Arab States and the Israelis, was in fact more belligerency than Armistice. The Armistice was more honoured in the breach than in the observance. However, the Arab States have been criticized for allegedly not permitting the Armistice to be replaced by a permanent peace. This is termed "Arab intransigence." Those who make this criticism should study the one serious attempt that was made to establish peace after 1948 through the Palestine Conciliation Commission and the Lausanne Protocol. This illustrates the respective positions of the Arab States and the Israelis very clearly regarding the question of peace.

On 11 December 1948, the U.N. General Assembly passed a resolution expressing appreciation for the late Count Bernadotte's work and establishing a Conciliation Commission in accordance with one of his recommendations.<sup>57</sup> The Commission was to assume the necessary functions of the Mediator and any which might be given to it by the General Assembly or the Security Council. France, Turkey and the United States were chosen as members of the Commission, which was instructed to "take steps to assist the Governments and authorities concerned to achieve a final settlement of all questions outstanding between them." The Resolution dealt with a number of issues, such as access to Holy Places and the right of expelled persons to return home. On this latter point, the Assembly specifically resolved "that the refugees wishing to return to their homes and live with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to

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(55) E.g. Resolutions 101 (1953) on Qibya, 106 (1955) on Gaza, 111 (1956) on Tiberias region, 171 (1962) on Tiberias region, S/228 (1966) on Sammua.

(56) Burns, *op. cit.*, p. 64.

(57) Res. 194 (III).

property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible.”

The Commission met in the Middle East and subsequently in Lausanne. In its third Progress Report, it made this comment:

The exchange of views held in Lausanne, unlike those held in Beirut, must be considered not only as bearing upon one of the specific tasks entrusted to the Commission by the General Assembly Resolution of 11 December 1948, such as the refugee question or the status of Jerusalem, but also as bearing upon its general task of conciliation of the points of view of the parties with a view to achieving a final settlement of all questions outstanding between them.<sup>58</sup>

The Commission submitted a Protocol, which would constitute the basis of work, and this was signed on 12 May 1949 by the Arab States concerned, the Israelis and the Commission members. A map was attached to the Protocol which indicated the 1947 Partition Resolution's territorial allocations, and this map was accepted as "a basis for discussion." The text of the Protocol was as follows:

The United Nations Conciliation Commission for Palestine, anxious to achieve as quickly as possible the objectives of the General Assembly Resolution of 11 December 1948, regarding refugees, the respect for their rights and the preservation of their property as well as territorial and other questions, has proposed to the delegations of the Arab States and to the delegation of Israel that the working document attached hereto (i.e. the partition map) be taken as a basis for discussions with the Commission. The interested delegations have accepted this proposal with the understanding that the exchange of views which will be carried on by the Commission with the two parties will bear upon the territorial adjustments necessary to the above-indicated objectives.<sup>59</sup>

It might appear that the signing of this Protocol by both sides would have led to discussions with the Conciliation Commission ending in some sort of peaceful compromise. This was not destined to be so, however, because the Israelis had no intention of abiding by the Protocol even when they signed it. Evidence of this lies in their subsequent actions.

The first Israeli application for U.N. membership had been turned down in December 1948, as it was felt the Zionist State did not fulfil the requirements of the Charter. This was because the Israelis had expanded beyond the territory allotted to them by the Partition Resolution and expelled large numbers of Palestinians from their homes. There had also been persistent Israeli violations of the truce based on Security Coun-

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(58) *U.N. Doc. A/927.*

(59) *Ibid.*, (Annex A).

cil directives. The Israelis made a further attempt at U.N. membership while the Lausanne discussions were going on. By signing the Lausanne Protocol, they conveyed the impression to many delegates that they were now prepared to consider the Partition Resolution map as a basis for discussion and to adopt a more reasonable attitude to the refugees, whose return home had been demanded in Assembly Resolution 194. The United Nations' grant of membership came almost simultaneously with the signature of the Lausanne Protocol.<sup>60</sup>

Even so, the General Assembly granted membership conditionally, "recalling its resolution of 29 November 1947 and 11 December 1948 and taking note of the declarations and explanations made by the representative of the Government of Israel before the Ad Hoc Political Committee in respect of the implementation of the said resolutions."<sup>61</sup>

Having secured their aim of U.N. membership, the Israelis repudiated the Lausanne Protocol. The Conciliation Commission called on the parties to submit their views on territorial questions. The Israeli view submitted, far from taking the 1947 Partition Resolution as a basis for discussion, in fact represented a demand for even more territory than the Israelis then held, namely for recognition of the international frontiers of Mandatory Palestine to be considered the "frontiers of Israel" except for a form of temporary de facto recognition of the Jordanian rule in the West Bank area. When the Arab delegations protested against the Israeli repudiation of the Protocol, the Israeli delegation said "it could not accept a certain proportionate distribution of territory agreed upon in 1947 as a criterion for a territorial settlement in present circumstances."<sup>62</sup> However, when the United Nations General Assembly had debated Count Bernadotte's recommendations of territorial changes to the partition plan, the Israeli representative had strongly opposed these, and said:

The Assembly's resolution of 29 November 1947 is a valid instrument of international law, while the conclusions in the Mediator's report were merely the views of a distinguished individual which were not embodied in any decision of a United Nations organ.<sup>63</sup>

According to Israeli logic, the Partition Resolution ceased to be a valid instrument of international law once the Israelis had seized more

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(60) Hadawi, *op. cit.*, pp. 165-166.

(61) Res. 273 (III), 11 May 1949.

(62) *U.N. Doc. A/927*.

(63) Official Records U.N. 1st. Committee, 29 November 1948.

than it had allotted them. The Lausanne Protocol, by this same logic, likewise lost its validity once it had served its purpose of tricking the United Nations into admitting Israel to membership. The repudiation of the Lausanne Protocol meant, in effect, that the Israelis were tearing up the 1947 Partition Resolution which they alleged had given them a right to establish their State. This writer does not accept the view that the Partition Resolution was ever a valid instrument of international law, for reasons outlined earlier. But it must be pointed out that the Israelis, in repudiating the Lausanne Protocol, were demolishing their main, albeit tendentious, argument for their statehood.

The attitude reflected by their repudiation also calls into question the whole basis of international law and the concept of a new world order based on law which the U.N. was intended to represent. International law can only function if it is based on equity and reciprocal honouring of international agreements and instruments. The insistence by one party on its competence to abrogate unilaterally a solemn agreement which should remain binding on both parties, or on its view that such an agreement need not be honoured if it is not convenient, makes a mockery of the whole idea of international contractual obligations. Furthermore, the United Nations Conciliation Commission was a signatory to the Protocol, and the United Nations has taken no action in response to the Israeli repudiation. Nor has it made any effort to ensure that the Israeli State fulfilled the conditions of its admission to U.N. membership. This total failure of the United Nations calls into question its whole alleged status as "the supreme type of international organization."<sup>64</sup> With the Israeli repudiation of the Lausanne Protocol was also included refusal to implement Assembly Resolution 194 on the refugees' right of return. This Resolution has been reaffirmed annually by the Assembly, with no action taken to ensure compliance.

In the face of continued Israeli refusal to respect international law, and the unwillingness and inability of the United Nations as a body to enforce its decisions, the Conciliation Commission found itself incapable of carrying out the most important aspects of its task. It only managed to perform certain subsidiary functions, such as studies on the value of expelled persons' properties or the release of their assets in bank accounts

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(64) Terminology used by International Court of Justice in advisory opinion on *Reparation for Injuries Suffered in the Service of the United Nations*, 11 April 1949.

frozen by the Israelis. For, although the Assembly, in Resolution 194, had asked the Commission to undertake a number of functions, its only power when obstructed was to report back to the United Nations. The Commission therefore lapsed, to all intents and purposes, into a state of complete impotence.



### CHAPTER III: LEGAL ISSUES ARISING FROM THE STATE OF BELLIGERENCY

The fact that there is a problem in Palestine is clearly due to the interference of the colonizing movement of Zionism and the imperial powers which have supported it. Neither Zionism nor Western imperialism have any legitimate interests in the Middle East, and both are alien to the region. The occurrence of the 1948 war and the existence of a state of belligerency since then should be blamed entirely on the interference of these two forces. This should be borne in mind, as widespread and all too widely believed Zionist propaganda blames the alleged intransigence of the Arab States for the present war situation in the Middle East.

Ample evidence has already been produced in preceding pages to show clearly where the real blame lies, and it will be obvious to anyone who studies the evidence that Arab intransigence is not the cause of the problem. A criticism that can be levelled against the Arab States is that they were too easily outmanoeuvred, too willing to believe in the good intentions of the United Nations. By accepting the Security Council's orders for a cease-fire in 1948, they allowed the Israelis an opportunity to build up their military strength; by signing the Armistice they enabled the Israelis to consolidate their presence on the Demarcation Lines politically. Perhaps at the time, due to the balance of world forces, they had little choice, but by drawing the correct conclusions from these experiences, Arab Governments may be able to avoid similar mistakes in future. If anything, the Arab delegations which signed the Lausanne Protocol were over-conciliatory in accepting the map of the Partition Resolution as a basis for discussion. Apart from the illegality of that resolution, questions of the future of Palestinian territory are solely the concern of the Palestinian people, not of the government of any other state.

Following the Israeli repudiation of the Lausanne Protocol, it was clear to the Arab States that the situation for a long time to come would be one of belligerency governed by the 1949 Armistice. In such a situation, the Arab States had to determine their position on a number of

questions in such a way that they would protect their interests as belligerents in accordance with international law. It is proposed in this chapter to examine four such questions, namely recognition, economic boycott, navigation and the diversion of the Jordan River, in the light of the Arab States' belligerent status.

These four questions have been the subject of much controversy and misinformation, particularly in Western information media. Nowhere have the Arab States been more criticized than where they have acted in accordance with international law as is appropriate to their status as belligerents. To these criticisms it should be answered that, since it is the Israelis who are responsible both for the initiation and the continuation of the state of belligerency, the Arab States cannot be expected to do other than to safeguard themselves by measures acceptable in international law.

#### 1. *The Question of Recognition*

Zionist propaganda has frequently attacked the Arab States for refusing to recognize the Israeli state. The criticisms levelled by the Zionists against this Arab position have usually been unscientific and inaccurate, and have played upon emotionalism and widespread public ignorance of the actual significance of recognition in international law. Thus, the Zionists claim that by withholding recognition, the Arab States are "trying to pretend that Israel does not exist." By this propaganda method, the Arabs are portrayed as an unrealistic people who refuse to face up to facts and insist on living in a cloud-cuckoo land divorced from the true world of international politics.

It should be understood that, in international law, there are a number of criteria for the granting of recognition to a state. The fact of that state's existence is only one criterion. It is not, of course, normal to grant recognition to non-existent states,<sup>1</sup> but it does not follow that any state is entitled automatically to recognition merely by coming into existence. Non-recognition does not, therefore, mean that the Arab States claim that the Israeli State is non-existent; the peoples of the Middle East, and of much of the world in general, are only too unpleasantly aware of its presence. It is worth pointing out that the non-recognition

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(1) A somewhat irregular situation arose when the United States continued to recognize Estonia, Latvia and Lithuania even after they had ceased to exist as states See von Glahn, *op. cit.*, p. 111.

of Israel is not confined to the Arab States alone. A large number of non-Arab states, like Pakistan, China and Greece, to name but a few, have also withheld recognition; a fact which suggests that many members of the world community share the Arab view that the Israeli State does not live up to the criteria which would entitle it to recognition.

It is important to understand something of the nature of international law. Most people who are misled by Zionist propaganda regarding recognition imagine that international law consists of a set of fixed rules, on the principle of "thou shalt not," and that departure from such well-defined rules constitutes a violation of international law. Such binding rules exist, in fact, in documents like the Geneva Conventions on the conduct of war. These are laws, in fact, defining what is right and wrong in international relations, subscribed to by the majority of states and, in some cases such as the Geneva Conventions' articles relating to war crimes, even recommending a rudimentary machinery for enforcement and punishment of offenders.

On other matters of international law, however, there are often no clearly defined rules. Many such matters are settled by treaties between two or more states, but such treaties are on the whole binding only on the signatories, not on the world community at large. Questions not covered by any convention or within the scope of a treaty are simply decided according to the norms of international law, that is, the normal ways of settling similar practices in the past, according to precedent. However, the norms of one state may differ from those of another, nor is the adoption of a new principle improper if it is to deal with an unprecedented situation or is likely to prove a positive development of international law.

Recognition is a matter on which international law has not established fixed rules. There is no international convention on the subject, nor is any centralized body of international law, such as the International Court of Justice, qualified to pronounce on it. Each state, in fact, has more or less developed its own norms with regard to the criteria for recognizing other states. Thus the United States, for instance, does not recognize the People's Republic of China primarily for ideological reasons, whereas other states with similar ideological differences with China, such as France, have extended recognition. Britain's recognition of the People's Republic of China and arguments on its representation at the United Nations were based on the doctrine of effective control of territory

and allegiance of population.<sup>2</sup> Where two states exist on territory which historically formed one entity, such as Korea, Vietnam or Germany, the position becomes even more complex. In such cases, one of the states resulting from the division tends to be recognized by some countries and the other state by some other countries. These instances show the widely differing criteria applied by various states with regard to recognition. Even someone with no knowledge of international law can see that a state which recognizes the German Federal Republic, for instance, is applying different norms from those followed by a state which recognizes the German Democratic Republic. There is no central authority or generally accepted text of international law to say which set of criteria is correct. Furthermore, "a duty to recognize new states cannot be demonstrated convincingly, despite many ingenious attempts to do so. What duty could be said to exist derives mainly and exclusively from sheer expediency as viewed by each already established and recognized member of the community of nations."<sup>3</sup>

The granting of recognition by one state to another does not mean, therefore, an acknowledgement that the latter state exists, but rather that it conforms to certain norms which the former state has decided are necessary if it is to consider the latter state properly constituted according to international law. Professor Kelsen tried to define the lowest common denominators of the norms applied by various states on the matter of recognition, when he wrote:

Traditional doctrine distinguishes three 'elements' of the state: its territory, its people, and its power exercised by an independent and effective government.<sup>4</sup>

This traditional doctrine has undergone some development in recent years as a result of a rapid evolution of international legal theory and the creation of new precedents. However, let us take the traditional doctrine as a starting-point. It is agreed that a state must have a territory within well-defined limits recognizable as its borders. The Israeli entity certainly controls expanses of territory as a result of forcible seizure, but it has no borders. One U.N. document, the 1947 Partition Resolution, suggested such borders, but it was not a legally valid resolution, and it

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(2) G.G. Fitzmaurice, "Chinese Representation in the United Nations," *Yearbook of World Affairs*, 1952, pp. 36-55.

(3) Von Glahn, *op. cit.*, p. 91.

(4) Kelsen, *op. cit.*, p. 307.

was anyway repudiated by the Israelis after they had seized territory beyond those proposed borders. Since that time, no Israeli borders have been proposed, let alone established, by any instrument of international law. The 1949 Armistice Agreement never set up political frontiers, but only demarcation lines, demilitarized zones and no-man's land areas to separate the armed forces of the two sides. Nor can the Israelis lay claim to the present cease-fire lines as their borders, since the Security Council Resolution of 22 November 1967 has called for withdrawal from territories occupied in the June war.<sup>5</sup> The Israelis' definition of their state appears very elastic, from the time they presented their territorial demands to the Versailles Peace Conference to the present day. Thus from the territorial aspect, there is no justification for recognizing the Israeli State, since it has no legal, well-defined territorial limits.

A state must also have a people. The people within a state are traditionally united by ethnic, linguistic, cultural or historical ties which give them a common bond and a link to the state's territory, on which the majority of them have lived for generations. No such people form part of the Israeli State. In the territory it has occupied since 1948, the vast majority of the inhabitants who had the historical links with the land and all the other characteristics of the lawful people of a territory have been driven out. They have been replaced with people of different nationalities, racial origins, languages, cultures and histories, who had no common ground with each other in any of these fields, nor any previous link with the territory they occupied. This is not a nation-state in the accepted sense of the term.

The Israelis' nationality laws are unique and unprecedented. "The Law of Return gives every Jew the automatic right to come and settle in Israel. A second law confers Israeli citizenship upon every Jewish immigrant the minute he enters the country, unless he undergoes specific procedures waiving his right."<sup>6</sup> At the same time, the Israeli State denies citizenship or residence rights to the vast majority of the land's legitimate inhabitants. The Israeli nationality laws are not only an injustice to the rightful people of Palestine; they are also a threat to the sovereignty of every state in the world which has citizens of Jewish faith. For they imply, in effect, that those citizens should be loyal not to their own countries, but to a foreign country, Israel. These laws therefore constitute an

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(5) Res. 242 (1967).

(6) Uri Avneri, *Israel Without Zionists* (New York, 1968), p. 158.

interference in the affairs of sovereign states by claiming an unlawful jurisdiction over some of their citizens. Thus the then Chairman of the World Zionist Organization Nahum Goldmann, while holding U.S. citizenship, has stated: "Israel's flag is our flag. We must see to it that the Zionist flag which has begun to fly above the state of Israel is hoisted aloft over the entire Jewish people."<sup>7</sup> The Israeli State's concept of what constitutes its so-called people is as vague and elastic as its concept of frontiers. Anyone in the world, theoretically, can be an Israeli: all he has to do is to be converted to Judaism and take the next flight to Tel Aviv. Thus, just as the Israeli State has no territorial limits defined by international law, so also it has no legally-established population. What sort of state is this which the Arab States have been asked to recognize?

The third 'element' of a state is its government. While Israel has an independent and effective government in the same sense as South Africa or Rhodesia, it must be pointed out that criteria of legality have increasingly come to be applied by many states in recent times with regard to recognition. This is particularly true in relation to racial discrimination.

The question has been raised: is racial discrimination actually a violation of international law? In the preamble of their Charter, United Nations members "reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations, large and small." The Universal Declaration of Human Rights points out that "all human beings are born free and equal in dignity and rights."<sup>8</sup> It also specifies that everyone without distinction is entitled to basic human rights, a number of which have been violated by the Israelis in regard to the Palestinians. These include the right of a person to return to his country (Article 13), rights of fair trial (Article 10), equality before the law (Article 7) and in employment (Article 23), inviolability of property (Article 17), and the prohibition of torture or cruel, inhuman or degrading treatment or punishment (Article 5). The Israelis refuse to apply these rights to the Palestinians, and their general policies of racial discrimination are contrary to the Universal Declaration of Human Rights and violations of the spirit of the U.N. Charter. It is arguable that the Universal Declaration, although adopted unanimously, is only a declaration of intent and that failure to carry it out is not an actual violation of international law. However,

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(7) *Zionist Newsletter*, 2 May 1950.

(8) Adopted as a Resolution of the U.N. General Assembly, 10 December 1948.

the United Nations Charter has a binding treaty character on its signatories. Racial discrimination can therefore be considered a violation of international law in that it is contrary to the Charter. Its illegality has further been reinforced by the Genocide Convention, the International Convention on the Elimination of All Forms of Racial Discrimination, and numerous U.N. resolutions.<sup>9</sup>

The belief is gradually growing among the international community that a government based on racial discrimination is undeserving of recognition because of its illegality. The progressive development of this belief can be traced in recent years. When white South Africa became independent and Nazi Germany emerged, recognition of them was not withheld or withdrawn on account of their racial policies. The emergence of Israel was more controversial, and a large number of nations withheld recognition. The unilateral declaration of independence by the latest racist state, Rhodesia, came at a stage when the world's conscience was far more developed, and the vast majority of states have refused to recognize Ian Smith's regime.

When the Israeli State was set up in 1948, the Arab States maintained this attitude, that it did not deserve recognition because of its racist character and contravention of human rights which rendered it illegal. The Arab States are consistent in this attitude, and for the same reason have refused to recognize the Rhodesian regime, which exists in the same sense as the Israeli one does. Many states which recognized Israel have not recognized Rhodesia, which indicates that the world is coming more and more to realize that racist states are illegal and merit no status in international law. The Arab States deserve credit for pointing this out as early as 1948, and thus acting as pioneers in furthering a concept of international law which can make a long-term contribution to human equality. In fact the growing acceptance of this concept vindicates the attitude of the Arab States, and demonstrates the irresponsibility of those states which granted Israel recognition.

There can be no doubt that, if a state does recognize another community as a state, is it bound to do so in accordance with international law, which determines, in a general way, the essential elements of a state. A state violates international law and thus infringes upon the rights of other

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(9) E.g. Resolutions 2331 (XXII) of 18 December 1967, 2438 (XXIII) of 19 December 1968 Against Nazism and Racial Intolerance, and several resolutions on racialism in Southern Africa.

states if it recognizes as a state a community which does not fulfill the requirements of international law.<sup>10</sup>

## 2. *The Arab Boycott of Israel*

The boycott of the Israeli State and of companies which help it economically or militarily is a matter whose rights and wrongs are little understood in the non-Arab world. This is due to two reasons: lack of public knowledge on the position of international law regarding economic boycott, and Zionist publicity campaigns which portray the boycott in a false light. Let us therefore first examine what the boycott is, and then see whether it is in conformity with international law.

The boycott was launched by the League of Arab States in May 1951—three years after the outbreak of the war in which the Israelis had seized territory that was legally and historically Arab, and had driven out Arab inhabitants. In official statements, the Zionists gave the Arabs cause for concern that further territorial seizures were contemplated. Thus, the Israeli Government has stated:

Only now . . . have we reached the beginning of independence in a part of our small country.<sup>11</sup>

When the Mandate was confirmed by the Council of the League of Nations in July 1922, the country, both in principle and in practice, was cut into two parts: the West remained as the area of the National Home, and the East, on the other bank of the Jordan, was handed over under Mandatory control to the Emir Abdullah . . . The State of Israel has been resurrected (sic) in the western part of the Land.<sup>12</sup>

The fact that the Israelis did seize considerable tracts of Arab States' territory in June 1967 demonstrates that the suspicions which the Arabs have felt for years about Israeli intentions were amply justified. Following the Armistice, the Arab States found themselves under conditions of belligerency and threatened with further expansion by an enemy who had already seized territory. They felt justified in taking measures of self-defence, including any steps that might prevent Israel from gaining the military and economic strength necessary for carrying out its announced aggressive intentions.

The boycott was such a step. According to the boycott measures, the Arab States have decided that they will not trade with the Israeli

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(10) Kelsen, *op. cit.*, p. 392.

(11) *Israel Government Yearbook*, 1951-1952, p. X.

(12) *Israel Government Yearbook*, 1952, p. 13. Both these questions were written by the first Israeli Prime Minister, Mr. Ben Gurion.



State or any companies which in certain ways strengthen it militarily or economically. It is not only by selling a state arms that one enables it to carry out acts of aggression, but also by giving it the finance to buy weapons, or increase its manpower, or to dominate its neighbours economically. The Arab boycott was designed to counter any such moves which might increase Israel's potential to launch an attack. Thus the boycott specifically covers firms which have branch factories, assembly plants, agents who assemble products, or main offices or agencies for their Middle East operations, in territories held by the Israelis since 1948; likewise firms which give patents, trade marks, copyrights, etc., to Israeli companies, which buy shares in Israeli companies or which offer Israel technical or consultant services.

The boycott is applied impartially against firms of whatever nationality when those firms engage in the sort of activities mentioned above, which tend to strengthen Israel militarily or economically. If any firm trading in the Arab countries is also reported to have dealings with Israel, the Arab Boycott Office contacts it to obtain clarification. If it is found that these dealings strengthen Israel economically or militarily, the firm is notified that such dealings harm the security and interests of the Arab States. The firm then has a choice of continuing to deal with Israel and thereby cutting itself from Arab markets, or of ending the dealings with Israel and continuing to trade with Arab countries. Even if a firm is placed on the boycott list, it can be removed from it and resume trade with the Arab countries if it ceases the dealings which caused it to be boycotted.

The boycott is imposed solely for the reasons stated. It is not, as Israeli propaganda attempts to portray it, a measure of discrimination against Jews. Its true nature is best described by this statement of the General Union of Arab Chambers of Commerce, Industry and Agriculture:

The Arab boycott is directed against Israel, but not against the Jewish people. Indeed, there are many Jewish citizens living in most of the Arab States who are unmolested and prosperous. Jewish firms outside Israel receive from the Arabs the same treatment as non-Jewish firms. There is no discrimination. Any firm, irrespective of the creed or race of its owners, shareholders or managers will be able to deal with the Arab countries, so long as it does not breach the regulations of the Arab boycott of Israel.<sup>13</sup>

The Arab boycott is no different from practices recognized as legal and adopted by the Allies in both World Wars. International law accepts

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(13) Quoted by Hadawi, *op. cit.*, p. 293.

that "each belligerent is obviously concerned not only to mobilize and protect his own manpower and resources, but also to appropriate, debilitate or destroy those of the enemy." Allied practice in the World Wars was not only to take measures against enemy firms but also against those from neutral countries which had branches on enemy territory; thus "any person or corporation is affected with enemy character to the extent of the assets of any business or branch thereof situated in enemy territory." In British law, during and even before the Napoleonic Wars, it was held that "at common law it is quite clear that any transaction tending to benefit the enemy State was forbidden, and if entered into, void."<sup>14</sup>

After the development of economic boycott as a legitimate weapon in the First World War, the League of Nations recognized it as a means of restraining an aggressor state. According to Article 16 of the Covenant: "Should any member of the League resort to war in disregard of its Covenants under Articles 12, 13, or 15, it shall *ipso facto* be deemed to have committed an act of war against all other members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the Covenant-breaking State, and the prevention of all financial, commercial or personal intercourse between the nationals of the Covenant-breaking State and the nationals of any other State, whether a member of the League or not."

This, in fact, made a very wide application of economic boycott acceptable in international law under certain circumstances, enabling states not only to boycott the offending state themselves, but also to enforce respect for the boycott on the nationals of other states. The United Nations, in Article 41 of the Charter, includes "complete or partial interruption of economic relations" among the measures not involving the use of armed force which can be employed to give effect to Security Council decisions. The imposition of mandatory economic sanctions on Rhodesia is probably the best-known case of the application of the boycott principle in modern times.

The boycott is therefore an accepted measure in international law. The conditions of its applicability by the international community have been specified in some detail, initially by the League Covenant, and now by the United Nations Charter. Its use by belligerent states, whether

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(14) Stone, *op. cit.*, pp. 417-428.

singly or acting jointly in a collective security arrangement, is also sanctioned by customs which have developed since the First World War. It is normal practice for a belligerent to enforce a boycott of enemy states in time of war, and there is no legal objection to it. Thus, British criminal law has provided for the enforcement of penalties against persons under British jurisdiction found guilty of "trading with the enemy."<sup>15</sup> Similar legislation was also adopted by other belligerent states on the allied side to prevent trade with the Axis powers.<sup>16</sup> Like the Arab boycott of Israel, the Allies' boycott of the Nazi Axis used the blacklist of firms which did not conform to their boycott regulations. "The United States' black lists, which incorporated the names in the British lists, contained, as at January 12, 1945, 14,534 names."<sup>17</sup> In both instances, the boycott was not simply justified but actually necessitated by the belligerents' requirements of collective self-defence.

The Arab boycott of Israel can in some respects be compared to the economic boycott on South Africa applied by a number of states, particularly African ones. A difference is that no state of belligerency exists in the case of South Africa. The basis of the boycott of South Africa, that it is to oppose that state's policies of racial discrimination, is equally valid as a justification for the boycott of Israel, which also practises such policies. Both are instances of collective boycott applied by a number of states acting outside the framework of the United Nations, although in accordance with the principle of racial equality which that body claims to uphold.<sup>18</sup>

International law, apart from all the above-mentioned considerations, accepts that economic boycott is a legitimate measure in a wide range of circumstances, because to consider it otherwise would be to create a situation which most states would not tolerate. Those who condemn the Arab boycott should realize that the corollary to their argument would lead to a denial of the rights of states to trade or not to trade with whom they wish. For trade itself is a form of contract. This means, in principle, that

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(15) Trading with the Enemy Acts of 1915, 1916, 1918 and 1939.

(16) E.g. Australia's Trading with the Enemy Act No. 14 of 1939, amended by No. 33 of 1940; Canada's Regulations Respecting Trading with the Enemy of 1939; and "American legislation in both World Wars followed the pattern of that of the United Kingdom." See Stone, *op. cit.*, pp. 451-454.

(17) Stone, *op. cit.*, p. 452.

(18) Res. 2396 (XXIII) of General Assembly condemned "political, economic and military collaboration" with South Africa, but the U.N. did not take any decision that would make economic boycott mandatory on members.

it must be entered into freely by both parties, because a contract extorted under duress is legally questionable. If states were to be compelled to trade with other states with which they had no wish to trade, that would be a serious infringement of their sovereignty.

Likewise, in a contract, it is up to both sides to put forward conditions. If these are accepted, the contract is signed, if they are rejected it is not. The Arab countries welcome trade with companies from all continents. The condition stated is that those companies should not contribute to a military or economic threat to the Arab countries' security. The companies are free to accept this condition and to trade, or to reject it, in which case the Arab countries reserve the right not to buy their products.

### 3. *The Question of Navigation*

The Israelis have repeatedly claimed that they have a right to navigate their ships through the Suez Canal and the Gulf of Aqaba as both, they allege, are international waterways. This question is of considerable importance, as the Israelis, with regard to the Gulf of Aqaba, claimed to have established a right of navigation as a result of their invasion of Egypt in 1956 and they used this question as a *casus belli* in their June 1967 invasion of three Arab States. This single matter of navigation is of course interrelated with many complex rights and wrongs of the Palestine question. However, if it can be demonstrated that the Israeli claim on navigation rights is untenable, it would follow that so also was its use as a *casus belli* by the Israelis in the June 1967 war, which would thus assume the character of an unjustified war of aggression launched by Israel.

We must recall that a state of belligerency has existed since 15 May 1948 between the Israelis and a number of Arab countries. The General Armistice Agreements did not end this state of belligerency, nor did they exclude the exercise of belligerent rights in matters such as the laws relating to blockade and contraband. Thus the issue of navigation in this instance must be determined in the light of the rules and norms of international law prevailing in time of war.

Let us first examine the question of the Suez Canal. The instrument of international law most often quoted regarding its status is the 1888 Convention of Constantinople. Article I of this Convention stated:

The Suez Maritime Canal shall always be free and open, in time of war as in time of peace, to every vessel of commerce or of war, without distinction of flag. Consequently, the High Contracting Parties agree not in any way to interfere with the free use of the Canal, in time of war as in time of peace. The Canal shall never be subjected to the exercise of the right of blockade.

Turkey, which then exercised nominal imperial control over Egypt, was one of the High Contracting Parties to the Convention. However, the position was complicated by the fact that, while Egypt was still in theory under the Turkish Empire, it was occupied by Britain. "A British reservation accepted by all ratifying states asserted that Great Britain would not be bound by the terms of the agreement insofar as they impeded the freedom of action of the British Government during its occupation of Egypt. In effect, therefore, the convention possessed no meaning beyond a mere declaration of intentions."<sup>19</sup>

Oppenheim raised the question of whether Egypt, on gaining independence, was obliged to permit passage of ships from countries at war with her as Turkey had been obliged to do.<sup>20</sup> In effect, when Egypt became independent, did the independent state inherit Turkey's unconditional obligation to abide by the Constantinople Convention, or Britain's conditional one? The latter view is more tenable, since it was from Britain that Egypt secured full independence under the 1936 Anglo-Egyptian Treaty which, *inter alia*, affirmed that the Canal was an integral part of Egyptian territory. By examining how Britain exercised control of the Canal according to the reservation to the Constantinople Convention, we can see the valid precedent for Egyptian conduct after independence.

The British occupation of Egypt at the time of the First World War meant, in effect, that Egypt was involved on the British side. Thus, "Egypt was forced to take measures for the defence of her vital waterway against the possibility of German hostile acts. By a proclamation of 5 August 1914, the Egyptian Government ordered the Canal Zone to be cleared of enemy shipping. The order was imperative, as it was easily possible for any such vessels to sink themselves in the Canal and block it effectively."<sup>21</sup> After Egyptian independence, "the outbreak of the Second World War saw an initial assumption of control over the canal and its

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(19) Von Glahn, *op. cit.*, p. 295.

(20) Oppenheim, *op. cit.*, 7th ed., Vol. II, p. 698, note 1.

(21) Hugh Schonfield, *The Suez Canal* (Harmondsworth, England), p. 71.

defences by military authorities of both Great Britain and Egypt, with the creation of a 'Canal Governorate'.<sup>22</sup>

These measures were in accordance with both the British reservation to the Constantinople Convention and Article 10 of the Convention which enabled the Egyptian Government to take any steps necessary for "the defence of Egypt and the maintenance of public order." The Article specified that Articles 4, 5 and 7, regarding the passage of belligerent ships through the Canal and the stationing of warships in its approaches, should not interfere with the Egyptian Government's right in this respect. The legality of the measures against shipping of the Central and Axis powers in the two world wars is not contested, although in the Second World War they were taken even before Egypt had declared war on the Axis powers. The mere threat of an Axis invasion of Egypt was considered enough justification without a state of belligerency existing.

The precedents created by this application of Article 10 of the Convention in two world wars would justify the Government of Egypt (now the United Arab Republic) in barring entry to the Canal to ships of a state which posed a threat to the country or to the operation of the Canal itself. This writer cannot agree with those writers who deny this right to Egypt, acting on its own initiative, as an independent state, but who support its previous exercise in concert with Britain. The principles of international law, if they are to have any meaning, must be equitably applicable. The question now is: has the Israeli State posed such a threat since 1948?

As stated above, belligerency has existed since that date between Egypt and Israel. Any government is entitled to regard a state with which it has a relation of belligerency as a threat. The fact that the Israelis, on two occasions since they signed the Armistice with Egypt, have violated that Armistice by invading and occupying Egyptian territory, speaks for itself. On both these occasions, the Israeli action has resulted in the blockage of the Canal and therefore the total interruption of world shipping through it. Furthermore, the Israelis on a number of occasions have put forward projects to rival the Suez Canal, such as an alternative canal linking the Red Sea with the Mediterranean and a pipeline to divert oil from the Canal tanker route.<sup>23</sup> This has justifiably given rise

(22) Von Glahn, *op. cit.*, p. 296.

(23) The Israeli propaganda monthly, *The New Middle East* (January 1969) claimed that "Israel . . . is reported to be planning to construct an Eilat-Ashkelon pipeline" to take 100 million tons of oil annually.

to fears that the Israelis have a commercial as well as a political interest in putting the Canal out of action. As the Allies in the First World War feared the Central powers might block the Canal by sinking one of their ships in it, so Egypt decided to take no chances of the Israelis resorting to such an action.

