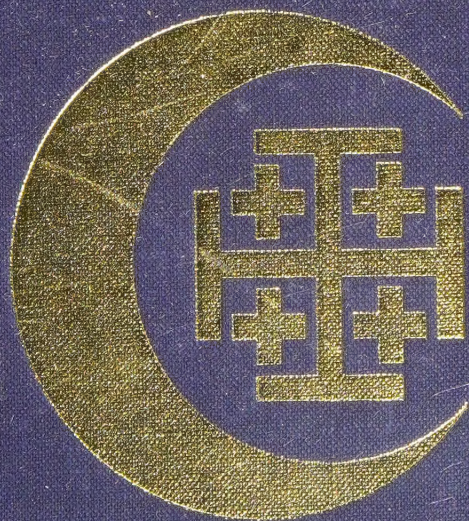


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PALESTINE, THE ARABS AND ISRAEL

The Search for Justice



PALESTINE,  
THE ARABS  
AND ISRAEL

*The Search for Justice*

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Henry Cattan LL.M.

*of The Middle Temple, Barrister-at-law*



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## Abbreviations

<i>AJIL</i>	American Journal of International Law
CCP	Conciliation Commission for Palestine
<i>Cmd.</i>	Command paper
I.C.J.	International Court of Justice
P.C.I.J.	Permanent Court of International Justice
RGDIP	Revue Générale de Droit International Public
UNRWA	United Nations Relief and Works Agency for Palestine Refugees
UNSCOP	United Nations Special Commission on Palestine

Part I

Origin of the Arab–Israeli Conflict





## SECTION I

# Historical Background

It is essential for a proper understanding of the Arab–Israeli conflict or the Palestine Question, as it used to be called, to review its historical background.

### I PALESTINE BEFORE 1922

The name of Palestine is derived from the Philistines who lived in the southern coastal part of the country in the 12th century B.C.

What is the origin of the people of Palestine?

As far as one can look back in history, the country is found to be inhabited. The early inhabitants were semi-nomadic tribes, but about the 20th century B.C. the Canaanites began to settle in the plains and on the coast. They built villages and towns and developed their own culture. In the Bible the country is called ‘the land of Canaan’ (*Numbers 34:1, 35:10*) or ‘the country of the Canaanites’ (*Exodus 3:17*).

It is necessary at the outset to correct a current misconception. The Israelis were not the earliest inhabitants of Palestine. They were invaders. When the Israelite tribes, after their exodus from Egypt, invaded the land of Canaan in the 12th century B.C., they found a settled population and an established culture. The population of the country then included the settled Canaanites, the Gibeonites and the Philistines. The Philistines were never completely subdued by the invaders and retained control of their coastal plain along the Mediterranean. The rest of the country was occupied and settled by the Israelites, who established the Kingdom of Israel. This Kingdom lasted for two centuries and then was split into the Kingdom of Israel in the north and the Kingdom of Judah in the south.

Between 733 B.C. and 721 B.C. the Assyrians overran the territories of the northern Kingdom and in 721 B.C. Israel became politically extinct.

'Never again did it gain full independence, for in the time of the Hasmoneans and their successors, the house of Herod, it had only a limited local authority.'<sup>1</sup>

After the Assyrians and Babylonians, the country was occupied in turn by the Persians (whose king allowed in 538 B.C. the return of the Jewish exiles), the Greeks and the Romans. Following the Jewish rebellion against the Romans, Titus destroyed Jerusalem in A.D. 70 and Hadrian quelled the last revolt in A.D. 132. 'In Judea proper the Jews seem to have been virtually exterminated, but they survived in Galilee.'<sup>2</sup>

From the 4th until the 7th century of our era, Palestine came under Christian influence. Emperor Constantine I built the Church of the Holy Sepulchre. His mother Helena built two other churches, the Church of the Nativity at Bethlehem and the Church of the Ascension at Jerusalem. Palestine began to attract Christian pilgrims and also became a centre of eremitic life; men flocked from all quarters to become hermits and the country was soon dotted with a number of monasteries.

In A.D. 637 occurred the Moslem Arab conquest of Palestine. Many of the indigenous inhabitants were converted to Islam and, as a result, 'the predominantly Christian population became predominantly Muslim'.<sup>3</sup> However, a Christian minority remained in Palestine after the Arab conquest.

There was a Christian resurgence during the Crusades, particularly as a result of the establishment of the Latin Kingdom of Jerusalem in A.D. 1100. Upon Saladin's victory over the Crusaders in A.D. 1187 and his recovery of Palestine, the indigenous Christians continued to live in Palestine side by side with the Moslems.

In A.D. 1518, the Turks conquered Palestine and remained in occupation until 1917. This conquest, however, did not involve any colonization nor did it cause any change in the composition of the population. The Turkish conquest did not in any way alter or affect the basically Arab character of the country. Its inhabitants, language, customs and culture remained Arab.

The long and bloodstained story of wars and invasions which have afflicted the Holy Land is reflected by the picture of the successive powers

<sup>1</sup> *Palestine and Transjordan*, Geographical Handbook Series, p. 87.

<sup>2</sup> *Encyclopedia Britannica*, 1966, Vol. 17, p. 166.

<sup>3</sup> *Ibid.*, p. 167.



which have held Jerusalem from 1050 B.C. until 1950. These, as given by the Reverend Charles T. Bridgeman, were:

		<i>Years</i>
Israeliites	Davidic Kingdom to Fall of Jerusalem 1050-586 B.C.	464
Babylonians	Fall of Jerusalem to fall of Babylon 586-538 B.C.	50
Persians	Cyrus to Macedonian conquest of Persia 538-332 B.C.	206
Greeks	Alexander's conquest of Jerusalem to emancipation of city by Maccabees 332-166 B.C.	166
Jews	Maccabean Kingdom 166-63 B.C.	93
Pagan Romans	Roman conquest of Jerusalem to fall of paganism 63 B.C.-A.D. 323	386
Christian Romans	From Constantine to Persian conquest A.D. 323-614	291
Persians	Period of Persian rule A.D. 614-628	14
Romans	Reconquest by Byzantines A.D. 628-637	11
Arabs	Conquest by Moslem Arabs A.D. 637-1072	435
Turks	Rule by Moslem Turks A.D. 1072-1092	20
Arabs	Reconquest by Arabs A.D. 1092-1099	7
Christians	Crusading Kingdom A.D. 1099-1187	88
Arabs	Reconquest by Arabs A.D. 1187-1229	42
Christians	City ceded by treaty to Frederick II A.D. 1229-1239	10
Arabs	Revived Arab rule A.D. 1239-1514	278
Moslem Turks	Jerusalem under Ottoman Turks A.D. 1517-1917	400
Christians	British conquest and mandate A.D. 1917-1947	30
Arabs and Israelis	Jerusalem seized by Israelis and Arabs A.D. 1947-1950	3 <sup>4</sup>

But notwithstanding the bewildering succession of wars, invasions and conquests in Palestine, the original indigenous elements of the population—to the exclusion of the Israelites who were themselves invaders and were subsequently killed or deported—had until almost the middle of the 20th century remained basically unchanged. There exists a com-

<sup>4</sup> See Reverend Charles T. Bridgeman's letter to the President of the Trusteeship Council, January 13 1950, General Assembly Official Records, 5th Session, Supplement No. 9, U.N. Document A/1286, p. 15.

mon misconception—deliberately created—that the Palestine Arabs were invaders of Palestine during the Moslem Arab invasion of Palestine in the 7th century. This is not historically correct. The Palestine Arabs are the original inhabitants of Palestine. The Moslem Arab conquest of Palestine in A.D. 637 was not the starting-point of their occupation of the country. The Arabs are a pre-Islamic people. They lived in Palestine and other parts of the Middle East before the advent of Islam. In fact, the number of the invaders at the time of the Moslem Arab conquest of Palestine in the 7th century was small and they were assimilated by the indigenous inhabitants. Professor Maxime Rodinson points out that the Arab population of Palestine was native in all the senses of that word and were Arabized as a result of the Arab conquest in the 7th century.<sup>5</sup> The Palestinians of today are the descendants of the Philistines, the Canaanites and the other early tribes.<sup>6</sup> They are the earliest and original inhabitants of the country. They have lived continuously and without interruption in their country since the dawn of history. Their settlement in Palestine can be traced back to at least forty centuries. There were infusions of other racial elements into the Palestinian stock, mainly from the Greeks, the Romans, the Moslem Arabs and the Crusaders. But this Palestinian stock, which comprises both Moslems and Christians, continued to constitute the main element of the population until the majority of the original inhabitants were displaced by the Israelis in 1948 in circumstances to be hereinafter described.

Apart from the Moslems and Christians, there existed other small communities which lived in the midst of the people of Palestine. These included Jews, Armenians, Assyrians and Kurds.

The Jews did not integrate into the ethnic stock formed by the original people of Palestine. They represented a small community. From the 1st century of our era until the 20th century, the Jews had almost ceased to exist in Palestine. 'Even as the main element in the population the Jews largely disappeared after the wars of A.D. 70 and A.D. 135. Benjamin of Tudela, a Jewish pilgrim who visited the Holy Land about A.D. 1170-1171 found but 1,440 Jews in all Palestine; and Nahman Gerondi, in

<sup>5</sup> Maxime Rodinson, *Israel and the Arabs*, (Penguin Books, 1968), p. 216.

<sup>6</sup> 'The Palestinian Arab of today, then, is a descendant of the Philistines, the Canaanites and other early tribes, and of the Greeks, Romans, Arabs, Crusaders, Mongols and Turks': Moshe Menuhin, *The Decadence of Judaism in our Times*, (Exposition Press, New York, 1965), p. 18.

A.D. 1267, found only two Jewish families in Jerusalem.<sup>7</sup> Up to the 19th century the Jewish population of Palestine had increased very little. At the beginning of the 19th century, the Jews in Palestine numbered 8,000; in 1845, they were 11,000 and in 1880 their number did not exceed 20,000.<sup>8</sup> In 1918 the Jews numbered 56,000.<sup>9</sup> At the time of the Balfour Declaration (1917) the Jews represented less than 10 per cent of the total population of Palestine. After the end of the First World War and following the Balfour Declaration, there was a wave of Zionist Jewish immigration into Palestine. The Palestine census in 1922 gave their number as 83,794 out of a total population of 757,182.<sup>10</sup>

During the Turkish period, i.e., from 1518 until 1917, Palestine was an administrative division of the Turkish Empire. In accordance with the administrative organization which took place in 1887-1888, Palestine was divided into the *mutassarifiyehs* (administrative units) of Acre, Nablus and Jerusalem. However, Jerusalem and its surrounding area enjoyed an autonomous status and instead of being dependent upon the governor of the province were linked directly to Constantinople, the capital of the Empire.

The various citizens of the Turkish Empire, Turks, Moslem Arabs, Christian Arabs, Kurds, Greeks, Armenians and Jews, all enjoyed equal civil rights, regardless of race, creed or religion. The principle of equality of rights which existed, in fact, was reaffirmed by the Turkish Constitution of December 23 1876. This Constitution provided for a cabinet, an elected parliament and proportional representation of all nationalities.<sup>11</sup> Parliament was elected and met in March 1877 but Sultan Abdul Hamid adjourned it and ignored the Constitution. On July 24 1908, as a result of the Young Turk Revolution, Sultan Abdul Hamid restored the Constitution and ordered the holding of elections. On December 17 1908 parliament met. The deputies consisted of 142 Turks, 60 Arabs, 25 Albanians, 23 Greeks, 12 Armenians, 5 Jews, 4 Bulgars, 3 Serbs and 1 Vlach.<sup>12</sup> New parliamentary elections were held in 1912. It should be remarked

<sup>7</sup> Reverend Charles T. Bridgeman's letter to the President of the Trusteeship Council January 13 1950, General Assembly Official Records, 5th Session, Supplement No. 9, U.N. Document A/1286, p. 13.

<sup>8</sup> *Dictionnaire Diplomatique*, p. 294.

<sup>9</sup> Government of Palestine, *Survey of Palestine*, Vol. I, p. 144.

<sup>10</sup> Government of Palestine, *Statistical Abstract of Palestine*, 1941, p. 12.

<sup>11</sup> S. N. Fisher, *The Middle East* (Routledge and Kegan Paul Ltd, London, 1960), p. 322.

<sup>12</sup> S. N. Fisher, *op. cit.*, p. 341.

that the inhabitants of Palestine participated in all parliamentary elections and elected their deputies. Article 48 of the Turkish Constitution recognized the right of every person of Ottoman nationality to elect and be elected for national representation.

— Not only did Arab citizens, among them the Palestinians, enjoy equal rights with the Turks with regard to national representation, they also participated in the general administration of the country. Many rose to high executive, legislative and administrative positions and several occupied important ministerial and palace posts. As one writer has observed:

The Turks were a racial minority in their great empire, and made no attempt at the general colonization of the conquered provinces. The empire was conceived on no narrow Turkish-national basis, but was a comprehensive empire like the Abbasid or the Roman. Whatever a man's race or birthplace, he was eligible for government service and could attain the highest office . . . while the bulk of senior officials were Turks, Syrian and Palestinian townsmen gained by their innate keenness of intellect an appreciable number of senior posts.<sup>13</sup>

It is of extreme importance to emphasize the legal and political status which the Palestinian Arabs enjoyed during the Turkish regime, because subsequent events, particularly the imposition of the British mandate over Palestine, have somewhat obscured two basic facts. First, the Palestinians, whether Moslems, Christians or members of other communities, enjoyed with the Turks complete political independence and equality, exercised their full civil rights and shared with the Turks the rights of sovereignty over the various territories comprised within the Turkish Empire. The separation of sovereignty between Arabs and Turks occurred only upon the detaching of the Arab provinces from the Turkish Empire after the First World War. Secondly, the Palestinians had attained before the First World War a level of cultural development and political maturity which could well have exempted them from being assisted by a mandatory power. Referring to the establishment of mandates over Palestine, Syria and Lebanon after the First World War, Mr. Duncan Hall remarks:

These were cradles of western civilization and of great religions of Europe and Asia; and their peoples were capable of becoming independent

<sup>13</sup> George E. Kirk, *A Short History of the Middle East* (Methuen, London, 1948), pp. 59–60.

states within a short period of time if they could in fact devise constitutions based on the consent of the main elements of the population.<sup>14</sup>

Notwithstanding their enjoyment of full political rights, the Arabs wished to establish a purely Arab state independent of the Turkish Empire. There were already several undercurrents at the end of the 19th century that aimed at the achievement of this objective. These undercurrents rose to the surface and gained strength during the First World War. The Allied Governments encouraged the struggle of the Arabs for their independence, or more correctly their secession from Turkey, since this fitted into their plans for a victorious termination of the conflict. In particular, the United Kingdom and its Allies made several pledges for the recognition and establishment of Arab independence.

These pledges and assurances included:

i. The correspondence in 1915–1916 between King Hussein of the Hedjaz, then Sharif of Mecca, and Sir Henry McMahon, British High Commissioner in Egypt, which embodied a pledge by the Government of Great Britain that (with the exception of portions of Syria lying to the west of the districts of Damascus, Homs, Hama and Aleppo) it was prepared to recognize and uphold the independence of the Arabs within the frontiers proposed by the Sharif of Mecca.

ii. The Hogarth message addressed by the British Government to the Sharif of Mecca in January 1918 in order to allay Arab fears about the Balfour Declaration, the issue of which had then come to the knowledge of the Arabs and had alarmed them about the sincerity of British intentions concerning the future of Palestine.

iii. The Declaration to the Seven of June 16 1918, which assured the inhabitants of territories occupied by the Allied armies that the future government of these territories would be based upon the consent of the governed.

iv. The Anglo-French Declaration of November 7 1918, which stated that the goal envisaged by France and Great Britain in prosecuting the war was the complete and final liberation of the peoples who had so long been oppressed by the Turks, and the setting up of national governments and administrations that should derive their authority from the free exercise of the initiative and choice of the indigenous populations.

<sup>14</sup> H. Duncan Hall, *Mandates, Dependencies and Trusteeships*, pp. 33–34, Carnegie Endowment for International Peace, 1948.



Thousands of copies of this declaration were dropped in leaflets from air-planes over Palestine.<sup>15</sup>

These pledges encouraged the Arab movement for secession from the Turkish Empire. The Arabs revolted against the Turks in many parts of the country and, in fact, made a substantial contribution to the Allied victory in the First World War. King Hussein of the Hedjaz joined the Allied armies, and Arabs from Syria, Lebanon and Palestine answered his call for revolt, joined the ranks of the Allies and fought with them against the Turks.

It has been established that the Arabs were betrayed<sup>16</sup> not only because these promises were not kept but also because Great Britain, after its promise to the Arabs, made an incompatible promise to the Zionist Jews concerning the establishment of a Jewish national home in Palestine. For many years before the Balfour Declaration was made, the Zionist Jews had entertained ambitions over Palestine. Jewish Zionism owed its origin to the desire of the Jews of Eastern Europe to escape the discrimination, and at times the persecution, from which they suffered in Eastern European countries. Theodor Herzl (1860–1904) became the strongest exponent of Zionism. In 1896 he wrote a pamphlet, *The Jewish State*, in which he advocated the establishment of British-sponsored Jewish colonization in Argentina or Palestine with a view to the eventual creation of a Jewish state.<sup>17</sup> Herzl's concern was a solution to the problem of anti-semitism, not the fulfilment of the prophecies of traditional Judaism.<sup>18</sup> In 1897, he convened the first Zionist Congress in Basle, at which the aim of Zionism to create a 'home' for the Jewish people in Palestine was proclaimed. Herzl tried to persuade the Turkish authorities to facilitate Jewish immigration to Palestine and grant them a certain degree of autonomy, but he was unsuccessful.

The Zionist objective of creating a Jewish state in Palestine was the root of the trouble and the source of the Palestine tragedy. It ignored the fact that Jewish presence in Palestine had almost ceased as from the 1st century A.D. It was also in obvious conflict with the rights of the

<sup>15</sup> For the text of the pledges made to the Arabs, see George Antonius, *The Arab Awakening*, Khayats, Beirut.

<sup>16</sup> See Anthony Nutting, *The Arabs* (New American Library, New York, 1965), pp. 289 *et seq.*

<sup>17</sup> Theodor Herzl, *The Jewish State*, 5th ed. (H. Pordes, London, 1967), p. 30; A. R. Taylor, *Prelude to Israel* (Philosophical Library, New York, 1959), p. 3.

<sup>18</sup> F. F. Andrews, *The Holy Land under Mandate*, I, p. 303.

people of Palestine who had inhabited the country since time immemorial. Historically speaking, the Jews were neither the earliest inhabitants nor the owners of the land in Palestine. The Jewish occupation of Palestine in biblical times was simply an episode in the long history of the country. The modern Zionist Jews, the great majority of whom can hardly claim to be descendants of the ancient Hebrews, seized upon this biblical episode in order to stake a political claim more than twenty centuries later upon the territory of Palestine. The fact that such a claim was incompatible with the facts of history, with justice and with the rights of the real owners of the country was ignored.

The Zionist Jews seized the occasion of the First World War to represent to the British Government the advantage of winning Jewish support by helping Zionist ambitions. These efforts succeeded. Accordingly, on November 2 1917 the British Foreign Minister Arthur James Balfour, in a written communication to Lord Rothschild, declared that the British Government viewed with favour the establishment in Palestine of a national home for the Jewish people, it being clearly understood that nothing should be done which might prejudice the civil and religious rights of 'existing non-Jewish communities' in Palestine, or the rights and political status enjoyed by Jews in any other country.

It is significant that the Balfour Declaration was made notwithstanding Jewish opposition in some quarters to the concept of a Jewish national home. Jewish criticism which was made at the time proved to be prophetic. Mr. C. G. Montefiore, who was one of the Jewish leaders consulted about the Declaration before it was made, has said:

When the Balfour declaration about Palestine was being discussed by the Cabinet, the terms were privately submitted to some half-a-dozen Jews, of whom four, if I remember rightly, were pronounced or semi-Zionists, and two, of whom I was one, were opposed to Zionism. We two ventured to suggest that the words 'the national home for the Jewish people' were likely to cause trouble. We were, it would seem, not so far wrong. . . . We objected to the words because we denied that the Jews were any longer a nation, and we did not want them even to become a nation again. We claimed and desired, as I and my friends still claim and desire, that they should be free and equal citizens of all the countries in which they lived. We feared that the proposed national home might create far more anti-semitism than it would cure. Our views and objections were, however, not listened to, except that for the definite article 'the', as the draft originally read, the

indefinite article 'a' was substituted, so that the words now run: 'a national "home for the Jewish people".'<sup>19</sup>

The Balfour Declaration was described as a document in which 'one nation solemnly promised to a second nation the country of a third. . . . It is true that the Arabs in Palestine lived under Turkish overlordship; but they have been living there for centuries, and the country was no doubt "theirs" in the generally accepted sense of the word.'<sup>20</sup>

Mr. Michael Adams, an English journalist, has analysed the Balfour Declaration and the circumstances in which it was made, and emphasized its connection with the Arab-Israeli conflict of June 1967. Under the title, *The Twice-Promised Land*, he wrote in *The Guardian* on November 3 1967:

The only good result of the fighting that took place in June is that it has forced the world to reconsider the realities of the Palestine question. What is astonishing is that these realities have been so successfully disguised and misrepresented in so short a space of time. The 50th anniversary of the Balfour Declaration provides an opportunity to restate them as matters of historical fact.

Fifty years ago there was no Palestine 'problem'. There was only Palestine itself, at that time a province of the Ottoman Empire, but a part of the Arab homeland like any other, occupied without interruption by Arabs for more than 1,300 years, and sharing the expectations of the rest of the Arab world. These expectations centered around the promise of immediate independence made to the Arabs by the British Government in 1916, in return for which the Arabs had risen in revolt against their Turkish masters, to play a significant part in the final defeat of the Ottoman Empire.

But before this promise to restore Arab independence could be kept, the British Government had entered into another, much less precise, undertaking to the Jewish people, then scattered throughout the world. This later undertaking, which we know as the Balfour Declaration, conflicted with the earlier promise to the Arabs; indeed, it could only be fulfilled at the expense of the Arabs—and in this contradiction lies the essence of the Palestine problem.

At the time that the British Government made the Balfour Declaration, it possessed no sovereignty, dominion or other title in Palestine which empowered it to recognize any rights in favour of the Jews in

<sup>19</sup> C. G. Montefiore, *The National Review*, December 1936, p. 731.

<sup>20</sup> Arthur Koestler, *Promise and Fulfilment*, p. 4.

Palestine. After remarking that the Balfour Declaration had no substance or validity in terms of international law, Mr. Adams observes:

There are two points to consider about the phrasing of the Balfour Declaration. The words 'a national home' had obviously been chosen with care. What was intended was some form of refuge, a sanctuary where Jews could escape from the restrictions and sometimes the persecutions to which they were subject in other parts of the world.

Plainly, the concept which the British Government had in mind was not a Jewish State in Palestine, or it would have said so. In any case, only a year earlier Britain had promised that Palestine would form part of an independent Arab State; and even if this promise were to be forgotten or disregarded, it would be patently impossible to create a Jewish State in Palestine without prejudicing 'the civil and religious rights of existing non-Jewish communities' in the country.

This phrase provides the other curiosity about the Balfour Declaration. It could only suggest, to someone who was unfamiliar with Palestine in 1917, that its population was predominantly Jewish, with some other, and possibly substantial, minorities. If this was deliberate, it was a piece of carefully calculated misrepresentation, for it expressed the precise opposite of the truth.

On the day when Mr. Balfour signed his letter to Lord Rothschild, Jews constituted between 7 and 8 per cent of the population of Palestine. That deceptive phrase 'existing non-Jewish communities' meant, in effect, the Arabs, the people whose ancestors had been in uninterrupted occupation of Palestine for 1,300 years and who, in 1917, constituted more than 90 per cent of the population and owned 97.5 per cent of the land. These were the unfortunates whose 'civil and religious rights' the British Government pledged itself to protect by the terms of the Balfour Declaration.

It is their children and grandchildren who now live in refugee camps or under Israeli occupation in the disputed remnants of their homeland.

The Balfour Declaration was issued without the knowledge or the consent of the Arabs. When the Arabs learned of it, they were seized with consternation and protested to the British Government. The latter immediately despatched Commander Hogarth to Jeddah early in 1918 to assure King Hussein of Hedjaz that the British Government favoured the return of Jews to Palestine only in so far as would be compatible with the political and economic freedom of the existing population.

However, this and other assurances given to the Arabs by the British Government that the Balfour Declaration would not affect their civil and



religious rights or their political freedom were neither kept nor intended to be kept. Here again one might leave the word to Mr. Michael Adams:

In a memorandum to the British Government dated August 11 1919 (Documents on British Foreign Policy 1919–1939, 1st series, Vol. IV, HMSO) Mr. Balfour wrote:

‘In Palestine we do not propose even to go through the form of consulting the wishes of the present inhabitants of the country. . . . The four great Powers are committed to Zionism. And Zionism, be it right or wrong, good or bad, is rooted in age-long traditions, in present needs, in future hopes, of far profounder import than the desires and prejudices of the 700,000 Arabs who now inhabit that ancient land.’

On that point, understandably, the Arabs disagree. I find it hard to see how any dispassionate observer can fail to sympathise with them. What Mr. Balfour was saying in that remarkably blunt and revealing memorandum to his colleagues was that there was no longer any intention to keep the promise to protect ‘the civil and religious rights of the existing non-Jewish communities in Palestine’.

Should the Arabs accept without question the consequences of a decision made 50 years ago by a small group of middle-aged Englishmen, and based on some ill-defined preference for the ‘age-long traditions’ of international Jewry over the ‘desires and prejudices’ of the Arab inhabitants of Palestine? It is difficult to see what line of reasoning, what emotion, what sense of self-respect or of respect for the rights of humanity as a whole could induce them to do so.

As far as Britain and its reputation are concerned, the Balfour Declaration is the seemingly innocuous tip of an iceberg of deception. That is something which every Englishman ought to remember when he considers the present situation in the Middle East, to whose complexities the Balfour Declaration has so powerfully contributed.

As far as Israel is concerned, the Balfour Declaration is the original foundation stone of the Jewish State now constituted in Palestine. This, too, is something for all Zionists to bear in mind if they are concerned to understand and to come to terms with the attitudes of their Arab neighbours.<sup>21</sup>

The question of the future of Palestine and the other Arab countries occupied by the Allied Forces during the First World War was the subject of discussions at the Paris Peace Conference in 1919.<sup>22</sup> Two main forces then came into play to shape the future of Palestine at the Peace Conference.

<sup>21</sup> Michael Adams, *The Twice-Promised Land*, *The Guardian*, November 3 1967, p. 12.

<sup>22</sup> Palestine was occupied by the British Army under General Allenby in 1917–1918 and an armistice was signed on October 30 1918.



On the one hand, the ideas which President Wilson had propounded towards the end of the First World War—namely, the rejection of any territorial acquisition by conquest and the recognition of the right of self-determination of peoples<sup>23</sup>—came to be generally accepted and were incorporated in 1919 in Article 22 of the Covenant of the League of Nations.<sup>24</sup> The Covenant laid down that, to the peoples inhabiting territories which have ceased to be under the sovereignty of the State which formerly governed them, there should be applied ‘the principle that their well-being and development form a sacred trust of civilisation’. Moreover, and specifically with regard to the communities detached from the Turkish Empire, namely, the people of Palestine, Syria, Lebanon and Iraq, Article 22 laid down that ‘. . . their existence as independent nations can be provisionally recognized subject to the rendering of administrative advice and assistance by a mandatory until such time as they are able to stand alone.’

On the other hand, the Zionists exerted all their efforts to secure endorsement of the Balfour Declaration by the Peace Conference. Already Zionist efforts had won over France, Italy and the United States to an acceptance of the concept of a Jewish national home in Palestine.<sup>25</sup> Representatives of the Zionist Organization appeared before the Supreme Council of the Allied Powers at the Peace Conference in February 1919 and presented the Zionist programme for the future of Palestine. This programme, as explained and modified in subsequent proposals, included the establishment in Palestine of a Jewish national home to be developed into an autonomous commonwealth. The Zionist representatives even submitted proposals concerning the terms to be embodied in the proposed mandate which was to be granted over Palestine. The text of the Palestine mandate was the subject of negotiation between the

<sup>23</sup> President Wilson’s Fourteen Points, presented to the American Congress on January 8 1918 stated, *inter alia*, that non-Turkish nationalities in the Turkish territories occupied by the Allied Forces should be given “an absolute unmolested opportunity of development.” In his address on January 11 1918 he stressed that “peoples and provinces are not to be bartered about from sovereignty to sovereignty as if they were mere chattels and pawns in a game, even the great game, now forever discredited, of the balance of power; but that every territorial settlement involved in the war must be made in the interests and for the benefit of the populations concerned.” (*AJIL*, Vol. 17, 1923, p. 51).

<sup>24</sup> The text of Article 22 of the Covenant of the League of Nations is set out in Appendix I.

<sup>25</sup> An account of Zionist activities to secure support for a Jewish national home in Palestine is given in the Report of the Zionist Organization to the 12th Zionist Congress at Carlsbad published in 1921.

British delegation at the Peace Conference in Paris and the Zionist Organization. 'The Zionists obtained nearly all they desired; but there is no record of any consultation with the Arabs whose vital interests were at stake.'<sup>26</sup> The Arabs, and, in particular, the people most directly concerned, the Palestinians, were neither represented at the Peace Conference nor consulted about the future of Palestine or the terms of the proposed mandate. On March 20 1919 President Wilson proposed to the Supreme Council of the Allied Powers at the Paris Peace Conference that an Inter-Allied Commission should visit Syria and Palestine to elucidate the state of opinion regarding the mode of settlement of their future. The Supreme Council adopted President Wilson's suggestion. However, fearing the result of such a consultation, the French refused to appoint their representative and the British representative withdrew. The two American members of the Commission, Henry C. King and Charles R. Crane, proceeded to the Middle East and conducted their investigation. Their report, though made in 1919, is still of intense topical interest. It permits an understanding of the Palestine issue and the present Arab-Israeli conflict.<sup>27</sup> Paragraph 5 of the King-Crane Commission's report stated *inter alia*:

If, however, the strict terms of the Balfour Statement are adhered to—favoring 'the establishment in Palestine of a national home for the Jewish people, it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine'—it can hardly be doubted that the extreme Zionist program must be greatly modified. For 'a national home for the Jewish people' is not equivalent to making Palestine into a Jewish State; nor can the erection of such a Jewish State be accomplished without the gravest trespass upon the 'civil and religious rights of existing non-Jewish communities in Palestine'. The fact came out repeatedly in the Commission's conference with Jewish representatives, that the Zionists looked forward to a practically complete dispossession of the present non-Jewish inhabitants of Palestine, by various forms of purchase.

In his address of July 4 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

<sup>26</sup> Lord Sydenham of Combe, *The Tragedy of Palestine, The Nineteenth Century and After*, London, May 1930, p. 603.

<sup>27</sup> For a full report on the investigation, see Harry N. Howard, *The King-Crane Commission (Khayats, Beirut)*, 1963.

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 program. The tables show that there was no one thing upon which the population of Palestine were more agreed than upon this. 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.

The King-Crane Commission emphasized the serious injustice involved in the implementation of the Balfour Declaration as well as the absence of any basis for the Zionist claim to Palestine. It stated that the Zionist programme could not be carried out except by force of arms, and observed:

That of itself is evidence of a strong sense of the injustice of the Zionist program, on the part of the non-Jewish populations of Palestine and Syria. Decisions, requiring armies to carry out, are sometimes necessary, but they are surely not gratuitously to be taken in the interests of a serious injustice. For the initial claim, often submitted by Zionist representatives, that they have a 'right' to Palestine, based on an occupation of two thousand years ago, can hardly be seriously considered.<sup>28</sup>

Unfortunately for the future of Palestine and the peace of the Middle East, the recommendations of the King-Crane Commission were discreetly buried and even concealed.<sup>29</sup> Although the Supreme Council of the Allied Powers did not espouse the proposal sponsored by the Zionists which envisaged the establishment of a Jewish commonwealth in Palestine, the Balfour Declaration itself was incorporated in the mandate over Palestine. The incorporation of the Balfour Declaration in the Palestine mandate was a denial of justice to the people of Palestine. The mandate system was conceived by Article 22 of the Covenant of the League of Nations as a means to implement the principle of self-deter-

<sup>28</sup> Harry N. Howard, *op. cit.*, pp. 349 *et seq.*

<sup>29</sup> The King-Crane Commission's Report was suppressed and kept secret for three years. It was published only in 1947: see Harry N. Howard, *op. cit.*, p. 221.

mination of peoples. As a result of Zionist influence this objective was defeated in the case of the Palestine mandate. As Professor Keith has observed, the adoption of the principle of a Jewish national home ran counter to the doctrine of the right of each people to self-determination.<sup>30</sup> On April 25 1920 the Supreme Council of the Principal and Allied Powers sitting at San Remo agreed to give the mandate over Palestine to the British Government, and on July 24 1922 the Council of the League of Nations entrusted the mandate to the British Government. The mandate, however, did not formally come into operation, because Turkey had not yet accepted the separation of the Arab provinces. By the Treaty of Sèvres of August 10 1920 Turkey agreed to accept the separation of the Arab provinces as well as the Balfour Declaration. The Treaty of Sèvres, however, was not ratified by the Turkish National Assembly, which rejected some of its provisions, including the Balfour Declaration. It was only three years later that the detachment of the Arab provinces from Turkey became legally effective in accordance with the Treaty of Lausanne which Turkey signed on July 24 1923. It is significant, however, that the latter Treaty did not embody Turkish acceptance of the Balfour Declaration.

## 2 PALESTINE DURING THE BRITISH MANDATE

The Palestine mandate embodied two main objectives.

On the one hand, as stated in its preamble, the mandate was given 'for the purpose of giving effect to the provisions of Article 22 of the Covenant of the League of Nations'. Two of those provisions were of consequence. First, the provision that 'the well-being and development' of the people of the mandated territory 'form a sacred trust of civilization'. Secondly, the provision that the existence of the people of Palestine 'as an independent nation was provisionally recognized'.

On the other hand, the Palestine mandate also required that the Mandatory should be responsible for putting into effect the declaration originally made on November 2 1917 by the British Government in favour of the establishment in Palestine of a national home for the Jewish people, 'it being clearly understood that nothing should be done which might prejudice the civil and religious rights of existing non-Jewish

<sup>30</sup> B. Keith, *Mandates*, *Journal of Comparative Legislation and International Law*, Vol. IV, 1922, p. 78.



communities in Palestine, or the rights and political status enjoyed by Jews in any other country’.

These various objectives were merged into Article 2 of the Palestine mandate which was worded as follows:

Art. 2. The Mandatory shall be responsible for placing the country under such political, administrative and economic conditions as will secure the establishment of the Jewish national home, as laid down in the preamble, and the development of self-governing institutions, and also for safeguarding the civil and religious rights of all the inhabitants of Palestine, irrespective of race and religion.

Moreover, the mandate further provided that Jewish immigration should not affect the rights and position of other sections of the population. Article 6 stated:

Art. 6. The Administration of Palestine, while ensuring that the rights and position of other sections of the population are not prejudiced, shall facilitate Jewish immigration under suitable conditions and shall encourage, in co-operation with the Jewish agency referred to in Article 4, close settlement by Jews on the land, including State lands and waste lands not required for public purposes.

Did the Mandatory achieve these objectives? Furthermore, did the Mandatory not prejudice the rights and position of the existing Palestine Arab population?

It is clear that the Mandatory utterly failed to achieve the mandate’s first and basic objective of giving effect to the provisions of Article 22 of the Covenant and of leading the country towards independence by the development of self-governing institutions. Largely because of Zionist opposition to the grant of any real powers to the existing population as long as the Jews were only an insignificant minority, almost no advance was made towards the development of self-governing institutions. From the beginning of the mandate in 1922 until its end on May 15 1948 all legislative and executive powers in Palestine were kept in the hands of the British Government and its representative, the British High Commissioner. While the Arabs were thus denied any right of self-government or even of participation in the administration of their own country, the Jews enjoyed a specially privileged status. Article 4 of the mandate had provided that ‘an appropriate Jewish agency shall be recognized as a public body for the purpose of advising and co-operating with the Administration of Palestine in such economic, social and other

matters as may affect the establishment of the Jewish national home. . . .’ The Zionist Organization which later became the Jewish Agency was recognized as such agency, and thus the Jewish Agency, a foreign body composed of Zionists, became a government within a government. On two occasions during the mandate the British Government indicated an intention to establish self-government in Palestine, but in both cases such intention did not materialize and the plan was defeated because of Zionist opposition. The first attempt was made in 1922. The Palestine Order-in-Council, 1922, which embodied what may be described as the organic law of Palestine during the mandate, had envisaged in Article 17 the constitution of a Legislative Council. The Legislative Council would consist of the High Commissioner and twenty-two members, ten of whom were to be appointed official members and twelve to be elected non-official members.<sup>31</sup> Elections took place in 1923 but were soon declared null and void and no further elections were held thereafter.<sup>32</sup> Article 17 of the Palestine Order-in-Council, 1922, was then repealed and replaced by a provision giving the British High Commissioner full powers of legislation.<sup>33</sup> The half-hearted attempt made by the British Government to grant some semblance of autonomy to the people of Palestine by the establishment of a Legislative Council had failed because the Palestine Arabs claimed that it was undemocratic for the British Government not to recognize majority rule in self-governing institutions and because the Zionist Jews strongly opposed the concession of any form of self-government to the Palestine Arabs. Again in 1939 the British Government indicated its intention to establish self-government in Palestine. In The White Paper issued in 1939 the British Government declared its intention to limit Jewish immigration to 75,000 over the next five years and to grant to Palestine its independence after ten years.<sup>34</sup> This White Paper was violently opposed by the Zionist Jews, who had other plans for the future of Palestine. They organized a campaign of violence against the Government and, as a result, the realization of the promise of the independence of Palestine contained in The White Paper was eventually defeated.

The other purpose of the mandate, namely, to give effect to the Balfour Declaration by ‘placing the country under such political, administrative and economic conditions as will secure the establishment of the

<sup>31</sup> Drayton, *The Laws of Palestine* (Waterlow and Sons, London, 1934), Vol. III, p. 2574.

<sup>32</sup> Drayton, *ibid.*, p. 2593. <sup>33</sup> Drayton, *ibid.*, p. 2591. <sup>34</sup> *Cmd.* 6018, May 17 1939.



Jewish national home', was successfully implemented. This was achieved in plain disregard of 'the rights and position' of the original inhabitants. The Mandatory Government opened the gates of Palestine to Jewish immigration despite the violent opposition and continuous protests of its Arab inhabitants. Jewish immigration in Palestine was inspired, artificially promoted and financed by Zionist organizations with a political objective: the domination of Palestine and the establishment of a Jewish state.

At first, there was not a strong response to Zionist efforts to increase Jewish emigration to Palestine. The Zionists were helped, however, by the advent of the Nazi regime in Germany and by the Nazi oppressions of the Jews. The only limitation which the British Government at a later date placed upon Jewish immigration in Palestine was the so-called test of 'economic absorptive capacity'. This limitation, however, did not unduly restrict Jewish immigration nor protect the Arab majority against the legal and political erosion of its rights and position. Jewish 'legal' immigration was supplemented by a massive 'illegal' immigration which offset the effect of any official limitation upon the number of Jewish immigrants.<sup>35</sup> The result was the establishment by artificial means and against the will of the original inhabitants of a Jewish political and demographic nucleus which for twenty centuries had not existed in Palestine. Within a quarter of a century the Jewish population of Palestine increased more than tenfold. Here is the picture:

Year	Moslems	Christians	Jews	Others	Total
1918	574,000	70,000	56,000 <sup>36</sup>	—	700,000
1922 (census)	590,900	73,014	83,794	9,474	757,182 <sup>37</sup>
1931 (census)	759,712	91,398	174,610	10,101	1,035,821 <sup>38</sup>
1946	{ 1,076,780 127,000 (bedouin) 1,203,780	145,060	608,230	15,490	1,972,560 <sup>39</sup>

<sup>35</sup> As to Jewish 'illegal' immigration into Palestine and its estimated number, see *A Survey of Palestine*, published by the Government of Palestine, Vol. I, p. 210.

<sup>36</sup> Government of Palestine, *Survey of Palestine*, Vol. I, p. 144.

<sup>37</sup> Government of Palestine, *Statistical Abstract of Palestine*, 1941, p. 12.

<sup>38</sup> *Ibid.*, p. 12.

<sup>39</sup> Appendix I to Report of Sub-Committee I, Official Records of the 2nd Session of the General Assembly, Ad Hoc Committee on the Palestinian Question, p. 270.

Thus, by means of an immigration forced upon the country against the will and the wishes of the majority of the original inhabitants, the number of the Jews in Palestine was increased from one-twelfth to one-third of the total population. There can be no doubt that such a substantial alteration of the demographic structure in Palestine with all its political implications quite obviously caused a serious prejudice to 'the rights and position of the other sections of the population' contrary to the terms and objectives of the mandate.

The original inhabitants of Palestine, Moslems and Christians, opposed the flow of Jewish immigration into their country. Their opposition took the form of protests, demonstrations, civil disturbances and even an armed rebellion against the Mandatory Government.<sup>40</sup> After each serious disturbance the British Government appointed a commission of inquiry to determine its causes, as if these causes were not clear enough already. A military Commission of Inquiry into the disturbances of April 1920 found that the reasons for the trouble were Arab disappointment at the non-fulfilment of the promises of independence which were given to the Arabs during the war, Arab belief that the Balfour Declaration implied a denial of the right of self-determination, and fear that increase in Jewish immigration would lead to their economic and political subjection to the Jews.<sup>41</sup> Another Commission of Inquiry, headed by the Chief Justice, reported that the fundamental cause of the disturbances of May 1921 was a feeling of discontent and hostility among the Arabs due to political and economic causes connected with Jewish immigration. The Commission rejected the Jewish suggestion that the riots had been artificially stimulated by the 'effendi' (the well-to-do) class and declared that the root of the trouble lay in the Arab fear of the consequence of Jewish immigration, which they regarded as an ultimate means of Arab political and economic subjection.<sup>42</sup> The Commission of Inquiry, headed by Sir Walter Shaw, which inquired into the riots of August 1929 made findings similar to the Commission of 1921.<sup>43</sup> The Royal Commission, named the Peel Commission, which investigated the unrest in 1936 found that the underlying causes of the disturbances

<sup>40</sup> Major riots and disturbances occurred in 1920, 1921, 1929, 1933 and almost continuously from 1936 until 1939 when they assumed the proportions of a rebellion.

<sup>41</sup> Government of Palestine, *A Survey of Palestine*, Vol. I, p. 17.

<sup>42</sup> *Cmd.* 1540; Government of Palestine, *A Survey of Palestine*, Vol. I, pp. 18-19.

<sup>43</sup> *Cmd.* 3530; Government of Palestine, *A Survey of Palestine*, Vol. I, pp. 24-25.

were the desire of the Arabs for national independence and their hatred and fear of the establishment of the Jewish national home.<sup>44</sup> The Peel Commission recommended the termination of the mandate and partition of the country between Arabs and Jews, save for enclaves covering Jerusalem, Bethlehem and Nazareth.<sup>45</sup> On further investigation of the form and practicabilities of partition by another Commission, called the Woodhead Commission, the British Government came to the conclusion that the difficulties involved in the proposal to create independent Arab and Jewish states within Palestine were so great as to make partition impracticable.<sup>46</sup>

Only in 1939 did the British Government appear to realize that continued Jewish immigration into Palestine caused serious prejudice to the rights and position of the Palestine Arabs which it was its duty under the mandate to safeguard. Consequently it issued the White Paper previously mentioned, in which it declared its intention to limit Jewish immigration to 75,000 persons over the next five years and to grant to Palestine its independence after ten years. After the period of five years no further Jewish immigration would be allowed except with Arab consent.<sup>47</sup> But the Zionist Jews fought this White Paper by a campaign of violence. The three Jewish secret para-military organizations, the Haganah, the Irgun Zvai Leumi and the Stern Gang, joined forces to commit a series of acts of violence against the British and the Palestine Government in order to intimidate the British Government and secure the withdrawal of its limitation upon Jewish immigration into Palestine.<sup>48</sup>

Concurrently with their campaign the Zionists exerted all efforts to influence American public opinion and to bring pressure upon the American Government in order to secure their support for large-scale Jewish immigration into Palestine. On the one hand, they quoted certain Biblical promises to the descendants of Abraham as if the Jews, and particularly the Jews of Eastern Europe, who then constituted the largest

<sup>44</sup> Government of Palestine, *A Survey of Palestine*, Vol. I, p. 38.

<sup>45</sup> *Cmd.* 5479.

<sup>46</sup> *Cmd.* 5854.

<sup>47</sup> *Cmd.* 6018, May 17 1939.

<sup>48</sup> For details about these outrages, see Government of Palestine, *A Survey of Palestine* Vol. I, pp. 56–57; The British Statement on Acts of Violence, *Cmd.* 6873 (1946); also S. N. Fisher, *op. cit.*, p. 579; G. Kirk, *The Middle East 1945–1950* (Oxford University Press, London, 1954), pp. 209–213 and 218–223.

proportion of Jewish immigrants to Palestine, were his only descendants. On the other hand, they pointed to the Nazi persecution of the Jews during the Second World War. This persecution evoked deep sympathy for the displaced Jews of Europe and gave rise to a massive 'guilt complex', particularly among Americans. This 'guilt complex' was prompted by the feeling that the American refusal to open the gates of the U.S.A. to Jewish immigration before 1939 had contributed to the vast dimensions of the tragedy and the Americans now felt an obligation to offer recompense for the horrors which the Jews of Europe suffered at the hands of the Nazis. But this recompense was to be offered at the expense of the people of Palestine, who were not responsible for the crimes committed against the Jews in Europe. This generosity at the expense of others is illustrated by the fact that, while President Truman requested in 1946 the admission of 100,000 Jewish immigrants into Palestine, only 4,767 displaced persons and refugees from Europe were admitted into the United States between December 22 1945 and October 21 1946.<sup>49</sup> In addition to the Bible and Nazi persecution, the Zionists also exploited the 'Jewish vote' in the American elections. As a result, there developed a strong American pressure upon the British Government to secure a larger measure of Jewish immigration to Palestine. This matter became a bone of contention between the American and British Governments. Accordingly, an Anglo-American Committee of Inquiry was formed in 1946 to suggest a solution. The Committee found that hostility between Jews and Arabs made the establishment of an independent Palestine impossible at the moment, and, therefore, advised that the British Government retain the mandate until a trusteeship agreement under the United Nations could be arranged. Meanwhile the Committee recommended the admission to Palestine of 100,000 European Jews as requested by President Truman.<sup>50</sup>

Unable to permit any further Jewish immigration into Palestine against the wishes of the majority of its inhabitants, plagued by Zionist demands for more and more immigrants, subjected to pressure by the United States and harassed by the Zionist campaign of violence, the Mandatory Government in 1947 referred the question of the future government of Palestine to the United Nations. The mandate was thus

<sup>49</sup> G. Kirk, *op. cit.*, p. 189.

<sup>50</sup> Report of Anglo-American Committee of Inquiry, April 20 1946, U.S. Government Printing Office, Washington.

coming towards an inglorious and tragic end after it had failed to achieve the purposes underlying Article 22 of the Covenant of the League of Nations. Its principal result was that it had allowed the introduction and implantation in Palestine of a foreign people who as a well-organized and militant minority were determined to wrest the country from its indigenous inhabitants.

### 3 THE UNITED NATIONS RESOLUTION OF NOVEMBER 29 1947 FOR THE PARTITION OF PALESTINE

The question of the future government of Palestine was the subject of discussion at a special session of the General Assembly of the United Nations held in April and May 1947. On May 15 1947 the General Assembly appointed the United Nations Special Commission on Palestine (UNSCOP) to consider the problem of Palestine and to submit such proposals as it might consider appropriate for its solution. UNSCOP submitted its report to the General Assembly in September 1947. Two plans for the solution of the Palestine problem, a majority plan and a minority plan, were offered in UNSCOP's report. The majority plan proposed the termination of the mandate, the partition of Palestine and the creation of an Arab State, a Jewish State, and a *corpus separatum* for the City of Jerusalem, which would come under a special international regime to be administered by the United Nations. The Arab and Jewish states would be linked by an economic union. The minority plan also suggested the termination of the mandate but proposed the establishment of a federal state consisting of an Arab State and a Jewish State with Jerusalem as the capital.

The Arabs opposed the proposal to partition Palestine on the ground that it was incompatible with law and justice and the principles of democracy. Partition was against the wishes of the majority of the inhabitants. The Arabs also questioned the legal competence of the United Nations to recommend the partition of their ancestral homeland.<sup>51</sup> On several occasions they suggested that the legal issues affecting the Palestine Question, including the competence of the United Nations to

<sup>51</sup> The absence of competence in the United Nations to decide the partition of Palestine and the ineffectiveness of the partition resolution to vest any territorial title in Israel will be discussed in Appendix XI.



recommend or to enforce any plan of partition of Palestine contrary to the wishes of its inhabitants, be referred to the International Court of Justice for an advisory opinion. But the political forces which were then attempting to secure a favourable vote on partition at any cost and by any means were not anxious to have their efforts hampered by an adverse judicial ruling. They were able each time to vote down every proposal to refer a legal issue to the International Court.<sup>52</sup> It has been remarked that the rejection of the proposals to refer the question of United Nations jurisdiction over the Palestine situation to the International Court of Justice 'tends to confirm the avoidance of international law' in this regard.<sup>53</sup>

Despite Arab opposition the General Assembly adopted on November 29 1947, by a vote of 33 to 13 with 10 abstentions, a resolution for the partition of Palestine basically on the lines suggested by the majority report with some territorial modifications.<sup>54</sup> The territories allocated to the proposed Arab and Jewish states respectively under the partition resolution are shown on the map annexed as Appendix II.

It is generally known that the U.N. vote in favour of partition was secured by Zionist pressures and power politics.<sup>55</sup> 'Several days before the vote was taken it appeared that the partition plan might not obtain the necessary two-thirds majority of those voting; but several postponements gave Zionists and sympathizers among United States officialdom opportunity to put pressure on China, Ethiopia, Greece, Haiti, Liberia and the Philippines, all of which intended to vote against partition.

<sup>52</sup> For several denials in 1947 by the U.N. of requests for an advisory opinion by the International Court of Justice on the Palestine Question, see U.N. Documents A/AC 14/21, October 14 1947; A/AC 14/24, October 16 1947; A/AC 14/25, October 16 1947 and A/AC 14/32, November 11 1947. See, in particular, the rejection by the Ad Hoc Committee on November 24 1947 by 21 votes to 20 of the recommendation of Sub-Committee 2 that an advisory opinion of the International Court of Justice be sought on the legal issues involved in the partition of Palestine (Official Records of the 2nd session of the General Assembly, Ad Hoc Committee on the Palestinian Question, p. 203).

<sup>53</sup> Pitman B. Potter, *The Palestinian Problem before the United Nations*, *AJIL*, Vol. 42, 1948, p. 860.

<sup>54</sup> Resolution 181 (II). For a concise review of the Palestine Question before the United Nations, see L. Larry Leonard, *The United Nations and Palestine*, International Conciliation, October 1949, pp. 603-786, published by the Carnegie Endowment for International Peace, New York.

<sup>55</sup> See in this regard Kermit Roosevelt, *The Partition of Palestine: A Lesson in Pressure Politics*, 2 *Middle East Journal* (1948), p. 1.



Greece, alone, withstood the pressure.<sup>56</sup> President Truman used his personal and official influence to secure a U.N. vote in favour of partition.<sup>57</sup> Mr. Pitman B. Potter has observed: 'The United States came close to exercising undue influence to get the partition plan adopted. . . .'<sup>58</sup> Dr. Stephen B. L. Penrose, President of the American University of Beirut, has criticized the American pressure which was used to secure adoption of the partition resolution in the following terms:

The political maneuvering which led to the final acceptance of the United Nations General Assembly of the majority report of UNSCOP provides one of the blacker pages in the history of American international politics. There can be no question but that it was American pressure which brought about the acceptance of the recommendation for Partition of Palestine with Economic Union voted by the General Assembly on November 29 1947. It was this effective American pressure for partition which is largely responsible for the terrific drop which American prestige took in all parts of the Arab and Muslim world.<sup>59</sup>

The U.N. resolution to partition Palestine was one of great injustice to the original inhabitants of the country both in respect of the principle of partition and in the manner of the division.

As regards the principle of partition, there can be no doubt that the very concept of the division of the country between its original inhabitants and a body of newcomers who had been allowed during the British mandate to enter and settle therein against the wishes of the people of Palestine because their alleged ancestors had lived in it a few thousand years before was fundamentally wrong, unjust and undemocratic.

Moreover, the principle of partition could not be justified on the basis either of Jewish population or of Jewish ownership of land.

In terms of population, the Jews constituted in 1947 less than one-third

<sup>56</sup> S. N. Fisher, *The Middle East* (Routledge and Kegan Paul, London, 1959), p. 583.

<sup>57</sup> As to President Truman's exertions to secure that the votes of states amenable to U.S. influence be given in favour of partition, see *The Forrestal Diaries*, pp. 309, 323, 344, 348, 357, and Under-Secretary of State, Sumner Welles, *We Need Not Fail*, p. 63. See also John H. Davis, *The Evasive Peace* (John Murray, London, 1968), p. 37.

<sup>58</sup> Pitman B. Potter, *The Palestine Problem before the United Nations*, *AJIL* (1948), Vol. 42, p. 861.

<sup>59</sup> Stephen B. L. Penrose, *The Palestine Problem: Retrospect and Prospect* (American Friends of the Middle East, New York), p. 10.

of the inhabitants of Palestine. Only one-tenth of them were part of the original inhabitants and belonged to the country. In fact, this original Jewish Palestinian community—consisting of Arabic-speaking and strictly Orthodox Jews—did not favour partition nor the establishment of a Jewish state.<sup>60</sup> The rest of the Jewish population was composed of foreign immigrants originating mostly from Poland, U.S.S.R. and Central Europe.<sup>61</sup> Only one-third of these Jewish immigrants had acquired Palestinian citizenship.<sup>62</sup> Excluding the Jews of Palestinian origin, the Jewish community then existing in Palestine was, therefore, mainly composed of foreigners—both in origin and in nationality. Nowhere, except in Palestine, have foreign immigrants been allowed to break up the territorial integrity of the country in which they came to live. The legal implications arising from the alien character of the majority of the Jews living in Palestine who proclaimed in 1948 the state of Israel will be considered in Appendix XI.

Even in the proposed Jewish state, the majority of the inhabitants were Arabs. The creation of a Jewish State in a territory whose population was predominantly Arab was criticized by Sub-Committee 2 to the Ad Hoc Committee on the Palestinian Question:

It will thus be seen that the proposed Jewish State will contain a total population of 1,008,800, consisting of 509,780 Arabs and 499,020 Jews. In other words, at the outset, the Arabs will have a majority in the proposed Jewish State.<sup>63</sup>

The Sub-Committee further analysed in detail the respective Arab and

<sup>60</sup> A few Jews of non-Palestinian origin also opposed the partition of Palestine. Among the most prominent Jewish opponents of the partition of Palestine was Dr. Judah Magnes, Rector of the Hebrew University of Jerusalem, who advocated a bi-national state: see Alfred Lilienthal, *What Price Israel?* (Henry Regnery Company, Chicago, 1953), pp. 51–52, 73, 80 and 172.

<sup>61</sup> See Government of Palestine, *Statistical Abstract, 1944–1945*, p. 42.

<sup>62</sup> The number of Jewish immigrants that entered Palestine from 1920 until 1945 was about half a million persons. Notwithstanding the facilitation by the Government of Palestine of the acquisition of Palestinian citizenship by Jewish immigrants during the mandate only 132,616 of them had acquired citizenship by the year 1945: see immigration and naturalization figures in *Statistical Abstract of the Government of Palestine, 1944–1945*, pp. 36 and 46, and *A Survey of Palestine*, also published by the Government of Palestine, Vol. I, p. 208.

<sup>63</sup> Report of Sub-Committee 2 to the Ad Hoc Committee on the Palestinian Question, U.N. Document A/AC 14/32, November 11 1947, Official Records of the 2nd session of the General Assembly, Ad Hoc Committee, 1947, p. 291.

Jewish population figures in the three sections of the proposed Jewish State as follows:

65. It is even more instructive to consider the relative proportion of Arabs and Jews in the three regions comprising the area of the proposed Jewish State. In its southern section—the Beersheba area—there are 1,020 Jews as against an Arab population of 103,820. In other words, the Jewish population is less than 1 per cent of the total. It is surprising that the majority of an international committee such as the Special Committee should have recommended the transfer of a completely Arab territory and population to the control of the Jews, who form less than 1 per cent of the population, against the wishes and interests of the Arabs, who form 99 per cent of the population. Similarly, in the northern section of the proposed Jewish State—eastern Galilee—the Arab population is three times as great as the Jewish population (86,200 as against 28,750). Only in the central section of the proposed Jewish State—the plains of Sharon and Esdraelon—have the Jews a majority, the respective population figures being 469,250 Jews and 306,760 Arabs (these figures do not include Bedouins, as separate estimates are not available for this area). Even in this region, the majority is more apparent than real because almost half the Jewish population is located in the Jewish towns of Tel Aviv and Petah Tiqva.<sup>64</sup>

The geographical distribution and percentages of the Arab and Jewish population in 1946 are shown on the U.N. chart annexed as Appendix III.