On 1 September 1951, the U.N. Security Council passed a resolution calling on Egypt "to terminate the restrictions on the passage of international commercial shipping and goods through the Suez Canal wherever bound and to cease all interference with shipping."<sup>24</sup>

On 8 October 1959, President Nasser, outlining the U.A.R. Government's position on this question, declared: "The resolutions concerning Palestine are an indivisible entity—the right of the refugees to return to their homeland; their right to their properties or compensation for their properties; and their right to the Palestine territory, cannot be divided . . . We are ready to accept a United Nations board or commission to put resolutions into effect for both Israel and us. But it would be unfair if only we are asked to implement the resolution on our side while Israel does not implement those on her side."<sup>25</sup>

Apart from the question of equitable application of international law, the Security Council's Suez Canal Resolution raises another question. The Resolution expresses the opinion that "since the armistice regime, which has been in existence for nearly two and a half years, is of a permanent character, neither party can reasonably assert that it is actively a belligerent or requires to exercise the right of visit, search, and seizure for any legitimate purpose of self-defence." At the same time, in this Resolution, the Security Council recalled its earlier Resolution 73 (1949) in which it described the Armistice as an "important step toward the establishment of permanent peace in Palestine." The Security Council contradicted itself in its Suez Canal Resolution, since the Armistice cannot be both a "step toward the establishment of permanent peace" and "of a permanent character." If it is a step toward the establishment of permanent peace, then it is temporary and designed to be replaced, eventually, by a permanent peaceful arrangement. If on the other hand, it is permanent, that would indicate that the Security Council has given up any hope of living up to the U.N.'s formerly announced intentions of working towards a permanent peace. Which of these two alternatives does the

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(24) Res. 95 (1951).

(25) Quoted by Hadawi, *op. cit.*, p. 229.

Security Council wish us to accept? In fact, the self-contradictory nature of its Suez Canal Resolution renders it a meaningless document.

This point is now, in any case, of purely academic interest since the Israelis repudiated this simultaneously temporary and permanent Armistice in 1956. They can therefore hardly claim that it gives them any navigation rights if they no longer accept its validity.

Navigation in the Gulf of Aqaba raises a number of different issues. The Red Sea, as a whole, had the character of a *Mare Clausum*, or closed sea, under the jurisdiction of Arab or Muslim Governments for almost the entire period from the rise of Islam until the opening of the Suez Canal. Even when the Suez Canal transformed the main body of the Red Sea and the Gulf of Suez into open sea, the Gulf of Aqaba continued to preserve its closed character under Ottoman or Arab jurisdiction. This fact gives it the character of an historic bay, which cannot be considered open sea, but rather lies within territorial waters.<sup>26</sup> That it is now bordered by more than one state does not invalidate this. Its case is similar to that of the Gulf of Fonseca, which in 1917 was ruled by the Central American Court of Justice to be an historic bay and part of the territorial waters of El Salvador, Costa Rica and Nicaragua. Thus the claim that the Gulf of Aqaba could constitute an international waterway is tendentious in the extreme.

The three sovereign States in whose territorial waters the Gulf of Aqaba legally lies are Jordan, the United Arab Republic and Saudi Arabia. The Israeli State has no legal rights in the Gulf of Aqaba or along its coastline. Apart from the general illegalities involved in the whole question of the establishment of the Zionist State, it must be recalled that the Israelis seized the southern part of Palestine, including the stretch of Red Sea coast on which Eilat is built, in violation of a truce, established through a Security Council directive, which was supposed to be in force and which the Arab side was honouring; and also in violation of the Egypt-Israel Armistice of February 1949.<sup>27</sup> It is impossible to maintain that legal rights such as those of navigation can be acquired by Israel out of an illegal action of this nature.

Furthermore, the entrance to the Gulf of Aqaba, the Straits of Tiran, is less than six miles wide. There is no internationally agreed limit for the

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(26) C.J., Colombos, *International Law of the Sea*, 6th ed. (London 1967), pp. 188-189.

(27) See Chapter Two, section 1, above.



extent of territorial waters, and the extents claimed by different states vary greatly. "One point at least is beyond dispute, for there is universal agreement that the width cannot be less than three nautical miles."<sup>28</sup> Even according to this minimum standard, therefore, it is clear that the entrance to the Gulf of Aqaba lies within the territorial waters of Saudi Arabia and the United Arab Republic. In fact, the navigable part of the Straits of Tiran, between Sinai and Tiran Island, lies within 500 yards of the United Arab Republic's coast. It is too far-fetched to ask any sovereign state to allow enemy ships within 500 yards of its coastline as long as belligerency prevails, and there is nothing in international law requiring it to do so, even if the Straits of Tiran were an international waterway as the Israelis claim. For the International Court of Justice, pronouncing on the famous Corfu Channel case in 1949, only upheld the right of innocent passage through straits used for international navigation "in time of peace."<sup>29</sup>

An attempt was made to alter the status of the Straits of Tiran by implication, at the 1958 Geneva Conference on the law of the Sea. Article 16 of the Convention on the Territorial Sea and Contiguous Zone adopted by that Conference declared:

The coastal State may, without discrimination amongst foreign ships, suspend temporarily in specified areas of its territorial sea the innocent passage of foreign ships if such suspension is essential for the protection of its security.

This, in fact, would entitle the United Arab Republic, on defensive grounds, to suspend innocent passage of all ships bound for the Israeli-held port of Eilat for as long as the state of belligerency with Israel lasts. However, an amendment was added to this Article, stating:

There shall be no suspension of the innocent passage of foreign ships through straits which are used for international navigation between one part of the high seas and another part of the high seas or the territorial sea of a foreign state.

The Arab States did not support this amendment. The Saudi Arabian representative at the Conference, for instance, stated that his Government would not recognize it as it was "specially tailored to fit a special case." It must be stressed that this Convention, being in treaty form, is only

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(28) H.A. Smith, *The Law and Custom of the Sea* (3rd ed., London, 1959), p. 22.

(29) *International Court Reports*, pp. 4, 244; Judgement (Merits), 9 April 1949, also *American Journal of International Law*, Vol. 43 (1949), pp. 558-589.

unreservedly binding on those states which have ratified it without reservations. In any case, the clumsy wording of this amendment makes it doubtful whether it could cover the Straits of Tiran. For, as demonstrated above, the Gulf of Aqaba is not a part of the high seas, but rather has the character of an historic bay. Nor can the Israelis, in view of the illegality of their seizure of a stretch of Red Sea coast, legitimately claim that they have any territorial waters in that Gulf.

Finally, and in addition to all the above-mentioned factors, the state of belligerency has given the Arab States the right, since 1948, to impose a blockade, and to seize contraband of war. "The principle of a legal blockade is the complete prohibition of all communication, whether inwards or outwards, with the whole or a defined portion of the enemy's coastline."<sup>30</sup> This is a perfectly normal and acceptable act by a belligerent, and eleven such blockades, for instance, were imposed during the First World War.<sup>31</sup>

The Laws on contraband of war enable belligerents not only to take measures against enemy ships but also against neutral ships carrying certain supplies to the enemy. "There is a further question, what we may lawfully do with regard to those who are not enemies, or say they are not, but who furnish supplies to the enemy. About this there has been and still is sharp controversy. Some stand up for the full severity of war, others for the freedom of trade. To begin with, we must distinguish between things themselves. There are some things which are only used in war, such as weapons. Other things, such as articles of luxury, have no use at all in war. But there is a third class of goods which are used both in war and apart from war, for example, money, provisions, or ships and their gear."<sup>32</sup>

This classification, made in 1625 by the authority known as the "father of international law" in Europe, is still broadly applied in modern practice. The first category, war materials, is "absolute" contraband, the third category, potential war materials, is "conditional" contraband. "Absolute contraband could be seized upon proof of any enemy destination, since it could be safely presumed that the goods in question were intended for use in war. Conditional contraband could only be seized upon further proof that it was destined for warlike and not for peaceful

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(30) Smith, *op. cit.*, p. 139.

(31) *Ibid.*, p. 143.

(32) Grotius, *De Jure Belli ac Pacis*, III, i, 5.

use. Such a destination might be presumed if the goods were consigned to the enemy forces, to enemy State authorities, or to places of military importance, such as fortresses or naval ports.”<sup>33</sup> The most important cargo at issue in the question of passage to Eilat is oil. Fuel was among the items listed as conditional contraband by the 1908 London Conference.

It is clear, therefore, that the Israelis' claims to navigation rights in the Suez Canal and the Gulf of Aqaba are not upheld by international law. It is impossible for them to claim any rights from the Suez Canal Resolution of the Security Council, in view of their repudiation of the Armistice on which it claimed to be based, and the uncertainty of the legal position it established through its contradictory wording. Nor can they demand its implementation while they, on their side, refuse implementation of other U.N. resolutions which they find inconvenient. Their illegal possession of Eilat does not entitle them to navigate the Arab territorial waters of the Gulf of Aqaba. The state of belligerency furthermore gives the right to blockade enemy-held ports and seize war contraband cargoes. It follows, therefore, that the Israelis had no justification for invoking the navigation issue as the *casus belli* for the most serious of their numerous contraventions of the Armistice, namely the June 1967 War.

#### 4. *The Diversion of the Jordan Waters*

The Israeli project to divert the River Jordan waters added considerably to the level of Middle East tension during much of the past two decades. As with many aspects of the Palestine problem, public ignorance on the international legal questions involved has led to serious misunderstanding of the case. This ignorance has greatly helped Zionist propaganda efforts to present an inaccurate picture: thus information media sympathetic to Zionism have been able to portray Israeli efforts to plunder the Arab States' water resources as a project to bring prosperity to the Middle East and "make the desert bloom." The Arab States' endeavours to protect their water resources and develop them so as to give maximum benefit to those with greatest need are, on the other hand, portrayed as obstructionism and an inexplicable desire to keep the region backward. Yet anyone who has any knowledge of Arab development projects like the U.A.R.'s Aswan Dam, Syria's Euphrates Dam or Jordan's desert

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(33) Smith, *op. cit.*, pp. 146-147.

irrigation at Al Jafr, projects to make the desert really bloom, will realize the baselessness of such accusations. For the Arabs, development is literally a matter of life and death, far more than for the Israelis whose elevated standard of living is maintained by liberal injections of international charity.<sup>34</sup> It is important to clear up the confusion that exists by studying all the legal implications of the various proposals for the use of the Jordan waters.

Zionist ambitions to control all the River Jordan's water supplies were revealed at quite an early stage. At the 1919 Versailles Peace Conference, we may recall, they demanded that the frontiers of their projected state include the Lebanese Litani River and much of southern Lebanon, the crest of Mount Hermon and the major part of Jordanian territory. This would have given them the whole of the River Jordan catchment area. It is against the background of these revealed territorial ambitions that subsequent Zionist plans on the River Jordan's waters should be considered.

The first such plan was published in 1944, before the establishment of the Israeli State. It was put forward in a book entitled "*Palestine, Land of Promise*" by Walter Lowdermilk, who had been commissioned for the task by the Jewish Agency. He proposed diverting the waters of the Jordan and its tributaries for developing hydro-electric power and irrigation, and a salient feature of the plan was to take a considerable quantity of water outside the Jordan's watershed to irrigate the Negev in southern Palestine. Lowdermilk also envisaged introducing Mediterranean Sea water into the Jordan Valley to keep the Dead Sea at its existing level. These ideas, particularly that of removing water from the Jordan Valley to the Negev, were to dominate all subsequent Israeli plans on this matter. They formed the basis for a second plan, drawn up in 1948 by James Hays, also commissioned by the Zionists.<sup>35</sup>

In 1949-1950 the Jordanian Government commissioned Sir Murdoch MacDonald to do a study of irrigation possibilities in the Jordan Valley.

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(34) Harry N. Howard, "U.S. and Israel: Conflicts of Interests" (Article in *Issues*, Summer 1964) points out that the U.S. gave Israel \$877,700,000 economic and military aid between 1946 and 1962. (Per capita rate \$39.70, highest in U.S. aid programme).

(35) For a fuller account of the various plans see Edward Rizk, *The River Jordan*, Arab Information Centre booklet (New York, 1964).

His report<sup>36</sup> put forward a plan for use of the Jordan waters within the Valley area, which would enable extensive cultivation and avoid any of the fresh water going wastefully into the Dead Sea. MacDonald also pointed out that there was excessive salinity in tracts of land in the southern Jordan Valley, which would need washing down. This was followed by a plan drawn up by M.E. Bungler of the U.S. Technical Cooperation Agency (Point IV), with the Jordanian Government. This introduced the possibility of joint Jordanian and Syrian development of the Yarmuk tributary and the construction of a storage dam on the Yarmuk; an alternative to a previous proposal for storing Yarmuk waters in Lake Tiberias, which would have had several disadvantages. Alternatives to the Tiberias storage plan were also discussed by MacDonald.

In the meantime, the Israelis had been pressing ahead with their own schemes. As early as 1948, a special Water Department had been formed in the Israeli Ministry of Agriculture, with the task of drawing up a water plan. An Israeli seven-year water plan was published in October 1953, and revised into a ten-year plan in 1956. Its salient features in its final form included the diversion of 700,000,000 cubic metres, over half the river's flow, each year, the piping of Jordan water to irrigate the Negev and the drainage of Lake Hulah. The Israelis were thus the first to plan and initiate the diversion of the River Jordan without the agreement of the three other states whose interests would be directly affected, namely Jordan, Syria and Lebanon.

In 1953 an American firm, Charles T. Main, carried out a study on "Unified Development of the Water Resources of the Jordan Valley Region" at the request of the United Nations. It suggested irrigation projects by gravity flow within the Jordan watershed, the drainage of Lake Hulah, storage in Lake Tiberias and the building of a small dam on the Yarmuk, essentially for hydro-electric power, and a dam on the Hasbani River in Lebanon. The study was made "without field investigations" and did not take political boundaries or Armistice lines into account.<sup>37</sup>

In October 1953, a representative of the United States, Mr. Eric Johnston, came to the Middle East to see whether any agreement could be found for developing the Jordan waters on the basis of the Charles

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(36) *Report on the Proposed Extension of Irrigation in the Jordan Valley*, published by Sir M. MacDonald and Partners (London, 1951).

(37) *The Jordan Water Problem: An Analysis and Summary of Available Documents* (Pamphlet of American Friends of the Middle East, Washington, D.C., 1964), pp. 35-40.

Main proposals or a modified version of them. In a subsequent broadcast, Mr. Johnston described his mission thus:

I did not go to the Near East with a plan. What I had in my briefcase was a proposal. This proposal was to urge the careful consideration of a concept, a concept which envisioned the coordinated development of the Jordan River watershed . . . I did not ask or expect a 'yes' or 'no' answer from anyone in connection with these suggestions. On the contrary, I did not feel that a definite reply made before careful consideration had been given to the proposals would be in order.<sup>38</sup>

It is clear, therefore, that any proposals which Mr. Johnston might make were only binding if they were accepted by the parties concerned. In fact, he emphasized this by inviting both sides to submit to him any alternative plans they might have formulated. This they did early in 1954.

The Israelis from the start were not pleased with the Johnston proposals. They did not like the fact that the Charles Main plan on which the proposals were based envisaged the use of Jordan waters within the watershed, nor were they content with Mr. Johnston's suggestion that they have 39 per cent of the river's flow. We may recall that while Mr. Johnston was trying to conduct his delicate mission, the Israelis were already beginning to carry out their plan to divert over half the river's flow and irrigate outside the watershed. This hardly indicated any sincere Israeli desire to reach a compromise solution, nor was it calculated to make Mr. Johnston's task easier. The Israeli counter-proposals, contained in the John Cotton plan, were a further manifestation of the Israeli urge to obtain control of other people's property which has become such a familiar feature of life in the Middle East. The plan proposed diverting the Litani, a purely internal Lebanese River, and also contained many other features of previous Israeli plans like diversion of the Jordan waters outside the watershed and their use in the Negev. While the Cotton plan only proposed to allow the three Arab riparian States, Jordan, Syria and Lebanon, enough water to cultivate some 200,000 acres between them, the Israelis were to have enough to cultivate nearly 450,000 acres, over twice as much as the three Arab States combined.<sup>39</sup>

The Arab States had found a number of inadequacies in Mr. Johnston's proposals, although they received him cordially and heard his views. In the first place, his suggestion that the Arab riparians receive 61 per cent of the Jordan's flow did not take into account the fact that 77 per

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(38) Statement on Columbia Broadcasting System network, 1 December 1953.

(39) *The Jordan Water Problem*, pp. 70-74.

cent of this flow originated in the territory of those Arab States. The 61 per cent, if these proposals were carried out, would have to be shared between three states whose development needs were extremely urgent, while the Israelis, with less pressing needs, would obtain the exceptionally high shares of 39 per cent. Also, the proposals did not consider Lebanon's needs, since the whole flow of the Hasbani headwater, originating in Lebanon, would be used for irrigating Israeli-held land. Nor were Syria's rights to use of the Baniyas headwater, originating in her territory, adequately recognized. Finally, the scheme to use Lake Tiberias as a storage reservoir, particularly for water diverted from the Yarmuk, had many disadvantages. Lake Tiberias has a high degree of salinity, whereas the Yarmuk does not. Storage of Yarmuk water in Lake Tiberias would considerably increase the salinity water flowing down the whole length of the Jordan Valley, some areas of which are already too saline, thus harming agriculture. It was also estimated that 300,000,000 cubic metres annually would be lost by evaporation from the Lake. Furthermore, and of paramount importance, Lake Tiberias being under Israeli control, to use it for water storage would place Jordan's irrigation in the Valley at the mercy of a state which has repeatedly shown hostility.<sup>40</sup>

The Arab States therefore presented Mr. Johnston with counter-proposals drawn up by the Arab League Technical Committee. These aimed at an equitable allocation for all riparians to give them enough water to irrigate all cultivable lands in the Jordan watershed. They included a project for a Yarmuk storage dam, from which evaporation loss would only be one twentieth the amount from Lake Tiberias, use of Yarmuk and upper Jordan water for both irrigation and hydro-electric power, and a more efficient use of additional supplies from wells and seasonal water-courses. Under this scheme, the Israelis would receive the major part of the flow north of Lake Tiberias plus 84,000,000 cubic metres annually from the Lake, and would thereby be able to cultivate over 50,000 acres.<sup>41</sup>

Thus, while the Arab States wished to see a comprehensive development of the Jordan watershed, taking into account the interests of all riparians, the Israelis aimed at obtaining the lion's share of the water for themselves, mainly to divert outside the watershed. Between these two

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(40) See Dana Adams Schmidt, "Prospects for a Solution of the Jordan River Valley Dispute" (article in *Middle Eastern Affairs*, January 1955), p. 6.

(41) *The Jordan Water Problem*, pp. 64-69.

views the gap was too wide, and Mr. Johnston's mission was unsuccessful. Which of the two positions accorded most with international law?

The principles at stake in this matter have not been definitely settled by a convention. There exist, however, some well-established norms which can be found in the writings of eminent jurists and the texts of treaties dealing with similar problems. There are over 100 treaties throughout the world in force regarding the question of sharing rivers between different states. Arab States are signatories to some of these, on the Nile, the Euphrates and the Tigris, for example; a fact which shows that they are willing to accept the principle of cooperation between states on the use of rivers, but with equitable sharing of waters and guarantees for the rights of riparians. The unilateral Israeli action in proceeding with diversion while the Johnston mission was engaged in its work inspired no confidence in Israeli intentions. As Mr. Johnston himself said:

Unilateral efforts to harness the stream can only be expected to create further tension. This could easily lead to open conflict. Unless some mutually acceptable development plan can be elaborated, the situation could easily become one in which whoever can take the water will get it, and I need not amplify the consequences which might ensue in that event.<sup>42</sup>

A subsequent Israeli refusal of Mr. Johnston's proposal for international supervision of the water resources was also not an indication of good faith.

In considering the Israeli unilateral diversion, it should be noted that "the two principles of (1) absolute territorial sovereignty and (2) the right to the absolute integrity of state territory as against effects emanating from other territories are properly applicable to the land and river territory of a state. These principles are capable of coming into conflict and as a result of the mobility of water very often do conflict."<sup>43</sup> Those writers who support the first principle maintain, in essence, that "over international rivers . . . a fundamentally unrestricted sovereign authority is vested in the riparian state to the extent that international rivers flow within its state territory. It is unobjectionable for an unrestricted right of sovereign authority in respect for non-navigable rivers to be vested in a state, for no interest of the riparian state in the use of the river course as a whole exists in the case of these rivers."<sup>44</sup> Those who maintain the principle of

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(42) *Ibid.*, pp. 83-84.

(43) Max Huber, "Ein Betrag zur Lehre von der Gebietshoheit an Grenzflüssen" (article in *Zeitschrift für Völkerrecht und Bundesstaatsrecht*, 1907), pp. 29f., 159f.

(44) W. Schade, *Wesen und Umfang des Staatsgebiets* (1934), p. 86.



territorial integrity, on the other hand, believe that "every state must allow rivers, over which it does not exercise unrestricted territorial sovereignty, whether in respect of their length or their breadth, to follow their natural course; it may not divert the water to the detriment of one or more of the other states with rights to the river, interrupt, artificially increase or diminish its flow."<sup>45</sup>

There has been a growing tendency to strike a balance between these two extremes,<sup>46</sup> and to secure international acceptance of the principle that "a river which flows through the territory of several states or nations is their common property."<sup>47</sup> In this way, measures taken by any state to use or divert water from a river would be taken in agreement with the other states concerned, and development could proceed on a basis of equitable sharing of the river's resources. This tendency is reflected in the large number of water treaties signed in this century.<sup>48</sup>

The Israelis, by proceeding with their unilateral diversion, were basing their action on the concept of absolute territorial sovereignty over any water which happened to be in territory under their control. While such an action is not actually forbidden by any convention, it can be considered retrogressive in that it is contrary to general principles becoming increasingly accepted by civilized countries in their mutual dealings. Furthermore, the argument of absolute territorial sovereignty could be made to cut both ways. For if the Israelis could invoke territorial sovereignty to justify their unilateral diversion, assuming that such a course is not contrary to international law, then the Arab States could likewise invoke the same argument and divert headwaters rising in their territories before they reached Israeli territory, as a retorsion. This was the decision of the Arab Summit Conference in January 1964. The Israeli refusal to abide by civilized principles left the Arab States with no other choice, if the development plans and existing agriculture of the Arab riparian States were to be protected.

Some writers have put forward the thesis that waters should not be diverted outside their watershed until the needs of the watershed's inhabi-

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(45) Huber, *op. cit.*, p. 160.

(46) See C.C. Hyde, *International Law, chiefly as interpreted and applied by the United States* (Boston, 1945), pp. 565f.

(47) This principle governed decisions of the International Law Association Conference at Dubrovnik, 1956; see Colombos, *op. cit.*, p. 229.

(48) For relevant extracts from these treaties, see F.J. Berber, *Rivers in International Law* (London, 1959), pp. 59-127.

tants have been fully met.<sup>49</sup> The Israeli diversion to the Negev would clearly be against this principle. This principle, however, is not a binding rule of international law, but rather a question of morality and civilized conduct.

In the absence of a general and definitive convention or other well-defined text of law on many of the questions raised by this issue, it is relevant to quote what the New York Conference of the International Law Association, in September 1958, considered to be the principles which had come to be accepted by civilized nations through the development of customary law. The Conference defined these as "Agreed Principles of International Law," and they are quoted with this writer's comments relating them to the case in question:

1. A system of rivers and lakes in a drainage basin should be treated as an integrated whole (and not piecemeal).

**Comment:** Unilateral diversion of waters outside the watershed without considering other riparians' interests and before the needs of the watershed have been met would be contrary to this principle, and harm development of the basin as an integrated whole.

2. Except as otherwise provided by treaty or other instrument or customs binding upon the parties, each co-riparian state is entitled to a reasonable and equitable share in the beneficial uses of the waters of the drainage basin. What amounts to a reasonable and equitable share is a question to be determined in the light of all the relevant factors in each particular case.

**Comment:** No treaty, instrument or customs exist on the sharing of water between the Arab riparian States and the Israeli State. Syria and Jordan on 4 June 1953 signed a treaty on the Yarmuk tributary, but this was not in dispute. Israeli plans certainly did not provide, and it is questionable if the Main plan provided, a "reasonable and equitable share" to the three Arab riparian States in view of their development needs.

3. Co-riparian states are under a duty to respect the legal rights of each co-riparian state in the drainage basin

**Comment:** That is, one state should not take over half the waters for itself, leaving the remainder to be shared by three other states with far greater requirements. Nor should it take measures which will increase

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(49) Georgiana Stevens, *The Jordan River Valley* (International Conciliation, No. 506, New York, January 1956), p. 229.

soil salinity and damage the agricultural prosperity of another state lower down the river.

4. The duty of a riparian state to respect the legal rights of a co-riparian state includes the duty to prevent others, for whose acts it is responsible under international law, from violating the legal rights of the other co-riparian states.

**Comment:** This is the only sanction suggested in regard to enforcement of riparian rights. It implies a form of collective responsibility for security on riparian rights, despite a certain vagueness on what these rights comprise. The concept of collective security was also implicit in the January 1964 Arab Summit decisions.

The Arab legal position has the supporting opinions of many distinguished international legal authorities. Thus:

The flow of non-national, boundary, and international rivers is not within the arbitrary power of one of the riparian states, for it is a rule of international law that no state is allowed to alter the natural conditions of its own territory to the disadvantage of the natural conditions of the territory of a neighbouring state. For a state is not only forbidden to stop or to divert the flow of a river which runs from its own to a neighbouring state, but likewise to make such use of the water of the river as either causes danger to the neighbouring state or prevents it from making proper use of the flow of the river on its part.<sup>50</sup>

Sir Hersen Luther Bacht, a British Judge on the International Court of Justice, also upheld this view:

The flow of an international river is not subject to the authority of any one of the nations through which it runs, since one of the principles of public international law is that no country is allowed to initiate changes with regard to physical conditions in its territory to the detriment of the physical conditions in the territory of another country. For this reason no country has the right to divert or in any way change the course of any river if it runs naturally from its territory into the territory of a neighbour. Moreover, no country is allowed for the same reason to use the waters of a river in a manner which could expose its neighbours to danger, or affect their normal use of waters of this river in its territory.<sup>51</sup>

The Israeli diversion in one respect constituted a direct violation of international law, in that it led to breaches of the Armistice Agreement with Syria. In the early stages, the Israelis carried out diversion works at Jisr Banat Yaqub in a Demilitarized Zone. Any exercise of sovereignty

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(50) Oppenheim, *op. cit.*, 8th ed., Vol. I, p. 475.

(51) Quoted in *The Jordan Water Problem*, p. 91.

of this nature in these zones was a violation of the Armistice.<sup>52</sup> Work in the Zone had to be halted by an order from the Security Council on 27 October 1953.<sup>53</sup> The most serious Armistice violation, the June war which led *inter alia* to seizure of Syrian territory, enabled the Israelis to secure greater control of the Jordan headwaters and thus to advance their diversion plans.

Of much greater importance than all these above-mentioned considerations, however, was the question of title to the land. The illegality of the Israeli claim to Palestinian territory has been fully examined in the first chapter of this study. Suffice to say that since the Israeli claim to Palestinian territory rests on no valid legal basis, it follows that the Israelis also have no right to alter that territory or the waters passing through it. A thief cannot claim a right to "develop" property which he has stolen from its lawful owner.

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(52) See von Horn, *op. cit.*, pp. 77-79, and Georgiana Stevens, *Jordan River Partition* (Hoover Institution Studies, Stanford University, 1965), pp. 74-75.

(53) Res. 100 (1953).

## CHAPTER IV: BASIC HUMAN RIGHTS IN INTERNATIONAL LAW

The widespread recognition that human rights are a subject essentially within the realm of international law represents one of the most encouraging features of progressive development of international law in modern times. Compared with the attitude which prevailed less than a century ago, one could almost term the present attitude a revolution in international legal thinking. For international law "was until quite recently mainly concerned with the affairs and relations of States and their unfettered dominion and sovereignty within their borders. The treatment of the individual whether a citizen or a foreigner, was considered a domestic matter lying outside the scope of international law . . . But after World War I, there was a return to the humanitarian principles of traditional law first laid down by the prophets of the great World religions, and later revived by Hugo Grotius the father of International Law and the other luminaries of the Age of Enlightenment in France, England, the United States of America and elsewhere. People, and the new constitutions formulated by them, began to speak of the Rights of Man, and of his fundamental inalienable rights."<sup>1</sup>

It was probably Islamic law which first introduced the concept of human rights into international relations, on the basis of such precepts as "there is no compulsion in religion"<sup>2</sup> and "fight them until there is no persecution."<sup>3</sup> It was on the basis of human rights that the early elected Islamic State intervened militarily to protect a population under imperial oppression by supporting the insurgency led by Muthanna Ibn Haritha against the Persian Sasanid Empire.<sup>4</sup> Christians fought on the Muslim side in that campaign.<sup>5</sup> Likewise, it was not only for questions of self-defence but also to protect Monophysite Christians from persecution

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(1) Shukry Muhtadie, *The Protection of Human Rights Under Occupation*, submitted to Seminar on Human Rights, Nicosia, 1969.

(2) Holy Quran, Chapter 2, Verse 256.

(3) *Ibid*, Chapter 2, Verse 193.

(4) Muhammad Ibn Jarir Al Tabari, *Tarikh Al Rusul wa Al Muluk* (Cairo, 1962 ed.), Vol. III, pp. 343, 444.

(5) Sir William Muir, *The Caliphate, its Rise, Decline and Fall* (Beirut reprint, 1963), p. 96.

that the Caliph Umar pursued the military campaign to expel Byzantine imperial rule from Syria.

The principle of human rights having been re-established in international law, it is therefore fitting in the scope of this study to consider the human rights aspects of the Palestine problem. These posed themselves potentially with the issuing of the Balfour Declaration, when the British Government promised not to prejudice the Palestinian people's "civil and religious rights" as a ruse to deprive them of their human rights. One of the most distinguished Afro-American leaders has pointed out that his people demand not civil rights but human rights, precisely because the latter are clearly defined and embodied in texts of international law while the former are meaningless.<sup>6</sup> As it turned out, the Palestinians lost not only their human rights through implementation of the Balfour Declaration, but their civil (whatever that may mean) and religious rights as well.

The primary issues of human rights which arose after the 1948 war, regarding the Palestinians, were twofold: the status of the Palestinians expelled from their country, and that of those who remained behind under Israeli rule. Subsequent issues which were to arise were the question of Israeli racial discrimination against Oriental Jews and the widespread Israeli violations of the Geneva Conventions following the June 1967 war, which will be dealt with in later chapters.

### 1. *The Expelled Population*

The Palestine problem cannot be understood without an appreciation of the two facets of the central issue of the problem: namely, the Palestinian people's dispossession of the land they lawfully own, and their forcible expulsion from it. This second facet is generally referred to as the "refugee problem."

This name is not an altogether satisfactory one, since the word refugee is somewhat vague and is used to cover people in a wide variety of situations. The Palestinian refugees, however, are in a unique situation totally different from that of any other people normally described as refugees. For the sake of accuracy, it is really necessary to invent a new term to describe them: "unlawfully expelled persons" would be the most

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(6) *The Autobiography of Malcolm X* (New York, 1966), p. 364.

precise, although it sounds long-winded. In order to be absolutely clear what is meant by a Palestinian refugee, let us define our terms.

To people outside the Arab World, the word refugee conveys the idea of someone in a difficult, unpleasant, but not impossible, situation. In an area of hostilities, like Nigeria or Vietnam for instance, a refugee is someone who has had to move from where he lives to go from a battle area to a safer place. His house may actually have been destroyed in the fighting, but nevertheless his rights of ownership are not in question or likely to be supplanted by alien settlers; therefore he may in theory be able to return to his original place of residence once hostilities cease. Thus, large numbers of Algerian refugees in Tunisia and Morocco were able to return home after the Algerian War of Independence had ended.

In Europe, a refugee may be someone who has left his country voluntarily because he disagrees with the government there and so decides, for economic or ideological or other reasons, to go and live elsewhere. Thus anti-Communist individuals have left a number of countries which have Communist Governments, and have become refugees in foreign countries. In North America, a refugee may be a Cuban who disagrees with Dr. Castro, or even a Havana casino owner who finds that his business is not what it used to be in the days of Batista, and decides he would do better in Florida. All these people of widely differing circumstances can be, and often are, described as refugees; yet, beyond the fact that they are no longer living in their original homes, they have nothing in common with Palestinian refugees. But the wide use of the term refugee has resulted in many people being confused about the nature of the refugee problem. Thus, in Western countries, people sometimes ask why Palestinian refugees should not settle in countries other than their own as, say, refugees from some European countries have done.

This confusion has arisen because the West only has first-hand experience of the voluntary refugee: a person who, for ideological or economic reasons, objects to living under the government of his own country and makes a free choice. There is no law which has compelled any citizens of, say, Cuba or the German Democratic Republic, to leave their homeland or which forbids their return. To become refugees was their own decision. With the Palestinians, the situation is totally different. Palestinian refugees did not make a free choice and decide that they would prefer to live in tents in surrounding countries rather than in their own homes under an

alien rule. The option was simply not offered to them: the Israelis drove them out by force, and forcibly prevent their return.

Because of the vital nature of this aspect of the problem, Zionist spokesmen have attempted to alter the facts of history with regard to the expulsion of the Palestinians. Thus, according to the Israeli account, the refugees left their homes on the instructions of the Arab Governments, broadcast over Arab radio stations, when armies of Arab States entered Palestine to fight the Zionists in May 1948.

Even to someone who does not know the facts, this must sound a bit of a tall story. Never in history have virtually an entire nation of a million people simply walked out of their homes on the instructions of governments of neighbouring states, leaving all their possessions behind them. An examination of the facts reveals the true cause of the exodus. In the first place, over 300,000 Palestinians had become refugees even before the Arab States' armies entered Palestine and the war officially began on 14 May 1948. The Zionists had initiated their expulsion plans shortly after the United Nations adopted the Partition Resolution, nearly six months before the entry of the Arab States' armies. Secondly, the massacre of Deir Yassin village, which precipitated the most serious flight, occurred on 9 April 1948, well over a month before Arab States intervened also. "Jewish terrorism, not only by the Irgun, in such savage massacres as Deir Yassin, but in milder form by the Haganah, itself 'encouraged' Arabs to leave areas the Jews wished to take over for strategic or demographic reasons. They tried to make as much of Israel as free of Arabs as possible," according to a Jewish American writer with wide knowledge of the Palestine problem.<sup>7</sup>

The researches of several scholars, notably Walid Al Khalidi and Ersine Childers, have demonstrated the falsehood of the Zionist claim about broadcast "orders to leave" from Arab radio stations. Mr. Childers related:

Examining every official Israeli statement about the Arab exodus, I was struck by the fact that no primary evidence of evacuation orders was ever produced. The charge, Israel claimed, was 'documented'; but where were the documents? There had allegedly been Arab radio broadcasts ordering the evacuation; but no dates, names of stations, or texts of messages were ever cited. In Israel in 1958, as a guest of the Foreign Office and therefore doubly hopeful of serious assistance, I asked to be shown the proofs. I was assured they existed, and was promised them. None had been offered when

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(7) I.F. Stone, "For a New Approach to the Israeli-Arab Conflict," (article in *New York Review of Books*, 3 August 1967).



I left, but I was again assured I asked to have the material sent on to me. I am still waiting . . .

I . . . decided to test the undocumented charge that the Arab evacuation orders were broadcast by Arab radio—which could be done thoroughly because the B.B.C. monitored all Middle Eastern broadcasts throughout 1948. The records, and companion ones by a U.S. monitoring unit, can be seen at the British Museum.

There was not a single order, or appeal, or suggestion about evacuation from Palestine from any Arab radio station, inside or outside Palestine, in 1948. There is repeated monitored record of Arab appeals, even flat orders, to the civilians of Palestine to *stay put*. To select only two examples: on April 4, as the first great wave of flight began, Damascus Radio broadcast an appeal to everyone to stay at their homes and jobs. On April 24, with the exodus now a flood, Palestine Arab leaders warned that:

Certain elements and Jewish agents are spreading defeatist news to create chaos and panic among the peaceful population. Some cowards are deserting their houses, villages or cities . . . Zionist agents and corrupt cowards will be severely punished. (Al-Inqaz, the Arab Liberation Radio, at 12.00 hours).

Even Jewish broadcasts (in Hebrew) mentioned such Arab appeals to stay put. Zionist newspapers in Palestine reported the same: none so much as hinted at any Arab evacuation orders.

After Deir Yassin "Irgun then called a press conference to announce the deed; paraded other captured Arabs through Jewish quarters of Jerusalem to be spat upon; then released them to tell their kin of the experience." Mr. Childers quoted examples of the official Haganah encouraging the exodus by using loudspeaker vans to incite panic. "In Jerusalem the Arabic warning from the vans was, 'The road to Jericho is open: Fly from Jerusalem before you are all killed!' (Meyer Levin in *Jerusalem Embattled*). Bertha Vester, a Christian missionary, reported that another theme was, 'Unless you leave your homes, the fate of Deir Yassin will be your fate'." As an instance of forcible expulsion by the Haganah, Mr. Childers cited the Zionist Kimche brothers' account of the conduct of troops led by Moshe Dayan in "shooting up" Lydda and Ramle.<sup>8</sup>

Writing from the United States, Dr. Khalidi confirmed the incorrectness of the Zionist broadcast claim. He stated:

I was pleased to see that the researches of Mr. Childers in the British Museum confirm my own findings. I can report now that the complete C.I.A. collection here in Princeton also overwhelmingly confirms and elaborates the results that Mr. Childers and I have arrived at independently of one another. Briefly, these are the following: (1) There are countless broadcasts by Zionist radios which indicate deliberate psychological warfare against the Arabs. (2) There is not one single instance of an Arab evacuation order or a hint of such an order. (3) There is an impressive stream of explicit Arab orders to the Palestinian Arab civilians to hold their ground and remain

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(8) Erskine Childers, *The Other Exodus*, article in *The Spectator*, 12 May 1961.

in their towns and villages. (4) A similar stream between March and May announces plans for the setting-up of a Palestinian administration and urges Arab civil servants to stay at their posts. (5) Many Zionist broadcasts repeat and comment on the Arab announcements referred to in (3) and (4). (6) Even at the darkest of times Arab broadcasts consistently belittled Zionist atrocities.<sup>9</sup>

The Palestinian refugees thus differ even from populations normally displaced by the hazards of war, in that their displacement was an act of deliberate policy by one of the parties to the hostilities, namely the Israelis. Subsequent circumstances have also been different for them, in that they have been denied the basic right normally granted to people in such a position, namely the right to return to their homes after hostilities have ended. It has been necessary to dwell in some detail on the evidence discovered by Mr. Childers and Dr. Khalidi, as this illustrates the illegal manner in which the Palestinians were made into refugees. However, this does not affect the basic right of return, which is inalienable, whatever the circumstances of their departure. "In general international law, the principle holds true that no citizen loses his property or his rights of citizenship; and the citizenship right is *de facto* a right to which the Arabs in Israel have much more legitimacy than the Jews. Just because the Arabs fled? Since when is that punishable by confiscation of property and by being barred from returning to the land on which a people's forefathers have lived for generations?"<sup>10</sup>

The application of the right of return was the solution recommended by the United Nations Mediator Count Bernadotte when the second truce of 1948 was supposed to be in force. It was the solution demanded by the United Nations General Assembly in its famous Resolution number 194 of 11 December 1948. The principle of return has been called for year after year in resolutions with which the Assembly has reaffirmed Resolution 194, but the Israelis still refuse to apply these resolutions or to allow the refugees to return to their homeland.<sup>11</sup> With this enforced exile has gone the deprivation of property rights. To the physical barrier of the barbed wire on the Demarcation Lines, the Israelis added a so-called legal measure to keep the Palestinians from their property rights: the Absentee Property Law, under which control of Palestinians' property passed to Israeli hands. Thus, "of the 370 new Jewish settlements estab-

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(9) Letter in *The Spectator*, 1961.

(10) Professor Erich Fromm in *Jewish Newsletter*, 19 May 1958.

(11) E.g. Resolutions 393 (V), 394 (V), 513 (VI), 614 (VII), 720 (VIII), 818 (IX), 916 (X), 1018 (XI), etc. ad infinitum.

lished between 1948 and the beginning of 1953, 350 were on absentee properties . . . In 1954 more than one third of Israel's Jewish population lived on absentee property, and nearly a third of the new Jewish immigrants settled in urban areas 'abandoned' by Arabs. The Arabs left whole cities like Jaffa, Haifa, Acre, Lydda, Ramleh, Beisan, Majdal; 388 towns and villages and large parts of 94 other cities and towns containing nearly a quarter of all buildings in Israel. Ten thousand shops, businesses and stores were left in Jewish hands, citrus groves, olive groves, etc."<sup>12</sup>

Resolution 194 had also instructed the Conciliation Commission "to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation." A further resolution directed the Commission, *inter alia*, to "continue consultations with the parties concerned regarding measures for the protection of the rights, property and interests of the refugees."<sup>13</sup> Both on the implementation of the right of return and on the question of safeguarding refugee property, the Commission distinguished itself by its inactivity.

On 8 December 1949, the General Assembly passed a resolution establishing UNRWA, the United Nations Relief and Works Agency for Palestine Refugees.<sup>14</sup> The General Assembly specified that it took this step for relief "without prejudice to the provisions of paragraph 11 of General Assembly Resolution 194" (affirming the right of return). However, it has repeatedly been questioned whether UNRWA has confined itself to the purely humanitarian role for which it was supposedly intended. UNRWA teachers in Jordan, on the occasion of a protest strike, have accused the organization of attempting to harm the education of Palestinians by removing anything of a national or religious content from the syllabus in schools in Israeli-occupied areas; also of "aiming at the humiliation of the Palestinian worker and killing the spirit of national struggle within him."<sup>15</sup>

It is worth recalling the explicit terms of Resolution 194, The General Assembly resolved "that the refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to

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(12) Don Peretz, *Israel and the Palestine Arabs* (Washington, D.C., 1958), p. 143.

(13) Res. 394 (V) of 14 December 1950.

(14) Res. 302 (IV) of 8 December 1949.

(15) *Al Difa'a* (Amman), 11 September 1969.

property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible."

Thus the General Assembly, repeatedly and in very definite terms, has stated these principles:

1) That the refugees have an inalienable right to return to their homes, and should be allowed to exercise this right.

2) That those who specifically choose not to exercise their right to return should be compensated for their property, but that the choice should be left entirely to them.

3) That all those who have suffered loss of or damage to property should be compensated for it, whether they exercise their right to return or not.

No temporary steps taken for the relief of the expelled Palestinians in any way alter these rights. Charity is no substitute for justice. No amount of ration cards, clothing parcels collected by old ladies' welfare groups in the West, temporary housing units or jobs can alter the fact that the Palestinian people have a right to their own homeland. "Even greater than the physical privation has been the lack of hope—hope that for years was nurtured by the annual passage of unfulfilled resolutions in the United Nations General Assembly calling for repatriation or compensation by Israel."<sup>16</sup>

What are the views of the refugees as a whole regarding the question of return? One of the sources from which evidence on this is available is the annual reports submitted by successive Commissioner-Generals of UNRWA. Whatever views these functionaries may hold privately as individuals, officially they cannot be accused of pro-Palestinian partiality, as they are appointed by, and submit their reports to, the organization which helped to precipitate the dispossession of the Palestinians by its adoption of the illegal 1947 Partition Resolution. Thus anything tending to support the Palestinian view in an UNRWA Commissioner-General's official report can be considered authoritative.

Thus, in the report for 1956-1957, the Commissioner-General stated that "the great mass of the refugees continues to believe that a grave injustice has been done to them and to express a desire to return to their homeland . . . The Government of Israel has taken no affirmative action in the matter of repatriation and compensation."<sup>17</sup>

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(16) John H. Davis, *The Evasive Peace* (London 1968), p. 72.

(17) *U.N. Doc. A/3686*.

In the 1963-1964 report, the Commissioner-General stressed that "all that he has so far seen and heard since assuming his present responsibilities confirms the view recorded in previous reports that the refugees in general strongly maintain their insistence on the idea and aspiration of returning to their homes . . . The refugees have also expressed the wish that they should be enabled to receive redress for the loss they have suffered without prejudicing their claims to repatriation or any other political rights mentioned in Resolution 194. The modalities of implementing that paragraph of the General Assembly Resolution may be differently conceived by the refugees, but what is not in doubt is that their longing to return home is intense and widespread . . . (they) express their feeling of embitterment at their long exile and at the failure of the international community, year after year, to implement the resolution so often reaffirmed. They feel that they have been betrayed and their resentment is directed not only against those whom they regard as the chief authors of their exile, but also against the international community at large whom they hold responsible for the partition and loss of their homeland, which they regard as an offence against natural justice."<sup>18</sup>

These clearly visible facts caused one Commissioner-General, Dr. Davis, to write in a private capacity after retirement, that "somehow, the basic rights of the Palestine Arabs must be restored and in a manner that no longer leaves them scattered against their will throughout the Arab world and beyond. They must again have a homeland."<sup>19</sup>

These conclusions by the Commissioner-Generals of UNRWA demonstrate that the overwhelmingly predominant feeling among Palestinian refugees is that their legally-recognized right of return should be exercised, and that compensation cannot be a legitimate or adequate substitute for that right. The correctness of this view is upheld not only by the specific General Assembly resolutions on Palestine refugees but also by the principles contained in the Universal Declaration of Human Rights which the Assembly adopted as a resolution on 10 December 1948, the day before the adoption of Resolution 194. Article 9 includes exile as something to which people should not be subjected. Article 13 reads: "Everyone has the right to leave any country, including his own, and to return to his country." Article 17 states: "No one shall be arbitrarily deprived of his property."

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(18) *U.N. Doc. A/5813*.

(19) *Davis, op. cit.*, p. 111.

Israeli policy towards the refugees has been contrary to all these principles in the Universal Declaration of Human Rights. The Israeli authorities have forcibly exiled the refugees, continue to deny them the right of return to their country, and have arbitrarily deprived them of their property.

It should be remembered that Israeli membership in the United Nations was made conditional upon the implementation of two resolutions, one of which was the resolution on the refugees' right to return. This condition was specifically laid down by Assembly Resolution 273, admitting Israel to the United Nations, and it is the only case of any state being granted membership conditionally. The Israelis have done nothing to fulfil the condition, and the United Nations has done nothing to enforce it.

The acts of massacre and expulsion by the Israelis, which were intended to destroy the Palestinian people as a national entity and to efface them from their territory, should be considered in the light of one of international law's greatest advances in the era of the United Nations, the illegalization of genocide. On 13 December 1946, the United Nations General Assembly adopted a resolution condemning genocide as a crime under international law.<sup>20</sup> Following this decision, a Convention on the Prevention and Punishment of the Crime of Genocide was drawn up, and the Assembly adopted it as a resolution on 9 December 1948, the day before the International Declaration of Human Rights and two days before Resolution 194 on the right of return. Article 2 of the Convention stated that "in the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group." The acts listed included: "(a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part."

Measures like the massacre of Deir Yassin clearly come under heading (a). The Israeli acts of expelling the refugees and denying them the right of return come under headings (b) and (c). The fact that the Israelis' expulsion of the refugees as a group was "calculated to bring about its physical destruction in whole or in part" is clearly borne out by Assembly

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(20) Res. 96 (I).

Resolution 212 which stated that "the choice is between saving the lives of many thousands of people now or permitting them to die." Had it not been for relief action, they would have died in large numbers as a result of the Israeli actions in dispossessing them.

Article 4 of the Genocide Convention provided that those guilty of genocide offences "are punishable, whether they are constitutionally responsible rulers, public officials, or private individuals." The weakness of the Convention lies only in its inadequately effective provisions for enforcement. "It stands to reason that a government pursuing a policy of genocide will not permit its officials to be tried before its courts for acts which form a part of government policy. To be sure, in the event of war and of subsequent defeat, the victors may try the officials of the defeated state for the crime of genocide."<sup>21</sup>

It was the dispossession of the Palestinian people that destroyed the peace of the Middle East in 1947, and has prevented peace returning to the area ever since. It follows, therefore, that there can be no true and just peace in the Middle East until this factor which disturbs it, namely the Israeli racialist State, is removed, and the problem is resolved in accordance with the recognized principles of international law. This involves the full and free exercise by the expelled Palestinians to return to their homes, and their attainment of all the general human rights, including self-determination, to which they are entitled in their own country.

## 2. *Arabs under Israeli Rule (1948-1967)*

When the 1949 Armistice Agreements were signed, out of approximately 1,000,000 original Arab inhabitants of Israeli-occupied territory, only 170,000 remained in their homes. By natural population increase, the number of Arabs under Israeli rule rose to some 296,000 by 1965.<sup>22</sup> Let us examine the Israelis' treatment of those whom they did not succeed in driving out.

The excuse may be raised, by those ignorant or heedless of the position of human rights in international law, that this is an internal matter for the Israeli State. However, the 1947 Partition Resolution, despite its illegal character, is clear proof that the United Nations right from the start considered the question of the rights of Palestinians under Israeli rule as being within the scope of international law. For Chapters 1 and 2

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(21) Kelsen, *op. cit.*, p. 220.

(22) Hadawi, *op. cit.*, p. 194 and Peretz, *op. cit.*, p. 95.

of the Resolution guaranteed (in theory) the rights of minorities in questions of religion, freedom from discrimination, education, language, equal protection of the laws and ownership of property. Chapter 4 of the Resolution stated:

The provisions of chapters 1 and 2 of the declaration shall be under the guarantee of the United Nations, and no modifications shall be made in them without the assent of the General Assembly of the United Nations. Any Member of the United Nations shall have the right to bring to the attention of the General Assembly any infraction or danger of infraction of any of these stipulations, and the General Assembly may thereupon make such recommendations as it may deem proper in the circumstances.

However, at no time has the United Nations taken any action to enforce what it termed its guarantee or to prevent any of the infractions that have occurred. The violation of the basic human rights of Arabs who lived under Israeli rule since 1948 can be considered under four main headings: general discriminatory practices, violation of property, enforced exile or deportation, and violent assaults, including massacre.

**(1) General Discriminatory Practices.** Israeli citizenship laws are more racially discriminatory in character than those of any other state, even including former Nazi Germany or white supremacist South Africa. This is because they are based, not only on the concept of racial purity to the exclusion of the Arab population, but also on the unique concept of "ingathering of the exiles," whereby everyone of Jewish faith throughout the world is considered an Israeli who should go and live in Israel. Thus "Jews are granted Israeli citizenship automatically, by virtue of the Return Law of 1950."<sup>23</sup> This law was followed by the 1952 Nationality Law, on which an independent Jewish newspaper made these observations:

Israel is *legally* proclaimed the home not merely of the million and a half Israelis who live there, but of all Jews in the world. A law has been enacted to facilitate their immigration and settlement in Israel . . . The second point of the Israeli Nationality Act provides that non-Jews in Israel can become citizens of the state only if they fulfil these requirements:

1. They must have been citizens of Palestine before the establishment of Israel.
2. They must be included in the official register before 1 January 1952.
3. They must prove continuous residence in Israel or in territory acquired by Israel since the establishment of the state.

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(23) Sabri Jiryis, *The Arabs in Israel* (Hebrew ed. Haifa, 1966, English ed. Beirut, 1968), p. 178. Mr. Jiryis has lived under Israeli rule since 1948, and writes from personal experience.



4. They must have knowledge of Hebrew.
5. They must be approved by the Ministry of the Interior as loyal to Israel and worthy of Israeli citizenship.

The sum total of these conditions, as has been stated in the debate in the Knesset, is that only about ten per cent of the native Arab population that lives in Israel now can obtain citizenship under the law. The others must remain aliens in their native land until they are admitted to citizenship.<sup>24</sup>

No civilized country in the world denies citizenship rights to those born in it of families who have lived in it for generations while automatically granting citizenship to foreigners of a particular religion upon their landing in the country. These Israeli laws contravene Article 15 of the Universal Declaration of Human Rights which states: "Everyone has the right to a nationality. No one shall be arbitrarily deprived of his nationality."

The concept of having two grades of national status, full citizenship for the master race and an inferior status for others, is based on a Nazi legal concept. "Thus, according to a German statute of September 1935, only subjects of German blood had political rights and were called *Reichsbuerger*, whereas the other subjects, especially Jewish subjects, were called *Reichsangehoerige*."<sup>25</sup> Israeli laws on nationality have in fact placed Arabs under Israeli rule in a position similar to Jews under Nazi rule. Israel boasts that it is a democracy. It is, in the same sense as South Africa or Rhodesia, for it provides Jewish settlers with the rights to form political parties and be represented in parliament; the same rights which white settlers in South Africa and Rhodesia enjoy. But in all these three settler states, the original lawful owners of the country have their political rights severely curtailed. Thus the Arabs under Israeli rule are forbidden to form political parties of their own representing their own interests, and are restricted only to political activity or expression within the established Zionist parties. An illustration of this was the case of Al Ard, an Arab association which was banned by the Israeli authorities. "The last act in the political activity of Al Ard was unfolded before the 1965 parliamentary elections, when some leading members presented a slate of candidates for the Knesset . . . The Central Elections Commission refused to register their slate, called the Arab Socialist List (September 1965), arguing that this was an illegal association." An appeal was lodged with the Supreme Court, which upheld the ban. The President of the Court

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(24) *Jewish Newsletter*, 12 May 1952.

(25) Kelsen, *op. cit.*, p. 373.

"pointed out the present system of election was by slates, that is by groups each having a common political objective; hence a list defined by the chairman of the Central Elections Commission as subversive *a priori* loses its right to share in the process of crystallizing the wishes of the people and therefore cannot participate in the election."<sup>26</sup>

Any right to vote which the Arabs under Israeli rule may possess, is therefore a mockery, amounting merely to a choice of what established Israeli party they would rather have to oppress them with discriminatory measures. The ruling Mapai party even restricts this choice. "Behind each village ballot box hovered the local military governor, with virtually limitless power over the freedom and livelihood of all. 'Who knows, if we vote communist they might stop our work passes?' 'Who knows, they might make a closed area of our land?'"<sup>27</sup> Before the Fifth Knesset elections, a meeting in a Galilee village was addressed by a representative of the military governor, who ordered the villagers to vote Mapai. "He went on to say that, to ensure the enforcement of this decision, and to ascertain what citizens were 'loyal' to the State, it had been decided that every clan and family should be divided into small units of 15 to 20 voters, a supervisor for each unit being appointed by the Military Governor. The representative of the Governor further declared that the voters were not entitled, when voting, to use the printed ballot papers bearing the initial of the list, which were available at the voting stations, but that they were to use sheets of white paper provided for the purpose on which they were to write the distinguishing letter of the list in a certain manner, as appointed for each unit ... The Governor's representative emphasized in his speech that this method would ensure that the names of those who refused to cooperate with the 'government' would be known, and that infringement of these instructions would not be viewed favourably."<sup>28</sup> Successful Arab candidates in such elections are generally what the Afro-Americans term "Uncle Toms."

The British Mandate enacted the 1945 Defence Laws (State of Emergency) to combat the Zionist Irgun and Stern terrorists. Dr. Dunkelbaum (later an Israeli Supreme Court Judge) said in 1946: "The laws contradict the most fundamental principles of law, justice and jurisprudence." A

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(26) Jacob Landau, *The Arabs in Israel* (London, 1969), pp. 100-101.

(27) Walter Schwarz, *The Arabs in Israel* (London, 1959), p. 67.

(28) Jiryis, *op. cit.*, p. 52.

Tel Aviv conference of Jewish lawyers on 2 July 1946 declared in a resolution:

The powers granted to the authorities under the Emergency Laws deprive the Palestinian citizens (in the land of Israel) of the fundamental rights of man.

These laws undermine law and justice, constitute a grave danger to the life and liberty of the individual and establish a rule of violence without any judicial control. The conference demands the repeal of these laws.<sup>29</sup>

This writer fully concurs with the learned opinion on these laws expressed by that conference. It is unfortunate that the distinguished lawyers who passed that resolution no longer make any protest now that these very same laws form the basis of the Israeli State's rule over the Arabs. Under these laws, stiffened by subsequent Israeli legislation, areas in which Arabs lived in any numbers came under military control. The military were given sweeping powers to expel people from their villages, seize their possessions, search their homes, detain them, restrict their movement and employment, place them under police supervision or forced residence, quarter troops in their homes at their expense, and force them to carry passes if they wished to move from one place to another. The nearest parallel to the life of the Arabs under Israeli rule is the life of Africans under the apartheid pass laws of South Africa, and areas like Galilee, the Negev and the Little Triangle with sizeable Arab populations are similar in many ways to "Bantustans."<sup>30</sup>

These measures are contrary to the principle affirmed in the Preamble of the United Nations Charter, namely "faith in fundamental human rights, in the dignity and worth of the human person . . ." as well as that embodied in Article 1 of the Universal Declaration, that "all human beings are born free and equal in dignity and rights." The sort of practices that are characteristic of states like Israel, South Africa and Rhodesia have come to be increasingly condemned in resolutions adopted by the United Nations against apartheid, Nazism and racial intolerance.

**(2) Violation of Property.** The Military Emergency Regulations referred to have enabled the Israeli military to seize the property of Arabs, including land. There also exists a complex tangle of civilian laws enabling the Israeli authorities to seize Arab land, of which only the

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(29) Quoted by Jiryis, *op. cit.*, pp. 3, 5.

(30) For a detailed account of the operation of these laws, see Peretz, *op. cit.*, pp. 95-98.

salient features can be dealt with due to shortage of space. Sabri Jiryis quotes numerous examples of villages whose inhabitants have had their property violated. "Under Article 125 of the Defence Laws, the Military Government can declare certain areas closed areas. Inhabitants can be refused entry to their own villages, expelled from them, or, if they were expelled during hostilities, prevented from returning."<sup>31</sup> Sabri Jiryis says the inhabitants of Rama were expelled on 5 November 1948; Kafr Bar'am on 15 November; Anan three months later (half the inhabitants being forced across the Demarcation Line in violation of the Armistice), and that village destroyed by the Israeli Army; Kafr Yasif on 28 February 1949 (700 driven out, mostly across the Demarcation Line); Hisam, Qatiya and Jauneh in June 1949; Ghabsiya on 24 January 1950; Batat in early 1950; Mijdal on 17 August 1950; 13 villages in Wadi Ara in February 1951, with the inhabitants being driven across the Demarcation Line; and numerous other instances. "It is not claimed that this list includes all the Arab villages whose inhabitants were expelled."<sup>32</sup> Nearly all these areas have been given to Zionist colonies to cultivate.

The most notorious measures for the seizure of property were the Absentee Property Regulations (1948), the Absentee Property Law (1950) and the Land Acquisition Law (1953). Under the 1948 Regulations a Custodian of Absentee Property "could take over most Arab property in Israel on the strength of his own judgement by certifying in writing that any person or body of persons, and that any property, were 'absentee.' The burden of proof that any property was not absentee fell upon its owner, but the Custodian could not be questioned concerning the source of information on the grounds of which he had declared a person or property absentee."<sup>33</sup> This meant that any Arab could be declared an 'absentee' arbitrarily and have his property seized, with no means of redress. Among those defined as 'absentee' were "all the Arabs who had property in the new city of Acre, though they never moved farther than a few yards to the Old City—as well as all others who had been displaced in any way by the war."<sup>34</sup> One of the most glaring features of

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(31) Jiryis, *op. cit.*, pp. 7, 18-19. See also Schwarz, *op. cit.*, pp. 61-64. Closed areas totalled half a million acres in January 1956, according to Mr. Ben Gurion in the *Jerusalem Post*, 19 January 1956.

(32) Jiryis, *op. cit.*, pp. 57-58. This pattern is confirmed in Schwarz, *op. cit.*, p. 62, and Peretz, *op. cit.*, pp. 96, 117.

(33) Peretz, *op. cit.*, p. 151.

(34) Schwarz, *op. cit.*, p. 101.

the Regulations was that they were retroactive; thus "any individual who may have gone to Beirut or Bethlehem for a one-day visit, during the latter days of the Mandate, was automatically an absentee."<sup>35</sup> The Regulations were enacted in December 1948, but their effect was retroactive to 29 November 1947. The 1950 Law made a few minor changes in the 1948 Regulations. The Land Acquisition Law enabled the transfer of "absentee" property to Zionist ownership through a development board. Some 1,300,000 dunums were thus estimated to have been transferred by March 1954, much of this land going to *kibbutzim*.<sup>36</sup>

The actions listed above are contrary to numerous Articles of the Universal Declaration, notably those concerned with equality before the law, property rights, freedom of movement and residence, freedom from exile, and in particular Article 12, which lays down: "No one shall be subjected to arbitrary interference with his privacy, family, home . . ." etc.

**(3) Enforced Exile or Deportation.** The creation of the "refugee problem" did not end with the Armistice Agreements or the theoretical cessation of active hostilities. As indicated in some of the cases of villages cited by Jiryis, himself a Palestinian who has lived under Israeli rule since 1948, the Israelis continued with their policies of expulsion over the Armistice Demarcation Lines. Sometimes, villagers were expelled from their homes merely so they could be classed as absentees and their lands could be seized, without being expelled from Israeli-held territory. On other occasions they were forced across the Demarcation Lines in order to reduce Israel's "minority problem." The following two cases illustrate the sort of treatment the Arab minority have often received.

On 31 May 1950, Israeli trucks dumped 100 Arabs on the Demarcation Line south of the Dead Sea. They were ordered to cross to Jordan, and had machine gun bursts fired over their heads. Since it was night, about 20 lost their way and died in the desert. The survivors were interviewed by a Jordanian Army officer, an UNRWA medical representative, a U.N. Observer and a photographer. They stated that they had been detained by the Israelis for various reasons. Many of them had beating marks on their bodies and broken teeth and one had had its fingernails torn out—a form of torture used in Nazi Germany. Israeli action in this case was specifically a violation of the Jordan-Israel Armis-

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(35) Peretz, *op. cit.*, p. 152.

(36) Schwarz, *op. cit.*, p. 102.

tice in that Israeli forces compelled civilians to cross the Demarcation Line and also fired shots across it.<sup>37</sup>

The second case was the subject of criticism by Knesset Member Moshe Erem. In July 1950, the Knesset discussed "the deportation of 150 'infiltrators' from the village of Abu Ghush. They included children already accepted in schools and adults with authorized residence permits. Erem accused the army of carrying out the operation callously. Mothers were separated from their children, and many old people were sent over the lines."<sup>38</sup>

These acts of deportation are violations of international law in the same sense as the mass expulsion of the Palestinians in 1948.

**(4) Violent Assaults.** Three cases may be cited as examples of the Israeli use of violence against the Arab minority.

In July 1953, a curfew was imposed on the village of Al Tirah, in the Little Triangle area, following an alleged incident in which shots were said to have been fired from "in or near" the village at an Israeli Air Force reconnaissance aircraft. Subsequently the Local Council "accused the military of thefts and maltreatment during a twelve hour search. The Council Chairman charged that shots were fired into the air to frighten the local population. Women, elderly persons and infants were rushed out of their houses and marched into concentration pens, where they were kept for several hours, without water, under the blazing sun. A village committee estimated that the Army caused £10,000 worth of damage. No illegal arms were found and no suspects were detained. During the previous four years there had not been a single incident in which any of the 4,000 villagers had violated the security of the area."

On 29 October 1956, a unit of the Israeli Frontier Force entered the village of Kafr Qasim and imposed a curfew on it at 5 p.m., when a number of the villagers and their families were outside the village at work. They were not informed of the curfew, and were machine gunned, 51 being killed and 13 wounded. The dead included 12 women and girls and 17 boys aged between 8 and 17. News of the massacre was drowned by the more sensational Israeli invasion of Egypt, which began on the same day. Eleven of the Frontier Force were put on trial in an Israeli court. However, they "all received a 50 per cent increase in their salaries. A special messenger was sent to Jerusalem to bring the cheques to the

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(37) Glubb, *op. cit.*, pp. 247-249.

(38) Peretz, *op. cit.*, pp. 103-104.

accused in time for Passover. A number of the accused had been given a vacation for the holiday."<sup>39</sup> Evidence at the trial demonstrated that the massacre had been carefully planned in advance, and that the intention had been to leave no wounded and none alive to take as prisoners. The Commander of the Frontier Force was fined a token sum of 10 prutot (2 cents), while some of his officers and men were given prison sentences and released shortly afterwards. "Lt. Gavriel Dehan, commander of the police platoon at Kafr Qasim had ordered the murder of the villagers in 'cold blood' and had himself shot two of the victims."<sup>40</sup> He was subsequently appointed as "officer responsible for Arab affairs" in the town of Ramle.<sup>41</sup>

Kafr Qasim was a village in the Little Triangle area, as was Al Tirah. This area had a special status under the Jordan-Israel Armistice Agreement, Article 6, Paragraph 6 which forbade the entry of Israeli forces into the area. Any actions by Israeli forces against villages in that area therefore constituted violations of the Armistice, apart from other illegalities.

The Israeli court's action towards those guilty of the massacre was contrary to Article 8 of the Universal Declaration, which specifies: "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law."

General Israeli policies towards the Arab minority can be classed as crimes within the definition of the Genocide Convention, in that they are "acts committed with intent to destroy, in whole or in part," these remaining Palestinians as a national group. Acts such as the Kafr Qasim come within the term "killing members of the group," while the other measures described come under the headings of "causing serious bodily or mental harm to members of the group" and "deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part." Ironically, the Genocide Convention was adopted as an expression of the world's horror at the Nazi crimes committed in Europe, including those against Jews. "The practices of the German government before and especially during World War II, relating to the

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(39) *Haaretz*, 11 April 1957.

(40) *New York Times*, 17 October 1958.

(41) Jiryis, *op. cit.*, p. 111. See also Menuhin, *op. cit.*, pp. 186-191, Hadawi, *op. cit.*, pp. 205-211, Schwarz, *op. cit.*, p. 81 and Peretz, *op. cit.*, pp. 107-110 for details of the massacre.

attempt to eliminate entire groups of its own citizens and later of citizens of occupied states, led to the question of whether such acts of destruction could be regarded any longer as domestic or whether they did not constitute crimes against humanity. The consensus of the civilized world—and not merely of the victors in World War II—appears to have been that prohibitions and punishments of such barbarous practices were needed, even if such a development entailed a curtailment of the traditional territorial sovereignty of independent states.”<sup>42</sup>

A further matter regarding classification of these crimes relates to the status of the territory seized by the Israelis in 1948. This territory has been under a state of emergency from 19 May 1948, with the exception of a six-month period before the June 1967 war. The Mandate’s 1945 Defence Laws are theoretically operative throughout the whole territory; in practice, military rule is imposed on all those areas with a sizeable Arab population. These facts, plus the absence of any valid legal territorial title for the Israelis, create a case for considering that territory as being under military occupation, in which case the Israeli acts against the lawful inhabitants can be classed as war crimes. If this is so, the 1949 Geneva Convention would also be applicable as from the time they came into force. If the territory seized by the Israelis in 1948 is not strictly militarily occupied territory in the technical legal sense, then the above-mentioned Israeli acts would be classified as crimes against humanity. These were defined, under Article 6 (c) of the Charter of the Nuremberg International War Crimes Tribunal as follows:

Murder, extermination, enslavement, deportation and other inhuman acts committed against any civilian population, before or during the war, or persecution on political, racial or religious grounds . . .

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(42) Von Glahn, *op. cit.*, p. 719.



## CHAPTER V: PROBLEMS OF IDEOLOGY AND SOVEREIGNTY

It is clear from the facts already discussed that the Israeli State is essentially a racist one. It has, however, an ideological feature which is lacking in the Aryan racialism of the Nazis or the white racialism of the South African and Rhodesian settlers: namely that its race-mythology is based on religion rather than ethnic origin. Zionist race-mythology maintains that all Jews in the world form one race, whereas in fact all they share in common is a religious belief. This scientifically unsound mythological view leads to some incongruous confusions. To take the cases of two of the world's most famous Jews as an example: according to Zionist doctrine, both the black American of African origin Mr. Sammy Davis Jr. and the white settler of Russian origin Mr. David Ben Gurion are members of the same race. Yet a glance at the two gentlemen concerned indicates some difference in their ethnic origins.

The results of this race-mythology based on religions have shown themselves in a number of Israeli policies in which race and religion have been confused and religious intolerance has gone hand in hand with racial discrimination. Apart from the Palestinians, whose situation was the subject of the previous chapter, the results of this intolerance and discrimination have fallen on the Oriental Jews who in recent years have come to form approximately half the numbers of Israeli society.<sup>1</sup> Thus, the dark-skinned oriental-featured Beni Israel Jews of India, whatever Zionist theory may claim, look very different from the "sun-bronzed, fair-haired, blue-eyed Sabra," the ideal of Zionism and a new version of the "Aryan superman" prototype. Since the Beni Israel's racial qualifications fall short of required Zionist standards, Zionism also questions their religious right to call themselves Jews.

While the Zionists would have preferred to build a selective society of the "best" Western Jews, (Mr. Ben Gurion, urging American Jews to immigrate, said: "We must have some of the best pioneering youth,"<sup>2</sup>),

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(1) Nathan Weinstock, *Le Sionisme Contre Israel* (Paris, 1969), pp. 310-311.

(2) *New York Times*, 26 January 1962.

this was not always possible for economic reasons. They had, therefore, to turn to Oriental Jewry for manpower. This often involved measures which were aimed at uprooting centuries-old communities of citizens in African and Asian States, generally infringing the sovereignty of the states concerned. These uprooted communities then had to endure a regime of discrimination from the European Jewish settlers in their so-called national home.

These practices resulted in increasing common ground and cooperation between the Israeli State and other states and movements based on racialism. This has meant that the effects of Zionism have been felt far beyond the Middle East, notably by the peoples of Africa.

The religious basis of Zionist racialism has also led to steady Israeli encroachment on the rights of Christianity and Islam in the Holy Places of Palestine. For an inevitable corollary to the concept of a racially "pure" Israeli State is the idea of a "Jewish" monopoly over the Holy Land of Palestine, with its sites of biblical associations becoming symbols of Zionist racial-religious mythology. It is important to explore these hitherto insufficiently studied aspects of the Palestine problem in the light of international law.

### *1. Illegal Zionist Practices towards Oriental Jews*

In addition to previously mentioned provisions in the 1950 Law of Return and the 1952 Nationality Law, enabling Jews of any nationality to claim Israeli citizenship on stepping on Israeli-held soil, the 1952 law also allowed Israelis to hold two nationalities, their original one as well as their new one. The dual nationality concept is accepted by some states and is not in itself contrary to international law. However, the position of Israeli law is contrary to the principles of international law on two counts, and is a serious infringement of some states' sovereignty and the rights of certain communities throughout the world.