In terms of ownership of land—exclusive of urban property—the Palestine Government's Village Statistics, annexed hereto as Appendix IV, indicate that the Jews owned in 1945 only 1,491,699 dunoms<sup>65</sup> of land out of a total area of 26,323,023 dunoms in Palestine.<sup>66</sup> Jewish land ownership represented a proportion of 5.66 per cent of the total area of the country. The figure of land in Jewish possession on June 30 1947 was given by Sub-Committee No. 1 of the Ad Hoc Committee on the Palestinian Question as being 1,802,386 dunoms.<sup>67</sup> This figure, however, represents land in Jewish possession rather than in Jewish

<sup>64</sup> Report of Sub-Committee 2 to the Ad Hoc Committee on the Palestinian Question, Document A/AC 14/32, November 11 1947, pp. 291–292.

<sup>65</sup> One dunom equals one thousand square metres. Four dunoms equal one acre approximately.

<sup>66</sup> Appendix VI to the Report of Sub-Committee 2 to the Ad Hoc Committee on the Palestinian Question, U.N. Document A/AC 14/32, November 11 1947, p. 270.

<sup>67</sup> Official Records of the Second Session of the General Assembly, 1947, A/AC 14/34.

ownership and includes 200,000 dunoms of public lands leased by the Government of Palestine to the Jews in the Haifa Bay area. Even if one takes as a basis land in Jewish possession instead of ownership, the percentage of total Jewish land holdings still remains at the low figure of 6.8 per cent only of the area of Palestine.

The Village Statistics establish also that land in Arab ownership amounted to 12,574,774 dunoms, representing 47.77 per cent of the total area of the country. This figure does not include large tracts of grazing land which belonged to Arab villages and which were classified under public lands. The balance, i.e., 46 per cent of the total area, represented public lands. The distribution of land ownership between Arabs and Jews by sub-districts in Palestine is shown in U.N. map No. 94 (b) of August 1950 annexed as Appendix V.

On the other hand, the manner of the division of the territory between the two communities was extremely unfair to the Palestine Arabs. The disproportion between the area of land owned by the Jews and the area of Palestine allocated to the Jewish state is astounding. In disregard of the fact that the Palestine Arabs constituted the majority of the population and despite the predominance of Arab ownership of the land, the partition resolution recommended that an area equivalent to 14,500 square kilometres, corresponding to 5,700 square miles, out of a total area of 26,323 square kilometres, equivalent to roughly 10,000 square miles, i.e., 57 per cent of the territory of Palestine, be allocated to the proposed Jewish State as against 11,000 square kilometres or 4,300 square miles, i.e., 43 per cent, to the proposed Arab State.<sup>68</sup> In effect, this meant that the Jews, who represented less than one-third of the population and owned about 6 per cent of the land, were allocated almost two-thirds of the country, i.e., a territory which was almost ten times the area owned by them. Furthermore, the part of Palestine allocated to the Palestine Arabs was mostly hilly, 'desert and unproductive country, while most of the fertile coastal belt from Acre in the North to Isdud in the South was allocated to the Jewish State.

<sup>68</sup> UNSCOP had even originally proposed that 3,600 square miles be assigned to the Arab state as compared with 6,400 square miles to the Jewish state.

## The emergence of Israel and the Palestine war (1948)

The United Nations partition resolution touched off a wave of protests, demonstrations and disturbances in Palestine. The chronology of events in Palestine during the last six months which preceded the end of the mandate reads like a sequence of horrors. This chronology is annexed as Appendix VI. The Arabs were determined to resist the partition of their country. The Jews were equally determined to create a Jewish state in Palestine. The Palestine Commission appointed by the General Assembly in its resolution of November 29 1947 to implement the partition plan had reported on the steadily deteriorating situation in Palestine. The Security Council considered the situation between February 24 and April 1 1948 without any concrete results. On March 19 1948 Mr. Warren R. Austin, the U.S. representative at the U.N., asked the Security Council to suspend action on the partition plan and to call a special session of the General Assembly at once to work on a new solution. He advocated a temporary trusteeship for Palestine under the Trusteeship Council until the establishment of a government approved by Arabs and Jews. On March 30, he presented to the Security Council a resolution asking that the General Assembly be convened 'to consider further the question of the future government of Palestine'. On April 16 1948 a second special session of the General Assembly was convened to consider further the question of Palestine. Discussions both at the Security Council and at the second special session of the General Assembly revealed that some governments questioned the wisdom of the partition plan. The United Kingdom, as the retiring Mandatory Power, declared that it was not prepared to participate in the enforcement of a settlement which was not acceptable to both Arabs and Jews and further asserted that lack of co-operation on its part sprang from the fact that the partition had not been impartially conceived. The Jews opposed any reversal of attitude concerning partition. The suggestion made by the



United States Government for the establishment of a temporary U.N. trusteeship over Palestine was attacked by the Jews as 'a shocking reversal of the United States position'. Eventually the idea of a trusteeship was abandoned and the General Assembly ended its second special session on May 14 1948 with a resolution appointing a Mediator to promote a peaceful adjustment of the future of Palestine. The United Nations were thus unable to prevent the explosion of the Palestine conflict which had been brewing since the adoption of the partition resolution.

For this conflict, Jews and Arabs were differently and unevenly prepared.

Politically, the Jews had more cohesion than the Arabs. Financially, they possessed much greater resources. Militarily, they were better prepared, trained and equipped for an armed conflict. For several years, they had enforced a compulsory military training of all Jews able to carry arms. Most Jewish immigrants were already militarily trained since they came from countries which applied military service. The Jews also could rely upon the experience of the Jewish Military Brigade which had been formed during the Second World War and upon the supernumerary police force which was set up, trained and armed by the Government of Palestine during the mandate for the protection of Jewish colonies.<sup>1</sup> In addition, the Jews had created during the mandate three illegal underground para-military organizations: the Haganah with a membership of 60,000 to 80,000, the Irgun Zvai Leumi and the Stern Gang.<sup>2</sup> The Irgun Zvai Leumi had a membership of about 5,000 to 10,000, together with several thousand sympathisers.<sup>3</sup> According to the British Government's Statement on Violence (1946), these three organizations worked in co-operation on certain operations.<sup>4</sup> Towards the end of the mandate the Jews decreed the total mobilization of Jewish manpower and converted the Haganah from an underground force into a regular army.<sup>5</sup> Between December 8 1947 and March 9 1948 the

<sup>1</sup> As regards the number and training of Jewish settlement and additional police during the mandate, see Government of Palestine, *A Survey of Palestine*, Vol. II, pp. 590-591.

<sup>2</sup> For details about these three Jewish para-military organizations, see the *Report of the Anglo-American Committee of Enquiry on Palestine*, 1946, pp. 40-41; S. N. Fisher, *The Middle East* (Routledge and Kegan Paul, London, 1960), p. 579; G. Kirk, *The Middle East 1945-1950* (Oxford University Press, London, 1954), pp. 4, 194, 195; Palestine Government, *A Survey of Palestine*, Vol. II, pp. 601-606.

<sup>3</sup> *Zionist Review*, May 30 1947, p. 4.

<sup>4</sup> *Cmd.* 6873, p. 3.

<sup>5</sup> G. Kirk, *op. cit.*, p. 247.



Haganah had registered and called to active service all Palestine Jews between the ages of 17 and 25.<sup>6</sup> Moreover, no Jew was permitted by the Zionist authorities to leave the country 'without an exemption from military service issued by the Haganah and a receipt for taxes paid for military financing'.<sup>7</sup> In addition to possessing a trained combatant force, the Jews possessed considerable stocks of light arms: some of those arms had been given to them by the Palestine Government for the defence of their settlements; the larger part, however, was smuggled during the mandate.<sup>8</sup> Some arms, including tanks, were even bought by the Haganah from British forces upon their evacuation of Palestine.<sup>9</sup>

In sharp contrast, the Palestine Arabs possessed no military organization or training. Their military potential depended exclusively upon certain groups of volunteers from among them with little or no military training. These groups were not even centrally organized.<sup>10</sup> The largest group of volunteers was called the Arab Liberation Army and had an estimated strength of 6,000 to 7,500 men.<sup>11</sup> Unlike the Jews, the bulk of the Palestine Arab population was not mobilized nor did it possess any military training. Accordingly, the Palestine Arab combatant force never matched in numbers, training or organization the Jewish combatant force.<sup>12</sup>

Other factors also operated against the Palestine Arabs and greatly diminished their chances in any armed conflict with the Jews. By reason of their opposition to the British mandate and to the establishment of a Jewish national home in Palestine—such opposition having on several occasions led to violent disturbances, riots and even rebellion against the British Government—the latter had followed the policy of systematically disarming the Arab population. Thus, between 1935 and 1947, over 7,600 rifles were confiscated by the Palestine Government from the Arabs, while only 135 rifles were confiscated from the Jews.<sup>13</sup> Moreover,

<sup>6</sup> *Middle East Journal* (1948), pp. 215 and 329.

<sup>7</sup> S. N. Fisher, *op. cit.*, p. 584.

<sup>8</sup> The Palestine Government recognized that there was 'ample evidence of arms smuggling by the Jews' (*A Survey of Palestine*, Vol. II, p. 594).

<sup>9</sup> S. N. Fisher, *op. cit.*, p. 586.

<sup>10</sup> As to the contrast between the respective military position of Arabs and Jews in 1948, see S. N. Fisher, *op. cit.*, pp. 585–586.

<sup>11</sup> G. Kirk, *op. cit.*, p. 260.

<sup>12</sup> See also on Arab military unpreparedness, Musa Alami, *The Lesson of Palestine*, *Middle East Journal* (1949), p. 373.

<sup>13</sup> Government of Palestine, *A Survey of Palestine*, Vol. II, pp. 594–595.

special emergency legislation was enacted to deal with the possession or carrying of firearms, and courts were established in order to punish this severely, even with death. Thousands of Palestinian Arabs were tried and sentenced by military courts for such offences.

On May 14 1948 the hour struck. The British High Commissioner left Palestine and the British mandate formally ended.

On the same day the Jewish state of Israel was proclaimed and a Provisional Government was formed. The Haganah became officially the army of the new state. Thereupon, military hostilities commenced between Israel and its four neighbouring Arab states, namely, Egypt, Transjordan, Syria and Lebanon. The Arab states put into the field 'four armies with no central command, no concerted aim, and no serious and sustained will to win', to face the Israelis, who had proceeded with a total mobilization of their manpower on modern lines.<sup>14</sup> The Arab armies which then moved into Palestine represented what in fact were token forces, a total of about 20,000 men.<sup>15</sup>

Three days after the intervention of the Arab states in Palestine, the United States Government submitted to the Security Council a resolution under Article 39 of the Charter ordering the belligerents to cease fire within thirty-six hours. The British Government questioned the desirability of invoking Article 39 of the Charter and thought that there should be a thorough study of the juridical status of Palestine after the end of the mandate. The United States proposal was not adopted, but on May 22 1948 the Security Council called upon the Governments concerned to order a cease-fire within thirty-six hours. Then on May 29 1948 the Security Council called for a truce for a period of four weeks during which the Governments should refrain from introducing into their countries men of military age or war material. The late Count Bernadotte, the United Nations Mediator, arranged for the month's truce to begin on June 11 1948.

The truce lasted from June 11 1948 until July 7 1948. 'The Israelis disregarded their undertaking not to import war materials during the truce, and took ample advantage of that respite to rectify their almost total

<sup>14</sup> Albert Haurani, Arab Refugees and the Future of Israel, *The Listener*, July 28 1949; S. G. Thicknesse, *Arab Refugees*, p. 2 (Royal Institute of International Affairs, London, 1949).

<sup>15</sup> For an account of military operations during the Palestine war and the respective military strength of Arabs and Jews, see Edgar O'Ballance, *The Arab-Israeli War, 1948* (Faber, London, 1956).

lack of combat aircraft, artillery and heavy armoured vehicles. . . .<sup>16</sup> On the expiry of the truce, hostilities were resumed. The Israelis not only occupied the areas allotted by the partition resolution to the Jewish State in the northern and central parts of the country but also seized the whole of Western Galilee as well as Lydda, Ramleh and a large part of central Palestine which the Arab Legion of Transjordan had evacuated. All of these areas had been allocated by the partition resolution to the Arab state. This time the fighting lasted only ten days, for on July 15 1948 the Security Council ordered the parties to desist from further military action. The second truce came into force on July 18 1948 and this time it was not subject to a time limit. The resolution stated that the truce should remain in force until a peaceful adjustment of the future of Palestine was reached, and charged Count Bernadotte, the United Nations Mediator, to supervise its observance.<sup>17</sup>

Count Bernadotte was unable to pursue his efforts to secure a peaceful settlement between the parties for he was assassinated with United Nations observer Colonel André Sérot at Jerusalem on September 17 1948 by Jewish terrorists. However, one day prior to his assassination he had completed and signed his report which recommended that the United Nations should order the repatriation of the Palestine refugees and make certain territorial modifications in the partition plan.<sup>18</sup>

The Israelis were not to be contained within any territorial limits by the truce ordered by the Security Council on July 15 1948. They found pretexts to expand in breach of the truce and they undertook several offensives during which they seized more territory. On October 15 1948 the Israelis, in breach of the truce, launched a general offensive against the Egyptians on the southern front. 'The Israelis, now enjoying for the first time a superiority in the air, made substantial gains of territory, capturing Beersheba on the 21st, Bait Hanun (only five miles north-east of Gaza) on the 22nd, and Bait Jibrin (in the direction of Hebron) soon afterwards.'<sup>19</sup>

The parties accepted a cease-fire with effect from October 22 1948 but on October 31 the Israelis defied a warning by the U.N. Chief of Staff and launched an attack on the Lebanese front and occupied fifteen

<sup>16</sup> G. Kirk, *op. cit.*, p. 277.

<sup>17</sup> Resolution No. 54 (1948), July 15 1948.

<sup>18</sup> U.N. Document A/648, September 16 1948.

<sup>19</sup> G. Kirk, *op. cit.*, p. 287.

villages situated within Lebanese territory.<sup>20</sup> Also, in November, they moved forward in the Negeb in the direction of the Gulf of Aqaba.

On December 22 1948 the Israelis launched another offensive in the south, occupied the area of Auja and made substantial penetration into Sinai.<sup>21</sup>

This was not their last violation of the truce. On March 10 1949, in breach of their Armistice Agreement with Egypt dated February 24 1949, the Israelis again moved further south until they reached the Gulf of Aqaba and occupied the Palestine Police post of Umm Rashrash, which they afterwards named Eilat.<sup>22</sup>

The Palestine war of 1948 was concluded by four Armistice Agreements signed by Israel with Egypt on February 24 1949, with Lebanon on March 23 1949, with Jordan on April 3 1949 and with Syria on July 20 1949. 'It was a short war', Commander Hutchison has observed, 'marked by outside intervention, Arab disunity and unlimited aid to Israel from the West, in addition to timely and substantial shipments of arms from behind the Iron Curtain, primarily from Czechoslovakia. This aid, sent in against the orders of the United Nations, was sufficient to turn the tide of battle and to grant Israel considerable land gains.'<sup>23</sup>

An examination of the course of events in Palestine in 1948 reveals three significant facts which have been blurred by Zionist propaganda.

First, before the end of the mandate and, therefore, before any possible intervention by the Arab states, the Jews, taking advantage of their superior military preparation and organization, had occupied a number of Arab cities and seized a considerable part of the territory of Palestine. The chronology of events in Palestine during the six months preceding the end of the mandate shows that Jewish forces had seized and occupied most of the Arab cities of Palestine before May 15 1948. Tiberias was occupied on April 19 1948, Haifa on April 22, Jaffa on April 28, the Arab quarters in the New City of Jerusalem on April 30, Beisan on May 8, Safad on May 10 and Acre on May 14 1948.<sup>24</sup>

Secondly, the Jews showed no respect, either before or after May 15

<sup>20</sup> G. Kirk, *op. cit.*, p. 288.

<sup>21</sup> G. Kirk, *op. cit.*, p. 292.

<sup>22</sup> G. Kirk, *op. cit.*, p. 297.

<sup>23</sup> E. H. Hutchison, *Violent Truce* (Devin-Adair Company, New York, 1956), p. 95.

<sup>24</sup> See Appendix VI and also G. Kirk, *op. cit.*, pp. 262-266.



1948, for the territorial boundaries fixed by the partition resolution for the proposed Arab and Jewish states. They not only occupied the territory of the proposed Jewish state but also seized a substantial portion of the territory reserved for the proposed Arab state. The areas seized by Jewish forces before and after May 15 1948, in excess of the territorial limits of the Jewish state as fixed by the partition resolution, include Western Galilee, the New City of Jerusalem, the area west of Jerusalem to the Mediterranean, the Arab cities of Jaffa, Acre, Lydda and Ramleh and several hundred Arab villages. These areas are shown in Appendix VII. The total areas which the Israelis seized in 1948 and 1949 amounted to 20,850 square kilometres<sup>25</sup> out of 26,323 square kilometres representing the total area of Palestine. This meant that Israel increased the territory of the Jewish state as proposed by the United Nations from 14,500 square kilometres to 20,850 square kilometres and by the same act decreased the territory of the proposed Arab state from 11,800 square kilometres to about 5,400 square kilometres. The total area which thus fell under Israeli control amounted to almost 80 per cent of the territory of the country. This is in striking contrast with the 6 per cent total Jewish land ownership in the whole of Palestine.

The Arabs, on their part, were left with one-fifth of the original territory of their country. And what remained to them was the bone. It has been remarked that '3,000 out of the 8,000 square kilometres in Arab control after 1948 in Central Palestine are mountainous desert. The remaining 5,000 square kilometres, with the exception of some land around Nablus and Jericho, are among the most infertile in the whole of Palestine outside the Negeb'.<sup>26</sup>

In contrast, the Palestine Arabs did not seize any of the territories reserved for the Jewish state under the partition resolution. Even when the Arab states did intervene militarily on May 15 1948, an express restriction was imposed on one of their armies in this regard. The Arab Legion of Transjordan was under orders from its British command not to move into territory awarded to the Jews by the United Nations partition plan.<sup>27</sup> Sir John Glubb, also known as Glubb Pasha, the commander of the Arab Legion, states that the Jordanians did not enter territory

<sup>25</sup> Israel Government, *Government Year-book*, English edition, 5712 (1951/1952), p. 315.

<sup>26</sup> S. G. Thicknesse, *op. cit.*, p. 22. It may be remarked that the area under Arab control in 1948 was less than 8,000 square kilometres.

<sup>27</sup> S. N. Fisher, *op. cit.*, p. 585. See also G. Kirk, *op. cit.*, pp. 270-271.

allotted by the United Nations to Israel but defended the area allotted to the Arabs.<sup>28</sup>

Thirdly, the Israelis have pretended that they did not respect the territorial limits set by the resolution of November 29 1947 because of the Arab refusal to accept partition. In actual fact, they themselves largely contributed to the defeat of the partition resolution by occupying by force, and even before the end of the mandate, the major part of the territories allocated to the Palestine Arabs by the resolution.

The result of the Palestine conflict of 1948 was summed up by the American Chairman of the Israeli-Jordan Armistice Commission in the following terms:

The brief official Palestine war of 1948–1949 is now a part of history—it settled none of the basic issues of Arab-Israeli contention. The major powers of the West and the East, losing sight of the true value of a friendly Arab World in the swirling clouds of Zionist propaganda, overran the rights of the indigenous population of Palestine—the Arabs. Every step in the establishment of a Zionist state had been a challenge to justice.<sup>29</sup>

Not only did the Palestine war of 1948 settle none of the basic issues of the Palestine Question, it created a new one: the tragedy of the Palestine refugees. During the strife which occurred before the end of the mandate and during the war that followed, more than half of the Palestine Arab population were displaced in circumstances to be discussed in greater detail in the following section.

<sup>28</sup> Glubb Pasha, *The Middle East Crisis* (Hodder and Stoughton, London, 1967), p. 39.

<sup>29</sup> Commander E. H. Hutchison, *op. cit.*, p. 95.



## The Exodus of the Palestine Refugees

### I CAUSES OF THE EXODUS

Rarely in history—at least in modern history—has a majority of the population of a country been forcibly displaced and uprooted by a militant minority of foreign origin. Yet this is what happened in Palestine in 1948. Nearly a million Palestinians then left or were forced to leave their homes, towns and villages, were robbed of their lands, properties and possessions, and became refugees without any means of livelihood. The bulk of them went to Jordan and the Gaza Strip, the remainder to Syria and Lebanon. Why did so many leave? The exodus of the Palestine refugees in 1948 was due to three causes: Jewish terrorism, expulsion, and the breakdown of security and government machinery for the preservation of law and order during the last few months of the mandate. In his Progress Report the late Count Bernadotte, United Nations Mediator for Palestine, summarized these causes as follows:

The exodus of Palestinian Arabs resulted from panic created by fighting in their communities, by rumours concerning real or alleged acts of terrorism, or expulsion.<sup>1</sup>

#### a *Jewish terrorism*

Before directing their outrages against the Arab civilian population in 1948, the Jewish terrorist organizations had for several years past turned their wrath against the British authorities in Palestine with the avowed purpose of forcing their hand on the immigration issue. The Jews had rebelled, as we have seen, against the British Government's policy declared in its White Paper of May 17 1939 of limiting Jewish immigration into Palestine to 75,000 over the next five years. Upon the expiration of this quota, Jewish organizations proceeded to instigate and

<sup>1</sup> U.N. Document A/648, p. 14.

organize the emigration of Jews from Europe to Palestine in violation of the law and also launched a terrorist campaign against the British in order to secure the repeal of the immigration restrictions. During this terrorist campaign, the Jews sabotaged public installations, dynamited government offices,<sup>2</sup> raided military stores, shot, killed, abducted and flogged British soldiers and government officials.<sup>3</sup>

Jewish terrorism was then severely condemned by Viscount Samuel, who was himself a Zionist Jew and the first High Commissioner of Palestine, in the following terms:

The Jewish people have always taken pride in the good deeds performed and the distinctions won by their members; in the number of scientists, writers, musicians, philosophers and statesmen, who have come from the Jewish ranks. . . . Today these same people have given birth to a set of assassins, who, disguised in false uniforms, waylay soldiers and policemen, hurl bombs promiscuously, blow up trains. . . . I feel bound to say . . . that the Jewish population of Palestine and the Jewish Agency are blameworthy for not having . . . extirpated this curse which has brought shame upon all members of the Jewish community.<sup>4</sup>

Upon the outbreak of violence in Palestine following the U.N. partition vote, the Jews resorted to terrorism as a weapon of psychological warfare against the Palestine Arabs with the double object of subduing their opposition to the creation of a Jewish state and of causing their eventual flight from the country. At the end of 1947 and during the remaining months of the mandate, they turned against Arab civilians the terrorist machine which they had developed and perfected in their campaign of violence against the Government of Palestine. The chronology of events in Palestine during the six months preceding the end of the mandate, annexed as Appendix VI, sheds some light upon the horrible

<sup>2</sup> The blowing up of the headquarters of the Palestine Government at Jerusalem by the Irgun Zvai Leumi on July 22 1946 during working hours will remain as the most notorious of these outrages. The terrorists deposited explosives in the basement of the King David Hotel where the government's offices were located and blew up the entire southern half of the east wing, causing the death of 91 persons and the wounding of 45 others: G. Kirk, *The Middle East 1945-1950* (Oxford University Press, London, 1954), pp. 221-222.

<sup>3</sup> See British statement on Acts of Violence, *Cmd. 6873* (1946); S. N. Fisher, *The Middle East* (Routledge and Kegan Paul, London, 1960), pp. 579, 582; G. Kirk, *op. cit.*, pp. 197, 203, 210, 215, 218, 238, 245.

<sup>4</sup> From Viscount Samuel's speech in the Palestine Debate in the House of Lords, April 23 1947, cited by J. L. Magnes, *Palestine—Divided or United*, Jerusalem, 1947, p. 89.

acts for which Jewish terrorism was responsible. Among Jewish exploits were the dynamiting of houses over the heads of their residents,<sup>5</sup> the bombing of crowds in public places,<sup>6</sup> the murder of people,<sup>7</sup> and the destruction of villages. The destruction by Israel of Arab villages after their occupation was mentioned by the late Count Bernadotte in his report to the United Nations. He said:

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. . . .<sup>8</sup>

In the same report, Count Bernadotte mentioned his investigation into the destruction of the villages of Ein Ghazal and Jaba and the representations that he made to the Israeli Government. He stated in his Report:

After intensive investigation by observers, who succeeded in locating more than 8,000 of the villagers and in establishing that less than 130 were killed or missing, the Central Truce Supervision Board found that the villages were attacked by the Jews between 18 and 25 July by air and land, and the inhabitants had been forced to evacuate; after the evacuation the villages of Ein Ghazal and Jaba were destroyed by the Israeli forces. The attack could not be excused as a police action. . . . I informed the Provisional Government of Israel that the type of military action undertaken by their military forces was unjustified, and that the measures taken involving the systematic destruction of two villages, were excessive and constituted a violation of both the spirit and letter of the terms of the truce.<sup>9</sup>

Notwithstanding the Mediator's protest, the destruction of Arab villages by Israel proceeded on a large scale. The intention was to prevent their inhabitants who had fled or had been forced to evacuate from returning to their homes. Up till November 1953 one hundred and sixty-one Arab villages had been razed to the ground after their occupa-

<sup>5</sup> For examples, see the chronology in *Middle East Journal* (1948), pp. 217, 218, 220, 329 (Appendix VI). One of the horrible examples of this kind of terrorism was the dynamiting by the Haganah of the Semiramis Hotel in a residential quarter of Jerusalem on January 5 1948 causing the death under the debris of twenty residents of Jerusalem, including the Spanish Consul: see chronology in *Middle East Journal* (1948), p. 217.

<sup>6</sup> For examples, see chronology in *Middle East Journal* (1948), pp. 216, 217 (Appendix VI).

<sup>7</sup> Progress Report of the United Nations Mediator, *op. cit.*, p. 40; G. Kirk, *op. cit.*, p. 282.

<sup>8</sup> U.N. Document A/648, September 16 1948.

<sup>9</sup> U.N. Document A/648, pp. 40-41.

tion by Israeli forces.<sup>10</sup> Many of these villages were even destroyed after the United Nations resolution of December 11 1948 calling upon Israel to permit the return of the refugees to their homes.

Outstanding in savagery among the outrages committed by Jewish organizations in Palestine against the unarmed Arab civilian population was the deliberate and unprovoked massacre on April 9 1948 of almost all the villagers of Deir Yassin, a small peaceful village on the outskirts of Jerusalem. This outrage will remain as an indelible stain on Zionism. An authentic account of this horrible massacre was given by Mr. Jacques de Reynier, the Chief Delegate of the International Red Cross who, at the risk of his life, was able to reach the village and witness the aftermath of the tragedy.<sup>11</sup> 'Three hundred persons', he said, 'were massacred . . . without any military reason nor provocation of any kind, old men, women, children, newly-born were savagely assassinated with grenades and knives by Jewish troops of the Irgun, perfectly under the control and direction of their chiefs.'<sup>12</sup> Mr. Reynier described Jewish troops which he met on the scene, men and women, armed with pistols, sub-machine guns, grenades and 'large knives most of which were still bloodstained'.<sup>13</sup> A young woman even showed him her knife, 'still dripping, as if it were a trophy'. Reynier forced his way into the homes of the village, found the mutilated bodies of the victims, and among them a girl ten years old and two old women, who, though wounded and left for dead, were still breathing. The Jewish Agency and the Haganah did all they could to prevent the delegate of the International Red Cross from investigating this horrible massacre.<sup>14</sup> The Zionist authorities expressed 'horror and disgust' following the disclosure of the massacre by the International Red Cross but this did not prevent the Zionist Council from ratifying on the same day an agreement, concluded before the massacre, for co-operation between the Haganah and the Irgun Zvai Leumi, who were responsible for the massacre.<sup>15</sup>

<sup>10</sup> A list giving the names of these villages was published with a letter of protest to the Israeli Government in *Al Rabitah*, No. 12, November 1953, a church magazine of the Greek Catholic Episcopate in Israel.

<sup>11</sup> Jacques de Reynier, *A Jerusalem un Drapeau flottait sur la Ligne de Feu* (Editions de la Baconnière, Neuchatel, Switzerland, 1950).

<sup>12</sup> Translation from Reynier, *op. cit.*, p. 213.

<sup>13</sup> Translation from Reynier, *op. cit.*, p. 73.

<sup>14</sup> Reynier, *op. cit.*, p. 69.

<sup>15</sup> G. Kirk, *op. cit.*, p. 261.

The Jewish objective for the Deir Yassin massacre, of terrorising the Arab civilian population, was achieved with disastrous results. It can safely be said that the Deir Yassin massacre was the principal reason which caused the Palestine Arab exodus of 1948. Mr. Jacques de Reynier commented in the following terms:

This action had immense repercussions. The whole press, both Jewish and Arab, did strongly condemn this manner of acting, but insisted all the same upon the fact of its possible repetition and upon the need of being watchful. Thereupon terror seized the Arabs and gave rise to movements of panic which were wholly out of proportion with the real danger. The exodus began and became nearly general.<sup>16</sup>

The leader of the Irgun Zvai Leumi at the time of the massacre, Menahem Begin, who is at present a minister in the Israeli Cabinet, has even boasted that there would not have been a state of Israel without what he described as the 'military victory' at Deir Yassin.<sup>17</sup>

The exodus of the Palestine Arabs 'did not assume catastrophic proportions until after the massacre of Arabs by Jewish terrorists at the village of Deir Yassin on April 9. This village had shown no special animosity to its Jewish neighbours, yet it was attacked by Jewish terrorists in order to demonstrate their military strength. Although Jewish terrorist leaders now deny that it was they who planned and executed the attack, it was they themselves who held a press conference the same night and boasted of what they had done.'<sup>18</sup>

Dr. Stephen Penrose, President of the American University of Beirut, explained the connection between the Deir Yassin massacre and the exodus of the Palestinian Arabs in 1948:

On both sides dreadful deeds were committed but, in the main, the Zionists made better use of terrorist tactics which they learned only too well at the hands of Nazi taskmasters. There is no question but that frightful massacres such as that which took place at Deir Yassin in April 1948 were perpetrated for the major purpose of frightening the Arab population and causing them to take flight. The Zionist radio repeated incessantly for the benefit of Arab listeners 'Remember Deir Yassin'. It is small wonder that many Arab families began a hasty exodus from the battle area and from sectors which might soon become battlegrounds. Terror is contagious, and

<sup>16</sup> Translation from Reynier, *op. cit.*, p. 213.

<sup>17</sup> Begin, *The Revolt: Story of the Irgun*, Henry Schuman, New York, 1951.

<sup>18</sup> Edwin Samuel, *Middle East Journal* (1949), p. 14.



it built up the tremendous migration which has led to the results which may be witnessed in the refugee camps.<sup>19</sup>

Although both Arabs and Jews have resorted and still resort to violence, one should not make the mistake of equating Jewish with Arab violence. Their objectives were and still are fundamentally different. Jewish terrorism was employed in the past in Palestine in order to oust the British Government which had been assigned the responsibility for its temporary administration, to displace the indigenous population and to take over the country against the will of its people. Nowadays, Jewish terrorism aims at the intimidation of Israel's neighbours and the repression of Palestinian resistance in the occupied territories. In contrast, the Arabs resorted to violence before the end of the mandate in order to retain, and more recently to regain, a land which is historically and legally their own.

In Deir Yassin and other places, the Israelis repeated Joshua's exploit on his entering the Land of Canaan as related in the Bible: 'And they utterly destroyed all that was in the city, both man and woman, both young and old, and ox and sheep, and ass, with the edge of the sword' (*Book of Joshua, ch. 6*). Mr. Moshe Menuhin has observed:

Quoting the Bible and using terror to spread panic were ancient devices for 'redeeming' a 'Promised Land' and getting rid of the native population. Ben Gurion and Menachem Begin had only to look up the Book of Joshua before applying the old methods of terror in Palestine, at Deir Yassin on April 9 1948, at Qibya on October 14-15 1953, and in many other unforgettable massacres of the Palestinian Arabs. Only, Joshua tells his story with unvarnished primitiveness, in the name of a young Jehovah who had not as yet grown up, and in the context of his barbaric times; whereas today's Joshuas, who are public-relations diplomats of expediency, act in the same way as ancient Joshua, but cry 'Peace, peace; all we want is the status quo!' after the dirty job has been done.<sup>20</sup>

## b *Expulsion*

Another cause of the Palestine exodus was actual expulsion of people from their towns and villages. The expulsion of the inhabitants was

<sup>19</sup> Stephen B. L. Penrose, *The Palestine Problem: Retrospect and Prospect* (American Friends of the Middle East, New York), p. 12.

<sup>20</sup> Moshe Menuhin, *The Decadence of Judaism in our Time* (Exposition Press, New York, 1965), p. 6.

carried out in Haifa,<sup>21</sup> Lydda and Ramleh,<sup>22</sup> Tiberias,<sup>23</sup> Safad,<sup>24</sup> Beer-sheba and several other towns and villages.<sup>25</sup> On various occasions Israeli forces used loud-speakers to threaten the civilian population and order it to leave.<sup>26</sup> Describing the occupation of Haifa, George Kirk states:

The Jewish combatants there and elsewhere made skilful use of psychological warfare to break their opponents' morale, and the effect upon the civilians was only what was to be expected. At a later stage, the Israeli armed forces did not confine their pressure on the Arab civilian population to playing upon their fears. They forcibly expelled them: for example, the population of 'Akka (including refugees from Haifa) in May; the population of Lydda and Ramleh (including refugees from Jaffa) in July; and the population of Beersheba and Western Galilee in October.<sup>27</sup>

c *Breakdown of security and government machinery before the end of the mandate*

The last of the causes that contributed to the exodus of the Palestine Arabs in 1948 was the breakdown of security and government machinery during the last six months of the mandate. After the outbreak of violence and terrorism following the partition vote by the United Nations, the British Government was neither able to maintain law and order in Palestine nor willing to commit its forces for that purpose. The mandate was coming to an end on May 15 1948 and the British Government concerned itself mainly with the evacuation of its personnel and equipment.

On December 15 1947 the Palestine Government withdrew its forces

<sup>21</sup> *Middle East Journal* (1949), p. 325.

<sup>22</sup> In Lydda and Ramleh 60,000 persons many of whom were refugees from other places were expelled by the Israelis: G. Kirk, *op. cit.*, p. 281. The people expelled were relieved of their money, jewellery and other articles of value in their possession and were sent on foot to Ramallah, a town north of Jerusalem.

<sup>23</sup> *Middle East Journal* (1948), p. 331.

<sup>24</sup> *Ibid.*, p. 332.

<sup>25</sup> S. N. Fisher, *op. cit.*, p. 589.

<sup>26</sup> As to the use of loud-speakers by Israeli forces as a means of 'psychological blitz' to frighten and secure the evacuation of the civilian population of Haifa, see G. Kirk, *op. cit.*, p. 262, and S. N. Fisher, *op. cit.*, p. 589. As to their use in Acre, see Sacher, *The Establishment of a State*, p. 245.

<sup>27</sup> G. Kirk, *op. cit.*, p. 264.

from Jaffa and Tel Aviv and turned over the policing in these two cities to the Arab and Jewish police respectively.<sup>28</sup> The British Government intimated to the U.N. that during their gradual withdrawal British troops would maintain order in the area which they still occupied, but would not be available to maintain order on behalf of the Palestine Commission which was charged with the implementation of partition.<sup>29</sup> On January 20 1948 the British Government stated that 'the policy of allowing both the Jewish and Arab communities to make arrangements for their own security, in areas where either community was in the great majority, had been carried further, so that the British police could be concentrated in Jerusalem and other mixed localities'.<sup>30</sup> At the beginning of February 1948, British personnel in the principal cities were concentrated in enclosed and guarded zones.<sup>31</sup> What happened outside the guarded zones ceased to be of concern to the Mandatory Government. In so far as law, order and security were concerned, the people were left to fend for themselves. During March 1948 the evacuation of British personnel began.<sup>32</sup> Notwithstanding that hundreds were being killed or wounded, not a single prosecution or police enquiry was even attempted. An indication of the complete absence of any Government machinery at the time is afforded by the fact that on the occurrence of the massacre of Deir Yassin on April 9 1947 no Government authority lifted a finger either to prevent the massacre or to assist and save the wounded or even to bury the dead.<sup>33</sup>

Although Article 2 of the mandate had imposed upon the British Government the responsibility for developing self-governing institutions in Palestine, no administrative machinery of any kind existed or was envisaged for the preservation of law and order after the abandonment by the Mandatory Power of its functions of government and administration. The question of the preservation of law and order upon the termination of the mandate was the subject of discussion at the U.N. in the spring of 1948 but nothing tangible resulted therefrom. On February 10 1948 the U.N. Palestine Commission in its first progress

<sup>28</sup> *Middle East Journal* (1948), p. 215; G. Kirk, *op. cit.*, p. 252.

<sup>29</sup> G. Kirk, *op. cit.*, p. 249.

<sup>30</sup> G. Kirk, *op. cit.*, p. 254.

<sup>31</sup> G. Kirk, *op. cit.*, p. 235.

<sup>32</sup> *Middle East Journal* (1948) p. 329.

<sup>33</sup> This is apparent from the account given by Jacques de Reynier, *op. cit.*, pp. 69-77 and 213.

report stressed the need for an international police force. The Commission envisaged the possibility of a collapse of security on the termination of the mandate unless adequate means were made available to it for the exercise of its authority. On February 16, in a special report to the Security Council, the Commission stated that unless immediate steps were taken the British withdrawal from Palestine would initiate 'a period of uncontrolled widespread strife and bloodshed'. The Commission reported that for the period from November 30 1947 to February 1 1948 the total number of casualties was 1,462 Arabs and 1,106 Jews. It also stated that the British Government as the Mandatory Power planned to terminate the existence of the Palestine Police Force as from May 15 1948 and to leave its equipment, arms and stores to 'the successor authorities'. As it happened, there were no successor authorities and the Commission was correct in forecasting 'a security vacuum immediately following the termination of the mandate'.

The complete state of chaos into which the country was plunged impelled many Palestine Arabs to seek temporary refuge elsewhere either in Palestine itself or in neighbouring countries. This movement was further encouraged by the absence of any communal organization for the protection of the Arabs from Jewish armed attacks or of the provision of elementary public services. Planning and organization to meet the situation which was to arise upon the ending of the British mandate on May 15 1948 were far more developed among the Jews than the Arabs. For years the Jews had been organizing politically, militarily, financially and administratively for this very situation. They had long laid their plans to establish a Jewish State. Upon the ending of the mandate, the Jews could switch with comparative ease to an autonomous administration equipped with all necessary services, including a well-trained military organization. In contrast, the Arab community possessed no shadow government, no proper military organization, no institutions for the discharge of governmental functions or the maintenance of public services. Don Peretz has observed:

With the breakdown of all functions of government necessary to maintain law, order and well-being, water, electricity, posts, police, education, health, sanitation and the like—Arab morale collapsed. . . .<sup>34</sup>

<sup>34</sup> Don Peretz, *Israel and the Palestine Arabs* (Middle East Institute, Washington, D.C., 1958), p. 7. Regarding the breakdown of public services, see also Reynier, *op. cit.*, pp. 214-215.

Considerations relating to the preservation of law and order and the protection of the Palestine Arabs were a determining factor in the military intervention of the Arab States at the end of the mandate. The cable addressed on May 15 1948 by the Arab League to the Secretary-General of the United Nations (S/745) declared:

The Mandatory has already announced that on the termination of the mandate it will no longer be responsible for the maintenance of law and order in Palestine. . . . This leaves Palestine absolutely without any administrative authority entitled to maintain, and capable of maintaining, a machinery of administration of the country adequate for the purpose of ensuring due protection of life and property.

However, for reasons previously explained, the intervention of the Arab states was not effective in preserving law and order, or in preventing Jewish occupation of a large area of Palestine. Consequently the conditions of total insecurity, chaos and anarchy which had prevailed in Palestine since the U.N. vote on partition continued unabated upon the withdrawal of the mandatory and caused the exodus of the Palestinians to increase.

Those are the main causes of the exodus of the Palestine Arabs from Palestine. Israeli propaganda has sought to misrepresent the reasons for the exodus. When world opinion awakened to the refugee tragedy, Israel disavowed responsibility for what happened and laid the blame upon the Arab states, the British, and even the refugees themselves.<sup>35</sup> Long after the tragedy, the Israelis began spreading the story that Arab broadcasts had been made to the Palestinians to flee from their homes. This fabrication was exposed by Mr. Erskine B. Childers, a British journalist. As a guest of the Israeli Foreign Office, this journalist investigated the Israeli statement about the alleged Arab broadcasts ordering the evacuation, and could find no dates, names of stations or texts of messages. He even checked British and American monitoring units of all Middle Eastern broadcasts throughout 1948. 'There was not', he concluded, 'a single order or appeal, or suggestion about evacuation 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.'<sup>36</sup>

<sup>35</sup> See Don Peretz, *op. cit.*, pp. 36 and 86.

<sup>36</sup> *The Spectator*, May 12 1961.



The Israelis have also attempted to disclaim liability for the exodus of the Palestinians by alleging that the refugee problem was the result of the war between the Arab States and Israel. There is nothing farther from the truth. The Palestine refugee tragedy was principally the consequence of Jewish terrorism and of the Deir Yassin massacre. This massacre was perpetrated several weeks before any war had taken place between the Arab states and Israel. In fact, the exodus had already reached considerable proportions before the outbreak of the war. It was estimated that before the Arab-Israeli war started on May 15 1948 the number of Palestine refugees had reached about 300,000. As Mr. Anthony Nutting has remarked: 'it would be truer to say that the refugees were the cause of the first Arab-Israeli war and not the result'.<sup>37</sup>

One might ask: why did the Zionist Jews resort to terrorist tactics to drive the Palestinians out of their homes and, where this failed, to their physical and forcible expulsion? The answer is to be found in the underlying Zionist racist objective of creating in Palestine a state which would be racially, religiously and exclusively Jewish. Professor Maxime Rodinson has observed that the Jewish character of the state is 'the prime aim and postulate of Zionist ideology'.<sup>38</sup> In other words, the Zionists wanted to convert Palestine into a state for the Jews and no one else but the Jews. The realization of this objective necessitated the displacement of the original inhabitants and their dispossession of their lands. The racial and religious exclusiveness of the Jewish state as envisaged in the Zionist programme had long been emphasized by Zionist leaders. The British Statement of Policy of 1922 referred to unauthorized statements which had been made to the effect that the purpose of the Balfour Declaration was to create a wholly Jewish Palestine and that Palestine was to become as Jewish as England is English.<sup>39</sup> Dr. Chaim Weizmann, the First President of Israel, made it plain that the aim of Zionism was that the Jews should 'take over the country'.<sup>40</sup> The Zionist objective of creating a Jewish State in Palestine by dispossessing its inhabitants

<sup>37</sup> From a speech delivered under the auspices of the American Council of Judaism at New York on November 2 1967. Regarding the causes of the Palestine exodus, see also Walid Khalidi, *Why Did The Palestinians Leave?* (Arab League Office, London, 1963).

<sup>38</sup> Maxime Rodinson, *Israel and the Arabs* (Penguin Books, London, 1968), p. 228.

<sup>39</sup> *Cmd.* 1700, p. 18.

<sup>40</sup> Chaim Weizmann, *Trial and Error* (Hamish Hamilton, London, 1949), p. 224.

was perceived by the King-Crane Commission as early as 1919. The Commission stated:

The fact came out repeatedly in the Commission's conference with Jewish representatives that the Zionists looked forward to a practically complete dispossession of the present non-Jewish inhabitants of Palestine, by various forms of purchase. . . .<sup>41</sup>

For more than a quarter of a century during the mandate the Zionists exerted all efforts and used all kinds of inducements in order to purchase the lands of Palestine. But despite all their efforts their total land holdings in 1947 represented, as we have seen earlier, a very small percentage, about 6 per cent of the total area of Palestine.<sup>42</sup> Their original intention disclosed to the King-Crane Commission, which aimed at the dispossession of the non-Jewish inhabitants by various forms of purchase, had failed. The Arab character of Palestine, of its lands and of its people stood in the way of Zionist aspirations to create an exclusively Jewish state. It was, therefore, necessary to have recourse to other means, particularly since in accordance with the partition plan proposed by the United Nations in 1947 the Jewish state would have a majority of Arab population in the proportion of 509,780 Moslems and Christians to 499,020 Jews.<sup>43</sup> It would obviously be a contradiction to describe as Jewish a state in which the Arabs exceeded the number of the Jews and, moreover, owned most of the land. But the Zionist Jews undertook to remove this contradiction. Accordingly, the Arab population of the the territory of Palestine seized by Israel in 1948 was reduced by methods which we have seen to less than one-tenth of its original number. Count Bernadotte wrote in 1948:

As a result of the conflict in Palestine, almost the whole of the Arab population fled or was expelled from the area under Jewish occupation. This included the large Arab population of Jaffa, Haifa, Acre, Ramleh and Lydda.

<sup>41</sup> Hurewitz, *Diplomacy in the Near and Middle East* (D. Van Nostrand Company, New Jersey, 1956), Vol. II, p. 70; Harry N. Howard, *The King-Crane Commission* (Khayats, Beirut, 1963).

<sup>42</sup> Out of this proportion only 2 per cent was bought from Palestinian Arabs, the balance representing lands which the Jews had acquired prior to the First World War or from absentee non-Palestinian landowners. As to Jewish land ownership in Palestine, see Section I (3), *ante*, and Appendices IV and V.

<sup>43</sup> See Appendix I to Report of Sub-Committee 2 to the Ad Hoc Committee on the Palestinian Question, Official Records of the 2nd Session of the General Assembly, Document A/AC 14/32, p. 304, and Section I (3), *ante*.

Of a population of somewhat more than 400,000 Arabs prior to the outbreak of hostilities, the number presently estimated as remaining in Jewish-controlled territory is approximately 50,000.<sup>44</sup>

Moreover, all lands which belonged to the Arab refugees were confiscated and most of the lands owned by Arabs who remained were expropriated.<sup>45</sup>

The creation of a Jewish state in Palestine has been described as 'a process which either by accident or intent rid Israel of the majority of its large Arab population'.<sup>46</sup> There is no doubt that there was little accident in the process. Mr. I. F. Stone observed:

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 the 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.<sup>47</sup>

Dr. John H. Davis, who occupied for five years the office of Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, has remarked that 'the extent to which the refugees were savagely driven out by the Israelis as part of a deliberate master-plan has been insufficiently recognized'. Dr. Davis went on to explain how the Zionist concept of a Jewish state called for the ousting of the indigenous Arab population from its homeland, and the manner in which this objective was achieved by means ranging from 'expert psychological warfare to ruthless expulsion by force'.<sup>48</sup>

The Zionist racist objective of building up an exclusively Jewish state by displacing the existing population and dispossessing it of its lands and homes was the underlying cause of the Palestine refugee problem and is at the root of the Palestine Question. Sir John Glubb has observed:

It is quite essential vividly to grasp the unique conditions of the struggle in Palestine. We have witnessed many wars in this century, in which one country seeks to impose its power on others. But in no war, I think, for many centuries past, has the objective been to remove a nation from its country and to introduce another and entirely different race to occupy its

<sup>44</sup> Progress Report of the United Nations Mediator on Palestine, General Assembly official records: 3rd Session, Supplement No. 11, A/648, p. 47.

<sup>45</sup> As to the confiscation and expropriation by Israel of Arab property, see Section 5 of Part II, *post*.

<sup>46</sup> *Middle East Journal* (1948), p. 447.

<sup>47</sup> I. F. Stone in *New York Review of Books*, August 3 1967.

<sup>48</sup> John H. Davis, *The Evasive Peace* (John Murray, London, 1968), pp. 57-60.

lands, houses and cities and live there. This peculiarity lends to the Palestine struggle a desperate quality which bears no resemblance to any other war in modern history.<sup>49</sup>

## 2 THE NUMBER OF REFUGEES

During the first three months of 1948 the number of refugees was relatively small. The exodus reached catastrophic proportions as a result of the massacre of Deir Yassin on April 9 1948, and of the expulsion by the Israelis of the Arab inhabitants of Tiberias (April 19), Haifa (April 22), Jaffa (April 29), Safad (May 10), Ramleh and Lydda (July 12), Beer-sheba (October 21), and Western Galilee during October 1948.

Early figures of the number of refugees were in the nature of rough estimates made during a continuing flow. Count Bernadotte's estimate as on September 10 1948 was 330,000. The Acting Mediator's report made in October 1948 revised the figure to 472,000 but stated that the estimates made by Arab authorities reached a total of between 740,000 and 780,000.<sup>50</sup> When a more precise estimate could be made, it was found that the real number was much higher. In June 1949 the Secretary-General of the United Nations reported to the fourth session of the General Assembly that the number of refugees was 940,000.<sup>51</sup> At the time that UNRWA was constituted (May 1 1950) to assist the Palestine refugees, their number was estimated at 960,000.<sup>52</sup> This figure did not include an unspecified number who either were not registered with UNRWA or were not receiving assistance from this organization. It can be reckoned that the number of Palestine refugees in 1948 was about one million persons. This was the estimate made at the time by the Delegate of the League of Red Cross Societies to the Middle East.<sup>53</sup>

As a result of natural increase, the number registered with UNRWA as on May 31 1967 had reached a figure of 1,344,576.<sup>54</sup> This figure,

<sup>49</sup> Glubb Pasha, *op. cit.*, p. 41.

<sup>50</sup> U.N. Document A/689, pp. 1 and 5.

<sup>51</sup> Annual Report of the Secretary-General on the work of the Organization, July 1 1948–June 30 1949, p. 102.

<sup>52</sup> Annual Report of the Director of UNRWA, 1953 (A/2470), p. 5.

<sup>53</sup> *Middle East Journal* (1949), p. 251.

<sup>54</sup> Annual Report of the Commissioner-General of UNRWA for the period July 1 1966–June 30 1967, U.N. Document A/6713. The same Annual Report gave the distribution of the refugees as follows: Jordan (722,687), the Gaza Strip (316,776), Lebanon (160,723) and Syria (144,390).

however, does not represent the total number because at no time was any census made of those who, though displaced in 1948, have never become dependent upon UNRWA and live of their own means or from their work. These were mostly professional people, merchants or artisans. Some of them live in Jordan, Syria and Lebanon while others work in Kuwait, Saudi Arabia, Iraq and other countries. In his Annual Report dated August 27 1962 the Commissioner-General of UNRWA estimated their number as twenty per cent of the total.<sup>55</sup> This estimate is quite conservative and the proportion could well be closer to twenty-five per cent. But even if the Commissioner-General's estimate were taken as a basis and added to those registered with UNRWA, the total number of Palestine refugees displaced by the events of 1948 must be considered to have been as on May 31 1967 in excess of 1,600,000.

### 3 AGGRAVATING FACTOR IN THE REFUGEE PROBLEM

The basic factor which has doubled the dimensions of the refugee problem was the occupation by Israeli forces of various territories of Palestine in excess of the boundaries fixed for the Jewish state by the United Nations partition resolution. These territories are shown in Appendix VII. In terms of population, the territories seized by Israel in excess of the partition resolution were peopled mostly, if not exclusively, by Arabs: Western Galilee (123,000 Arab inhabitants), the Jaffa enclave (114,000 Arab inhabitants),<sup>56</sup> the Ramleh sub-district and portions of the sub-districts of Nazareth, Jenin, Tulkarm, Gaza and Hebron. The Israeli seizure extended to the wholly Arab towns of Jaffa, Acre, Nazareth, Lydda, Ramleh, Shafa Amr, with an estimated Arab population of 195,000 people,<sup>57</sup> as well as to several hundred Arab villages.<sup>58</sup> Israel's seizure of the territories, towns and villages reserved for the pro-

<sup>55</sup> U.N. Document A/5214, p. 2.

<sup>56</sup> The above figures of inhabitants are derived from the report of Sub-Committee 2 to the Ad Hoc Committee on the Palestine Question, U.N. Document A/AC 14/32, pp. 305-306.

<sup>57</sup> The population figures of these towns can be found in two publications of the Palestine Government: *Statistical Abstract of Palestine 1944-1945*, p. 22, and *A Survey of Palestine*, Vol. I, p. 151.

<sup>58</sup> The total number of Arab villages which existed in the territories occupied by Israel in 1948 and 1949 was 863. This number has since been reduced as a result of Israel's destruction of 161 Arab villages: see Section 1 (3), *ante*.



posed Arab state resulted in the expulsion or flight of more than 600,000 persons. In other words, almost two-thirds of the refugees who were displaced in 1948 came from the areas seized by Israel in excess of the territorial boundaries fixed by the partition resolution. The significance of this fact will appear later during the discussion of an effective solution for the refugee problem.

## Part II

Two decades of Tension (1948–1967)



## SECTION I

### Failure of mediation and conciliation

The mediation efforts undertaken by Count Bernadotte, the United Nations Mediator on Palestine, for a settlement of the Palestine Question failed. In his Progress Report dated September 16 1948 the Mediator stated that neither agreement between the parties nor a basis for agreement had been found. He recommended to the General Assembly of the United Nations that, in the absence of agreement between Arabs and Jews on boundaries, certain revisions be made in the boundaries which had been envisaged by the resolution of the General Assembly of November 29 1947 and, in particular, that the Negeb should be defined as Arab territory. He also recommended the repatriation of the Palestine refugees: 'The right of innocent people, uprooted from their homes by the present terror and ravages of war, to return to their homes, should be affirmed and made effective, with assurance of adequate compensation for the property of those who may choose not to return.' Because of its religious and international significance and the complexity of the interests involved, he suggested that the City of Jerusalem be accorded special and separate treatment.<sup>1</sup>

In its resolution 194 (III) of December 11 1948 the General Assembly adopted Count Bernadotte's recommendation concerning the repatriation of the refugees and appointed a Conciliation Commission to which it entrusted the late Mediator's functions. The United Nations Conciliation Commission for Palestine was formed of representatives of the United States, France and Turkey. One of its first acts was to secure the agreement of the Arab states and Israel at Lausanne on what has since been described as the Lausanne Protocol. This Protocol was signed on May 12 1949 and was worded as follows:

The United Nations Conciliation Commission for Palestine, anxious to achieve as quickly as possible the objectives of the General Assembly's resolution of December 11 1948 regarding refugees, the respect for their rights

<sup>1</sup> U.N. Document A/648, p. 17.

and the preservation of their property, as well as territorial and other questions, has proposed to the Delegation of Israel and to the Delegations of the Arab States that the working documents attached thereto be taken as basis for discussion with the Commission.

The interested Delegations have accepted this proposal with the understanding that the exchanges 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.

To the Protocol was annexed a map on which were indicated 'the boundaries defined in General Assembly resolution 181 (II) of November 29 1947, which has thus been taken as the basis of discussion with the Commission'.<sup>2</sup>

In its Third Progress Report, the Conciliation Commission gave an account of the results of its discussions with the parties on the basis of the Lausanne Protocol. This Progress Report is illuminating because it sets out the position taken by Israel from the outset on three basic questions involved in the Palestine Question (refugees, territory and the City of Jerusalem), a position which has prevented the success of the Commission's efforts at mediation.

On the refugee question, the Third Progress Report stated: 'The Arab delegations continue to hold the view that the first step must be acceptance by the Government of Israel of the principle set forth in resolution 194 (III) of December 11 1948 concerning the repatriation of refugees who wish to return to their homes and live at peace with their neighbours. The Commission has not succeeded in achieving the acceptance of this principle by the Government of Israel.'<sup>3</sup> In the face of Israel's refusal to allow the repatriation of the refugees in accordance with the General Assembly's resolution, the Arab delegations then submitted a more limited proposal 'directed towards the immediate return of the refugees coming from the territories now under Israel authority which formed part of the Arab zone on the map attached to the Protocol of 12 May; that is, Western Galilee, the area of Lydda, Ramleh and Beersheba, Jaffa, Jerusalem and the coast line north of Gaza'. This proposal, it might be observed, was of great significance. On the one hand, it was in line with the territorial boundaries between the Arab and

<sup>2</sup> Third Progress Report of the United Nations Conciliation Commission for Palestine, U.N. Document A/927.

<sup>3</sup> U.N. Document A/927, June 21 1949.



Jewish states as defined by the General Assembly resolution of November 29 1947. On the other hand, apart from Jerusalem, which had a mixed population, the territories covered by the proposal were wholly Arab owned and populated almost exclusively by Arabs. Repatriation of the refugees to these territories would have enabled the majority of these unfortunate victims to return to their homes and would have substantially solved the Palestine refugee problem. But Israel rejected this proposal.<sup>4</sup> It was evident that Israel did not want the refugees to return to these territories which it planned to retain, even though they fell within the boundaries of the Arab state as proposed by the United Nations.

On the territorial question, Israel was no less adamant and its attitude was also not conducive to a settlement. The Conciliation Commission's Third Progress Report mentions that on the territorial question Israel proposed that its frontiers with Egypt and Lebanon should be the frontiers of Palestine while under the British mandate. This proposal, if accepted, would have meant Israel's annexation of Western Galilee and the Gaza Strip, both of which were wholly Arab areas which had been reserved for the Palestine Arabs under General Assembly resolution 181 (II) of November 29 1947. As regards its frontier with Jordan, Israel proposed a boundary corresponding to the armistice lines. This proposal again implied the annexation by Israel of several Arab territories which it had seized in 1948 and 1949 but which were reserved for the Palestine Arabs under the General Assembly resolution. In effect, Israel's territorial proposals at the Lausanne discussions in 1949 meant that the Palestine Arabs would have been left with about 15 per cent of the area of their own country.