In the first place, while the Israelis thus offered their nationality to anyone of Jewish faith no matter what his national origin, they deprived Arabs whose ancestors had lived for centuries in Palestine of their nationality. This was against the principle contained in the Universal Declaration of Human Rights, that "no one shall be arbitrarily deprived of his nationality." This Israeli legislation was totally opposed to existing norms of international law on nationality, in that it conferred nationality on the basis of religion. The accepted grounds for a state's nationality being

inherited or acquired are, birth of the person concerned on that state's soil (*jus soli*), or of parentage of that nationality (*jus sanguinis*), or naturalization after a specified period of residence.<sup>3</sup>

While it is a general principle that every state has the discretion to frame its own nationality laws, this is limited, apart from the consideration of fundamental human rights, by the requirement that it should not trespass upon the sovereignty of another state. This is the second count on which the Israeli Nationality Law and Law of Return are violations. "There is a rule of general international law prohibiting the conferring of citizenship upon an alien without his consent. Hence naturalization is admissible only in case the alien applies for it. The law of a state providing that every alien entering the territory of the state becomes *ipso facto* a citizen of this state would be in contradiction to general international law."<sup>4</sup>

This irregular Israeli practice not only posed a threat to the rights of sovereign states regarding their jurisdiction over their own nationals, but also damaged the interests of Jewish communities of different nationalities throughout the world. An American Jewish view expressed was that: "This law, passed by a state which calls itself the 'Jewish State,' may be interpreted by some future anti-Semitic Government as an invitation to deport its Jews to Israel. In any event, such a law strengthens the moral position of the anti-Semites in all countries by confirming their claim that Jews are aliens everywhere, that they cannot become a real part of any country or civilization, except of Israel. Such a law, abysmally false as its theory is, may in an age of propaganda cause irreparable harm to millions of innocent Jews in this and other countries."<sup>5</sup>

Among the millions of innocent Jews harmed by this law were many living in Jewish communities throughout the Arab world. These communities had maintained good relations with their Muslim and Christian fellow-citizens, and had not been exposed to the pogroms for which Western "civilization" became renowned. Indeed, many were descended from Spanish Jews who fled from Ferdinand and Isabella's persecution to the tolerant atmosphere of North Africa, or of East European Jews granted shelter by many Arab countries during the pogroms of the last century. The calm of these communities was shattered by the activities

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(3) Von Glahn, *op. cit.*, pp. 178-181.

(4) Kelsen, *op. cit.*, p. 375.

(5) *Jewish Newsletter*, 12 May 1952.

of Zionism, which claimed that they should desert their allegiance to their own countries, either by migration to the Israeli State, or by engaging in acts of espionage or sabotage on its behalf.

Let us take the example of Morocco, the status of whose 750,000 Jewish citizens was regulated by such legal safeguards as the Sultan's decree of 5 February 1864:

It is our order that all Jews residing in our Empire, regardless of the situation in which they were placed by the Almighty, should be treated by our governors, administrators and other subjects, in conformance with strictest justice; and that before our legal courts, they should be on an equal basis with any other person, so that not even the slightest injustice may be done them nor any unmerited treatment accorded them . . . because such an injustice is an injustice in the heavens, and we cannot under any circumstances prejudice their rights. Our dignity is opposed with all its might to such proceedings. In our eyes, all men have an equal right to ask for justice.<sup>6</sup>

Throughout the past four centuries, distinguished Jews of Morocco have served their country and its royal family as ministers, ambassadors, court advisers, doctors and financiers and in many other professions. In the Second World War, when Morocco was occupied by the pro-Nazi Vichy French regime, Sultan (later King) Muhammad V protected Jewish Moroccans from Nazi measures and issued a proclamation, stating: "Moroccan Jews are my subjects, and my duty is to protect them against any aggression." His action was later praised by M. René Cassin, President of the French Alliance Israelite, who said, "The life and property of many thousands of Jews were saved thanks to the Sultan's courage and to the support he received from the entire Muslim community in Morocco."<sup>7</sup>

Into this atmosphere, Zionists endeavoured to inject prejudice in order to disrupt the life of Moroccan Jews and persuade them to emigrate to the Israeli State. The campaign reached its height in 1961. The Zionists tried to arouse communal disturbances during a visit by President Nasser of the U.A.R., by circulating among Moroccan Jews and wearing Israeli emblems. Pamphlets urging Jews to emigrate were distributed in six Moroccan cities. But the Zionist campaign failed, due to calmness and cooperation between the Moroccan Government and local Jewish leaders. Jewish representatives attended King Hassan II's coronation and members of the Moroccan royal family continued the tradition of attending Jewish festivities and visiting Jewish institutions.<sup>8</sup>

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(6) Rom Landau, *op. cit.*

(7) Alfred Lilienthal, *The Other Side of the Coin* (New York, 1965), p. 44.

(8) *Ibid.*, pp. 41-42.

Eighty prominent Jewish Moroccans publicly denounced: "The subversive activities of Zionist instigators who, speculating on the deep aspiration of Jewish Moroccans to dignity, well-being and security, push those to emigrate, when Muslims and Jews must unite their efforts in order to achieve the national liberation and create in their country the conditions of a happy life, ensuring democracy, well-being and security for all. Anxious to defend our country against any calumny, we denounce the international campaign led against Morocco by imperialist hypocrites who try to create here a conflict in order to discredit our country and tear away the Jewish population from the national community. Our stand here is not an act of compliance dominated by the desire to please anyone. It is derived from nationals who, long before independence, recognized Morocco as their only country and pledged their allegiance to it."<sup>9</sup>

The defeat of this Israeli intrigue against the Jews of Morocco is all the more important in contrast to an earlier similar intrigue in which Israeli agents succeeded in uprooting the centuries-old Jewish community in Iraq. Pamphlets were circulated by Zionists at synagogues with the slogan "Don't Buy from Muslims," with the obvious aim of arousing Muslim suspicion. Then explosions were reported at Jewish business premises and other places, without causing casualties or much damage, but they had an important psychological effect. Rueben David, one of many Iraqi Jews who was frightened away from his homeland by this campaign, subsequently wrote:

It seems obvious to me that these bombings must have been done by the Zionists. I believe that all they wanted to do was frighten the Jews and make them believe the Muslims were taking action against them. Although the bombings seem to have done little or no physical damage, they had an effect on Iraqi Jews generally.<sup>10</sup>

"This pattern of liquidation and destruction by spreading fear, despair, defeatism and panic is part of the Zionist ideology and of Israel's mass-immigration policy."<sup>11</sup> It was successful in Iraq because the Nuri Said Government in power at that time, instead of firmly resisting the Zionists, in fact assisted them in their task by passing the 1954 Option Law which encouraged the Jews to leave the country.

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(9) Statement of 18 February 1961 by Jewish Moroccan delegation led by former minister, Dr. Leon Bencaquen.

(10) Lilienthal, *The Other Side of the Coin*, pp. 37-38.

(11) *Jewish Newsletter*, 23 February, 1959.

Let us now turn to the Lavon Affair, a case which was not only a threat to the well-being of Egypt and the Jewish community living there, but was also designed to interfere with Egypt's foreign relations with another state. It would have succeeded had not the culprits been caught and justice been done to them. In 1954, relations were steadily improving between Egypt and the United States, a fact which was believed to have caused some apprehension to the Israeli leaders at that time. A senior Israeli intelligence officer was sent via Paris, with the task of entering Egypt illegally to set up a sabotage squad of Jewish Egyptians, who were to blow up American establishments in Egypt; this, it was intended, would strain relations between the two countries. The officer managed to persuade 13 youths to do this act of disloyalty. At first, all went according to plan. A number of explosions occurred in American establishments in Cairo, and tension arose between Egypt and the United States. Then the saboteurs were caught red-handed. The Israeli officer committed suicide, but the 13 Egyptian Jews who were guilty of treason to their country were put on trial. Zionist propaganda attempted to portray the trial as a manifestation of "anti-Semitism," although the world was able to see that it was perfectly just. It was subsequently revealed that the sabotage orders were carried out on orders bearing a forged signature of Israeli Defence Minister Pinhas Lavon. The ensuing scandal implicated Mr. Ben Gurion and his associates as organizers of the operations without their Defence Minister's knowledge.<sup>12</sup>

Whenever an Arab citizen of Jewish faith is misguided by Zionist agents into committing acts of espionage or sabotage against his own country, and is caught and brought to trial for these acts, the country concerned is made the victim of a Zionist propaganda campaign and accused of persecuting Jews. An example of such a campaign was the one mounted against Iraq in January and February 1969, following the execution of some Iraqi citizens whom a court had found guilty of espionage. A number of others accused had been sentenced to prison terms, and some had been acquitted. Among those sentenced to death and imprisonment and those acquitted there were Jews, Muslims and Christians. In the Western press, this was portrayed as a campaign of persecution against Judaism. Why it was not also portrayed as a campaign of persecution against Christianity and Islam the propagandists did not say.

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(12) For a full account of the Lavon Affair, see Menuhin, *op. cit.*, pp. 169-173, 199-206, Avneri, *op. cit.*, pp. 104 ff.

Nor were they opposed, apparently, to the death penalty for the crime of espionage as such, for they raised no protest against it being carried out on Christians and Muslims. It was the sentencing of people of Jewish faith for espionage to which these propagandists objected. From which we may conclude that what they demanded was that espionage be made a crime for which Gentiles only may be punished according to the penal laws of Iraq and that Jews be exempt from the penalties of the law for that offence. Apart from being an interference in Iraq's internal affairs in demanding that that State rewrite its penal code to give a religious minority preferential treatment, this is contrary to the principle of equality before the law embodied in the Universal Declaration of Human Rights.

It should be emphasized that the vast majority of Jews resident in Arab countries were born in those countries of parents bearing those countries' nationalities. They are therefore nationals of those countries by the criteria of both *jus soli* and *jus sanguinis*. An Iraqi Jew's national allegiance is solely to Iraq, a Moroccan Jew's to Morocco, in the eyes of international law, unless or until he may apply for and be granted another nationality by naturalization. No other state has any right to claim that allegiance or to try to force him to leave his country.

"Fortunately, the Arab people continue to distinguish between Judaism and Zionism, and Jews and Zionists. Judaism and Jews they accept and respect, whereas Zionism and Zionists they reject, and Israel they equate with Zionism."<sup>13</sup> Thus an Arab Jew who is loyal to his country has a status of equality with all other loyal citizens of that country, and his religion is his private affair. Only if he commits treason against his country can he expect to receive the treatment that all states accord to those of their citizens who commit treason, especially in wartime.

This work is concerned with international law, not ethics, although the two subjects have much common ground. It is not relevant here to consider the morality of a state subverting the loyalty of another state's citizens and then raising a protest when they are tried for treason as a result. The legal aspects of this, however, are within the scope of this work. Every state has the right to try anyone who commits acts of espionage or sabotage against it on its own territory. If the offender is a national of that state, he may also be charged with treason. Members of a particular religious group are not entitled to immunity from the law if they

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(13) Davis, *op. cit.*, pp. 110-111.

commit an offence, nor should the fact of their trial elicit allegations of religious discrimination. Thus, the United States exercised its right to bring to trial two of its citizens, the Rosenbergs, and they were found guilty of espionage and executed. The fact that they were Jewish does not justify an accusation of anti-Judaism against the United States.

The right of a state to try its nationals for treason was established in the case of *Joyce v. Director of Public Prosecutions*. William Joyce (Lord Haw Haw) was a British passport holder who was tried for working for German Broadcasting in the Second World War. Rejecting his appeal against conviction, the House of Lords ruled:

As long as Joyce held the passport, he was, within the meaning of the statute of 1351 A.D., a person who, if he adhered to the King's enemies in the realm or elsewhere, committed an act of treason. Because of the foregoing conclusion, a British court possessed jurisdiction to try Joyce. Since the appellant had admittedly adhered to the King's enemies outside the realm, he had been rightly convicted of treason.<sup>14</sup>

Thus, Israeli interference with the allegiance of any Arab State's citizens being an infringement of sovereignty, that State is legally entitled to protect its community from any such subversion of allegiance.

The situation of those Oriental Jews, from Arab and other Asian countries, who succumb to Zionist propaganda and migrate to the Israeli State, deserves examination. "The Oriental Jews who after 1948 were persuaded to emigrate to Israel soon found themselves the victims of bigotry . . . they were looked down on as an inferior group by the dominant Western and East European Jews. The backward Yemenite Jew who found sleeping in a bed a novel experience was quickly labelled with usual clichés of prejudice, such as 'childish,' 'shiftless,' 'dirty' and 'unwilling to work.' The Iraqis . . . who, after the Poles and Rumanians, constitute the largest Israeli ethnic group, complained bitterly from the outset about discrimination. In July, 1951, these Iraqi Jews staged a mass demonstration in Tel Aviv against 'race discrimination in the Jewish State, the first of its kind'."<sup>15</sup>

"A serious race riot broke forth on 9 July 1959 in the Wadi Salib, a slum district of the port city of Haifa. The battle between 'Black Jews' from Arab countries and 'White Jews' from Europe lasted four days and resulted in the wounding of eleven Israeli policemen, the arrest of 32

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(14) House of Lords, 1946, 62 *Times Law Reports*, 208.

(15) Lilienthal, *The Other Side of the Coin*, pp. 223-224.



rioters and considerable property damage. Violent incidents occurred subsequently in Migdal Haemek and suburbs of Tel Aviv."<sup>16</sup>

Oriental Jews have complained of discrimination in housing (being forced to live in slums and shanty towns while European immigrants obtain the best apartments), employment (being confined to unskilled and semi-skilled or "degrading" jobs), government or official posts (over 99 per cent of state and Histadrut jobs being in the hands of Westerners), income (average 49 per cent of that earned by European Jews) and education (60 per cent of primary school pupils being Oriental, but only 5 per cent at higher levels).<sup>17</sup>

The Indian Bene Israel Jews have been subjected to both racial and religious discrimination. At first they were banned from marrying outside their own sect. This restriction was eased, but they are still required to prove the "purity" of their ancestry before being granted permission to marry other Jews. "In July 1962, 800 delegates of the Bene Israel held a conference in Beersheba to express their indignation at the alleged discrimination against members of the Bene Israel Community in Israel. Some speakers referred to the rabbinical directives as 'an attempt at spiritual murder' and compared them with the Nuremberg laws and the Indian caste system."<sup>18</sup>

The Israeli State's racial discrimination against Oriental Jews constitutes violations of basic human rights in the same way as many of the policies adopted against Palestinians. The religious discrimination against the Bene Israel Jews is, in particular, contrary to Article 16 (1) of the Universal Declaration of Human Rights, which says: "Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family."

## 2. *Zionism and Other Forms of Racialism*

Zionism, as we have observed, is based on the racialist concept that Jews of different origins and nationalities form one racial group. It shares this idea with the prejudice known as anti-Semitism, which also believes that the Jews are a race apart from the rest of mankind. The term anti-Semitism is in fact a misnomer, as in the countries in Europe where this

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(16) *Ibid.*, p. 226.

(17) Weinstock, *op. cit.*, pp. 337-340.

(18) *Jewish Chronicle* (London), July 1962 issues; quoted by Menuhin, *op. cit.*, p. 388.

evil has been prevalent, the Jewish citizens are of European, not Semitic, origin. The term anti-Judaism is more accurate. The fact that Zionists and anti-Judaists have common ground in their racial concept has often resulted in their cooperation, at least surreptitiously, sometimes even openly. For, in concrete terms, they also have common ground with regard to the implementation of their policies. Jew-haters in Europe wish for the removal of Jews from the European scene, while Zionists aim also at removing Jews from their native countries, in Europe and elsewhere, to resettle them in Palestine and swell Israeli manpower. The essentially racialist character of Zionist doctrines has also resulted in Zionist cooperation with other movements based on racial exclusiveness. It will be recalled that Herzl secured the support of the anti-Judaist Russian Minister of the Interior, von Plehve, for Zionism.<sup>19</sup> Herzl treasured a letter from von Plehve, promising the Russian Government's material and moral assistance; he presented it to the Zionist Congress and showed it to the Pope with whom he was granted an audience. From its earliest days, therefore, the Zionist movement recognized the doctrine of its "common interest" with other racialist philosophies.

The growth of Zionist strength during and after the First World War was followed by the rise of Nazism. These two events were not unrelated. Zionism regarded anti-Jewish prejudice as a useful force for propelling Jews out of their native lands towards Palestine, and, at the same time, the Nazis drew from Zionist theories as evidence of their own allegations that Jews were a race apart, incapable of loyalty to the nations whose citizenship they held. The book "*Krisis und Entscheidung*," by the Zionist Jakob Klatzkin (published in Berlin in 1921) on this very theme, formed a favourite source of quotations for Nazi propagandists.<sup>20</sup> Adolf Eichmann himself confirmed that he had worked intimately with some Zionists in the Second World War, and had read a great deal of Zionist political literature. He claimed that there had existed "a very strong similarity between our attitudes in the S.S. and the viewpoint of these immensely idealistic Zionist leaders."

Eichmann also told of his cooperation with Dr. Rudolph Kastner, the leading Zionist representative in Hungary. He said that Kastner "agreed to help keep the Jews (in the camps) from resisting deportation—and even keep order in the collection camps—if I would close my eyes

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(19) See Chapter I, section 1, above.

(20) Menuhin, *op. cit.*, pp. 482-483.

and let a few hundred or a few thousand young Jews emigrate illegally to Palestine. It was a good bargain. For keeping order in the camps, the price of 15,000 to 20,000—in the end there may have been more—was not too high for me . . . Kastner never came to me fearful of the Gestapo strong men. We negotiated entirely as equals . . . while we talked he would smoke one aromatic cigarette after another, taking them from a silver case and lighting them with a silver lighter. With his great polish and reserve he would have made an ideal Gestapo officer himself . . . Dr. Kastner's main concern was to make it possible for a select group of Hungarian Jews to emigrate to Israel . . . I believe that Kastner would have sacrificed a thousand or a hundred thousand to achieve his political goal . . . He was not interested in old Jews or those who had become assimilated into Hungarian society . . . As I told Kastner: 'We, too are idealistic, and we, too, had to sacrifice our own blood before we came to power'."<sup>21</sup>

Kastner, in his 'deal' with Eichmann, had in fact been working on the basis of a precedent established in 1938, in a secret agreement reached between two Zionist emissaries, Pino Ginsberg and Moshe Bar-Gilad, and the Nazi authorities, for uprooting Jews from Germany and Austria and transporting them to Palestine. The Nazis had been very obliging, even providing training camps for Zionist youth pioneers.<sup>22</sup> Zionists in Germany were not opposed to Hitler's ascent to power, since it fitted in with their aim of discouraging assimilation, and they encouraged German Jews to "wear the Yellow Star with pride."<sup>23</sup> By their complicity with Nazism, the Zionists achieved two main objectives: they used persecution as a force to compel able-bodied Jews to leave Europe and swell their ranks in Palestine, and they channelled Gentile sympathy for Jewish victims of Nazism in such a way as to win support for their state as "a refuge for persecuted Jews."

In accordance with international law, a number of Nazis were subsequently tried and sentenced for war crimes and crimes against humanity by the Nuremberg Tribunal. By the same token, those Zionists who collaborated with Nazism deserve to be put on trial as accessories by a similar international tribunal.

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(21) *Life magazine*, 28 November and 5 December 1960.

(22) Jon and David Kimche, *The Secret Roads* (London, 1954), pp. 15 f.

(23) Hannah Arendt, *Eichmann in Jerusalem* (New York, 1963), pp. 53-55.

It is not surprising that Zionism has since maintained close links with movements that formerly supported Nazism, like the South African Broederbond, or with regimes and organizations based on a similar racialist philosophy. This is a particularly strong factor in Israeli policy towards Africa, where Herzl had shown some interest in colonization. A proposal for a settler state in Uganda was turned down by the Zionist Congress, who decided to insist on colonizing Palestine.<sup>24</sup> However, the subsequent interest in Zionism in furthering colonialism in Africa has been the subject of a valuable study by the Ghanaian writer, Mr. Tom Tettegah. He referred to a statement in June 1967 by Guinea's President Sekou Toure that there had been a project, which was never implemented, for the creation of a Zionist State in the Guinean province of Fouta-Djalou. "Had this happened, Sekou Toure said, the people of Guinea would never have been able to break the fetters of colonialism."<sup>25</sup>

The Israelis have developed very close links with white supremacist regimes in Africa. It has long been common knowledge that the Portuguese forces are equipped with Israeli made Uzi sub-machine guns for use against the liberation movements of Angola, Guinea-Bissau and Mozambique.<sup>26</sup> There are other interesting arms deals:

The North Atlantic Treaty Organization is scrapping 700 tanks, replacing them by modern ones and selling the obsolete machines. Israel is acting as a sales agent. She is selling the tanks to the regimes of Ian Smith and Vorster.

The imperialist interests find common grounds in South Africa's racism and in Israel's Zionism. This union is badly needed by Washington. It is becoming stronger daily, monthly, every year.

Immediately following the Six-Day War, the South African Minister of Labour, Wield, said that the war in the Middle East has given South Africa great benefits. He didn't specify what benefits he meant, but it is evident that he knew what he was talking about and it is not accidental that the former government of Verwoerd allowed hundreds of South African 'volunteers' to go to Israel to take part in the military actions against the Arabs. It was the same government which gave its blessing to the transfer of ten million pounds sterling to Israel. This money was donated by the secret fascist organization the 'Broederbond,' while the South African Zionist Federation provided the lump sum of one million rand, plus one million rand annually for the next five years.

It is apparent that this union will be further consolidated . . . In December 1967 . . . South Africa was visited by a good-will mission headed by the Deputy Director and the Chief Engineer of the Israeli Aircraft Industries.

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(24) Weizmann, *op. cit.*, pp. 110-117.

(25) Tom Tettegah, *How Israeli Secret Agents Subvert Africa* (Thinkers' Forum booklet, Winneba, 1968), p. 1.

(26) See *The Observer*, 28 May 1961. Weinstock, *op. cit.*, p. 445, maintains Uzis were also supplied to the right-wing forces of Tshombe in Katanga.

The delegation also included members of the board of the El-Al company, leaders of industrial enterprises and the prominent Israeli businessmen.

Among other questions the Israeli El-Al company and the Johannesburg Atlas company discussed the details of shipping to Angola the Israeli weapons and American napalm.<sup>27</sup>

Tettegah also accused the Israelis of having reached a secret agreement with the United States to cooperate with the Air Force of the Smith regime in Rhodesia, in exchange for the supply of Phantom aircraft by the United States to the Israeli Air Force. His view is that "it is the Americans who want to see Israel entrenched in Africa. The white racists in the South of our continent and the bastion of Zionism blocking Africa in the North East form a deadly imperialist vice."<sup>28</sup>

The Israelis have developed contacts, on diplomatic and other levels, in a number of African States. Their motive in this, according to evidence Tettegah has gathered, is political and economic infiltration. He accused the Israeli Intelligence, Shin Beth, of organizing coups d'etat to undermine the stability of Africa. "After the establishment of diplomatic relations with Israel, Israeli embassies swarmed with Shin Beth agents who used all kinds of covers for their activities, including the offices of technical advisers. By the end of 1963 there were 266 such agents in Ghana, 140 in Ethiopia, 82 in Tanganyika, 72 in Liberia, 68 in Nigeria, 55 in the Ivory Coast, 48 in Mali, 45 in the Central African Republic, 37 in Togo, 36 in the Congo (Kinshasa), 35 in the Cameroons, 21 in Niger and 18 in Uganda and Kenya each."<sup>29</sup>

United States and Israeli cooperation to destroy the stability of Africa by coups d'etat shows "a very interesting division of labour indeed: the U.S. provides the finances, the Israeli intelligence service prepares the coup, and the U.S. Central Intelligence Agency supervises over the whole operation."<sup>30</sup>

Tettegah accused the Israelis of charging exorbitant prices for their so-called aid projects, and stated that "the common trend of all the Israeli efforts in trading with the African countries is to subjugate our economy to Israel's economy . . . Israel prefers to cater to the needs of South African racists . . . The latter supply the Zionists with diamonds which they cut and sell. The diamond-cutting industry of Israel works specially to process

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(27) Tettegah, *op. cit.*, pp. 6-7.

(28) *Ibid.*, p. 8.

(29) *Ibid.*, p. 20.

(30) *Ibid.*, p. 9.

South African diamonds. The Israelis are not even afraid that the racists would suddenly stop supplying the precious stones. It is quite evident that the racists and the Zionists cannot live without each other."<sup>31</sup>

In the conduct of their so-called medical aid missions, the Israelis, in Tettegah's view, are guilty of a serious violation of international law.

Under the pretext of fighting epidemics, the Israelis tested new vaccines on the Africans . . . The Africans are probably the most tolerant patients in the world. The Israelis usually tested wide spectrum vaccines on the Africans starting from the very potent ones and down to the weak vaccines. We paid with our lives for the Israeli experiments.

The African territory South of the Sahara was turned into a medical proving ground. That was what happened in the Congo during an epidemic of cerebro-spinal meningitis which later affected Niger. That was what happened when the Israelis helped us to control trachoma in Liberia, Ruanda and Malawi. But who can say how many Africans became blind because new drugs were used on them.

Experiments on human beings range under the category of major crimes. During the Second World War the Jews were themselves victims of Nazi experiments . . . Today teams of Israeli epidemiologists experiment on the Africans. The Israelis, who always say that the colour of human skin is indifferent to them, consider the Negroes as a herd of blackskinned animals.<sup>32</sup>

Just as the Israelis' internal policies of racial discrimination against Palestinian Arabs and Oriental Jews are contrary to international law, so also are their external policies of cooperation with other racist regimes, South Africa in particular. Racial discrimination is regarded by the world community as a violation of human rights embodied in the U.N. Charter, the Universal Declaration of Human Rights, and many other instruments of international law and United Nations recommendations. On 26 October 1966, the U.N. General Assembly proclaimed 21 March, the anniversary of the Sharpeville massacre, as an annual International Day for the Elimination of Racial Discrimination. Probably the most effective commemoration of this day so far has been the Palestinian Commandos' victory at Karama, on 21 March 1968.

Israel's secret air force cooperation with the Smith regime in Rhodesia is contrary to both the letter and the spirit of the U.N. decision to impose mandatory sanctions on that regime. Israeli cooperation with South Africa is also contrary to numerous United Nations resolutions. Thus the General Assembly has deplored "the attitude of the main trading

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(31) *Ibid.*, pp. 14-15.

(32) *Ibid.*, p. 21. For general details of Israeli penetration in Africa, see also Adwa' la Siyasat Isra'il fi Ifriqiya (article in *Al Thawra Al Falastiniyya*, a Fateh monthly magazine, July 1969).

partners of South Africa ... which ... have encouraged the latter to persist in its racial policies." In the same resolution, the Assembly stated that it:

Draws the attention of the main trading partners of South Africa to the fact that their increasing collaboration with the Government of South Africa despite repeated appeals by the General Assembly has aggravated the danger of a violent conflict, and requests them to take urgent steps towards disengagement from South Africa and to facilitate effective action, under the auspices of the United Nations, to secure the elimination of apartheid:

Appeals to all States to comply fully with the decisions duly taken by the Security Council which solemnly call on them to cease forthwith the sale and delivery to South Africa of arms, ammunition of all types, military vehicles and equipment and materials intended for their manufacture and maintenance; to discourage immediately the establishment of closer economic and financial relations with South Africa, particularly in investment and trade.<sup>33</sup>

In two more strongly worded resolutions, the Assembly "condemns the actions of those States, particularly the main trading partners of South Africa, and the activities of those foreign financial and other interests, all of which through their political, economic and military collaboration with the Government of South Africa and contrary to the relevant General Assembly and Security Council resolutions, are encouraging that Government to persist in its racial policies."<sup>34</sup>

The Commission on Human Rights, in a resolution on 16 February 1968, declared that it "expresses dissatisfaction at the fact that several Governments, in violation of United Nations resolutions, are continuing to maintain diplomatic, commercial, military, cultural and other relations with the Republic of South Africa and the illegal regime in Southern Rhodesia," and "calls upon all those Governments which have diplomatic, commercial, military, cultural and other relations with South Africa to desist from such relations in accordance with the resolutions of the General Assembly and of the Security Council."

Subsequent resolutions concerning racial discrimination in Southern Africa in general were also passed. Thus the General Assembly:

Condemns the actions of all those Governments which, in violation of United Nations resolutions, are continuing to maintain diplomatic, commercial, military, cultural and other relations with South Africa and the illegal regime in Southern Rhodesia;

Calls upon those Governments to break off such relations.<sup>35</sup>

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(33) Res. 2202 (XXI).

(34) Resolutions 2307 (XXII) and 2396 (XXIII).

(35) Res. 2439 (XXIII).

And likewise:

Calls upon all States to sever relations with South Africa, Portugal and the illegal minority regime in Southern Rhodesia, and to refrain scrupulously from giving any military or economic assistance to these regimes.<sup>36</sup>

Israeli collusion with other racist forces, notably those which are against the African people, in defiance of repeated U.N. resolutions, shows clearly to everyone who upholds international law and the concept of human rights, that the struggle against Zionism is an inseparable part of humanity's struggle against all racialism.

### 3. *The Status of the Holy Places*

Zionist propaganda frequently reminds the world that the Jewish religion has Holy Places in Palestine. Whenever possible, it omits to mention that Palestine is at least equally the Holy Land of the two other great monotheistic religions of the world: Christianity and Islam, both of which also have places sacred to them in that country. The reason for this omission is obvious, for if the public in the Western World became aware that Palestine is the Holy Land of three faiths, they would be less willing to accept Zionist claims of an "exclusive Jewish right" in Palestine.

The Bible in itself refutes this aspect of Zionist propaganda. Everyone who has read the Bible knows that Jesus was born in Bethlehem, lived in Nazareth and preached in Jerusalem and on the shores of Lake Tiberias; it stands to reason, therefore, that these are Christianity's Holy Places. For Muslims also, who venerate Jesus' memory and teachings, and indeed those of all God's Prophets, Palestine, with all its association with these Prophets, is sacred. In addition, the third holiest shrine of Islam is Al Aqsa Mosque, venerated as the site of the Prophet Muhammad's night journey before his ascent to Heaven. It is therefore impossible to say that Palestine is a monopoly of any one of these religions, as adherents of all three have rights in their respective Holy Places.

The religious rights of Jews, Christians and Muslims, in accordance with Quranic teaching,<sup>37</sup> were established and maintained in a spirit of toleration and religious liberty under Muslim guardianship of the Holy Places. Apart from the interregnum when Palestine was seized by the Crusaders, adherents of all three faiths lived without discrimination, free

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(36) Res. 2446 (XXIII).

(37) See Chapter IV, note 2, above.



to practise their beliefs and to administer and maintain their respective shrines. This tradition was only undermined when the Zionists seized most of Palestine in 1948.

Palestine's sacredness to three religions makes it unique. The status of the Holy Places from the point of view of international law can be determined mainly from precedent and from certain specific documents relating to Palestine such as the 1949 Armistice Agreements. There are also principles of a more general nature, regarding freedom of conscience, which are applicable in Palestine as anywhere else.

The precedent regarding the status of the Holy Places has already been mentioned: namely that believers in Judaism, Christianity and Islam had their rights guaranteed in their respective Holy Places without discrimination during the time of Muslim guardianship. However, Zionist propaganda has alleged that Jordan denied Jews access to the Wailing Wall in Jerusalem between 1948 and 1967. Let us examine the legal status of this Holy Place.

"The Wall forms part of the ancient Temple; being the last remaining vestige of that sacred place, it is regarded with the greatest reverence by religious Jews, whose custom of praying there extended back to at least the Middle Ages."<sup>38</sup> Jews can thus legitimately consider it to be a Holy Place of significance to their religion, and their right to pray there has been established by precedent. "Throughout the centuries of Moslem rule the Arabs have respected the custom of Jewish worship at the Wall, not only on the ninth of Ab, but on every day of the year, and have allowed the Jews to stand and pray in front of it."<sup>39</sup> As long as this remained a religious practice, no problem arose. However, with the rise of Zionism as a racial doctrine in the garb of religion the concept of religious toleration was severely damaged. The Zionists stirred up communal conflict during the festival of the ninth of Ab in 1929. "For some days beforehand Jewish youths had been aggressively beating up Arab villagers on their way to the city with fruit and vegetables. On the eve of the Feast itself, this aggressive spirit showed itself in the form of a demonstration, thoroughly well organized beforehand, when thousands of young Jews and Jewesses from Tel Aviv and elsewhere marched in military formation carrying their flag draped with black ribbons through the streets of Jerusalem.

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(38) *Shaw Commission Report*, Cmnd. 3530 (1930), p. 27.

(39) Frances E. Newton, *Fifty Years in Palestine* (Wrotham, England, 1948), p. 246.

Arriving at the Wailing Wall the flag was unfurled and the Jewish National Anthem, the Hatikvah, was sung with great enthusiasm. Cries were raised of 'The Wall is ours! . . .'<sup>40</sup> The inhabitants of Palestine were naturally provoked by this transformation of a religious occasion into a political rally for a racialist movement; by this method the Zionists succeeded in arousing the disturbances which led to the investigation by the British Government's Shaw Commission.

Regarding the legal title of ownership of the Wailing Wall (as distinct from the right to pray at it) the Commission noted: "The Wall is part of the Haram es Sharif which was an Islamic place of great sanctity, being reckoned next to the sacred cities of Mecca and Medina as an object of veneration to the Moslems. Legally, the Wall is the absolute property of the Moslem community, and the strip of pavement facing it, on which the Jews stand when making their devotions at the Wall is Wakf property (that is endowed property) . . . That part of the Wall in front of which Jews are accustomed to stand when lamenting and praying, has a special significance for the Moslems in that, partly within the thickness of the wall there is a chamber, within which, so tradition runs, Mohammed's horse, whose name was Burak, was stabled when the Prophet made his celestial journey from the Rock. It is for this reason that the Wall is known to Moslems as 'the Bûrak'."<sup>41</sup>

Thus the Wall is a Muslim Holy Place as well as a Jewish one, and while the Muslim right to it is absolute since it is Muslim property, the Jewish right to pray there is one that has been granted by the Muslim community as owners of the property, out of a spirit of religious tolerance.

Bearing these factors in mind, we may now examine this question in the light of the 1949 Jordan-Israel Armistice Agreement, which was intended to cover the special situation resulting from the 1948 war. Article 8 provided that:

A Special Committee, composed of two representatives of each Party designated by the respective Governments, shall be established for the purpose of formulating agreed plans and arrangements designed to enlarge the scope of this Agreement and to effect improvements in its application.

The Special Committee shall be organized immediately following the coming into effect of this Agreement and shall direct its attention to the formulation of agreed plans and arrangements for such matters as either Party may submit to it.

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(40) *Ibid.*, p. 237.

(41) *Shaw Report*, p. 27.

The Armistice specified that a number of matters, on which agreement in principle already existed, must be included in the scope of the Committee's activity. Among these were free access to the Holy Places and other rights of freedom of movement. However, the fact that the text of the Agreement referred to "plans and arrangements for such matters as either Party may submit" to the Committee, made it plain that both the Jordanian and Israeli sides had the right to raise other questions not specifically mentioned in the Article and to submit proposals which could improve the arrangements of the Armistice.

Shortly after the Armistice was signed, the Committee began its deliberations under the Chairmanship of General William Riley, then Chief of Staff of the U.N. Truce Supervision Organization. Possibly, had this Committee been allowed to function properly and the original terms of the Agreement been strictly observed, some temporary arrangement might have been worked out to ensure the right of the three great religions in their respective Holy Places. But it is idle to speculate, for the Committee meetings were soon entangled because the Israelis' interpretation of how Article 8 should be applied departed from the Armistice Agreement's original wording. The interpretation they placed on Article 8 was, to say the least of it, one-sided. For they maintained that the Article gave Jews freedom of access to the Wailing Wall and the Jewish Cemetery on the Mount of Olives, which were on the Jordanian side of the Armistice Demarcation Line, while at the same time they denied freedom of access of Arab Christians to Nazareth and Muslims to Nabi Rubin in Jaffa, both of which were on the Israeli-occupied side of the Line. It must be stressed that the Armistice Agreement did not restrict free access to the Holy Places to Jews, nor did it specify that only Jewish Holy Places were involved. It is clear from reading the text that this provision of the Armistice Agreement was concerned with Holy Places in general, and freedom of access for people in general who held them sacred.

In addition, the Israelis reinterpreted the entire function of the Special Committee in a way that radically conflicted with the definition in Article 8 of the Armistice Agreement. For they maintained that the Committee was only appointed with the task of deciding procedurally how to implement the points specified in Article 8, with no right for the Jordanian side to raise new issues. As already noted, Article 8 gives either Party the right to submit plans and arrangements to the Committee. Indeed, it refers to plans and arrangements "designed to enlarge the scope

of this Agreement." It is impossible to enlarge the scope of the Agreement if the Parties are denied any right to raise new points.

The response of the Jordanian Delegation on the Special Committee was to call for strict application of the original text of the Armistice Agreement and full and proper implementation of its terms. They pointed out that this Agreement was not designed for the Israelis' benefit alone, and recalled that Article 8 was designed to enable the Parties to make proposals for plans and arrangements to improve the Armistice. The Jordanian Delegation also upheld the broad nature of freedom of access to Holy Places obviously intended in the Armistice Agreement. Accordingly, they said this freedom of access must be maintained for Muslims, Christians and Jews so followers of all three religions could be free to visit their Holy Places as before. The Jordanian Delegation's legal adviser, Mr. Sami Hadawi, subsequently wrote:

The Jordan Delegation maintained that free access to the Holy Places meant for Moslems, Christians and Jews over the whole territory of Palestine; not made available to Jews in both Arab and Israeli-held territories and out-of-bounds to Moslems and Christians in the Israeli-held area. If Jews are to be accorded rights and privileges in the Arab area, then it is only reasonable to demand that Moslems and Christians should be accorded the same treatment in a land which is theirs by right of birth and occupation until expelled.<sup>42</sup>

The Jordanian Delegation also proposed that Muslim and Christian inhabitants of the Israeli-occupied sector of Jerusalem be allowed to return to their homes. Its position, in brief, was a rejection of the policy of religious discrimination for which the Israeli Delegation called. The Jordanian Delegation's submitted plans and arrangements for carrying out Article 8 were on a basis of equality and reciprocity: namely free access for Jews to places on the Jordanian side of the Demarcation Line that were sacred to Judaism, and similarly for Muslims and Christians to any of their Holy Places in Israeli-held territory. These proposals were rejected by the Israeli Delegation, and consequently proper application of Article 8 of the Armistice Agreement became impossible and the situation degenerated into a stalemate.

It is in any case anomalous for the Israelis to make accusations regarding religious rights after their actions regarding Holy Places and religious property during and since the June 1967 war. During the war,

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(42) *Bitter Harvest*, p. 139. See also pp. 136-140 for fuller details of Special Committee's proceedings.

they attacked and severely damaged St. Anne's Church in Jerusalem and dropped a bomb on the Church of the Nativity in Bethlehem. About a week after occupying the Old City of Jerusalem, "The Israelis bulldozed 135 houses belonging to the Moslem Waqf . . . the total number of persons affected by this campaign were 650. Two small mosques were amongst the demolished buildings."<sup>43</sup>

Many objective writers have noticed the attitude of disrespect Israelis showed to the Holy Places after seizing them. Acts of sexual indecency by Israelis in Holy Places have not been uncommon. As one writer commented, "This conduct, normal for them, would previously have led to a prosecution for indecent behaviour . . . nothing could have been more different from the behaviour of Muslim and Christian Arabs in these holy places, for the Arabs are still a devout people."<sup>44</sup>

Acts of desecration committed against the Holy Places under Israeli occupation included:

Theft of the diamond-studded crown on the statue of the Virgin Mary in the Church of the Holy Sepulchre, soon after the June 1967 war.

In August 1967, the Israeli Army confiscated the keys to one of the gates of the Aqsa Mosque. They opened this door to Jewish visitors, or to be more accurate Jewish vandalism and desecration. The Israelis made a point, when visiting the Aqsa, not to miss the Moslem prayer and disturb those who prayed.<sup>45</sup>

The burning of Al Aqsa Mosque on 21 August 1969.

The Israelis, in all their actions, from individual or collective acts of desecration to major violations of international law, have demonstrated their lack of fitness to be responsible for the Holy Places. It is clear from past experience that neither basic and time-honoured religious rights nor the sanctity of Holy Places will be respected under the rule of a system based on a mixture of racial discrimination and religious obscurantism.

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(43) Rauhi Al Khatib, Evidence before U.N. Security Council, 3 May 1968, (*U.N. Doc. S/PV. 1421*), published as *Jerusalem, Israeli Annexation* (Jordanian Ministry of Information pamphlet, 1968), p. 7. Mr. Al Khatib is Mayor of Jerusalem.

(44) Godfrey Jansen, "Jerusalem: a tale of two cities made one by force," article in *Sunday Statesman* (India), 23 July 1967.

(45) Al Khatib, *op. cit.*, p. 11.



## CHAPTER VI: THE JUNE WAR AND ITS AFTERMATH

Any study of the June 1967 war written less than three years after the event is bound to be incomplete. This is because, as yet, only a small proportion of the facts about that war have become publicly known. Even in the case of the 1956 tripartite attack on Egypt, the full picture did not emerge clearly until over ten years later, and in that case, the collusion between imperial powers and Israel was relatively blatant. The June war, in which the role played by imperial powers was far more skilfully concealed, will probably not be clearly understood until a much longer time has elapsed. At this stage, all that a writer can do is to pose certain questions, such as: what did the major powers hope to gain from the June war? Why did they try to lull the Arabs into a false sense of security by giving them encouragement to believe in a diplomatic solution? Why did both the Soviet Union and the United States insist so emphatically to President Nasser that the U.A.R. must not initiate hostilities? Were both these powers aware when they issued that warning that the Israelis were about to attack? What was the status of United States citizens serving in the Israeli armed forces? Why did U Thant insist on withdrawal, not regroupment, of the U.N.E.F.? Were aircraft and other military material flown in to the Israelis on the eve of the June war from British bases in Cyprus and the American Wheelus base in Libya? What was the role of the C.I.A. ship Liberty, and why was it attacked by Israeli aircraft? Why did the major powers do nothing to enforce the U.N. cease-fire call, allowing the Israelis to complete the seizure of all the territory they had planned to seize? What was decided by Mr. Kosygin and Mr. Johnson at Glassboro shortly after the war?

These questions offer a challenge to researchers over the coming years, and no study of the June war can be complete until sufficient data come to light to answer them. This chapter, therefore, is about the action of launching the June war as it was carried out by the Israelis. It considers the Israeli act of war, the methods of conducting the war and the occupation of territories seized in the war, from the legal viewpoint. This does not mean that the Israelis launched the war without accomplices,

but only that this writer considers that investigations regarding complicity are not yet conclusive and that further evidence needs to come to light, before a prima facie case against the governments of the United States, Britain and possibly some other powers can be said to exist.

So far, there are certain indications that such evidence has been concealed hitherto. In the words of one writer who, by his own account, was formerly employed by the Central Intelligence Agency, the official United States attitude is that "When we choose to violate any of our policies, from being truthful in our diplomacy to refraining from 'interfering in the internal affairs of a sovereign nation,' we find means outside the normal machinery of government. Our Government has such means. It is able to define a problem, to release forces which, largely on their own power, can effect a solution, and to disclaim any responsibility for what follows."<sup>1</sup>

Some facts have emerged which would suggest active military collusion. "Yugoslav observers in Libya noted unusual air activity at the Wheelus base on the 4th and 5th of June," and "On 5 June and succeeding days the number of daily flights by Royal Air Force planes from the base at Akrotiri increased from 25 to over 200. Since this unusual activity was perfectly visible and audible to the citizens of the nearby town of Limassol, the Cyprus authorities called in the British High Commissioner and asked for an explanation. The High Commissioner first said that the additional activity was due to training flights, and when this explanation was met with scepticism he said that these were planes passing through to Hong Kong. However, no new R.A.F. unit arrived in Hong Kong in June 1967. In the first half of that week a group of 25 to 30 pilots with U.S. passports arrived at Nicosia airport and were flown to Israel in an El Al plane."<sup>2</sup>

This writer, in his capacity as a member of the Bertrand Russell Peace Foundation War Crimes Investigating Team, visited Syria in August-September 1967 and was shown the identification tag of a U.S. Air Force pilot, Thomas P. Nihan, who had been shot down piloting an Israeli-marked aircraft over Syria during the June war.<sup>3</sup>

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(1) Miles Copeland, *The Game of Nations* (London, 1969), p. 13.

(2) G.H. Jansen, *Whose Suez?* (Institute for Palestine Studies, Beirut, 1968), pp. 12, 32.

(3) According to the *International Herald Tribune*, 18-19 October 1969, an American official in Tel Aviv stated that "under a new interpretation of dual citizenship an American could acquire Israeli citizenship and serve in the Israeli armed forces without losing his U.S. citizenship."



Although the case for accusing certain powers of active collusion with the Israelis is not yet supported by sufficient evidence, there is clear proof of their passive collusion in allowing the Israelis to carry out their attack and doing nothing to deter aggression. When Israeli aircraft struck against the U.A.R. on the morning of 5 June, "The U.S.S. Liberty, the radar station on Cyprus, the Six Fleet and the Russian squadron, one after the other, would have had the Israeli force in range for their entire flight over the Mediterranean, for this hour and a half, if their radar had a reach of only 200 miles."<sup>4</sup> The Soviet, American and British Governments, with this knowledge, took no action to avert hostilities. "Was there any reason why these governments should intervene at all? Aside from the fact that all these three powers were supposedly pledged to the 'territorial integrity' of the countries of the area and that all three are member states of the United Nations and signatories of the United Nations Charter, the Americans, British and Russians were obliged to intervene. President Nasser in his 9 June speech described how on 26 May, President Johnson asked Egypt not to be the first to open fire, and a few hours later, in the early hours of 27 May, the Soviet Ambassador, by some strange coincidence, asked him to do the very same thing. The Egyptian President agreed, and thus deprived himself of the overwhelming advantage of strategic surprise which Israel promptly seized. Therefore, when they knew that Israel was striking first, President Johnson and Prime Minister Kosygin were under every sort of political, military and moral obligation to do everything possible to frustrate the Israeli aggression. They did nothing."<sup>5</sup>

Whatever may be the final picture of the part played by other powers, when fuller evidence has been revealed, the Israeli actions during and after the war are by now reasonably well documented and can be assessed from the standpoint of international law. It is necessary first of all to consider the initial act of the launching of the war, and then the actions involved in the conduct of the war and the occupation of territories seized as a result of it. This writer has had considerable personal contact with much of the evidence and many of the witnesses available, both through participating in the investigations of the Russel Foundation Team, and through over two years' residence in Jordan following the war.

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(4) Jansen, *Whose Suez?*, pp. 16-17.

(5) *Ibid.*, p. 19.

1. *Legal Aspects of Events Leading up to the War.*

Determining the cause of a war can be a difficult task, because the aggressive party to it does not generally want to go back to the first origins in which he committed the act that put him in the wrong. Instead, he prefers to take as a starting-point a subsequent incident which he can claim was caused by an act of his victim, on whom he thereby places the burden of guilt for initiating the sequences of events leading to war.

Thus, Israeli spokesmen repeatedly claim that the incident that made the June 1967 war inevitable was the United Arab Republic's action in closing the Straits of Tiran to Israeli shipping. In more general terms, they allege that the climate of war was created by operations carried out by Palestinian resistance fighters in Israeli-occupied territory, for which the Israelis claim a right of retaliation against neighbouring Arab countries.

Israeli claims regarding these incidents have no more validity than would an allegation that World War II was started through the Allies declaring war on Germany. If we are really to understand the cause of the June war, we must trace the chain of events leading up to it from the first cause which set the chain in motion. As demonstrated earlier, the Israelis were not legally justified in using the closure of the Straits of Tiran as a *casus belli*.<sup>6</sup> For that action was a perfectly legitimate exercise by the United Arab Republic of its sovereignty over its own territorial waters, against a state with whom it had had relations of belligerency since 1948. Nor could the Israelis claim that acts of resistance by the Palestinians whom they had dispossessed constituted a provocation for invading neighbouring States; particularly since the right of such resistance to the armed occupation of one's territory is recognized in Article 13 of the First Geneva Convention of 1949.

The initial cause of all the military and political upheavals centred on Palestine in recent years can be traced back to 1897, when the First Zionist Congress resolved to set up a racially-exclusive Zionist State on Arab soil. The sequence of events led through the Israelis' massacre of Deir Yassin village and seizure of Arab territory and expulsion of population in 1948, the invasion of Egypt in 1956 and the series of Israeli attacks and massacres across the Armistice Demarcation Lines by Israel irregular forces such as the attack on Sammua village on 13 November 1966.

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(6) See Chapter III, section 3 above.

In January 1967, fighting flared up in the Demilitarized Zones along the Syrian-Israeli Armistice Demarcation Line. The root cause of this fighting, namely persistent Israeli attempts to exercise sovereignty and install para-military forces in the Zones, contrary to the Armistice Agreement and Dr. Bunche's authoritative interpretation, has already been examined.<sup>7</sup> These clashes escalated into a sizeable Israeli air attack on Syria in April 1967. This was despite earlier efforts by Syria, on 25 January, to secure a reduction of tension, working through the Syrian-Israeli Mixed Armistice Commission at U Thant's suggestion. These efforts broke down due to the Israeli refusal to discuss the status of the Demilitarized Zones at the Mixed Armistice Commission talks.<sup>8</sup> Israel's air attack came at a time when Israeli leaders were adopting an increasingly threatening tone against Syria. Thus, in an interview earlier in the year, Mr. Shimon Peres told the French-language Zionist paper *La Terre Retrouvée*: "Perhaps the time has now come to teach the Syrians a good lesson." On 15 April, following the air attack, General Rabin told the same newspaper: "On this occasion the Israeli Air Force was brought into action as a result of frontier incidents. It might in future intervene in other circumstances, and it is in the Syrians' own interest to take heed of this warning."<sup>9</sup>

On 10 May, General Rabin expressed a wish to see the Syrian Government overthrown.<sup>10</sup> This should be seen in the light of a prediction some six months earlier by an Israeli newspaper, which proclaimed: "Danger of war! The Americans demand that Syria be attacked . . . The Israeli Government intends to become a servile satellite of a foreign power. This foreign power demands of the Government actions that completely contradict the country's national interests . . . The attempted coup in Syria has failed. This was the final attempt of the General Intelligence Agency of the United States to 'save' the Syrian State from what the C.I.A. qualifies as the first step towards Syria's turning into a people's republic . . . Should the counter-revolution have won in Syria there would have been no need to use Israel. But after the abortive coup the U.S. has decided to stake on an intervention from outside. Israel was the only choice."<sup>11</sup>

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(7) See Chapter II, section 2 above.

(8) Maxime Rodinson, *Israel and the Arabs* (English ed. Harmondsworth, England, 1968), pp. 183-184.

(9) Quoted by Rodinson, *op. cit.*, pp. 183, 185.

(10) Randolph and Winston Churchill, *The Six-Day War* (London, 1967), p. 29.

(11) *Ha'olam Hazev*, 26 November 1966.

On 14 May, Syria's Ambassador George Tomeh informed the United Nations that the Israelis were threatening war against Syria and warned of a very dangerous situation in the Middle East.<sup>12</sup>

As Israeli threats mounted, the Syrian Government felt it necessary to take any steps possible to defend their country. Syria had signed a joint defence agreement with the U.A.R. on 4 November 1966; she invoked this agreement and U.A.R. forces were ordered to be in a state of preparedness and to take up positions in Sinai on 14 May, as the Israeli campaign of threats reached its climax.

In order to be completely in a position to fulfil its obligations under the joint defence pact in the apparently likely event of an Israeli attack on Syria, the U.A.R. "issued an order that the commander of the U.N. Emergency Forces along the armistice lines be requested to withdraw and group his forces in the Gaza Strip, leave the Egyptian border, and keep away from it to ensure their safety in case of military operations."<sup>13</sup> The force had been stationed along the Armistice Line and Sinai-Palestine border and at Sharm Al Shaikh overlooking the Tiran Straits, since the 1956 tripartite invasion. Those clearly following the situation were aware that the U.A.R. demand was "not for the expulsion of the force but merely that it should stand aside."<sup>14</sup> U.N. Secretary General U Thant, however, faced the U.A.R. with a choice of "all or nothing": either a total withdrawal of the force, or its preservation in all the positions where it was stationed. This placed the U.A.R. in the embarrassing position of having to choose between failing to fulfil its treaty obligations, or appearing "intransigent" by demanding total withdrawal. Commitment to treaty obligations prevailed. The Israelis protested at the withdrawal, but rejected U Thant's suggestion of stationing the force on the Israeli-held side of the Sinai border. After the total evacuation, the U.A.R. resumed the effective exercise of sovereignty over its territorial waters in the Straits of Tiran.

On 23 May, President Nasser personally expressed willingness for U Thant to use his good offices.<sup>15</sup> Meanwhile, there was intense diplomacy elsewhere. President de Gaulle called for a big four conference and said France would not support the side which opened hostilities, as he later

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(12) *Al Baath* (Damascus), 15 May 1967.

(13) *Al Abram* (Cairo), 17 May 1967.

(14) *The Times*, quoted in *War File*, edited by Tom Hewat (London, 1967), p. 11.

(15) Rodinson, *op. cit.*, p. 193.

recalled.<sup>16</sup> Appeals not to initiate hostilities also came from the United States and the Soviet Union.<sup>17</sup> The Arab States acted in accordance with these appeals. U Thant reported to the Security Council that he had received assurances from President Nasser that the U.A.R. would not initiate the use of force or go beyond a defensive position.<sup>18</sup>

On 30 May, King Hussein flew to Cairo and signed a joint U.A.R.-Jordan defence pact, to which Iraq subsequently acceded. It must be stressed that this pact, like all other actions taken by the Arab States during this crisis build-up, was a purely defensive response to Israeli threats. In addition, throughout this period, the Arab States endeavoured to preserve the Armistice by diplomatic means. President Nasser stated his willingness for the functions of the Egypt-Israel Mixed Armistice Commission to be resumed.<sup>19</sup> The Commission had ceased to function on the unilateral Israeli renunciation of the Armistice with Egypt in 1956. "Moreover, the records show that the United Arab Republic had emphasized, during the early stages of this crisis, that it was prepared to cooperate in any steps that might produce a formula for the solution of the problem of navigation, bearing in mind that the United Arab Republic was acting in accordance with International Law in the application of its sovereign right in the Strait of Tiran and that the correct interpretation of the issue in this case could have been given by the International Court of Justice had Israel paid the slightest attention to seeking a peaceful course."<sup>20</sup> From 29 May to 3 June, Mr. Charles Yost of the U.S. State Department visited Cairo and it was agreed that U.A.R. Vice President Zakaria Muhyiuddin should visit Washington to discuss means of avoiding conflict. The fact that he was scheduled to depart the day the Israeli invasion was launched (on 5 June)<sup>21</sup> gave rise to suspicions of United States collusion to lull the United Arab Republic into a false sense of security, on the basis that it would not expect a military attack while diplomatic efforts were continuing.

Whatever picture may finally emerge concerning this matter, it was clearly the Israelis who destroyed any chances of a diplomatic easing of

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(16) Press Conference of 26 November 1967.

(17) *U.N. Doc. A/PV. 1573*, p. 56, and statement of President Nasser on 9 June 1967.

(18) *U.N. Doc. S/7906*.

(19) Press Conference of 28 May 1967.

(20) Jamal Nasser, *The Israeli War of Aggression* (Amsterdam, 1968), p. 22. Dr. Nasser was appointed Jordanian Minister of Justice in 1969.

(21) Copeland, *op. cit.*, p. 234.

the crisis by their blitzkrieg attack against the Arab States. Israeli spokesmen have put forward various arguments to support this action. It is necessary to examine whether there is any justification for these arguments in international law.

In the first place, the Israelis claim they were compelled, by Arab threats to attack them, to launch a preventive war. It is important to remember that Israeli threats to attack Syria were the factor that first initiated the crisis. If anyone had been justified in launching a preventive war in response to a threat, it would have been Syria, not Israel. However, the entire concept of preventive war has increasingly come to be regarded as contrary to international legal principles, as is specifically demonstrated by Article 51 of the United Nations Charter. "According to the wording of Article 51, the right of self-defence may be exercised 'only if an armed attack occurs.' An attack must have actually been initiated, therefore, before measures of self-defence may be undertaken and any armed action of a preventive character must be considered as forbidden by Article 51."<sup>22</sup>

The Israelis have also alleged that actions taken by the Arab States in the period of crisis prior to the June war, such as U.A.R. troop movements, the call for withdrawal of the U.N. Emergency Force from Sinai, the signing of joint defence agreements or the U.A.R.'s exercise of sovereignty in the Straits of Tiran, constituted aggressive acts to which Israel was justified in replying by force. This is an extremely tendentious argument, for all these actions were either defensive preparations or measures of legitimate collective security, or were actions carried out within the limits of the U.A.R.'s rights as a sovereign State. The purpose of the troop movements was to enable the U.A.R. to fulfil its treaty obligations to Syria, in the event of the Israelis putting their threats of attack into action. Collective defence treaties are a perfectly acceptable means in international law for safeguarding states against attack: the United States, for example, is bound by eight collective defence treaties with 42 countries (and has not always used these treaties for purely defensive purposes).

The steps taken by the Arab States before and during the June war were in full accordance with Article 51 of the United Nations Charter, which declares: "Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs

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(22) Kelsen, *op. cit.*, p. 62.

against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security." The French Government saw this aspect of the crisis in clear terms and took a position in accordance with the principles in Article 51 of the Charter, recognizing that the Arab States' measures of collective defence were legitimate under those principles, and that the Israelis would be committing an act of aggression by firing the first shot.

The regroupment of the U.N. Emergency Force was something which the U.A.R. was perfectly entitled to demand. As the U.N. Secretary General had pointed out on 9 October 1958: "U.N.E.F. has been necessarily limited in its operations to the extent that consent of the parties concerned is required under generally recognized international law. It followed that while the General Assembly could establish the Force, subject only to the concurrence of the States providing contingents, the consent of the Government of the country concerned was required before the Assembly could request the Force to be stationed or to operate on the territory of that country." The U.A.R.'s request for withdrawal to Gaza was necessary out of consideration for the safety of members of the Force since, as the Secretary General stated: "It is in no sense a military force exercising, through force of arms, even temporary control over the territory in which it is stationed, nor does it have military objectives, or military functions exceeding those necessary to secure peaceful conditions on the assumption that the parties to the conflict will take all the necessary steps for compliance with the recommendations of the General Assembly."<sup>23</sup>

Had the U.A.R. been required to come to Syria's defence against the threatened Israeli attack, the ensuing hostilities could have jeopardized the lives of members of the Force quite needlessly and pointlessly.

The Israelis condemn the exercise of U.A.R. sovereignty over the Straits of Tiran following the withdrawal of U.N.E.F., and maintain that the stationing of U.N.E.F. at Sharm Al Shaikh commanding the Strait was a gain Israel secured following the 1956 attack on Egypt. This, according to the Israeli view, established an Israeli "right of navigation" through the Straits. The unfounded nature of Israeli claims to navigation rights in the Arab territorial waters of the Gulf of Aqaba has been demonstrated;<sup>24</sup> and the claim that such rights were established by the illegal Israeli action of 1956 cannot be substantiated. For the General Assembly condemned

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(23) *U.N. Doc. A/3943*.

(24) See Chapter III, section 3 above.

that invasion as an Armistice violation.<sup>25</sup> Any gain such as the Israelis claimed would be contrary to the principle that political gains should not be won by aggression, which President Eisenhower enunciated in these words:

Israel insists on firm guarantees as a condition to withdrawing its forces of invasion . . . If we agree that armed attack can properly achieve the purposes of the assailant, then I fear we will have turned back the clock of international order. We will have countenanced the use of force as a means of settling international differences and gaining national advantages . . . If the United Nations once admits that international disputes can be settled by using force, then we will have destroyed the very foundation of the organization, and our best hope for establishing a real world order.<sup>26</sup>

When the June 1967 war took place, the United States Government, for reasons best known to itself, decided to discard these principles proclaimed by one of its former Presidents.

*The Times* newspaper of London made some interesting observations on the navigation issue at the time of the crisis:

“There exists an international agreement, signed by Israel, which prohibits its sea forces—military, para-military or non-regular—from passing through ‘the waters within three miles of the coastline’ of Egypt. This is the Egyptian-Israel General Armistice Agreement signed at Rhodes on 24 February 1949, at which time Israel was not in possession of Eilat, the port at the northern end of the gulf.” Regarding blockade of civilian shipping, *The Times* noted that the Israelis had unilaterally abrogated the Armistice, an act which would make a blockade by the U.A.R. “undeniably legitimate”; and also, “it can be argued . . . that the Gulf of Aqaba is an inland sea . . . The Arabs claim that Israel’s presence in Eilat is illegal, having been achieved by force in March 1949, in violation of the Armistice Agreement signed the previous month. They claim that a precedent can be cited for giving several powers with a community of interest, and a common inheritance, control over an enclosed stretch of water.”<sup>27</sup>

In any case, had the Israelis felt their argument on this issue was really convincing, their proper course would have been to present it to the International Court of Justice, not to launch a war. It is clear from this, as well as the facts that the Israelis initiated the crisis by threatening Syria and forestalled any diplomatic efforts at a solution by staging a

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(25) Res. 997 (ES-1).

(26) TV and Radio “Report to the Nation,” 31 October 1956.

(27) *The Times*, 31 May 1967.



“preventive war,” that they deliberately planned that war and were determined that it should occur. This is borne out by the smooth conduct of their military operations, clearly the result of long strategic preparation, as well as their subsequent insistence on consolidating territorial gains.

The Israelis in every sense launched a war of aggression on 5 June 1967. The whole series of their acts contravened the United Nations Charter which states, in Article 2 (4):

All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations.

## 2. *Israeli Conduct of the War*

The result of the Israeli-initiated war of aggression of June 1967, as is known, was the seizure by Israel of tracts of territory from three Arab states, Syria, the United Arab Republic and Jordan. This meant, in effect, that all of Palestine then fell under Israeli occupation, since the territory seized from Jordan was the “West Bank” area which had been incorporated into Jordan after the 1948 war. The Gaza Strip was also seized.

According to the International War Crimes Tribunal at Nuremberg, the initiation of a war of aggression is more than a simple violation of international law; it is the most serious international crime warranting the trial by an international court of those guilty of it. The Nuremberg Tribunal laid down that “To initiate a war of aggression, therefore, is not only an international crime; it is the supreme international crime differing only from other war crimes in that it contains within itself the accumulated evil of the whole.”<sup>28</sup>

The Nuremberg Tribunal, set up to try Nazi war criminals after World War Two, has been criticized by some writers as unprecedented, and as introducing innovations. It was indeed unprecedented, but it was supported and established by some of the greatest jurists in international legal history, and its innovations, like many of the precepts in the U.N. Charter, were of value to the constructive development of international law and the introduction of effective international sanctions to deter the committing of international crimes. Accepting the Tribunal, therefore, as

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(28) International Military Tribunal (Nuremberg) Judgement and Sentences, *American Journal of International Law*, No. 43 (January 1949), p. 168.

a constructive development, we may apply its reasoning to the June 1967 war and conclude that, in launching that war, the Israelis were guilty of "the supreme international crime."

Apart from the supreme international crime as a whole, the Nuremberg Tribunal likewise concerned itself with all acts of individuals which made up the "accumulated evil" contained in it, such as mass extermination, crimes against non-combatants, use of torture, and so on. Let us consider the Israeli conduct of the June war to see if such acts were committed on that occasion, and if so, in what way these acts contravene international law. Important details on this subject were contained in a statement by the British philosopher Bertrand Russell, who declared:

There is now extensive evidence that Israel used large quantities of napalm in its recent blitzkrieg against its Arab neighbours. U Thant announced on 9 June that the United Nations' representatives on the spot had reported to him that Israeli aircraft were 'continuously bombing, napalming and strafing' Syrian positions. The *Washington Post* has reported Syrian hills 'covered with burned and blackened fields, silent testimony to the liberal use of napalm.' The Beirut correspondent of the *Economist* has reported that in Jordan the informed estimate is 'between 14,000 and 18,000 people killed . . . The main cause of death was napalm bombing. Eyewitness reports from Lebanese doctors speak of continuous napalm bombing of roads where civilians were fleeing from the West Bank. Ambulances and medical units were bombed. Three hospitals were totally destroyed . . .' The *Times* published a report from Cairo on 19 June of its correspondent's visit to victims of napalm in hospital.

Napalm causes third degree burns which destroy the whole thickness of the skin, and frequently destroy the underlying muscles and even the bones. If the wounds remain open for long, keloids (or hypertrophic scars) occur on the scars. There is also the danger of fibrosis and contraction of the scars which usually leads to pronounced disability and disfigurement. The keloid formations can become cancerous.

It is abundantly clear that napalm is an anti-personnel weapon which has no place in any civilized community . . . it is intolerable in its fiendishness. Napalm must be banned in the same way as dum dum bullets and gas chambers.<sup>29</sup>

Dr. Usama Al Khalidi, who was doing research at the Augusta Victoria Hospital, Jerusalem, at the time of the war, stated:<sup>30</sup>

When hostilities commenced on the morning of Monday 5 June, the Augusta Victoria Hospital was flying the U.N. flag but was not marked with the Red Cross because it was universally known to be a hospital . . . On Monday at 9.30 p.m. phosphorous incendiary bombs were fired at Augusta Victoria from Israeli military positions . . . on Mount Scopus about half a mile away. Small fires started and we took our 60 patients down to the basement. Later that night bombing with 2-inch mortars of the hospital building and its compound commenced and continued all through Tuesday;

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(29) Issued 29 June 1969. Published in *London Bulletin*, August 1967.

(30) These doctors' statements were issued to the press in Beirut, June 1967.

I estimated at least 2,000 mortar shells landed in the area. On Tuesday also Israeli airforce planes attacked the hospital and 5 or 6 rockets hit the hospital building. At about midnight Tuesday-Wednesday incendiary bomb attacks recommenced and the top floor of the hospital caught fire and was totally destroyed. On midday Wednesday the Israeli forces occupied the area while we were trying to evacuate our patients in ambulances to a safer area. Mortar shelling continued throughout the operation. On Wednesday 21st when I drove from Jerusalem to Jericho I observed at least four clearly marked ambulances burnt out on the side of the road, with their stretchers still inside them.

**Dr. Salim Saab of the American University Hospital, Beirut, stated:**

From early Thursday morning (8 June) until mid-morning on Friday (9 June) I participated in operating room and ward activities in the Military Base Hospital in Amman, Jordan. One floor of the hospital containing 150 patients, which was around 20 per cent of the total admissions, were burn cases consistent with burns made by napalm. All of these were second-degree burns; the third-degree burn cases could not be evacuated from the battle-field area. I visited the morgue of the hospital with the resident pathologist and saw corpses of soldiers who had been bandaged at the front and who had burns on areas of their bodies other than those bandaged. This indicated that raids had been conducted on ambulances in which these soldiers were being evacuated. The pathologist confirmed that the burns had been inflicted by napalm.

**Dr. Kamal Bikhazi, also of the American University Hospital, stated:**

While in Jordan we were told by our Jordanian medical colleagues, both military and civilian, of attacks made on the following hospitals:

1. Augusta Victoria Hospital, Jerusalem.
2. The French Hospital, Jerusalem
3. Military Field Hospital, Ramallah.
4. The Military Hospital, Jenin.
5. The Military Tent Hospital, Nablus, from which 18 casualties were evacuated by ambulance and the ambulance burnt. All the wounded were killed; the doctor managed to jump from the vehicle.
6. The Mobile Army Hospital, travelling between Ramallah and Jerusalem, all wounded and staff killed.

With respect to the last incident, I was told by Dr. Abdul Rahim Malhas, who had evacuated his Army hospital in Ramallah under air attack, that he personally saw a napalm or incendiary bomb attack on the Mobile Field Hospital, clearly marked with a red cross, in which all its patients, about 350, and its staff were incinerated. This occurred on Wednesday 7 June.

**Dr. Najib Abu Haidar, likewise from the American University Hospital, gave this evidence regarding conduct of Israeli troops in Jerusalem:**

I was given the following information by Mr. Labib Nasser, the General Secretary of the Y.M.C.A. On the morning of Tuesday 6 June Mr. Nasser and some other people from the Y.M.C.A. were taken by Israeli soldiers, put into a truck, and paraded through the streets of the new city. They had a motorcycle escort who shouted to passers-by informing them that these people were Arabs and asking them to spit on the Arabs. They were spat upon and cursed for being Arabs and Christians and Muslims. A few hours after they

returned to the Y.M.C.A. a second batch of people including some Y.M.C.A. workers were taken away for a second parade through the streets of the Jewish area but when they returned to the Y.M.C.A. there was an altercation between the Arabs and the Israeli army escort who opened fire killing three people on the steps of the Y.M.C.A.

I personally observed that the Israeli army looted almost every shop in the Herod's Gate area; if any escaped it was because the soldiers could not break in. In the course of a few hours on the morning of Wednesday 7th when walking around the area I saw an Israeli soldier with a rope tied to the back of an Israeli army truck fixing it to the shutters of a tobacconist shop so as to pull them off. When I remonstrated with him he told me he was trying to get some matches. A few yards further on radios and other electrical equipment were being loaded into two Israel army trucks from an electric goods store. Across the street I saw two men breaking into a photographic shop. In subsequent days looting became commonplace. On one occasion when I saw an Israel army officer looking at shops being looted I asked him to stop it but he merely shrugged his shoulders.

The destruction of the Augusta Victoria Hospital was confirmed by many Western journalists. Four Israeli jets dropped napalm canisters on the Augusta Victoria.<sup>31</sup>

The worst-hit building in the whole of Jerusalem is the Augusta Victoria Hospital on a hill next to the Mount of Olives. The Israelis say they bombed it because it was being used by the Jordanian Army, but for once their intelligence seems to have been faulty. As far as I could see the building was a hospital and nothing else. Luckily no one was hurt—patients and staff were sheltering in the basement—but one whole wing was destroyed and with it research work of a lifetime.<sup>32</sup>

On 6 June, Israeli forces entered Yalu, a village of some 3,000 inhabitants. What occurred was described by a shopkeeper from the village, Ahmad Taya Muhammad Salih:

The Israelis selected Ibrahim Ali Shuaibi, Abdul Karim Mahmud Nimr, Issa Muhammad Issa Abdullah and my brother Abdul Rahim, and called them 'to come and see an officer.' The Israelis beat them with sticks and kicked them, then bound their hands and put them in cars. The men were taken off a short distance and shot. They were all civilians. Old people who were unable to leave the village, like Issa Zayyad, who was over 80, were killed. Ali Al Arab, aged over 75, and a woman called Sabha Abu Dayya, aged over 70, were bayoneted to death by the Israelis, who then drove out the inhabitants of the village. The Israelis did not let me take even clothes for my children when they drove me out. They said: 'Everything in your home and shops belongs to Israel now.'<sup>33</sup>

According to corroborative evidence, one victim, Issa Zayyad, was shot between the shoulders and died after two days of agony, receiving no help or medical attention. In Amwas village nearby, seven disabled

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(31) *Life Magazine*, 3 July 1967.