On the question of Jerusalem, the Conciliation Commission could make no progress. The Jews had occupied the New City and the Arabs the Old City. Israel, however, was proceeding with the annexation of the area under its control. The Commission noted in its Third Progress Report that Israel had established 'ministerial services' within the area of the City and that this action prompted protests by the Arab delegations as being in derogation of the resolution of December 11 1948.<sup>5</sup>

<sup>4</sup> U.N. Documents A/927, June 21 1949 and A/1367/Rev. 1, September 2 1950.

<sup>5</sup> The resolution of December 11 1948 had declared that the Jerusalem area should be accorded special treatment from the rest of Palestine and should be placed under effective United Nations control.

Israel's unwillingness to allow the return of the refugees to their homes, its refusal to abandon the territories which it had seized in excess of the partition resolution and its attempted annexation of the area of Jerusalem then under its occupation caused the failure of the only discussions that ever took place with a view to the conclusion of a peaceful settlement between Arabs and Jews. There can be no doubt that Israel's intention, first declared at Lausanne in 1949 and held since then, to maintain territorially and politically the *fait accompli* of 1948—involving the seizure and usurpation of 80 per cent of the territory of Palestine, the ousting of one million Palestinians from their homeland and the annexation of the New City of Jerusalem, all acts which are in conflict with the resolutions of the United Nations—was the basic reason which prevented any settlement of the Palestine Question.

Since then the Conciliation Commission has abandoned the hope of achieving its primary objective of mediation, namely, 'to promote a peaceful adjustment of the future situation of Palestine'. Instead it has directed its efforts towards two minor matters: the release of some three and a half million pounds sterling of Arab refugee money blocked by Israel in bank accounts, and the initiation of a programme for the identification and valuation of Arab refugee immovable property in Israeli-held territory. These were its only achievements during two decades of effort.

## SECTION 2

# Border incidents, truce violations and a large-scale war in 1956

The Armistice Agreements concluded in 1949 between Israel and its four neighbouring Arab states did not establish political or territorial boundaries. The armistice lines therein laid down were delineated 'without prejudice to rights, claims and positions of either Party to the Armistice as regards ultimate settlement of the Palestine Question'.<sup>1</sup> As it happened no settlement of the Palestine Question did take place for, as we have seen, the discussions for a settlement on the basis of the Lausanne Protocol failed by reason of Israel's unacceptable demands and impossible conditions. The result was that a million refugees continued to live in conditions of misery and destitution, mostly in tents, forbidden by Israel to return to their lands, homes and occupations under pain of death summarily administered by Israel's forces while, on the other hand, the Israelis were distributing Arab lands and homes to Jewish settlers who were being drawn to Palestine from the four corners of the earth. This situation was provocative and explosive and it is no wonder that border incidents were frequent.

The border incidents can be attributed to a variety of causes: Arab villagers attempting to return—even at the risk of being shot on the spot—to the lands which they and their forebears have owned and cultivated for hundreds of years; expulsion of Arab peasants and bedouin from their lands; attacks by *fidai'iyeen* or Palestinian freedom fighters; so-called retaliatory raids by Israel; cultivation by Israelis of Arab lands in the Demilitarized Zones established by the Armistice Agreements, particularly at the Syrian border and at Auja in the south in violation of the Armistice Agreements. The most important of these border incidents

<sup>1</sup> Article V of Egyptian-Israeli Armistice Agreement of February 24 1949; Article II of Lebanese-Israeli Agreement of March 23 1949; Article II of Jordanian-Israeli Armistice Agreement of April 3 1949; and Article II of Syrian-Israeli Agreement of July 20 1949.

are described in the reports made by the Chiefs of Staff of the U.N. Truce Supervision Organization in Palestine to the United Nations.<sup>2</sup>

Although both Arabs and Jews have mutually accused each other of violations of the truce, the violations attributed to the Arabs were not acts of governments but the acts of individuals or of Palestinian commandos. The Arab states themselves did not undertake any warlike operations against Israel in breach of the Armistice Agreements. They had entrenched themselves behind the non-recognition and economic boycott of Israel in the mistaken and naive belief that these negative measures would bring Israel to its knees. In contrast, Israel's raids against its Arab neighbours were organized military operations undertaken by regular forces, often on a large scale, and involved the use of guns, tanks and aircraft. Since 1949 Israel has been condemned for more than forty armed aggressions against the Arab States, almost all causing heavy loss of life. Twenty-nine of these condemnations were made by the Security Council for 'flagrant violations' of the Armistice Agreements with Syria, Egypt and Jordan. Among these condemnations mention may be made of Israel's attacks on Huleh (1953), Qibya (1953), Nahalin (1954), Gaza (1955), the Syrian outpost on Lake Tiberias (1955), the Gaza Strip and the Sinai Peninsula (1956), the Syrian villages in the Lake Tiberias area (1960 and 1962) and Samou' village (1966).<sup>3</sup> There is no other state among the international community which possesses such a record of condemnations by the Security Council. Not once has any Arab state been condemned by the Security Council for an attack upon Israel in breach of the Armistice Agreements.

Israel has sought to justify its raids and attacks against its neighbours on the basis of a so-called right of reprisals. But the wrongful occupier of a territory which is not his own cannot claim any rights—whether of

<sup>2</sup> A number of these border incidents and raids are described by Commander E. H. Hutchison in *Violent Truce* (Devin-Adair Company, New York, 1956) and by General Carl Von Horn in *Soldiering For Peace* (Cassell, London, 1966).

<sup>3</sup> To this list one should add Israel's condemnation by the Security Council on March 24 1968 for the military action which it launched at Karameh in Jordan and which resulted in the destruction of several hundred houses and the killing of a large number of people 'in flagrant violation of the United Nations Charter and the cease-fire resolution' (Resolution 248 of 1968), its condemnation on August 16 1968 for its 'large-scale and carefully planned air attack' against the town of Salt in Jordan on August 4 1968 'in flagrant violation of the United Nations Charter and Resolution 248 (1968)', and its condemnation on December 31 1968 for its 'premeditated' attack against the civil international airport of Beirut 'in violation of the Charter and the cease-fire resolutions'.

'reprisals' or 'punitive measures'—against the original inhabitants and owners of such territory. The law—whether it be municipal law or international law—was never meant to protect the wrongdoer nor to give him the right of punishing his victims. Since Israel came into existence it was condemned on several occasions by the Security Council for its unlawful recourse to reprisals and warned against repetition of its acts. Following Israel's first assertion of a right of reprisals the Security Council in its resolution No. 56 of August 19 1948 laid down the principle that 'no party is permitted to violate the truce on the ground that it is undertaking reprisals or retaliations against the other party'. Israel defied the Security Council's clear directive in this regard and was condemned on November 24 1953 for its attack on Qibya in Jordan. On this occasion the Security Council found that the 'retaliatory action at Qibya taken by the armed forces of Israel on October 14-15 1953 and all such actions constitute a violation of the cease-fire provisions of the Security Council resolution No. 54 (1948) and are inconsistent with the parties' obligations under the General Armistice Agreement between Israel and Jordan and the Charter of the United Nations'.<sup>4</sup> Two years later, in condemning Israel for its attack on Syrian military forces in the area of Lake Tiberias on December 11 1955, 'in flagrant violation of the cease-fire provisions, the terms of the Armistice Agreement and its obligations under the Charter', the Security Council further reminded this state that 'the Council had already condemned military action in breach of the General Armistice Agreement, whether or not undertaken by way of retaliation, and has called upon Israel to take effective measures to prevent such action'.<sup>5</sup> In its resolution 111 of January 19 1956 condemning Israel for its attack on Syria in the Lake Tiberias area the Security Council called upon it to comply with its obligations, 'in default of which the Council will have to consider what further measures under the Charter are required to maintain or restore the peace'. In 1962 the Security Council reaffirmed its resolution No. 111 of January 19 1956, which condemned Israeli military action in breach of the General Armistice Agreement, whether or not undertaken by way of retaliation, and held that the Israeli attack of March 16-17 1962 on Syria constituted a flagrant violation of that resolution.<sup>6</sup> Again, in its resolution of

<sup>4</sup> Resolution No. 101, November 24 1953.

<sup>5</sup> Resolution No. 111, January 19 1956.

<sup>6</sup> Resolution No. 171, April 9 1962.



November 25 1966, condemning Israel's attack on Samou' village in Jordan, the Security Council emphasized 'to Israel that actions of military reprisal cannot be tolerated and that if they are repeated, the Security Council will have to consider further and more effective steps as envisaged in the Charter to ensure against the repetition of such acts'. And again, in its resolution 248 of March 24 1968 condemning Israel's military action against Karameh in Jordan, the Security Council declared that 'actions of military reprisal and other grave violations of the cease-fire cannot be tolerated and that it would have to consider further and more effective steps to ensure against repetition of such acts'. So also in condemning Israel on August 16 1968 for its 'massive' and 'carefully planned' air attack on August 4 1968 upon the Jordanian town of Salt 'in flagrant violation of the United Nations Charter and resolution 248 (1968)', the Security Council contented itself with warning Israel 'that if such attacks were to be repeated the Council would duly take account of the failure to comply with the present resolution'.

The most serious violation of the Armistice Agreements during the period under consideration was the war which Israel launched against Egypt in 1956. Taking advantage of the situation created by Egypt's nationalisation of the Suez Canal and having secured the military support of the United Kingdom and France, both of which had grudges of their own against Egypt, for an attack on this country, Israel could not resist the prospect of attempting to destroy the Egyptian Army, occupying the Gaza Strip and the Sinai Peninsula and removing the obstacles to the navigation of its ships in the Gulf of Aqaba. On October 29 1956 Israeli forces launched their attack against Egypt, occupied the Gaza Strip and the Sinai Peninsula and seized Sharm el Sheikh which guarded the Straits of Tiran and the entrance to the Gulf of Aqaba. At the same time Anglo-French forces landed at Port-Said in order to seize the Suez Canal. World opinion was shocked by this aggression. The General Assembly of the United Nations denounced the invasion of Egypt and the Gaza Strip and called upon Israel immediately to withdraw behind the armistice lines of 1949 and upon the United Kingdom and France immediately to withdraw from Egyptian territory.<sup>7</sup> English and French forces withdrew. Israel withdrew from the Sinai Peninsula but refused to surrender the Gaza Strip and Sharm

<sup>7</sup> General Assembly resolutions of November 2 1956, November 4 1956, November 5 1956, November 7 1956, November 24 1956, January 19 1957 and February 2 1957.

el Sheikh unless it were promised and guaranteed freedom from *fida'iyeen* raids from Egyptian territory and the open use of the Straits of Tiran. President Eisenhower 'denounced any such promise and castigated the idea of permitting gain from aggression'.<sup>8</sup> The American President declared that a nation which attacks and occupies foreign territory in the face of United Nations disapproval cannot be allowed to impose conditions on its own withdrawal.<sup>9</sup> Finally, under the pressure of international public opinion and the threat to withhold U.S. financial aid, Israel withdrew in March 1957 behind the armistice lines.<sup>10</sup> This aggression, committed in clear violation of international law and the Egyptian-Israeli Armistice Agreement, is one of the wars which Israeli propaganda continues even today to describe as the three 'defensive' wars which Israel had to wage in order to defend its existence.

<sup>8</sup> S. N. Fisher, *The Middle East* (Routledge and Kegan Paul, London, 1960), p. 597.

<sup>9</sup> Dwight D. Eisenhower, *Waging Peace, 1956-1961*, p. 188.

<sup>10</sup> It should be noted that upon the recommendation of the General Assembly and with Egypt's consent a United Nations Emergency Force (UNEF) was stationed as from 1957 on Egyptian territory along the armistice lines between Egypt and Israel. This force was to remain until May 1967. For a full account of manœuvres behind the scenes in connection with the Suez War, see Anthony Nutting, *No End of a Lesson, The Story of Suez* (Constable, London, 1967).

### SECTION 3

## Israel's refusal to repatriate the refugees

The first step taken in 1948 by Count Bernadotte, the United Nations Mediator on Palestine, was to insist upon the repatriation of the refugees. In the face of Israel's opposition to their repatriation he proposed to Israel in July 1948 that, without prejudice to the question of the ultimate right of all Arab refugees to return to their homes, a limited number be permitted to return as from August 15. The Mediator's proposal was rejected by Israel on the ground of security considerations. Israel's reply stated that the problem could only be considered when the Arab states were ready to conclude a peace treaty. Count Bernadotte did not accept this pretext, for he observed in his Progress Report:

On receipt of the Jewish reply, I reported to the Security Council on the question (S/948), 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.<sup>1</sup>

All the efforts which the Mediator made in order to secure the repatriation of the refugees completely failed by reason of Israel's opposition. Among the recommendations which he made to the General Assembly of the United Nations for a settlement of the Palestine Question was that:

The right of the Arab refugees to return to their homes in Jewish-controlled territory at the earliest possible date should be affirmed by the United Nations, and their repatriation, resettlement and economic and social rehabilitation, and payment of adequate compensation for the property of those choosing not to return, should be supervised and assisted by the United Nations conciliation commission. . . .<sup>2</sup>

The General Assembly of the United Nations accepted Count Berna-

<sup>1</sup> U.N. Document A/648, p. 14.

<sup>2</sup> U.N. Document A/648, p. 18.

dotte's recommendation, and in paragraph 11 of its resolution 194 (III) dated December 11 1948 it declared:

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 property which, under principles of international law or in equity should be made good by the Governments or authorities responsible.<sup>3</sup>

The same resolution charged the United Nations Conciliation Commission for Palestine 'to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees . . .'. As previously mentioned, the Conciliation Commission did not succeed in achieving the acceptance by Israel of the principle of repatriation of the refugees.<sup>4</sup>

Although Israel officially stipulated that the settlement of the refugee problem should be conditional upon the conclusion of peace, its real attitude was made quite plain on many occasions. In its Eighth Progress Report the Conciliation Commission stated: 'Mr. Ben Gurion did not exclude the possibility of acceptance for repatriation of a limited number of Arab refugees, but he made it clear that the Government of Israel considered that a real solution of the major part of the refugee question lay in the resettlement of the refugees in Arab States.'<sup>5</sup> The Technical Committee on Refugees established by the Conciliation Commission in 1949 reported that 'in conversations with the Israeli authorities, the Technical Committee was advised that there could be no repatriation in the sense that Arab refugees would be allowed or assisted to return to their former homes or villages.'<sup>6</sup>

On only one occasion, as a result of pressure from the U.S. Government, did Israel make any offer to take back a limited number of refugees. In May 1949, the U.S. Government addressed a note to Israel in which it insisted that Israel should make tangible concessions on the question of refugees, boundaries and the internationalization of Jerusalem, failing which the U.S. Government would reconsider its attitude towards it. The U.S. note 'interpreted Israel's attitude as dangerous to

<sup>3</sup> U.N. Document A/810.

<sup>4</sup> U.N. Document A/927, June 21 1949.

<sup>5</sup> U.N. Document A/1367, October 23 1950.

<sup>6</sup> U.N. Document A/1367/Rev. 1, p. 26.

peace and as indicating disregard of the U.N. General Assembly resolutions of November 29 1947 and December 11 1948'.<sup>7</sup> This produced an Israeli offer to the Conciliation Commission to permit the return of 100,000 refugees, subject to conditions, one of which was that Israel 'reserved the right to resettle the repatriated refugees in specific locations, in order to ensure that their reinstallation would fit into the general plan of Israel's economic development'. Obviously, a proposal to permit the return of 10 per cent of the number of refugees and to resettle them in specific locations away from their homes did not constitute a compliance with the United Nations repatriation resolution. The Conciliation Commission's comment was that it considered the Israeli proposal unsatisfactory.<sup>8</sup>

Since 1948, the General Assembly has annually reaffirmed its resolution calling for the return of the refugees, but without avail. Israel's opposition to the repatriation of the refugees has not changed or diminished. Israel has even abandoned the pretence that the question of the refugees is linked with the making of peace. It now declares openly that it does not want their return to their own country. It keeps repeating that their homes are destroyed or occupied, that there is no room for them, that conditions are changed and that they should not dream of returning. In support of its attitude, Israel invokes a variety of reasons. Thus, in 1965, the Israeli delegate told the U.N. that 'the solution to the problem lay not in Israel but in the Arab world. . . . Although it was natural for refugees to wish to return to their former homeland, that wish was irrational for in 1948 Palestine had ceased to exist as a territorial entity on the map. . . . The General Assembly was not competent to adopt the resolution of December 11 1948. . . . There was nothing in paragraph 11 of the resolution which contradicted the sovereign right of any State to determine who should be permitted to enter its territory. In any case, the paragraph had long since been made obsolete by the course of events.'<sup>9</sup>

In his diary, Count Bernadotte deplored Israel's attitude towards the Palestine refugees. After pointing out that the Jews must always reckon

<sup>7</sup> Don Peretz, *Israel and the Palestine Arabs* (Middle East Institute, Washington, D.C., 1958), pp. 41-42; James G. McDonald, *My Mission to Israel* (Simon and Schuster, New York, 1951), pp. 181-182.

<sup>8</sup> U.N. Document A/1367, p. 14.

<sup>9</sup> U.N. Document A/SPC/SR 433, October 19 1965.



to have Arabs for their neighbours and that they ought to counteract the prevailing hatred between Arabs and Jews, he said: 'The Israeli Government had had a very great opportunity in connection with the Arab refugee question. It had missed that opportunity. It had shown nothing but hardness and obduracy towards these refugees. If instead of that it had shown a magnanimous spirit, if it had declared that the Jewish people, which itself had suffered so much, understood the feelings of the refugees and did not wish to treat them in the same way as it itself had been treated, its prestige in the world at large would have been immeasurably increased.'<sup>10</sup>

Israel's refusal to allow the return of the Palestine refugees to their homes can be explained only by racist considerations. The root of the Arab-Israeli conflict and, in particular, of the refugee problem lies in the Zionist concept of a Jewish state in which there is no room for Gentiles and much less so if those Gentiles are the owners of the land and the original inhabitants of the country. This racist and religious concept of a Jewish state undiluted by Gentiles accounts for the driving out of the Palestinians from their country and explains the real reason for Israel's refusal to repatriate them.

Racism also explains Israel's legislation relating to the 'ingathering of the Jewish exiles'. In accordance with the Law of Return which Israel enacted in 1950 any Jew is entitled to emigrate to Israel and settle there. Upon his entry, he automatically acquires Israeli citizenship. The Law of Nationality of 1952 confirmed the special privilege recognized in favour of any Jew, whatever his nationality or his country of origin, to acquire Israeli citizenship automatically and unconditionally. This is in contrast with the attitude adopted by Israel towards the Arabs and other non-Jews who remained in Israeli-held territory in 1948. In accordance with the Law of Nationality of 1952 resident non-Jews can acquire citizenship only on the basis of residence if they can prove that they were Palestinian citizens or by naturalization. This rule was even applied to the original inhabitants of the country who were born and had lived all their life in Palestine and whose ancestors have lived for centuries in Palestine before them. As a result of this legislation, the Palestinian Arabs who remained in Palestine under Israeli occupation literally became foreigners in their own country. Don Peretz has observed: 'The conditions required of an Arab to prove his citizenship rights by

<sup>10</sup> Count Folke Bernadotte, *To Jerusalem* (Hodder and Stoughton, London, 1951), p. 209.

“residence” were in practice very difficult to fulfil. Most Arab residents had no proof of Palestine citizenship. . . . Large numbers of Arabs who had possessed identity cards either lost them or surrendered them to the Israel Army during, or immediately after, the war.’<sup>11</sup> This discrimination between Jews and non-Jews in the acquisition of citizenship was a violation of General Assembly resolution 181 (II) of November 29 1947.<sup>12</sup>

Thus, while denying to the Palestinian refugees the right to return to their homes and refusing to those Arabs who remained the right of citizenship, Israel has treated every Jew in the world as a potential citizen. It has opened the gates of the country to all Jews who wish to come to Palestine, assisted Jewish immigrants with free passages and has given them the homes and lands of the Palestine refugees. Israel’s policy has created an abyss between Arabs and Jews and its refusal to allow the refugees to return to their homes stands in the way of a solution and of the restoration of peace in the Middle East.

<sup>11</sup> Don Peretz, *op. cit.*, p. 123.

<sup>12</sup> Resolution 181 (II) provided that Arabs and Jews who reside in Palestine shall upon the recognition of independence become citizens of the state in which they reside: Article 1, Chapter 3 of Section C (see Section 3 (1) of Part IV, *post*).

## SECTION 4

# Assistance to the refugees

The early refugees of 1948 encountered conditions of great hardship and suffering. With almost no means, money or possessions, some were sheltered in private homes or housed in public buildings. Hundreds of thousands, however, found themselves without food or shelter, merely camped under trees or at best lived in caves and ancient ruins. Here is how the United Nations Mediator in Palestine described the conditions of Palestinian refugees at Ramallah in the summer of 1948:

Before we left Jerusalem, I visited Ramallah, where thousands of refugees from Lydda and Ramleh were assembled. I have made the acquaintance of a great many refugee camps; but never have I seen a more ghastly sight than that which met my eyes here at Ramallah. The car was literally stormed by excited masses shouting with oriental fervour that they wanted food and wanted to return to their homes. There were plenty of frightening faces in that sea of suffering humanity. I remember not least a group of scabby and helpless old men with tangled beards who thrust their emaciated faces into the car and held out scraps of bread that would certainly have been considered quite uneatable by ordinary people, but was their only food. Perhaps there was no immediate danger of this camp becoming a breeding-ground of epidemic diseases that would spread all over Palestine. But what would happen at the beginning of October, when the rainy season began and the cold weather set in? It was a thought that one preferred not to follow to its conclusion.<sup>1</sup>

Count Bernadotte was prophetic. Israel refused to allow the Palestine refugees to return to their homes and, as a result, many thousands found themselves, at the onset of winter, without any protection whatsoever.<sup>2</sup> Many of them died. These were the uncounted victims. The first measures for the relief of the refugees were taken by the local populations

<sup>1</sup> Count Folke Bernadotte, *To Jerusalem* (Hodder and Stoughton, London, 1951), p. 200.

<sup>2</sup> W. de St. Aubin, *Peace and Refugees in the Middle East*, *Middle East Journal* (1949), p. 249.

and the Arab governments.<sup>3</sup> For more than a year the refugees depended upon this assistance. As the refugee tragedy grew in proportion, several voluntary relief agencies, among them the League of Red Cross Societies, the International Red Cross and the Friends' Service Committee, offered their help. But it soon became clear to the United Nations Mediator that neither the efforts of the Arab governments and populations nor the donations of foreign relief agencies could cope with the massive problem of the refugees. The choice, as stated by the United Nations Mediator on Palestine, was between saving the lives of many thousands of people or permitting them to die. To avert disaster, it was necessary for the United Nations Organization to step in. In 1949 the United Nations Relief for Palestine Refugees (UNRPR) was organized to assist on a temporary basis. Then on May 1 1950 the United Nations Relief and Works Agency (UNRWA), which had been established by a resolution of the General Assembly dated December 8 1949, assumed the function of assisting the Palestine refugees. UNRWA has alleviated the conditions of starvation and distress among the refugees by providing them with food, shelter and medical care. During the last few years attention has also been given to vocational training. Not all registered refugees receive assistance; thus in 1966 only 860,000 out of a total registered number of 1,300,000 refugees received rations. Between the years 1951 and 1966, UNRWA's annual expenditure has varied between 26 and 37 million dollars.<sup>4</sup> In effect, this means an average per capita assistance of less than \$30 a year for each refugee.<sup>5</sup>

<sup>3</sup> As regards assistance to Arab refugees by Arab populations and Governments, see W. de St. Aubin in *Middle East Journal* (1949), p. 249, and Harry N. Howard in *Middle East Forum* (1966), p. 29.

<sup>4</sup> See Annual Report of UNRWA (1966-1967), Table 19. In 1967 and 1968 annual expenditure exceeded \$40 million and for 1969 UNRWA's budget was estimated to exceed \$42 million (U.N. Document A/7213, p. 44).

<sup>5</sup> U.N. Document A/5214, p. 1.

## Fate of Arab refugee property

All the property, movable or immovable, of a million Arab refugees was seized by Israel in 1948. This plunder is one of the greatest mass robberies in the history of Palestine. In order to disguise the operation, the Israelis have called it 'the absorption of abandoned Arab property'. Such deceptive terminology cannot change the nature of the act because the so-called 'absorption' is nothing but the taking of the property of others. Professor Arnold J. Toynbee has described Israel's appropriation of Arab refugee property by its appropriate name of 'robbery'.<sup>1</sup>

Mr. Don Peretz, who undertook a detailed study of the question of Arab refugee property seized by Israel in 1948, mentions the secrecy with which the Israeli Government has surrounded all aspects of Arab refugee property and its unwillingness even to supply information thereon to the U.N. Conciliation Commission for Palestine which was charged with the protection of the rights, interests and property of the Palestine refugees:

Much information concerning the use, amounts and distribution of abandoned Arab property and the government's policy toward it was secret. Records and most reports of the Custodian of Absentee Property were secret. Sessions of the Kneset's Finance Committee, when it discussed the problem, were closed. Even the United Nations, in spite of frequent requests, was unable to obtain adequate information about Israel's disposition of Arab property. In its Fifteenth Progress Report of October 4 1956 the CCP stated that its representatives had still received no reply to a request submitted to the Israel Government the previous February for information concerning the administration of Arab refugee property or the measures taken to protect it, safeguard its identity, and provide restitution to the refugee owners.<sup>2</sup>

<sup>1</sup> Arnold J. Toynbee, *The Arab-Israeli Conflict*, *The Arizona Republic*, June 18 1967.

<sup>2</sup> Don Peretz, *Israel and the Palestine Arabs* (The Middle East Institute, Washington, D.C., 1958), pp. 142-143.



## I MAGNITUDE AND VALUE OF ARAB REFUGEE PROPERTY

Arab refugee property seized by Israel in 1948 consists of the following main items:

i. A large number of cities, towns and villages complete with their contents. The wholly Arab cities and towns of Jaffa, Acre, Nazareth, Lydda, Ramleh, Beersheba, Beisan, Majdal, Isdud, Beit Jibrin and Shafa Amr, the Arab sections of the New City of Jerusalem, Haifa, Tiberias, Safad and over eight hundred villages<sup>3</sup> were seized and taken over by Israel. As their Arab inhabitants were terrorised, expelled or fled in conditions of chaos and confusion, all these cities, towns and villages were taken over, in almost all cases, complete with their contents, including furniture, household effects, equipment, goods and other movable property. Since only 10 per cent of the Arab population remained in the territory occupied by Israel, the property seized represented 90 per cent of Arab holdings in such territory.

ii. Land outside urban areas. According to official figures already mentioned, the Arabs owned the bulk of the land of Palestine. This included cultivable land covering an area of 6,705,568 dunoms, land planted with citrus having an area of 135,368 dunoms, land planted with olive trees, bananas and other trees having an area of 1,054,065 dunoms<sup>4</sup> and large tracts of grazing land.

iii. Commercial and industrial property. This includes the rights, assets, goods and equipment of tens of thousands of individuals, companies, partnerships, industrial and commercial establishments, factories, flour mills and workshops. Mr. Don Peretz mentions that 7,800 shops, offices, workshops and storehouses were taken over by the Jews.<sup>5</sup>

iv. Movables, possessions and personal effects. This item represents the movable property and personal possessions of a million persons. In many cases the loot included money, silver, rugs, tapestries, paintings and works of art. Mr. Don Peretz refers to a report by the Israeli Custodian of absentee property dated April 18 1949, in which he stated that

<sup>3</sup> The number of Arab villages which existed in 1945 in the territories occupied by Israel was 863: A. Granott, *Agrarian Reform and the Record of Israel*, London, 1956, p. 89.

<sup>4</sup> See Appendix IV which reproduces the Village Statistics of the Government of Palestine to which reference is made in United Nations Document A/AC 14/32, November 11 1947. See also footnote 12, p. 76.

<sup>5</sup> Don Peretz, *op. cit.*, p. 165, note (8).

'the Arabs abandoned great quantities of property in hundreds of thousands of dwellings, shops, storehouses and workshops'.<sup>6</sup>

Resisting in 1966 a draft resolution for the appointment of a U.N. Custodian to protect and administer Arab refugee property, the Israeli delegate at the United Nations described the property of the Palestine refugees which was plundered by Israel as 'mainly agricultural land'. Here are his own words:

So far as the facts are concerned, the abandoned properties in question, mainly agricultural land, have long become an integral and indivisible part of the country's economy.<sup>7</sup>

However, the facts are otherwise, as is shown above.

Turning to the value of Arab property which was seized and misappropriated by the Jews in Palestine, one can say that it is immense. Politically, the value of Arab property in Palestine is priceless as such property is not for sale. But if one were to set a commercial value on it, the resulting figure would run into billions of dollars. Dr. Stephen Penrose, President of the American University of Beirut, thought that the total holdings of the Arabs in Palestine reached the staggering figure of two to three billion pounds sterling,<sup>8</sup> i.e., eight to twelve billion dollars if conversion is made at the then existing rate of exchange. In the opinion of Palestinian experts in real estate, the market value in 1948 of Arab refugee property seized by Israel in urban and non-urban areas (to the exclusion of movables and commercial or industrial property) amounted to approximately four billion English pounds sterling corresponding (at the then prevailing exchange rate of U.S. \$4.03 to the English pound sterling) to over sixteen billion U.S. dollars. This estimate reflects the market value of such property in 1948, which is far below its value at present prices. The value of real estate in the Middle East generally has risen considerably from what it was twenty years ago. Building costs are now generally about five times higher than they were twenty years ago.

The United Nations Conciliation Commission for Palestine has attempted on two occasions to make a valuation of Arab refugee

<sup>6</sup> Don Peretz, *op. cit.*, p. 148.

<sup>7</sup> U.N. Document A/SPC/PV 509, November 11 1966.

<sup>8</sup> Stephen Penrose, *The Palestine Problem: Retrospect and Prospect* (American Friends of the Middle East, New York, 1954), p. 18.

property. The first valuation was in the nature of a global estimate while the second valuation was made for each individual property. In neither case were the refugees consulted or represented at any stage of the proceedings.

The global assessment was made in 1951 by the Refugee Office established by the Conciliation Commission. As regards immovable property the estimate was said to have been based on the value of the land for its 'existing use', whatever such expression may mean.<sup>9</sup> The Refugee Office specifically excluded certain factors which since the Second World War had, in its opinion, 'forced up prices'. As regards urban lands, the assessment was based upon the 'notional amount of tax payable on abandoned Arab lands in each town by assuming that the tax payable is in proportion to the decrease in population'.<sup>10</sup> Land outside urban areas, if not cultivable, was not taken into account even though it might, and often did, possess considerable commercial value for building or development. The value of agricultural land was related to tax considerations. No wonder that the global valuation of Arab real property made by the Refugee Office in application of such unusual methods of assessment did not exceed one hundred million pounds sterling. Such a valuation was completely absurd because it hardly represented the income of Arab refugee property for one or two years.<sup>11</sup> It was only several years later than the Conciliation Commission for Palestine appeared to appreciate the importance and complexities of land values in Palestine. In its Seventeenth Progress Report it observed that 'land differs from most commodities in that the unit (hectare, acre or dunom) can vary so enormously in value. . . . For instance, figures from 2 to 100,000 Palestine pounds per dunom were quoted in official Palestine Government correspondence in 1946.'<sup>12</sup>

<sup>9</sup> Progress Report of the United Nations Conciliation Commission for Palestine, Supplement No. 18 A/1985.

<sup>10</sup> U.N. Document A/1985, p. 13.

<sup>11</sup> For example, the value in 1944 of Palestine's agricultural produce only was 28,327,000 Palestine pounds: P. J. Loftus, *The National Income of Palestine, 1944*, Palestine Government Press. The Palestine pound was equivalent to the pound sterling. Although no figures are available in respect of the income of urban property, such income must be presumed to have been considerably higher than the value of agricultural produce.

<sup>12</sup> U.N. Document A/4225. It should be observed that in some cases urban property in Palestine fetched prices higher than the sum of 100,000 Palestine pounds per dunom mentioned by the Conciliation Commission. The standard dunom or dunum represents one thousand square metres or approximately one-fourth of an acre.

The valuation made by the Refugee Office of movable property lost by the refugees was just as arbitrary and absurd as the valuation of immovables. The Refugee Office first stated that it could not make a valuation of all movable property. 'A formal request made by the Office on September 30 1951 to the Israeli authorities for information concerning the nature and extent of movable property appropriated by them has so far produced no result.'<sup>13</sup>

The Refugee Office did not trouble to ask the refugees for any information regarding movable property lost by them. Without any information from either the Israeli authorities or the refugees, the Refugee Office proceeded to make certain theoretical calculations based on the value of movables as a percentage of the value of immovables. These calculations led it to estimate the total value of the movable property belonging to the refugees at 19.1 million Palestinian pounds.<sup>14</sup> This amounted to the ridiculous figure of 19 pounds sterling or \$54 per head!

In 1962 the Conciliation Commission for Palestine attempted another valuation but made it clear on this occasion that in carrying out what it described as 'a technical programme' of identification and valuation of the property rights of Arab refugees 'the Commission was not attempting to lay down a basis for an over-all settlement of the refugee problem'.<sup>15</sup> Unlike the 1951 global valuation, which was based on value derived from 'existing use' and on other strange considerations, an effort was to be made this time to identify real property belonging to the refugees and to reach an opinion about the value of each individual parcel of land which they owned with reference to its market value on November 29 1947. The refugees themselves were not consulted about the value or identity of their properties. In its Twenty-second Progress Report (A/5700) of May 1964, the Conciliation Commission announced the completion of its programme for the identification and valuation of Arab refugee real property in Israel. However, the values reached were not disclosed. In its Twenty-third Progress Report, the Conciliation Commission stated that 'in the absence of any agreed programme involving values of properties, it would be not only premature but possibly prejudicial to speak of specific figures'.<sup>16</sup> In the absence of

<sup>13</sup> U.N. Document A/1985, p. 13.

<sup>14</sup> U.N. Document A/1985, p. 15.

<sup>15</sup> U.N. Document A/4225, para. 22.

<sup>16</sup> U.N. Document A/6225, December 28 1965.

publication of the values reached by the Conciliation Commission, it is not possible to comment upon the results achieved. It may be remarked, however, that the Conciliation Commission's basic objective of establishing the market value of property on November 29 1947, appears to have been largely defeated since it seems that the valuation relied upon land assessments derived from tax lists. The tax value of property does not generally represent its market value, and never did in fact represent its market value in Palestine. The rules and criteria adopted by the Conciliation Commission's land expert for the evaluation of refugee property were criticized by Jordan, Lebanon, Syria, and the U.A.R.<sup>17</sup> Moreover, the Conciliation Commission's efforts were limited to the identification and valuation of lands and buildings and did not consider the property rights of the refugees generally.

## 2 LOOTING OF MOVABLES, GOODS AND PERSONAL EFFECTS

The movable property of the million Arab refugees in 1948, comprising their personal possessions, household effects, goods and all other movable assets found in their homes, shops and factories, was purely and simply looted by Israel. The looting which occurred in Palestine at the hands of the Israelis is reminiscent of days gone by prior to the advent of civilization. The testimony about this large-scale looting is unanimous.

In his Progress Report, Count Bernadotte observed that most of the refugees left practically all their possessions behind.<sup>18</sup> He then added:

Moreover, while those who had fled in the early days of the conflict had been able to take with them some personal effects and assets, many of the latecomers were deprived of everything except the clothes in which they stood, and apart from their homes (many of which were destroyed) lost all furniture and assets, and even their tools of trade.<sup>19</sup>

Writing later, Mr. Ralph Bunche, the Acting Mediator on Palestine, stated in his Progress Report that 'the bulk of the refugees left their homes on foot at short notice taking little or nothing with them'.<sup>20</sup> Similarly, the Director of Field operations for the U.N.'s Disaster Relief

<sup>17</sup> U.N. Document A/AC.25/W.85, May 16 1966.

<sup>18</sup> U.N. Document A/648, p. 14.

<sup>19</sup> U.N. Document A/648, p. 47.

<sup>20</sup> U.N. Document A/689, p. 1.



Project observed: 'While a few were able to carry personal effects and some money, flight was generally disorderly and with almost no possessions.'<sup>21</sup> Referring to the exodus of the Palestine refugees, Mr. Edwin Samuel stated: 'The next stage in this tragedy was widespread Jewish looting of Arab property.'<sup>22</sup> Mr. George Kirk wrote:

It was apparently at Jaffa that Jewish troops first succumbed to the temptation to indulge in wholesale looting . . . and within a few days Jewish troops were looting the newly captured Arab suburbs of Jerusalem (see Kinche, *Seven Fallen Pillars*, p. 224; Levin, *Jerusalem Embattled*, pp. 116, 135-136, 226). Ben Gurion himself afterwards admitted that the extent to which respectable Jews of all classes became involved was 'a shameful and distressful spectacle' (Israel, *Government Handbook*, 5712, London, Scymour Press, 1951/52).<sup>23</sup>

S. G. Thicknesse wrote in 1949:

While it is comparatively simple to describe, or investigate, the present state of Arab immovable property, it is quite impossible to give any documented account of the fate of Arab movable property. It is very unlikely that the Government of Israel has assessed the value and extent of the immense amount of Arab property destroyed and looted (systematically as well as unsystematically) by Jewish groups and individuals both during and since the Palestine war. . . . The total value of such movable property must run into many million pounds.<sup>24</sup>

Don Peretz has cited the Israeli Custodian of Absentee Property as follows:

In a statement describing the early period, the Custodian of Absentee Property reported to the Kneset's Finance Committee early in 1949 that, during the violent transition from mandatory to Israeli control, before a firm authority was established, the Arabs abandoned great quantities of property in hundreds of thousands of dwellings, shops, storerooms and workshops. They also left produce in fields and fruit in orchards, groves and vineyards, placing 'the fighting and victorious community before serious

<sup>21</sup> W. de St. Aubin, *Peace and Refugees in the Middle East*, *Middle East Journal* (1949), p. 252.

<sup>22</sup> *Middle East Journal* (1949), p. 14.

<sup>23</sup> George Kirk, *The Middle East, 1945-1950* (Oxford University Press, London, 1954), p. 263.

<sup>24</sup> S. G. Thicknesse, *Arab Refugees*, Royal Institute of International Affairs, London, 1949, pp. 27-28.

material temptation'. (Extract from Custodian's report to the Kneset's Finance Committee given on April 18 1949.)<sup>25</sup>

'Temptation' is often an excuse pleaded as a mitigating circumstance by common thieves in criminal prosecutions but this is the first time that 'temptation' has been put forward by a government as an excuse for the massive plunder of a nation on such a large scale.

### 3 CONFISCATION OF IMMOVABLE PROPERTY

The immovable property of the Palestine refugees was also systematically seized and confiscated by Israel. This operation was done in two phases.

In a first phase between 1948 and 1950 Israel physically laid its hands upon all lands and buildings that belonged to the Palestinian refugees and enacted legislation which aimed at the formal seizure of their property. The first legislation in this regard was the Abandoned Areas Ordinance (1948). According to this law, the Government could declare any occupied area as 'abandoned' and in such event regulations could be made concerning 'the expropriation and confiscation' of the property. There can be no doubt that property which its owners had to leave behind in circumstances of coercion, terrorism or expulsion cannot properly be described as 'abandoned' property. The refugees never intended to 'abandon' their homes and their lands. Such a description is clearly tendentious.

The Abandoned Areas Ordinance was followed by the Cultivation of Waste Lands Regulations (1948). 'Waste land' was defined as land which was not cultivated or, in the opinion of the Minister of Agriculture, was not 'efficiently' cultivated. Such land could be seized by the Minister of Agriculture. It is obvious that, since the Palestine refugees were not allowed to return to their lands and could not cultivate them, this regulation was a device to seize all Arab land owned by the refugees in Israeli-held territory.

Then came the Absentee Property Regulations (1948) which extended the scope of the seizure to all Arab refugee property of any nature. In accordance with these regulations, 'absentee property' was vested in the Custodian of absentee property. The Custodian was entitled to ad-

<sup>25</sup> Don Peretz, *op. cit.*, p. 148.

minister the property but not to sell it nor to lease it for a period exceeding five years. 'Absentee property' was defined as property owned or possessed by an 'absentee'. The term 'absentee' meant any person who on November 29 1947 was a citizen or resident of the Arab States or was a Palestinian citizen who had left his place of residence, even though to take refuge in another part of Palestine. This meant, in effect, that all property, including land, buildings, movables and moneys owned by Arabs who did not remain at their habitual place of residence in Israeli-held territory was vested in the Israeli Custodian. The Custodian was entitled to a fee equal to 5 per cent of the value of the property as a charge for his administration. These regulations consummated the seizure of all property belonging to the Palestine refugees.

Encouraged by the inability of the United Nations to implement their resolutions concerning the repatriation of the refugees and the protection of their property, Israel took the next step, namely, the confiscation of Arab refugee property. This was done in the following manner. First, the Absentee Property Law (1950) was enacted on March 14 1950. This law again vested 'absentee property' in the Israeli Custodian of absentee property but its basic feature was that it authorized the Custodian to sell vested property, not generally, but to 'a development authority which shall be established by the Kneset' at a price not less than the 'official value' (Article 19). As regards urban property the expression 'official value' was defined to mean a sum  $16\frac{2}{3}$  times the 'net annual value' of the property as fixed for tax purposes in the year 1947/1948.<sup>26</sup> In the case of land planted with citrus, village built-up areas and cultivable land the 'official value' was a stated coefficient multiplied by the tax chargeable to the property. Such 'official value', being derived from a valuation of property made for tax purposes, bore no relation to its real or market value. The derivation of the value of property from a tax valuation in accordance with the 'official value' formula, coupled to its expression in devalued Israeli pounds, produces a value which is sometimes less than 5 per cent and never more than 10 per cent of the real value of the property. The 'official value' set by the Israeli

<sup>26</sup> In accordance with the Urban Property Tax Ordinance, 1928 the 'net annual value' was assessed once every five years for tax purposes. Such net annual value was arrived at by deducting 20 to  $33\frac{1}{3}$  per cent for repairs and other charges from the estimated gross annual value of built-up property. In the case of land the 'net annual value' was six per cent of the estimated capital value. In the case of rural property, the tax was based upon the estimated productivity of the soil.

authorities upon immovable property owned by the refugees was thus a thin disguise for a confiscation at a symbolic consideration.<sup>27</sup>

Then on July 31 1950 the Development Authority (Transfer of Property) Law was enacted. The Development Authority was a governmental entity which was set up in order to buy, rent, lease or otherwise acquire property. It was also empowered to sell or otherwise dispose of property but only to the State, the Jewish National Fund, Government institutions or local authorities. All land that belonged to the Palestine refugees outside urban areas was 'sold' by the Custodian of absentee property to the Development Authority which in turn 'sold' it to the Jewish National Fund or leased it to co-operative agricultural settlements. The greater part of urban and built-up property that belonged to the Palestine refugees was also 'sold' by the Custodian to lessees or squatters. Only 30 per cent to 40 per cent of urban built-up property, consisting mostly of old buildings in urban areas, still remain vested in the Custodian of absentee property.

The interposition of the Development Authority as the buyer of Arab refugee property was a method for concealing the confiscation. The device of interposing the Development Authority was explained as follows:

The Development Authority was based upon a sort of legal fiction. It was not desired to transfer abandoned land to Government ownership, as this would be interpreted as confiscation of the abandoned property. The Government was disinclined to take such a step, which would have been unfavourably regarded abroad, and no doubt opposed.<sup>28</sup>

The nullity under international law of the confiscation by Israel of Arab property in Palestine—whether or not it was in the form of transactions of 'sale'—and the right of the refugees to restitution of their property will be discussed in Section 3 (3c) of Part IV, *post*.

The confiscation of Arab property by Israel was not limited to that of the Arab refugees. Even those Arabs who remained in Israeli-held territory were not spared.<sup>29</sup> They were deprived of their lands by several

<sup>27</sup> For a criticism of the 'official value' criterion adopted by Israel, see Sami Hadawi, *Palestine: Loss of a Heritage* (Naylor Company, 1963), pp. 62–66.

<sup>28</sup> A. Granott, *Agrarian Reform and the Record of Israel*, pp. 100–101.

<sup>29</sup> For an account of the confiscation of Arab property and generally for the treatment of the Arab minority in Israel, see Sabri Firyis, *The Arabs in Israel* (The Institute for Palestine Studies, Beirut, 1968).

methods, some administrative and others legislative. Among confiscatory measures in the form of legislation mention may be made of the extension of the Absentee Property Law to Arab residents who had changed their place of residence before August 1 1948; the regulations of 1949 enabling the Minister of Defence to declare certain areas as 'security zones' and evict all their Arab inhabitants; the Law Concerning Uncultivated Lands (1949); the Expropriation Law, 1950; the Land Acquisition Law, 1953; and the Law of Limitation, 1958. The effect of some of these laws is briefly mentioned hereafter. By the Absentee Property Law of 1950 the term 'absentee' was extended to include Arabs who though they remained in Israeli-occupied territory in 1948 had the misfortune by reason of the prevailing circumstances to leave temporarily their ordinary place of residence. The consequence of such legislation was that if an Arab left his village in 1948 and sought refuge in a city or a neighbouring village so as to avoid a possible fate such as that of the villagers of Deir Yassin, he was classified as an 'absentee' and his property was seized and given away to the Development Authority. By this means nearly one-half of the Arab lands belonging to owners who had remained in Israeli-controlled territory were taken and confiscated. The Land Acquisition Law (1953) validated the seizure made prior to the date of the law of land belonging to resident Arabs which had been taken for 'security reasons or development purposes' and purported to vest title to such land in the Development Authority. The owners were offered in exchange for the seizure and expropriation of their property either some other land which was to be fixed by the authorities or some nominal compensation in cash.<sup>30</sup> Another means which was adopted by Israel to dispossess the Arab minority of its lands was the Law of Limitation (1958). This Law required the claimant to unregistered land to prove continuous undisputed possession for a period of fifteen years. Failing such proof, the land would be forfeited to the Israeli Government. Since the largest part of the land in Palestine was unregistered and claims thereto rested upon a possessory title, and since the required proof was almost impossible to adduce in many cases by reason of the prevailing circumstances, the new Law of Limitation meant, in effect,

<sup>30</sup> As to the fictitious nature of the compensation offered for the expropriation of the lands of the Arab minority in Israeli-held territory, see the memorandum of Al Ard Company submitted in 1964 by a group of Arabs in Israel to the Secretary-General of the United Nations: French version in *Les Temps Modernes*, 1967, No. 253 Bis, Paris, p. 792.



the confiscation of Arab-owned land. It is reliably estimated that the Palestine Arabs who have remained in Israel have been dispossessed of 80 per cent of their land holdings. The total area of land possessed by Arabs living in Israeli-held territory on June 4 1967 amounted to some 200,000 dunoms (about 50,000 acres), i.e., less than 1 per cent of the area of the country.

It is clear from the review of Israeli land legislation and confiscatory measures which were adopted in regard to lands owned by the Arab refugees and the Arab minority in Israel that Israel's policy was not only to create an exclusively Jewish state by displacing the non-Jewish inhabitants but also aimed at the dispossession of the Arabs, both refugees and residents, of all their lands, houses and buildings.

Notwithstanding their considerable financial means and all kinds of economic pressures and inducements, it took the Jews about seventy years from 1880, when Zionist colonization efforts started in Palestine, until 1948 to acquire 1,491,699 dunoms, representing about 6 per cent of the lands of Palestine. In less than two years from the date of the establishment of the state of Israel, namely, between 1948 and 1950, they were able to usurp and confiscate almost the totality of the lands of Palestine which came under their occupation, in plain violation of the rights of the Palestinians and in breach of the principles of international law and the resolutions of the United Nations.

#### 4 FAILURE OF ATTEMPTS TO PROTECT ARAB REFUGEE PROPERTY

Israel has defeated all the efforts which were made by the Conciliation Commission for the preservation and protection of Arab refugee property. The Conciliation Commission has mentioned in its Third Progress Report that it presented to the Israeli Government a list of preliminary measures which it considered fair and just for the protection of Arab refugee property.<sup>31</sup> Israel ignored the request. Another request made by the Conciliation Commission for the appointment of a mixed committee to deal with the question of the preservation of Arab orange groves was rejected by Israel.<sup>32</sup> The Conciliation Commission also asked Israel to abrogate the Absentee Property Law and to suspend all measures of requisition and occupation of Arab houses and lands.

<sup>31</sup> Third Progress Report, Document A/927, June 21 1949.

<sup>32</sup> Fourth Progress Report, Document A/992, September 22 1949.

Again this effort bore no fruit. The Conciliation Commission reported that 'the Israeli delegation informed the Committee that its Government was unable to abrogate the Absentee Act or to suspend measures of requisition of Arab immovable property'.<sup>33</sup>

In its resolution 394 (V) of December 14 1950 the General Assembly directed the United Nations Conciliation Commission for Palestine, *inter alia*, to 'continue negotiations with the parties concerned regarding measures for the protection of the rights, property and interests of the refugees'. Again the efforts failed. In its Tenth Progress Report (1951) the Conciliation Commission stated that it asked an assurance from Israel that no steps had been taken or would be taken by that Government which might be likely to impair the task with which the Refugee Office had been entrusted. The outcome of the Commission's efforts was summarized in its statement that: 'No reply was received to that request.'<sup>34</sup> The Conciliation Commission could not be more completely ignored by Israel.

The Conciliation Commission was not entirely discouraged by Israel's attitude for it continued its academic efforts for the protection of Arab refugee property. In its Fifteenth Progress Report, the Commission reported as follows:

In its letter dated September 28 1956 to the Government of Israel, the Commission went on to recall that, apart from the overall question of compensation, it had a responsibility in connection with the protection of the property rights of the refugees. In this respect, the Commission noted that it had not yet received a reply to its inquiries as to the administration of Arab property. The Commission also stated that it had before it a request from the Governments of the Arab States for information with regard to Arab refugee property in Israel. For these reasons the Commission requested the Government of Israel to provide it with concrete information as to the way in which refugee property was being administered, what measures were being taken to protect that property and safeguard its identity and what measures might have been taken with regard to the restitution to the refugee owners of rents or other income from their property which might have accrued since the property was taken over by the Israeli Custodian.<sup>35</sup>

This request of the Conciliation Commission was also ignored by Israel.

<sup>33</sup> Fourth Progress Report, Document A/992, September 22 1949.

<sup>34</sup> Document A/1985, July 15 1951.

<sup>35</sup> Document A/3199, October 4 1956.

Having failed to secure any protection of refugee property through the Conciliation Commission, the Arab States sought the appointment by the United Nations of an independent Custodian for the protection and administration of Arab refugee property. In 1961 a draft resolution was presented to the General Assembly for the appointment of a Custodian but was rejected. Again in 1962 at the General Assembly's seventeenth session another draft resolution for the appointment of a Custodian was submitted but not put to vote because the U.S. representative told the Special Political Committee that the Conciliation Commission was engaged in the identification and valuation of refugee property and that the Committee should await the Conciliation Commission's conclusion before coming to a decision. In 1965, a draft resolution for the appointment of a Custodian was rejected in the Special Political Committee by 38 votes to 34. In 1966, a similar resolution was also rejected, by 38 votes to 36. However, in December 1967 the Special Political Committee adopted for the first time, by 42 votes to 38, a five-power resolution for the appointment of a Custodian to protect and administer Arab refugee property in Israel and receive its income 'on behalf of the rightful owners'.<sup>36</sup> The sponsors of the resolution estimated that the income of refugee property which Israel has been appropriating illegally for the last nineteen years was several times larger than UNRWA's budget.<sup>37</sup> However, the sponsors of the resolution decided not to press it to a vote in the General Assembly, where it became apparent that by reason of certain political opposition it would not at that time gain the required two-thirds majority. A similar resolution was again defeated in the Special Political Committee by 44 votes against 42 on December 13 1968. The legal considerations relating to the appointment of a United Nations Custodian and the responsibilities of the United Nations for the protection of Arab refugee property will be considered in Section 3 (3c) of Part IV, *post*.

#### 5 BENEFITS DERIVED BY ISRAEL FROM ARAB REFUGEE PROPERTY

The benefits which Israel has derived from Arab refugee property are considerable. One can here leave the word to Mr. Don Peretz:

<sup>36</sup> U.N. Document A/SPC/SR 594, December 20 1967.

<sup>37</sup> U.N. Document A/SPC/SR 589.

During its formative years the new state's economy constantly hovered on the brink of bankruptcy. . . . Using the extensive property abandoned by the Arab refugees in their flight from Palestine, Israel hastened the speed of Jewish immigration and the extent of economic expansion.<sup>38</sup>

Later he observes:

As these facts show, the importance of property abandoned by Arab refugees could not be determined by the CCP's evaluation alone. Its value to Israel could be understood more clearly in relation to the amount of Jewish property at the end of the Mandate and to the role which it played in the new state's economic life, particularly in the absorption of over 700,000 new immigrants in the first few years of Israel's independence.<sup>39</sup>

Don Peretz gives also the following facts:

Abandoned property was one of the greatest contributions toward making Israel a viable state. The extent of its area and the fact that most of the regions along the border consisted of absentee property made it strategically significant. Of the 370 new Jewish settlements established between 1948 and the beginning of 1953, 350 were on absentee property. (Israel Government, Custodian of Absentee Property, mimeographed press release, January 16 1953; *Ha-Arez*; *Jerusalem Post*, January 18 1953.) In 1954 more than one-third of Israel's Jewish population lived on absentee property and nearly a third of the new immigrants (250,000 people) settled in urban areas abandoned by Arabs. They left whole cities like Jaffa, Acre, Lydda, Ramleh, Beisan, Majdal; 388 towns and villages and large parts of 94 other cities and towns. . . . (*Ibid.*; *Ha-Arez*, June 15 1951.) According to one Israeli source, the total number of Arab villages in the area now constituting Israel was 863 in the year 1945. (A. Granott, *Agrarian Reform and the Record of Israel*, London, 1956, p. 89.) . . . Ten thousand shops, businesses and stores were left in Jewish hands. At the end of the Mandate, citrus holdings in the area of Israel totalled about 240,000 dunoms, of which half were Arab owned. Most of the Arab groves were taken over by the Israeli Custodian of Absentee Property. But only 34,000 dunoms were cultivated by the end of 1953. (Israel Government, Custodian of Absentee Property, *op. cit.*, Government Year-book (English edition), 5714, 1953-1954, p. 142.) By 1956, 73,000 dunoms were either cultivated or fit for cultivation. (*Ha-Arez*, April 17 1956.) In 1951-1952, former Arab groves produced one-and-a-quarter million boxes of fruit, of which 400,000 were exported. Arab fruit sent abroad provided nearly 10 per cent of the country's foreign

<sup>38</sup> Don Peretz, *op. cit.*, p. 141.

<sup>39</sup> Don Peretz, *op. cit.*, p. 147.

currency earnings from exports in 1951. . . . In 1949 the olive produce from abandoned Arab groves was Israel's third largest export, ranking after citrus and diamonds (*Jerusalem Post*, August 15 1949). The relative economic importance of Arab property was largest from 1948 until 1953, during the period of greatest immigration and need.<sup>40</sup>

The Conciliation Commission for Palestine estimated that the amount of cultivable land owned by the Palestine Arab refugees which was taken over by Israel was nearly two and a half times the total area of Jewish-owned property.<sup>41</sup>

One can rightly say that to a large extent Israel has lived and thrived upon its loot of Arab refugee property in Palestine.

<sup>40</sup> Don Peretz, *op. cit.*, pp. 143, 165.

<sup>41</sup> Don Peretz, *op. cit.*, pp. 143-144.



Part III

The Israeli–Arab War (1967)



## SECTION I

# The causes of the war

The last Israeli-Arab war started with Israel's surprise attack on June 5 1967 upon the Egyptian and Syrian aerodromes. This lightning attack was followed by Israel's invasion of the Old City of Jerusalem, the Gaza Strip, the Sinai Desert, the West Bank of Jordan and the Golan region of Syria. The fighting stopped only after four cease-fire orders were issued by the Security Council. Israel ignored the cease-fire orders until it had achieved its territorial ambitions: to seize the Old City of Jerusalem, reach the banks of the Jordan River and the Suez Canal and occupy the commanding heights of the Golan in Syria. Although Jordan accepted the Security Council's cease-fire order issued on June 6 1967 Israel continued to fight until it had completed the capture of the Old City of Jerusalem and the whole West Bank. On the Syrian front, Israel launched its attack after the cease-fire order and continued hostilities until its forces had realized their objectives. The territories which Israel occupied during the war of June 1967 are shown on the map annexed as Appendix VII.