(32) *The Economist*, 1 July 1967.

(33) Sworn testimony given in presence of the author.

persons, five women and two men, were slaughtered in one house by Israeli soldiers. Their names and ages were: Heijar Khalil Ali, 70; Nimr Mustafa Abu Khalil, 71; Amina Al Shaikh Hussein, 80; Amina Muhammad, 73; Nauma Al Atash, 81; Zahia Hassan Khalil, 69; and Aisha Salama, 85.<sup>34</sup>

A similar pattern was repeated in Bait Nuba village. A farmer from Bait Nuba, Abdul Rahim Ali Ahmad Al Qadi, stated:

On 6 June 1967 at 3 a.m. a large force from the Israeli Army entered our village and expelled us by force. They opened fire with machine guns on the men, women and children of the village, and a number of these persons, men and women, were killed. Their names are: Muhammad Ali Abu Bakr, age about 70, with weak eyesight; Musa Ahmad Abu Haniya, age about 60; Fatima Ahmad Hamad, age about 60; Mahmud Abdul Hamid, age about 60 and his wife of approximately the same age; Lutfi Mahmud Hasan Abu Rahhal, age about 35; Al Abed Dhahir Ahmad Hifa, age about 25; Sabha Al Bahluz, age about 70; Ali Ibrahim Zayid, age between 35 and 40; Al Abed Musa Mahmud Ali, age about 30. The Israelis killed these persons because they refused to leave the village or were too weak to leave due to their old age.

My family and I left and went to Ain Arik village, where we stayed two days without food. After that, an Israeli officer arrived and told the Mukhtars (village notables) there that everyone should go back to his house. So we returned to our village and found Israeli policemen at the edge of the village near its well. They forbade us to enter the village and began to demolish the village completely, and we witnessed that. That occurred at 3 p.m. on 9 June 1967.<sup>35</sup>

The three villages were totally destroyed. Visiting them shortly afterwards, a French nun wrote:

There was what the Israelis did not want us to see: three villages systematically destroyed by dynamite and bulldozer. Alone in a deathly silence donkeys wandered about in the ruins. Here and there a crushed piece of furniture or a torn pillow stuck out of the mass of plaster, stones and concrete. A cooking pan and its lid abandoned in the middle of the road. They were not given time to take away anything. Israeli tractors of adjoining kibbutzes were hastening to cultivate the fields (15 kilometres within the previous border, which before was no-man's land).<sup>36</sup>

A British journalist confirmed the destruction of Yalu, Bait Nuba and Amwas, and also wrote of Zeita village:

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(34) George Dib, Fuad Jaber and George Nasrallah, *Memorandum on the Treatment of Arab Civilians in the Occupied Territories* (Institute for Palestine Studies, Beirut, 1968), p. 4.

(35) Sworn testimony given in presence of the author and submitted to U.N. Investigation, August 1969.

(36) Sister Marie-Thérèse, *Jérusalem et le Sang des Pauvres* (Témoignage Chrétien pamphlet, Paris, 1967), p. 27.

When all the villagers were assembled, Israeli guards climbed on to the nearest rooftops and trained their guns on the crowd. It was about 6.30 in the morning. No one was allowed to move and the villagers stayed where they were until 6 in the evening.

No adult could go aside to relieve himself, no child could go and fetch a cup of water. (The sun is hot in Palestine in June). While they sat there, Israeli soldiers carefully and systematically blew up 67 houses, including a school and a clinic maintained by the International Council of Churches.

At 6 in the evening the commander appeared on a rooftop with a loud-speaker and told them they could 'return to their homes.'<sup>37</sup>

These villages were not isolated cases. In Qalqilya (population about 20,000) for instance, over 50 per cent of the houses were destroyed totally, another 25 per cent were badly damaged and 90 per cent of household properties were looted. Widescale looting was reported in numerous other towns, apart from Jerusalem, where it was particularly serious.<sup>38</sup>

The above-mentioned acts of destruction were carried out after the Israelis were securely in occupation of those localities, fighting had ceased around them and Arab forces were no longer near them. They cannot be justified on grounds of military necessity.

On 11 June 1967, Israeli forces took up positions in the newly-captured district of Qunaitra, in the Syrian highlands. In one house just outside Qunaitra, an Israeli unit discovered a three-year-old boy named Hayil Mahmud, with his mother. The officer commanding the unit began to interrogate the mother, ordering her to tell him about the movement of Syrian troops in the region. She replied that she knew nothing of military matters, had seen no troops, and so could not answer his questions. The Israeli officer warned that he would burn her child if she did not answer. When the woman repeated that she knew nothing, the Israeli soldiers took her outside her house, locked the child Hayil inside it alone, and set fire to it. The soldiers held the mother to prevent her from rescuing her son. When they finally released her and she managed to drag him out of the burning building, he had severe burns all down one side of his body.<sup>39</sup>

These were only some incidents in a wide pattern of Israeli conduct in the June 1967 war. They are, however, an accurate and representative illustration.

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(37) Article by Michael Adams in *The Sunday Times*, 16 June 1968.

(38) Dib, Jaber and Nasrallah, *op. cit.*, p. 17.

(39) Evidence gathered by Russell Investigation Team, who interviewed the mother and examined the child's wounds medically, in August 1967.

### 3. *Israeli Conduct in Territories Occupied in the June 1967 War*

The Israelis' conduct in territories seized in the June war may be considered under four main headings: destruction of property, forcible expulsion of population, administrative measures and violence against persons.

**(1) Destruction of Property:** The Israeli policy of destroying people's homes, implemented on a considerable scale in the June war, has been carried on continuously ever since. The following examples, only a small sample of the total, give an indication of the general pattern:

— The destruction of 138 homes in the Maghariba Quarter of Jerusalem, rendering some 650 people homeless, on 11 and 12 June 1967, followed by the destruction of some 650 homes in other areas (including the Jewish Quarter 80 per cent of which is Arab owned), rendering some 3,000 people homeless, the following week.<sup>40</sup>

— On 16 June, the Israelis blew up three houses in Gaza.

— On 21 June, they totally destroyed Bait Awa and Bait Marsam villages, as well as houses in Maghrabit Al Sikka, Surif, Azna and Bait Oula. This was followed the next day by the destruction of most of Shuwaika and Habla villages.

— On 28 June, Al Burj village was destroyed.

— On 31 August, Israeli forces destroyed a number of houses in Akraba village.

— On 11 September they destroyed several houses in Qabalan and Surif.

— On 25 September they pulled down six houses in Nablus (Samaritan Quarter).

— On 1 October they blew up all houses in Saytaria area and 20 houses in Allar village.

— On 12 November, Israeli forces blew up the houses of the headmen of Shuyukh, Hebron, and 40 other houses.<sup>41</sup>

The fact that the Israelis continue such measures unabated is illustrated by their order on 23 June 1969 for shopkeepers in 17 shops near the Wailing Wall to evacuate. On 25 June, families housed in the buildings where these shops were located were forcibly evicted, and the buildings were demolished. Israeli policy is to destroy not only homes but also

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(40) Al Khatib, *op. cit.*, pp. 6-7.

(41) Dib, Jaber and Nasrallah, *op. cit.*, appendix pp. 63-72.

See also *The Arabs Under Israeli Occupation*, memorandum by Arab Women's Information Committee to Regional Conference on Human Rights, Beirut, December 1968, Document No. III, for further extensive information on such cases.

installations and property that provide means of livelihood in the occupied territories. Thus:

— On 31 July 1967 they destroyed the old convent of the Syriac Christians and a cafe near Bab Al Amud, Jerusalem.

— On 7 August, they blew up a large section of the Nablus Industrial School.

— On 17 September, they blasted the water reservoir of Dair Sharaf village.

— On 26 November, Israeli forces blew up four water pumps in Al Buraij, Gaza, as well as 45 homes in the same region.

— On 10 January 1968, they destroyed three shops and a truck which provided livelihoods for several people in Jabalia, Gaza.

— On 14 January 1968, they destroyed fishing boats and equipment of a total estimated value of 100,000 pounds in Gaza port.<sup>42</sup>

Israeli justifications for these acts have varied. In the case of houses destroyed in Jerusalem immediately after the June war, the reason was that the Israelis wanted to clear space for visitors to the Wailing Wall.<sup>43</sup> On other occasions, the Israelis have alleged that the owners of houses were in some way connected with the resistance, but the houses have been destroyed before the owners have had any chance for this to be proven or disproven in a court of law.

**(2) Forcible Expulsion of Population:** There have been very numerous cases of the Israelis expelling inhabitants of the territories occupied since June 1967. These have sometimes been effected by an individual expulsion order, as in the case of Shaikh Abdul Hamid Sayih, who was President of the Islamic Council and Acting Chief Justice of the West Bank. He was expelled because of his active role in peaceful protests against the Israeli occupation. Following his deportation, 20 distinguished residents of Jerusalem on 25 September 1967 signed this protest to the Israeli Prime Minister:

We, the undersigned residents of Arab Jerusalem, wish to express our deep regret and strong objection to the deportation order imposed by the Israeli Defence Minister on Shaikh Abdul Hamid Al Sayih, forcing him to leave the occupied West Bank, such an order being arbitrary in nature, unjustified in fact, and repugnant in spirit to the principles of international law and the Geneva Convention. We also wish to avail ourselves of this opportunity to convey the profound concern of all residents of the West Bank at the arbitrary measures to which they have been subjected, including impi-

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(42) Dib, Jaber and Nasrallah, *op. cit.*, pp. 65-70.

(43) *Daily Telegraph*, 15 June 1967; *Economist*, 17 June 1967.



sonment, the use of force and the wilful destruction of property belonging to the innocent. We hereby place on record that such arbitrary measures can only add to the tension, and we sincerely hope that these orders will be rescinded and that such unwarranted conduct will stop.<sup>44</sup>

The Israelis' use of mass methods of expulsion is evidenced by the fact that from June to early September 1967, 110,000 out of a total population of 140,000 had been expelled from the Syrian highlands, and the number of persons on the East Bank of Jordan driven from the West Bank or Gaza Strip was estimated to have reached 400,000 by November 1969.<sup>45</sup>

Press reports indicated unrelenting pressures on people to leave their homes even long after the war. Thus U.N. officials reported that 1,000 people a week were at one time being forced out of the Gaza Strip. "Israeli reprisals have included curfews, demolition of houses at the sites of incidents, and roundups and detention of young Arabs in these areas. These measures have encouraged the refugees, particularly young men, to leave Gaza for Jordan."<sup>46</sup> The following month, "The Israeli authorities deported 200 residents of the Gaza Strip to Egypt."<sup>47</sup> In a subsequent act of individual deportation, "four well-known personalities, including former Jordanian officials, were expelled from East Jerusalem and Hebron . . . Charged with initiating a campaign of incitement against Israeli authorities, the three men and a woman were roused from their sleep, taken to the Allenby Bridge and sent to Jordan."<sup>48</sup>

**(3) Administrative measures:** The Israeli authorities have enforced numerous administrative measures in occupied areas. Some of these were outlined in the Bethlehem Notables' memorandum to U Thant on 9 August 1967:

The Israeli occupation of our Arab land has been accompanied by violations of the sanctity of both Islamic and Christian Holy Places, and by interference in the inhabitants' performance of their religious duties in their places of worship. It has also been accompanied by encroachments on property and possessions, by the confiscation of credits in the banks of Bethlehem and in every other part of the West Bank, by the obligatory use of Israeli currency and the imposition of new and illegal taxes on the owners of factories

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(44) *The Resistance of the Western Bank of Jordan to Israeli Occupation, 1967.* (Pamphlet of Institute for Palestine Studies, Beirut, 1967), p. 92.

(45) Jordanian Government estimate, given in a statement by the Prime Minister, Mr. Talhouni, on 9 November, 1969.

(46) *Herald Tribune*, 29 March 1968.

(47) *Le Monde*, 6 April 1968.

(48) *Herald Tribune*, 7 September 1968.

and shops, by the erection of customs barriers within Arab territory and by the expulsion of thousands of the inhabitants. The occupation authorities are behaving as if the rights of sovereignty had already been transferred to them, whereas according to international law, occupation in no way changes the inhabitants' rights within an occupied territory.<sup>49</sup>

**Israeli attempts to alter school curricula in occupied territory were condemned by West Bank Teaching Institutions on 13 August 1967:**

The statements of the Israeli authorities on the changing of curricula and books are incompatible with internationally recognized laws and customs, which do not permit occupation authorities to make any change in the laws and regulations already in force in occupied territories, except in connection with the protection of the occupying forces. International law and custom also oblige occupation authorities to respect the inhabitants of occupied territories, to protect their rights, property and beliefs, and to refrain from ordering them to take actions which are incompatible with their national feelings and religious tenets.<sup>50</sup>

**The most serious Israeli administrative measure was the annexation of Jerusalem:**

Under the Law and Administration Ordinance (Amendment No. 11) Law of 27 June 1967, it was provided that the law, jurisdiction and administration of the State should apply in any area of the State of Israel designated by the Government by order. Under this provision the Government issued an order dated 28 June 1967 which declared that a territory defined in an annex was an area in which the law, jurisdiction and administration of the State of Israel were in force. The area described in detail in the annex included the Old City, Sur Baher, Shaikh Jarrah, the Qalandia airport, Mount Scopus and vicinity and Sha'afat.<sup>51</sup>

Following a U.N. General Assembly resolution,<sup>52</sup> U Thant sent Ambassador Ernest Thalmann to report on the situation in Jerusalem. Mr. Thalmann's report was based on evidence submitted to him by Israeli authorities, Arab residents and religious leaders. He stated, *inter alia*:

The Personal Representative was repeatedly assured by the Israeli side that every attention was being paid to the well-being of the Arab population and that the Arab residents would have the opportunity to bring their standard of living up to the level prevailing in Israel.<sup>53</sup>

The sort of attention the Israelis paid to Jerusalem Arabs' well-being was illustrated by these observations of Mr. Thalmann:

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(49) *Resistance of the Western Bank*, pp. 44-45.

(50) *Ibid.*, pp. 51-52.

(51) *U.N. Doc. S/8146*.

(52) Res. 2254 (ES-V).

(53) *U.N. Doc. S/8146*.

The dynamiting and bulldozing of 135 houses in the Maghrabi Quarter ... had aroused strong feelings. The action involved the expulsion of 650 poor and pious Muslims from their homes ... It was charged that the Israel authorities had taken over the so-called Jewish Quarter and evicted 3,000 residents at short notice. It was also pointed out that the Israel authorities had chosen a government school for girls near the Aksa Mosque as the seat of the High Rabbinical Court, without consulting the Waqf ... The dissolution of the elected Municipal Council of East Jerusalem and the taking over of its buildings, furnishings and archives by the Municipal Council of West Jerusalem was described by Arabs as a violation of international law ... The Personal Representative was told that the measures already introduced or announced by Israel with respect to taxes, customs duties, licences, absentee properties, and other economic matters, were considered oppressive by the Arab population and that there was a growing feeling of economic strangulation ... The Personal Representative found a pronounced aversion to the efforts of the Israeli authorities to apply their own educational system to Arab schools ... The Arabs ... were opposed to civil incorporation into the Israel State system ... It was repeatedly emphasized that the population of East Jerusalem was given no opportunity to state for itself whether it was willing to live in the Israel State community. It was claimed that the right of self-determination, in accordance with the United Nations Charter and the Universal Declaration of Human Rights, had therefore been violated.<sup>54</sup>

Ambassador Thalmann quoted Israeli Premier Eshkol as saying, on 7 June 1967: "You may rest assured that no harm of any kind will be allowed to befall the religious Holy Places." The value of such a promise was underlined by Mr. Thalmann's observation that "since 1948, the church and vicariate of the Syrian Catholic parish had been in no-man's land and had remained intact throughout. It was stated that on 30 June and 2 July, the buildings had been completely destroyed by the Israelis, without the parish's having been informed."<sup>55</sup> Mr. Eshkol's words sound even more hollow now after the fate of Al Aqsa Mosque on 21 August 1969.

Further Israeli measures against Jerusalem included deportation of the Mayor, Mr. Rauhi Al Khatib, as part of the move to transfer administration from the lawfully elected Arab Municipal Council to the Israeli Municipal Council for which Jerusalem Arabs had not voted; demolition of more buildings and seizure of properties, including 848 acres of land on 11 January 1968 under an Expropriation Act;<sup>56</sup> and the seizure of a newly-built hospital and its conversion into a police headquarters.<sup>57</sup> The Israelis have proceeded with plans to establish settlers on the expropriated

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(54) *Ibid.*, Mr. Thalmann's use of the terms East and West Jerusalem is geographical only "with no other connotations."

(55) *Ibid.*

(56) Al Khatib, *op. cit.*, pp. 14-15.

(57) *Jerusalem Post*, 8 February 1968.

land, and have also set up kibbutzim in other occupied areas of the West Bank as well as Sinai and the Syrian highlands.

**(4) Violence against Persons:** Among the Israeli authorities' most serious acts have been those of physical violence against persons. Four refugees from the Gaza Strip, Tawfiq Mahmud Abu Fakhr, Ibrahim Khalil Turmus, Amir Abdul Rahim Al Rautisi and Muhammad Rashid Matar, made a statement on 5 August 1968:

After making a detailed check in every house as to which members of the families are present, and which absent, and the reasons for their absence, the occupation forces seal houses with a seal during the night and beat the father of the family and the males who are present and ask them about those who are absent and whether they are commandos. Children under ten years of age are covered with earth and shots are fired in their direction to intimidate them so that they would guide the authorities to the place where arms are hidden. If women intervene in an attempt to make the soldiers cease beating and torturing their husbands and children, the Israelis threaten to take them to brothels in Israel, to teach them not to meddle in affairs which are not their concern.<sup>58</sup>

Ahmad Ghanem, a Beersheba Secondary School pupil, and Muhammad Al Ghurayyib, an UNRWA employee, gave more details, in the presence of a British Red Cross representative:

On 15-6-1967, after the explosion of a land mine under a military vehicle, a large Israeli force, supported by helicopters, arrived and started bombarding both the Shuyukh Al Id camp and Al Awadhira (Gaza Strip). After destroying about 150 houses the Israelis rounded up some 23 persons, including the teacher Abdul Khaliq Muhammad Musa and his brother, Abdul Rahman Muhammad Musa . . . They were all taken to somewhere near the Rafah Intermediate School for Refugee Boys and Elementary School, near the rubbish dump. Here they were forced to dig a trench, after which they were all shot and buried in the trench they had dug.<sup>59</sup> (Forcing victims to dig their own mass graves was a Nazi practice in the Second World War).

The use of such techniques was confirmed in a conversation a French journalist reported having with an Israeli soldier, who told her:

In the middle of the night we break into houses. Women cry and children are terrified. Men and children over 14 are compelled to lie on their stomachs, hands crossed behind their heads. We trample them and hit them with the butts of our rifles. We do this every night, nothing special has to have happened, we do it as a matter of routine . . . I have also mounted guard at court martials. Most of the people tried were youngsters of 14 and 12. One of them had been beaten so much that he couldn't walk. Another had had his testicles pierced with pins.<sup>60</sup>

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(58) Dib, Jaber and Nasrallah, *op. cit.*, Appendix pp. 94-95.

(59) *Ibid.*, Appendix p. 10. See Hannah Vogt, *The Burden of Guilt* (London, 1965), p. 230 for details on Nazi use of this method.

(60) *L'Humanité*, 6 February 1968.

There are persistent reports of violence against those entitled to prisoner of war status, both regular army soldiers and persons accused of belonging to the resistance. British journalists related soon after the June war: "We saw 22-year old Corporal Souilen Abdel Rasoul Gadali, who had been in a tank near Rafah, in the Gaza Strip. He had lost his left arm and been hit by nine bullets. Some had been fired into him, he said, while he was being interrogated after his capture on the first day of the war. He had been held for 72 hours and had been hung upside down by his feet, he said—for how long it was not clear. When he asked for a drink they shot at him. A bottle of water was rigged to drip onto his body but not into his mouth."<sup>61</sup>

On another occasion, the U.A.R. announced its intention of reporting to the United Nations and the International Red Cross regarding a "surgical operation" performed by the Israelis on a Palestinian prisoner of war. "Dr. Gamal Sami, head of the sterility department of el-Galla Hospital, told a press conference that the operation, in which the testicles of the Palestinian, Mohamed Abdul Kader Derbas, 26, were removed, was performed at a hospital in Haifa shortly after the June war in 1967. Derbas, whose wife and child were believed killed in the war, had since been saved by doctors from committing suicide, Dr. Sami said . . . Derbas has lost weight and was being treated with hormones . . ."

"The Palestinian told the press conference he was wounded in the abdomen in Gaza during the war. He was taken to Haifa hospital and confessed after torture that he was a Palestinian. When Derbas recovered consciousness after being given an anaesthetic he found the operation had been performed. Derbas also said he had seen Israeli soldiers shoot and kill other Palestinians in the hospital yard. Others were kicked and beaten."<sup>62</sup>

A case that caused considerable sensation at the time was that of Qasim Abu Akr of Jerusalem, who died of torture inflicted on him during interrogation by Israeli security forces.<sup>63</sup> If the Israeli charge against him, that he belonged to a resistance organization, was a genuine one, then he was entitled to prisoner of war status.

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(61) *The Times*, 19 June 1967.

(62) *Daily Star* (Beirut), 12 June 1969.

(63) *Le Monde*, 27 March 1969.

#### 4. *A Legal Assessment of Israeli Actions*

Any legal assessment of Israeli actions during and after the war of June 1967 must take into consideration that it was a war of aggression launched by Israel. This, in itself, creates a *prima facie* case for charging the Israeli leaders with crimes against the peace as defined by the Nuremberg Tribunal.

The Israelis' individual and collective actions against civilians outlined in this Chapter, including extensive use of napalm, mass and individual killings of non-combatants, destructions of villages and homes, expulsions and acts of harrassment, are all crimes within the definition of the Genocide Convention. They were committed with intent to complete the destruction of the Palestinians as a national and ethnical group by "(a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; and (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part." Medical operations designed to cause sterility (the castration operation in Haifa hospital) are also considered as crimes of genocide, under the Convention's heading of "imposing measures intended to prevent births within the group." Those who have committed or are responsible for the crimes listed by the Genocide Convention are punishable, whether they are constitutionally responsible rulers, public officials or private individuals.<sup>64</sup> The principle established by the Convention is that they are to be tried by a competent international tribunal or a competent tribunal of the state in which the acts were committed. In the event of no such international tribunal being set up, this duty would devolve on a competent tribunal of whatever State is established in Palestine after Zionist rule is overthrown.

Apart from the Genocide Convention, numerous other legal instruments are relevant to Israeli actions during and after the June war. These include, notably, the 1949 Geneva Conventions as well as earlier documents like the Hague Regulations, as well as, in certain cases, the Universal Declaration of Human Rights.

Of particular gravity are the attacks carried out on hospitals during the June war. Article 18 of the Fourth Geneva Convention says: "Civilian hospitals organized to give care to the wounded and sick, the infirm and

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(64) See Hans Kelsen, "Collective and Individual Responsibility for Acts of State in International Law," in *Jewish Yearbook of International Law*, No. 1 (1949), pp. 226-239.

maternity cases, may in no circumstances be the object of attack, but shall at all times be respected and protected by the parties to the conflict." The attack on the *Augusta Victoria* was a violation of this provision. Attacks on military medical installations were violations of Article 19 of the First Convention: "Fixed establishments and mobile medical units of the Medical Service may in no circumstances be attacked, but shall at all times be respected and protected by the Parties to the conflict." The same goes for attacks on ambulances. According to Article 35 of the First Convention: "Transports of wounded and sick or of medical equipment shall be respected and protected in the same way as mobile medical units."

There is some controversy as to whether the use of napalm constitutes a violation of international law, as it is not specifically listed as one of those weapons banned by international agreement, like asphyxiating or poisonous gases. The use of gas in the First World War led to the signature by many States of the 1925 Geneva Gas Protocol. The absence of such a specific agreement mentioning napalm does not, however, legalize its use. For the cruelty of its effects, accurately described in Bertrand Russell's statement, brings it clearly within the scope of Article 23-e of the Regulations annexed to the Fourth Hague Convention Respecting the Laws and Customs of War on Land (1907). This prohibits the employment of arms, projectiles and other material calculated to cause unnecessary suffering.

Regardless of the precise legal position of napalm as a combat weapon, nothing can justify its use against civilians, nor the other acts of armed force carried out by the Israelis against civilians in the June war. According to Article 3 of the Fourth Geneva Convention: "Persons taking no active part in the hostilities . . . shall in all circumstances be treated humanely . . ." The Article specifically forbids, among other acts: "Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture." Civilians coming under enemy control are intended in international law to be protected by the Fourth Convention. Article 4 says: "Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals."

Apart from violations of these general principles in cases like Israeli forces' conduct in Yalu, Bait Nuba, Amwas, Zeita and other localities,

there were also contraventions of specific precepts. Thus, acts of allowing the wounded to die over a prolonged period, as in the case of Issa Zayyad of Yalu, were contrary to Article 3 (2) of this Convention, which laid down: "The wounded and sick shall be collected and cared for."

The killing of old people who were too weak to obey the Israelis' order to evacuate their homes, as in the cases cited from Amwas, Bait Nuba and Yalu, violated Article 16, which listed the infirm as among those who "shall be the object of particular protection and respect."

Israeli armed forces' widespread killings of civilians and brutality against them violated Article 32, which states: "The High Contracting Parties specifically agree that each of them is prohibited from taking any measure of such a character as to cause the physical suffering or extermination of protected persons in their hands. This prohibition applies not only to murder, torture, corporal punishment, mutilation and medical or scientific experiments not necessitated by the medical treatment of a protected person, but also to any other measures of brutality whether applied by civilian or military agents."

The ill-treatment of captured wounded soldiers is also expressly forbidden by the Fourth Convention. Article 3 includes "members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause" among those who "shall in all circumstances be treated humanely." This was violated in the cases of the two wounded soldiers captured in Gaza as mentioned above, one of them having been castrated and the other hung upside down and shot at during interrogation. Such acts are also contrary to Article 13 of the Third Convention, which demands humane treatment for prisoners of war and expressly forbids "physical mutilation or medical or scientific experiments of any kind which are not justified by the medical, dental or hospital treatment of the prisoner concerned."

The expulsion of inhabitants is contrary to Article 49 of the Fourth Convention: "Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory . . . are prohibited." The establishment of Israeli settlers and the building of new kibbutzim is also a violation of the same Article, which prohibits the Occupying Power from transferring "parts of its own civilian population into the territory it occupies." Israeli policy in this respect appears to be based on the



policy of Nazi Germany in Poland, where a number of inhabitants were displaced to make room for German settlers after the 1939 invasion.<sup>65</sup>

In the context of expulsions, it must also be recalled that arbitrary exile is contrary to Article 9 of the Universal Declaration of Human Rights.

The destruction of villages, homes and property violated Article 53 of the Fourth Geneva Convention: "Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations." According to Article 17 (2) of the Universal Declaration: "No one shall be arbitrarily deprived of his property." Pillage is prohibited by Article 33 of the Fourth Geneva Convention.

Deprivation of livelihood by destruction of property is condemned by Article 39 of the Fourth Convention, which states: "Where a Party to the conflict applies to a protected person methods of control which result in his being unable to support himself, and especially if such a person is prevented for reasons of security from finding paid employment on reasonable conditions, the said Party shall ensure his support and that of his dependents." Far from supporting those whose livelihoods they have destroyed, the Israelis use this deprivation as a means of coercing people to leave the occupied territories. Thus, the family of Mashhur Abdullah, whose living depended on the truck and shops destroyed on 10 January 1968 in Jabalia, Gaza, as quoted above, were forced to seek refuge in Jordan to avoid starvation.<sup>66</sup>

The Israelis' claim that they are justified in destroying houses as a means of combating resistance is invalid. For they proceed to destroy the houses arbitrarily, without first verifying the accuracy of the allegation of connection with the resistance in a court of law. Very often, the person against whom the allegation is made has only the most tenuous connection with the house in question—he may only be a relative of a tenant, for example, and it is upon the owner that the hardship falls. Such acts are simply blind reprisals for actions by the resistance. Article 33 of the

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(65) Vogt, *op. cit.*, p. 146, quotes Hitler as saying: "We have the duty to 'depopulate' much as we have the duty of caring for the German population. We shall have to develop a technique of 'depopulation'."

(66) Dib, Jaber and Nasrallah, *op. cit.*, p. 18.

Fourth Convention states: "Reprisals against protected persons and their property are prohibited."

Various Israeli administrative measures in the occupied territories are violations of the Fourth Geneva Convention. Alteration of school curricula for political ends is contrary to Article 50 which provides that "the Occupying Power shall, with the cooperation of the national and local authorities, facilitate the proper working of all institutions devoted to the care and education of children." The conversion of a hospital into a police station contravenes Article 57 which lays down that "the Occupying Power may requisition civilian hospitals only temporarily and only in cases of urgent necessity for the care of military wounded and sick." The Israeli treatment of the Arab Municipal Council in Jerusalem is against Article 54, which does not allow the Occupying Power to "alter the status of public officials."

The annexation of Jerusalem has been condemned in several U.N. resolutions,<sup>67</sup> and is the sort of measure now considered contrary to international law. It was the sort of practice common in previous centuries, but developments such as the 1899 Hague Conference and the League Covenant have progressively come to outlaw the practice of conquerors seizing what they could. The 1928 Pact of Paris, or Kellogg-Briand Pact, was an attempt to prohibit "aggressive war," and was part of the justification for trying war criminals at Nuremberg. That Pact is thereby held to have established a principle of customary law binding on states whether signatories to it or not. "The Japanese seizure of Manchuria in 1931-32 led the then American Secretary of State, Henry Stimson, to issue a series of pronouncements (subsequently endorsed by the Assembly of the League) expressing a denial of the validity of the acquisition of territory by the use of force."<sup>68</sup>

Although the Stimson Doctrine, as it came to be known, has to all intents and purposes been abandoned by the United States, it has received wide acceptance in the world, and its principle is expressed in Article 2 (4) of the U.N. Charter. "The legality of title to territory acquired by conquest has been seriously challenged in recent years. By some writers the League Covenant and the Kellogg Pact were thought to have rendered conquest illegal and therefore to have invalidated a title to territory so

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(67) Resolutions 2253 (ES-V), 2254 (ES-V) of General Assembly; 252 (1968), 267 (1969) of Security Council.

(68) Von Glahn, *op. cit.*, p. 261.

acquired. Others based their arguments against the validity of title by conquest upon the Stimson Non-Recognition Doctrine, the limited acceptance thereof by the League of Nations and the series of Pan-American Agreements culminating in the Lima Declaration on Non-Recognition of the Acquisition of Territory by Force.”<sup>69</sup>

Annexation during wartime occupation is also illegal. “An occupant is not legally entitled to annex until the state of war out of which the occupation arose has ceased.” In violation of this principle, “in 1939 Germany occupied over one-third of Polish territory and annexed outright a substantial part of the occupied territory.”<sup>70</sup>

It would appear, therefore, that Israeli policy in the territories seized in June 1967, involving expulsion of the legitimate inhabitants, establishment of settlers and annexation, is based broadly on the precedent of Nazi policy in Poland. It must be stressed that the Israelis have followed the implementation of this policy since 1947. There is no difference, in legal terms, between the dispossession of Palestinians then and now, or between the illegal annexation of, say, Jaffa or Galilee and the illegal annexation of Jerusalem. One result of Nazi Germany’s pursuit of this policy was the adoption of the Atlantic Charter, in which the British Prime Minister and United States President declared that “they desire to see no territorial changes that do not accord with the freely-expressed wishes of the peoples concerned.” It was disregard for this principle that created the Palestine problem. It is worth remembering that in the Second World War, respect for this principle, and the ending of illegal acts of annexation by the Axis aggressors, could only be achieved by the defeat of those aggressors.

The continued acts of physical violence against people in the occupied territories are contrary to several specific provisions of the Fourth Geneva Convention, in addition to those already cited. Thus, measures of collective intimidation against inhabitants, as were described in the Gaza Strip, are violations of Article 33: “No protected person may be punished for an offence he or she has not personally committed . . . Collective penalties and likewise all measures of intimidations or of terrorism are prohibited.” So also, according to Article 27: “Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and

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(69) Herbert Briggs, *The Law of Nations*, 2nd ed. (New York, 1952), p. 251.

(70) Stone, *op. cit.*, p. 720.

customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity. Women shall be specially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault."

These provisions have been contravened in several of the sample cases considered, such as the public parading of people to be spat upon (testimony of Dr. Abu Haidar), terrorization of families in their homes (testimonies of Israeli soldier to L'Humanité and of four Gaza refugees) and threats to send women to brothels (testimony of four Gaza refugees).

Article 31 rules: "No physical or moral coercion shall be exercised against protected persons, in particular to obtain information from them or from third parties." This has been contravened in the collective terrorization of inhabitants (of particular seriousness is the terrorization of small children) and also in the individual cases of torture of detainees and prisoners of war. The latter cases are also contrary to Article 37: "Protected persons who are confined pending proceedings or serving a sentence involving a loss of liberty, shall during their confinement be humanely treated," and contrary to the Third Convention. The Israeli methods described are also contrary to Articles of the Universal Declaration of Human Rights which forbid torture and humiliating or degrading punishments, and affirm the right to fair trial, protection of honour and family and other fundamentals.

Article 147 of the Fourth Geneva Convention defines a number of acts as grave breaches of the Convention. Those committed by the Israeli authorities and forces include the following:

Wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person . . . or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention . . . and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

The commission of these acts means that the problem of Israeli aggression is one in which an obligation lies with humanity as a whole. For, in Article 146 of the Fourth Convention, "the High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention. Each High Contracting Party shall

be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of nationality, before its own courts.”

This obligation is also established by precedents, the best known of which are the International Tribunals of Nuremberg and Tokyo, and other allied courts, set up to try the war criminals of the Second World War. These resulted from the London Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis (1945)<sup>71</sup> which defined the following offences as meriting trial by an International Tribunal:

(A) Crimes against Peace: Namely, planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing;

(B) War Crimes: Namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labour or from any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity;

(C) Crimes against Humanity: Namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.

Leaders, organizers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any persons in execution of such a plan.

A *prima facie* case exists for charging the Israeli leaders, authorities and armed forces with crimes against peace, war crimes, and crimes against humanity.

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(71) *International Conference on Military Trials*, London, 1945 (U.S. State Department Publication 3080, Washington, D.C.).



## CHAPTER VII: THE PALESTINIAN PEOPLE AND INTERNATIONAL LAW

It is now appropriate, having studied the major legal aspects of the Palestine problem as it has developed in the past, to consider its legal aspects in the present and future in the light of its most important subject: the Palestinian people and their right to their homeland.

Recent years have seen two very significant factors in the situation. The first of these is the emergence and rapid growth of the Palestinian Resistance, which has given the Palestinian people a recognized national personality which cannot be disregarded by the international community. The second factor is the effort being exerted by external forces to impose a compromise solution and prevent the situation from becoming increasingly violent. These two factors are in fundamental contradiction to each other, and the future stability or devastation of the Middle East will depend on which of these two factors prevails over the other.