The dramatic incidents of the war have attracted more attention and received more publicity than its real causes. And in regard to causes, it is essential to distinguish between cause and pretext. Israel claimed at first that it did not start the war except in self-defence against the attack which Egypt launched against it on June 5 1967 in the air and on the ground.<sup>1</sup> This allegation has been shown to be false and Israel does not rely on it any longer. Israel further claimed that its sole goal in using force was to defend itself against Egypt's blockade resulting from the closing of the Straits of Tiran on May 22 1967 to Israeli navigation and to ships carrying strategic war material to Israel. However, the closure of the Straits of Tiran was not the cause of but only the pretext for the war. It was only a link, an important link, in a chain of events which had started earlier. The incident of the Straits of Tiran was played up to

<sup>1</sup> U.N. Document S/PV, 1347, June 5 1967.

such an extent that it has obscured the real causes of the war. An examination of the sequence of events which preceded the war shows that the roots of the armed conflict lie in certain provocative acts committed by Israel before the closure of the Straits of Tiran in order to create the required conditions for the achievement of certain aims—which included the destruction of Egyptian military forces—in a war for which the blame could be thrown upon the Arabs. The Syrian-Israeli Demilitarized Zone was the scene and starting-point of these provocative acts.

The Syrian-Israeli Armistice Agreement of July 20 1949 established a Demilitarized Zone from which the armed forces of the two parties were to be withdrawn and excluded. It was provided in Article V that any advance by the armed forces of either party, military or para-military, into any part of the said Zone should constitute a flagrant violation of the Armistice Agreement. The Chairman of the Mixed Armistice Commission was 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 for internal security purposes. A schedule of withdrawal of such armed forces as were then found in the Demilitarized Zone was annexed to the Agreement.

The Israelis violated the provisions of the Armistice Agreement on various occasions and in several respects. They refused to allow Arab civilians who had fled during the fighting in 1948 to return to their homes in the Demilitarized Zone. They expelled from the Zone those Arab inhabitants who had not left their homes, and proceeded to cultivate their lands. They erected fortifications and stationed armed police in the Zone. On a number of occasions, they launched military action against the Syrians.

All these breaches of the Armistice Agreement were condemned by the Mixed Armistice Commission and by the Security Council. It is not the intention to review here the troubled history of the Demilitarized Zone. It is enough to mention some of the major incidents and to note their origin. In its resolution No. 93 of May 18 1951 the Security Council, *inter alia*, noted that the Chief of Staff of the Truce Supervision Organization and the Chairman of the Israeli-Syrian Mixed Armistice Commission on a number of occasions have requested Israel to ensure that the Palestine Land Development Company is instructed to cease all operations in the Demilitarized Zone until such

time as an agreement is arranged through the Chairman of the Mixed Armistice Commission for continuing this project'. The Security Council further found that the aerial action taken by the forces of the Government of Israel on April 5, 1951, was 'inconsistent with the terms of the Armistice Agreement and the obligations assumed under the Charter'. The Security Council referred in the same resolution to the expulsion by Israel of Arab owners from the Demilitarized Zone and decided '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 . . .'<sup>2</sup>

Israel did not comply with the resolution of the Security Council and the Arab owners and farmers who were expelled from the Demilitarized Zone in breach of the Armistice Agreement were not allowed by Israel to return. In his report to the Security Council dated November 9, 1953, General Benmike, Chief of Staff of the U.N. Truce Supervision Organization, estimated the number of Arabs expelled by Israel from the Demilitarized Zone at 785 persons. However, no effective action was taken by the Security Council to force Israel to comply with its directions concerning the return of the evicted Arab owners to their lands and homes. Neither was the U.N. Truce Supervision Organization able to prevent the Israelis from ploughing Arab-owned land. The result has been that each year Israeli tractors supported by Israeli armed forces have ploughed or attempted to plough the lands that belong to the expelled Arab owners in the Demilitarized Zone while the Syrian forces have sought to prevent such cultivation. The outcome has been a succession of annual incidents between Syria and Israel.

In addition, Israel erected fortifications and stationed border police in the Zone in violation of the provisions of the Armistice Agreement. Moreover, Israel has also declined since 1951 to attend the regular meetings of the Mixed Syrian-Israeli Armistice Commission and refused to permit United Nations observers of the Truce Supervision Organization to enter the Demilitarized Zone to investigate Israel's activities. Commander Hutchison, who acted as an observer of the United Nations Truce Supervision Organization in Palestine, stated that the situation on the Syrian-Israeli border was 'aggravated by Israel's

<sup>2</sup> U.N. Document S/2157.



constant attempt to exert total control over the Demilitarized Zones that separate the two countries in some sectors'.<sup>3</sup>

General Carl von Horn, Chief of Staff of the U.N. Truce Supervision Organization in Palestine from 1958 to 1963, has thrown much light upon Israel's encroachments on Arab-owned lands and its attempts to gain exclusive control over the Demilitarized Zone in violation of the provisions of the Armistice Agreement and the resolutions of the Security Council. Describing the truce problems along the armistice lines, General von Horn explained that Israel's encroachment upon Arab-owned land was the usual cause of the border incidents:

A very different picture emerged along the Israeli-Syrian border where fierce outbreaks of shooting and shelling invariably coincided with ploughing, sowing and harvesting. It was a fruitful if disputed zone where the wheat and barley fields sometimes yielded two crops a year, and the ploughing time when the Israelis tended to encroach on Arab-owned land was regarded by both sides as the beginning of the shooting season.<sup>4</sup>

He remarked that the work of the Mixed Armistice Commission was 'a peace-keeper's nightmare because the Israeli members refused to attend meetings at which Syrians were present. And this despite their obstructionist tactics having been roundly condemned by the Security Council in New York'.<sup>5</sup>

General von Horn observed that:

The Jews developed a habit of irrigating and ploughing in stretches of Arab land, for the ground was so fertile that every square foot was a gold mine in grain. Gradually, beneath the glowering eyes of the Syrians, who held the high ground overlooking the Zone, the area had become a network of Israeli canals and irrigation channels edging up against and always encroaching on Arab-owned property. This deliberate poaching was bitterly resented by the Syrians who, shortly after a new canal had been started on March 24, opened fire on the Israeli irrigation teams. To our observers, they complained that the Israelis had been breaking the Armistice Agreement. Not unreasonably, they also claimed that the canal would prejudice the future ownership of the land whose sovereignty was still to be decided when and if ever a lasting peace was signed.<sup>6</sup>

<sup>3</sup> E. H. Hutchison, *Violent Truce* (Devin-Adair Company, New York, 1956), p. 107.

<sup>4</sup> General Carl von Horn, *Soldiering for Peace* (Cassel, London, 1966), p. 69.

<sup>5</sup> General von Horn, *op. cit.*, p. 69.

<sup>6</sup> *Ibid.*, p. 78.

General von Horn also described how 'the Israelis had advanced the "frontier" to their own advantage'.<sup>7</sup> This was not a figure of speech, for at certain places small trees were physically moved and transplanted so as to advance the frontier to Israel's advantage.

General von Horn has related in detail Israel's encroachment upon the lands of the Syrian village of Tawafik and the destruction by Israeli armed forces in 1962 of the houses of the village for no reason other than the villagers' opposition to such encroachment. He described Israel's cultivation of Arab land as

part of a premeditated Israeli policy to edge east through the Demilitarized Zone towards the old Palestine border (as shown on their maps) and to get all Arabs out of the way by fair means or foul . . . The Arab villagers in Tawafik resented this gradual encroachment . . . the land was intricately apportioned into narrow parallel strips which were either Arab or Jewish-owned. . . . This intricate apportionment had never been respected by the Israelis, who cultivated where they pleased.<sup>8</sup>

On February 1 1962 the Israelis attacked and occupied the village of Tawafik and blew up its houses. The Mixed Armistice Commission and subsequently the Security Council condemned the Israeli attack on Tawafik as a flagrant violation of the Security Council's resolution of January 19 1956 and of the Armistice Agreement.<sup>9</sup>

General von Horn also mentioned that the Israelis did not observe the Armistice Agreement which only allowed limited numbers of locally recruited civilian police in the Demilitarized Zone. 'Instead a patrol from the border police of the State of Israel would arrive usually in an armoured vehicle. . . . It was hardly surprising the Arab farmers should feel themselves and their fields threatened.'<sup>10</sup>

Israel's objective to appropriate all lands within the Syrian-Israeli Demilitarized Zone regardless of their ownership and in breach of the Armistice Agreement merely illustrates Israel's ambition to seize by any means all Arab-owned land in Palestine. The lands which the Jews had unsuccessfully tried to buy from their Arab owners during the British mandate they now sought to seize by force of arms. The objective here was the same as that followed by Israel in the occupied territories of

<sup>7</sup> *Ibid.*, p. 79.

<sup>8</sup> *Ibid.*, pp. 115-116.

<sup>9</sup> U.N. Document S/5111.

<sup>10</sup> General von Horn, *op. cit.*, p. 116.

Palestine, namely, to dispossess the Arabs of their lands. The land of Palestine must literally become the land of Israel. But to dispossess the Arabs in the Syrian-Israeli Demilitarized Zone the Israelis could not make use of their 'absentee legislation'.<sup>11</sup> So instead they used armoured tractors, guns and aircraft. Israel was condemned several times by the Security Council for its attacks and encroachments upon the Syrian-Israeli Demilitarized Zone which were 'flagrant violations' of the Armistice Agreement.<sup>12</sup> It is only fair to observe that Syria has not been condemned at any time by the Security Council for any attack on Israel or for any encroachment upon the Demilitarized Zone in breach of the Armistice Agreement. Israel's propaganda has always portrayed the Syrians as an unruly and trigger-happy people who sought to prevent Israeli farmers from cultivating their lands and thus arrested progress. What, in fact, the Syrians were arresting was the progress of the erosion of the Demilitarized Zone by the Israelis. It is fitting here to cite an observation which was made by the Chief of the U.N. Truce Supervision Organization. It was unlikely, he said, that the Syrian guns located on the plateau overlooking the Demilitarized Zone 'would ever have come into action had it not been for Israeli provocation'.<sup>13</sup>

In his Report to the Security Council dated November 2 1966 on the status of the Demilitarized Zone, the Secretary-General of the United Nations referred to Israel's continued violations of the Armistice Agreement and of the Security Council's resolutions on the Demilitarized Zone. The Secretary-General noted that both Israel and Syria had submitted complaints daily for several years. Israel has requested no investigation of its complaints alleging encroachments by Syrian fortifications, but Syrian authorities have asked for the investigation of their complaints of Israeli fortifications. The Secretary-General stated that 'since June 1956, United Nations Military Observers have been prevented by Israel

<sup>11</sup> As to Israel's 'absentee legislation' see Section 5 (3) of Part II.

<sup>12</sup> Among Israel's condemnations by the Security Council for breaches of the Armistice Agreement in respect of the Demilitarized Zone, see resolution No. 93 of May 18 1951 condemning Israel with respect to the Syrian Demilitarized Zone (U.N. Document S/2157), resolution No. 100 of October 27 1953 condemning Israel for drainage work in the Demilitarized Zone at Huleh (U.N. Document S/3128), resolution No. 111 of January 19 1956 condemning the attack on the Syrian outpost on Lake Tiberias and the Syrian-Israeli Demilitarized Zone (U.N. Document S/3538), and resolution No. 171 of April 9 1962 condemning the attack on Tawafik and the Syrian-Israeli Demilitarized Zone (U.N. Document S/5111).

<sup>13</sup> General von Horn, *op. cit.*, p. 117.

from carrying out investigations in the Hagrovrim and Susita areas. Access to the Dardera area, in the central sector of the D/Zone, has also been refused to United Nations Military Observers. Such restriction on the movement of United Nations Military Observers has prevented the investigation of recent Syrian complaints relating to Israeli fortifications in the Demilitarized Zone.<sup>14</sup> The same Report referred to the condition embodied in the Armistice Agreement which provided for the return of civilians to their villages and mentioned that Israeli police assumed control over practically the entire Demilitarized Zone. On the Western bank of the Demilitarized Zone, the Secretary-General pointed out that 'Arab villages have been demolished. Their inhabitants evacuated. The inhabitants of the villages of Baqqara and Ghannama returned following the Security Council resolution of May 18 1951 (S/2517). They were later (on October 30 1956) forced to cross into Syria where they are still living. Their lands on the Western Bank of the river, and the Khoury farm in the same area, are cultivated by Israel nationals.'<sup>15</sup>

And so we reach April 3 1967. On this date, the Israeli press announced that the Israeli Cabinet had decided to cultivate all areas of the Demilitarized Zone, specifically lots 51 and 52 which belong to Arab farmers.<sup>16</sup> Then, on April 7 an armoured Israeli tractor started cultivating a disputed parcel of land in the Demilitarized Zone backed by regular Israeli forces. Syrian small arms fire against the Israeli tractor was answered by a massive Israeli military action which included the use of artillery, tanks and aircraft. Several Syrian villages were bombarded and Israeli jet fighters reached the Damascus area. Six Syrian aircraft were lost in battle. In reporting this incident to the Security Council, Syria stated:

Several times during the past two weeks the Israelis continued to cultivate the disputed areas in the Demilitarized Zone for the sole purpose of instigating hostilities. This they did by armoured tractors protected by tanks and every armament, illegally placed in the Demilitarized Zone, in violation of the General Armistice Agreement. This demonstrates beyond any doubt a clear criminal intent to provoke a large-scale war with Syria.<sup>17</sup>

Israel's motives behind its provocative cultivation of the Demilitarized Zone which resulted in the major incident on April 7 1967, and

<sup>14</sup> U.N. Document S/7573, November 2 1966.

<sup>15</sup> U.N. Document S/7573, November 2 1966, pp. 4-5.

<sup>16</sup> Syrian complaint to Security Council, S/7845, April 9 1967.

<sup>17</sup> U.N. Document S/7845, April 9 1967, p. 5.

another incident four days later, were the subject of the following editorial comment in one of Beirut's leading newspapers:

The Demilitarized Zone, the subject of the dispute, possesses a small area. If Israel renounced sending to it its tractors, what would happen? Would Israel's economy be ruined?

What policy does this obstinacy to cultivate disputed lands indicate? . . . The incidents of April 7 and 11 are clearly premeditated acts of political significance.

The problem is not to know who fired first . . . but one of knowing why Israel, knowing what would be the Syrian reaction, has committed such provocation and then has engaged in reprisals.<sup>18</sup>

Israel followed the incident of April 7 by overt and public threats of military action against Syria. On May 10 1967, General Rabin, the Israeli Chief of Staff, said that Israeli forces might 'attack Damascus and change its Government'. On May 11 Israel's Prime Minister Eshkol stated in a public speech that in view of past incidents, 'we may have to adopt measures no less drastic than those of April 7'. On May 13 in a radio interview Israel's Prime Minister spoke of drastic measures to be taken against Syria 'at the place, the time, and in the manner we choose'. It is significant that these threats were also whispered in the ears of 'journalists and foreign diplomats including the Soviets'.<sup>19</sup> On May 15 1967 Syria drew the attention of the Security Council to the threatening statements made by Israeli leaders which evidenced an intent to launch military action against it.<sup>20</sup>

Israeli threats of military action against Syria were followed by troop movements and concentrations. On May 15 Israel organized a military parade in Jerusalem in breach of the Armistice Agreement with Jordan and in defiance of United Nations resolutions relating to the status of Jerusalem. Syria, Egypt and Soviet Russia received reports of Israeli troop concentrations along Syria's border. Israel has denied any such concentrations. Considering, however, that Israel is capable of mobilising and demobilising at a moment's notice and in view of the threats which it had made, its denial of the existence of troop concentrations was not convincing.

<sup>18</sup> Translated from *L'Orient*, April 12 1967.

<sup>19</sup> Charles W. Yost, *The Arab-Israeli War: How It Began*, *Foreign Affairs*, Vol. 46, No. 2, January 1968, p. 310.

<sup>20</sup> U.N. Document S/7885, May 15 1967, p. 1.



In a Report to the Security Council on May 19 1967 the Secretary-General referred to the 'steady deterioration along the line between Israel and Syria, particularly with regard to disputes over cultivation rights in the Demilitarized Zone, since the first of the year'. He then mentioned other factors which aggravated the situation: Al Fatch's activities,<sup>21</sup> the 'persistent reports about troop movements and concentrations, particularly on the Israeli side of the Syrian border', and intemperate and bellicose statements. Although the Secretary-General reported that U.N. officials had not noticed any troop concentrations in Israeli-held territory, such statement did not neutralize the prevalent belief of the existence of Israeli troop concentrations for the reason that for years Israel had prevented U.N. observers from visiting certain localities and exercising their surveillance at the frontiers. As regards Israeli threats against Syria, the Secretary-General said:

Intemperate and bellicose utterances, by officials and non-officials, eagerly reported by Press and radio, are unfortunately more or less routine on both sides of the lines in the Near East. In recent weeks, however, reports emanating from Israel have attributed to some high officials in that State statements so threatening as to be particularly inflammatory in the sense that they could only heighten emotions and thereby increase tension on the other side of the lines.<sup>22</sup>

What could have been the purpose behind Israel's threats against Syria and behind its troop concentrations, real or simulated? Was it to deter the Syrians or the Palestinian commandos? This can hardly be believed because the clash of April 7 was neither caused by the Syrians nor connected with Palestinian resistance. It was Israel which caused it by its provocative cultivation of Arab-owned lands; it was Israel which enlarged it by its massive raid against Syria; it was Israel which aggravated it by its threats to invade Syria and occupy Damascus. Israel's previous aggressions, which were always disguised under the name of reprisals, were not preceded by threats such as those which it made before the war of June 5 1967. One can only presume that Israel's aim was to exert so much pressure on Syria as to bring Egypt into the fray. The invasion of Syria would not realize Israel's basic objectives. Israel was more interested in engaging the Egyptians, who possessed the only

<sup>21</sup> Al Fatch is the leading Palestinian commando organization which fights Israel's occupation of Palestine.

<sup>22</sup> U.N. Document S/7896, May 19 1967.

Arab army which stood in the way of its territorial and expansionist ambitions. If, as is likely, this was Israel's plan, it succeeded perfectly.

Faced with Israel's threats of military action, Syria sought Egypt's assistance under their Mutual Defence Pact of November 1966. Egypt responded by moving troops to Alexandria and Ismailia. Such a response was dictated not only by the genuine fears felt in Damascus and Cairo of an impending Israeli aggression against Syria but also by reason of the criticism which had been levelled at President Nasser for his inaction in the face of Israel's aggressions against the Jordanian village of Samou' on November 13 1966, and against Syria on April 7 1967. However, in order to be in a position to extend effective assistance to Syria in the event of Israel carrying out its threats of invasion, but principally in order to deter Israel from any such attack, it was necessary for Egyptian troops to move up to the Egyptian-Israeli armistice lines. This necessitated the withdrawal of the U.N. Emergency Force which had been stationed since 1957 with Egypt's authorization on Egyptian territory along the armistice lines. Accordingly, after some unsuccessful discussions with the Commander of the U.N. Emergency Force, Egypt requested the Secretary-General of the United Nations, on May 17, to withdraw the Emergency Force. On the following day the Secretary-General agreed to the request and thereupon Egyptian units took up positions on the armistice lines. It should here be remarked that Israel questioned the Secretary-General's power to withdraw the U.N. Emergency Force without a decision from the General Assembly, but when faced by the Secretary-General's suggestion that such force be stationed on the Israeli side of the armistice lines Israel's representative quickly turned down the suggestion as being 'entirely unacceptable to his government'.<sup>23</sup> It is clear that the retention of the U.N. Emergency Force along the armistice lines with Egypt did not fit Israel's plans.

One of the localities from which the U.N. Emergency Force was withdrawn was Sharm El Sheikh, which overlooks the Straits of Tiran at the entrance of the Gulf of Aqaba. After its evacuation by the U.N. Emergency Force, Sharm El Sheikh, being Egyptian territory, was occupied on May 21 1967 by Egyptian troops. Since the navigable channel in the Straits of Tiran is situated less than a mile from the Egyptian coast and the Straits themselves lie in Egyptian territorial waters, Egypt announced on May 22 1967 that the Straits would be henceforth closed

<sup>23</sup> Charles W. Yost, *op. cit.*, p. 313.

to Israeli shipping and to strategic war material destined for Israel. This act amounted to a restoration of the situation as it existed from 1949 until 1956 before the Suez war, and constituted a lawful exercise by Egypt of its right of sovereignty over its territorial waters as well as an exercise of its belligerent rights.

Thereupon, tension began to mount on both sides. On the one hand,

the Syrian cry for help and the Egyptian military demonstration set off through the Arab world a wave of emotion such as could hardly have been predicted and which was to have considerable influence on the course of events. There was hardly an Arab city from Casablanca to Baghdad where demonstrations of some kind did not occur. No Arab government, whatever its political complexion, could afford to be backward in pledging both moral and material support in the battle apparently provoked by aggressive Zionism. . . . By May 27 all thirteen members of the Arab League had declared their solidarity in aiding any of their members who had to defend itself against Zionist aggression.<sup>24</sup>

On May 28 1967, Egypt and Jordan signed a defence pact. But in several public declarations President Nasser declared that Egypt would not unleash the war though it would resist Israeli aggression against any Arab country. His purpose was clearly 'to deter Israel rather than provoke it to a fight'.<sup>25</sup> On the other hand, 'the Israeli service chiefs, for their part, became increasingly insistent on attack, and accused the pacifists of treason for their shillyshallying'.<sup>26</sup>

When the crisis over the Straits of Tiran erupted in May 1967 some of the Great Powers adopted a confused and partial attitude. While all the Great Powers pleaded with the parties for calm, two of them, the American and British Governments, showed more concern for Israel's nonexistent, or at least arguable, navigation rights than for the legalities of the situation or for the root-causes of the Arab-Israeli conflict. Both Governments then made emphatic declarations condemning Egypt's action and supporting Israel's right of navigation through the Straits of Tiran. These two Governments even advocated the taking of international action to uphold the right of free passage through the Straits

<sup>24</sup> M. Howard and R. Hunter, *Israel and the Arab World: The Crisis of 1967*, Adelphi Papers, No. 41, p. 17.

<sup>25</sup> *The Observer*, June 4 1967.

<sup>26</sup> Maxime Rodinson, *Israel and the Arabs* (Penguin Books, 1968), p. 199.

without recourse to, or a ruling from, the International Court of Justice on such an important legal issue. In contrast, the monstrous injustice suffered by the people of Palestine never prompted any such emphatic protests or calls for international action. Professors Howard and Hunter have remarked: 'And even the least paranoic Arab statesmen could hardly regard as impartial powers which, while taking a strong stand on Israeli rights of navigation in the Gulf of Aqaba, had nothing whatever to say about the rights of a million Palestinian Arabs dispossessed of their lands.'<sup>27</sup>

At the beginning of June Egypt accepted the American Government's suggestion to send Zacharia Mohyeddin, its Vice-President, to Washington to discuss a peaceful solution. But Israel did not want any peaceful solution. It jumped at the occasion offered by the closure of the Straits of Tiran to its shipping. This was the golden opportunity 'to strike a heavy blow and administer the promised "good lesson" to the Arabs'.<sup>28</sup> At the same time Israel could also achieve other desirable objectives. On the one hand, Israel's involvement in military action with the Arabs would relieve the severe emigration and economic crises which have oppressed Israel since 1966. For the first time since its creation immigration to Israel had suffered a set-back and in 1966 more Jews left Israel than those who came in. This ominous development—if it continued unchecked—presaged the collapse of the Zionist experiment in Palestine. On the other hand, Israel's finances were at a low ebb and those who had been supplying the necessary financial support for the maintenance of this economically non-viable state were beginning to get tired. German compensations to Israel were at an end and contributions to the Jewish National Fund were dwindling. The Arab boycott was becoming stiffer. The number of unemployed had reached 100,000 early in 1967. Labour riots had broken out in Tel-Aviv on March 16 1967. A military campaign against the Arab states, particularly if presented to world opinion as a defensive war intended to safeguard Israel's existence, would distract the people from their internal problems, boost morale, attract world sympathy and generate financial contributions on a large scale. Moreover, this was a chance to further the Zionist basic objective and expand territorially, laying hands in the process upon the valuable tourist resources of the Christian and Moslem Holy Places in

<sup>27</sup> M. Howard and R. Hunter, *op. cit.*, p. 42.

<sup>28</sup> Maxime Rodinson, *op. cit.*, p. 208.



the Old City of Jerusalem and upon the Egyptian oil wells in Sinai which would ensure for Israel self-sufficiency in crude oil. Therefore, Israel seized the occasion to treat the closure of the Straits of Tiran to its shipping as a *casus belli*. This undue haste on its part to start the war cannot be explained by any urgent navigational needs, for 'no merchant vessels flying the Israeli flag had passed through the Straits of Tiran for the past two years'.<sup>29</sup> Thus Egypt had made a miscalculation about the effect of its demonstration of solidarity with Syria. Neither its troop movements nor its request for the withdrawal of the U.N. Emergency Force had deterred Israel from aggression. In fact, by announcing the closure of the Straits of Tiran to Israeli ships Egypt fell into the trap and gave Israel the pretext for which it had been waiting. On the morning of June 5 1967, Israel struck with savage force at Egypt, Syria and Jordan, bringing the ravages of war to the Middle East for the third time since 1948.

These were the real reasons for the Israeli-Arab war of June 5 1967. Every step taken by Israel from April 7 1967 until June 5 1967 was carefully and accurately planned, first to get Egypt involved in the fray and then to make the world believe that Israel was the little defenceless country, persecuted by the Arabs, threatened by its evil neighbours, struggling to survive and to defend its existence. Israel's propaganda was mobilized everywhere and neglected nothing for the psychological preparation of public opinion before the aggression. Israel's threats were met by noisy Arab counter-threats which Israel ably exploited in order to give the colour of a defensive war to its proposed aggression. Israel's propaganda was able to create such an emotional climate that it actually succeeded in making the world believe that two million Jews were threatened with massacre by one hundred million Arabs when, in fact, and putting aside Arab verbal excesses, there was not the slightest danger of any Arab attack upon Israel and, much less, of the annihilation of the Jews. As to the eloquent but meaningless Arab counter-threats against Israel, they were an exact repetition of what occurred in 1948: words and speeches on the part of the Arabs in contrast to acts and deeds on the part of the Israelis: 'the Arabs cry havoc and Israel promptly makes it'.<sup>30</sup> The 'throwing of the Israelis into the sea' was a mere emotional slogan used by some Arabs. The throwing of the Palestine Arabs out of their

<sup>29</sup> M. Howard and R. Hunter, *op. cit.*, p. 24.

<sup>30</sup> *The Economist*, December 9 1967, p. 1042.



homes and country was not a slogan on the part of the Israelis: it became a sad reality.

Israel overplayed the danger to its security when it is remembered that it had by its own actions and threats provoked the crisis and that it was in no danger of being attacked and much less of being destroyed. In fact, the danger of attack and destruction came from Israel itself. It was Israel which struck, and the world was amazed to discover that poor little Israel was better armed, better equipped, and better trained than its adversaries. It took poor little Israel only six days to wreak havoc and destruction on three neighbouring Arab countries and their armies, to kill and maim tens of thousands of people and to displace four hundred thousand civilians from their homes. From that time many impartial observers began to doubt Israel's propaganda about its helplessness, the danger to its security and its war aims. Israel's continued occupation of Arab territories, its establishment of Jewish settlements in the occupied areas, and its annexation of the Old City of Jerusalem are an indication that its war aims were other than the opening of the Straits of Tiran and its own defence. In June 1967 Israel did not score a military success only, it won a victory of propaganda and deception: the victims were made to appear as if they were the aggressors and the aggressors were made to appear as if they were the victims. This, in fact, has been Israel's strategy from the outset. Ever since 1948 Israel has posed as the defender of acquired rights and has represented the Arabs as the aggressors. In the words of Professor Jacques Berque, this is a reversal of the historical relations between the parties.

Israel's claim that it was entitled to treat the closing of the Straits of Tiran as a *casus belli* is a distortion of history. The war, in effect, was started by Israel on April 7 1967 by its provocative cultivation of Arab-owned land in the Syrian-Israeli Demilitarized Zone and its attack on Syria on that day in breach of the Armistice Agreement. The clash on April 7 1967 was correctly described as 'the curtain-riser to the six-day war'.<sup>31</sup>

On the other hand, Israel's claim that it was justified in treating the closure of the Straits of Tiran as a *casus belli* has no legal basis or, at least, was of doubtful validity under international law. Israel possessed no right of innocent passage either through Egypt's territorial waters or

<sup>31</sup> Charles W. Yost, *op. cit.*, p. 306.

through the Straits of Tiran. Professor Roger Fisher of Harvard University has observed that

it is debatable whether international law confers any right of innocent passage through such a waterway. Despite an Israeli request the International Law Commission in 1956 found no rule which would govern the Straits of Tiran. Although the 1958 Convention of the Territorial Sea does provide for innocent passage through such Straits, the United States representative, Arthur Dean, called this 'a new rule' and the U.A.R. has not signed the treaty.<sup>32</sup>

Professor Fisher further questioned whether Israel could in view of its raids and threats against Syria claim a right of innocent passage through Egyptian territorial waters:

In April Israel conducted a major retaliatory raid on Syria and threatened raids of still greater size. In this situation, was Egypt required by international law to continue to allow Israel to bring in oil and other strategic supplies through Egyptian territory—supplies which Israel could use to conduct further military raids? That was the critical question of law.<sup>33</sup>

Regarding the acceptance by the Western Powers at the time of the crisis of Israel's thesis on the closure of the Straits of Tiran, Professor Maxime Rodinson has observed that Egypt could urge what were at the very least powerful arguments in any discussion on this disputed question of international law. 'In the absence of any specific international convention, was any state obliged to grant passage, through coastal waters extending less than two miles from its shores, to strategic material intended for another state with which it is legally at war? Besides, all that had been effected was a return to the situation operating from 1949 to 1956.'<sup>34</sup>

Professor Edmond Rabbath has said that it is immaterial to determine in this case whether the Straits of Tiran give access to an international waterway or whether their waters are territorial because:

Le droit de passage innocent (ou inoffensif) est, par définition et dans son esprit même, incompatible avec le droit de défense, dont jouissent néces-

<sup>32</sup> Professor Roger Fisher, Letter to the *Sunday New York Times*, June 11 1967.

<sup>33</sup> Professor Roger Fisher, *ibid.*

<sup>34</sup> Maxime Rodinson, *op. cit.*, p. 196.

sairement les Etats riverains, en guerre avec l'Etat qui en revendique l'exercice.<sup>35</sup>

Furthermore, as regards the particular question of the passage of Israeli warships through the Straits of Tiran, such passage is in terms prohibited by Article II of the Egyptian-Israeli Armistice Agreement of February 24 1949. Article II provides that no element of the forces of one party shall enter or pass through waters within three miles of the coast line of the other party.

Who bears responsibility for the Israeli-Arab war of June 5 1967? It is evident from the historical sequence of the events which have preceded June 5 1967 that the war was an aggression committed by Israel against the Arab states. In an attempt to clear itself of this charge, Israel has sought to throw the blame for the outbreak of the war on Palestinian resistance, on the Syrians, on President Nasser and on the Russians. Such accusations conflict with the facts. Another explanation has been advanced by Mr. Charles W. Yost, who has suggested that 'no government plotted or intended to start a war in the spring of 1967. . . . There is no evidence—quite the contrary—that either Nasser or the Israeli Government or even the Syrian Government wanted and sought a major war at this juncture.'<sup>36</sup> This explanation, however, appears to be too charitable to Israel, which it frees from its basic responsibility for the war. But even if one were to concede that Israel 'did not plot or intend to start a war', there can be no doubt that its provocative cultivation of Arab-owned land, with its resulting clash on April 7 1967 which Israel escalated into a large-scale war operation, coupled with the threats uttered publicly by Israel's leaders against Syria, started an irreversible chain of events that led eventually to the war of June 5 1967. And, it should not be forgotten, it was the Israeli forces which fired the first shots and launched their surprise attack upon Egyptian aerodromes on the morning of June 5 1967.

<sup>35</sup> Professor Edmond Rabbath, *Mer Rouge et Golfe d'Aqaba* (Institute for Palestine Studies, Beirut), p. 59.

<sup>36</sup> Charles W. Yost, *op. cit.*, p. 319.

## Another refugee tragedy

In less than twenty years Israel created a second refugee tragedy. The number of Palestinians displaced from the West Bank and the Gaza Strip as a result of the Israeli-Arab war of June 5 1967 were estimated by the Government of Jordan on May 31 1968 to have reached 410,248 persons. A large number of them received assistance from UNRWA in Jordan and were estimated in January 1968 at 325,000. This figure comprises 145,000 Palestinian refugees of the 1948 conflict who were formerly registered with UNRWA on the West Bank and were displaced for a second time in June 1967, and 180,000 new refugees from the West Bank and the Gaza Strip. To the number of Palestine refugees who were displaced from the West Bank and the Gaza Strip, one must add 16,000 Palestinians registered with UNRWA as refugees of the 1948 conflict who were displaced in Syria as well as 3,000 to 4,000 Palestinian young men, also previously registered with UNRWA, who were expelled by Israel from the Gaza Strip to Egypt.<sup>1</sup> In addition to the Palestine refugees, about 100,000 people were also displaced from the occupied areas in Syria, 60,000 to 70,000 were displaced from the Sinai Peninsula, and about 300,000 people were moved away from the Suez Canal Zone in consequence of Israeli bombardments across the Canal.

The total number of Palestinian refugees existing at present as a result of the two conflicts of 1948 and 1967 needs some clarification. In 1962, as we have seen, the Commissioner-General of UNRWA estimated the proportion of Palestine refugees who were not registered with UNRWA and who lived on their own means at twenty per cent of those displaced.<sup>2</sup> Similarly, Mr. Gussing, the Special Representative of the Secretary-General, stated in his report dated September 15 1967 that the number of refugees registered with UNRWA 'is estimated to be 70 per cent of the

<sup>1</sup> U.N. Document A/6713, September 15 1967, para. 40.

<sup>2</sup> U.N. Document A/4514, p. 2. See Section 3 (2) of Part I, *ante*, as to the estimated number of refugees, registered and unregistered, as on May 31 1967.

total number of refugees and displaced persons'.<sup>3</sup> UNRWA's figure of registered refugees as on June 30 1968 amounted to 1,364,298.<sup>4</sup> If one adds to this figure a proportion of 20 or 30 per cent representing the refugees not registered with UNRWA, the total number of Palestine refugees who were displaced by Israel since 1948 must be considered to be in excess of 1,800,000.

The condition of the new refugees in Jordan is appalling. The majority live in tents in eight camps scattered around Amman. More than once in winter their tents were torn away by the winds or washed away by storms. On several occasions refugee camps close to the Jordan River were subjected to Israeli bombardments. Large numbers of refugees are gathered in the towns, mostly in the capital. 'They swarm on the steps of the Ministry of Reconstruction or cluster at the wrought iron gates of the private houses of any Jordanian official who might tell them where to find work, shelter, food.'<sup>5</sup> These innocent victims have lost everything in this world, home, country and earthly possessions, some of them even becoming refugees for a second time in a generation; but they still cling to a hope, becoming fainter every day, in a justice which is still to come from the United Nations and the conscience of mankind.

What were the reasons for the exodus of the Palestine refugees from the West Bank and the Gaza Strip?

Some left out of fear,<sup>6</sup> others were either expelled or forced to leave as a result of the destruction of their homes or because of oppression.

In some instances, the Palestinian refugees were physically expelled from their villages or their homes. In various places Israeli forces used the method which they had applied with success in 1948: in loud-speakers installed in armoured cars they announced that the road to Amman was open and ordered the people to leave. Thus, in Jerusalem, loud-speakers announced on June 6 1967 the capture of the city and asked the Arab inhabitants to leave for Amman while the road was still open. They were told that their safety could not be guaranteed if they remained. In other places, such as in Bethlehem, the people were

<sup>3</sup> U.N. Document A/6797, p. 66.

<sup>4</sup> U.N. Document A/7213, p. 18.

<sup>5</sup> *The Economist*, December 9 1967, p. 1042.

<sup>6</sup> *Le Monde* has observed that the fear of being massacred by the Israelis, the desire not to live under Jewish occupation and the memory of 1948 have contributed to the Arab exodus (*Le Monde*, August 19 1967).



ordered to leave within two hours, failing which their houses would be blown up over their heads. Some heeded the threats, others did not. In his report to the Security Council, Mr. N. G. Gussing, the Special Representative of the Secretary-General of the United Nations, mentioned 'persistent reports of acts of intimidation by Israeli armed forces and of Israeli attempts to suggest to the population, by loud-speakers mounted on cars, that they might be better off on the East Bank. There have also been reports that in several localities buses and trucks were put at the disposal of the population for travel purposes.'<sup>7</sup>

Another method used by the Israelis to displace the Palestinians was the mass destruction of their homes and villages. Thousands of houses and several villages were dynamited by Israeli forces after the official ending of the hostilities, some as a means to force the Palestinians to leave their country, others by way of 'reprisals' for resistance by the inhabitants to the occupying forces.<sup>8</sup> In some cases, whole quarters of towns and villages were razed to the ground, forcing their inhabitants to roam about without shelter and in conditions of utter destitution. Two residential quarters of the Old City of Jerusalem, the Magharbeh and the Sa'diyah Quarters, were razed to the ground in order to establish a 'parking ground' in front of the Jewish Wailing Wall. As a result, several hundred Arab families were rendered homeless.<sup>9</sup> In the town of Qalqiliya 850 houses were dynamited and destroyed.<sup>10</sup> UNRWA's report to the U.N. dated September 15 1967 stated that 'in Qalqiliya (near Nablus) and in seven villages in the Latrun and Hebron areas many houses were damaged or destroyed during the fighting or were subsequently destroyed. The extent of the destruction varies from rather less than half the houses in Qalqiliya to virtually total destruction in some of the smaller villages. . . . At one time the total number of persons thus rendered homeless exceeded 20,000. The inhabitants of the three villages in the Latrun area, who number about 4,000, are still not allowed to go back and these villages are reported to be wholly destroyed.'<sup>11</sup>

In the Jerusalem area the two villages of Battir and Beit Iksa were

<sup>7</sup> U.N. Document A/6797, p. 13, September 15 1967.

<sup>8</sup> Some of these destructions are mentioned in David Holden's article in *The Sunday Times*, November 19 1967.

<sup>9</sup> For details of demolitions in the Old City of Jerusalem, see the statement made by Mr. Rouhi El Khatib, Mayor of Jerusalem, before the Security Council on May 3 1968.

<sup>10</sup> See Mr. Gussing's report to the Security Council, U.N. Document A/6797, pp. 14-15.

<sup>11</sup> U.N. Document A/6701. See also Gussing's report U.N. Document A/6797, p. 16.

destroyed after the end of hostilities. In the Latrun area, the villages of Emmaus (of Biblical significance), Yalo, Beit Nouba and Beit Sir were 'systematically and completely destroyed by the Israelis 19 days after the cease-fire'.<sup>12</sup> Their inhabitants, who numbered over 10,000, were left without a roof or shelter. In the Hebron area, the two villages of Beit Awa and Beit Mersim were also destroyed after the cease-fire. Mr. Gussing's report to the Security Council states that at Beit Awa, out of some 400 houses, more than 90 per cent have been completely demolished while Beit Mersim was completely destroyed. The report adds: 'The Special Representative visited Beit Awa on August 11. The Arab mukhtar stated that Israeli troops entered the village on June 11 at 5.30 a.m. The inhabitants were then asked to take two loaves of bread and to go to the hills surrounding the village. At 7.30 a.m. the Israeli troops started to demolish the houses with dynamite and bulldozers. Groves around the village were burnt. The belongings of the inhabitants were also burned since they were unable to take them along.'<sup>13</sup>

Even refugee shelters built by UNRWA for the victims of the war of 1948 were not spared. Thousands of these shelters were razed to the ground by Israeli forces. The Commissioner-General of UNRWA reported to the United Nations about the demolition of shelters after fighting had ceased in the refugee camps of Jabaliya and Rafah in the Gaza Strip.<sup>14</sup> On November 20 1967 the refugees at Karameh on the eastern side of the Jordan River were the victims. Here is the report: 'The people of Karameh are mourning their dead. This is a refugee camp of 1948 vintage that hitched itself to the landscape and became quite a flourishing Jordan valley town. It was here on the afternoon of November 20 that children, coming out of school, were caught in the splintering fire of Israeli mortars. These were aimed with deadly precision. Right down the main street . . . came heavyweight high-fragmentation anti-personnel bombs. . . . The deathroll of children was higher than at Samu, the Jordan West Bank village. . . .'<sup>15</sup> On Decem-

<sup>12</sup> Letter of Anna Hagglof to *The Times*, September 13 1967.

<sup>13</sup> U.N. Document A/6797, pp. 17-18, September 15 1967.

<sup>14</sup> U.N. Document A/6723/Add. 1, July 4 1967.

<sup>15</sup> *The Economist*, December 9 1967, p. 1042. For a description of Israel's bombardment of the Karameh refugee camp on November 20 1967, see U.N. Document A/6956. But this was not the end of the story, for the same refugee camp at Karameh was to suffer again a massive Israeli raid on March 21 1968 which was condemned by the Security Council on March 24 1968 as a 'flagrant violation of the United Nations Charter and the cease-fire resolutions'.

ber 2 1967 some 800 houses and refugee shelters in the Jordan valley near the Damia bridge on the Jordan River, which were inhabited by 6,000 people, mostly refugees, were wiped out by bulldozers of the Israeli army. The official explanation was that 'the area was infested with rats which threatened the health of Israeli soldiers in a military post in the neighbourhood'.<sup>16</sup> On December 8 1967 UNRWA lodged a protest to the Government of Israel against the systematic destruction of refugee houses and shelters. The destruction of Arab houses was also condemned on March 8 1968 by the United Nations Commission on Human Rights which called upon Israel 'to desist forthwith from acts of destroying homes of the Arab civilian population inhabiting areas occupied by Israel'. On May 7 1968 the United Nations Conference on Human Rights held at Teheran again called upon Israel to desist forthwith from destroying homes of the Arab civilian population and to respect and implement the Universal Declaration of Human Rights and the Geneva Conventions of August 12 1949 in the occupied territories.<sup>17</sup> The destruction of houses or other property by a military occupier is contrary to international law and is forbidden by the Geneva Conventions of August 12 1949.

In addition to physical expulsion and destruction of homes and villages, oppression and terrorism by Israeli forces have accounted for the exodus of a great number of refugees from the occupied areas and, in particular, from the Gaza Strip. The population of the Gaza Strip was estimated before the conflict of June 5 1967 at 442,476 of whom 316,776 were refugees of the 1948 conflict (U.N. Document A/6713). It is here that the strongest oppressive pressure was and is still being exercised against the refugees in order to force them to leave. The most savage terrorist outrage was perpetrated at the largest refugee camp at Rafah, which housed 42,000 people. There 'according to UNRWA sources . . . 144 inhabited houses in a refugee camp were bulldozed in a single night, and a recent communal grave in the camp, which was excavated under UNRWA supervision, contained 23 bodies'.<sup>18</sup> What the newspaper report failed to mention was that Israeli forces came to the Rafah refugee camp in the early hours of Friday, June 9 1967, bulldozed 144 refugee houses and blew up with explosives a number of other houses

<sup>16</sup> *The New York Times*, December 2 1967.

<sup>17</sup> U.N. Document A/7098, May 10 1968.

<sup>18</sup> David Holden in *The Sunday Times*, November 19 1967.

while the occupants were still asleep inside. The victims were buried in shallow mass graves in the camp area. On June 29 1967 UNRWA complained to the Israeli authorities that the burial of the refugees who were killed and buried within the precincts of the camp created a health hazard for the other refugees. In consequence of these representations UNRWA was permitted to exhume the bodies and bury them at greater depth and at a safer distance. What is astonishing is that while there is good reason to believe that UNRWA has reported the Rafah camp massacre of June 9 1967 to the Secretary-General of the United Nations, no mention of it was made in UNRWA's published reports. The incident was buried with the victims.

Mr. Michael Adams, an English journalist, made an inquiry on the spot concerning Israel's treatment of the civilian population of the Gaza Strip. His report concluded as follows: 'I had my ups and downs during four years as a prisoner of war in Germany but the Germans never treated me as harshly as the Israelis are treating the Arabs of the Gaza Strip, the majority of whom are women and children.'<sup>19</sup>

Israel's oppression of the inhabitants of the Gaza Strip explains the daily flow of people that fled from the area after the end of the hostilities and sought refuge in Jordan. This flow of refugees was even at one time financially subsidized by the Israeli authorities until Jordan put a stop to it in the summer of 1968 by shutting its frontier to any further refugees. Israel's oppression, which aims at making life intolerable to people in Gaza Strip, is clearly intended to create conditions that will enable an easy annexation of the area. Since last June Israel's leaders have made numerous statements in which they have expressed annexationist ambitions in respect of the Gaza Strip. But in line with Israel's racist policy first applied in 1948, they want the land without the people.

These were the main causes of the second exodus of Palestine refugees in 1967.<sup>20</sup> Israel's strategy has even sought to describe the appalling

<sup>19</sup> Michael Adams, *The Guardian*, January 26 1968. As to various methods of oppression and intimidation used by the Israeli authorities against the civilian population in the Gaza Strip, see also the accounts in *The Sunday Times*, November 19 1967, *The Economist*, December 9 1967, *The Guardian*, February 19 1968, and *The Observer*, January 18 and February 18 1968.

<sup>20</sup> For an eye-witness account of pillage, brutalities, expulsions and destruction by Israeli forces which were designed to force the Arabs to leave the areas occupied in June 1967, see the account given by two French religious charity workers in *Jérusalem et le Sang des Pauvres*, Cahier du Témoignage Chrétien, No. 47 (49) Faubourg-Poissonnière.



human tragedy which it has caused as 'a free and orderly migration'. Such was the description given of the second exodus of Palestine refugees by Israel's representative at the U.N. in the Special Political Committee on December 14 1967.<sup>21</sup>

Under the pressure of international public opinion and by way of apparent compliance with Security Council's resolution 237 of June 14 1967 and with General Assembly resolution 2252 (ES-V) of July 14 1967, both of which called upon Israel to facilitate the return of those inhabitants who had fled since the outbreak of hostilities, Israel announced in July 1967 that it would allow the return of the refugees of the last conflict. The arrangements for the return of the refugees became the subject of prolonged negotiations between the International Committee of the Red Cross and the Governments of Israel and Jordan. After much discussion about forms, procedure and rules, the application forms which Israel required should be submitted by the refugees were issued on August 12 1967. Only those refugees who had crossed over to the East Bank of Jordan between June 5 and July 4 1967 and whose applications were approved by Israel would be allowed to return to their homes. At the same time, Israel fixed the deadline of August 31 1967 for termination of the arrangement, thereby making it practically impossible from the outset for the refugees to return. Notwithstanding the stringent conditions which hemmed in the repatriation programme, 40,000 applications were submitted to Israel for the return of 150,000 refugees. The majority of those applications were not approved or even considered. Only a small number were permitted to return. Israel offered all kinds of obstacles to prevent repatriation. These are described in the report of the Commissioner-General of UNRWA dated September 15 1967:

The number of applications approved and permits issued by Israel is stated on the Jordan side to be 5,122 (relating to 18,236 persons) and on the Israel side to be 5,787 (relating to 20,658 persons). The number of persons who had actually crossed by August 31 was reported from Amman to be 14,150 and from Jerusalem to be 14,056. It is evident that only a small fraction of the total number of persons applying to return have so far been permitted to do so. Among those permitted to return, it appears that there

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Paris). The writers have remarked that what they saw in June 1967 explains the exodus of 1948: pp. 19 and 27.

<sup>21</sup> U.N. Document A/SPC/SR 588, p. 6.



were very few former inhabitants of the Old City of Jerusalem,<sup>22</sup> very few from among the refugees formerly living in UNRWA camps on the West Bank and from the displaced persons who were accommodated in the tented camps set up in East Jordan since the hostilities. The number of refugees registered with UNRWA who have been permitted to return is reported to be only about 3,000 out of the 93,000 who crossed to the East Bank before July 4 and who were therefore *prima facie* eligible to return in accordance with the conditions stipulated by the Government of Israel. The Jordanian authorities have also reported that, in some cases, permits have been issued for some members of the family but not for others; the procedure for the submission of applications required that adult sons and daughters should apply separately from the rest of the family and this has resulted in cases where families were faced with the choice of either leaving a son or daughter behind or of losing their opportunity to return. It is clear from the figures given above that the hopes which were generated at the beginning of July that at least the bulk of the displaced persons would be able to return to the West Bank in pursuance of the terms of the Security Council's resolution 237 (1967) have not been realized. The reasons for the frustration of these hopes are disputed. . . . However, from personal observation, the Commissioner-General and his staff in Amman are able to record that the Jordanian authorities did all that was humanly possible to ensure that those whose applications to return were approved were promptly informed and were given every assistance in re-crossing the river.<sup>23</sup>

Although the Security Council's resolution fixed no final date for the return of the refugees, and despite appeals to Israel from the International Red Cross to continue the operation, Israel enforced its deadline and on September 1 1967 closed the door to any further repatriation. In the period of less than three weeks during which repatriation was permitted, only 14,000 out of the 400,000 refugees, namely less than 4 per cent, were permitted to return. The repatriation operation which had been announced by Israel as 'a proof to the world of its readiness to contribute in a concrete manner to the peace of the Middle East' was defeated by Israel's paralysing obstacles. In fact, during the same period of three weeks a larger number of people than those who returned, some 17,000 persons, were forced as a result of oppression and intimidation to

<sup>22</sup> The unwillingness of the Israeli authorities to permit the return of former inhabitants of Jerusalem reported by UNRWA's Commissioner-General is explainable by Israel's intention to annex the City of Jerusalem and make of it an entirely Jewish city.

<sup>23</sup> U.N. Document A/6713.

leave the Israeli-occupied territory and seek refuge on the East Bank of Jordan.

The Israeli authorities have strongly discouraged any unauthorized return by the refugees to their homes. In November 1967 Mr. David Holden reported that 'along the Jordan river it seems to be generally accepted that about 200 Arabs have been shot in attempting night crossings to the West Bank. How many were "Al Fatch" and how many were just Palestinians trying to return to their homes is not known. But the Israelis admit that numbers of them have been buried without identification in unmarked graves.'<sup>24</sup>

The looting of Arab refugee property in 1967 followed the pattern set by Israel in 1948. Countless shops, hotels and houses were plundered in the early days of the Israeli occupation of Jerusalem, Gaza, Nablus and other occupied towns and villages. It has been reliably reported that no shop, no hotel, no Government department, no motor vehicle was spared from looting in Jerusalem. Many homes were also plundered. The mass looting of Kuneitra in Syria was vividly described by the Special Representative of the Secretary-General of the United Nations, Mr. N. G. Gussing, in his report to the Security Council, in the following terms:

... all over the city nearly every shop and every house seemed to have been broken into and looted. A visit to one apartment building confirmed the thoroughness with which the looting had been done, and showed that in some cases dwellings had been set on fire after looting had occurred. Israeli spokesmen did not deny the looting but pointed out that looting is often associated with warfare.<sup>25</sup>

<sup>24</sup> *The Sunday Times*, November 19 1967.

<sup>25</sup> U.N. Document A/6796, September 15 1967, p. 10.

### SECTION 3

## The aftermath of the conflict

The war unleashed by Israel on June 5 1967 has resulted in the aggravation of the political and human issues that existed before the conflict and has led to the creation of new problems.

Before June 5 1967 the Arab–Israeli conflict involved what is known as the Palestine Question. Basically, the Palestine Question concerned the legitimacy of the state of Israel, which was established by a foreign minority in a land that historically, legally and factually belongs to the people of Palestine; the displacement of the majority of the Palestinians from their homeland; Israel's refusal to allow the return of the Palestine refugees to their homes and to restore to them their properties in accordance with the resolution of the General Assembly of December 11 1948; and, finally, Israel's occupation and attempted annexation of the New City of Jerusalem in violation of the international status envisaged for the Holy City by the United Nations. All these issues have remained unresolved since 1948 and have been the cause of the tension that has existed since that time. None of these issues was solved by the Israeli–Arab war of 1967.

Since June 5 1967 the Arab–Israeli conflict involves not only the unsettled basic issues of the Palestine Question but involves also several new problems which have resulted from the war, among which are the occupation of new Arab territories, the aggravation of the refugee problem and the occupation and attempted annexation of the Old City of Jerusalem.

As a result of the war, Israel now occupies large portions of the territories of three Arab states: the West Bank of the Jordan, the Sinai Desert, the Straits of Tiran and the Golan heights of Syria. Israel also occupies the Gaza Strip, which is Palestinian territory.<sup>1</sup> Israel's occupation of new territories in 1967 is merely a link in the chain of its pro-

<sup>1</sup> Although the Gaza Strip was occupied from 1948 by Egyptian military forces, the civil administration of the area was in the hands of the Palestinians.

gramme of military expansion. In less than twenty years Israel has fought three wars which it has described as being defensive, despite the fact that in each case it was itself the aggressor. In each of these wars Israel has realized a territorial gain. In 1948 it seized not only the territory of the Jewish state as fixed by the United Nations resolution but also usurped the larger part of the territory reserved by the same resolution for the Palestinian Arabs. In the Suez aggression of 1956–1957 it gained by force a right of navigation through the Straits of Tiran. Upon the outbreak of the conflict on June 5 1967 Israel's leaders proclaimed that their objectives were defensive and disclaimed any intention to seize any Arab territory. All their concern, so they claimed, was to open the Straits of Tiran to their ships and to defend themselves against attack by their neighbours. Barely a week passed after the conclusion of hostilities before Israel's leaders proclaimed the right of Israel to 'natural' and 'secure' boundaries and disclosed an intention to annex the old City of Jerusalem, the Gaza Strip and some parts of the West Bank. They also declared that Israel's frontiers as set out in the General Assembly resolution of 1947 were 'obsolete' and that the Armistice Agreements of 1949 were 'defunct'. Some of Israel's leaders are even now talking about a 'Greater Israel'. In 1948 and 1949 Israel expanded the area envisaged by the partition resolution for the Jewish state from 14,300 square kilometres to 20,800 square kilometres and in June 1967 it expanded the area under its occupation to 102,400 square kilometres. So long as war and aggression pay, why stop anyway?

Impartial foreign observers have warned against Israel's expansionism and aggressiveness. Writing in 1954, Doctor Stephen Penrose, President of the American University of Beirut, said:

Although Israel now occupies 20 million of Palestine's 26 million dunoms of land, there has been sinister evidence of an expansionist effort which has kept the neighbouring Arab states in a condition of apprehension. The movement into the Huleh area in April and May of 1951, the establishment by force of arms of the settlement of Givat Rachel in the Gaza demilitarized zone in September 1953, and the infamous Kibya incident of October 15 1953 were all steps in the direction of expansion, Israeli propaganda to the contrary notwithstanding.<sup>2</sup>

In 1962 Lieutenant-General Burns, former Chief of Staff of the

<sup>2</sup> Stephen Penrose, *The Palestine Problem: Retrospect and Prospect* (American Friends of the Middle East, New York, 1954), p. 15.

United Nations Truce Supervision Organization, almost prophesied Israel's aggression of June 5 1967 and its expulsion of more Palestinians. He then said:

The Arabs fear that continued immigration into Israel will build up such a population pressure that Israel will burst out beyond her present boundaries, seizing more Arab lands and expelling the inhabitants. Such a policy is definitely part of the programme of the extremist Herut Party, the second largest in the Knesset, and receives occasional encouragement from the speeches of leading members of the leftist labour Ahdut Ha'Avoda and the rightist General Zionist parties. The Israel armed forces, supremely confident of their ability to defeat any and all of the Arab countries surrounding Israel with ease and speed, would take on such a task with alacrity.<sup>3</sup>

'Israel, once established, has shown an alarming attitude of aggressiveness towards the Arab people,' states Dr. John H. Davies, former Commissioner-General of UNRWA, who mentions in support Israel's seizures of Arab territories in 1948, 1956 and 1967.<sup>4</sup>

The occupation of Arab territories in 1967 has meant the subjection of their inhabitants to Israeli domination, mainly over one million Palestinians on the West Bank and in the Gaza Strip and a number of Egyptians and Syrians in the Sinai Peninsula and the Golan. The inhuman treatment of the civilian population which has caused another exodus from the West Bank and the Gaza Strip was briefly described in the preceding section. The treatment of the Arab population in the occupied territories has caused concern. On June 14 1967 the Security Council by its resolution 237 called upon Israel to ensure the safety, welfare and security of the inhabitants of the areas under military occupation and recommended to the governments concerned scrupulous respect for the humanitarian principles governing the treatment of prisoners of war and the protection of civilians in time of war contained in the Geneva Conventions of August 12 1949. The Council further asked the Secretary-General to report on the effective implementation of the resolution. But Israel has ignored this resolution and refused to receive the Special Representative who was appointed by the Secretary-General in order to visit the Arab territories under military occupation and to report on the implementation of the Security Council's resolution.

<sup>3</sup> E. L. M. Burns, *Between Israeli and Arab* (George G. Harrap and Co., London, 1962), p. 283.

<sup>4</sup> John H. Davis, *The Evasive Peace* (John Murray, London, 1968), p. 89.



Israel's pretext was that he should also perform a function which had not been ordered by the Security Council: to inquire into the conditions of the Jews in the Arab countries. On September 27 1968 the Security Council deplored in its resolution 259 the delay in the implementation of its resolution of June 14 1967 and requested again the Secretary-General to despatch a Special Representative 'to the Arab territories under military occupation by Israel following the hostilities of June 5 1967' in order to report on the implementation of its previous resolution. The Security Council also requested Israel to receive the Special Representative of the Secretary-General, to co-operate with him and to facilitate his work. Israel again refused to receive the Secretary-General's Representative, thus preventing any international inquiry into its treatment of the civilian population and into complaints regarding its violations of human rights in the occupied territories. Then again, on December 19 1968, the General Assembly of the United Nations decided to create a committee to investigate Israeli practices affecting the human rights of the population of the occupied territories. The committee, however, is still awaiting Israel's pleasure.