The Palestinian Resistance maintains that it is illusory to expect any peace in the Middle East until the factors that disturbed the peace, namely the racially-exclusive Israeli State and the denial of Palestinian self-determination, have been eliminated. The external forces, represented by the "Big Four" powers, the United Nations and certain Arab quarters which accept their formulae, believe that the first priority is to "stop the shooting at all costs," and to maintain a sort of permanent cease-fire based on a partial correction of the situation which would nevertheless leave intact some of the factors that have caused three wars in two decades. It is important to examine which solution proposed accords more with international law.

The growth of the Palestinian Resistance had begun before the June war. Armed struggle was launched on 1 January 1965, with the first operation by al-Asifah, the military wing of the Palestinian National Liberation Movement (Fateh).<sup>1</sup> The Palestine Liberation Organization, which was to become the political framework within which the movement

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(1) Military communique No. 1, published by Fateh.

for liberation as a whole would be coordinated, had been founded in 1964. Other groups were formed, sometimes reflecting trends of various political parties, and the public wish to see a closer unity of Palestinian forces was expressed with increasing strength. The result has been the Palestinian Armed Struggle Command, which by autumn 1969 had come to coordinate seven commando organizations representing an estimated 95 per cent of the total Palestinian fighting forces. One or two smaller groups, the best-known of which is the Popular Front for the Liberation of Palestine, had not joined the Armed Struggle Command up to the time of writing. On the political level, the Palestinian National Council, containing representatives of various groups, and independents, provides the forum for debate and political decisions. The Palestinian Resistance thus has the character of a broad united front containing several political tendencies working together for a common national aim.

The status of the Resistance in international law merits consideration. Then it is proposed to examine the solutions proposed for the Palestine question, both by external forces and by the Palestinians themselves, in the light of international legal principles.

### *1. Status of the Resistance*

An important question of international law arising from the Palestine problem is the right of a people to resist the invasion and seizure of their land. Basically, it can be posed in these terms: does international law recognize a people's right to resist an alien invasion and occupation? What should be the attitude of states whose territories are partly occupied, or of neighbouring states, to the occupation and the resistance? Does the occupying power have any right to retaliate against the people of the occupied territories or of neighbouring states on the grounds that the latter's support of the resistance endangers the occupying power's security?

When international law was in a relatively primitive stage of development, the laws of war were considered to govern only the belligerent relations between regular armies of states. At that time, resistance movements had no recognized legal status, as they were irregular forces. Even though they might be allied to a state, or even owe allegiance to one, they were not considered as part of the forces under its regular military command. The enemy consequently often regarded them as persons unprotected by international law, and shot them out of hand. In the Franco-Prussian war, for example, the Prussians used to execute the



*francs-tireurs*, an irregular French citizen militia.<sup>2</sup> Such barbarities led to a realization that the deficiency in the law must be remedied, and the first attempt to do so came in the 1899 Hague Regulations on the Laws and Customs of War on Land. Article 1 of these gave recognition to the status and rights of irregular forces subject to four criteria of combatant status which had been drawn up by the 1874 Brussels Conference. These criteria were to be embodied in the 1949 Geneva Conventions. They were that such forces should be under a responsible command, wear a distinctive sign, carry arms openly and themselves observe the laws and customs of war.

The process of recognizing the right of resistance to enemy occupation advanced considerably during the Second World War. The Nazi occupation of many countries such as France, Norway, Holland, Yugoslavia and Greece led to the rise of a number of resistance movements in those countries. These movements gained world-wide admiration and recognition of their legal status as combatants by several governments, as well as support and encouragement. Thus the British Government encouraged the Yugoslavians to carry on resistance by guerrilla tactics from the mountains after the Nazi invasion of their country.<sup>3</sup> So also, the British Government extended recognition to the French Committee of National Liberation on 26 August 1943.<sup>4</sup> In June 1944 the Allies gave official recognition to the French Maquis (armed resistance fighters) as the French Forces of the Interior. These Forces were recognized by the Supreme Commander of the Allied Expeditionary Forces as an integral part of the troops commanded by him and a formal announcement to that effect was made.<sup>5</sup> The anti-fascist Partisans in Italy were given a form of recognition in an international document. The 1947 Peace Treaty between the Allies and Italy referred to the "Resistance Movement which took an active part in the war against Germany."

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(2) Cf. Oppenheim, *op. cit.*, 7th ed., Vol. II, pp. 215-216 for details of how the Nazis also applied this practice in the 1941 Barbarossa Jurisdiction Order and the *Wacht und Nebel* decree. Acts carried out under this logic were judged to be war crimes by the Nuremberg Tribunal.

Cf. *War Crimes Reports*, 12 (1949), p. 86; also section 37 of the British Military Manual, and U.S. War Department Rules of Land Warfare, 1940, No. 351.

(3) Winston S. Churchill, *The Second World War* (London, 1948), Vol. III, pp. 197-198.

(4) E.L. Woodward, *British Foreign Policy in the Second World War* (H.M.S.O., 1962), p. 224.

(5) *The Times*, 17 July 1944; Oppenheim, *op. cit.*, 7th ed., Vol. II, p. 574, note 2.

These situations all created precedents which were to be strengthened by the growth of national liberation movements throughout the Afro-Asian world in ensuing years. At present therefore, there is wide recognition of the right of a people under occupation to form resistance movements and take up arms against the occupying power.

The legal belligerent status of resistance movements was given full and unequivocal recognition in the 1949 Geneva Conventions. The Third Convention, in Article 4, declared that captured combatants entitled to Prisoner of War status include:

Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfil the following conditions:

- (a) that of being commanded by a person responsible for his subordinates;
- (b) that of having a fixed distinctive sign recognizable at a distance;
- (c) that of carrying arms openly;
- (d) that of conducting their operations in accordance with the laws and customs of war.

These conditions are clearly fulfilled by the Palestinian Resistance organized within the Armed Struggle Command. Apart from the Command itself, each component movement has its own command responsible for its members, its own insignia, its arms are carried openly, and the Resistance as a whole has announced publicly that it adheres to the Geneva Conventions.<sup>6</sup>

During the Second World War, Nazi conduct was contrary to the laws and customs of war in many respects. As a result of a Nazi refusal to respect the status of resistance movements, "conflicts of view arose as to the status of persons or groups who continued to resist locally throughout the remaining years of general hostilities elsewhere. Most of this guerrilla activity was directed against the Axis occupation forces, and Germany . . . treated guerrillas as illegitimate combatants." In the closing stages of the Second World War, Nazi broadcasts went so far as to proclaim that "all the rules of warfare are obsolete and must be thrown overboard."<sup>7</sup>

The adoption of the 1949 Geneva Conventions was a final rejection

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(6) *Al Dustur* newspaper (Amman), 9 May 1969, reported that the Palestinian Red Crescent informed the Swiss Foreign Minister of this intention.

(7) Stone, *op. cit.*, p. 565 and note.

by the world community of the Nazi interpretation of the laws of war. In theory the Israelis, as signatories of the Geneva Conventions, are supposed to abide by the high principles in them. The actual position is otherwise, for we find that the Israelis have revived the Nazi theory that it is unlawful to resist occupation, that guerrillas are "illegitimate combatants" and that rules of warfare can be declared obsolete and thrown overboard if adherence to them is inconvenient. Thus, they refuse to recognize the prisoner of war status to which resistance fighters are entitled when captured. This is a clear Israeli violation of Article 4 of the Third Geneva Convention. The illegality of this attitude was confirmed by the adoption of a resolution calling for recognition of Palestinian commandos' prisoner of war status at the Istanbul Conference of the International Red Cross and Red Crescent Societies in September 1969.<sup>8</sup>

There is some doubt as to the international legal status of private individuals who carry out acts of resistance on their own initiative without being members of an established resistance organization. In the Nazi-held territories of Europe, it became quite a common practice for ordinary citizens to seize any opportunity they could to damage the occupant, even if they did not belong to the official resistance. Since they are not subject to organizational discipline and do not wear insignia, they do not fulfil all the criteria laid down in Article 4 of the Third Geneva Convention. The Conference which adopted the four Geneva Conventions decided against conferring the right to prisoner of war status on civilian individuals not in organized resistance movements, unless they take part in a *levée en masse* begun before the invader occupies their territory.<sup>9</sup>

While individual, unorganized resisters are not granted prisoner of war status in international law, the Fourth Geneva Convention does lay down a certain minimum of protection for them on which there is no dispute. Article 5 requires that persons engaged in or suspected of activities hostile to the occupying power's security, as well as persons detained as spies or saboteurs, shall nevertheless be treated with humanity, and in case of trial shall not be deprived of the rights of fair and regular trial prescribed by the Convention. This demonstrates that even persons who are not members of established resistance organizations are nevertheless entitled to basic human rights under international law.

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(8) *Al Dustur*, and other newspapers, 13 September 1969.

(9) Oppenheim, *op cit.*, 7th ed., Vol. II, p. 373, note 3.

The use of torture, now a widespread practice in Israel as has been seen from earlier chapters, is a clear violation of the Third Geneva Convention on treatment of prisoners of war (in cases of members of resistance organizations) and of the Fourth Convention on treatment of civilians (in cases of unorganized resisters or suspects). Also to be counted as violations are prolonged detention or other punishments applied in penal institutions against those entitled to prisoner of war status, or without fair trial and humane treatment against any other persons detained by the occupation. One form of punishment frequently practised, as has been observed, is demolition by the Israeli authorities of houses where one of the dwellers is suspected of connection with the Resistance. These demolitions are carried out on the orders of the Israeli Defence Minister (General Dayan), summarily and without any trial to verify whether the suspicion is true, and no provision is made for alternative accommodation. Article 6 of the Charter of the Nuremberg International War Crimes Tribunal declared the "wanton destruction of cities, towns or villages or devastation not justified by military necessity" to be a war crime. The Tribunal judged the German Chief of Staff, General Jodl, to be a war criminal for having ordered the evacuation of inhabitants and destruction of houses in certain provinces of Norway.<sup>10</sup> As is the case with General Dayan, General Jodl was motivated by a desire to combat resistance of the inhabitants to occupation.

The resistance of the Palestinian people to Israeli occupation is therefore recognized by international law as legitimate. Furthermore, the Israelis' occupation of territory in their hands at present arose out of their acts of launching aggressive war in 1948 and 1967. This was defined by the Nuremberg Tribunal as the supreme international crime. It is a basic precept of law that legal rights cannot be acquired by the commission of an illegal act. From this it follows, accordingly, that the Israelis have not acquired legal rights from their acts of aggressive war and the subsequent occupation. In view of the illegal character of their occupation, they cannot lawfully claim even those rights to take measures for protecting the security of their occupation forces; rights which international law grants to an occupying power which has not gone to war illegally. The Israelis persist, nevertheless, in claiming such rights and more for themselves both by their suppression of the population of the occupied terri-

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(10) *Ibid.*, Vol. II, p. 416.

tories, and by their allegations that neighbouring states are responsible for acts of resistance carried out in the occupied territories.

There is no legal basis for such an allegation. For one thing, the Palestinian Resistance has demonstrated very clearly, in both words and actions, that it is entirely responsible for everything it does and is not answerable to any government. It arises from the Palestinian people and their national aspirations, and the Palestinian people are the sole authority which controls it. Furthermore, the Arab States, as their own spokesmen have often declared, are not responsible for ensuring the protection of Israeli forces engaged in illegal occupation. Even in the case of a legal occupation, international law does not grant the occupying power legitimate sovereignty, but considers it to be temporarily in administration in occupied territory, and consequently responsible for maintaining its own security there. If, due to opposition of the territory's rightful inhabitants, it is unable to maintain security for its own presence there (in this case illegal anyway), it has no legal grounds for blaming other states for its incapacity.

Other states, if they wish, have the right to extend aid to resistance movements. For instance, the Allies during the Second World War gave help to the resistance movement in countries like France, Norway, Yugoslavia or Greece. The legality of such aid is not questioned. If Hitler had alleged that the Allies had a duty to refuse aid to those resisting Nazi occupation, the Allies would doubtless have treated such an allegation with the contempt which it deserved. The parallel between Palestinian resistance to Israeli occupation and European resistance to Nazi occupation was well illustrated by Lady Fisher of Lambeth, who wrote:

When French men and women formed themselves into resistance groups to embarrass and resist the German forces occupying their land, we hailed them (quite rightly, I believe) as heroes and heroines. Why therefore must Arabs, who try to do the same thing against enemy forces occupying their land, be referred to as 'terrorists' and 'saboteurs'? Surely they are only doing what brave men always do, whose country lies under the heel of a conqueror?<sup>11</sup>

Lady Fisher's words emphasize an important aspect of international law: that its principles must be universally and equitably applied. The principles of international law which have evolved regarding the right of resistance were not tailor-made to fit only the cases of European countries under Nazi occupation; they are applicable to every country in the

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(11) Letter to *The Times*, 26 March 1968.

world that has been subjected to such an occupation. Many of them, indeed, such as those in the 1949 Geneva Conventions, were enunciated after the Second World War to demonstrate humanity's total rejection of the sort of acts committed by the Nazis, and desire that such acts should never be repeated by anyone.

The universally-applicable right of resistance renders it illegal for an occupying power to attempt to counter such resistance by reprisals against civilians either in the occupied territories or in neighbouring states. Article 33 of the Fourth Geneva Convention specifically prohibits reprisals against civilians and their property in occupied territories. Attacks on civilians in neighbouring countries, apart from the fact that they are directed against persons not responsible for resistance in the occupied area and are therefore ineffective, are also clear acts of aggression. They cannot be classed as legally justifiable reprisals, since acts of resistance to armed occupation are not illegal; on the contrary, it is the Israeli occupation which is illegal, since it arises from acts of aggressive war. In the present context, such Israeli attacks constitute violations of the armistice and cease-fire agreements. They have been carried out on many occasions, for example against Salt, Irbid, Kafr Asad and Ain Hazzir in Jordan, Al Hamma and Maysaloun in Syria, and several villages in Southern Lebanon. The casualties in these attacks have been almost entirely civilians.

The Israelis have attempted to justify these violations by claiming that acts of resistance are also violations of the cease-fire agreements. This logic is totally false. The Israeli violations are acts by a government which is a party to the cease-fire, whereas the acts of resistance are a spontaneous and natural response of any people under occupation, and an exercise of a legally-recognized right, by the Palestinians who are not a party to the cease-fire. The argument which equates the war crimes of the aggressor with the legitimate self-defence measures of his victim strikes at the very foundation of international law. It is an argument which all who uphold international law will reject, as they would have rejected any attempt to equate the acts of the Nazi occupation with the lawful struggle of, say, the French Maquis or the Yugoslav Partisans.

The Israeli maintenance of the Nazi doctrine that resistance must be crushed no matter what violations of international law this involves, will inevitably lead to further bloodshed. How this bloodshed may be finally ended, through a solution that brings justice and accords with international law, will be considered in the remaining sections of this chapter.

## 2. *External Proposals for a Solution*

Following the war of June 1967, the United Nations continued to act in much the same way as it had since 1947. For several months, sterile debates were accompanied by a total failure to condemn the aggressor or to lay down principles that accorded fully with justice.<sup>12</sup> Some mild resolutions were passed: one by the Security Council, calling for respect for the safety, welfare and security of the inhabitants of areas where military operations had taken place, and the return of the displaced persons to their homes,<sup>13</sup> and two by the General Assembly calling on the Israelis to desist from any action to change the status of Jerusalem.<sup>14</sup> All these three resolutions were disregarded by the Israelis, and no effective enforcement action was taken. In particular, the United Nations failed to live up to its avowed principles in this essential point: namely, that on the basic legal and moral issue of the Israeli launching of a war of aggression and seizure of large areas from the territories of U.N. Member States, the United Nations debates were sterile and failed to face up courageously to the fact that aggression had been committed. A Special Session of the General Assembly failed to adopt a resolution, and the 23rd Ordinary Session of the Assembly referred the matter to the Security Council.

From the minute the issue came before the Security Council, the representative of the United States of America stiffened the already hard attitude he had maintained during the debates in the General Assembly, for no other reason than to support Israel by means of clever, lucid, camouflaged phrases.<sup>15</sup>

The chances of the Security Council adopting any constructive attitude, in view of this stand by at least one of its permanent members, were thus virtually non-existent from the start.

Neither a draft resolution proposed by Mali, Nigeria and India, nor an alternative one proposed by the United States, secured adoption. After lengthy debating, a resolution proposed by the United Kingdom was unanimously adopted by the Council on 22 November 1967.<sup>16</sup> Essentially, this resolution, in one interpretation or another, was to form the basis of the various plans put forward by outside parties since then, for a so-called "peace settlement" of the Palestine question. It is necessary, therefore, to examine this resolution in detail in order to understand the

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(12) For details of these debates, see Nasser, *op. cit.*, pp. 30-45.

(13) Res. 237 (1967).

(14) Resolutions 2253 (ES-V) and 2254 (ES-V).

(15) Nasser, *op. cit.*, p. 35.

(16) Res. 242 (1967).

whole matter of the legality or otherwise of "peaceful solutions" which outside parties are endeavouring to impose on the Palestinian people.

By the 22 November Resolution, the Security Council paid lip service to certain principles: "The inadmissibility of the acquisition of territory by war and the need to work for a just and lasting peace, . . . and that all Member States in the acceptance of the Charter of the United Nations, have undertaken a commitment to act in accordance with Article 2 of the Charter." This Article specified that U.N. members should settle disputes by peaceful means and refrain from the threat or use of force against the territorial integrity or political independence of any state. While the reaffirmation of such principles by the Security Council sounded pleasant, it was meaningless, since the Council took no decision to condemn the Israelis for violating these principles, or to ensure respect for them in the future.

On the contrary, the whole basis of this Resolution was that the aggressor should not be condemned for his acts of aggression, but should, rather, be allowed to commit these acts with impunity. This attitude of the Security Council is clear from the fact that the wording of its Resolution draws no moral distinction between aggressor and victim. Thus, in operative paragraph 1 of the Resolution, the Council "affirms that the fulfilment of Charter principles requires the establishment of a just and lasting peace in the Middle East which should include the application of both the following principles:

(I) Withdrawal of Israeli armed forces from territories occupied in the recent conflict;

(II) Termination of all claims or states of belligerency and respect for and acknowledgement of the sovereignty, territorial integrity and political independence of every State in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force."

Operative paragraph two demonstrates the same moral myopia, for in it the Council "affirms further the necessity:

(A) For guaranteeing freedom of navigation through international waterways in the area;

(B) For achieving a just settlement of the refugee problem;

(C) For guaranteeing the territorial inviolability and political independence of every State in the area, through measures including the establishment of demilitarized zones."



In the third operative paragraph, the Council requested the Secretary General "to designate a special representative to proceed to the Middle East to establish and maintain contacts with the States concerned in order to promote agreement and assist efforts to achieve a peaceful and accepted settlement in accordance with the provisions and principles in this resolution." The fourth operative paragraph required the Secretary General to report progress to the Council.

The first and second operative paragraphs purport to outline the terms of the peace settlement, rather than generalities or procedural matters, and so it is these two paragraphs that require the most serious attention. They are characterized by the distorted logic so prevalent in U.N. circles, namely that the way to solve a conflict between justice and injustice is to try to take a "neutral" position of compromising between them. Invariably, in any such compromise, it is justice which is sacrificed, because justice is an absolute. It is impossible to reach a compromise which is "somewhat unjust," and at the same time maintain that justice has been upheld.

Yet this is precisely what the Security Council's Resolution 242 tries to do. It is allegedly in favour of "a just and lasting peace;" it seeks to correct one injustice by calling in vague terms for "withdrawal of Israeli armed forces from territories occupied in the recent conflict;" but in the same breath calls for the perpetuation of an even more glaring injustice, the situation arising from the Israeli war of aggression of 1947-48. There is little doubt as to the real meaning of the second part of operative paragraph one; behind its fine-sounding verbal camouflage of sovereignty, territorial integrity, political independence or "right to live in peace" it is an attempt to coerce the Arab States into surrendering the rights of the Palestinian people, in exchange for evacuation from territories seized by the Israelis in June 1967. By calling on the Arab States to end the state of belligerency, to acknowledge the racist Israeli State's "sovereignty, territorial integrity, political independence and right to live in peace" on land to which it has no title, the Security Council struck a serious blow against several principles of international law. For, by voting for the legitimization of the Israeli State and its pre-1967 territorial seizures, the Security Council was declaring that might is right, and that international law should be waived before the violence of a conqueror. It was also maintaining that the right of a dispossessed people to self-determination in their ancestral homeland should be disregarded,

and a state based on racial discrimination should be tolerated. All these attitudes expressed by the Security Council in this Resolution are diametrically opposed to international law as it has developed in our present age. By hiding this illegality behind legal phrases like sovereignty, territorial integrity and political independence, the Security Council hoped that the world would be deceived into accepting it as legal. Even so might the appeasers of 1938 have pleaded for acknowledgement of the Nazi State's sovereignty, territorial integrity and political independence and its right to "live in peace" within the "secure and recognized boundaries" of Austria and Czechoslovakia.

Both these two operative paragraphs implicitly base their logic on the theory that aggressors should be appeased rather than condemned or punished for their crimes. It has been noted above that the June war, whose resultant crisis the Security Council was called to resolve, was an aggressive war launched by the Israelis. Far from condemning or imposing sanctions on the Israelis for their aggression, which would have been the Council's proper course according to its responsibilities under Chapter VII of the Charter, the Council in this Resolution proposed to reward them by calling on the victims to make concessions.

In addition to the Security Council's call for the renunciation of the Palestinians' inalienable rights, the Resolution also instructed the Arab States to reward the aggressor with other concessions. Thus, in operative paragraph two, the Council completely accepted the aggressor's tendentious interpretations on the navigation question, and told the Arab States to yield their legally-defensible rights on this issue. In order to guarantee "the territorial inviolability and political independence" of states, the Council proposed "measures including the establishment of demilitarized zones." It should be pointed out that the Arab States have posed no threat to any State's "territorial inviolability and political independence" (legally-acquired or otherwise), but on three occasions have had to fight defensively against Israeli aggressive wars. The last occasion resulted in severe Israeli encroachments on the territorial inviolability of Arab States—encroachments which still continue without any serious move by the Security Council to fulfil its responsibilities. On whose territory, it may be asked, are such demilitarized zones to be established? And what guarantee, if any, does the Council envisage to prevent Israeli encroachment and assertion of sovereignty over these zones, as happened with such zones on the Syrian, Jordanian and Egyptian Demarcation Lines from 1948 to 1967?

In the light of all this whittling away of the basic principles of international law, the call in operative paragraph two for "a just settlement of the refugee problem" is clearly revealed as simply another verbal deception, a smokescreen behind which the Council hoped the Palestinian people's legitimate rights could be liquidated with impunity. The Resolution, very discreetly, does not define what such a just settlement could be, for the obvious reason that, if it is to be really just, it would be diametrically incompatible with the other provisions of the Resolution. A just settlement of the refugee problem involves not only the Palestinians' inalienable right of return, as affirmed by the General Assembly in Resolution 194 and subsequent resolutions, but also their right to self-determination, in accordance with the U.N. Charter, in the whole of their historic homeland, and to live under a system free from racial discrimination, in accordance with the principles in the Universal Declaration of Human Rights, the Genocide Convention, the Convention for the Elimination of All Forms of Racial Discrimination, and other international instruments including U.N. resolutions condemning racialism.

No such just settlement is envisaged in Security Council Resolution 242. Quite the reverse: the Resolution envisages the perpetuation of the racist Israeli State on Palestinian territory, and its strengthening with a form of recognition extorted from Arab States. Under such terms, a just settlement of the refugee problem, or indeed any other problem arising from Zionist aggression, is manifestly unattainable. This supposed guarantee of refugee rights in the Security Council's Resolution is as meaningless as the guarantee of "civil and religious rights" in the Balfour Declaration. Both the Security Council Resolution and the Balfour Declaration were documents drafted by the British Government with the aim of deceiving public opinion, while the people of Palestine were to be despoiled of their rights in accordance with the interests of the imperial powers and their Zionist allies.

A further deception was perpetrated in this Resolution, which has apparently escaped the attention of those Arab circles who claim the Resolution offers a chance of a "reasonable settlement." It is argued by some quarters that although the Resolution is in many ways inadequate, it should be accepted because it offers the Arab States a chance of "liquidating the consequences of aggression," that is, of recovering the territories the Israelis seized from them in June 1967. How realistic is this attitude? It has probably been put in its best perspective by a poli-

tical journal from Britain, the country sponsoring the Resolution, thus: "On the central issue of Israel's withdrawal it compromises between the vagueness of the American resolution and the precision of the Afro-Asian one. The resolution calls for the withdrawal of Israeli armed forces from territories occupied in the recent conflict. Lord Caradon's last-ditch battle was his successful rejection of a Russian effort to insert 'all the' before the word 'territories.' With the Egyptians signifying assent, the Russians then voted the straight Caradon line. The Indian delegate had made the point that by withdrawal he understood 'total' withdrawal. Lord Caradon did not agree."<sup>17</sup> Thus, from Lord Caradon, the distinguished representative of the United Kingdom who proposed the Resolution, we have the admission that the Israeli withdrawal clause is nothing more than a confidence trick.

By its failure to condemn aggression, and its call to the victims to appease the aggressor by concessions, the Security Council fell lamentably short of the standards enunciated in the words of the U.N. Secretary General. After the June war, U Thant declared:

There is the immediate and urgently challenging issue of the withdrawal of the armed forces of Israel from the territory of neighbouring Arab States occupied during the recent war. There is near unanimity on this issue, in principle, because everyone agrees that there should be no territorial gains by military conquest. It would, in my view, lead to disastrous consequences if the United Nations were to abandon or compromise this fundamental principle . . . It is indispensable to our international community of States—if it is not to follow the law of the jungle—that the territorial integrity of every State be respected, and the occupation by military force of the territory of one State by another cannot be condoned.<sup>18</sup>

By adopting that Resolution on 22 November 1967, the U.N. Security Council turned its back on respect for basic principles of international law, and in fact adopted a position of compromise between international law and the international crime of launching aggressive war. No legal body can long maintain its authority if it compromises between law and crime, and it is actions such as the Security Council's adoption of Resolution 242 that have seriously undermined what moral and legal authority the United Nations once possessed.

It has been argued that, since the Security Council is a supreme authority, it is not subject to the rule of law, but is itself vested with the powers to make or change the law. Thus we find it argued that, whereas

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(17) *The Economist*, 25 November 1967.

(18) *U.N. Doc. A/6701/Add. 1*, pp. 20-21.

under the League of Nations, power was theoretically subject to the rule of law, "in the Charter of the United Nations we now find the opposite principle, that law is subordinate to power. Insofar as the five principal States can agree among themselves they are not limited by law in anything which they may decide to do, and the rest of the world is pledged to obey."<sup>19</sup> The theory that international law should be governed not by the democratic principle but by a despotic oligarchy has on occasions found support in the attitudes and actions of the Security Council's permanent members. However, the limitless application of this theory is highly questionable, even according to international law as it is at present constituted.

Where a system of law is regulated by a constitution, any authority of that system, whether legislative, executive or judicial, has power to act according to the terms of that constitution. If it exceeds the terms of the constitution, it may be said to have acted illegally. There is no absolute authority in any constitutional legal system, since the function of a constitution is to define the limits of an authority's powers.

The constitution of the United Nations legal system is the U.N. Charter. The Security Council, like other organs of the United Nations, has powers to act according to the functions granted to it in the Charter. These powers are certainly very wide (excessively so, in the view of many writers), but they are not unlimited. Thus, U.N. members "confer on the Security Council primary responsibility for the maintenance of international peace and security," in which it "acts on their behalf," and indeed must "act in accordance with the Purposes and Principles of the United Nations." (Article 24). Members "agree to accept and carry out the decisions of the Security Council in accordance with the present Charter," (Article 25) with the implication that members are not so bound where a Council decision does not accord with the Charter.

Chapter VI of the Charter authorizes the Council to call upon parties to a dispute to settle it, to investigate such a dispute, and make recommendations as to a settlement. Chapter VII gives it wider powers, but at the same time, more detailed responsibilities, regarding any "threat to the peace, breach of the peace, or act of aggression." Its prime task, according to Article 39, is to "make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or

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(19) Smith, *op. cit.*, p. 95.

restore international peace and security." Article 41 provides for "measures not involving the use of force" and Article 42 for forceful measures.

The Charter demonstrates that the Security Council's functions have two important characteristics. First, the Council must act according to the Purposes and Principles of the United Nations, since it acts on behalf of the Organization's members. Secondly, the Council has the prime responsibility for maintaining or restoring international peace and security.

Among the Purposes and Principles of the United Nations listed in Chapter I of the Charter are "to take effective collective measures for the prevention and removal of threats to the peace and for the suppression of acts of aggression or other breaches of the peace;" and "to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples." The Security Council's actions have not accorded with either of these two purposes. In the first place, the Israelis were guilty of a very clear act of aggression in invading and seizing the territories of Arab States in June 1967. At no time has the Security Council done anything effective to suppress that act of aggression, nor to counteract the continual threats to the peace that Israeli policies involve. Resolution 242, with its requirement that the Israeli State should be acknowledged within secure and recognized boundaries on territory to which it has no legal claim, is a clear violation of the U.N.'s principle of respect for self-determination of peoples, in this case the Palestinian people. To affirm a racist state's so-called "right to live in peace" is manifestly contrary to the Preamble of the Charter, which reaffirms "faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small."

The fact that Resolution 242, far from suppressing aggression, actually encouraged it by awarding concessions to the aggressor, demonstrates that the Security Council did not live up to its responsibilities under Chapter VII of the Charter. Encouragement of aggression cannot by any stretch of the imagination be termed a good way of maintaining or restoring international peace and security; on the contrary, it is the surest method of ensuring that international peace and security suffer a total collapse.

By its adoption of Resolution 242 and by its other actions (or lack of them) following the June war, the Security Council has departed from the Purposes and Principles of the United Nations and has failed to discharge its task as the guardian of international peace and security. It is

thus correct to maintain that it has acted illegally, or contrary to its constitution, the U.N. Charter, in regard to the Palestine question. The Palestinian people are therefore under no obligation to conform to its recommendations.

It is not proposed here to go into details of all the various "peace plans" based on Resolution 242 and put forward by various quarters. In the first place, these plans have been so numerous and verbose that they would fill a large volume by themselves. In the second place, since Resolution 242 rests on such an unsound legal basis, it follows that any plans founded on it can also make no claim to legality. It is, however, of some value to examine some of the moves made by certain quarters on an official level with a view to implementing the Resolution.

The Resolution itself provided, in operative paragraph three, for the appointment of a special representative of the Secretary General whose task, broadly, was to make contact with different parties in an effort to facilitate implementation. Dr. Gunnar Jarring, the Swedish Ambassador to the Soviet Union, was appointed for this purpose. The story of his long odyssey, in which he journeyed back and forth between Nicosia, Amman, Cairo, Jerusalem and New York, merely demonstrated how the talents of a diplomat of integrity can be wasted fruitlessly when he is given a hopeless mandate by the United Nations. Since the Resolution whose implementation he was to assist took no account of the Palestinians, who are primarily concerned in the matter, his mission was doomed to failure from the start, even though it was given the wholehearted cooperation of the Jordanian and U.A.R. Governments and the somewhat reluctant lip-service of the Israelis.

At the close of 1968, it became apparent that Dr. Jarring's mission was not producing concrete results.<sup>20</sup> The idea of some type of intervention by the major powers to strengthen his mission came increasingly to the fore. Mr. Charles Yost, following the announcement of his appointment as United States representative at the U.N., called for joint collaboration between the Soviet Union and the United States to impose a settlement on the Middle East. He expressed the view that such a settlement should come through "a United Nations initiative supported by the Great Powers. The really vital interest of both the United States and Russia is to remove the grave threat to their own security which the present

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(20) Cf. *Financial Times*, 12 November 1968, and editorial in *Washington Post*, 12 November 1968.

situation poses," Mr. Yost added.<sup>21</sup> This was accompanied by hints of a new Soviet initiative, in accordance with the Security Council Resolution, to overcome the "deadlock."<sup>22</sup> Shortly afterwards, it was reported that a Soviet proposal for four-power talks on the Middle East was being considered by the United States, Britain and France, and the Soviet Ambassador in London handed the British Foreign Secretary a suggestion for a "stage by stage implementation of the Security Council Resolution."<sup>23</sup> The Soviet plan was stated to "envisage the sending of U.N. troops to the Middle East."<sup>24</sup> A French proposal for Big Four talks was subsequently accepted by the United States,<sup>25</sup> and these talks were started officially with meetings of the Soviet, American, French and British Ambassadors at the U.N. These contacts were from time to time supplemented by Big Two discussions between the Soviet Union and the United States.

In view of the close secrecy which has surrounded these talks, the ground which has been covered, up to the time of writing, can only be a matter of speculation. All that is definite is that the major powers have been attempting to work out a formula on the basis of the Security Council Resolution. Apart from the Resolution's inadequacy as a basis for restoring peace in the Middle East, the competence of the Big Four to play the role of peacemakers needs to be seriously questioned. Let us examine their past records.

Britain, as is well known, was the imperial power whose leaders gave Zionism its first public endorsement in the Balfour Declaration. Throughout the Mandate period, British rule in Palestine enabled Zionist colonizers to settle, arm themselves and establish a position of strength, without which it would have been impossible for them to found their racialist state. In ensuing years up to this day the British Government supplied arms to the Israelis, and joined them in the Tripartite invasion of Egypt in 1956. During the June war, the British Government gave full endorsement to the Israeli position over the navigation question and other issues. They have given no indication of any significant policy change since then.

The United States gave considerable support to Zionism during the closing years of the British Mandate, and played the leading part in

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(21) *Atlantic Monthly*, January 1969.

(22) Cf. Tass Agency Report, 26 December 1968.

(23) *The Observer*, 5 January 1969.

(24) *Le Monde*, 9 January 1969.

(25) *The Daily Telegraph*, 6 February 1969.



pressing the Zionist case for partition at the U.N. in 1947. With the exception of a brief period following the Tripartite invasion of Egypt, the United States has given solid political support to the Israeli State, in particular after the June war. It has also consistently supplied the Israelis with arms, including napalm and, more recently, Phantom fighter-bombers, and has now replaced France as the main source of supply.

France, for a considerable period particularly during the Algerian war years, became known as Israel's closed ally and main arms supplier. The Israeli atomic energy project is said to have been built up largely through French help, and the Mirage jet was the Israeli Air Force's most important aircraft during the June war. After that war, there was a significant shift in French policy, with President de Gaulle imposing a partial embargo on arms shipments to Israel, which was made total following the Israeli attack on Beirut airport. The reason for this shift was the perfectly correct assessment of the French Government that the Israelis were the aggressive party in the June war. It was nevertheless not accompanied by any awareness, on the governmental level, of the rights of the Palestinians or the illegal racialist character of the Israeli State, although such an awareness has begun to be felt among the more enlightened sections of French opinion. French official policy is still to maintain the so-called "right to exist" of the racialist State, but this is accompanied by a demand that it confine itself to its pre-1967 limits.

The Soviet Union has vacillated between two policies on the Middle East. Initially, in accordance with the teachings and internationalist spirit of Marx and Lenin, it opposed Zionism which it regarded as a reactionary chauvinistic force that divided Jewish workers from their Gentile fellows and removed them from the class struggle in their countries. Immediately after the Second World War, there was a tendency for Soviet policy in the Middle East to collaborate with the United States. This led to a joint campaign by the two powers to sponsor the Zionist case for partition at the U.N. The United States and the Soviet Union were the first two powers to recognize the Israeli State immediately after its establishment. The Soviet Union still has not withdrawn this recognition, despite its clear incompatibility with principles of egalitarianism and socialism on which Soviet policy is supposedly based. In the 1948 war, the United States and the Soviet Union, and Czechoslovakia with Soviet encouragement, were the principal sources of arms for the Israelis. After that war, the Soviet Union gradually shifted its position away from supporting the

United States' ally Israel, as the cold war intensified. However, the basic Soviet policy of supporting the racist state's "right to exist" and of disregarding the Palestinian people's rights to self-determination has remained unchanged, despite Soviet expressions of verbal support and supplies of arms to certain Arab Governments.