Another major consequence of the war of June 5 1967 was the aggravation of the Palestine refugee problem. As explained in the preceding Section, over 400,000 Palestinians were expelled by Israel or have fled from the newly occupied territories to the East Bank, so that Jordan has now become one large refugee camp. Here is to be found a great mass of refugees, uprooted from their country, deprived of their homes, robbed of their property, who have become a burden on the conscience of civilized men, a great human problem, an explosive political force and an issue that will divide Arabs and Israelis until it is settled. The mass of humanity represented by the Palestine refugees, deprived of their homes and country and pursued by Israel's savage retaliatory raids, is now like a boiling cauldron of misery, hate and despair.

Still another grave issue which resulted from the war was Israel's occupation of the Old City of Jerusalem, its subjection of the Christian and Moslem Holy Places to its domination and its systematic and determined attempt to judaize the Holy City in defiance of international opinion. The General Assembly's resolution of November 29 1947 had laid down an international status for Jerusalem. Such international status was further confirmed by the General Assembly's resolutions of December 11 1948, and of December 9 1949. After its seizure of the

New City of Jerusalem in 1948, Israel sought to annex it and name it as its capital, but the international community refused to recognize such annexation or to concede that Israel had acquired sovereignty over any part of the Holy City. After its occupation of the Old City of Jerusalem on June 6 1967 Israel took a number of legislative and administrative measures which were intended to lead to the annexation of Jerusalem. These measures shocked the feelings of Christians and Moslems in many parts of the world. In its resolutions 2253 (ES-V) and 2254 (ES-V) of July 4 and 14 1967 the General Assembly of the United Nations declared invalid the measures taken by Israel to change the status of Jerusalem and called upon it to rescind all measures already taken and to desist forthwith from taking any action which would alter the status of the Holy City. It is to be observed here in passing that the U.S. Government, whose attitude could have been of great weight in this matter, showed on this occasion a remarkable indifference to the fate of the Holy Places and the City of Jerusalem by abstaining from the almost unanimous vote on these two resolutions of the General Assembly which condemned Israel's annexation of Jerusalem. Instead of complying with these resolutions, Israel has since proceeded to tighten its grip over the Holy City. It has expropriated more than 1,100 acres of what is mostly Arab-owned property in and around the City of Jerusalem in order to erect thereon hideous looking concrete tenements—planned more for political reasons than for development—which will permanently disfigure the Holy City. It should be remarked that although the Jews own about one-third of the urban area of the New City of Jerusalem, they own almost nothing in the Old City of Jerusalem or in the surrounding area. Their total ownership of land in all the administrative sub-district of Jerusalem does not exceed 2 per cent.<sup>5</sup>

On May 21 1968 the Security Council followed the lead of the General Assembly and adopted resolution 252 which reaffirmed that 'acquisition of territory by military conquest is inadmissible' and urgently called upon Israel to rescind all measures already taken and to desist forthwith from taking any further action which would tend

<sup>5</sup> As to the above percentage of Jewish-owned land in the administrative sub-district of Jerusalem, see United Nations map, No. 94 (shown in Appendix V) which was annexed to the Report of Sub-Committee 2 to the Ad Hoc Committee on the Palestinian Question, U.N. Document A/AC 14/32, November 11 1947. Arab and Jewish land ownership in Palestine during the mandate is established by the official records and statistics of the Government of Palestine.

to change the status of Jerusalem. The Security Council further declared that

all legislative and administrative measures and actions taken by Israel, including expropriation of land and properties thereon, which tend to change that status are invalid and cannot change that status.

The Security Council's resolution of May 21 1968 is annexed as Appendix VIII. Israel's response was a declaration by its leaders that they will 'ignore' the Security Council's resolution. And, in fact, Israel has continued to ignore and defy all the resolutions of the United Nations regarding this City which is holy to the three great monotheistic religions in the world.

Israel's occupation of the Christian and Moslem Holy Places in Jerusalem adds another explosive issue to a situation already replete with dangers, and imperils the world's religious heritage. It is of importance in this connection to recall the fears that were expressed by the King-Crane Commission in 1919 with regard to the Jews becoming the guardians of the Holy Places or the custodians of the Holy Land. The Commission said:

There is a further consideration that cannot justly be ignored, if the world is to look forward to Palestine becoming a definitely Jewish state, however gradually that may take place. That consideration grows out of the fact that Palestine is the Holy Land for Jews, Christians and Moslems alike. Millions of Christians and Moslems all over the world are quite as much concerned as the Jews with conditions in Palestine, especially with those conditions which touch upon religious feeling and rights. The relations in these matters in Palestine are most delicate and difficult. With the best possible intentions, it may be doubted whether the Jews could possibly seem to either Christians or Moslems proper guardians of the holy places, or custodians of the Holy Land as a whole. The reason is this: the places which are most sacred to Christians—those having to do with Jesus—and which are also sacred to Moslems, are not only not sacred to Jews, but abhorrent to them. It is simply impossible, under those circumstances, for Moslems and Christians to feel satisfied to have these places in Jewish hands, or under the custody of Jews. There are still other places about which Moslems must have the same feeling. In fact, from this point of view, the Moslems, just because the sacred places of all three religions are sacred to them, have made very naturally much more satisfactory custodians of the holy places than the Jews could be. It must be believed that the precise meaning,

in this respect, of the complete Jewish occupation of Palestine has not been fully sensed by those who urge the extreme Zionist program. For it would intensify, with a certainty like fate, the anti-Jewish feeling both in Palestine and in all other portions of the world which look to Palestine as 'the Holy Land'.<sup>6</sup>

Israel's offer at the United Nations on October 8 1968 made through its Foreign Minister to place Christian and Moslem Holy Places in Jerusalem under the responsibility of 'those who hold them in reverence' constitutes a deceptive assurance so long as overlordship of such Holy Places remains with 'those who hold them in abhorrence'. The fears expressed by the King-Crane Commission years ago with respect to a Jewish occupation of the Holy Places in Palestine have now become realities.

Apart from creating new and grave issues, the war of June 5 1967 has also given rise to two military and political developments which influence to a large degree the present evolution of the conflict.

In the first place the war has resulted in the emergence or rather resurgence of a new military and political factor, namely, Palestinian resistance. Although Palestinian resistance has existed since the establishment of Israel, the last aggression has given to it an impetus which it did not possess before. While the Arab states whose territories were seized by Israel have respected the cease-fire in the expectation that Israel's withdrawal from the occupied territories can be achieved by peaceful means through the efforts of the United Nations, the Palestinians do not share such expectation. In the past the Palestinians have largely relied on the Arab states to recover their rights, but now they are relying upon themselves and asserting their identity and objectives. They have gradually lost confidence in the effectiveness of the United Nations to redress the great injustice done in 1948 or even to implement their resolutions on Palestine. They have now come to realize that even in our era of civilization what is lost by force can be regained only by force. In 1964 a Palestinian national congress was convened at Jerusalem and in the name of three million Palestinians—a large number of whom are scattered as refugees in Jordan, Syria, Lebanon and Kuwait—established the Pales-

<sup>6</sup> Harry N. Howard, *The King-Crane Commission* (Khayats, Beirut, 1963), pp. 349 *et seq.* As to the report of the King-Crane Commission on other aspects of the Palestine Question, see Section I (I) of Part I, *ante*.



tine Liberation Organization. In addition to the Palestine Liberation Organization there exist other organizations of Palestinian resistance, the most famous among them being Al Fateh. The objective of Palestinian resistance, it should be remarked, is not limited to removing the consequences of the aggression of June 5 1967 but aims at the liberation of Palestine and the repatriation of its people to their homeland. Israel's propaganda has sought to vilify the Palestinian guerrilla fighters or *fida'iyeen* who are exercising a natural right to defend their homeland by describing them as 'terrorists and saboteurs'. The purpose of this vilification is obvious: it is to disguise the aggression committed in Palestine and to give Israel the appearance of a lawfully established authority against which some disorderly elements are rebelling. Many people now perceive the real nature of Palestinian resistance, which in no way differs from similar resistance movements to foreign military occupation at other times and places. And despite Zionist propaganda the world is beginning to understand the Palestine problem and to realize that the so-called terrorists and saboteurs are the Palestinians who were ousted from their country and whose homes, lands and possessions were usurped by Israel.

The intensification of Palestinian resistance came as a complete surprise to the Israelis, who after their military success in June 1967 imagined that the way was clear for complete Arab submission and capitulation. Infuriated by this unexpected development the Israelis have turned their wrath and military power both against the Palestinian commandos and against the neighbouring Arab states in which the Palestinian refugees live. Deliberately overlooking the fact that it was the Israelis who ousted the Palestinians from their lands and homes, Israel now claims that the Arab states who harbour the refugees are responsible for their acts. The main victim of this new law of the jungle has been Jordan, where the largest number of the refugees are found. By recourse to air raids and bombardments of refugee camps, towns and villages, Israel has attempted to crush Palestinian resistance and to intimidate Jordan into accepting its terms. Although artillery exchanges and aerial bombardments by Israel are almost daily occurrences, some of Israel's raids against Jordan have assumed the proportions of large-scale operations. Thus, on November 20 1967 the refugee camp at Karameh was subjected to heavy artillery fire which caused a large deathroll, particularly among children (U.N. Document A/6956). On February 15 1968 Israel launched



an attack with artillery, aircraft and napalm bombs on twenty villages and refugee camps across the Jordan River on a sixty-mile front. This attack caused more than one hundred casualties and forced the exodus of some 70,000 people, mainly Palestinian refugees, who sought safety deeper in the hills. A month later Israel repeated its aggression on a much larger scale. On March 21 1968 an Israeli force estimated at 15,000 men using armour and aircraft crossed the River Jordan in breach of the cease-fire, attacked the town of Karameh, destroyed several hundred houses and abducted more than one hundred and fifty farmers and refugees on the allegation that they were Palestinian commandos. Notwithstanding the attempt made by friends of Israel to throw the blame for the raid on both the aggressor and the victims, the Security Council condemned Israel on March 24 for its attack upon Karameh 'in flagrant violation of the United Nations Charter and the cease-fire resolutions'.<sup>7</sup> The Security Council declared that actions of military reprisal and other grave violations of the cease-fire cannot be tolerated and that it would have to consider further and more effective steps as envisaged in the Charter to ensure against repetition of such acts. But Israel's representative defied the Security Council and informed this international body that Israel 'could not accept the condemnation contained in the resolution', nor would it accept censure. Israel claimed 'the right to undertake all measures to preserve its sovereignty and security'. This was no empty threat. Five days only after Israel's condemnation by the Security Council, Israeli forces using artillery and aircraft bombed and shelled thirteen Jordanian villages for six hours. Two weeks later, on April 8, Israeli forces carried by helicopters crossed the cease-fire lines and undertook a mine-laying expedition in Jordanian territory south of the Dead Sea. On June 5 1968 Israeli forces undertook an air raid on the town of Irbed and caused a large number of casualties. Then on August 4 1968 Israeli planes bombed for three hours the town of Salt and its vicinity, killing and wounding a number of civilians. On December 1 1968 an Israeli force carried by helicopters blew up road and railway bridges, cutting communications between Amman and Aqaba. Those are only a few examples of Israel's military exploits intended to 'punish' Jordan for not stamping out Palestinian resistance.

A more recent victim of Israel's policy to 'punish' the Arab states for the acts of Palestinian refugees is Lebanon. On December 28 1968 Israel

<sup>7</sup> Security Council resolution S/RES/248, March 24 1968.

turned its wrath upon this country in a raid against the undefended civilian airport of Beirut which shocked international public opinion. On the evening of that day an Israeli helicopter-borne task force of the Israeli army landed at the airport and destroyed with explosives thirteen civilian aircraft, mostly jet airliners, which belonged to three Lebanese aviation companies. In the Security Council which was summoned to hear Lebanon's complaint, the Israeli representative sought to justify this outrage as a reprisal against the attack made two days earlier by two Palestinian commandos on an Israeli airliner at Athens. Such an argument has no basis either under international law or under the principles recognized by civilized nations. As the Lebanese Government proclaimed after the outrage, the Israeli attack could have no legal or moral justification even though presented as a reprisal for an attack by Palestinian commandos. Lebanon and the other Arab states cannot be held accountable for the acts of the Palestinian refugees whom Israel has evicted from their homes and whose homeland it has usurped, nor can they be expected to assist Israel in repressing Palestinian resistance and stifling the feelings and resentment of the victims. Israel's attack on the airport at Beirut was nothing but a terrorist raid committed in breach of international law and without any justification whatsoever. None of the members of the Security Council was prepared to condone what the American representative described as 'an act of arrogance' and 'an unacceptable form of international behaviour', and on December 31 1968 the Security Council unanimously condemned Israel for its 'premeditated military action in violation of its obligations under the Charter and the cease-fire resolutions'. The Security Council considered 'that such premeditated acts of violence endanger the maintenance of peace', and issued 'a solemn warning to Israel that if such acts were to be repeated, the Council would have to consider further steps to give effect to its decisions'. The Security Council also considered that Lebanon is entitled to 'appropriate redress' for the destruction it suffered. It remains to be seen whether this 'solemn warning' will be heeded by Israel.

The repression by Israel of Palestinian resistance in the areas which it has occupied since June 1967 has been no less savage. Such repression has taken the form of the summary execution of young men accused or suspected of resistance, the torture of prisoners, the dynamiting of hundreds of homes, the detention of thousands of people, curfews im-

posed for days on end, particularly in the Gaza Strip, and deportations. All these acts of repression have not weakened the Palestinian spirit. On the contrary the only effect has been to create more hatred and bitterness and to increase the intensity of Palestinian resistance.

Palestinian resistance is the new factor which dominates the present situation and will probably shape the future. The leaders of Palestinian resistance have already made it clear that no settlement of the Palestine question can or should be envisaged which does not restore to the people of Palestine their fundamental and legitimate rights.

The other major political development which resulted from the war has been Great Power involvement in the Arab-Israeli conflict, particularly of the U.S.A. and Soviet Russia, on an unprecedented and dangerous scale. The Middle East is an area in which there has always existed a confrontation between the political, strategic and economic interests of the Great Powers. But the emergence of Israel on the Middle Eastern chess-board has created a new factor of division and a pawn for exploitation. On its part, Israel has been able to exploit the situation for its own purposes and benefit. In order to maximize U.S. support in its favour, Israel's propaganda has created or aimed at creating the myth that it is a valuable bastion for western democracy. The support which Israel gained as a result from the U.S. Government was countered by Russian support to some of the Arab states. And thus the Arab-Israeli conflict has generated another conflict, namely, a political confrontation between the U.S.A. and Soviet Russia over the Middle East. The war of June 1967 has accentuated this conflict and has led to a dangerous rift between these two Great Powers. Unlike the situation which prevailed in 1956 at the time of the Suez aggression, when the U.S.A. and Soviet Russia condemned Israel's attack against Egypt and the Gaza Strip and their combined efforts secured the withdrawal of the military forces of Israel, the United Kingdom and France from the territories which they had occupied, these two Great Powers have been divided since June 1967 with regard to the manner of settling the last upheaval in the Middle East. This became apparent during the fifth emergency special session of the General Assembly of the United Nations. This special session was convened on June 17 1967 at Soviet Russia's request to consider the situation resulting from the war of June 1967 and to adopt a decision designed to bring about the liquidation of the consequences of aggression and the immediate withdrawal of Israeli forces behind the

armistice lines. The U.S. Government opposed Israel's condemnation by the United Nations as an aggressor and also opposed the adoption of a resolution calling upon Israel to withdraw its forces from the territories which it had occupied during the conflict. Instead it submitted a resolution which aimed at achieving peace through 'negotiated arrangements on the basis of the recognition of Israel's boundaries' and the mutual recognition of the political independence and 'territorial integrity' of all countries in the area. In effect, this meant that Israel could use the pressure of its military occupation of the territories of its neighbours in order to dictate to them its terms and to extract from them an acknowledgement of the legitimacy of its conquests and aggressions, past and present. Judged in the light of United Nations resolutions, Israel's seizure in 1948 and 1949 of territories in excess of the partition boundaries was a violation of the resolution of the General Assembly of November 29 1947. Israel's seizure of territories in 1967 was, in addition, a breach of the Armistice Agreements of 1949 which had been concluded under the directives of the Security Council and 'without prejudice to the settlement of the Palestine Question'. Therefore, the attempt by the U.S. Government at the fifth emergency special session of the General Assembly, to make Israel's withdrawal from the occupied territories conditional upon the conclusion of a peace to be negotiated under the duress of military occupation, was a striking departure from the attitude which President Eisenhower adopted in a similar situation at the time of the Suez aggression. In his memorable Address to the Nation on February 20 1957 President Eisenhower then challenged the legality of Israel's similar argument that it should have 'firm guarantees as a condition to withdrawing its forces of invasion' and said:

Should a nation which attacks and occupies foreign territory in the face of United Nations' disapproval be allowed to impose conditions on its own withdrawal?

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.<sup>8</sup>

As a result of the division between the U.S.A. and Soviet Russia on the question of Israel's withdrawal from the occupied territories, the Russian resolution calling for an immediate withdrawal of Israeli forces

<sup>8</sup> Dwight D. Eisenhower, *Waging Peace, 1956-1961*, p. 188.



and the American resolution calling for negotiations between the parties, as well as all other resolutions and amendments backing one or other of these two conflicting positions, failed to gain the two-thirds majority required for their adoption by the General Assembly. Thus the United Nations were paralysed and the practical result was a reward to aggression. Dr. John H. Davis has summarized the resulting situation in the following terms:

With the two major powers thus divided, no effective action was possible in the Security Council or the General Assembly. This, in effect, has given Israel virtually a free hand in such matters as holding and occupying the territory she had seized, annexing the Old City of Jerusalem, and refusing to permit the refugees who had crossed to the East Bank of the Jordan to return to their homes in the West Bank area or the Gaza Strip.<sup>9</sup>

Zionist influence in the U.S.A. has been the main factor which has led to this dangerous situation. It is the Zionist aim to have the preservation of Israel—enlarged by its territorial conquests—identified by the American people as an 'American interest'. Mobilizing all its forces, exploiting the 'Jewish vote', and making full use of Jewish control over a large number of media of information, Zionism has been able until now to generate considerable American support, both political and financial, in favour of Israel. Financial support has comprised direct Government assistance and tax-free contributions to the United Jewish Appeal. There are 5,700,000 Jews in the U.S.A., among whom there exist active Zionists who have not hesitated to influence the foreign policy of the country of their nationality in favour of the country of their religion, even though such action may be detrimental to the interests of the former.<sup>10</sup> Lieutenant-General Burns has remarked:

The United States Jewish community, through its economic power especially as related to many media of mass information, under the leadership of the well-organized Zionist pressure groups, exerts an influence on U.S. policy which goes far beyond what might be calculated from a counting of the so-called 'Jewish vote'. . . . Thus the Jews of the United States deter-

<sup>9</sup> John H. Davis, *op. cit.*, p. 99.

<sup>10</sup> On the question of Zionist influence on U.S. policy with regard to Israel, see R. P. Stevens, *American Zionism and U.S. Foreign Policy 1942-1947*; Harry N. Howard, *The United States and Israel: Conflicts of Interest and Policy*, *Issues*, Summer 1964, pp. 14 *et seq.*



mine the degree of political as well as financial support that Israel receives from the U.S.A.<sup>11</sup>

But political and financial support from the U.S.A. is not sufficient for Israel. It wants also military support in order to preserve the fruits of its aggressions. For some time past Israel's aim has been to secure from the U.S. Government military assistance in the form of supersonic aircraft under the pretence that arming it with the most sophisticated weapons will 'deter Arab aggression'. It is unfortunate that this Zionist propaganda has found a sympathetic response in the U.S.A. because the arming of Israel merely encourages it to further aggressions.<sup>12</sup> Somehow the arming with the most modern and destructive weapons of a state which has committed so many wrongs does not seem to be right. This consideration, however, has not prevented the American Presidential elections of 1968 from witnessing a competition between political parties and candidates actuated by a desire to win the 'Jewish vote' to make the most liberal promises for the supply of arms and aircraft to Israel—even though such arms and aircraft are most likely to be used by Israel to commit further aggressions or to crush the resistance of the people of the country which it has usurped. It should be clear to anyone by now that the electoral promises which are extracted by Zionists in favour of Israel from American political candidates spark off similar promises from competing candidates—all this to the advantage of Israel and to the detriment of vital American interests in the Arab world. It is a tragedy both for the U.S.A. and for the Middle East that the Arab-Israeli conflict is allowed to be exploited in this manner and that it is not insulated from American internal politics.

The fact is obvious that Israel wants a Great Power like the U.S.A. to underwrite it financially, politically and now even militarily. In particular, Israel wants the U.S. Government to maintain a permanent military equation between it and the Arab states. The United States, it has been suggested, is committed to Israel's survival. But the history of the United States shows that it is deeply committed to right and justice, and one is justified in doubting that the American Government will in the long

<sup>11</sup> E. L. M. Burns, *op. cit.*, p. 288.

<sup>12</sup> On December 27 1968, the State Department announced that the U.S.A. and Israel had reached agreement on the sale of 50 F4 Phantom jet fighters to Israel, and on the following day Israel despatched its helicopters to wreak havoc and destruction upon the civil international airport of Beirut.

run indorse the aggressions and transgressions which Israel has committed from 1948 until today. U.S. support of Israel and indorsement of its acts are not conducive to the restoration of peace in the Middle East and would not be in keeping with American traditions of justice and democracy.

An indication of a possible change in U.S. policy towards Israel may be found in the condemnation by the U.S. Government at the Security Council of Israel's attack on December 28 1968 against the civil international airport of Beirut as 'an arrogant act' and 'an unacceptable form of international behaviour' for which Israel should apologize. This was the first outspoken criticism by the U.S. Government since 1956 of one of Israel's many aggressions, and one hopes that this new attitude presages an alteration in the political support which Israel has received until now from the U.S. Government.

Great Power involvement in the Arab-Israeli conflict has made of this conflict a suitable vehicle for the realization of Great Power ambitions in the area, and the Middle Eastern states concerned are not far from becoming pawns in a great and dangerous chess game which is not being played for their benefit. The natural evolution of such a situation, if unchecked by remedial action, could well result in an armed conflict in which the Great Powers will intervene, either directly or indirectly. The Middle East, which was the cradle of civilization, might become its grave. The situation is as full of dynamite as it is full of injustice. 'It is no exaggeration to say', has observed Dr. Stephen Penrose,

that upon the solution to the problem of Palestine rests not only the peace of the Middle East but very possibly the peace of the entire world. The Arab countries now present a picture not unlike that of the Balkans before World War I, a power vacuum into which the ruling world forces must inevitably rush because of the strategic significance of the area itself and because of the vast importance of its natural resources. At present, and largely because of the failure to understand the crucial importance of Palestine, the democratic world is at a marked disadvantage. A sound and convincingly enlightened policy, entered upon immediately with determination and intelligence, could yet alter the movement of the scales of destiny.<sup>13</sup>

The political balance-sheet of the Middle East since the establishment

<sup>13</sup> Stephen Penrose, *The Palestine Problem: Retrospect and Prospect* (American Friends of the Middle East, New York), p. 20.

of Israel in 1948 is frightful: three wars, two of which have almost brought the world to the brink of the abyss, a great refugee tragedy, the Christian and Moslem Holy Places of Palestine in the hands of the Zionists, the Suez Canal closed to international navigation, and a continuously explosive situation which promises more catastrophes.

Faced with this deteriorating situation, the Security Council adopted on November 22 1967 a resolution which aimed at the establishment of a just and lasting peace in the Middle East. This resolution emphasized the inadmissibility of the acquisition of territory by war and affirmed the necessity for the withdrawal of Israeli armed forces from territories occupied in the recent conflict, the termination of all claims or states of belligerency, the 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. The resolution further affirmed the necessity for guaranteeing freedom of navigation through international waterways in the area and for achieving a just settlement of the refugee problem. The Security Council requested the Secretary-General of the United Nations to designate a special representative in order to promote agreement and assist in achieving a peaceful and accepted settlement in accordance with the provisions and principles of the resolution.<sup>14</sup> The Secretary-General immediately designated Dr. Gunnar Jarring as his special representative and the latter embarked on his mission without delay, but without success as yet. The situation has continued to be as explosive as in June 1967, and it is certainly not improving.

In view of the negative results of Dr. Jarring's mission after more than one year's fruitless efforts, the four Great Powers—the U.S.A., Soviet Russia, France and the U.K.—decided early in 1969 to consult together on how they could bring about a peaceful settlement in the Middle East. The chief U.N. delegates of these Powers opened their talks to this end at New York on April 3, 1969. Israel immediately announced its opposition to the procedure adopted by the Great Powers and declared that it will not accept any of their recommendations which are in conflict with its vital interests, rights and security. The aim of the four Great Powers was to achieve a settlement of the Middle Eastern crisis by means of the implementation of the Security Council's resolution of

<sup>14</sup> The Security Council's resolution of November 22 1967 is annexed as Appendix IX.

November 22, 1967. Israel did not accept the resolution for the reason that it requires two things that are not to Israel's liking, namely, the evacuation of the territories which it occupied in 1967 and a just solution of the Palestine refugee problem. The Arab states were divided in their attitude towards the resolution, some being in favour of its acceptance, others for its rejection. The Palestinians, on their part, rejected the resolution on the grounds that although it sought to efface the consequences of the 1967 aggression, it also aimed at liquidating the Palestine Question in violation of their legitimate and fundamental rights. Two questions now arise. The first question is whether the four Great Powers can reconcile their own differences on the Middle East, this being necessary before they can hope to reconcile the parties concerned. Time alone will furnish the answer. The second question is whether the Security Council's resolution offers a suitable framework for a just and lasting settlement of the Palestine Question in the light of right and justice. This question will be considered in Part IV when discussing the guiding principles for the restoration of peace in the Middle East.

Part IV

In Search of a Solution





## SECTION I

### The essence of the conflict

The amazing succession of wrongs which have occurred in Palestine during the last two decades has created one of the most explosive human and political problems of our times. The issues involved directly affect the lives, aspirations and future of millions of people in the Middle East. Furthermore, these issues are enmeshed with important political, strategic and commercial interests of the Great Powers so that the problem has become one of international stature and of great complexity.

A misleading propaganda often tends to obscure the real issue which is involved between the Arabs and Israel.

The truth about Palestine has been buried beneath a mass of deliberate misinformation, distorted facts and insidious propaganda accumulated throughout decades. Neutral observers, Canadians, Swedish and Americans, who have dealt with the problem of Palestine at first hand as United Nations accredited officials have noted the distortion of facts as well as the difficulty of putting the Arab case before world public opinion. Lieutenant-General Burns, Chief of Staff of the United Nations Truce Supervision Organization in Palestine, has mentioned that over many years it is only Israel's side of the Palestine story which has been presented to Americans.<sup>1</sup> Major-General Carl von Horn, Chief of Staff from 1958 until 1963 of the United Nations Truce Supervision Organization in Palestine, said in connection with an Israeli investigation of a truce incident: '... we were amazed at the ingenuity of the falsehoods which distorted the true picture. The highly skilled Israeli Information Service and the entire press combined to manufacture a warped, distorted version which was disseminated with professional expertise through every available channel to their own people and their sympathizers and supporters in America and the rest of the world. Never in all my life had I believed the truth could be so

<sup>1</sup> E. L. M. Burns, *Between Arab and Israeli* (George G. Harrap & Co., London, 1962), p. 288.

cynically, expertly bent.’<sup>2</sup> This description applies word for word to the distortion of the facts relative to the Palestine Question by Zionist and Israeli propaganda. Dr. John H. Davis, Commissioner-General of UNRWA during five years, has stated that he ‘found that the world’s understanding of the Palestine refugee problem was at variance with the truth’.<sup>3</sup> Then, as he began to study the broader aspects of the problem of Arab–Israeli relations he found the same thing to be true—particularly in regard to the cause of the conflict. Later Dr. Davis said: ‘A large proportion of the world, including the Western world, knew little about modern Palestine or the struggle that had been taking place there over the immigration of Jews and efforts to found a Jewish state. In so far as the American public was concerned, most people had never heard the Arab side presented.’<sup>4</sup>

Zionism possesses a network of media of information—press, radio and television—in a large number of countries. The Zionist propaganda machine with all its numerous ramifications, its great power, efficient organization, unlimited financial resources and its ability to work and operate from within each country as an internal and national entity, represents a danger to the world. Its capacity for misinformation is tremendous. It can lead and mislead international public opinion at will on any given issue in favour of Israel regardless of truth, right and justice.

The Arabs, on the other hand, have been and still are unable to present their side of the case to world opinion. This is due chiefly to two reasons. First, the Arabs do not possess the means to undertake the immense task of enlightenment which is required. Secondly, they cannot hope to compete with the tremendous propaganda machine of the Zionists which has the capacity to drown the sound of any Arab or even non-Arab voice raised in opposition to Israel.

In the quest of a solution the first step is to remove the smokescreen that has been laid by Zionist and Israeli propaganda around the Palestine Question, and to lay bare the great injustice done to the people of Palestine which is at the root of the problem. The writer subscribes

<sup>2</sup> Carl von Horn, *Soldiering for Peace* (Cassell, London, 1966), p. 85. Later he remarks in connection with another truce incident, ‘We had sometimes felt we were battling alone amidst a fog of warped Israeli Propaganda’: *ibid.*, p. 125.

<sup>3</sup> John H. Davis, *The Evasive Peace* (John Murray, London, 1968), p. ix.

<sup>4</sup> *Ibid.*, p. 35.

to the view recently expressed by Mr. Michael Adams that 'the Zionists have triumphed so far because they have distorted the facts and misled the world. . . . The Arab case has no need of distortion or exaggeration. What it does need is to be heard and once it is heard . . . then the facts will speak for themselves.'

The core of the conflict was the emergence of Israel in Palestine in conditions of great injustice to the original inhabitants and its usurpation of a land which is not its own. Israel has risen in a world to which it does not belong, and since its birth has heaped one wrong after another upon the people of Palestine. 'The conflict,' has observed Professor Maxime Rodinson, 'therefore appears essentially as the struggle of an indigenous population against the occupation of part of its national territory by foreigners.'<sup>5</sup> Mr. Anthony Nutting has identified the root of the conflict in the following terms:

What is important is first to understand and, from understanding, to try to resolve the issue which lies at the core of the bitter running conflict between the Arabs and Israel of the last twenty years. This issue is quite simply and briefly the issue of Palestine and the Palestinians who, over the last twenty years, have been evicted from their homes and farms in Palestine to make way for the establishment of a Zionist state on land which has been theirs for the past 1,300 years, and who have been made to pay with their suffering the debt which Europe owes to persecuted Jewry.

Everything that has happened in the development of the Arab-Israel conflict over the last 20 years can be traced to this basic human issue. And every one of the problems with which the world has become so sickeningly familiar—freedom of passage through the Suez Canal and the Gulf of Akaba, the disputes about Israel's frontiers, the raids and counter-raids across those frontiers, the Jordan waters issue, and now finally the occupation by Israel of further tracts of Arab territory—are all subsidiary to the main issue. And whatever Israel is prepared or not prepared to do or to concede in respect of these problems, the conflict will continue so long as the injustice done to the people of Palestine remains unrequited. Conversely, if Israel could be brought to recognize the wrong that she has done to these people and to remedy the injustice they have suffered by resettling them in their homeland, then every issue such as the Suez Canal and the Gulf of Akaba, the frontiers and the Jordan waters, will become immediately negotiable.<sup>6</sup>

<sup>5</sup> Maxime Rodinson, *Israel and the Arabs* (Penguin Books, 1968), p. 219.

<sup>6</sup> *Issues*, Winter 1967–Spring 1968, p. 16.

Israel is an illegitimate and unnatural creation. Juridically, Israel's creation, its usurpation of a land which belongs to another people, and its displacement of the original inhabitants of Palestine have done violence to the most elementary principles of equity, law and justice. Politically, Israel's implantation in the midst of the Arab world has led to a chronic conflict which, three times already, has brought the ravages of war to the Holy Land. Palestine is the heart of the Arab world. The creation of a Zionist racist state in its midst was a mad adventure. Since the start of the Zionist experiment in Palestine the Middle East has been in a state of convulsion and the situation, if it continues, appears to threaten more conflicts and catastrophes. Judaism has lived for centuries in peace in the Arab world and has never suffered from the persecutions it has encountered elsewhere. But the Zionist racist state of Israel has been rejected by the Arab world much in the same way as the human system rejects a foreign body.

The war which Israel launched in June 1967 has settled none of the issues involved between the Arabs and Israel nor has it brought to Israel Arab recognition. In fact, the Israeli-Arab war of 1967 was a double catastrophe.

It was a catastrophe for the Arabs: a humiliating military defeat, the occupation of several Arab territories, more than one million people subjected to Israel's occupation and domination, more refugees, more destruction and more ruin.

It was also a catastrophe for Israel despite its victory. The war has added new and grave issues to the basic conflict. It has widened the gap between Arabs and Israelis. Finally, military success has intoxicated the Israelis and increased their arrogance and ambitions to a point that it has made it much more difficult to achieve by pacific means a reasonable and equitable solution of the Palestine Question. Israel has won a war but has lost the chance of winning the peace.

What does the future hold in store?

Israel is determined to maintain by force the *fait accompli* of 1948 and even to improve it by the retention of some of the territories which it occupied in June 1967. But despite its military successes, Israel cannot by the use of force gain Arab recognition or bring the conflict to a conclusion. It has been remarked that the activist policy of Ben Gurion and his school was designed to obtain Arab recognition by terror and de-



ployment of force, but that this policy has failed.<sup>7</sup> Israel was able to win a war, even a succession of wars, against the neighbouring Arab states, but it cannot hope to win the war against the Arab world nor impose peace on the losers. Israel is, therefore, condemned notwithstanding its military successes to be surrounded by those whom it has ousted from their homeland and to remain the object of the hatred of its victims until the wrongs which it has committed are righted.

On the other hand, despite the lapse of twenty years, the Arabs have not recognized the *fait accompli* of 1948 and are determined not to recognize Israel's latest conquests.

The essence of the conflict, therefore, is the basic injustice of 1948 which has now been aggravated by the war of June 1967 and its aftermath.

Can this conflict be resolved? It is difficult to predict the future because future developments depend upon the action of several political forces: the Palestinians, the Arab states, Israel, the U.S.A., Soviet Russia and the United Nations.

Many think that the Arab-Israeli problem is insoluble. Although no solution appears to be in sight, it might be of assistance to review and discuss in the remaining pages certain fundamental considerations which might help to shape the eventual solution.

<sup>7</sup> Maxime Rodinson, *op. cit.*, p. 229.

## SECTION 2

### Misconceptions about the proper solution

It is of the utmost importance to stress before anything else the need for the abandonment of certain misconceptions. This is all the more necessary because these have prevented in the past the proper direction of efforts towards a real and just solution. It is as important to know what is not a solution as it is to know what could be a solution. The failure for that reason of the several solutions attempted in the past was emphasized by Dr. John H. Davis, former Director of UNRWA, in his Annual Report to the U.N. in 1961. The Director concluded his Annual Report in the following terms:

30. In this report the Director of UNRWA has dealt with UNRWA affairs without attempting to present any general solution to the Palestine refugee problem, since responsibility for the latter rests elsewhere within the United Nations. Even so, the general observations, here set forth, which are based on the Agency's experience, should also be pertinent to any general solution; and none more than the conclusion that any solution, if it is to be effective, must take adequately into account the deep feelings and aspirations of the peoples of the Middle East as a whole. In the Director's opinion, it has been the failure to do this that has determined the failure of the several solutions to the problem which have been proposed.<sup>1</sup>

#### I ARAB ACCEPTANCE OF THE FACTUAL SITUATION

The first misconception concerns the possibility of acceptance by the Arabs of the factual situation created by Israel in 1948. Such misconception is the result of a studied and misguided policy. Israel and its friends laboured under the delusion that after 1948 passions would die down, the Palestine refugees would be absorbed in the neighbouring countries and the problem of Palestine might thus be solved. This misconception

<sup>1</sup> U.N. Document A/4861, p. 4.

has inspired, and possibly still inspires, the attempts made by certain powers friendly to Israel to settle the Arab-Israeli conflict. One even senses at times an impatience in certain quarters at the unwillingness of the Arabs to submit to the *fait accompli*, as if it were wrong for them to claim their homeland and the restoration of their rights, lands and homes. It is as if the *fait accompli* should not be questioned or disturbed. In these same quarters the attempt to find a solution which is at variance with the *fait accompli* is even considered to be unreasonable and unrealistic.

Such an attitude arises from a complete failure to comprehend the basic equities of the Palestine Question. The history of the last twenty years has shown that whatever the lapse of time the Arabs will not recognize what was done in Palestine. In fact, time only aggravates the problem.

Israel has often said that 'the clock cannot be turned back'. By this slogan Israel wants to justify its refusal to allow the return of the refugees or to evacuate the territories which it has occupied. However, the clock can be turned back. History shows that many a time the clock was, in fact, turned back to redress a glaring injustice or to remove a colonialist implantation. If justice is to be done in Palestine and peace to be restored to the Middle East the clock must be turned back. In a somewhat similar situation in Algeria, where French immigrants implanted themselves in a land which was not theirs, the factual situation was undone after well over a century. The *fait accompli*—on which Israel has until now rested its existence, its policy and its territorial conquests—cannot be accepted as a lasting situation or as a source of title in international relations. The Palestine injustice cannot be buried under a *fait accompli*.

## 2 RESETTLEMENT OF THE REFUGEES OUTSIDE THEIR COUNTRY

The second misconception concerns a possible resettlement of the refugees outside their own homes. This iniquitous and unnatural solution represents Israel's solution for the problem which it created in 1948 by uprooting a million people from their homes. Since then Israel has advocated the resettlement of the refugees in the neighbouring Arab countries and their integration into the economic life of the region.

An attempt to liquidate the refugee problem by resettlement of the refugees outside their homes was made in 1949. The plan was sponsored by the American Department of State<sup>2</sup> and developed by the Conciliation Commission for Palestine. Mr. Porter, the American member of the Conciliation Commission, submitted a proposal for the appointment of an Economic Survey Commission for the Middle East. The task of the Economic Survey Commission was to make recommendations for an integrated development programme in the Middle East and for the reintegration of the refugees 'into the economic life of the area on a self-sustaining basis, within a minimum period of time'. The Economic Survey Commission was appointed under the chairmanship of Mr. Gordon R. Clapp, and with amazing despatch submitted its report. The Clapp Mission, as it came to be called, recommended a programme of public works as 'pilot demonstration schemes' in the host countries for the employment of the refugees, the immediate reduction of refugee rolls by one-third, and the termination of relief to the refugees within eighteen months. The United Nations General Assembly accepted the Clapp Mission's recommendation concerning the establishment of work programmes, but declined its recommendation regarding the termination of relief. In its resolution of December 2 1950 the General Assembly authorized UNRWA to set up a reintegration fund of \$30 million to be utilized for projects which might be requested by governments in the Near East for the re-establishment of refugees and their removal from relief. On January 26 1952 the General Assembly endorsed a programme for the expenditure of \$200 million for reintegration.

The works programme suggested by the Clapp Mission completely failed. On December 31 1950, the date which the Clapp Mission had fixed for the termination of refugee relief, about 12,000 out of a million refugees had found employment. Less than five per cent of the \$200 million reintegration fund had been used. The reason for the failure was expressed by Mr. Henry R. Labouisse, UNRWA's Director, in his Annual Report for 1955/1956 as follows:

The problem posed by the Palestine refugees is concerned with human suffering, with the memories and frustrations of hundreds of thousands of

<sup>2</sup> P. de Azcarate, *Mission in Palestine, 1948-1952* (Middle East Institute, Washington, D.C., 1966), p. 154; Don Peretz, *Israel and the Palestine Arabs* (The Middle East Institute, Washington, D.C., 1958), p. 63.

individual human beings. It is not simply an economic problem susceptible of economic solutions. . . . It would be a grave error to believe that a state of tension exists only when military operations, frontier incidents or political antagonisms are making headlines in the world press. Although it varies in degree, there is a continuing tension in this sensitive area, and it is a matter for constant concern. . . . It must be stressed once more that the refugees' desire to return to their homeland continues unabated. . . . So long, however, as nothing is done to help requite this longing for their homeland, either by giving them the choice between repatriation and compensation provided for in paragraph 11 of General Assembly resolution 194 (III) of December 11 1948, or through some other solution acceptable to all parties, the long-term task assigned to the Agency will prove unrealizable. . . . It is easy to understand why this desire to return to their homes has made impossible any large-scale progress in the Agency's long-term task of bringing about 'the reintegration of the refugees into the economic life of the Near East'.<sup>3</sup>

In the following year the Director of UNRWA declared that the problem—

lies in the realm of politics, and in deep-seated human emotions. It does not lie simply in the field of economics. UNRWA can, to be sure, enable some hundreds of refugees to become self-supporting each year—through small agricultural development projects, grants to establish small businesses and the like. But it cannot overcome the fact that the refugees as a whole insist upon the choice provided for them in General Assembly Resolution 194—that is, repatriation or compensation. In the absence of that choice, they bitterly oppose anything which has even the semblance of permanent settlement elsewhere. Officials of the host Governments, with but few exceptions, openly support the refugees in this position and oppose the large-scale resettlement projects. On the other hand, in the matter of repatriation and compensation, the Government of Israel has taken no affirmative action.<sup>4</sup>

The successive Directors of UNRWA have all emphasized in their Annual Reports the total failure of attempts at resettlement of the refugees. In his Annual Report for the year 1955/1956 the Director of UNRWA stated:

There are, of course, some who have established themselves satisfactorily

<sup>3</sup> U.N. Document A/3212, pp. 1-2.

<sup>4</sup> *United Nations Press Release* 3369, February 11 1957.



in new lives; but the great majority maintain their collective claim that a grave injustice has been done to them and assert that the only acceptable solution is a return to their homes.<sup>5</sup>

In his Annual Report for the year 1957/1958 UNRWA's Director observed:

There have been no signs of any change from their collective hostility towards major development projects which, to the refugees, imply permanent resettlement away from their ancestral homes and the abandonment of their hopes of repatriation. Nor has there been any affirmative action by the Government of Israel to facilitate the implementation of General Assembly resolution 194 (III) of December 11 1948 concerning repatriation and compensation.<sup>6</sup>

Although the economic capacity or incapacity of the neighbouring Arab states to absorb the Palestine refugees is of no relevance in this regard, it should be mentioned that these states are neither economically able to absorb the refugees nor politically disposed to resettle them against their wishes. The reports of the Conciliation Commission have referred to the high density of population in the Gaza Strip, Egypt and Lebanon, a factor which precludes the resettlement of the Palestine refugees in those countries. UNRWA's reports to the U.N. have stressed on several occasions the economic limitations upon resettlement or upon finding work in the countries which are hosts to the refugees. One report has mentioned that 'four-fifths of the refugees live in Gaza and Jordan; so that even if all the refugees in Lebanon and Syria should become self-supporting, the greater part of the problem would remain.'<sup>7</sup> Another UNRWA report has referred to the 'over-all economic limitations of the host countries on absorbing refugees in addition to their own growing populations.'<sup>8</sup>

The absence of opportunities for the Palestine refugees in the host countries has been emphasized by UNRWA's Director as follows:

Resolution 194 (III) has not been implemented and the outlook for the Palestine refugees is for a continuation of conditions similar to those of the

<sup>5</sup> U.N. Document A/3212, p. 1.

<sup>6</sup> U.N. Document A/3921, p. 1.

<sup>7</sup> U.N. Document A/3212, p. 6.

<sup>8</sup> U.N. Document A/5214, p. 1.

past twelve years. The simple truth is that the jobs at which the refugees could be employed do not exist today within the host countries. Nor could any large number of jobs be created in these countries—except at an uneconomic level of investment—because of the limited local resources and scope for employment. The fact has to be faced that for the majority of the refugees—two-thirds of the total or more—the areas where they are presently located hold out almost no prospect of their absorption into satisfactory, self-supporting employment. It follows that if these refugees are ever to find suitable employment, they will have to move across an international frontier in one direction or another. Even if, for the sake of argument, one disregards all political implications, it seems unlikely that other nearby countries will accept large numbers of refugees who qualify as farmers and low-skilled workers, because these countries already have sufficient workers of these types.<sup>9</sup>

Not only the host countries do not economically lend themselves to the absorption of the refugees, but their economies have even been strained by the refugee population:

The economies of the host countries have been subjected to serious strain by the influx of such large numbers of people. This strain is felt not only by the taxing of existing limited public services and resources, and by depressed labour markets, but the Governments themselves are called upon to finance some services for the refugees, as distinct from those financed by the Agency.<sup>10</sup>

In its resolution 194 (III) of December 11 1948 the General Assembly laid down the principle of repatriation of the Palestine refugees and in doing so rejected any idea of their resettlement against their will outside their homeland. This resolution has been annually reaffirmed but Israel has refused to implement it. Israel has even sought to mislead world opinion about the true scope and intent of the repatriation resolution. In 1966 Israel's representative at the U.N. argued that: 'The second part of paragraph 11 of resolution 194 (III) instructed the Conciliation Commission to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation. . . . The inclusion of the words 'resettlement and economic and social rehabilitation' in paragraph 11 indicated the broad lines

<sup>9</sup> U.N. Document A/4478, p. 2.

<sup>10</sup> U.N. Document A/3212, p. 9.

of a possible solution.’<sup>11</sup> Such an argument is misleading and misconceived. Paragraph 11 of the repatriation resolution was based upon the specific recommendation made in 1948 by the late Count Bernadotte, the United Nations Mediator on Palestine. In his Progress Report Count Bernadotte pointed out that ‘the Arab inhabitants of Palestine are not citizens or subjects of Egypt, Iraq, Lebanon, Syria and Trans-jordan, the states which are at present providing them with a refuge and the basic necessities of life’.<sup>12</sup> He also referred to the proposal which he had made to the Provisional Government of Israel to allow the return of the refugees and to his undertaking to enlist the aid of appropriate international organizations and agencies ‘in the resettlement and economic and social rehabilitation of the returning refugees’.<sup>13</sup> Thus when Count Bernadotte spoke of ‘resettlement’ of the Palestine refugees he clearly meant resettlement of ‘the returning refugees’. He did not countenance the resettlement or, in other words, the exile of the refugees outside their homeland. His basic recommendation concerning the refugees was as follows:

The right of the Arab refugees to return to their homes in Jewish-controlled territory at the earliest possible date should be affirmed by the United Nations, and their repatriation, resettlement and economic and social rehabilitation, and payment of adequate compensation for the property of those choosing not to return, should be supervised and assisted by the United Nations Conciliation Commission. . . .<sup>14</sup>

It is quite obvious, therefore, that the phrase in paragraph 11 of General Assembly resolution 194 (III) which referred to the ‘resettlement and economic and social rehabilitation’ of the refugees meant their resettlement in their own country after their return. In other words, resettlement was not meant in Count Bernadotte’s recommendation or in the General Assembly’s resolution as an alternative but was intended as a complement to repatriation. Resettlement of the refugees outside their homes can be viewed, therefore, only as a voluntary act on the part of individual refugees who may elect not to return but in no case should it be envisaged as a collective measure for the liquidation of the refugee problem.

<sup>11</sup> U.N. Document A/SPC/SR 513, November 15 1966.

<sup>12</sup> U.N. Document A/648, p. 52.

<sup>13</sup> U.N. Document A/648, p. 48.

<sup>14</sup> U.N. Document A/648, p. 18.

### 3 PAYMENT OF COMPENSATION

The proposal to solve the refugee problem by payment of compensation to the refugees represents another misconception which creates false hopes regarding a just and equitable solution. For what is compensation to be made? The material value of their lands and homes? Twenty years of exile? The loss of an ancestral homeland? The inalienable right of sovereignty? The payment of compensation cannot possibly resolve either the refugee problem or the Palestine Question. No one will sell his birthright or alienate his homeland for cash. Compensation can properly be envisaged as a subsidiary means for settling the property rights of individual refugees who, after being offered the choice between repatriation or payment of compensation, elect to take the latter. This was, in fact, the basic concept which underlay paragraph 11 of General Assembly resolution 194 (III). It was never the intention of the General Assembly in adopting this resolution to barter away the right of the refugees to return to their homes for a monetary payment. The very thought of a monetary solution for the Palestine refugee problem constitutes an affront to the ideals of humanity and the principles of civilization.

It is fitting in this respect to mention the comment which Mr. Moshe Menuhin has made upon a report of the New York Times of October 17 1961 regarding a contention that the holdings of the Palestinian refugees would come to twelve billion dollars: 'whether this figure is correct or "highly inflated", the Arabs of Palestine have been robbed of their homes and their homeland, something one cannot buy with all the gold in the world when it comes to attachment and love of one's own country.'<sup>15</sup>

<sup>15</sup> Moshe Menuhin, *The Decadence of Judaism in our Times* (Exposition Press Inc., New York, 1965), p. 197.

### SECTION 3

## Israel's obligations under U.N. resolutions and international law

The first step in the search for a solution of the Arab–Israeli conflict is to determine Israel's obligations under international law and under United Nations resolutions in relation to the issues involved in the conflict. Such an inquiry will also settle the question of the obligatory force of United Nations resolutions on Israel. It is essential to define the legal position in this regard because Israel has claimed sovereignty in order to defeat the implementation of each and every one of the United Nations resolutions on Palestine. It has asserted sovereignty not only over the territory envisaged by the partition resolution for the Jewish state but also over the various territories which it seized in 1948 and 1949 in excess of the area of the Jewish state. It has also opposed on the ground of sovereignty the implementation of the General Assembly's resolution which called for the repatriation of the refugees. In 1965 Israel's representative told the Special Political Committee of the United Nations: 'In short, there was nothing in paragraph 11 (of General Assembly resolution 194 (III) of December 11 1948) which contradicted the sovereign right of any State to determine who should be permitted to enter its territory.'<sup>1</sup> In 1966 he said in the same Committee: 'The United Nations cannot be asked to dictate to a sovereign State who should be permitted to enter its territory. That is a matter for the Government of that State to decide in accordance with its laws and with security, economic and demographic factors.'<sup>2</sup>

Whether the question is one of protecting Arab refugee property by the United Nations<sup>3</sup> or of the Security Council preventing Israel from

<sup>1</sup> U.N. Document A/SPC/SR 433, October 19 1965.

<sup>2</sup> UN. Document A/SPC/PV 509, November 11 1966.

<sup>3</sup> Israel has resisted all attempts made at the U.N. for the appointment of a Custodian for the administration and protection of Arab refugee property on the allegation of sovereignty: see sub-section 3c, *post*.



holding a provocative military parade in occupied Jerusalem<sup>4</sup> or of stopping Israel's raids against its neighbours,<sup>5</sup> the ground for Israel's opposition to action by the United Nations has invariably been based on 'sovereignty' or 'domestic jurisdiction'. One must, therefore, examine at the outset whether any legal basis exists for Israel's claim to resist United Nations action or resolutions on the ground of sovereignty.

While the question as to whether Israel has or could have acquired legal sovereignty under the partition resolution over the territory earmarked for the Jewish state or over the territories reserved for the proposed Arab state which it seized in 1948 and in 1949 in excess of such resolution is reserved for separate discussion at a later stage, it is sufficient now to remark that Israel's reliance upon sovereignty is legally misconceived on two broad grounds: first, because of the obligations imposed on Israel by the United Nations in 1947 prior to its creation, and, secondly, because of the formal undertakings to implement General Assembly resolutions which Israel assumed both at the time of its establishment in 1948 and in connection with its admission to membership of the United Nations in 1949.

#### I OBLIGATIONS IMPOSED BY THE U.N. ON ISRAEL PRIOR TO ITS CREATION

General Assembly resolution 181 (II) of November 29 1947 imposed certain obligations, limitations and restrictions upon the two states whose creation it then envisaged. Considered in relation to Israel, these obligations, limitations and restrictions included a geographical limitation of the territory of the Jewish state, a guarantee of equal civil and

<sup>4</sup> On April 27 1968 following the adoption by the Security Council of a unanimous resolution (S/8563/Rev. 1) calling upon Israel to refrain from holding a military parade on May 2 1968 in Jerusalem the Israeli representative informed the Council that Israel cannot accept the resolution 'as the matter was one which came under Israel's internal jurisdiction'. Israel defied the Security Council's injunction and held its parade.

<sup>5</sup> Following the adoption of a resolution by the Security Council on March 24 1968 which condemned the military action launched by Israel on March 21 1968 at Karameh in Jordan in flagrant violation of the United Nations Charter Israel's representative told the Security Council that 'Israel could not accept the condemnation', and that 'Israel would maintain its right to undertake all measures to preserve its sovereignty and security'.

political rights, human rights, and fundamental freedoms in favour of all persons and the protection of Arab property rights within the proposed state. The same resolution further laid down restrictions upon Israel's legislative and executive powers and placed certain of its provisions, including the protection of religious and minority rights, under the guarantee of the United Nations. The pertinent provisions of the resolution relating to these obligations, limitations and restrictions are set out here.

a *Geographical limitation of the territory of the state of Israel*

The boundaries of each of the two proposed Arab and Jewish states as well as the boundaries of the City of Jerusalem were set out in detail in Part II of the resolution of the General Assembly of November 29 1947. These boundaries were also indicated on the map annexed to the resolution. Israel's territory was thus geographically limited and defined by the United Nations so that Israel's seizure of any territory in excess of such resolution constitutes a violation of the resolution.

b *Guarantee of equal civil and political rights, human rights and fundamental freedoms*

Article 10 of Part I of the resolution of November 29 1947 provided that the Constituent Assembly of each state should draft a democratic constitution for the state. The same Article provided that the constitution should embody Chapters 1 and 2 of a Declaration to be made by the Provisional Government of each state under Section C.<sup>6</sup> Such constitution was to include, *inter alia*, provisions for

Establishing in each state a legislative body elected by universal suffrage and by secret ballot on the basis of proportional representation, and an executive body responsible to the legislature.

Guaranteeing to all persons equal and non-discriminatory rights in civil, political, economic and religious matters and the enjoyment of human rights and fundamental freedoms. . . .

Moreover, Article 1 of Chapter 3 of the Declaration stated that Arabs and Jews who resided in Palestine outside the City of Jerusalem

<sup>6</sup> The provisions of the Declaration are set out in Appendix X.

should upon the recognition of independence become citizens of the state in which they were resident and 'shall enjoy full civil and political rights'.

c *Protection of property rights*

Article 8 of Chapter 2 of the Declaration laid down the principle of the protection of land against expropriation except for public purposes. Article 8 stated:

8. 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.<sup>7</sup>

d *Restrictions upon legislative and executive powers*

The Declaration required to be made by each of the two states contained a general provision which was as follows:

The stipulations contained in the declaration are recognized as fundamental laws of the State and no law, regulation or official action shall conflict or interfere with these stipulations, nor shall any law, regulation or official action prevail over them.<sup>8</sup>

e *Guarantee of the United Nations and remedy against infraction*

Article 1 of Chapter 4 of the Declaration states:

1. 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.<sup>9</sup>

The provisions of Chapter 1 of the Declaration concerned Holy

<sup>7</sup> See Appendix X.

<sup>8</sup> See Appendix X.

<sup>9</sup> See Appendix X.

Places, religious buildings and sites. The provisions of Chapter 2 concerned religious and minority rights.

It is clear, therefore, that Israel's international legal status differs fundamentally from the status of any other state. Unlike any other state, Israel was the creation of a resolution of the General Assembly. This resolution has fixed Israel's territorial limits, subjected it to definite limitations, restrictions and obligations, deprived it of any power to enact any laws or regulations or take any action that conflict or interfere with the rights protected by the resolution, and placed the Holy Places and the rights of the Palestine Arabs under the guarantee of the United Nations.<sup>10</sup> The obligations and restrictions thus imposed upon Israel constitute definite limitations of Israel's sovereignty. These limitations are of a permanent character, for they cannot be modified without the assent of the General Assembly of the United Nations. The General Assembly was specifically given the power to inquire into any infringement of the stipulations embodied in the resolution and to make such recommendations as it might deem proper. Being as it were a statutory creation, Israel does not enjoy an unrestricted sovereignty. It cannot act in breach of the resolution which envisaged its creation and limited its powers, because any such act on its part would be *ultra vires* and without any legal effect. Hence, Israel is precluded from invoking sovereignty over territories seized in excess of the resolution of November 29 1947 to defeat or violate the rights of the Palestine Arabs which are protected by the resolution, or to justify any action on its part which is inconsistent with, or derogatory to, such resolution. 'The modern law of nations,' states Mr. Hedley Cooke,

admits not only of the general, i.e., universally applicable, limitations upon sovereignty, but also of special restrictions imposed on one or more nation-states due to their special circumstances. . . . In the United Nations Palestine Partition Resolution of 1947 . . . the Palestine Jews were directed—as a condition precedent to full recognition of independent status—to submit a draft national constitution for U.N. approval. So it was clear that the nations still had in mind certain limitations upon Israel's sovereignty . . . and the community of Nations may still demand of her an accounting on this score. . . . Israel's sovereignty, as contrasted with France's and Switzer-

<sup>10</sup> International law knows of restrictions upon the liberty of action of a state with regard to its citizens: Oppenheim, *International Law* (Longmans, London, 1955), Vol. I, 8th ed., p. 296.

land's, is permanently limited by her duties as embodied in her charter of existence—towards the Arab residents of the area which she controls. . . .<sup>11</sup>

## 2 ISRAEL'S UNDERTAKINGS TO THE UNITED NATIONS

In addition to the specific obligations arising under General Assembly resolution 181 (II) of November 29 1947 Israel has also formally bound itself—both at the time of its establishment in 1948 and before its admission to membership of the United Nations in 1949—to respect and execute the resolutions of the General Assembly on Palestine.