Since the time of the Cuban missile crisis, there has been a steady thaw in the cold war and an increasing rapprochement between the Soviet Union and the United States in the framework of "peaceful coexistence." This has generally taken the form of tacit, unpublished "understandings" whereby each recognizes the other's sphere of influence—Latin America for the United States, Eastern Europe for the Soviet Union, for instance. This trend was less noticed in the Middle East than elsewhere, because spheres of influence were less clearly demarcated and, at least until after the June war, were still the subject for bargaining. A significant stage in U.S.-Soviet collaboration appears to have been the Glassboro Summit meeting of Mr. Johnson and Mr. Kosygin. No details are yet known of the secret agreement reached between these two statesmen on the destinies of the Middle East, without consulting the Arabs, except that they both agreed the racist Israeli State should be preserved.<sup>26</sup>

This Soviet attitude of accord with the United States, together with the failure to withdraw recognition of Israel or to acknowledge and support the Palestinians' legitimate resistance struggle, calls into question the verbal support of Soviet leaders for the Arab cause. Nor are arms supplies to the Arab States any proof of Soviet sincerity. Britain, and even the United States, have on occasions supplied arms to some Arab States, without following a policy of loyal support for Arab rights.

Thus, all the four major powers engaged in discussions to help implement the Security Council Resolution have played an important part in creating or strengthening the racist Israeli State, and they are all agreed in their desire to preserve it. None of them have shown any readiness to accept the Palestinians' right of self-determination. Their talks have been carried on without consulting the Palestinians or considering their interests; although it is the Palestinians who are most concerned in the whole issue. It is, after all, they and their land whose future is at stake, and it is the denial of their rights in their land which lies at the root of the problem.

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(26) See account of Glassboro meeting and President Johnson's subsequent broadcast in *Keesing's Contemporary Archives*, p. 22180, 29 July-5 August 1967.

Apart from the fact that all the Big Four, because of their past records, are unfit to play any part in resolving this problem, their discussions and any decisions they may reach behind the Palestinians' backs are in no way binding. Indeed, this procedure of four major powers sitting in a secret cabal to settle the future of another nation without the latter's consent is reminiscent of another "Big Four" decision—reached at Munich on 29 and 30 September 1938, between Britain, France, Germany and Italy. Then, it was the fate of the Czechoslovak people and their homeland that was decided. "Nor were the Czechs themselves allowed to be present at the meetings. The Czech Government had been informed in bald terms on the evening of the 28th that a conference of the representatives of the four European Powers would take place the following day. Agreement was reached between 'the Big Four' with speed."<sup>27</sup> The result was the dismemberment of the Czechoslovakian homeland as a "peaceful settlement" of the problem posed in Europe by Nazi territorial expansionism.

Human memories are short. The shadow of Munich has faded behind more than three decades, and plausible-sounding arguments are advanced in favour of repeating its performance in the Middle East. We are told, for instance, that it is worth sacrificing the rights of the small, uninfluential Palestinian people as the price to avoid a third world war. Yet this "third world war" possibility, presumably to be fought out between the United States and the Soviet Union, is extremely far-fetched, as the two supposed antagonists, despite their past rivalry, are now on excellent terms with each other. They are coexisting peacefully together with great enthusiasm, and are in accord on their Middle East policies on such essentials as their desire to arrange their spheres of influence in the region, to preserve the Israeli State, and to deny Palestinian self-determination. The chance of a U.S.-Soviet war now is about as great as would have been the likelihood of a Franco-British war immediately after the signing of the Sykes-Picot Agreement.

Likewise, we are told that a "Big Four" guarantee is the only hope of preventing prolonged bloodshed in the Middle East. What happened to a similar guarantee, the 1950 Tripartite Declaration? Two of its signatories, Britain and France, helped Israel launch an invasion in 1956 against Egypt, and the third guarantor, the United States, has been the most persistent encourager of Israeli aggression, particularly during and

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(27) Churchill, *The Second World War*, Vol. I, p. 285.

since the June war. The Tripartite Declaration was not intended to guarantee peace, but only to protect the Israeli State's hold over territory it had then seized, for when it expanded beyond that territory, the tripartite "guarantee" of Middle East frontiers was quietly dropped. We hear the argument, however, that by adding the Soviet Union to the original signatories of the "guarantee," it can then be made watertight. Yet, even assuming the Soviet Union had honest intentions in signing such a guarantee, can we imagine it going to war, if necessary, to enforce it against the combined might of the Western imperial powers?

The Munich Agreement, it should not be forgotten, was also a "peaceful settlement," designed to prevent the outbreak of the Second World War. The "peace for our time" proclaimed by the British Prime Minister Chamberlain lasted for one year. To attain this, the rights of a small people in their ancestral homeland were sacrificed. The aggressor was appeased with territorial concessions. The Munich Agreement was a cast-iron guarantee of peace, underwritten by the four most powerful European States of that time. The adoption of a similar formula to solve the Palestine problem would produce similar interesting results.

### 3. *The Palestinian People's Solution*

A European historian wrote of the 1930's: "The reign of international law was brought to an abrupt close. The prevailing fashion of the unilateral repudiation of treaties rode roughshod over the sanctity of covenanted agreements. From a dream of universal peace men suddenly awoke to the crude realities of naked aggression."<sup>28</sup> The cause of this development was a series of acts of appeasement towards aggressors, who were able to seize territory with impunity. The description could aptly be applied to the present.

The Munich Agreement was only one incident in this process of deterioration of international law, which also included such acts as the Japanese invasion of Manchuria, the Italian invasion of Abyssinia, and eventually the Nazi invasions of several European countries. Each time an act of aggression was committed with impunity, the aggressors were tempted to go further. Thus, the Nazi seizure of Czechoslovakia was only the preliminary phase of further expansion, destruction of populations of the seized territories, and the establishment of German settlers in their

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(28) E. Lipson, *Europe 1914-1939* (London, 1945), p. 331.

place. In Hitler's words: "The aim of National Socialism must be to secure for the German people an extension of the space in which our people must live."<sup>29</sup> The Israeli policy of territorial expansion, expulsion of the Arab population and establishment of Zionist settlers on their soil, is so close an imitation of Nazi policy, that the Palestinians, and Arabs in general, cannot afford to ignore the historical parallels of their situation with that of Europe in the 1930's. It is in the light of the lessons of history, therefore, that the Palestinian people's attitude to peace in the Middle East merits consideration.

The parallels must not, however, be oversimplified. There are differences between Czechoslovakia in 1938 and Palestine today. For one thing, the process in Palestine has gone further: the aggressor state is more firmly established, the rightful population is already largely dispossessed. This, if anything, renders the situation even more serious. Israel is not directly represented, as Germany was at Munich, at the Big Four talks, but only indirectly, through its principal ally and backer, the United States. Likewise, the Israeli State does not commit acts of aggression purely on its own account as Nazi Germany did at least initially, but as part of a world-wide pattern of imperial domination. The symbiotic relationship between Zionism and imperialism is the key to understanding this. The Israel-U.S. relationship also enables one to realize the truth behind the so-called Israeli "opposition" to the Big Four talks and apparently lukewarm attitude to the Security Council Resolution. Israeli declarations of opposition to "solutions imposed from outside the Middle East region" are too strident to be convincing. They are motivated by two considerations: first, the well-known technique of seeming intransigent in order to extract more advantageous terms (Hitler also used this immediately before Munich);<sup>30</sup> and secondly, in the hope of inducing a Pavlovian reaction of acceptance of a Big Four settlement on the Arab side, on the theory that "if the enemy is opposed to it, it must be a good thing." This psychiatric prediction applied only too accurately to the reaction of some Arab circles.

A further difference between the two situations is that the Palestinians are aware of the past lessons of history, and are mobilized in armed resistance. The Palestinian people's resistance and their attitude to peace are based on the same principle as that embraced by the European

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(29) Quoted by Lipson, *op. cit.*, p. 384.

(30) See Churchill, *The Second World War*, Vol. I, pp. 275-276.

resistance movements which fought against Nazi occupation during the Second World War. This principle is that peace must be on a just and durable basis, and this can only be achieved by eradicating those factors which caused war. Aggression, in short, must be eliminated, not appeased.

The Palestinian people and their resistance organizations have rejected the Security Council Resolution and all plans inspired by it, because that Resolution and those plans represent an appeasement of aggression. In calling for an acknowledgement of the Israeli State within secure and recognised boundaries, the Resolution proposes awarding the aggressors the fruits at least of their 1947-48 aggression, if not all the fruits of the 1967 one. It must be stressed that the extent of territory concerned is not the essential fact, but the principle; for once the principle is accepted that aggression should be allowed, the aggressor, on that basis, will proceed to further conquests when he is ready. Hitler did not receive the whole of Czechoslovakia by the Munich Agreement, but once that Agreement established his "right" to seize other people's territory, he used it as his "legal" basis for further seizures. Theft is still theft, whether the sum involved is one dollar or a million. If the Israeli "right" to seize any part of Palestine, however small, is once admitted, this will herald a long period of Israeli territorial annexations in the Middle East, and will endanger the security of all Arab countries within reach of Israeli armed forces.

In the light of these facts, the Palestinian National Council has declared that "the Palestinian cause in the present phase is facing the dangers of being liquidated for the interests of Zionism and imperialism through the Security Council Resolution of 22 November 1967 and all so-called peaceful solutions and liquidation plans proposed, including the Soviet plan which aims at laying down a timetable for the implementation of the Security Council Resolution."

While exposing the illusory "peaceful solution" of Resolution 242, the Palestinian National Council, the most broadly representative body of the Palestinian people, also laid down the criteria for the attainment of genuine peace. It declared:

The Arab Palestinian people resolutely reject all liquidatory resolutions and plans including the Security Council Resolution of 22 November 1967 and the Soviet plan and any other plans. The Palestinian people, in their bitter struggle to liberate their homeland and return to it, aim only at the establishment of a free democratic society in Palestine for all Palestinians, Muslims, Christians and Jews, and the redemption of Palestine and her

people from the domination of world Zionism, since that is a reactionary religio-racialist movement with fascist roots, organically linked to world imperialism.<sup>81</sup>

Since a peace settlement based on appeasement would be unsatisfactory and short-lived, the Palestinian people, led by their Resistance, have resolved that the future peace of the Middle East must be a peace based on respect for the highest principles of international law. There is nothing at all ambiguous about this. The Palestinian Resistance has outlined in detail how true peace must be established, and the correct principles are clearly defined in numerous solemn international documents. Let us examine the Palestinian approach to peace in the light of the principles of international law.

In one of its early statements, Fateh, the largest commando organization, gave an indication of the peace programme of the Resistance. Referring to its conduct of armed struggle against occupation, Fateh declared:

This undermining of the Israeli Zionist existence will continue until Palestine has been restored to its rightful owners, the Palestine Arabs, who have lived on this land alongside the Jewish minority uninterruptedly for 4,000 years.

Al-Fateh, the Palestine National Liberation Movement, wishes to point out, however, that its operations—which today enjoy the support of the entire Palestinian people—are in no way aimed at the Jewish people as such with whom they lived in harmony in the past for so many centuries. Nor does it intend to 'push them into the sea.' This resistance and the liberation movement Al-Fateh is coordinating is aimed solely at the Zionist-military-fascist regime which has usurped our homeland and expelled and repressed our two million people, condemning them to a life of destitution and misery . . .

The movement Al-Fateh is leading is the organized expression of this people's liberation struggle whose counterparts are to be found throughout the world, wherever fascist and imperialist aggression is being waged—in Vietnam, South Africa, Angola, Bolivia or elsewhere. In occupied Palestine as in these countries, the humble, ordinary subjugated people are taking up arms in self-defence and for the eventual liberation of their homeland . . .

And they also know that on the day the flag of Palestine is hoisted over their freed, democratic, peaceful land, a new era will begin in which the Palestinian Jews will again live in harmony, side by side with the original owners of the land, the Arab Palestinians.<sup>82</sup>

In a subsequent publication, Fateh published this more detailed statement of its position:

After being expelled from their homeland, and having lived for 20 years in camps in the most humiliating way, our people are now taking up arms to defend their interests. All political means have been exhausted.

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(31) Council statement issued at Cairo Congress, 1-4 February 1969.

(32) Press Release No. 1, issued by Fateh Information Section, January 1968.

Although our rights have been recognized almost unanimously by the General Assembly of the United Nations, and on several occasions, Israel has refused to carry them out. No other way remains for us.

Peace is the final objective of our people. But this peace cannot be achieved unless our people are given back their legitimate rights:

— The unconditional right of return and national status for every Palestinian, when it pleases him to take it;

— The right of individuals to recover their properties seized by the enemy;

— The right to a democratic life in a democratic country, and consequently to measures of protection against any sort of aggressive hegemony;

— The stopping of Zionist immigration.

That is the minimum on which a peace in Palestine could possibly be conceived.

For the realization of these aims, our Palestinian people have organized themselves under the leadership of the Palestine National Liberation Movement, Al-Fateh.

Our people's struggle is therefore represented by Al-Fateh. It is thus independent from the actions or declarations of other interested parties. 'Israel' is now in conflict with the Arab countries. There should be no confusion between the two conflicts. There is the conflict over the 1967 act of aggression, and the main conflict over Palestine itself . . .

It is a question here of the existence of a people. Our people are not just defending a land by arms; they are not trying to recover a lost land for reasons of living space or vanity: it is a question that genocide has been committed against a society, a civilization, a complete organism of human society. It is in this case a problem of existence; liberation here takes on the meaning of a protective action of a social entity. In considering the Palestine problem, one should think of a social entity in danger and of a criminal action against it. The crime has been committed: but now it is a question of a people, who do not die.<sup>33</sup>

The Palestinians, in formulating their doctrine on peace, have had to bear in mind that the Israeli State refuses to honour any U.N. resolutions which it considers disadvantageous to itself. These include Resolution 194 on the refugees' right of return, and other resolutions on reaffirmation of refugee rights, respect for Armistice Agreements, status of demilitarized zones and, since June 1967, the rights of newly displaced persons, the illegality of the annexation of Jerusalem and respect for the cease-fire. The Israelis and their supporters maintain that peace requires the Arab States to make concessions: to renounce the rights of the expelled Palestinians, give the Israeli State diplomatic recognition, forget Jerusalem's historic Arab character and allow the Israelis any territorial adjustments they need to place them in a strong strategic position for their next blitzkrieg. Other concessions might also be demanded, such as accepting Israeli economic domination of the Middle East (the Abba Eban plan). Failure to make such concessions will result in the Arabs being accused

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(33) *Vers une Paix en Palestine*, pamphlet of Fateh Information Section.



of intransigence, although the Israelis themselves are not prepared to make any concessions.

The Palestinian people, in rejecting any peace based on concessions to the aggressor or territorial adjustments, whether in the framework of the Security Council Resolution or any other plan, base themselves on the principle in the Atlantic Charter, that territorial changes should only come about in accordance with the freely-expressed wishes of the peoples concerned. This principle, enshrined in the U.N. Charter as the self-determination principle, was violated in 1948 with the establishment of the Israeli State. The Palestinian people are not prepared to tolerate a "peace settlement" based on the violation of so basic a principle of international law. It must be stressed here that the problem is not simply a refugee problem, nor is mere enforcement of Resolution 194 an adequate solution. The Palestinians have the right not only to return to live in Palestine, but also to be a sovereign people there, exercising their right of self-determination in the whole of their homeland.

The self-determination principle, as well as Article 2 of the U.N. Charter, established a rule that acquisition of territory by aggression is illegal. This had earlier been declared in the Kellogg-Briand Pact, on whose basis the Nuremberg Tribunal condemned the launching of aggressive war as "the supreme international crime."

Arising from the self-determination principle is the Palestinian view that peace cannot be restored until the racist Israeli State is overthrown. There has been some confusion among the uninformed public abroad on this issue, due to Israeli propagandists' use of emotive phrases (also written into the Security Council Resolution) such as "right to exist" or "right to live in peace." Yet international law denies the right of any state based on racial discrimination to exist and to be allowed "peacefully" to trample on basic human rights. It has also become increasingly accepted in international law since World War Two that a racist state by its very nature is a threat to the peace of the surrounding area. This finds expression, for instance, in a U.N. General Assembly resolution which notes with concern:

That the Government of South Africa continues to intensify and extend beyond the borders of South Africa its inhuman and aggressive policies of apartheid and that these policies have led to a violent conflict, creating a situation in the whole of southern Africa which constitutes a grave threat to international peace and security.

The Assembly, in this Resolution, also considered:

That effective action for a solution of the situation in South Africa is imperative in order to eliminate the grave threat to peace in southern Africa as a whole.<sup>34</sup>

South Africa's racialist policies are undoubtedly a potential threat to peace in that they may at any time lead to the outbreak of a full-scale war although they have not yet done so. Israel's racialist policies, on the other hand, are a proven threat to peace as they have already caused three full-scale wars and may cause a fourth one in future.

Because it endangers peace as well as contravening basic human rights, racialism aroused these words from the U.N. General Assembly:

That racism, Nazism and the ideology and policy of apartheid are incompatible with the objectives of the Charter of the United Nations and the Universal Declaration of Human Rights, the Convention on the Prevention and Punishment of the Crime of Genocide, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, the International Convention on the Elimination of All Forms of Racial Discrimination and other international instruments.

In that Resolution, the Assembly:

Calls upon all States and peoples, as well as national and international organizations, to strive for the eradication as soon as possible and once and for all, of racism, Nazism and similar ideologies and practices, including apartheid, which are based on racial intolerance and terror.<sup>35</sup>

The solution put forward by the Palestinian Resistance fully accords with these principles, in that it envisages a democratic Palestinian State in which all its citizens, of whatever religion or ethnic origin, enjoy equal rights. The emergence of the Resistance which represents the Palestinian people now offers a solution to this problem where formerly there had been a void. Foreign observers interested in the Palestinian question used, quite legitimately, to pose the problem: if the Palestinians regain their homeland, what will happen to the Jewish settlers? Before the emergence of a Resistance genuinely representative of the Palestinians, there was nobody who could answer this authoritatively. The void was sometimes filled with the words of irresponsible demagogues who had no authority

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(34) Res. 2396 (XXIII) of 2 December 1968.

(35) Res. 2438 (XXIII).

to speak for the Palestinian people. Now, the Palestinians, through their Resistance, have spoken in unmistakable terms: those Jews prepared to live on a basis of equality as Palestinian citizens will be welcome to do so. Nobody can reasonably ask for more than equality with his fellow men in basic human rights.

In this writer's view, only the Palestinian Resistance has put forward a programme for the restoration of peace and the solution of the Palestine problem which fully accords with the principles of international law as they have evolved today. The fact that the Palestinian people are compelled to take up arms in order that this programme of secure peace and racial equality can be implemented is due essentially to the lamentably irresponsible fashion in which the United Nations has acted throughout, and the sordid intrigues carried out by the major powers, the "Big Four."

To those who put forward the pacifist argument that any violence must be avoided at all costs, and that conciliation is the only way, through United Nations or big power mediation, an answer is required. This writer recognizes that where international disputes can be solved through compromise and conciliation, in a just and legal manner, this is infinitely preferable to the use of force. In civil law, the courts can often solve a dispute between citizens without them having to resort to the more primitive redress of a fistfight. However, there are occasions when law must be firm and uncompromising, when the issue is one of basic rights or the commission of a crime. If a civil court, as a compromise, allowed a thief to keep half of what he had stolen, or permitted a murderer to go unpunished, the result would not be social stability, but a total breakdown of the law. In the case of Palestine, the issue is not like a dispute over fishing rights or the delineation of a border. It concerns principles which lie at the heart of the entire concept of international order: the right of a people to live in their own land, to exercise self-determination, to live free from racial discrimination. It concerns also serious violations of international law, crimes against peace, war crimes and crimes against humanity committed by the Israeli State, crimes which, if they go unpunished, will threaten all the ideals on which civilization is based, as did the Nazi crimes. The Palestine question is one where international law must be firmly applied, and supported by all those who desire to prevent another lapse into barbarism.

These, then, are the issues at stake in the future of the Middle East. In pursuing their quest for a just and lasting peace, the Palestinian people

must continue to be guided by their understanding that such a peace should be based on respect for the principles of international law. Only thus can the threat of war eventually be eliminated from this region of the world, and may peace once more prevail in the land of peace.

## CHAPTER VIII: INTERNATIONAL LAW AND IMPLEMENTATION

"In the literature of international law there is no mistake which is more prevalent, no mistake which has brought more discredit on our science than the old rooter tendency of all too many publicists to confuse the law as it really is with the law as they think it should be."<sup>1</sup>

Throughout the preceding chapters of this work, this writer has endeavoured to avoid falling into this error and to confine the study to the question of Palestine in the light of international law as it stands at its present stage of development. In this concluding chapter, however, it is necessary to examine international law in the light of some problems posed by the Palestinian situation, to point to what this writer regards as inadequacies in the present international legal structure and to explore possibilities for improving the structure and facilitating the progress of civilization.

The first problem posed by the Palestinian situation is that of finding effective means to deter aggression and safeguard peoples' rights to self-determination as affirmed by the U.N. Charter and other documents. In this field, history seems to be repeating itself. In the 1930's, Manchuria, Abyssinia, Austria and Czechoslovakia were successively the victims of aggression and illegal seizure without the League of Nations taking any effective action to ensure respect for international law. In our day, the Israeli acts of aggression are not isolated, but part of a wider pattern. This pattern includes the United States aggression against Vietnam, on which the United Nations can take no action, since the aggressor is a permanent Security Council member who can exercise the right of veto, so the matter cannot even be given proper consideration. The United Nations has not even succeeded in bringing to an end the results of many acts of aggression of long standing, such as the Portuguese colonization of African territories, despite many pious resolutions and declarations on the granting of independence. Indeed, the outstanding examples of decolonization, like Algeria or South Yemen, have come about not through

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(1) H.A. Smith, *The Economic Use of International Waters*, (1931), p. 259.

the United Nations but through the armed struggles of their peoples who have recognized that the existing international legal structure leaves them with no other way to secure their legitimate rights. In terms of halting aggression, therefore, the United Nations has so far totally failed in its task, and international law in this field remains a collection of documents of pure theory, devoid of any practical enforcement except through the wronged party resorting to arms.

The second problem is that of combatting racial discrimination. In this field, the United Nations has been as fertile in theory as it has been barren in practice. The sum total of declarations and resolutions, and conventions brought into being through U.N. action, have established now beyond all doubt that racial discrimination is a violation of international law. Yet two of the world's most notorious racist states, with racial discrimination built into their constitutions, namely Israel and South Africa, are fully accepted U.N. members. The sanctions imposed by the United Nations against another racist state, Rhodesia, while theoretically correct, have so far been about as effective as the League of Nations' sanctions on Italy after the invasion of Abyssinia.

The third problem is that of enforcement of international law to deter the committing of serious international crimes, namely, crimes against peace, war crimes and crimes against humanity. Immediately after the Second World War, it was hoped that a positive start had been made to tackle this problem. However, the International Military Tribunals of Nuremberg and Tokyo proved to be a false dawn, not the start of a new day, for once justice had been done to the Second World War criminals, the matter was allowed to lapse. The U.N. General Assembly did, in fact, appoint a Committee to draft a statute for a permanent International Criminal Court.<sup>2</sup> The Draft Statute submitted contained many positive aspects.<sup>3</sup> As yet, however, nothing concrete has been achieved in terms of establishing the Court and, as in other matters, the United Nations has failed to take the necessary action.

The need for international law to be effectively applied in solving the above problems is not merely a point of academic interest. It is crucial to the future of the human race. The fact that aggression, denial of self-determination, racial discrimination and serious international crimes are being perpetrated frequently, on a wide scale and with impunity, has

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(2) Res. 489 (V) of 12 December 1950.

(3) *U.N. Doc. A/AC.48/4, Annex I.*

brought the world to the brink of a very dangerous situation, reminiscent in many respects of that in the late 1930's. A difference is that now the crisis is on a wider scale. We are living in an age that sees prolonged and bitter conflicts occurring simultaneously in different localities of the globe, like the Middle East, Vietnam, the Portuguese colonies. Added together, the casualties of these conflicts which have dragged on, now here and now there, for the past two decades, amount to a total on a similar scale to those suffered in the two world wars. Future historians, in fact, may come to regard all these seemingly separate local conflicts as campaigns fought within the wider framework of a Third World War: a war not between East and West, but between North and South, between the exploiting imperial powers of Europe and North America on the one hand, and the exploited peoples mainly concentrated in Africa, Asia and Latin America on the other.<sup>4</sup>

The fact that the structure of white supremacist imperial power is mainly concentrated on the exploitation of "coloured" peoples bodes particularly ill for the future and threatens to give this war (if it has not already given it) the character of a war of racial extermination such as that waged by Nazi Germany. History, particularly recent history, contains ample evidence that the most barbarous crimes are those committed by those who claim their race is "superior" against other races whom they brand as "inferior." This Aryan superman logic knows no moral restraint, and is now practised by the Israeli and South African regimes and other members of the imperial bloc led by the United States.

In the present state of widespread disregard for international law, due in great measure to the United Nations' failure to fulfil the functions for which it is in theory intended, the Palestinian people have no alternative but to carry on armed struggle until the overthrow of the Zionist racial philosophy which has upset the peace of the Middle East. What is important for the future, and for humanity as a whole, is that the correct lessons should be drawn from the Palestinian experience. Otherwise, the world may be faced with other similar situations resulting from repeated grave violations of international law. As an example of another Palestine-type situation, one need only look at Southern Africa. There, two racialist

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(4) The words North and South are used as only approximate terms to denote a general picture. There are geographical exceptions, as Australia, in the southern hemisphere but a member of the imperial military alliance, or Northern Ireland, geographically in the north, but an exploited colony.

settler States, South Africa and Rhodesia, maintain a rule very similar to that of Israel. The original inhabitants are branded as racially "inferior" and dispossessed of the best land. In South Africa, many have been uprooted from their ancestral land and flung, as destitute refugees, into "Bantustans." The inevitable growth of popular resistance will doubtless be used by these two racist entities, in true Israeli tradition, as an excuse to carry out acts of aggression against independent African States. A South African or Rhodesian blitzkrieg against, say, Zambia or Tanzania is not a remote possibility, and it would doubtless draw experience and even help from Israel, in view of the latter's close links with white supremacists in Africa. The situation in Southern Africa is further exacerbated by the powerful Portuguese imperial presence in Angola and Mozambique.

Ireland, partitioned like Palestine as a result of British rule, is another situation similar to Palestine in many ways. To preserve its domination in the North, the imperial power, Britain, has placed ominous religious sectarian overtones on the racial discrimination of the British "Protestant" settlers against the original Irish "Catholic" inhabitants. All indications are that British imperialism, when eventually faced with a national liberation struggle by the Northern Irish people, will resort to suppression that is both racist and sectarian, on a scale that could bring considerable bloodshed.

In the face of this severe world crisis in international law, what should be done? In the first place, all those states, peoples, national movements, organizations and individuals, whatever their origin or nationality, who sincerely wish to see international law upheld, need to recognize that this cannot be achieved through appeasement of aggressors or racists. The conduct of the racist imperial alliance has made conflict inevitable, just as the conduct of the Nazis and their allies made conflict inevitable in the 1930's.

The second necessity, arising from acknowledgement of the above reality, is for all those elements of honest intent to unite their forces in resolute opposition to aggression and racialism. One reason for Hitler's initial successes was the vacillation and lack of united purpose among his opponents. It must be recognized that the alliance of imperialism and racialism is a close organic unity. Israel sells Uzi sub-machine guns to the Portuguese Army and has secret military cooperation with both South Africa and Rhodesia, as has been demonstrated. All the racist states are given considerable economic help (through investment capital) and



military help (arms supplies and secret NATO cooperation) by imperial powers like Britain and the United States. To face such a powerful and cohesive power bloc, an alliance of states, peoples and forces against imperialism and racialism is an imperative necessity. Within the framework of such an alliance, states and national liberation movements could give each other mutual aid, coordinate their struggles so as to place maximum pressure on the common enemy when he is weakest, exchange information on operational techniques, arms and ammunition production, training methods, intelligence gathered on the enemy's activities, and other important subjects. Such an alliance could lead to a great intensification of struggle against racialism and imperialism throughout the world. It could appreciably hasten the victory of the forces of human liberation, and consequently reduce the toll of human lives which are being lost.

Thirdly, it is time for a recognition that the United Nations has altogether failed to carry out the task with which it was entrusted, and that this failure is due to the inherent weakness of its structure, notably insofar as the Security Council is concerned. This means that its inability to work for the application of international law on the Palestine question will be repeated whenever it faces any similar questions. There is no indication that the United Nations would act any more constructively over, say, a war in Southern Africa than it has over wars in the Middle East. Certainly, it has passed plenty of resolutions condemning South Africa or Rhodesia; but it has passed even more resolutions condemning Israel, and none of these have had any effect. The alliance of peoples for liberation will therefore have to face up to the task of building a new structure to be the supreme body of international law. A painstaking study should be undertaken to discover precisely why the United Nations has failed and what were the weaknesses in its structure which led to that failure, so that these errors can be avoided in future.

Among the tasks which would face a new world organization would be the establishment of effective machinery to deter and punish international crimes, and to prevent the use of some of the most atrocious weapons of war. For this, the establishment of a permanent International Criminal Court is essential. A powerful moral sign of this necessity was the enthusiastic public response in many countries to Bertrand Russell's launching of the International War Crimes Tribunal which investigated and published details of United States war crimes in Vietnam. This Tribunal, although it lacked the coercive power to punish those whose

guilt was established by the evidence, was nonetheless an important international "bar of public opinion." The intention was proclaimed by Bertrand Russell himself: "The Tribunal must begin a new morality in the West, in which cold mechanical slaughter will be automatically condemned."<sup>5</sup> However, war criminals cannot be deterred by public opinion alone, and Bertrand Russell's valuable public service has indicated that humanity must establish an effective permanent Tribunal on Nuremberg lines.

Space permits only a brief outline of these ideas for attempting a restoration of respect for international law. They are, in any case, ideas which, if they are of any value, will require intensive study and formulation by large numbers of men, representing many nations and possessing much greater qualifications than the modest ones this writer holds.

These ideas are not offered in the illusion that they will be a panacea or a path to Utopia. The hope behind them is that, if they are applied, they may result in some moderate improvements in the structure of international law and a few small steps along the far-stretching road of human progress. The alternative is to remain stuck in our present situation. It is up to humanity to decide which of the two alternatives is preferable.

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(5) Final address to the Stockholm Session of the International War Crimes Tribunal, 10 May 1967.

## Appendix I

### TWO RESOLUTIONS

When the Middle East crisis in the aftermath of the June war was debated in the U.N. Security Council, the United States Representative, Mr. Goldberg, proposed a draft resolution, which the Jordanian Minister of Justice, Dr. Jamal Nasser, has correctly described as "non-balanced and one-sided in favour of Israel" in its entire context. Mr. Goldberg did not succeed in persuading the Security Council to adopt this draft.

Subsequently, on 22 November 1967, the Council adopted a British-sponsored Resolution, No. 242. It is worth comparing the text of that Resolution with Mr. Goldberg's draft. The preambles of the two are different. Operative paragraph 1 of Resolution 242, while its wording has been slightly altered from Mr. Goldberg's original, is in substance identical. Operative paragraph 2 is identical in both substance and wording with that in the Goldberg draft, except that the U.S. proposal to limit the arms race was deleted, doubtless because the arms race in the Middle East has been very profitable for the big four permanent Security Council members. The other two operative paragraphs are, to all intents and purposes, the same in both resolutions.

It is clear, from a comparison of the two texts, that Resolution 242 is simply a slightly rewritten version of the U.S. draft proposed by Mr. Goldberg, insofar as its most vital parts, the operative paragraphs, are concerned. Resolution 242 may therefore be described as non-balanced and one-sided in favour of Israel in its entire context.



**THE GOLDBERG DRAFT**  
**(Proposed by the United States; U.N. Document S/8229)**

The Security Council,

Expressing its continuing concern with the grave situation in the Middle East,

Recalling its Resolution 233 (1967) on the outbreak of fighting which called, as a first step, for an immediate cease-fire and for a cessation of all military activities in the area,

Recalling further General Assembly Resolution 2256 (ES-V),

Emphasizing the urgency of reducing tensions and bringing about a just and lasting peace in which every State in the area can live in security,

Emphasizing further that all Member States in their acceptance of the Charter of the United Nations have undertaken a commitment to act in accordance with Article 2 of the Charter,

1. Affirms that the fulfilment of the above Charter principles requires the achievement of a state of just and lasting peace in the Middle East embracing withdrawal of armed forces from occupied territories, termination of claims or states of belligerency, and mutual recognition and respect for the right of every State in the area to sovereign existence, territorial integrity, political independence, secure and recognized boundaries, and freedom from the threat or use of force;

2. Affirms further the necessity:

(a) For guaranteeing freedom of navigation through international waterways in the area;

(b) For achieving a just settlement of the refugee problem;

(c) For guaranteeing the territorial inviolability and political independence of every State in the area, through measures including the establishment of demilitarized zones;

(d) For achieving a limitation of the wasteful and destructive arms race in the area;

3. Requests the Secretary-General to designate a Special Representative to proceed to the Middle East to establish and maintain contacts with the States concerned with a view to assisting them in the working out of

solutions in accordance with the purposes of this resolution and in creating a just and lasting peace in the area;

4. Requests the Secretary-General to report to the Security Council on the progress of the efforts of the Special Representative as soon as possible.

**THE SECURITY COUNCIL RESOLUTION**  
**(Adopted unanimously on 22 November 1967; S/RES/242)**

The Security Council,

- (1) Expressing its continuing concern with the grave situation in the Middle East,
- (2) Emphasizing the inadmissibility of the acquisition of territory by war and the need to work for a just and lasting peace in which every State in the area can live in security,
- (3) Emphasizing further that all Member States in their acceptance of the Charter of the United Nations have undertaken a commitment to act in accordance with Article 2 of the Charter,
  1. Affirms that the fulfilment of Charter principles requires the establishment of a just and lasting peace in the Middle East which should include the application of both the following principles:
    - (I) Withdrawal of Israeli armed forces from territories occupied in the recent conflict;
    - (II) Termination of all claims or states of belligerency and respect for and acknowledgement of the sovereignty, territorial integrity and political independence of every State in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force;
  2. Affirms further the necessity
    - (A) For guaranteeing freedom of navigation through international waterways in the area;
    - (B) For achieving a just settlement of the refugee problem;
    - (C) For guaranteeing the territorial inviolability and political independence of every State in the area, through measures including the establishment of demilitarized zones;
  3. Requests the Secretary-General to designate a Special Representative to proceed to the Middle East to establish and maintain contact with the States concerned in order to promote agreement and assist efforts to achieve a peaceful and accepted settlement in accordance with the provisions and principles in this resolution;

4. Requests the Secretary-General to report to the Security Council on the progress of the efforts of the Special Representative as soon as possible.



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