On May 15 1948 the Foreign Minister of the Provisional Government of Israel addressed a cablegram to the Secretary-General of the United Nations which stated, *inter alia*, that 'the State of Israel will be ready to co-operate with organs and representatives of the United Nations in implementation of the resolution of the General Assembly of 29 November 1947'. The Foreign Minister concluded in these terms: 'Accordingly, I beg to declare on behalf of the Provisional Government of the State of Israel its readiness to sign the Declaration and Undertaking provided for respectively in Part One C and Part One D of the resolution of the General Assembly. . . .'<sup>12</sup> This declaration represented a formal acceptance by Israel of the limitations, restrictions and obligations embodied in resolution 181 (II) of November 29 1947. It is obvious that in order to realize the Zionist dream of a Jewish state in Palestine the Israelis were willing in 1948 to subscribe to all the limitations, restrictions and obligations imposed by the resolution.

Israel again formally undertook the obligation to execute General Assembly resolutions in connection with its admission to membership of the United Nations. It will be recalled that Israel's original application for admission was made on November 29 1948 but was rejected by the Security Council on December 17 1948 because several governments opposed Israel's admission on the ground that the questions of boundaries, refugees and the status of Jerusalem had not been settled.

<sup>11</sup> Hedley V. Cooke, *Israel—A Blessing and a Curse* (Stevens and Sons, London, 1960), pp. 174, 178–180.

<sup>12</sup> U.N. Document S/747, May 15 1948, Official Records of Security Council, Supp. for May 1948, p. 89. The Declaration under Part One, Section C is set out in Appendix X. The Undertaking under Part One, Section D concerns the Economic Union and Transit which, it was envisaged by the resolution, would exist between the Arab and Jewish states.



When Israel renewed its application for admission on February 24 1949, the General Assembly invited it to clarify its attitude concerning the execution of the resolutions of the General Assembly on the internationalization of Jerusalem and on the problem of refugees. Several meetings of the Ad Hoc Political Committee of the General Assembly were held during which Israel's representative was questioned in detail and at length about Israel's intentions regarding the execution of General Assembly resolution 181 (II), the repatriation of the Palestine refugees, and the international status of Jerusalem.<sup>13</sup> Among the questions which were directed to Israel's representative was a specific inquiry as to whether Israel had made the required Declaration to the United Nations for the guarantee of Holy Places, human rights, fundamental freedoms and minority rights as required by the resolution of November 29 1947.<sup>14</sup> Israel's representative replied that 'only the State of Israel gave the requested formal undertaking to accept its provisions' and he referred to Security Council document S/747 which embodied the cablegram that was addressed by Israel's Foreign Minister to the Secretary-General of the United Nations on May 15 1948.<sup>15</sup>

Israel's representative was also specifically asked the question 'whether, if Israel were admitted to membership in the United Nations, it would agree to co-operate subsequently with the General Assembly in settling the question of Jerusalem and the refugee problem or whether, on the contrary, it would invoke Article 2, paragraph 7 of the Charter which deals with the domestic jurisdiction of States?' Mr. Abba Eban, who was then Israel's representative, was most co-operative and spoke a language which was essentially different from the one he speaks now as Israel's Foreign Minister. This is what he then said in reply:

The Government of Israel will co-operate with the Assembly in seeking a solution to those problems. . . . I do not think that Article 2, paragraph 7, of the Charter, which relates to domestic jurisdiction, could possibly affect the Jerusalem problem, since the legal status of Jerusalem is different from

<sup>13</sup> See the report of these meetings in Official Records of the 3rd Session of the General Assembly, Ad Hoc Political Committee, Part II, 1949, pp. 179-360.

<sup>14</sup> Official Records of the 3rd Session of the General Assembly, *op. cit.*, Part II, 1949, p. 302.

<sup>15</sup> Official Records of the 3rd Session, *op. cit.*, pp. 348-349.

that of the territory in which Israel is sovereign. . . . My own feeling is that it would be a mistake for any of the Governments concerned to take refuge, with regard to the refugee problem, in their legal right to exclude people from their territories. . . .<sup>16</sup>

Securing admission to membership of the United Nations was of vital importance to Israel, for its representative went on to add:

Moreover, as a general theory—and as I explained yesterday—during the past year we arrived, in connexion with resolutions of the General Assembly, at the view that we must be very careful not to make an extreme application of Article 2, paragraph 7, if such an application would deprive Assembly decisions of all compelling force. The admission of Israel to the United Nations would obviously result in making applicable to it Article 10 of the Charter, and the General Assembly would then be able to make recommendations directly to the Government of Israel which would, I think, attribute to those resolutions extremely wide validity.<sup>17</sup>

The Cuban representative summed up the debate on Israel's admission in the following terms:

Certain happenings which had shocked public opinion had perforce been investigated on different lines than would have been the case had Israel been a Member of the United Nations. The representative of Israel had given an assurance that, if that country were admitted as a Member, such matters as the settlement of frontiers, the internationalization of Jerusalem and the Arab refugee problem would not be regarded as within its domestic jurisdiction and protected from intervention under the terms of Article 2, paragraph 7 (of the Charter).<sup>18</sup>

Those were the formal assurances given by Israel to the United Nations prior to its admission to membership of the international organization. Considering that Israel's admission to membership was preceded by a clarification of its attitude towards the execution of General Assembly resolutions and by its making certain declarations and explanations in respect of the implementation of the resolutions of November 29 1947 and December 11 1948 it is reasonable to assume

<sup>16</sup> Official Records of the 3rd Session of the General Assembly, Part II, Ad Hoc Political Committee, 1949, pp. 286–287.

<sup>17</sup> Official Records of the 3rd Session of the General Assembly, *op. cit.*, Part II, 1949, p. 286.

<sup>18</sup> Official Records of the 3rd Session of the General Assembly, *op. cit.*, Part II, 1949, p. 351.

that it was only on the basis of such clarification and Israel's declarations and explanations that Israel was admitted on May 11 1949 to membership of the United Nations. This is apparent from the terms of the resolution which admitted Israel to membership of the United Nations. The Preamble of the resolution stated:

Noting furthermore the declaration by the State of Israel that it 'unreservedly accepts the obligations of the United Nations Charter and undertakes to honour them from the day when it becomes a Member of the United Nations'.

Recalling its resolutions of November 29 1947 and December 11 1948 and taking note of the declarations and explanations made by the representative of the Government of Israel before the Ad Hoc Committee in respect of the implementation of the said resolutions.<sup>19</sup>

Israel's 'declarations and explanations' involved, therefore, the two following basic undertakings:

First, Israel will implement General Assembly resolution 181 (II) of November 29 1947 (concerning territory, the City of Jerusalem, the Holy Places and minority rights of the Arabs within the Jewish state) and General Assembly resolution 194 (III) of December 11 1948 (concerning the repatriation of the Palestine refugees or payment of compensation for the property of those who did not wish to return);

Secondly, Israel will not invoke in regard to the implementation of General Assembly resolutions paragraph 7 of Article 2 of the Charter relating to domestic jurisdiction.

Israel's admission to membership of the United Nations should, therefore, be considered to have been conditional upon its undertaking to implement these two specified resolutions in particular and the resolutions of the General Assembly generally. It follows that Israel's reliance upon sovereignty in order to defeat the General Assembly's resolutions on Palestine and, in particular, the resolutions of November 29 1947 and of December 11 1948 is a breach of faith and a violation of an international obligation solemnly assumed by it at the time of its establishment and formally undertaken by it in order to secure its admission to membership of the United Nations.

The conclusion is, therefore, obvious that unlike any other state

<sup>19</sup> Resolution No. 273 (III) of May 11 1949.

Israel is subject to certain specific international obligations and is bound by definite and formal undertakings which negate the existence of any right, power or capacity in Israel to resist the implementation of United Nations resolutions or to remove the organic and permanent limitations imposed on it by the United Nations or to liberate itself from its commitments to the international community concerning Palestine and the Palestinians.

### 3 ISRAEL'S OBLIGATIONS WITH RESPECT TO EVACUATION OF TERRITORY, REPATRIATION OF THE REFUGEES, RESTITUTION OF REFUGEE PROPERTY AND COMPENSATION

Both international law and United Nations resolutions impose precise and definite obligations upon Israel with respect to the evacuation of the territories seized by it in 1948, 1949 and 1967, the repatriation of the Palestine refugees, the restitution of their property and the payment of compensation.

#### a *Evacuation of territory*

The question of the evacuation of occupied territories will be considered separately in respect of the territories of Palestine seized by Israel in 1948 and 1949 in excess of the partition resolution and in respect of the territories of three Arab states and the Gaza Strip occupied by Israel in June 1967.

i *Evacuation by Israel of territories seized in 1948 and 1949 in excess of the partition resolution.* Israel is under an obligation to evacuate all the territories which it seized in 1948 and 1949 in excess of the territorial limits fixed for the Jewish state in General Assembly resolution 181 (II) of November 29 1947 on the strength of the following considerations.

First, Israel has no legal right to retain these territories. It does not possess a particle of sovereignty over them.<sup>20</sup> It cannot sustain any claim to them under international law. These territories belong in law and in fact to the Palestinians. It is, therefore, evident that Israel is under an obligation to evacuate such territories.

<sup>20</sup> See Appendix XI.

Secondly, Israel has no equitable right to retain these territories because prior to their seizure they were either exclusively or predominantly Arab, both in population and in land ownership.<sup>21</sup> The small percentage of Jewish population in these territories towards the end of the mandate appears from a glance at Appendix III which shows the respective Arab and Jewish population percentages in Palestine in 1946. The equally insignificant percentage of Jewish land ownership in such territories also appears from Appendices IV and V. Taking Western Galilee as an example, it will be noticed that this area of Palestine which was allotted to the Arab state had a Jewish population which did not exceed 4 per cent (Appendix III). The Jews owned only 3 per cent of its lands (Appendix V). In these circumstances on what principle of justice can Israel claim to retain Western Galilee? The same consideration applies to the other territories which Israel has seized in excess of the partition resolution.

Thirdly, the evacuation of these territories appears to be the only practical and effective means of solving the refugee problem. The fact that the solution of the refugee problem depends upon a settlement of the territorial aspect of the Palestine Question was emphasized on many occasions. In its Second Progress Report, the Conciliation Commission for Palestine observed that it is 'of the opinion that the refugee problem cannot be permanently solved unless other political questions, notably the question of boundaries, are also solved'.<sup>22</sup> Again in its Third Progress Report the Conciliation Commission stated that 'the refugee question and the territorial question were closely interlinked'.<sup>23</sup> The mistake which was made in the past was to view the solution of the Palestine refugee problem mainly in the context of General Assembly resolution 194 (III) of December 11 1948, which called for the repatriation of the refugees, rather than by means of Israel's evacuation of the territories seized in excess of the partition resolution. The refugee problem cannot be effectively solved solely by the implementation of the repatriation resolution. It is of no less, if not of greater, importance to envisage also as a first step the implementation of the territorial aspects of General Assembly resolution 181 (II) of November 29 1947 which

<sup>21</sup> Population and land ownership figures in Palestine at the end of the mandate were given in Section I (3) of Part I, *ante*.

<sup>22</sup> U.N. Document A/838, April 5 1949.

<sup>23</sup> U.N. Document A/927, June 21 1949.



would mean the evacuation by Israel of the territories that were seized in excess of the boundaries fixed for the Jewish state by such resolution.

Mention has been made of the fact that Israel's seizure in 1948 and 1949 of territories in excess of the General Assembly resolution has doubled the dimensions of the refugee problem. What this meant in terms of additional territories seized was considered in Section 2 of Part I and what it meant in terms of displaced Palestinians was discussed in Section 3 (3) of Part I. The evacuation of the additional areas seized by Israel in 1948 and 1949 is, therefore, a cornerstone and a condition *sine qua non* of a settlement of the refugee problem. Such evacuation will enable more than half of the refugees of the 1948 conflict and about three-quarters of the refugees of the 1967 conflict, in all, about a million people, to be repatriated to their own homes. In particular, such evacuation will permit the refugees from Jerusalem and the inhabitants of the wholly Arab towns of Jaffa, Acre, Nazareth, Lydda, Ramleh, Shafa Amr and of several hundred villages to return to their homes.

Moreover, it would be illusory to expect that Israel is likely to implement voluntarily the General Assembly resolution calling for the repatriation of the Palestine refugees. Israel's refusal to allow the return of the refugees of the 1948 conflict, its racist policy, its expulsion of a large number of Palestinians in 1967, and its oppression of the Arab population in the occupied territories give added force to the view that the real solution of the refugee problem lies in the evacuation of the occupied territories. The paying of lip service to the cause of the refugees by annual affirmations on the part of the General Assembly of their right of repatriation is devoid of any practical significance. The solution of the problem is essentially territorial: Israel must evacuate, or be made to evacuate, the territories which the United Nations envisaged in 1947 should be reserved for the Palestine Arabs. This view is further reinforced by the consideration that from a practical standpoint the refugee problem cannot be solved without restoration to the refugees of their lands, orchards and groves. Three-fourths of the Palestine refugees are farmers who have always lived from their work on the land. They do not possess any other occupation or qualification. Dr. John H. Davis, Director of UNRWA, has said in his Annual Report dated August 26 1961:

4. In general, the 70 odd per cent of all adult refugees who became dependent on UNRWA were farmers, small shopkeepers, unskilled workers,

and herders, together with the sick and the old. In general, the areas into which they crowded were already saturated with persons possessing such skills. Particularly acute has been the problem of families engaged in agriculture and related village services, who constituted more than two-thirds of all refugees who became dependent on UNRWA. It was their misfortune that the host countries already had a large excess of native sons who wanted to farm but who had no land, since for years the farm population has been increasing at a rate several times that needed to replace retiring farmers and supply occupants for newly developed land.<sup>24</sup>

A small number of the refugees have been rehabilitated by learning a trade or craft but the great majority have been living in forced idleness because they have been deprived of their only source of livelihood. Without their land, most of the refugees have no means of earning their living.

The suggestion herein made regarding the necessity for Israel's evacuation of the territories which it seized in excess of the partition resolution should not be construed as representing Arab acceptance of partition. Such evacuation will neither solve the Palestine problem nor result in Arab acceptance of the partition of Palestine. But a territorial application of the partition resolution, involving as it would the evacuation of several areas held by Israel, will materially reduce the dimensions of the tragic problem of the refugees and might constitute a first step towards a solution.

ii *Evacuation by Israel of territories occupied in June 1967.* The considerations already set forth with regard to Israel's obligation to evacuate the territories which it seized in 1948 and 1949 equally apply to the territories which it has occupied since June 1967. Israel has no right to occupy, or to continue in occupation of, such territories. Its continued occupation of these territories constitutes a violation of international law.

The principle of the inadmissibility of the acquisition of territory by military conquest, already firmly established as a rule of international law by the consensus of the civilized nations, the Kellogg Pact and the Charter of the United Nations, was unanimously reaffirmed by the representatives of the international community at the fifth emergency session of the United Nations held in the summer of 1967. Moreover, the principle was also embodied in the resolution of the General

<sup>24</sup> U.N. Document A/4861, p. 1.

Assembly of the United Nations of November 22 1967 (Appendix IX) with respect to the territories occupied by Israel in June 1967 and in the resolution of the Security Council of May 21 1968 (Appendix VIII) with respect to Jerusalem.

The resolution of the Security Council of November 22 1967 (Appendix IX) has also affirmed the necessity of the withdrawal by Israel of its armed forces from the territories which it occupied in the recent conflict. Until now Israel has not shown any eagerness to comply with the Security Council's directives. It has taken the position that it will not withdraw from the territories occupied in the recent conflict until and unless the Arab states accept direct negotiations with it to settle certain matters to its satisfaction. This is obviously not in compliance with the terms of the Security Council's resolution, for if Israel is allowed to use the pressure of its military occupation to extract territorial or political gains from the Arabs, this would put a premium on aggression.

#### b *Repatriation of the refugees*

Resolution 194 (III) of December 11 1948 embodied three principles: the repatriation of the refugees, the restitution of their property, and their compensation for loss or damage to property.

The right of the refugees to return to their homes and to live in their ancestral homeland is a natural, legal, inalienable and fundamental human right. The Universal Declaration of Human Rights (1948) has declared that 'everyone has the right to return to his country' (Article 13).

The right of the Palestine refugees to return to their homes was recognized by the General Assembly in its resolution of December 11 1948. Since then this right has been annually reaffirmed by the General Assembly but without any practical result whatsoever. As regards the refugees of the 1967 conflict, the Security Council in its resolution 237 of June 14 1967, the General Assembly in its resolution S 2252 (ES-V) of July 4 1967 and 2452 (XXIII) of December 19 1968, the Commission on Human Rights in its resolution dated February 27 1968, and the Economic and Social Council in its resolution 1336 (XLIV) of May 31 1968 have all laid down the right of the refugees to return to their homes. These resolutions have declared that 'essential and inalienable

human rights should be respected even during the vicissitudes of war and called upon the Government of Israel to facilitate the return of those inhabitants who had fled the areas of military operations since the outbreak of hostilities'. On May 7 1968 the International Commission on Human Rights also affirmed

the inalienable rights of all inhabitants who have left their homes as a result of the outbreak of hostilities in the Middle East to return, resume normal life, recover their property and homes, and rejoin their families according to the provisions of the Universal Declaration of Human Rights.<sup>25</sup>

Israel, however, has not heeded these resolutions.

The Israeli refusal to permit the repatriation of the refugees is illegal and inhuman. Moreover, it constitutes a most absurd contradiction: on the one hand, the Israelis have claimed a so-called right to return to the land of their alleged ancestors of 2,000 years ago, while, on the other hand, they have denied to the Palestine refugees their natural right to return to their own homes. Israel's original claim that the question of the return of the refugees depended upon the conclusion of peace with the Arabs was mere pretence. The real reason, as we have seen, is a racist one which aims at the establishment of an exclusively Jewish state undiluted by Gentiles. Professor Albert Haurani has observed that by refusing to consider the refugee problem except in the framework of a peace settlement with the surrounding Arab States, the Israelis have linked together two matters which had no moral connection; for the return of the refugees was an obligation which they owed not to the surrounding Arab States but to the Palestinian Arabs themselves, as inhabitants of the land they had conquered. To make such a connection was the more tempting because Israel did not really wish the refugees to return. Even at a peace settlement it would only have offered to take back a small number; for what it wanted was to have the land without its inhabitants, so as to settle its own immigrants.<sup>26</sup> General Assembly resolution 194 (III) treated the Arab refugees as individuals possessing individual rights of resettlement in the country of their origin; hence, the fate of the refugees and their future could not depend upon, or be made a subject of, negotiation between states.<sup>27</sup> As

<sup>25</sup> U.N. Document A/7098, May 10 1968.

<sup>26</sup> Albert Haurani, Palestine and Israel, *The Observer*, September 3 1967.

<sup>27</sup> Official Records of the 3rd Session of the General Assembly, Part II, 1949, p. 282.

to Israel's present claim that it is entitled to refuse the repatriation of the refugees on the ground of sovereignty, it is clear, as we have seen, that this argument is devoid of any legal basis and is incompatible with its undertakings to the United Nations.

Some Jews have raised their voice in condemnation of the Israeli Government's refusal to repatriate the Palestine refugees. The Ihud Association—founded in Palestine by the late Dr. Judah L. Magnes and others—has said:

In the end we must come out publicly with the truth, that we have no moral right whatever to oppose the return of the Arab refugees to their land . . . that until we have begun to redeem our sin against the Arab refugees, we have no right to continue the 'Ingathering of the Exiles'. We have no right to demand that American Jews leave their country to which they have become attached and settle in a land that has been stolen from others, while the owners of it are homeless and miserable.

We had no right to occupy the house of an Arab if we had not paid for it at its value. The same goes for fields, gardens, stores and workshops. We had no right to build a settlement and to realize the ideal of Zionism with other people's property. To do this is robbery. I am surprised that Rabbi Herzog, and all those who speak in the name of Jewish ethics and who always quote the Ten Commandments, should consent to such a state of affairs. Political conquest cannot abolish private property.<sup>28</sup>

The main question about the refugee problem is how to implement effectively the right of the refugees to repatriation. We have observed earlier in this Section that the effective implementation of repatriation depends upon the evacuation of the territories seized by Israel in excess of the partition resolution. Such a step, however, will not do justice to the refugees who do not originate from these territories. It is necessary, therefore, to envisage the appropriate measures which should be taken in order to reduce the injustice in their case. To this end it is necessary to revert to the basic objectives of the United Nations when they recommended the establishment of a Jewish state. It is clear that when the General Assembly adopted its resolution on the partition of Palestine, it did not give away or alienate any part of Palestine to the Jews, as such, but recommended the establishment of an Arab state and

<sup>28</sup> Cited by Moshe Menuhin, *The Decadence of Judaism in our Times* (Exposition Press Inc., New York, 1965), p. 143.



a Jewish state. We have seen in Section 1 (3) of Part I that in the Jewish state, as then proposed, the majority of the inhabitants were Arabs. It was estimated on the basis of existing population figures that the population of the proposed Jewish state would then consist of 509,780 Arabs as against 499,020 Jews.<sup>29</sup> Accordingly, the territory which was earmarked for the Jewish state by the resolution of November 29 1947 was just as much allocated to the 509,780 Palestinian Arabs as it was allocated to the 499,020 Jews who were then the inhabitants of such territory. By driving out in 1948 the Arab inhabitants of the Jewish state, the Jews have ignored and distorted the United Nations concept of the Jewish state as then envisaged by the General Assembly. They acted as if the United Nations had granted to the Jewish inhabitants alone the territory of the proposed Jewish state and reserved such territory for their exclusive use and occupation. This was never the intention of the United Nations. The Palestine refugees who originated from the territory allocated to the proposed Jewish state and whose forefathers lived there for centuries have an equal, if not a greater right, to live in the territory of the Jewish state as have the Jews themselves. Hence, by forcing the Arab inhabitants out of the territory of the Jewish state and refusing their repatriation, the Israelis have not only defeated the intent and distorted the scope of the General Assembly resolution, they have also appropriated more territory than the United Nations originally intended to allocate to the Jewish community then existing in Palestine. Israel cannot be allowed to benefit from its own wrongdoing. In these circumstances, not only are the Israelis bound to evacuate the territories which they have seized in excess of the area of the proposed Jewish state as defined by the partition resolution, but they have no right to retain the whole of the territory allocated to the proposed Jewish state for the obvious reason that such territory was allocated to both the Arab and the Jewish inhabitants. Therefore, if Israel persists in its refusal to repatriate the Palestine refugees, it is only fair and equitable—if the original intention of the United Nations is to be effectuated—that the territory of the Jewish state as originally envisaged in 1947 be reduced in proportion to the number of the Arab inhabitants who were displaced by Israel from such territory.

<sup>29</sup> Report of Committee 2, Official Records of the 2nd Session of the General Assembly, Ad Hoc Committee, 1947, p. 291 and Section 1 (3) of Part I, *ante*.

### c *Restitution of refugee property*

It was mentioned in Section 5 (3) of Part II that all property, movable and immovable, which belonged to the Palestine refugees was seized and vested in the Israeli Custodian of absentee property who then proceeded to transfer to the Development Authority, a state-owned corporation, all lands that belonged to the Palestine Arab refugees and to 'alienate' to private individuals—lessees or squatters—almost all built-up property in urban areas owned by the refugees. In cases of 'alienation' the transaction was made on the basis of the 'official value' which was nothing but a fictitious or symbolic consideration.<sup>30</sup>

Regardless of the transfers, alienations, transactions and dispositions effected by the Israeli Custodian or by persons deriving title from him, the Palestine refugees possess the right, in accordance with recognized principles of law and concepts of modern civilization, to the restitution of their property. In the case of the Palestine refugees, their right to the restitution of their property is based not only upon general principles of international law but also upon specific provisions laid down in resolutions of the General Assembly of the United Nations. These two aspects are discussed hereinafter.

*i Right to restitution of refugee property under general principles of international law.* It is immaterial to the question of restitution of refugee property whether one applies the laws of war or the laws of peace, or whether one considers that Israel is in belligerent occupation of the whole or part of the territory which it has controlled since the date of the Armistice Agreements of 1949, or whether one considers that the legal status of the Palestinians who were forced out of their homes in 1948 is that of enemy subjects or aliens or simply that of refugees; because in all cases international law extends its protection to their property which has been seized and misappropriated by Israel.

Even if for the purposes of this discussion one assumes the worst possible status for the refugees—though such status is questionable under the principles of international law—namely, the status of enemy subjects, it is well settled that private enemy property, whether movable or immovable, cannot be seized, looted, confiscated or

<sup>30</sup> As to the meaning of 'official value', see Section 5 (3) of Part II, *ante*.

sold by the occupying power. The rule is clearly stated by Oppenheim:

Immovable private enemy property may under no circumstances or conditions be appropriated by an invading belligerent. Should he confiscate and sell private land or buildings, the buyer would acquire no right whatever to the property.<sup>31</sup>

Private personal property which does not consist of war material cannot even be seized. Articles 46 and 48 of the Hague Regulations expressly stipulate that private enemy property may not be confiscated, and pillage is formally prohibited.<sup>32</sup> Nazi German acts of plunder of private property in occupied territory during the Second World War were condemned as a war crime by the International Military Tribunal at Nuremberg.<sup>33</sup>

The protection of private property laid down by international law was reaffirmed by Article 17 (2) of the Universal Declaration of Human Rights of December 10 1948 which stated that 'no one shall be arbitrarily deprived of his property'.

Oppenheim observes that if the occupier has appropriated and sold private or public property which may not legitimately be appropriated by a military occupant, such property may afterwards be claimed from the purchaser without payment of compensation.<sup>34</sup>

ii *Right to restitution of refugee property under General Assembly resolutions.* In addition to the protection of Arab refugee property available under the general principles of international law, a specific protection of such property was also envisaged by certain resolutions of the General Assembly.

As previously mentioned, resolution 181 (II) of November 29 1947 embodied a specific prohibition against the expropriation of land owned by Arabs in the Jewish state (and vice versa) except for public purposes and subject to payment prior to dispossession of full compen-

<sup>31</sup> Oppenheim, *International Law* (Longmans, London, 1952), 7th ed., Vol. II, p. 403.

<sup>32</sup> *Ibid.*, p. 405.

<sup>33</sup> *Ibid.*, p. 406.

<sup>34</sup> Oppenheim, *op. cit.*, p. 619. Title founded on violation of law is void. See the application of this rule to unlawful requisitions and enactments of authorities in military occupation: D. P. O'Connell, *International Law*, Vol. I, 1965, pp. 496-497.

sation as fixed by the Supreme Court.<sup>35</sup> This prohibition was one of the stipulations which were recognized by the resolution as constituting fundamental laws which could not be defeated by any 'law, regulation or official action'. Moreover, this prohibition was included within the stipulations which were placed by the resolution 'under the guarantee of the United Nations'. The effect of resolution 181 (II) in this regard was, therefore, to put it beyond Israel's power to seize, confiscate, acquire, or alienate Arab refugee property; and any expropriation was always legally subject to the limitation and condition stated above. Accordingly, Israel's appropriation of Arab refugee property must be considered as null and void and of no effect, as having been done in violation of the express provisions of the General Assembly resolution of November 29 1947.

Resolution 194 (III) of December 11 1948 further affirmed the right of the refugees 'to return to their homes' and stated that 'compensation should be paid for property of those choosing not to return'. The return of the refugees to their homes can only mean that their homes and other property should be restored to them. This was obviously one of the aims of the resolution.<sup>36</sup> Under the resolution compensation for refugee property becomes payable if the refugee chooses not to return. It is important, however, to emphasize that the right of election between repatriation and compensation belongs to each individual refugee, not to Israel. The refugees, therefore, retain ownership of their property until and unless they have exercised their option of return or compensation. By denying to the refugees the exercise of their right of repatriation and recovery of their property, Israel has violated the General Assembly resolution of December 11 1948 and cannot claim title to property which it has taken over by contravening such resolution.

Furthermore, resolution 394 (V) of December 14 1950 directed the United Nations Conciliation Commission for Palestine, *inter alia*, to

Continue consultations with the parties concerned regarding measures for the protection of the rights, property and interests of the refugees.

<sup>35</sup> See Article 8 of Chapter 2, Section C of the Declaration required from the Jewish and Arab States: Appendix X.

<sup>36</sup> It may be remarked that the Lausanne Protocol which was signed by the Arab states and Israel on May 12 1949 recognized the need 'to achieve as quickly as possible the objectives of the General Assembly's resolution of December 11 1948 regarding refugees, the respect for their rights and the preservation of their property . . .'

It is evident that this resolution involved the recognition of the continued ownership of the refugees to their property notwithstanding Israel's spoliations and its 'absentee' and other confiscatory legislation.

The right of the refugees to recover their properties is thus established both by international law and by the resolutions of the United Nations. It follows that no account can be taken of the measures, spoliations and confiscatory legislation by which Arab refugee property was taken over by the Israeli authorities. It is immaterial whether the spoliation was the result of administrative or executive acts or was carried out in execution of confiscatory legislation, because the 'absentee' regulations and other legislative measures by which Israel has dispossessed the Arab refugees of their lands and properties are utterly null and void. Speaking of legislation which is contrary to international law, Oppenheim observes:

Such legislation may properly be treated as a nullity and, with regard to the rights of property, as incapable of transferring title to the State concerned either within its territory or outside it.<sup>37</sup>

It is also immaterial whether Israel has misappropriated, expropriated or 'sold' Arab refugee property to a state-owned corporation or to occupiers or to squatters at or without a symbolic consideration. Title to such property remains in the refugees who are entitled to its restitution.

In the preceding discussion no distinction has been made in regard to the location of the property. If, as we have seen, Israel's power to expropriate property was severely restricted by the United Nations in the General Assembly resolution of November 29 1947 in the area of the proposed Jewish state, its power to expropriate Arab property within the territory of the proposed Arab state and within the area of the City of Jerusalem was simply non-existent. In neither of these two last mentioned territories does Israel possess any right of expropriation whatsoever. Much less does it possess in such areas any right of legislation or confiscation. The invalidity of expropriations of land and other properties carried out by Israel in the City of Jerusalem was the subject of an express ruling by the Security Council. In its resolution of May 21 1968 (annexed as Appendix VIII), the Security Council has declared that it:

considers that all legislation and administrative measures and actions taken

<sup>37</sup> Oppenheim, *op. cit.*, Vol. I, p. 268.



by Israel, including expropriation of land and properties thereon, which tend to change the legal status of Jerusalem are invalid and cannot change that status.

Apart from the adoption of resolutions, Arab refugee property has not until now received any effective protection from the United Nations. On the one hand, the United Nations have not honoured the guarantee which was embodied in General Assembly resolution 181 (II) of November 29 1947 for the protection of the rights of the Arabs in the Jewish state, nor effectively enforced against Israel the prohibition against the expropriation of Arab-owned land. On the other hand, despite the fact that the Conciliation Commission was charged by the General Assembly with responsibilities for the protection of the rights, property and interests of the refugees, it does not appear that any concrete measures were taken to ensure such protection. In several of its reports the Conciliation Commission put on record Israel's refusal 'to abrogate the Absentee Act or to suspend measures of requisition of Arab immovable property' or to reply to its requests concerning Arab property rights.<sup>38</sup> And the matter seems to have rested there. More recently several attempts were made at the United Nations to safeguard Arab refugee property by means of the appointment by the United Nations of a Custodian for the protection and administration of such property. The proposals made in this regard have also envisaged that the Custodian would collect the income of refugee property on behalf of the rightful owners. It is estimated that the normal income of Arab refugee property represents an annual value which is several times the amount of UNRWA's annual budget. Until now, however, it has not been possible to muster the required majority for the adoption by the General Assembly of a resolution for the appointment of a United Nations Custodian.<sup>39</sup>

Israel has resisted the appointment of a United Nations Custodian over refugee property on two totally unacceptable grounds. Israel has first contended that 'derelict and abandoned lands had been transferred to the Israeli Development Authority by due process of law'.<sup>40</sup> It is, to

<sup>38</sup> See U.N. Documents A/927, June 21 1949, A/992, September 22 1949, A/1985, July 15 1951, A/3199, October 4 1956 and Section 5 (4) of Part II, *ante*.

<sup>39</sup> See Section 5 (4) of Part II, *ante*.

<sup>40</sup> U.N. Document A/SPC/SR 513, November 15 1966. See also U.N. Document A/SPC/SR 594, December 20 1967.

say the least, misleading to describe Arab refugee property as 'derelict and abandoned lands' when the refugees were forced out of their homes, had no intention of abandoning their property, and were prevented from returning and recovering their lands and homes. Similarly, it is a travesty of law and justice to describe the confiscation and spoliation of refugee property as a transfer by 'due process of law.' Israel has also opposed the proposal to appoint a Custodian over Arab refugee property by the allegation that the General Assembly is not competent to recommend this measure as such action would be contrary to Israel's sovereignty. Israel's representative to the United Nations told the Special Political Committee on December 16 1967:

The General Assembly had no competence to intervene in the regulation of property matters in any sovereign Member State. . . . It was quite wrong to suggest that Israel's sovereignty and statehood was limited or restricted by some provision which did not apply to the other 122 Member States. . . .<sup>41</sup>

But as already explained earlier in this section, Israel's legal status does differ from the status of all other member states, because its sovereignty was permanently limited and restricted by the very resolution which envisaged its establishment. General Assembly resolution 181 (II) has placed certain rights, including Arab property rights in the Jewish state, under the guarantee of the United Nations and thus put it beyond Israel's power to deal by legislation, expropriation or otherwise with such rights in contravention of its provisions. Moreover, Israel is precluded, on the basis of the express assurances and undertakings which it gave to the General Assembly when seeking admission to membership of the United Nations, from invoking the concept of domestic jurisdiction in order to resist the implementation of General Assembly resolutions. The arguments which have been advanced by Israel against the appointment of a United Nations Custodian over refugee property are, therefore, devoid of any legal basis and are inconsistent with the pledges it has given to, and the obligations it has assumed towards, the United Nations.

It is somewhat strange to observe that the U.S. representative at the U.N. was as vehement as the Israeli spokesman in his opposition to the appointment of a United Nations Custodian for the protection and administration of Arab refugee property. At the same meeting of the

<sup>41</sup> U.N. Document A/SPC/SR 594.

Special Political Committee in December 1967, he advanced an extraordinary collection of arguments against the appointment of a Custodian. The U.S. representative said that he was 'strongly opposed' to the five-power resolution which called for the appointment. In his view, the appointment of a Custodian would neither facilitate the task of UNRWA nor improve the prospects of a 'realistic' solution of the refugee problem. On the contrary, he thought, it would seriously jeopardize the possibilities of a solution. Espousing Israel's argument concerning sovereignty, he stated that 'the United Nations had no right under the Charter or existing international law to appoint a custodian to administer property within any sovereign state against the will of that state, much less to appropriate income from the properties (of the refugees). The General Assembly had already given the Secretary-General enough tasks which were extremely difficult to carry out and it should not burden him with another that it was impossible to implement.<sup>42</sup> Such an attitude is neither legally tenable nor morally justifiable. Arab refugee property is subject, as we have seen, to the protection of international law and to the specific guarantee of the United Nations. The prospects of a solution are not helped by a mass robbery of refugee property. The argument based on Israel's alleged sovereignty is completely devoid of any legal basis. Hence the 'strong opposition' shown by the U.S. representative to a United Nations attempt to redress the wrong done to the Palestine refugees is tantamount to a condonation of one of the largest robberies committed in modern history, and is hardly consonant with American traditions and ideals of justice.

#### d *Compensation*

Paragraph 11 of the General Assembly resolution 194 (III) of December 11 1948 has envisaged the payment of two kinds of compensation to the refugees: compensation for the value of the property of those who elect not to return, and compensation for loss of or damage to property.

i *Compensation for the value of the property of refugees choosing not to return.* We have observed that compensation for the value of refugee

<sup>42</sup> U.N. Document A/SPC/SR 594, December 20 1967.

property is a right which belongs personally to those refugees who, after they are allowed to exercise the option between repatriation and compensation, choose not to return. Until now Israel has refused to permit the Palestine refugees to exercise that option. Therefore, the question of compensation for the value of refugee property has not arisen and, of course, none has been paid.

ii *Compensation for loss or damage to property.* Paragraph 11 of General Assembly resolution 194 (III) has also envisaged that compensation should be paid 'for loss or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible'. This provision covers loss or damage to property suffered by any person and is distinct from the compensation payable for the value of property of refugees choosing not to return. Therefore, regardless of whether any refugee elects to return or not, he is entitled in accordance with this provision to compensation for loss or damage to his property. This form of compensation concerns the vast amount of personal property looted, the large number of villages and houses demolished or razed to the ground, commercial and industrial property and other rights and interests, such as the rent and income of real property, which have been appropriated by the Israeli authorities.

Although the Conciliation Commission for Palestine has undertaken a programme for the identification and valuation of the immovable property of the refugees, yet it has made no effort to identify and evaluate loss and damage to property for which compensation is due in accordance with the General Assembly resolution regardless of the question of repatriation. Such loss and damage concern both movable and immovable property and are of consequence. No machinery has been envisaged by the Conciliation Commission for the inquiry into such loss and damage, or for the submission of claims or evidence in support.

It should be remarked that the existing provisions in United Nations resolutions concerning the payment of compensation—whether for the value of refugee property or for loss or damage to property—are limited to broad principles without indication of necessary procedures and practical methods of implementation. There can be no doubt that, in practice, the value of a principle depends upon the manner of its

implementation. What is the gauge of compensation? Is it the fair market value of property as at the time of its seizure or loss in 1948? Or is it its replacement value at present-day prices? Is such value to be determined without regard to currency devaluations?<sup>43</sup> What is the currency or rate of exchange to be used for the purpose of determining value? Is any allowance to be made for the use of property until the actual date of payment of compensation? What assurance exists that compensation will be fair and adequate? Who will determine the amount of compensation? Will there be any recourse or redress against any erroneous or unjust valuation? All these questions have no answers. If the matter of compensation is to be left to the valuation and determination of the Israeli authorities, it is almost certain that such compensation will be grossly inadequate, if not merely symbolic. The totally illusory and fictitious compensation which was paid by Israel to the Arabs who remained in Palestine for the lands that were expropriated from them is sufficient evidence. As already explained in Section 5 (3) of Part II the tax value set by the Israeli authorities in devalued Israeli pounds for Arab refugee property at the time of its confiscation represents generally less than 5 per cent and in any event not more than 10 per cent of its real value. This percentage, diminished by expenses, administration fees, taxes and even estate duties imposed upon the succession of persons who died long before Israel came into existence, is what Israel considers to be the compensation for Arab refugee property. In fact, this would not be compensation, but pure spoliation. In his report to the United Nations, the late Count Bernadotte recommended that 'payment of compensation for those choosing not to return should be supervised and assisted by the United Nations Conciliation Commission...'<sup>44</sup> It is necessary, therefore, that in those cases where compensation becomes payable, a procedure be envisaged by the United Nations for the payment of just and adequate compensation to be determined by a neutral and independent body.

There is one final remark to be made about the subject of compensation. Apart from the question of compensation to the Palestine refugees which is covered by the General Assembly resolution of December 11

<sup>43</sup> The currency in use in Palestine until 1948 was the Palestine Pound which had the same value as the English Pound Sterling. Since 1948 two devaluations of the Pound Sterling have occurred.

<sup>44</sup> U.N. Document A/648, p. 18.



1948 there is the wider question of Israel's liability under international law to make adequate reparation for injuries, loss and damage caused by its aggression of June 5 1967. The Soviet Union's draft resolution submitted to the fifth Emergency Special Session of the General Assembly which was convened on June 17 1967 envisaged that Israel should make good in full all the damage inflicted on the three Arab countries which had been attacked. However, this resolution failed to obtain the required majority and the matter may be considered to be in suspension.

## SECTION 4

# The possibilities and conditions of a settlement

An attempt will be made in this section to consider the questions which now engage world attention in regard to the Middle East. Is the conclusion of peace between the Arab states and Israel possible? What are the chances of effecting a political settlement? What are the requisites for a just and equitable solution of the Arab-Israeli conflict over Palestine? The answers given are based exclusively upon the writer's own personal evaluation of the situation.

### IS THE CONCLUSION OF PEACE BETWEEN THE ARAB STATES AND ISRAEL POSSIBLE?

Three major obstacles stand in the way of peace between Israel and the Arab states: Israel's usurpation of a land which is not its own either in law or in fact, its ousting of the original inhabitants from their homeland, and its racism combined with an aggressive expansionism. In the face of these obstacles the conclusion of peace between the Arab states and Israel does not seem to lie within the realm of possibility.

Since the end of the war in June 1967, Israel began chanting its old refrain about its desire for peace and its propaganda harped on the need to solve the conflict by direct negotiations between the parties. But at their summit meeting at Khartoum on September 1 1967 the Arab states adopted three decisions: no recognition of Israel, no negotiation with Israel, and reaffirmation of the rights of the Palestinians to their homeland. Some people who ignore the history and basic causes of the conflict may have failed to appreciate the reason underlying the Arab attitude. Why do the Arabs refuse to negotiate? The reason is simple. The Arabs know what Israel has in mind when it speaks of peace and peace negotiations. Israel wants first its recognition as a state by the Arabs and, more important still, it wants Arab acceptance of its

usurpations, spoliations and territorial conquests. Lieutenant-General Burns, former Chief of Staff of the United Nations Truce Supervision Organization in Palestine, said of the Israelis:

They proclaim almost daily that they want peace—a peaceful settlement as soon as possible—that they are willing to sit down and negotiate with the Arabs any time, any place. But, of course, what they want is peace on their own terms. . . .<sup>1</sup>

It is obvious from the outset that any peace negotiations cannot be fruitful, for peace cannot rest on an injustice of the dimensions of the Palestine injustice. But unlike the Arabs, Israel has nothing to lose and even stands to gain from the holding of such negotiations despite their eventual failure. For although in any such negotiations Israel could not dictate its terms to the Arabs, it would none the less have realized a great political gain which it has been unable to achieve by three wars during the last twenty years: namely, its formal recognition by the Arabs. This would constitute a sufficient gain for Israel regardless of the outcome of the negotiations.

Israel's terms for peace with the Arabs were disclosed by Israel's Foreign Minister at the United Nations on October 8 1968. He declared that Israel is willing to withdraw its troops to agreed boundaries within the framework of a peace settlement. In effect, Israel's proposals mean that it plans—in violation of the Security Council's resolution of November 22 1967 requiring its withdrawal from the territories which it has seized in June 1967—to remain in occupation of such territories until the Arab states accept what Israel considers to be 'secure and recognized boundaries'. What Israel means by 'secure and recognized boundaries' is simply the annexation of additional Arab territory. In other words, Israel wants to use the pressure of military occupation in order to impose upon the Arabs the recognition of the territorial situation which it established by force in 1948 and 1949, and to improve such territorial situation by the annexation of some of the territories which it seized during the last aggression, including the Old City of Jerusalem. Israel also wants the ending of belligerency, the right of free navigation in 'international waterways' which, in fact, lie in Arab territory or within Arab territorial waters, and the conclusion of a peace treaty.

<sup>1</sup> E. L. M. Burns, *Between Arab and Israeli* (George G. Harrap & Co., London, 1962), p. 31.

Israel's so-called peace proposals do not envisage the implementation of the United Nations resolutions on Palestine or the repatriation of the refugees or the restoration of their human rights, their fundamental freedoms and their lands and homes. Generally speaking, Israel's terms do not contemplate the redress of the great injustice done in Palestine. Their aim is merely to satisfy further Israeli ambitions, both political and territorial. It is obvious that Israel is not seeking peace but only a reward for its aggressions and a ratification of its usurpations and spoliations.

Israel's protestations of peaceful intentions are not sincere. Israel talks of peace but, in fact, wages war. From 1948 until today Israel has made no secret of its intention to subdue all opposition and preserve by force its territorial gains. Its massive raids against its neighbours, which have earned for it twenty-nine condemnations by the Security Council, are an illustration of this policy.<sup>2</sup> The Israelis labour under the delusion that by recourse to violence they can secure condonation by the Arabs of the great injustice committed in Palestine. The only effect of Israel's resort to violence is to pour oil over the fire and to reduce the chances of a peaceful settlement. As Mr. Roger P. Davies, American Deputy Assistant Secretary of State for the Near East, recently observed, Israel cannot 'shoot its way to peace'. Acts of violence committed by the Israelis against the Arabs only enrage the victims, increase their bitterness and widen the abyss between them. In fact, the Israelis are creating a dangerous and massive blood feud between them and the Arabs. They seem to be doing everything to ruin every chance of restoring order and peace in the Middle East. In 1954 Mr. Henry A. Byroade, Assistant Secretary of the United States, told the Israelis, 'You should drop the attitude of the conqueror and the conviction that force and a policy of retaliatory killings is the only policy that your neighbours will understand. You should make your deeds correspond to your frequent utterances of the desire for peace.'<sup>3</sup> Lieutenant-General Burns considered Israel's policy of retaliation 'a 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

<sup>2</sup> See Section 2 of Part II, *ante*.

<sup>3</sup> Henry A. Byroade, *The Middle East*, Department of State publication 5469, p. 11.

member of the United Nations.’<sup>4</sup> It has been observed by Mr. Charles W. Yost:

There will also be no peace in the Middle East until the Israelis recognize that the condition of their long-term survival as a nation is a reconciliation with their much more numerous Arab neighbours, that survival cannot indefinitely be preserved by military force or territorial expansion, that displays of inflexibility and arrogance are not effective modes of international intercourse. . . .<sup>5</sup>

Peace in the Middle East does not depend upon the Arabs. It is not the Arabs who have created the conditions which now divide them from the Jews. In the past, Arabs and Jews have lived peacefully together and there is no reason why they cannot live peacefully together in the future. But before this can take place the great wrong committed in Palestine must be redressed. And this can only be done if the Jews of Israel abandon their Zionist objectives. Like the Arabs, many neutral observers including a number of distinguished Jews see in Zionism the cause of the trouble. Rabbi Elmer Berger has described the process of ridding Israel of its Zionist objectives as the ‘de-Zionization’ of Israel.<sup>6</sup> Professor Maxime Rodinson, a French orientalist of the Jewish faith, considers that the *désionisation* of Israel is a preliminary condition to any settlement.<sup>7</sup> Mr. Anthony Nutting, former British Minister of State, has expressed the same view: ‘So long as Israel remains a western state, inspired by Zionist aims, there can be no hope for peace with the Arab world.’<sup>8</sup> Professors Howard and Hunter doubt whether Israel with a Jewish population of two and a quarter million Jews can reconcile one and a half million Arabs now within its borders ‘unless the Israelis abandon many of their Zionist ideals and revert to the older concept of a Palestine shared peacefully between Arab and

<sup>4</sup> E. L. M. Burns, *op. cit.*, p. 64.

<sup>5</sup> Charles W. Yost, *The Arab-Israeli War: How it Began*, *Foreign Affairs*, January 1968, Vol. 46, No. 2, p. 320.

<sup>6</sup> See Rabbi Elmer Berger, *The Jewish Dilemma* (Devin-Adair, New York, 1956), Moshe Menuhin, *The Decadence of Judaism in our Time* (Exposition Press, New York, 1965), and Alfred Lilienthal, *What Price Israel?* (Regnery, Chicago, 1953).

<sup>7</sup> *Monde Diplomatique*, July 1967. See also his book, *Israel et le Refus Arabe, 75 Ans d'Histoire* (Seuil, Paris, 1968), p. 225, a translation of which was published in English in the Penguin Series under the title *Israel and the Arabs*.

<sup>8</sup> Anthony Nutting, *Israel through Middle Eastern Eyes: A Western Beachhead*, *Issues*, Winter 1966-1967, p. 20.



Jew'.<sup>9</sup> The former Commissioner-General of UNRWA, Dr. John H. Davis, has expressed the view that 'the world, and in time probably even the people of Israel, would come to see Zionism as the cause of the conflict' and that 'a de-Zionization of Israel would become the eventual basis for peace'.<sup>10</sup> It is the very nature of Zionism that prevents the establishment of peace in the Middle East. The following passage extracted from a recent article by Mr. Machower, an Israeli professor of philosophy, embodies a lucid analysis of the situation:

The military escalation that one observes at the present time has its origin in the 'wrong' done to the Palestinian Arab people. The reverse process cannot be put in motion as long as this people is deprived of its national rights. But it is the very nature of the Zionist regime which puts it in conflict with the national aspirations of the Palestinian Arab people. In other words, the Government of Israel cannot make peace, neither can the 'doves' or the 'hawks'. Israel can impose a *fait accompli* by the sheer strength of its military power or might be induced to effect a compromise under the pressure of the Great Powers. In one case as in the other, there can be no question but of a transient equilibrium which is always susceptible of being questioned.

Peace in the region depends upon the de-zionization of Israel and the ending of the Zionist regime. This signifies the abandonment of the absolute priority which is given to the maintenance of a Jewish state.<sup>11</sup>

Whether the 'de-Zionization' of Israel will ever occur is difficult to foresee. Political, military and economic leadership in Israel has fallen from the outset into the hands of a small minority of militant Zionist Jews of Central and Eastern European origin called the Ashkenazim, who do not historically or ethnically belong to the Middle East. They lack comprehension of Arab mentality. They possess no affinities with the Arabs. The Ashkenazim occupy the top of the hierarchy which now rules Israel. At the bottom of the pyramid, without much power, are the Sephardim, comprising the oriental and Arabic-speaking Jews. Many of them are immigrants from the Middle East who have been lured to Israel by financial inducements and gilded promises. The Sephardim possess close affinities with the Arabs that have been established during many centuries of coexistence. Zionism, however, has disrupted the

<sup>9</sup> M. Howard and R. Hunter, *Israel and the Arab World: The Crisis of 1967*, p. 44, Adelphi Papers, No. 41.

<sup>10</sup> John H. Davis, *The Evasive Peace* (John Murray, London, 1968), p. 112.

<sup>11</sup> Translation from *Le Monde*, January 9 1969.

traditional relationship and friendship which have always existed between Arabs and Jews. It is only when this mass of oriental Jews is able to shake itself free from the grip of its misguided Zionist rulers of foreign origin that some hope can be entertained for the restoration of understanding between Arabs and Jews in Palestine. Mr. Moshe Menuhin has observed that the Jews 'must win a new war of emancipation this time from their benighted fellow Jews, the "Jewish" nationalists, who have perverted and degenerated the noble heritage of universal Judaism'.<sup>12</sup> The Arabs are not antisemitic. They are semites themselves. In fact, antisemitism is not to their benefit, for while Israel thrives on antisemitism because it achieves Israel's main goal, namely, the encouragement of Jewish immigration into Palestine with its resulting increase of Israel's manpower, the Arabs were and still are the victims of antisemitism directed at the Jews in other countries. Zionism itself owed its origin to the persecution of Jews in Europe. By his persecution of the Jews in Germany, Hitler has done more to establish the Jewish national home in Palestine than Herzl, Weizmann and all Zionist leaders put together. But the Zionists have been evil geniuses to the Jewish people. They have done and are still doing almost irreparable injury to the friendship and understanding that have prevailed for centuries between Arabs and Jews.

## 2 THE CHANCES OF A POLITICAL SETTLEMENT

Failing peace in the strict sense of the term, some have thought of establishing between the Arabs and Israel a state of non-belligerency approximating to peace. This is a substitute for peace and has been called a political settlement. The chances of success of a political settlement depend upon what is meant by such expression. If by a political settlement is meant the restoration of right and justice, the Arabs will surely welcome such a solution. If, on the other hand, what is meant by a political settlement is, in effect, the patching up of a makeshift arrangement or *modus vivendi*, regardless of moral issues or ethical values, on the basis of the *status quo ante* to June 1967, or on the basis of such *status quo* modified or improved to Israel's advantage in the light of the military success achieved by Israel in 1967, then such a

<sup>12</sup> M. Menuhin, *op. cit.*, p. 489.

solution stands no chance of acceptance whatsoever. This fact is basic and should not escape attention. For twenty years the Arabs have refused to recognize the *fait accompli*. Is it reasonable to think that they will now reward Israel for its aggression of June 5 1967 by recognizing its usurpation of 1948? The Palestine injustice is a deep national grievance, not only to the Palestinians, but to the whole Arab nation. No Arab government or leader can compound or give away the inalienable right of the people of Palestine to their homeland.

In certain respects the Security Council's resolution of November 22 1967 (Appendix IX) constitutes an attempt at reaching a political settlement of the conflict. There is no doubt that the resolution possesses positive aspects, namely, its emphasis on the need for 'a just and lasting peace', the 'inadmissibility of the acquisition of territory by war' and 'the necessity for achieving a just settlement of the refugee problem', and in this regard it may properly be considered as representing the first attempt made by the United Nations to secure a settlement between Arabs and Israelis since the failure in 1949 of the Conciliation Commission for Palestine to arrive at a solution on the basis of the Lausanne Protocol. Yet despite its positive aspects, the resolution is open to two fundamental objections.

The first objection lies in the fact that it seems to have laid more emphasis upon the question of termination of belligerency between the parties rather than upon the equities of the Palestine Question which form the basis of such belligerency. If such is its proper construction then the resolution is not likely to achieve its basic purpose. When considering a solution which aims at the establishment of a just and lasting peace in the Middle East, it is of extreme importance to see all the issues in their true perspective. The Palestine Question comprises fundamental issues and issues of lesser importance. The fundamental issues are often submerged in more dramatic problems of much less moment. The fundamental issues concern the emergence of Israel, its seizure of the territory of Palestine, its forcible displacement of its inhabitants and the status of the City of Jerusalem. These issues have now been aggravated by the conflict of June 5 1967 which has created new and serious problems. However, the Israeli-Arab conflict of June 5 1967 is only a phase in a continuously explosive situation. It cannot be dissociated from the basic conflict of 1948. Any such dissociation is tantamount to an artificial truncation of the problem. Hence, the liquidation of the

consequences of the conflict of June 1967 alone will not solve the basic issues involved in the Palestine Question, because the treatment of consequences is ineffectual unless it is accompanied by an effective treatment of causes. It should be evident that the establishment of a just and lasting peace requires much more than the withdrawal of Israeli forces from the territories occupied during the recent conflict. It requires the redress of the injustice of 1948. Peace without right and justice is illusory. The attempt to establish peace in the Middle East by short-circuiting the basic question of Palestine is like trying to erect a permanent structure over the top of a volcano. Naturally this objection would lose much of its significance if the Security Council's reference in its resolution to the need for 'a just and lasting peace' were construed to require not only the liquidation of the consequences of the war of 1967 but also the redress of the injustice committed in 1948. This, in fact, is the interpretation placed upon the resolution by those Arab states which accept it and see in it an attempt to settle not only the problems arising from Israel's last aggressions but also the problem arising from Israel's establishment in 1948 in violation of the rights of the people of Palestine. However, other Arab states and, in particular, the Palestinians do not find in the Security Council's resolution the elements of a just solution. They view this resolution as a means for settling the aftermath of the last conflict against a price to be paid by the Arabs, namely, the recognition of Israel. They also believe that Arab recognition of Israel cannot but prevent 'a just settlement of the refugee problem' as required by the resolution.

The second objection to the Security Council's resolution is that it has envisaged a solution which implies the acknowledgement of 'the sovereignty, territorial integrity and political independence of every state in the area' without any reservation about the existence or otherwise of the sovereignty and territorial integrity of one of the parties concerned. The sovereignty, territorial integrity and political independence of the Arab states are not and have never been in doubt, so that the reference to an acknowledgement of such matters must be understood to apply only to Israel, whose legitimacy, sovereignty and territorial integrity are in question and the subject of dispute.

On what legal basis one may assume the sovereignty of Israel over the territories which it occupies is not made clear. The territories which Israel occupied prior to June 5 1967 consisted of various areas whose



manner of acquisition did not rest upon a legitimate basis either under international law or under the United Nations resolution of November 29 1947. Israel has not and could not have acquired legal title either to the territory which, by exceeding its competence and its authority, the General Assembly designated in 1947 as the area of the proposed Jewish state. Nor has Israel acquired, nor could it have acquired, legal title to the territory allocated to the proposed Arab state which it seized in excess of the boundaries of the partition resolution. In both cases the status of Israel is that of a belligerent occupier and such a status confers no title or sovereignty on the occupier. The recognition of Israel's sovereignty over such territories would be incompatible with international law and the inalienable rights of the Palestinians. The question of sovereignty over Palestine is of a strictly juridical nature, and consequently is discussed in more detail in Appendix XI.

As to the reference made in the Security Council's resolution to 'territorial integrity', one wonders what this could mean in the case of Israel. Neither Israel's territory nor its boundaries are legally recognized and settled under international law or under United Nations resolutions. Sovereignty is correlative to 'territorial integrity'. A state cannot assert a claim to 'territorial integrity' if it lacks legal sovereignty over the territory which it occupies.

On the other hand, Israel does not possess any legally settled and recognized boundaries. The Armistice Agreements concluded by Israel in 1949 with the four neighbouring Arab states did not recognize the armistice lines as constituting Israel's boundaries. On the contrary, all the Armistice Agreements have specifically provided that the armistice lines are delineated 'without prejudice to the ultimate settlement of the Palestine Question'.<sup>13</sup> Article V of the Armistice Agreement with Egypt dated February 24 1949 also provided that 'the armistice demarcation lines are not to be construed in any sense as political or territorial boundaries'. Article II of the Armistice Agreement with Lebanon of March 23 1949, Article II of the Armistice Agreement with Jordan of April 3 1949 and Article I of the Armistice Agreement with Syria are of similar purport and effect.

In the absence of any valid legal title to the areas which Israel occupies

<sup>13</sup> See Article V (2) of the Egyptian-Israeli Armistice Agreement and Article II (2) of each of the Armistice Agreements concluded between Israel and Lebanon, Transjordan and Syria.



by force of arms and in the absence of any legally established frontiers, what can the 'territorial integrity' of Israel mean? Is it a territorial integrity within the boundaries laid down by the partition resolution of 1947? Or is it a territorial integrity within the armistice lines established by the Armistice Agreements of 1949? Or is it a territorial integrity within the expanded boundaries which Israel now claims? It seems to be a patent contradiction to speak of the 'territorial integrity' of a state which has established itself by force on the land of others and does not possess a legally recognized territory or legally settled frontiers.

The recognition of the sovereignty and 'territorial integrity' of Israel in these circumstances would have the effect of settling all disputed issues in Israel's favour, regardless of their legality. One is entitled to doubt that such was the Security Council's intention. It does not seem possible to interpret the resolution as implying a recognition by the Security Council of sovereignty or of any particular 'territorial integrity' in favour of Israel, regardless of the rights of the Palestinians and regardless of the geographical limitation of Israel's territory by the General Assembly resolution of November 29 1947. Any such interpretation must be rejected because the Security Council can neither impair the legitimate and fundamental rights of the people of Palestine nor abrogate a resolution of the General Assembly of the United Nations.

Despite the apparent inadequacy of the Security Council's resolution as a framework for a satisfactory political settlement of the problem, two of the Arab states whose territory was occupied in June 1967, i.e., Egypt and Jordan, have seen in its emphasis upon the need for 'a just and lasting peace', as well as in its affirmation of the necessity for Israel's withdrawal from territories occupied in the recent conflict and for a just settlement of the refugee problem, a positive contribution to the reduction of tension in the area and a first step towards a solution. Acting against the weight of general Arab opinion, which does not find in the Security Council's resolution the basic elements for a just settlement, these two states went to the extreme lengths of concessions and expressed their willingness to implement the resolution. They have even suggested the phasing of execution of the resolution upon the basis of a fixed time-table. However, the acceptance by Egypt and Jordan of the Security Council's resolution should not be misunderstood. Such acceptance should be viewed only as a first step towards a solution

because, as Mohamed Hassanein Heykal has observed: 'The ending of the state of belligerency is a question which can be discussed within the framework of the elimination of the sequels of aggression, but the establishment of a state of peace is directly linked with the Palestinian Question. It is a problem which cannot be discussed except within the framework of the situation which has prevailed in the Middle East since 1948.'<sup>14</sup> But Israel has prevented the taking of such a first step by its refusal to implement the Security Council's resolution and by its intransigent insistence upon what it well knows to be the impossible condition of direct negotiations. Israel's insistence upon direct negotiations and its obstinacy in retaining the territories which it has occupied until the Arab states surrender to its terms show that it is not realistic to expect that the Israelis, already intoxicated by their military success, will voluntarily abandon the territories which they usurped in 1948 or seized in 1967. It is said that Israel's leaders are divided into 'hawks' and 'doves'. Politically, however, the difference between them is not so pronounced, for the 'doves' appear to be almost as ferocious in their appetite as the 'hawks'. The so-called 'hawks' would like to retain most of the Arab territories seized in 1967 with an eye on some more in the future, while the so-called 'doves' would content themselves—for the present, at least—with the territories seized in 1948 plus a few choice morsels of the territories seized in 1967, including the Holy City of Jerusalem. It is significant, however, that both have denounced the armistice lines of 1949 and treated them as obsolete. It is also significant to observe that neither the 'hawks' nor the 'doves' have ever indicated that the conflict could be settled on the basis of the United Nations resolutions or on the basis of right and justice.

Israel hoped after its military success of June 1967 that under political, military and economic pressures the Arabs would cave in and submit to its terms. Israel thought it could exploit the situation and take advantage of Arab military weakness, divisions in the Arab world, and the economic disaster suffered by Jordan and Egypt, to exact Arab recognition and to dictate its terms to the Arabs. This was a great illusion. And those who share Israel's hope and expect the Arabs to submit to its terms under the pressure of military occupation commit a grave error of judgment. Errors of judgment in matters which affect the life of nations can be costly to humanity. The Middle East now suffers from the error

<sup>14</sup> Translated from *Al Ahram*, Cairo, January 19 1969.

of judgment committed in 1947 by the various powers that supported the Zionist plan for the partition of Palestine and the creation of a Jewish state. It would be just as costly, if not worse, to err again and imagine that peace on Israel's terms, or even on the basis of the *status quo* that existed prior to June 5 1967 could be imposed upon the Arabs.

The conclusion is, therefore, unavoidable that by reason of Israeli insistence upon the implementation of the Zionist programme in Palestine and the deficiencies inherent in the Security Council's resolution of November 22 1967 the chances of achieving a political settlement on the basis of such resolution are not only quite dim but almost non-existent.

### 3 REQUISITES FOR A JUST AND EQUITABLE SOLUTION

If we discard the possibility of resolving the Arab-Israeli conflict by agreement between the parties, whether by the conclusion of peace or by resort to a makeshift political settlement, only two eventualities remain.

One of these eventualities would be to leave the conflict unresolved and allow force to become the arbiter of the situation. This means that until the situation is redressed the grave injustice done in Palestine and to its people will continue unabated; Israel will accentuate its pressures, economic and psychological, upon the Palestinians so as to force many of them to leave the country; it will seek to strengthen its grip upon the occupied territories by colonization and the creation of new settlements with the hope that the armistice lines will in time become international frontiers. The situation which is already explosive will become more explosive. Israel had made no secret of the fact that failing Arab surrender to its terms it intends to perpetuate its occupation of the territories seized in June 1967 in the same way as it perpetuated the situation which it forcibly established in 1948. The Israeli plan carries imponderable implications which by reason of the involvement of the Great Powers could possibly affect the peace of the world. The balance of probabilities is that Israel's persistence in the path of aggression will carry it from victory to victory until it will eventually suffer a devastating disaster.

The other eventuality would be to seek a just and equitable solution.

This seems to be the only sensible course of action to pursue if the world wants to avoid a disaster. The writer will examine hereinafter the conditions which he humbly believes are required for such a solution. These conditions are: the redress of the wrongs done in Palestine, the determination by an international decision of the measures required for redress and the implementation of such measures by the United Nations. It should be remarked that the effectiveness of the solution depends upon treating these three conditions as one indivisible whole.

a *Redress of the wrongs done in Palestine*

The history of Palestine from 1917 until present times has been one of avoidance of law and justice. The number of wrongs, illegalities and injustices which have been committed in this country is simply appalling. The Balfour Declaration, which promised the land of one people to another, the imposition of Jewish immigration during the British mandate against the will of the original inhabitants, the iniquitous plan of partition, the emergence of Israel in a land which is not its own, its usurpation of 80 per cent of the country, the uprooting and expulsion of the majority of its indigenous inhabitants, the plunder of their possessions and confiscation of their lands and properties, the occupation of the remainder of the country in 1967, the subjection of more than a million Palestinians to an oppressive Israeli domination, and the aggravation of the refugee tragedy constitute a bewildering and unparalleled succession of revolting injustices inflicted upon the people of Palestine. All this was achieved in disregard of the human rights of the Palestinians and their fundamental freedoms. In the case of Palestine, the concepts of 'international law', 'justice', 'self-determination', 'human rights' and 'fundamental freedoms' have been devoid of any significance or practical application.

There can be no peace in the Middle East unless and until the wrongs done in Palestine and to its people are righted and redressed. How is this to be achieved? The answer is simple. The wrongs done in Palestine must be righted on the basis of principles of law and justice and by recourse to the resolutions of the United Nations.

One of the positive aspects of the Security Council's resolution of November 22 1967 was to emphasize the need for justice in dealing with the situation in the Middle East. This was stressed in regard both



to the peace which should be established and to the solution of the refugee problem. The peace should be 'just and lasting' and the settlement of the refugee problem should be 'just'. Peace without justice is not an enduring peace and a solution of the refugee problem which lacks justice is not a solution. The concept of justice, all too often ignored in the Palestine Question and in previous efforts directed towards its settlement, provides the guiding light to be followed in the search for a solution. The Charter of the United Nations has prescribed recourse to 'the principles of justice and international law' for the adjustment of disputes, significantly naming the former first as if to give the principles of justice precedence over the principles of international law. Article 1 of the Charter states:

Article 1.—The purposes of the United Nations are:

1. To maintain international peace and security . . . and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace.

The concept of justice is not an empty word and should not be confused with international law. 'If we may judge by the wording of Article 1, paragraph 1 of the Charter, the "principles of justice" are something distinct from "international law".'<sup>15</sup> The concept of justice is universal, and unlike international law is much less subject to divergence of opinion or interpretation. The concept of justice introduces into the international sphere a gauge of moral and ethical values which are not conspicuous in the field of international law in its strict sense.

On the other hand, redress of the wrongs done in Palestine may be helped by the implementation of the resolutions of the United Nations which deal with the withdrawal of Israeli forces from occupied areas, repatriation of refugees, restitution of their property and compensation, the guarantee of equal civil and political rights, human rights and fundamental freedom of persons, the status of the City of Jerusalem, the protection of Arab property rights against expropriation and the restrictions upon Israel's legislative and executive powers. None of these resolutions have received any practical application, by reason of Israel's opposition.

<sup>15</sup> P. E. Corbett, *Law and Society in the Relations of States* (Harcourt, New York, 1951), p. 268.



The application of the principles of law and justice and the implementation of the resolutions of the United Nations on Palestine necessitate a reappraisal of the situation and a review of the equities of the Palestine Question. What has been done by force must be undone, because force is not the source of right. Wrongs must be righted and injustices redressed, however long they may have lasted, for there can be no vested right in wrong and injustice. The review of the equities of the Palestine Question should go to the roots of the problem. The Palestine problem did not start on June 5 1967. A full realization of this fact is indispensable for a proper diagnosis of the situation. The former Commissioner-General of UNRWA has observed that 'the world is bound to regard the acts committed against the Palestine Arabs, at the time of the creation of Israel and subsequently, as constituting grave injustices which must be rectified in the name of humanity and in the interest of peace'.<sup>16</sup>

What kind of political structure is likely to emerge from a reappraisal of the situation is difficult to say, but it could well be that a new order will succeed the present chaotic conditions. In the past, diverse solutions have been suggested for the Palestine problem. The solution which was recommended in 1947—the partition of Palestine—has not worked and has resulted in tragedy. Other solutions which were suggested were the establishment of Arab and Jewish cantons in a unified Palestine, a federated state and a bi-national state. Common sense requires that an attempt should be made to explore a formula which would ensure the integration of the Jews in the Middle East without violating the fundamental human and legal rights of the original inhabitants of Palestine. The Jews cannot reasonably hope to live eternally in a state of war with the Arab world, nor to impose their Zionist state upon the Arabs by force and terror.

In reviewing the Palestine situation, one must start from the beginning and not with preconceived ideas and predetermined solutions. Some contend that whatever the injustice done to the Palestinians, Israel exists as a fact and hence one must proceed from the basic premise that Israel has a right to exist. But must that be at the cost of the uprooting and exile of the people of Palestine? Why should Israel exist and the people of Palestine perish? Do not the people of Palestine have a right to exist? Do not the Palestinians possess a greater right than

<sup>16</sup> John H. Davis, *op. cit.*, p. 97.

others to live in their own ancestral homeland? A distinction should, therefore, be made between Israel's claim to exist and the right of the Jews to exist. No Arab wants or desires the extermination of the Jews. But the preservation of the Jewish community in Palestine cannot be made conditional upon the existence or continuance of a Zionist and racist state, nor should it be predicated upon the displacement and extinction of the people of Palestine. In this regard it is fitting to recall the views of two distinguished Jewish intellectuals on the question of the creation of a Jewish state. Dr. Judah L. Magnes, the late Rector of the Hebrew University in Jerusalem, said:

But, as far as I am concerned, I am not ready to achieve justice to the Jew through injustice to the Arab. . . . I would regard it as an injustice to the Arabs to put them under Jewish rule without their consent.<sup>17</sup>

Professor Albert Einstein has declared:

I should much rather see reasonable agreement with the Arabs on the basis of living together in peace than the creation of a Jewish state.<sup>18</sup>

The review of the equities of the Palestine problem will require greater foresight than has been shown until now and a different kind of wisdom from that made famous in a certain biblical judgment. King Solomon's historic call for a sword to cut into two the child who was claimed by two women was only a feint which he made in order to discover the truth and to dispense justice. Unfortunately, in the case of Palestine, the country was tragically and literally cut into pieces, causing one of the great injustices of the century.

The criticism will almost certainly be made that although the Charter of the United Nations embodies the rule that international disputes or situations which might lead to a breach of the peace shall be adjusted or settled by peaceful means and 'in conformity with the principles of justice and international law', in practice political conflicts are not resolved on the basis of legal or equitable principles. For instance, it will be argued, is Israel likely to recognize the illegitimacy of its establishment, abandon its status as a Zionist racist state and integrate into the political structure of the Middle East? Is Israel likely to evacuate the territories which it seized in 1948 in excess of the territorial limits fixed

<sup>17</sup> See N. Bentwich, *For Zion's Sake* (Jewish Publication Society of America, Philadelphia, 1965), p. 188.

<sup>18</sup> Albert Einstein, *Out of My Later Years* (Philosophical Library, New York, 1950), p. 263.

by the United Nations for the Jewish state, since it is already proving difficult to secure its withdrawal from the territories which it occupied in June 1967? Will Israel permit the repatriation of the refugees and accept the restitution of their properties when it has occupied their homes and confiscated their lands, and while its objective all along has been to maintain a racially pure Jewish state? Will Israel abandon its hold upon Jerusalem, considering that it has defied until now each and every one of the resolutions of the United Nations concerning the Holy City? Can it be expected that Israel will yield to the moral pressure of the principles of law and justice and abandon what it has gained by force? The answer to these questions is simple. If the law of the jungle is to prevail it would certainly not be realistic to attempt to convince the wolf of the rights of the lamb. So if the injustice which is at the basis of the Palestine Question is to continue until it is eventually removed by the use of force, then the writer must confess that the discussion of a pacific solution based upon right and justice is unprofitable and unrealistic. But if in the search for a solution one ignores the Charter of the United Nations which was the fruit of the costly lesson learnt by humanity during the Second World War, and if one abandons the concepts of right and justice which are the only bases for an equitable solution, what is the alternative? A realistic solution? But what is a realistic solution? In the minds of some people, a realistic solution signifies the acceptance of what is described as 'politically feasible'. If this means that a wrong cannot be undone except with the consent of the wrongdoer, then such a solution should be rejected, as it implies submission to what has been established by force, regardless of its legality or morality. Surely realism requires recognition of the fact that no international order can subsist on the basis of an injustice which affects the fate and the life of a whole nation. It is the failure to appreciate this fact which has prevented until now the Palestine tragedy from being brought to an end. If, on the other hand, a realistic solution merely implies the impossibility of restoring right and justice fully and entirely, and that the parties injured should be content with a solution which will be substantially in conformity with right and justice, then to that extent one might envisage a certain degree of realism.

In fact, neither the Arabs nor the Israelis have been realistic in the past. During the last twenty years they have lived under serious illusions. The Arabs, on the one hand, believed that peace and justice could be

restored in Palestine by the United Nations. Today the Arabs are disillusioned. Victims of another aggression, they have come to realise that Palestine cannot be regained, nor justice restored, by words and speeches. The Israelis, on the other hand, have entertained the illusion that they can secure the implantation of Israel in the land of Palestine by ousting its inhabitants and obtain its recognition by the use of force, reprisals, guns, aircraft and napalm bombs. They have not yet come to realize that building on foundations of injustice is like building on sand.

b *Determination by an international decision of the measures required for redress*

How is the reappraisal of the situation to be made? Who will define and determine the appropriate measures required for a redress of the Palestine situation? Could this be done by the parties themselves? This is impossible. By mediation? This is useless, as past events have shown. By agreement between the Great Powers? This is hopeless. The review of the equities of the Palestine Question could be effected in one of two ways. First, the review could be undertaken by the International Court of Justice or by some other international forum, such as an international commission of independent and neutral jurists. Rabbi Elmer Berger has suggested that the Great Powers might 'construct an orderly international procedure by means of which the basic equities in the historic Palestine problem can be judiciously reviewed'.<sup>19</sup> Secondly, such a review could be done by the General Assembly of the United Nations.

The review of the Palestine Question by an international forum raises the question of the consent of the parties concerned. Under present conditions the International Court of Justice does not possess a compulsory jurisdiction over international disputes, though it can give an advisory opinion at the request of the United Nations. Similarly, the reference of the matter to an international forum other than the International Court of Justice would require the consent of the parties, and it is more than improbable that Israel will accept arbitration of its own fate or the fruits of its military conquests.

These considerations, however, do not prevent the establishment by the United Nations of an international procedure to review the Palestine situation. In contrast to any other state, Israel is subject to the

<sup>19</sup> Elmer Berger, *Brief*, June 1967, American Council of Judaism, New York.



jurisdiction and control of the United Nations. As already mentioned in Section 3 of this Part, its sovereignty was permanently limited by the resolution which envisaged its establishment. The letter and the spirit of the partition resolution clearly show that it was not the intention of the United Nations to create Israel and let it loose without any control. The rights of the Arabs in the Jewish state were placed under the guarantee of the United Nations, and the General Assembly expressly reserved to itself the right to make such recommendations as it might deem proper in the circumstances. In view of the powers of control and supervision over Israel's acts which the General Assembly has expressly reserved for itself in its resolution of November 29 1947, Israel is barred from pleading sovereignty in order to defeat the establishment of an international procedure which aims at the review and reappraisal of the equities of the Palestine Question.

The other means for a review of the Palestine Question could take the form of a reconsideration by the General Assembly of the United Nations of the partition resolution of November 29 1947. As author of the partition resolution the General Assembly possesses an inherent power to reconsider and rescind its own resolution. The exercise by the General Assembly of the power to reconsider its resolution appears to be all the more necessary and justified when it is realized that the Jewish state which emerged in 1948, and which has since then caused so much chaos, damage and injustice, is fundamentally different from the Jewish state which was originally envisaged by the United Nations.

### c *Implementation by the United Nations*

It would be most ingenuous and unrealistic to expect Israel to execute voluntarily any measures that are recommended by an international forum or by the United Nations for redress of the wrongs which have been committed in Palestine. Israel's record from the time of its creation until now is not one of docile submission to United Nations resolutions or of co-operation with United Nations representatives. Count Bernadotte, the late United Nations Mediator on Palestine, put on record Israel's refusal to repatriate the refugees.<sup>20</sup> In his diary published after his death under the title *To Jerusalem*, he condemned the inhuman

<sup>20</sup> U.N. Document A/648.



attitude adopted by Israel towards the refugees and mentioned Israel's 'arrogance',<sup>21</sup> its 'blatant unwillingness for co-operation',<sup>22</sup> 'the uncompromising and stiff-necked behaviour of the Jewish Government'<sup>23</sup> and how the latter 'had shown nothing but hardness and obduracy towards these refugees'.<sup>24</sup> Major-General Carl von Horn, the Swedish Chief of Staff of the United Nations Truce Supervision Organization in Palestine, noted Israeli 'obstructionist tactics' and 'an Israeli tendency to immediately brand objectivity as anti-semitic; a convenient label which could be smeared on to any U.N. soldier whose impartial report did not weigh down in favour of the Israelis'.<sup>25</sup> His Canadian successor in office, Lieutenant-General Burns, has observed that 'co-operation from the Israelis only came when it suited their propaganda purposes'.<sup>26</sup> Israel's attitude towards the United Nations Conciliation Commission for Palestine is illustrated by the sarcastic remark made in 1966 by Israel's permanent representative to the U.N. before the Special Political Committee: 'The Conciliation Commission was scolded for not taking unilateral action against Israel in the name of implementing paragraph 11 (of resolution 194 (III) of December 11 1948). But what is the poor Commission expected to do? It is, after all, a conciliation commission, not the executive branch of a supra-national government.'<sup>27</sup>

None of the resolutions of the General Assembly or of the Security Council on Palestine have been respected by Israel. No other power, great or small, has ever defied the authority of the United Nations and damaged its prestige in this manner. On several occasions, as we have seen, when the Security Council condemned Israel for gross breaches of the Armistice Agreements and violations of the Charter, it warned this unruly state against the repetition of its acts. But Israel has neither respected the Security Council's resolutions nor heeded its warnings. And the Security Council itself has not taken against Israel 'further and

<sup>21</sup> F. Bernadotte, *To Jerusalem* (Hodder and Stoughton, London, 1951), p. 188.

<sup>22</sup> *Ibid.*, p. 219.

<sup>23</sup> *Ibid.*, p. 222.

<sup>24</sup> *Ibid.*, p. 209.

<sup>25</sup> Major-General Carl von Horn, *Soldiering for Peace* (Cassell, London, 1966), pp. 69, 282-283.

<sup>26</sup> E. L. M. Burns, *Between Arab and Israeli* (George G. Harrap & Co., London, 1962), pp. 173-174.

<sup>27</sup> U.N. Document A/SPC/PV 509, November 11 1966.

more effective steps to ensure against repetition' of its acts as stated in its various warnings.

Armed to the teeth, equipped with the latest arms and weapons, possessing the fastest fighters and bombers, defying every resolution of the General Assembly and the Security Council, possessing a fifth column in a number of states and still assured of financial and political support, Israel thinks it has become a Great Power and acts like Frankenstein's monster.

In these circumstances, why not frankly recognize that past methods used to secure the implementation by Israel of General Assembly or Security Council resolutions have been a complete failure? It is obvious that if the enforcement of such resolutions or of any measures for redress are to depend upon Israel's goodwill or consent, there will be neither enforcement nor redress. In the case of Israel's Suez aggression in 1956-1957, President Eisenhower observed that an aggressor should not be allowed to impose conditions on his withdrawal from the territories which he has occupied. Much less should a wrongdoer's consent be required to undo the wrong done by him or to implement the directives of the United Nations aiming at the redress of an injustice committed by him. The Palestine Question and the resulting Arab-Israeli conflict cannot be settled by the mere adoption of resolutions. It is equally if not more important to implement these resolutions, if not voluntarily executed, by coercive action under the Charter of the United Nations. Dr. John H. Davis, former Commissioner-General of UNRWA, has remarked that, 'in the end, one must even be prepared to impose corrective measures on Israel against her will'.<sup>28</sup>

The preceding considerations, concerning the futility of United Nations resolutions on Palestine if their implementation were to depend upon Israel's goodwill or consent, also apply to the efforts which are being made to settle the aftermath of the 1967 conflict by means of mediation under the Security Council's resolution of November 22 1967. It should be clear by now to anyone who understands the Middle Eastern situation that any attempt to secure peace in the Middle East by means which are based upon mediation, conciliation, negotiation or agreement between the parties is unlikely to lead to any tangible results, because the differences between them are so extreme and profound that they cannot be bridged by any of the usual means for the

<sup>28</sup> John H. Davis, *The Evasive Peace* (John Murray, London, 1968), p. 107.

settlement of international disputes. The experience of Count Bernadotte, of the Conciliation Commission for Palestine, and now of Dr. Gunnar Jarring bear witness to the illusory value of mediation and conciliation as a means of settling the Palestine conflict. Is it reasonable to expect that Israel will abandon the fruits of its military conquests—whether those of 1948 or of 1967—or undo any of its acts which have caused the Palestine tragedy, without international pressure or coercion?

Israel has made it clear that it will not accept a solution imposed on it by the United Nations or by the Great Powers. This suggests that the *fait accompli* which Israel itself imposed in 1948 and in 1967 by force of arms may not be changed without its consent. It is evident, therefore, that if the *fait accompli* is to be undone, and if right and justice are to be restored, the solution must of necessity be imposed upon Israel. There is much more justification for imposing right and justice than for imposing wrong and injustice.

The settlement of the Palestine Question cannot be left to the goodwill, consent or conditions of Israel. If any settlement is to take place it will have to be imposed upon Israel and implemented by the United Nations. More than any international problem existing today, the settlement of the Palestine Question is an international responsibility. This responsibility falls first upon the powers which have voted in favour of partition and have helped in the establishment of Israel. Dr. John H. Davis has pointed out that by helping to create a Jewish state in Palestine, Britain and America 'have made themselves responsible, together with the Zionist Movement and Israel, for the grave injustices that were committed against the Arab people and for the miscarriage of justice reflected in the fact that these wrongs have gone unredressed'.<sup>29</sup> Dr. Davis has further emphasized that 'the supporters of Israel, by upholding her despite her wrongful acts against the Palestine Arabs, have, in effect, contributed more to conflict than to peace'.<sup>30</sup> The wrongs committed by Israel in Palestine could not have been committed and would not have lasted until now were it not for the help and support that it has received from outside sources. In these circumstances the powers which have helped to create Israel and have extended to it their political and financial assistance have a moral duty to reconsider the basis of their assistance.

<sup>29</sup> John H. Davis, *op. cit.*, p. 89.

<sup>30</sup> *Ibid.*, p. 105.

Not only does justice require that these powers should reconsider their assistance to Israel but it is also necessary that they should actively assist in the redress of the injustice. They cannot now wash their hands of the whole affair and take refuge in an attitude of alleged neutrality. The adoption of such an attitude, particularly at a time when Israel has militarily the upper hand, would encourage it to undertake further aggressions. Those who have helped to establish the injustice are under a duty to help in its redress. Neutrality in the face of a wrong is itself a wrong. Neither can these same powers plead their inability to influence Israel, for this would simply be an excuse for not disturbing the *fait accompli*. Fairness seems to demand that the political pressures which were used in 1947 to bring about the tragedy of partition should now be matched by an equal pressure to redress the damage done.

On the other hand, the problem is a responsibility of the United Nations. This is so not only because the United Nations Organization is the guardian of international justice and fundamental human rights, but also because of the specific guarantee which the United Nations extended to the people of Palestine in 1947. As mentioned earlier, in its resolution 181 (II) of November 29 1947 the General Assembly placed the rights of the Arabs in the Jewish state—whether political or human or proprietary—under the guarantee of the United Nations.<sup>31</sup> Nineteenth of the Arabs who were established during centuries in territories now under Israel's occupation were driven out and expelled from their homes, dispossessed of their properties and deprived of their human and fundamental rights. What is the value of the guarantee given to them by the United Nations if it is not honoured? The United Nations cannot abdicate their responsibility and are, therefore, under a duty to take concrete and effective steps in order to honour their obligation to the people of Palestine.

How is this international responsibility to be discharged?

Financial contributions to UNRWA and material aid to the refugees are palliatives, but they do not solve the problem nor remove the injustice. It is not enough to feed the refugees with bread, food and hope. Such assistance does not restore to the refugees their rights, their homeland and their dignity.

Similarly, the paying of lip service to the cause of the refugees, by the annual adoption by the General Assembly of stereotyped resolutions

<sup>31</sup> See Section 3 (1) of Part IV.

which recite Israel's failure to repatriate or compensate the refugees and express regrets for such failure, is not conducive to any practical result.

So also the condemnations by the Security Council of Israel's armed attacks against its neighbours, even though coupled with warnings against the repetition of its acts, have not deterred it from doing again and again what it was forbidden to do.

It is high time to abandon policies which produce no positive results. Israel's continued defiance of United Nations resolutions puts in jeopardy the peace of the world and the prestige and future of the international organization. The Security Council possesses extensive powers under the Charter of the United Nations to ensure respect for, and implementation of, United Nations decisions and resolutions. The Security Council has not attempted until now to exercise effectively its responsibilities under the Charter and it is possible that it might fail in its attempt by reason of disagreement between the Great Powers over what is to be done or undone.

Failing agreement between the Great Powers on some common action through the Security Council for the restoration of justice in Palestine, the only other effective means of redress is the exertion of pressure upon Israel by the U.S. Government. Such pressure can be most effective in forcing Israel into submission to legality. The U.S.A. controls the economic life of Israel. On two previous occasions, the suspension by the U.S. Government of its economic assistance to Israel has forced it to respect law, order and the will of the international community. When Israel refused in 1953 to recognize the authority of General Van Binnike, Chief of Staff of the United Nations Truce Supervision Organization, and declined to stop its drainage work in the Syrian-Israeli Demilitarized Zone, Secretary of State Dulles suspended on September 25 of that year an allocation of Mutual Assistance funds to Israel because it was acting in contempt of the United Nations. Mr. Dulles then explained that the United States had 'played an essential part in creating Israel' and he considered this 'clearly an occasion to invoke the concept of decent respect for the opinion of mankind as represented by the United Nations'.<sup>32</sup> This measure achieved its purpose, for Israel immediately agreed to a suspension of its drainage work in the Demilitarized Zone. Again, in 1957, following the Suez aggression, the threat made by the U.S. Government to withdraw its econo-

<sup>32</sup> *Department of State Bulletin*, November 2 1953, p. 588.



mic assistance contributed to Israel's evacuation of Sharm el Sheikh and the Gaza Strip. It is futile to expect any solution of the Arab-Israeli conflict so long as Israel continues to receive the political and financial support of the U.S. Government. There can be no doubt that the U.S. Government holds the key to the solution of the problem. Without its participation no international pressure can be effectively exercised against Israel to secure its compliance with United Nations resolutions and to ensure respect for the principles of law and justice. In these circumstances the U.S. Government carries a great responsibility for the restoration of justice and for the preservation of peace in the Middle East.

## Conclusion

Some of the facts stated in the preceding pages may have caused surprise and amazement to certain readers. This, it should be made clear, is in no way due to any lack of authenticity or genuineness. The real facts about the Arab-Israeli conflict are not always generally known or they are misrepresented or distorted. It is the writer's earnest hope and desire that the foregoing exposition will help to promote a better comprehension of the real issues involved in the Arab-Israeli conflict and in its root cause, the Palestine Question.

Since the establishment of Israel in part of the land of Palestine three explosions have rocked the Middle East, and the situation remains as explosive as ever and as far removed from a settlement as at any time. Considering that Israel came into existence in furtherance of, though not in conformity with, the General Assembly's resolution for the partition of Palestine, it is necessary to review the efforts which have been made by the United Nations to restore peace and order to the land whose future government they sought to determine in the autumn of 1947. These efforts have not always been appropriate or effective.

In 1948 and 1949 the United Nations allowed force and aggression to reign unchecked and unredressed. No attempt was then made to correct the error or to redress the injustices that were inherent in the resolution of partition or even to compel Israel to evacuate the territories destined for the Palestine Arabs which it had seized in breach of the resolution of partition. The United Nations were then content to adopt a resolution which called for the repatriation of the Palestine refugees or at their choice, for their compensation, and also called for the appointment of a Conciliation Commission to mediate in the conflict. Neither measure produced any tangible result, for Israel refused either to repatriate the refugees or to abandon any of the territories which it had seized. Thus, the Palestine problem remained unresolved.

In 1956 and 1957 Israel again seized Arab territories, but this time the

United Nations were more effective in effacing the traces of aggression. As a result of strong pressure exercised by the United Nations, and in particular by the U.S.A. and Soviet Russia, Israel was forced to evacuate the Sinai Peninsula and the Gaza Strip and to withdraw to the armistice lines of 1949.

The third explosion came in June 1967. Although the war was formally ended by the four cease-fire orders issued by the Security Council in June 1967, in fact violence has continued and a new factor, namely Palestinian resistance, has arisen. The cycle of violence, whether it takes the form of Palestinian commando attacks, Israeli raids, reprisals and repressions, or other acts of war, is likely to continue until a just solution of the conflict is found or until another war breaks out.

The world thought that a solution to the conflict could be found in the Security Council's resolution of November 22 1967. But notwithstanding Dr. Gunnar Jarring's efforts under such resolution and the consultations held between the Great Powers to secure its implementation, nothing constructive has been achieved. This negative result is due chiefly to two factors. On the one hand, Israel has not formally and unequivocally accepted the Security Council's resolution, for the reason that it provides for 'the withdrawal of Israeli armed forces from territories occupied in the recent conflict'. Israel wants to keep some of the territories which it has occupied, including the City of Jerusalem, and is unwilling to withdraw from the remaining territories without receiving certain compensations, including Arab recognition of its legitimacy and of its conquests. On the other hand, from the Arab standpoint, although the resolution seeks to remove the territorial consequences of the last aggression, it does not provide an appropriate framework for a settlement of the basic problem of Palestine. By attempting to achieve a settlement which seeks principally the restoration and the reinforcement of the political and territorial *status quo* that existed before June 5 1967, the Security Council resolution merely aims, in effect, at a return to the situation which has prevailed since 1948 without removing the injustice done to the people of Palestine. In order to achieve a just and lasting peace in the Middle East, much more is required than was contemplated in the resolution. It is necessary that the political order created by Zionism in Palestine through successive acts of force committed since 1948 be undone and be replaced by a new political structure which would be based upon justice and democracy and which would be free from racism

and Zionism. Can one conceive that peace and justice could exist in the Middle East if the Palestinians continue to be deprived of their homes, of their country and of their legitimate rights and fundamental freedoms? It is true that the resolution has called for 'a just settlement of the refugee problem' but is it reasonable to expect that this could be achieved while at the same time preserving in Palestine a racist political order which has ousted the Palestinians from their country, usurped their lands and denied to them the right to return to their homes?

The Security Council's resolution of 1967 is thus inadequate to secure a just and lasting peace. Therefore, it is necessary for the United Nations to revise drastically their thinking about the means and methods whereby peace and justice may be restored to Palestine and to the Middle East. This would obviously require the undoing of many acts and the reversal of many situations.

Naturally, it is hardly to be expected that Israel will agree to undoing any part of what it has brought about in Palestine since 1948. And it might even seem visionary or fanciful to imagine that after its military success of June 1967 Israel could without strong international pressure be stripped of its territorial conquests, reduced in geographical dimensions, and transformed into a political entity which would include both Arabs and Jews enjoying as citizens equal rights and duties. For this reason any thought that Israel might voluntarily or in agreement with the Arabs abandon the territorial and political gains which it has realized since 1948 or repatriate the refugees or forsake its racist policy and Zionist objectives is utterly unrealistic. The two basic conditions of a settlement of the Arab-Israeli conflict are that such a settlement should be just and that it should be imposed upon Israel. There is no other way. Justice must be imposed in the same way as injustice was imposed. Already, in anticipation of any eventual change under the Security Council's resolution in the territorial situation created in 1967, Israel has affirmed its opposition to any settlement which might be imposed by the Great Powers. On March 17 1969, in her speech to the Knesset, Mrs. Golda Meir, Israel's new Prime Minister, has reminded these Powers that 'in matters affecting our existence, no decision can be adopted without us, nor can any recommendation be formulated without our consent'. Is it likely that Israel would consent to forgo the fruits of its aggressions? It is obvious that Israel wants to maintain the *fait accompli*

which it has established by force and wants itself to impose its own solution upon the Arabs.

The imposition of a settlement upon Israel is justified, even required, under international law and in the particular circumstances of its creation. As we have seen, the international legal status of Israel is fundamentally and organically different from the status of any other state. Israel is the only state which has come into existence bound and shackled by the permanent limitations, restrictions and obligations imposed upon it by the General Assembly of the United Nations in accordance with its resolution of November 29 1947. Israel cannot escape these limitations, restrictions and obligations, nor can it avoid the undertakings which it assumed upon its admission to membership of the United Nations with regard to the repatriation of the Palestine refugees, the respect of the international status of Jerusalem and the implementation of the General Assembly's resolutions.

If, however, in an attempt to escape these limitations or to avoid these undertakings, Israel claims that it is not the Jewish state which was envisaged by the United Nations in 1947, then it should be considered to be a political growth which has come into existence in violation of the principles of justice and democracy and should, therefore, be excised. In either case, Israel remains subject to the jurisdiction and control of the United Nations and cannot on grounds of sovereignty or for any other reason resist a solution which is imposed upon it by the United Nations and which is intended to restore to the Arab states their territories and to the Palestinians their homes and their human rights.

The question may be asked why the United Nations should interfere in the Middle Eastern crisis and impose upon Israel the redress of the Palestine injustice, the observance of international obligations and the respect of democratic rights, thereby showing more concern for this case than for other explosive problems and unjust situations existing in other parts of the world. The reasons for this are numerous.

First and foremost, the situation which now prevails in the Middle East is a direct result of the resolution for the partition of Palestine which was adopted by the General Assembly of the United Nations in 1947. In fulfilment of the aims and objectives of the Charter the United Nations are in duty bound to redress the wrong done in Palestine as a result of such resolution.

Secondly, the wrong that resulted from the partition resolution was



considerably aggravated by the fact that Israel has developed into a political entity which does not represent the conception of the Jewish state as envisaged by the United Nations. Israel has exceeded the geographical limits fixed for the Jewish state, has violated the constitutional provisions and safeguards laid down by the United Nations resolution in favour of the Palestine Arabs and has usurped most of the territory reserved for the original Arab inhabitants whom it displaced from their homes and deprived of their fundamental rights and freedoms.

Thirdly, the United Nations have the right and even the duty to interfere because the protection of Arab minority rights and of the Holy Places were placed by the General Assembly 'under the guarantee of the United Nations'. It is not admissible that the original inhabitants of Palestine be deprived of their most elementary rights or that the religious heritage of Christianity and Islam should remain under the control of Zionist Jews who are dominated by racist considerations and are determined, as shown by their ousting of the original Arab inhabitants, to transform Palestine into an exclusively Jewish land free from Gentiles and from non-Jewish marks and traces. The least that the United Nations can do is to honour their guarantee.

Lastly, the United Nations have good cause to interfere because the Middle Eastern situation contains the seeds of a world conflict. Both in 1956 and in 1967 the Great Powers came near to a confrontation by reason of the Arab-Israeli conflict.

The restoration of justice to the people of Palestine and of peace to the Middle East is in the hands of the United Nations.

## Article 22 of the Covenant of the League of Nations, June 28 1919

*Article 22.* To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilization and that securities for the performance of this trust should be embodied in this Covenant.

The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations who by reason of their resources, their experience or their geographical position can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as Mandatories on behalf of the League.

The character of the mandate must differ according to the stage of the development of the people, the geographical situation of the territory, its economic conditions and other similar circumstances.

Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent 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.

Other peoples, especially those of Central Africa, are at such a stage that the Mandatory must be responsible for the administration of the territory under conditions which will guarantee freedom of conscience and religion, subject only to the maintenance of public order and morals, the prohibition of abuses such as the slave trade, the arms traffic and the liquor traffic, and the prevention of the establishment of

fortifications or military and naval bases and of military training of the natives for other than police purposes and the defence of territory, and will also secure equal opportunities for the trade and commerce of other Members of the League.

There are territories, such as South-West Africa and certain of the South Pacific Islands, which, owing to the sparseness of their population, or their small size, or their remoteness from the centres of civilization, or their geographical contiguity to the territory of the Mandatory, and other circumstances, can be best administered under the laws of the Mandatory as integral portions of its territory, subject to the safeguards above mentioned in the interests of the indigenous population.

In every case of Mandate, the Mandatory shall render to the Council an annual report in reference to the territory committed to its charge.

The degree of authority, control or administration to be exercised by the Mandatory shall, if not previously agreed upon by the Members of the League, be explicitly defined in each case by the Council.

A permanent Commission shall be constituted to receive and examine the annual reports of the Mandatories and to advise the Council on all matters relating to the observance of the mandates.

APPENDIX II

PALESTINE—Plan of Partition.  
See folding map facing this page.

APPENDIX III

PALESTINE

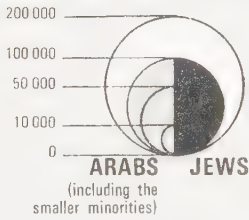
DISTRIBUTION OF POPULATION BY SUB-DISTRICTS.

WITH PERCENTAGES OF JEWS AND ARABS

(including the smaller minorities)  
(Estimated 1946)

(Prepared on the instructions of Sub-Committee 2 of  
the Ad Hoc Committee on the Palestinian question)

SCALE OF POPULATION

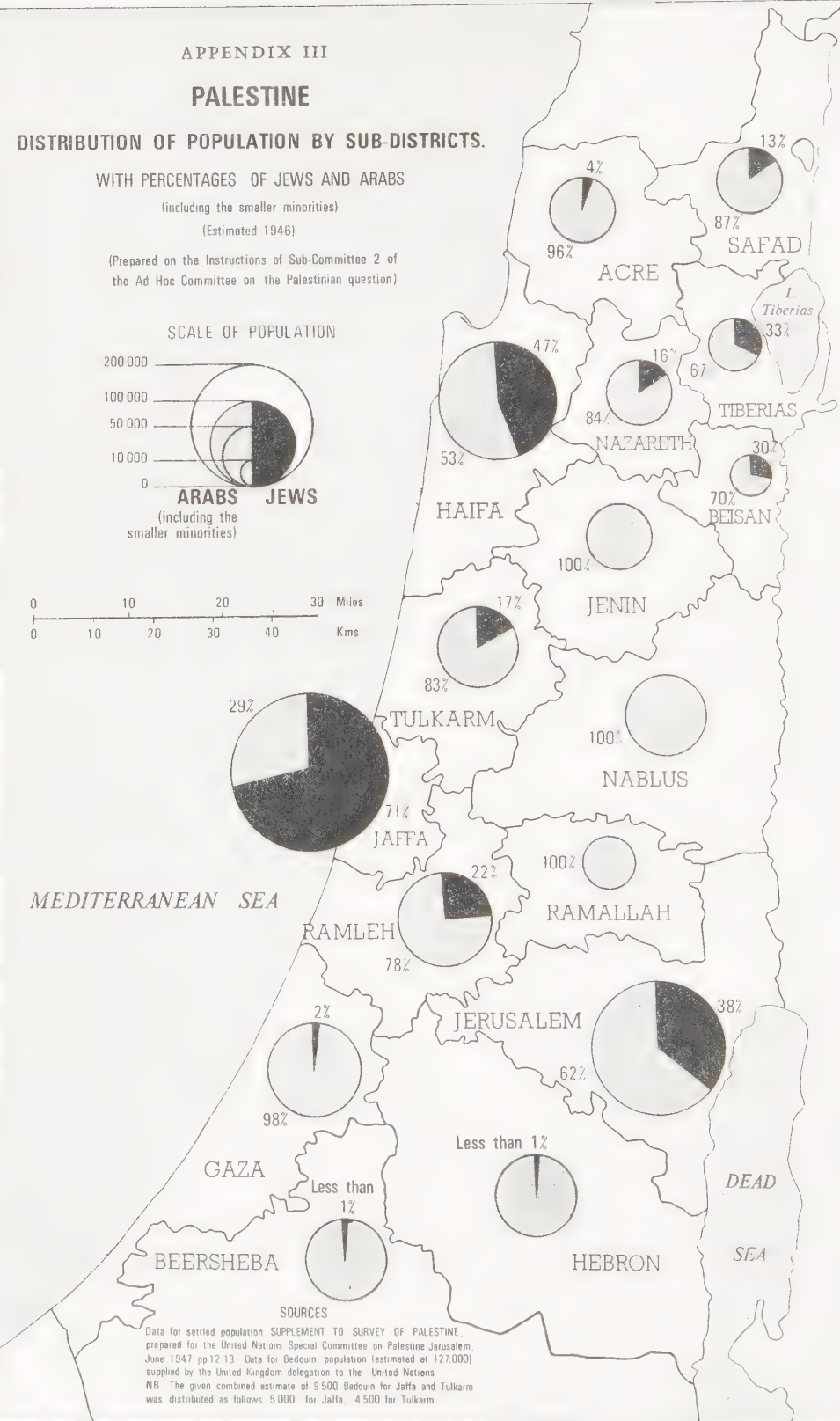


MEDITERRANEAN SEA

DEAD SEA

SOURCES

Data for settled population SUPPLEMENT TO SURVEY OF PALESTINE,  
prepared for the United Nations Special Committee on Palestine Jerusalem,  
June 1947 pp 12 13 Data for Bedouin population (estimated at 127,000)  
supplied by the United Kingdom delegation to the United Nations  
NB The given combined estimate of 9 500 Bedouin for Jaffa and Tulkarm  
was distributed as follows: 5 000 for Jaffa, 4 500 for Tulkarm





APPENDIX IV  
**EXTRACTS FROM VILLAGE STATISTICS**  
as at 1 April 1945  
**SUMMARY FOR PALESTINE**

Areas in dunoms. 1 dunom = 1,000 sq. metres = 0.2471 acres.

SUB-DISTRICT	TOTAL					
	Arabs	Jews	Public	Others	Roads, Rail- ways, Rivers & Lakes	Total
<b>GALILEE DISTRICT</b>						
Acre	695,694	24,997	74,705	1,481	2,786	799,663
Beisan	159,812	124,755	73,070	184	9,266	367,087
Nazareth	258,616	137,382	88,354	4,429	8,752	497,533
Safad	474,973	121,488	91,500	7	8,163	696,131
Tiberias	226,441	167,406	33,122	5,085	8,915	440,969
<b>Total</b>	<b>1,815,536</b>	<b>576,028</b>	<b>360,751</b>	<b>11,186</b>	<b>37,882</b>	<b>2,801,383</b>
<b>HAIFA DISTRICT</b>						
Haifa	434,666	364,276	179,616	24,766	28,431	1,031,755
<b>SAMARIA DISTRICT</b>						
Jenin	701,965	4,251	126,179	73	2,746	835,214
Nablus	1,383,466	15	184,872	19,691	3,674	1,591,718
Tulkarm	650,646	141,361	27,257	15	16,081	835,360
<b>Total</b>	<b>2,736,077</b>	<b>145,627</b>	<b>338,308</b>	<b>19,779</b>	<b>22,501</b>	<b>3,262,292</b>
<b>JERUSALEM DISTRICT</b>						
Hebron	1,984,434	6,132	82,571	1,154	1,894	2,076,185
Jerusalem	1,326,571	33,401	146,361	55,765	8,687	1,570,785
Ramallah	681,996	146	2,569	489	1,364	686,564
<b>Total</b>	<b>3,993,001</b>	<b>39,679</b>	<b>231,501</b>	<b>57,408</b>	<b>11,945</b>	<b>4,333,534</b>
<b>LYDDA DISTRICT</b>						
Jaffa	158,413	129,439	11,981	16,917	18,616	335,366
Ramleh	670,392	122,159	47,380	11,640	18,621	870,192
<b>Total</b>	<b>828,805</b>	<b>251,598</b>	<b>59,361</b>	<b>28,557</b>	<b>37,237</b>	<b>1,205,558</b>
<b>GAZA DISTRICT</b> (Excl. Beersheba S/D)						
Gaza	830,314	49,260	206,196	349	25,382	1,111,501
<b>Grand Total</b>	<b>10,638,399</b>	<b>1,426,468</b>	<b>1,375,733</b>	<b>142,045</b>	<b>163,378</b>	<b>13,746,023</b>
Beersheba	1,936,375	65,231	10,574,925	5	464	12,577,000
<b>Grand Total for Palestine</b>	<b>12,574,774</b>	<b>1,491,699</b>	<b>11,950,658</b>	<b>142,050</b>	<b>163,842</b>	<b>26,323,023</b>

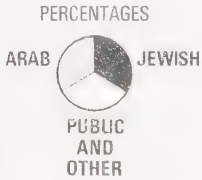
APPENDIX V

PALESTINE

LAND OWNERSHIP BY SUB-DISTRICTS

(1945)

(Prepared on the instructions of Sub Committee 2 of the Ad Hoc Committee on the Palestinian question)



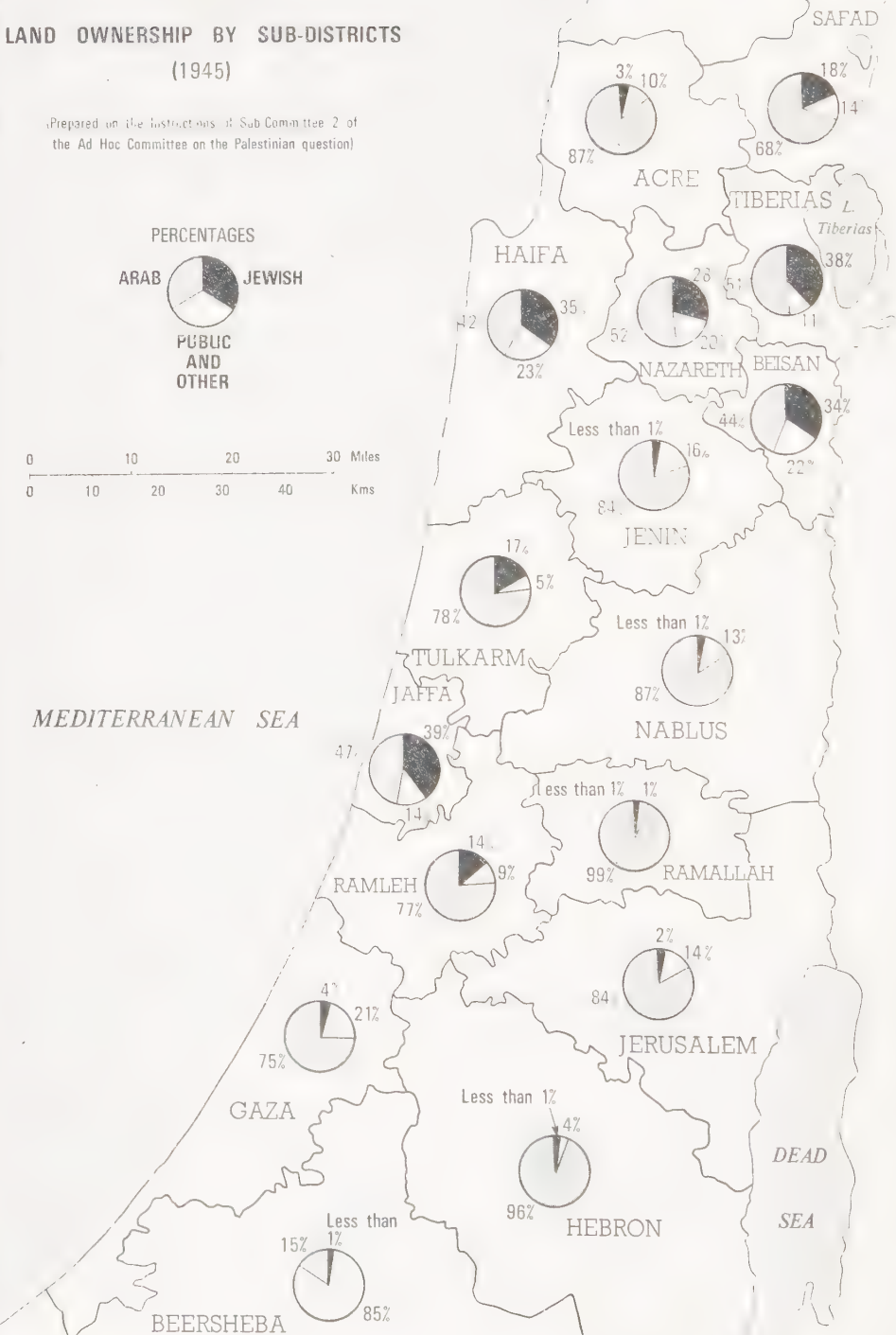
MEDITERRANEAN SEA

DEAD SEA

BEERSHEBA

SOURCES

VILLAGE STATISTICS, Palestine Government, Jerusalem, 1945



## Palestine

### Chronology of events in Palestine

December 1 1947–May 15 1948<sup>1</sup>

1947

Dec. 1: Arabs and Jews clashed between Tel Aviv and Jaffa.

— Jews opened 12 recruiting centres and posted mobilization notices.

Dec. 2: Eight Jews and 6 Arabs were killed, and 32 Jews and 6 Arabs were reported wounded in the day's clashes. Sporadic fighting continued on the Jaffa–Tel Aviv boundary. Attacks by Arabs on Jewish shops were reported in Jerusalem on the first day of a three-day Arab strike. Minor skirmishes were reported at Ramleh and Safad.

Australia, China, France, Mexico, Great Britain, and the United States were named to a U.N. working committee to write a draft constitution for the Jerusalem international zone.

Dec. 3: Ralph J. Bunche, director of the United Nations Trusteeship Division, was appointed chief of the secretariat to accompany the five-man U.N. Commission charged with setting up provisional governments in the new Arab and Jewish states.

Deaths mounted from incidents in Jerusalem and the Tel Aviv area. First incidents were reported from Haifa.

Dec. 4: The Arab three-day strike ended. Haganah announced the arrival of 174 unauthorized immigrants, described as 'Oriental Jews from North Africa'.

Dec. 5: The State Department announced that the United States was

<sup>1</sup> The above chronology is reproduced by the kind permission of the editors of the *Middle East Journal*, Washington, D.C. The chronology was published in the *Middle East Journal* (1948), Vol. 2, pp. 215–221 and 329–332. Unless otherwise indicated, items in the chronology were drawn from the *New York Times*. The author has added some footnotes to correct certain items which were obviously either inaccurate or erroneous.

placing an embargo on arms shipments to 'the Middle East' (i.e. Palestine and the Arab states).

Dec. 6: Strife continued to spread, with fighting reported in Jerusalem, the Jaffa-Tel Aviv sector, Haifa and Petah Tiqva.

A new secret Arab radio transmitter ('Voice of the Revolution') urged recruits to join forces preparing in Syria for military action. A secret Arab organization, al-Jihad, claimed credit in pamphlet releases for the bombing of the U.S. Consulate General in October.

Dec. 8: National registration of all Jewish youth began in Jerusalem, Tel Aviv, Afulah, and Safad under the direction of Vaad Leumi and the Jewish Agency. Haganah announced that 3,000 picked men and women would be taken on as full-time salaried Haganah employees.

Nineteen were killed in an Arab attack on Tel-Aviv.

Lebanon and Egypt requested that their governments' special representatives be heard as 'interested parties' in the Security Council debate on Palestine scheduled for December 9.

Britain recommended to the U.N. that it terminate its Palestine mandate May 15 and that independent Jewish and Arab states come into formal existence two weeks later. Final British troops would not leave until August 1, but from May 1 to August 1, Britain would be responsible for security only in a troop-occupied area near Haifa.

The Palestine Government announced that on Dec. 15 British and Arab police would be withdrawn from Tel Aviv, although the local Jewish police would remain under police orders.<sup>2</sup>

Dec. 9: Faris al-Khuri of Syria appeared before the Security Council to challenge the legality of the partition plan, but after a two-hour discussion, debate on the question was shelved indefinitely.

Jews turned on British police in the first open attacks since the U.N. decision to partition Palestine, burning two police armoured cars and attacking seven others.

Dec. 10: The six-nation working group of the Trusteeship Council agreed on measures aimed at guaranteeing Jerusalem's neutrality during any Palestine disturbance: the Governor would be empowered to rule by decree in emergencies and to take any measures

<sup>2</sup> Before May 1 1948 the Palestine Government had, in fact, abandoned responsibility for security outside certain zones. These zones were established early in 1948 in certain sections of Jerusalem and Haifa and in areas surrounding police and government buildings in other places.

necessary to preserve the inviolability of the Holy City from armed force.

Eighteen deaths were reported.

Dec. 11: The day's death toll reached a new high of 35.

The Jewish Agency appealed to the Secretary-General of U.N. for permission to appear before the Security Council and participate in the debates on the Palestine case 'as a party to a dispute under consideration'.

Dec. 12: Twenty-eight were reported dead, with 8 missing, in Palestine fighting.

Dec. 13: Three bombing incidents, attributed to the Irgun, killed 16 Arabs and wounded 67. The day's total in killed was 21 Arabs, 3 Jews, and 1 British soldier. Curfews were enforced in Safad, sections of Haifa, and the Tel Aviv-Jaffa border.

Speaking before the United Jewish Appeal conference, Major General John Hilldring, member of the U.S. delegation to U.N., predicted a quick end to violence in Palestine. He denied that the United States used any undue pressure on other countries to influence their votes on partition.

Dec. 14: Arab Legion troops killed 14 Jews, 2 British soldiers, and an Arab civilian in an attack on a bus convoy near Tel Aviv. The troops declared they were replying to a grenade attack made on their camp by the Jewish settlement police guard of the convoy.<sup>3</sup>

Dec. 15: A convoy of the Transjordan Frontier Force was attacked with grenade and rifle fire in Jerusalem (*London Times*, Dec. 16, 1947, p. 4).

Dec. 17: In London, Nahum Goldman, member of the Jewish Agency Executive, said that Jewish legal experts working on a draft constitution for the new state had included a clause binding the country to neutrality on the Swiss model in any future conflict. He further reported that an economic and defence delegation of 50 American Jews would fly to Palestine in February to survey needs of the state; U.S. Jews would be asked to subscribe \$250,000,000 to meet the new state's overseas needs, including \$146,000,000 for defence; world

<sup>3</sup> The accuracy of this report is subject to doubt because the Arab Legion was Transjordan's army and like other Arab armies did not enter Palestine except on May 15 1948 when the British mandate formally ended. The Arab Legion then occupied Jericho and a large area in the Judean hills, all being areas reserved by the U.N. partition plan for the proposed Arab State.



Jewry would be asked to subscribe to an internal loan; between 100,000 and 200,000 immigrants would be brought to Palestine by the end of 1950; Jewish Palestine would probably remain in the sterling bloc; the political relationship between world Zionism and Palestine Jewry remained to be settled; the country would apply for U.N. membership as soon as possible, and might seek to be heard at any future peace conference on Germany.

At Lake Success, Moshe Shertok, chief of the Jewish Agency's political department, charged that the implementation of the U.N. partition plan was being imperilled by the Palestinian Government's inadequate protection programme, and its policy of obstructing Jewish self-defence.

Dec. 19: Per Federspiel was announced as Denmark's representative and Dr. Eduardo Morgan as Panama's representative on the U.N. Palestine Commission. The Bolivian, Czechoslovakian, and Philippine delegates were still unnamed.

Haganah accepted responsibility for a raid on the village of Khisat in northern Palestine in which 10 Arabs were killed. Two large-scale raids by Arabs were made on food trains between Haifa and Lydda.<sup>4</sup>

Dec. 20: Haganah attacked the Arab village of Qazaza for three hours. The house of the village mukhtar was dynamited.

Dec. 21: The Jewish Agency gave first official approval to reprisal raids by Haganah on Arab villages.

An Arab bus was attacked between Ramallah and Latrun. Four Jews machine-gunned a British lieutenant and a sergeant-major in Jerusalem. A British-Jewish journalist was shot dead near the Government Press Department. Scattered Arab attacks were reported in northern Palestine.

Dec. 22: A shipload of 800 unauthorized Jews travelling in the schooner *Lo Tafhidunu* were intercepted off the coast by the British Navy.

Jews and Arabs fought a half-hour battle near Holon.

Dec. 25: Christmas Day was marked by 16 deaths and at least 51 wounded. Haifa remained the chief trouble centre.

Dec. 27: Thirteen persons were killed in a six hour Arab-Jewish battle near Tulkarm.

Official figures placed total casualties since Nov. 30 at 316 dead,

<sup>4</sup> The alleged raids on food trains can be doubted because no 'food trains' ever existed in Palestine.

270 seriously wounded, 474 slightly wounded, and 4 missing. Those killed included 125 Jews, 162 Arabs, 11 Jewish settlement police, 9 soldiers, 2 British policemen, 4 'neutral' civilians, 1 Arab soldier, 1 Arab policeman, and 1 Jewish special constable.

Dec. 28: Irgun Zvai Leumi announced it was negotiating for a 'united front' with Haganah.

Dr. Moshe Sneh, formerly head of the Haganah, resigned from his membership on the Jewish Agency Executive because of the Agency's undue emphasis on friendship with the Western democracies, at the expense of relations with Russia. The immediate cause of the dispute was a disagreement over the Agency's acceptance of continued restrictions on immigration, particularly from Eastern Europe.

A ship carrying 700 unauthorized immigrants was intercepted and escorted to Haifa by the British Navy (*London Times*, Dec. 29, page 4).

Dec. 30: An Irgun Zvai Leumi bomb thrown from a speeding taxi in Jerusalem killed 11 Arabs and 2 Britishers.

Two bombs were thrown by Irgun members at a group of about 100 Arab labourers outside the employment office of Consolidated Refineries, Ltd., near Haifa. Six Arabs were killed. The survivors invaded the plant and engaged in reprisals against Jewish employees, killing 41 Jews. Forty-eight Jews and 42 Arabs were injured.

At a dinner of the American Committee of Jewish Writers, Artists, and Scientists in New York, U.N. Soviet Delegate Andrei A. Gromyko issued a warning against any effort by 'foreign monopolies' to dictate the future economies of the newly created Arab and Jewish states.

With the Bolivian Government's announcement of the appointment of Raul Diez de Medina, counsellor of the Embassy in Washington, as its representative on the U.N. Palestine Commission, the list of five members was completed. The Philippine delegate was announced as Senator Vicente J. Francisco. Dr. Karel Lisicky was named for Czechoslovakia.

Dec. 31: An authorized analysis of British official reports by the *New York Times* London correspondent emphasized the official British view that the Pan Crescent and Pan York, two Jewish immigrant ships en route to Palestine from Bulgaria, were full of potential 'fifth columnists'—mostly hand-picked Communists or

fellow-travellers, with links to the Stern Gang, sent to Palestine with the knowledge and active connivance of the Soviet Union and its satellites.

Jews opened fire on the Arab village of Balad al-Shaykh at the foot of Mt. Carmel, killing 17 Arabs and injuring 33.

Emile al-Ghuri, member of the Arab Higher Committee, said that Arab leaders did not wish violence at this time, but matters could no longer be checked. Under the circumstances, the only criticism Ghuri had of Arab attacks was that 'there are not enough'.

1948

Jan. 2: The Jewish Agency Executive, meeting in Jerusalem, discussed (a) the problem of getting arms from the United States; and (b) the recent resignation of Dr. Moshe Sneh.

A Jewish Agency spokesman in New York described as 'malicious slander' British reports that the two immigrant ships from Bulgaria were full of Communist agents.

Jan. 3: A shipment of TNT estimated at 65,000 pounds and labelled 'used machinery' was discovered being loaded illegally aboard a Palestine-bound freighter at a Jersey City pier.

Jan. 4: Stern Gang members bombed a crowded public square in Jaffa, killing between 15 and 30 persons and wounding 98. The blasts smashed the Jaffa headquarters of the Arab Higher Committee.

Jan. 5: The Arab-owned Semiramis Hotel in Jerusalem was destroyed by bombing, for which the Haganah accepted responsibility. Twenty persons were killed, including the Spanish consul. The Government described as untrue Haganah's statement that the hotel was the Jerusalem headquarters of the Najjadah movement.<sup>5</sup>

Jan. 7: The first draft of a convention for governing the international zone of Jerusalem was referred to the U.N. working committee by two subcommittees of experts.

Eighteen persons were killed and 41 wounded in two bombings carried out by the Irgun in Jerusalem.

<sup>5</sup> The persons killed in the above terrorist outrage, with the exclusion of the Spanish consul, were men, women and children, members of families of Jerusalem, who for security reasons had left their homes located in Jewish areas in order to live in this residential hotel.

Jan. 9: An organized Arab force of from 600 to 1,000 men 'invaded' Palestine from Syria and attacked two Jewish settlements. The attack was repelled by the Haganah and British troops, with a Royal Air Force fighter unit in support.

Dr. Karl Lisicky of Czechoslovakia was elected chairman of the U.N. Palestine Commission (London *Times*, Jan. 10, page 4).

The State Department announced that informal discussions on the possibility of sending American marines or other guards to protect the U.S. Consulate General in Jerusalem had been carried on with the Palestine Government, but that no decision had been reached.

The U.S. War Assets Administration placed an embargo on all undelivered orders of surplus explosives.

Jan. 10: The U.N. Palestine Commission held its first meeting.

Arab attacks on the Jewish settlements of Ramat Rahel, near Jerusalem, and Wadi Suqrayr, south of Jaffa, resulted in 12 Jews and 8 Arabs killed.

Jan. 11: Jews wrecked a bridge over the River Jordan on the main road from Palestine to Syria.

Moshe Shertok was named the Jewish Agency's liaison officer with the U.N. Palestine Commission.

Jan. 12: The Jewish Agency announced in Jerusalem that plans for the new Jewish state government would be completed 'down to the smallest detail' by the end of January. Among questions still unsettled was the site of the capital.

A \$38,000 robbery of Barclay's Bank in Tel Aviv was attributed to the Stern Gang.

Jan. 13: British troops fought Arab raiders in the Lake Hulah region and on the Jerusalem-Hebron road.<sup>6</sup>

Jan. 14: Sir Alexander Cadogan outlined British withdrawal plans to a closed meeting of the U.N. Palestine Commission.

The Jewish colony of Kfar Etzion, 13 miles south of Jerusalem, was besieged by Arabs. Fighting continued in Jerusalem and Haifa. Jewish bomb squads attacked two Arab communities on the outskirts of Jerusalem in an attempt to open a route to Hebrew University and Hadassah Hospital, which had been isolated by Arab snipers. In Jaffa, Palestine Arabs, Syrians, Iraqis, and Transjordanians were

<sup>6</sup> The expression 'Arab raiders' is not accurate in seeking to describe Arab guerrillas fighting for the defence of their country.

reported awaiting instructions to move against Tel Aviv. An Arab bombing of a Jewish bus terminus in Haifa resulted in the death of 6 Jews and 2 British, and the wounding of 26 others.

Jan. 16: Jews blew up three Arab houses in Haifa. Zionist sources asserted they had killed 82 Arabs in the previous 24 hours of fighting.

A British battalion, tanks, and six Spitfires succeeded in clearing the Hebron area of 2-3,000 Arabs who had surrounded four Jewish settlements (London *Times*, Jan. 16, page 3).

The U.N. Palestine Commission took up the question of how armed militia would be established and financed in the proposed Jewish and Arab states. Moshe Shertok declared that a Jewish militia of 15,000 to 25,000 men would be needed; he asked the Security Council to call on member nations to help provide the equipment and to refuse to supply it to nations that opposed partition. A British report to the Commission stated that 1,974 persons had been killed or injured in Palestine between Nov. 30 and Jan. 10. Those killed included 295 Arabs, 262 Jews, and 30 British.

Jan. 17: Thirty-five Jews en route to the settlement of Kfar Etzion were killed by Arab fighters in an ambush near the Arab village of Surif, 12 miles southwest of Jerusalem. Four Arabs were killed.<sup>7</sup>

Jan. 19: The Arab Higher Committee replied to U.N. Secretary-General Trygve Lie's telegram inviting the organization to appoint a representative to the Palestine Commission by reaffirming its determination to reject partition and anything connected with it.

Jan. 20: An Arab force of about 500 attacked the Jewish settlement of Yehiam in western Galilee.

Jan. 21: Sir Alexander Cadogan told the U.N. Palestine Commission that it was 'not possible' for Britain to comply with the U.N. Assembly's recommendation for the opening by Feb. 1 of a major seaport to facilitate substantial Jewish immigration. He reaffirmed the British intention to maintain the present immigration policy (i.e., 1,500 immigrants monthly) for the duration of the mandate.

Jan. 22: Mrs. Golda Myerson left Jerusalem by plane for New York to mobilize U.S. Jews behind the Zionist state; her primary mission was to obtain arms.

Jan. 25: Mrs. Golda Myerson opened her U.S. drive to get arms for

<sup>7</sup> The Jews who were killed in the incident reported above were all armed men of the Haganah.



Zionist forces with an address to the annual general assembly of the Council of Jewish Federations and Welfare Funds in Chicago. She asked American Jews to supply \$25,000,000 to \$30,000,000 immediately.

British armoured cars broke up a battle between Arabs and Jewish convoy guards outside Jerusalem; official reports listed 10 Jews and 2 Arabs dead.

Jan. 26: Government authorities in Tel Aviv refused the U.S. ship Exford permission to unload its cargo and redirected the ship to Haifa for examination, in accordance with a new government order requiring examination of the contents of all U.S. cargo ships.

Jan. 27: Arabs and Jews broke an uneasy week long truce in the Haifa-Tel Aviv area with an Arab attack on a Jewish truck convoy and a Jewish attack on two Arab police officers driving children to school. Jews clashed with the police near Rehovoth.

A 15-man Arab National Committee for Jerusalem was formed, with the purpose of organizing local nationalist work under the Arab Higher Committee.

Moshe Shertok presented the U.N. Palestine Commission with the Zionist case for a Jewish militia of 30-35,000 men and the lifting of the U.S. embargo on arms shipments.

Jan. 29: The U.N. Palestine Commission decided unanimously to help arrange for the formation of a Jewish militia in Palestine, and designated Senator Vicente J. Francisco of the Philippines to negotiate with Great Britain and the Jewish Agency in formulating plans.

Jewish terrorists shot and killed two British policemen in Jerusalem. Two Arab train robberies were thwarted by the British police, although a third hold-up resulted in the capture of 40 tons of freight and the arms of the policeman guarding the train.

Fawzi al-Qawuqji, commander-in-chief of the Arab Palestine forces, issued a first 'Order of the Day', warning his men that they should be prepared to meet about 42,000 armed Jews.

The U.S. Consulate-General in Jerusalem warned U.S. citizens in Palestine that the U.S. Government 'strongly disapproves of and opposes any interference or participation by American citizens in foreign armed forces'. The announcement stated that citizens fighting in the armed services of Jews or Arabs would lose their passports and

right to protection, and that naturalized U.S. citizens would lose their American citizenship if they fought for a foreign power.

Sir Alexander Cadogan told the U.N. Palestine Commission that the British Government could not allow the formation of a Jewish militia in the Holy Land prior to the termination of the mandate. He stated that his Government was opposed to the Commission's coming to Palestine sooner than two weeks before the expiration of the mandate on May 15, and warned that if it should come earlier Britain could not be responsible for the safety of its members.

Jan. 31: The British Government delivered a note to the Bulgarian Foreign Ministry formally charging that the Bulgarian Government either had been 'deliberately' conniving in breaking the laws of Palestine by assisting unauthorized Jewish immigration, or that a 'serious error' had been committed by Bulgarian officials.

The British Navy intercepted a schooner carrying 280 unauthorized Central European Jews and sent them to Cyprus.

Twenty persons were injured when an explosion wrecked the plant of the Jewish-owned English-language *Palestine Post* in Jerusalem. Abd al-Qadir al-Husayni, commander of Arab underground forces in the Jerusalem area, announced that his forces were responsible for the bombing; Jewish Agency sources, on the other hand, discounted the Arab claim and held the British responsible.

Feb. 2: The British Government refused a Zionist request to permit Haifa to become the capital of the new Jewish state, on the grounds that Haifa would be the final staging point for withdrawal of troops and equipment.

Feb. 3: The U.N. Palestine Commission drafted a strongly-worded letter to Sir Alexander Cadogan protesting against the British Government's refusal to allow the Commission to go to the Holy Land until two weeks before the termination of the mandate.

Feb. 4: British troops fought parties of Arab raiders from across the River Jordan near Lake Tiberias, killing 1 and wounding 11. Shootings were also reported from Jerusalem, the Gaza-Beersheba road, Safad, and the Jaffa-Tel Aviv area.

Feb. 5: The London *Times* reported that 12 Syrian Arabs were killed and 21 wounded in a battle with troops and police, following a 150-man Arab attack on a Jewish truck near Haifa.

In reply to the U.N. Commission's request for information on the

'incursions of armed bands' into Palestine, the British delegation submitted the first authoritative information on this subject in the form of cabled reports from the British High Commissioner. These reports stated that the security position had become 'more serious' as a result of the entry of trained guerrillas. They cited specifically the arrival of a band of about 300 men in the Safad area of Galilee; a well-equipped group of about 700 Syrians via Transjordan, January 20-21; and a third uniformed party of 950 non-Palestinians, which entered Palestine during the night of January 29-30, and dispersed in the Nablus-Jenin-Tulkarm area.

Feb. 6: In a letter to Secretary-General Trygve Lie, the Arab Higher Committee sent to the U.N. a formal declaration of war in 'self-defense' against 'any force going to Palestine to partition the country'. The communication asserted that the Assembly's partition decision was 'null and void' because of 'pressure put by the U.S. delegation and Government on certain nations', citing Siam, Haiti, the Philippines, Liberia, Cuba, Colombia, and other countries.

Feb. 7: Jewish Agency Treasurer Eliezer Kaplan reported to the Jewish Labour Party in Tel Aviv that the Jewish Agency budget provided for bringing 75,000 immigrants into Palestine in 1948. The total for the next four years would be 400,000.

Feb. 9: The U.N. Palestine Commission appealed directly to Great Britain to permit it to take four preliminary steps in the establishment of local Arab and Jewish militia: (1) setting aside of troop-camp areas; (2) recruitment; (3) training; (4) equipping. The militia, the Commission said, would not go into action until the U.N. assumed responsibility for Palestine May 15.

Britain announced the disbandment of the Transjordan Frontier Force.

Lloyd's announced an increase from \$3.50 to \$12.00 per 100 pounds in insurance rates on shipments to Palestine. Shipments from Palestine remained at \$3.50.

Feb. 10: The U.N. Palestine Commission's first monthly progress report to the Security Council proclaimed the existence of an Arab 'attempt to alter by force' the U.N. partition plan and asked the Council to determine that 'a threat to peace' existed. The report stressed the need for an international police force. In reply, the Security Council agreed to put the question of an armed force on its

agenda following receipt of a special report on security due shortly from the Commission.

Arab troops attacked and occupied a large part of the Montefiore (Jewish) quarter in Jerusalem in the course of a five-hour battle; British troops eventually forced them to retire. In a village south of Haifa, Jews killed 7 Arabs.

Feb. 11: Twenty-five incidents were reported throughout Palestine.

The Yerushalayim ha-Nezurah, carrying 679 unauthorized Jewish immigrants, was intercepted off the Palestine coast.

Feb. 13: The Jewish Agency charged British troops with being accessories before the fact in the murder of four Jewish guards in Jerusalem: the guards were arrested for bearing arms and later found dead in an Arab quarter. Lieut. Gen. McMillan, British commander-in-chief, announced an immediate investigation.

The day's total deaths included 13 Jews, 12 Arabs, and 2 Britons.

The Haganah forbade Jews to submit to search or arrest by British security forces unless in the presence of Jewish police.

Feb. 14: Zionist forces took the offensive in northern Galilee, killing 11 Arabs in a raid on the Arab village of Sasa, and blowing up several bridges near the frontier.

Feb. 15: A heavy Arab attack was launched against Tel Aviv in the Jaffa border area.

Feb. 16: Jewish residents beat off a five-hour Arab attack on Tirat Zvi, a Jordan River valley settlement southeast of Beisan. Thirty Arabs and one Jew were reported killed. In Haifa, Arab Legion troops clashed with Jews.

The U.N. Palestine Commission, in a special security report, called for 'prompt action' by the Security Council on the problem of 'providing that armed assistance which alone would enable the Commission to discharge its responsibilities'. It stated that unless immediate steps were taken the British withdrawal from Palestine would initiate 'a period of uncontrolled, widespread strife and bloodshed'.

Feb. 19: The British Navy intercepted a refugee ship carrying 700 unauthorized immigrants, and escorted it to Haifa for transshipment.

Feb. 20: Jews attacked Arab sections of Haifa with mortars, killing at least 6 Arabs and wounding 36. Heavy street firing ensued. In Jerusalem, 12 Jewish terrorists escaped from Central Prison.

Feb. 22: The British Government announced the dropping of Palestine from membership in the sterling currency area, and outlined steps to block Palestine-held sterling balances of about £100,000,000; however, £7,000,000 would be released for Palestine's immediate needs. Every facility for re-entry into the sterling area would be offered after the May 15 termination of the mandate. The Jewish Agency attacked the move as 'arbitrary and unilateral'.

The Jewish Agency made a formal indictment of British rule in Palestine in a 12,000 word statement submitted to the special Palestine Commission and to the Security Council.

An early-morning explosion wrecked Ben Yehuda Street in the Jewish section of Jerusalem, killing 57 and injuring at least 100. While Arab sources claimed that Arab commandos trained in Syria had been responsible, Jewish groups charged that the British were responsible and launched a series of reprisals, resulting in the death of 10 Britishers and the wounding of at least 8. British authorities denied responsibility.

Feb. 23: Reprisals against Britishers continued in Jerusalem, with 6 soldiers wounded during the day.

Feb. 24: The current U.S. view on partition was presented to the Security Council by Delegate Warren R. Austin. He stated that the U.S. would agree to consultations among the five great powers on the possible constitution of an international armed force to preserve peace in Palestine, but held that any action by the Council must be directed solely to keeping the peace and not to enforcing partition.

Faris al-Khuri, Syrian delegate on the Security Council, presented a resolution which (1) invited the Big Five to 'consult' in accordance with Article 106 of the U.N. Charter to prevent a breach of peace; (2) proposed that the Council appoint a committee of two permanent and two non-permanent members of the Council to explore possibilities of a Jewish Agency-Arab Higher Committee agreement; (3) asked the Council to consider the advisability of a special Assembly session to reconsider the whole problem; and (4) asked Britain to postpone the laying down of the mandate until July 15.

The Arab Higher Committee claimed complete control of a triangular area in the central Palestine hills where 30,000 'volunteer army' troops were ready to go into battle on 48 hours' notice. Both



Jewish and Arab forces attacked British headquarters in various sections of Jerusalem.

Feb. 25: Jews killed an Arab police guard in a raid on the British military court in Jerusalem.

Feb. 26: Increasing tension between Irgun Zvai Leumi and the Haganah broke into open warfare in a street battle in Tel Aviv; 16 persons were hospitalized. The trouble was precipitated, according to Jewish sources, by Irgun efforts to raise money 'by extortion' at the same time as the Jewish Agency was launching a \$10,000,000 defence fund among Palestine Jews.

An Arab attack on Hadassah hospital was reported. Jews attacked the Arab villages of Beit Dajan, southeast of Jaffa, and Jaba, south of Haifa.

Feb. 27: While strongly criticizing the U.S. delegate's statement of Feb. 24 before the Security Council as jeopardizing the partition plan, Jewish Agency Representative Moshe Shertok told the Council that the Agency was prepared to go ahead with the setting up of a state even without the backing of an international force.

Lieut. Gen. Sir Allan G. Cunningham, High Commissioner for Palestine, announced that he would begin rule by decree on March 1, in order to facilitate British withdrawal.

Feb. 28: Seven Arabs and one Jew were killed in communal fighting.

The British blockade intercepted a ship carrying over 1,000 unauthorized Jewish immigrants from a western European port, and escorted it to Haifa.

Arab sources reported a Jewish raid across the border on the Syrian frontier town of Banias.

Feb. 29: Thirty British soldiers were killed when land mines blew up the Cairo-Haifa train near Rehovoth. The Stern Gang claimed responsibility.

Mar. 1: Following the death of 30 British soldiers in a train explosion at Rehovoth on February 29, the Palestine Government issued an official statement condemning the Jewish Agency's policy of condoning terrorism. (Text in *New York Times*, Mar. 2, page 10.)

Mar. 2: British troops joined the Haganah to break up an Arab block at Bab al-Wad.

International money order and all insured services in Palestine were discontinued.

Mar. 3: A government source in London announced that evacuation of British troops, mostly administrative personnel, had begun and that the number of replacements being sent was reduced.

The Stern Gang claimed responsibility for the detonation of an army truck in front of the Salam building in Jerusalem. Fourteen Arabs were killed and at least 26 wounded.

Mar. 4: Numerous minor skirmishes were reported. A Jewish party mining the roadway near Baytuniyah, 7 miles northwest of Jerusalem, was ambushed by Arabs; 17 Haganah Jews were killed.

Mar. 6: Approximately 1,000 British troops of the 6th Airborne Division and 500 policemen with their families boarded ship at Haifa for England.

Mar. 7: The Haganah defended its right to mobilize any military age Jews resident in Palestine, including American citizens. The U.S. Consulate-General in Jerusalem registered a strong oral protest against the inclusion of Americans.

Fawzi al-Qawuqji assumed active command of the Arab Forces in Palestine.

Mar. 9: Final call was issued by Haganah for registration and call to active status of all Palestine Jews between the ages of 17-25.

Mar. 10: Haganah set fire to the railroad station at Lydda, and a large group of Arabs attacked Neve Ya'aqov on the Ramallah road north of Jerusalem.

Twenty-five hundred British troops were shipped out of Palestine.

The House of Commons passed a bill terminating the British regime in Palestine on May 15. A motion urging British responsibility in a solution after the mandate was defeated, 240-30.

Mar. 11: A car stolen from the U.S. Consul-General in Jerusalem was driven by its Arab driver into the Jewish Agency Headquarters parking area, where it exploded, wrecking the offices of Keren Hayesod, killing 12, and injuring 86.

Mar. 13: The Jewish Agency opened a new immigrant camp, near Haderah, with American funds.

Jews blew up houses in the Katamon sector of Jerusalem, fired on an area near Jaffa, and blew up 12 houses in the northern Galilee village of Husayniyah.

Two thousand additional British troops and 200 civilians left Haifa by boat.

Mar. 14: The British commander in the Lake Huleh region of northern Palestine announced that as a result of the raid on Husayniyah the area would be placed under a seven-day road curfew.

Jews razed a concrete bridge on the Haifa-Jenin road and engaged Arabs attacking their supply convoy at Gaza. Other incidents were reported on the Jaffa-Tel Aviv border and at Ain Ghazzal, near Haifa.

Mar. 17: The General Officer Commanding Palestine, Lt. Gen. G. H. A. MacMillan, confirmed a sentence of 5 years' imprisonment on Henry Martin Dickson, Scottish editor of the *Arab World Review*, and 4 years' imprisonment on 3 British constables. All were found guilty of attempting to furnish firearms to Arabs.

The legal panel of the Jewish Agency and National Council reached the conclusion after investigating the Feb. 22 Ben Yehudah Street explosion that 'some of the persons who took part in the bombing were Britishers'. The British, who did not find the legal panel's evidence conclusive, continued their separate investigation.

Mar. 20: Abd al-Rahman Azzam Pasha, Secretary-General of the Arab League, stated in Beirut that the Arabs would accept a truce and a limited trusteeship for Palestine if the Jews would agree to do the same.

David Ben-Gurion, speaking for the Jewish Agency, rejected a Palestine trusteeship 'even for the shortest time'. He asserted a Jewish state existed and would 'find a way to live in friendship with the Arab peoples'.

Mar. 22: About 600 Arabs attacked Har Tuv colony west of Jerusalem. Fighting was reported near Neve Ya'aqov, north of Jerusalem, and at Nitzanim, north of Gaza.

Mar. 23: A joint resolution of the Jewish Agency and Vaad Leumi stated that a provisional Jewish Government would begin operation at the end of the mandate and 'not later than May 16'.

Mar. 24: Arabs under the command of Abd al-Qadir al-Husayni attacked two convoys, killing 26 Jews; Arabs used artillery in an attack on Zaraim in northern Palestine. Haganah attacked several points around Haifa. A total of 119 casualties was reported.

Mar. 25: President Truman issued a statement on Palestine, stressing the urgency of an immediate truce between Arabs and Jews and stating U.S. willingness to share the responsibility of a temporary trustee-

ship. 'Trusteeship is not proposed as a substitute for the partition plan,' he said. Its intent was to establish order and it would 'not prejudice the character of the final political settlement'. (Text in *New York Times*, March 26, page 11.)

Formation of a Zionist inner war council was reported from Tel Aviv.

Mar. 26: The Post Office Department of the Palestine Government announced that all mail service to Palestine, service for air mail letters excepted, was suspended until further notice.

Mar. 27: Four Jewish planes bombed Arabs engaged in attacking a Jewish convoy of 35 vehicles south of Bethlehem. Seventy Jews and 6 Arabs were believed killed. Arabs attacked another convoy at Kabiri in northern Palestine.

Mar. 28: The Ihud (Union) Association announced support of President Truman's appeal for a truce.

The Secretary of the Arab Higher Committee rejected truce proposals for Jerusalem, trusteeship for Palestine, and an international guard for the Holy City.

Mar. 30: Henry Martin Dickson and 3 British constables (convicted Mar. 17) escaped from Acre prison.

Sir Hugh Dow was named British Representative in Palestine, to assume his duties under the Foreign Office after the mandate's end.

The U.S. State Department announced that passports would not be issued to U.S. citizens intending to join the fighting forces of either faction in Palestine, and that U.S. nationals participating would forfeit their passports.

Mar. 31: Forty Arabs were killed south of Haifa when Jewish mines derailed a train.

Police reported 271 Jews, 256 Arabs, 14 British soldiers, and 4 British constables killed, and 352 persons seriously injured in Palestine during March.

Apr. 3: The U.N. Palestine Commission stated that the British Government gave the High Commissioner for Palestine authority to grant a franchise for the construction of an additional pipeline to the Iraq Petroleum Company across Palestine. The projected pipeline would handle oil from two more areas in Iraq and from Transjordan; the franchise would cost £45,000 annually.

Haganah troops seized Qastel on the Jerusalem-Tel Aviv highway.

High Commissioner Lt. Gen. Sir Alan Cunningham broadcast a plea to both factions to accept an immediate truce.

Apr. 5: Syrian and Iraqi troops employed armoured vehicles and medium artillery in an attack on the Zionist settlement of Mishmar Haemeq.<sup>8</sup>

Apr. 6: The first food convoy to break through in two weeks entered Jerusalem from Tel Aviv. The British also brought 4 long trains of supplies, including oil and gasoline, into the city. Arabs attacked the village of Lahavot Habashan and clashes occurred in a number of places on the western edge of Jerusalem.

Apr. 7: Haganah occupied Khulda and Deir Muheisin on the Jewish convoy route from Jerusalem to the coast. An Arab-Jewish battle continued at Qastel.

Apr. 8: The Arabs captured Qastel but their commander, Abd al-Qadir al-Husayni, Chief of the Palestinian Arab National Guard and Commander of the Jerusalem district, was killed in the engagement. Syrian Arabs attacked Lahavot Habashan.

Apr. 9: U.S. Under-Secretary of State Lovett rejected the suggestion of 41 U.S. Congressmen that the Middle East arms embargo be removed, and stated, with respect to partition, that the U.S. voted for it as a solution 'and still supports it'.

The Jews retook Qastel; casualties were heavy on both sides. Stern Gang and Irgun forces 'captured' the Arab village of Deir Yassin west of Jerusalem, killing more than 200 Arabs.<sup>9</sup>

Apr. 10: Arabs shelled the western environs of Jerusalem.

Apr. 11: Iraqis and Syrians launched an all-out attack on Mishmar Haemeq astride the Haifa-Jenin highway. Egyptian troops raided the Kfar Darom settlement south of Gaza in their first engagement. Haganah occupied and burned the village of Qaluniyah, between Qastel and Jerusalem.<sup>10</sup>

<sup>8</sup> The mention that Syrian and Iraqi troops were involved in the attack cannot be accurate. Troops of Arab states entered Palestine only on May 15 1948.

<sup>9</sup> The above report to the effect that Irgun forces 'captured' the village of Deir Yassin is completely wrong. The Irgun's exploit referred to was the massacre of 300 Arab unarmed civilians, men, women, children and newly-born as established by the report of the International Red Cross mentioned in Section 3 of Part I, *ante*. See also the account of the Chief delegate of the International Red Cross who visited the scene of this massacre: Jacques de Reynier, *A Jérusalem un Drapeau flottait sur la ligne de Feu* (Editions de la Baconnière, Neuchatel, Switzerland), pp. 69-77, 213.

<sup>10</sup> As regards the mention of the use of troops of Arab states, see footnote 8.



Apr. 12: The Jews claimed to have won the battle for Qastel.

The General Zionist Council approved a resolution to establish an independent Jewish state in Palestine on May 16.

Apr. 13: A ten-vehicle medical convoy en route to Hadassah Hospital was attacked by Arabs; 39 Jews, 6 Arabs, and 2 British were killed in the seven-hour battle which followed. A 178-truck Jewish supply and car convoy reached Jerusalem from the coast without incident.<sup>11</sup>

More than a score of Arabs were killed when Jews attacked Lajjun near Jenin; troops were also engaged near the Mishmar Haemeq settlement.

Apr. 14: All Arab workers walked out of the Consolidated Refineries plant in Haifa, demanding that the Iraq Petroleum Company accept responsibility for the injuries and deaths of workers on the roads. The company ceased operations.

Apr. 15: Haganah launched a counter-attack against Fawzi al-Qawuqji's army at Mishmar Haemeq, and took a number of small villages in the area. Additional Jewish forces took the Tel Litvinsky camp near Tel Aviv, engaged Arabs at the Wadi Sarar camp, and attacked Lajjun.

Apr. 16: Haganah troops occupied and destroyed a major portion of Saris on the Jerusalem-Tel Aviv road. Jews were on the offensive in most of a score of incidents. Arabs were reported to have suffered heavy losses before withdrawing from the battle of Mishmar Haemeq.

The British administration officially assured Palestinian investors that their holdings of government securities and savings would be guaranteed by the British Government.

Apr. 17: A Jewish food convoy of 300 trucks guarded by 1,500 Haganah troops reached Jerusalem.

<sup>11</sup> The above report is not completely accurate. Jacques de Reynier, the Chief delegate of the International Red Cross, enquired into the allegation made by the Jewish Agency that the attack on the medical convoy was a violation of the Geneva Conventions. His findings were that the medical convoy was preceded and followed by tanks and armoured cars, that the Arabs had attacked the military vehicles and a battle ensued. He further secured from the Jews the admission that they used the so-called medical convoys to supply and replace the troops located at the Hadassah Hospital. He concluded that a mobile medical unit should move without arms and should not be accompanied by a combat force. He, therefore, informed the Jews that they must choose between armed protection or the protection of the Geneva Conventions: see Jacques de Reynier, *op. cit.*, pp. 79-82.

Druzes suffered heavy losses when they launched an attack on the Jewish settlement of Ramat Johanan. Emile al-Ghuri assumed command of the Jerusalem area Arab forces being reinforced and re-organized west of Jerusalem.

Apr. 19: Haganah took Tiberias on the Lake of Galilee; inhabitants were evacuated with the aid of police and British troops.

Apr. 20: Al-Hajj Amin al-Husayni arrived in Transjordan for discussions with King Abdallah.

A Jewish food convoy of more than 260 vehicles entered Jerusalem from Tel Aviv, after an encounter with Arab forces at Deir Ayyub.

Apr. 21: Fighting was reported along the coastal plain of Sharon. The Jerusalem-Tel Aviv road was rendered impassable when Arabs blew up two bridges west of Bab al-Wad. An Arab-Jewish battle for the control of Haifa began as the British withdrew.

Apr. 22: Irgun and Haganah occupied Haifa in a battle costing well over 100 lives. Arab forces there surrendered a quantity of arms, as many Arabs left the city. Jews attacked several villages in the Jaffa area.

The General Zionist Council issued a revised declaration of independence, excluding the bitter references to British domination which appeared in the original.

President Truman announced the U.S. was willing to furnish its share of forces in any international police body for Palestine set up by the U.N.

Apr. 23: The Palestine Government absolved British security forces of responsibility for the Ben Yehuda Street explosion.

Apr. 25: British stopped Jews attempting to invade Jaffa and the Shaykh Jarrah quarter of Jerusalem.

Apr. 26: Egypt warned all shipping to stay out of territorial waters along a 20-mile coastal strip of southern Palestine after May 1.

Haganah raided Acre. Arabs attacked Atarot and Lahavot, and built a road block at Bab al-Wad.

King Abdallah announced he would take personal command of the armies of Transjordan, Syria, and Lebanon, and move into Palestine on May 1. Egyptian army units under a closely allied command would cross the southern frontier at the same time.

Apr. 27: The Stern Gang stole \$1,000,000 from Barclays' Bank in Tel Aviv.

Haganah announced it would co-ordinate its plans with Irgun Zvai Leumi.

The British Navy intercepted a shipload of 558 Jewish refugees, redirecting them to Cyprus.

Apr. 28: The Irgun battled inside Jaffa, taking the Manshiyah quarter, while Haganah attacked surrounding villages. Arab reinforcements were rushed into the area; some shelled Tel Aviv. British planes attempted to halt Jewish operations, attacking military headquarters at Bat Yam.

Apr. 29: British threats of force caused Jews and Arabs to cease fighting in Jaffa. Sharp skirmishing occurred in the Jordan River Valley.

Apr. 30: Jewish forces attacked Jerusalem, occupying most of the Katamon section. Fighting was heavy in the Mamilla Cemetery and Montefiore sections. Arab reinforcements were rushed in from Hebron, Bethlehem, and Jericho.

May 2: The British ordered a 48-hour cease-fire in the Katamon section of Jerusalem and announced they were sending reinforcements to Palestine to prevent further deterioration of the situation. The Jewish Agency and Arab Higher Committee agreed to a cease-fire for the Walled City of Jerusalem.

May 3: From 175,000 to 200,000 Arab refugees were reported to have fled east from Jewish occupied areas.

May 4: The cease-fire in the Katamon quarter was indefinitely extended.

The Irgun claimed capture of Yahudiyah, on the main route to Lydda airport, and Aqir, south of Rehovot. Arabs attacked Kfar Etzion.

May 6: Haganah consolidated gains at Safad and claimed capture of Sejera, near Tiberias. Arabs attacked Mishmar Haemek.

May 7: A report from London stated the Iraq Petroleum Company had ceased pumping crude petroleum along its northern as well as its southern pipeline, and had stopped construction on the new 16-inch pipeline to Haifa.

Representatives of the Arab League, meeting with the British High Commissioner, agreed to a general Jerusalem cease-fire, and a truce as well, provided Jews would agree that the Jerusalem-Tel Aviv road should remain closed.

May 8: Firing ceased in Jerusalem as truce negotiations continued. Jews

took control of the railway from Samakh to Haifa with the capture of the station at Beisan.

May 9: Haganah challenged the Arab blockade of Jerusalem by attacking the road block at Bab al-Wad.

The British Central Palestine Police Headquarters moved from Jerusalem to Haifa.

May 10: Haganah forces drove Arabs out of Safad and smashed through the Arab road block at Bab al-Wad.

May 11: Haganah took Beit Mahsir, claimed Akbara (near Safad), and besieged Beisan. Heavy fighting was reported in southern Jerusalem.

May 12: Arab forces launched an attack on Jewish positions south and west of Jerusalem. Palestine Arabs, reinforced by irregulars from other Arab states, attacked around Bab al-Wad and near Kfar Etzion.

May 13: Jaffa became an open city policed by Haganah.

The British Colonial Office and Foreign Office issued a chronicle of the history and policy of the Mandate in Palestine. (Text in *New York Times*, May 14, page 4.)

Arabs and Jews agreed to the U.N. appointment of Harold Evans, Philadelphia attorney, as Municipal Commissioner of Jerusalem.

The British notified the Jewish Agency that the Arab Legion of Transjordan was no longer under British command.

May 14: Haganah troops captured Acre, encountering small resistance.

May 15: British High Commissioner Sir Alan Cunningham left Palestine, formally ending the British Mandate.

Haganah became the Jewish National Army. Menahem Beigin, Commander-in-Chief of Irgun Zvai Leumi, announced that organization would respect Israel as its own government and cease underground activities.

President Truman announced recognition of the provisional government as the de facto authority of the new State of Israel.

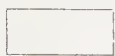
About 1,000 Jewish immigrants from Cyprus and Marseilles entered Palestine on Israel visas.


The Arab Legion occupied Jericho and took control of a large area in the Judean hills; Egyptian planes bombed Tel Aviv, and Egyptian troops entered Palestine from the south. Lebanese troops invaded from the north and battled with Haganah at Malikiyah, while advance Syrian patrols penetrated south of the Sea of Galilee.

# APPENDIX VII AREAS SEIZED BY ISRAEL

in excess of U.N. partition plan

 Territories of Palestine proposed under the U.N. partition plan for the establishment of a Jewish State

 Territories of Palestine seized by Israel in 1948 and 1949 in excess of the U.N. partition plan.

 Territories seized by Israel in June 1967.





## Resolution 252 (1968)

Adopted by the Security Council at its 1426th meeting,  
on May 21 1968

*The Security Council,*

*Recalling* General Assembly resolutions 2253 (ES-V) and 2254 (ES-V) of 4 and July 14 1967.

*Having considered* the letter (S/8560) of the Permanent Representative of Jordan on the situation in Jerusalem and the report of the Secretary-General (S/8146),

*Having heard* the statements made before the Council,

*Noting* that since the adoption of the above-mentioned resolutions, Israel has taken further measures and actions in contravention of those resolutions,

*Bearing in mind* the need to work for a just and lasting peace,

*Reaffirming* that acquisition of territory by military conquest is inadmissible,

1. *Deplores* the failure of Israel to comply with the General Assembly resolutions mentioned above;
2. *Considers* that all legislative and administrative measures and actions taken by Israel, including expropriation of land and properties thereon, which tend to change the legal status of Jerusalem are invalid and cannot change that status;
3. *Urgently calls upon* Israel to rescind all such measures already taken and to desist forthwith from taking any further action which tends to change the status of Jerusalem;
4. *Requests* the Secretary-General to report to the Security Council on the implementation of the present resolution.

Resolution of the Security Council S/RES/242  
(1967) of November 22 1967 concerning the  
situation in the Middle East

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.

November 22 1967.

Section C of Part I of General Assembly  
Resolution 181 (II) of November 29 1947

C. DECLARATION

A declaration shall be made to the United Nations by the provisional government of each proposed State before independence. It shall contain *inter alia* the following clauses:

GENERAL PROVISION

The stipulations contained in the declaration are recognized as fundamental laws of the State and no law, regulation or official action shall conflict or interfere with these stipulations, nor shall any law, regulation or official action prevail over them.

CHAPTER I

*Holy Places, religious buildings and sites*

1. Existing rights in respect of Holy Places and religious buildings or sites shall not be denied or impaired.

2. In so far as Holy Places are concerned, the liberty of access, visit and transit shall be guaranteed, in conformity with existing rights, to all residents and citizens of the other State and of the City of Jerusalem, as well as to aliens, without distinction as to nationality, subject to requirements of national security, public order and decorum.

Similarly, freedom of worship shall be guaranteed in conformity with existing rights, subject to the maintenance of public order and decorum.

3. Holy Places and religious buildings or sites shall be preserved. No

act shall be permitted which may in any way impair their sacred character. If at any time it appears to the Government that any particular Holy Place, religious building or site is in need of urgent repair, the Government may call upon the community or communities concerned to carry out such repair. The Government may carry it out itself at the expense of the community or communities concerned if no action is taken within a reasonable time.

4. No taxation shall be levied in respect of any Holy Place, religious building or site which was exempt from taxation on the date of the creation of the state.

No change in the incidence of such taxation shall be made which would either discriminate between the owners or occupiers of Holy Places, religious buildings or sites, or would place such owners or occupiers in a position less favourable in relation to the general incidence of taxation than existed at the time of the adoption of the Assembly's recommendations.

5. The Governor of the City of Jerusalem shall have the right to determine whether the provisions of the Constitution of the State in relation to Holy Places, religious buildings and sites within the borders of the State and the religious rights appertaining thereto, are being properly applied and respected, and to make decisions on the basis of existing rights in cases of disputes which may arise between the different religious communities or the rites of a religious community with respect to such places, buildings and sites. He shall receive full co-operation and such privileges and immunities as are necessary for the exercise of his functions in the State.

## CHAPTER 2

### *Religious and minority rights*

1. Freedom of conscience and the free exercise of all forms of worship, subject only to the maintenance of public order and morals, shall be ensured to all.

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

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



4. The family law and personal status of the various minorities and their religious interests, including endowments, shall be respected.

5. Except as may be required for the maintenance of public order and good government, no measure shall be taken to obstruct or interfere with the enterprise of religious or charitable bodies of all faiths or to discriminate against any representative or member of these bodies on the ground of his religion or nationality.

6. The State shall ensure adequate primary and secondary education for the Arab and Jewish minority, respectively, in its own language and its cultural traditions.

The right of each community to maintain its own schools for the education of its own members in its own language, while conforming to such educational requirements of a general nature as the State may impose, shall not be denied or impaired. Foreign educational establishments shall continue their activity on the basis of their existing rights.

7. No restriction shall be imposed on the free use by any citizen of the State of any language in private intercourse, in commerce, in religion, in the Press or in publications of any kind, or at public meetings.<sup>1</sup>

8. No expropriation of land owned by an Arab in the Jewish State (by a Jew in the Arab State)<sup>2</sup> 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.

### CHAPTER 3

#### *Citizenship, international conventions and financial obligations*

1. *Citizenship.* Palestine citizens residing in Palestine outside the City of Jerusalem, as well as Arabs and Jews who, not holding Palestinian citizenship, reside in Palestine outside the City of Jerusalem shall, upon the recognition of independence, become citizens of the State in which they are resident and enjoy full civil and political rights. Persons over the age of eighteen years may opt, within one year from the date of

<sup>1</sup> The following stipulation shall be added to the declaration concerning the Jewish State: 'In the Jewish State adequate facilities shall be given to Arabic-speaking citizens for the use of their language, either orally or in writing, in the legislature, before the Courts and in the administration.'

<sup>2</sup> In the declaration concerning the Arab State, the words 'by an Arab in the Jewish State' should be replaced by the words 'by a Jew in the Arab State'.

recognition of independence of the State in which they reside, for citizenship of the other State, providing that no Arab residing in the area of the proposed Arab State shall have the right to opt for citizenship in the proposed Jewish State and no Jew residing in the proposed Jewish State shall have the right to opt for citizenship in the proposed Arab State. The exercise of this right of option will be taken to include the wives and children under eighteen years of age of persons so opting.

Arabs residing in the area of the proposed Jewish State and Jews residing in the area of the proposed Arab State who have signed a notice of intention to opt for citizenship of the other State shall be eligible to vote in the elections to the Constituent Assembly of that State, but not in the elections to the Constituent Assembly of the State in which they reside.

2. *International conventions.* (a) The State shall be bound by all the international agreements and conventions, both general and special, to which Palestine has become a party. Subject to any right of denunciation provided for therein, such agreements and conventions shall be respected by the State throughout the period for which they were concluded.

(b) Any dispute about the applicability and continued validity of international conventions or treaties signed or adhered to by the mandatory Power on behalf of Palestine shall be referred to the International Court of Justice in accordance with the provisions of the Statute of the Court.

3. *Financial obligations.* (a) The State shall respect and fulfil all financial obligations of whatever nature assumed on behalf of Palestine by the mandatory Power during the exercise of the Mandate and recognized by the State. This provision includes the right of public servants to pensions, compensation or gratuities.

(b) These obligations shall be fulfilled through participation in the Joint Economic Board in respect of those obligations applicable to Palestine as a whole, and individually in respect of those applicable to, and fairly apportionable between, the States.

(c) A Court of Claims, affiliated with the Joint Economic Board, and composed of one member appointed by the United Nations, one representative of the United Kingdom and one representative of the State concerned, should be established. Any dispute between the United

Kingdom and the State respecting claims not recognized by the latter should be referred to that Court.

(d) Commercial concessions granted in respect of any part of Palestine prior to the adoption of the resolution by the General Assembly shall continue to be valid according to their terms, unless modified by agreement between the concession-holder and the State.

#### CHAPTER 4

##### *Miscellaneous provisions*

1. 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.

2. Any dispute relating to the application or the interpretation of this declaration shall be referred, at the request of either party, to the International Court of Justice, unless the parties agree to another mode of settlement.

## Sovereignty over Palestine

The territories which are now occupied by Israel are the following: the territory which was envisaged for the Jewish state in accordance with General Assembly resolution 181 (II) of November 29 1947 and the various territories which Israel has seized in excess of the General Assembly resolution. These territories comprise:

i. More than half the areas which General Assembly resolution 181 (II) of November 29 1947 had reserved for the Arabs of Palestine and which were to constitute the territory of the proposed Arab state. These additional areas were occupied by Israel in 1948 and 1949.<sup>1</sup>

ii. The City of Jerusalem, which under the same General Assembly resolution was to have been subject to an international regime administered by the United Nations. Israel occupied the New City of Jerusalem in 1948 and the Old City of Jerusalem in 1967.

iii. The West Bank of Jordan, the Sinai Peninsula and the Golan Heights—being territories of Jordan, Egypt and Syria respectively. Israel seized these territories in June 1967.

iv. The Gaza Strip was also seized by Israel in June 1967.

The above-mentioned territories are shown in Appendix VII.

It is proposed to examine here the question of sovereignty over such territories and the legal status of Israel in regard to such territories. This legal question may not be of much interest to the layman but it has an important bearing upon the eventual solution.

In its common usage, the term sovereignty means the supreme power of a state over a certain territory and its people regardless of the legitimacy of its origin. But sovereignty involves also a broader and more fundamental concept: the legal and inalienable title of a king or a nation to a territory. It was on the basis of this concept of legitimacy of title that the pre-Napoleonic sovereigns were restored to power and

<sup>1</sup> See Section 2 of Part I.

Europe was reconstructed after 1815.<sup>2</sup> It is on the basis of the same concept that the nationhood of Poland was preserved during the long interregnum between 1795 and 1919 until it finally triumphed with the restoration of its international personality. The same broad concept explains the survival of Austria's sovereignty during the period of its forced union with Germany in 1938 until its formal re-establishment in 1945. In all these cases, sovereignty was not extinguished by the forceful occupation of territory or by conquest. Consequently, a distinction exists between legal and political sovereignty, the latter meaning factual dominion and control and the former signifying the rightful and inalienable title of a people to a territory. Such a distinction corresponds to the difference that is made between sovereignty in law and sovereignty in fact.<sup>3</sup> Professor Schwarzenberger has made the distinction between legal and political sovereignty as follows: 'The last word is still not with law, but power. On such a level, the counterpart to legal sovereignty is political sovereignty.'<sup>4</sup> Mr. Ian Brownlie has made the same distinction by contrasting the 'assumption of the powers of government' with '*de jure* sovereignty'.<sup>5</sup> It is in the sense of legal sovereignty that the term sovereignty is used hereinafter.

#### I SOVEREIGNTY OF THE ORIGINAL INHABITANTS OF PALESTINE

Notwithstanding the political vicissitudes in Palestine during the last fifty years, legal sovereignty still lies today in the original inhabitants of the country as they existed at the time of the detachment of Palestine from Turkey at the end of the First World War.

Prior to the occupation of Palestine by the British Army in 1917 during the First World War, Palestine formed an integral part of Turkey, which was a sovereign and independent state. The inhabitants of Palestine, Moslems, Christians and Jews, all Arabic-speaking peoples, were then Turkish citizens and enjoyed, as we have already seen, equal rights

<sup>2</sup> See Guglielmo Ferrero, *The Reconstruction of Europe* (translation by Jaeckel, New York, 1941), and C-M. de Talleyrand, *Mémoires*, Vol. II.

<sup>3</sup> As to this distinction, see Gaston Jèze, *Etude Théorique et Pratique sur l'Occupation* (Paris, 1896), p. 46.

<sup>4</sup> C. Schwarzenberger, *The Fundamental Principles of International Law* (Hague Recueil, 1955), p. 215.

<sup>5</sup> Ian Brownlie, *Principles of Public International Law* (Oxford 1966), pp. 100-102.



with the Turks in government and administration.<sup>6</sup> The Turkish constitution made no distinction between Turk or Arab or between Moslem or Christian or Jew. Turks and Arabs, therefore, shared sovereignty over all the territories of the Turkish Empire regardless as to whether such territories were Turkish or Arab provinces. This situation continued until the detachment of the Arab provinces, including Palestine, from Turkey at the end of the First World War. Such detachment was at first *de facto*, and resulted from the military occupation of Palestine by the British Army in 1917 and then became *de jure* by Turkey's renunciation of its sovereignty over the Arab territories in accordance with the Treaty of Lausanne of July 24 1923.

The British military occupation of Palestine in 1917 did not give sovereignty to the occupying power nor take away the sovereignty of the inhabitants. Apart from the fact that under international law the military occupation of enemy territory does not give the occupier a territorial title, it was clear that the avowed objective of the Allied Powers during the First World War was not the acquisition of territory in the Middle East. This is evident from the various pledges and formal assurances given to the Arabs by Great Britain and its Allies between 1915 and 1918 regarding the future of the Arab territories. These pledges and assurances were mentioned in Section 1 (1) of Part I.<sup>7</sup> It should be remarked that the reference to the British pledges and assurances given to the Arabs during the First World War does not signify that such pledges and assurances are made a foundation for the Arab claim to Palestine. The title of the Palestinian Arabs to Palestine does not, and cannot, depend upon the pledges and assurances of a third Power which, moreover, possessed neither sovereignty nor dominion nor any right whatsoever over the country. Their title rests upon their ownership of the country from time immemorial. That the title of the Palestinians to Palestine dates from time immemorial is literally true, not a figure of speech. Frequently, the date of the Arab occupation of Palestine is related back to the Moslem Arab conquest of the country some thirteen centuries ago. This is not historically accurate. The Moslem conquest of Palestine in A.D. 637 was not the starting-point of the occu-

<sup>6</sup> See Section 1 (1), of Part I, *ante*.

<sup>7</sup> For the text of these pledges and assurances see the Report of the Committee set up by the British Government to consider the McMahon-Hussein Correspondence and statements made on behalf of His Majesty's Government in 1918, *Cmd. 5964*, and George Antonius, *The Arab Awakening* (Khayats, Beirut).

pation of the country by the Palestinians. The Arabs, including the Palestinians, are a pre-Islamic people. They lived in Palestine and other parts of the Middle East before the advent of Islam and the Moslem conquest. As we have seen earlier in Part I, the Palestinians were the descendants of the Philistines and Canaanites, and have lived continuously in Palestine since the dawn of history, even long before the ancient Hebrews set foot in the country.

The Covenant of the League of Nations, approved by the Paris Peace Conference on April 28 1919, and incorporated into the Treaty of Versailles on June 28 1919, also discarded any idea of annexation by the occupying powers of the territories seized from Turkey and Germany during the First World War. The Covenant dealt in Article 22 with the future of the Arab communities and territories of the Turkish Empire and also with the future of the former German Colonies. Article 22 of the Covenant established a new status under international law for the Arab communities detached from the Turkish Empire and, it is important to note, recognized their 'existence as independent nations'. Article 22 began with the statement:

To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them. . . .<sup>8</sup>

Its fourth paragraph stated:

Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognized subject to the rendering of administrative advice and assistance by a mandatory until such time as they are able to stand alone.<sup>9</sup>

Mr. Duncan Hall has observed: 'Underlying Article 22 was the assumption of independent national sovereignty for mandates. The

<sup>8</sup> See Appendix I. The term 'colonies', as distinct from 'territories', must be understood to refer to the former German colonies in Africa. The Arab provinces of the Turkish Empire were not colonies, as already noted, since they formed an integral part of Turkey.

<sup>9</sup> The use of the expression 'communities belonging to the Turkish Empire' is misleading. The Arab provinces 'belonged' to the Turkish Empire in the sense that they formed part of this country, but not in the sense in which a colony 'belongs' to the mother country. It has been made amply clear that Arabs and Turks enjoyed equal rights and shared sovereignty over the whole Turkish Empire.

drafters of the Covenant took as their starting-point the general notions of "no annexation" and "self-determination".<sup>10</sup> In the case concerning the International Status of South-West Africa (1950) the Court held that in Article 22 of the Covenant of the League of Nations 'two principles were considered to be of paramount importance: the principle of non-annexation and the principle that the well-being and development of such peoples form a sacred trust of civilization'.<sup>11</sup> The inhabitants of the mandated territories were the beneficiaries of this trust.<sup>12</sup>

The legal effect under international law of the detachment of Palestine from the Turkish Empire and of the recognition by the League of Nations of the community inhabiting it as an independent nation was to make of this country a separate, independent and international political entity. The community which then inhabited Palestine thus became a subject of international law in which was vested the legal sovereignty over the territory in which it lived.

But although Palestine acquired its own sovereignty as a result of its detachment *de facto* from Turkey and the recognition of its people as an independent nation by the Covenant of the League of Nations, the formal renunciation by Turkey of its sovereignty over its former Arab provinces occurred only some time later. The Supreme Council of the Principal Allied Powers sought to impose upon Turkey the Treaty of Sèvres of August 10 1920. This Treaty, however, was not ratified by the Turkish Government, which objected to some of its provisions. Ultimately, the Allied Powers had to negotiate with the Turkish nationalists, who had abolished in 1922 the Sultanate and declared the Ottoman Government to be no longer in existence. The Turkish nationalists accepted the separation of the Arab provinces and concluded with the Allied Powers the Treaty of Lausanne of July 24 1923 after certain provisions of the abortive Treaty of Sèvres had been withdrawn and abandoned. Among the provisions of the abortive Treaty of Sèvres to which the Turkish authorities had taken objection and which were abandoned was the provision concerning the Jewish national home. The Treaty of Sèvres had provided in Article 95 that the parties agreed to entrust, by application of Article 22 of the Covenant of the League of Nations, the

<sup>10</sup> H. Duncan Hall, *Mandates, Dependencies and Trusteeships* (Carnegie Endowment for International Peace, Washington, 1948), p. 80.

<sup>11</sup> *I.C.J. Reports*, 1950, p. 131.

<sup>12</sup> *Ibid.*, p. 132.

administration of Palestine to a Mandatory to be selected by the Principal Allied Powers, and that the Mandatory would be responsible for putting into effect the declaration made on November 2 1917 by the British Government in favour of the establishment in Palestine of a national home for the Jewish people.<sup>13</sup> Turkey refused to subscribe to this provision. Instead, Article 16 of the Treaty of Lausanne provided as follows:

Art. 16. Turkey hereby renounces all rights and title whatsoever over or respecting the territories situated outside the frontiers laid down in the present Treaty and the islands other than those over which her sovereignty is recognized by the said Treaty, the future of these territories and islands being settled or to be settled by the parties concerned.

It is significant that by excluding any reference in the Treaty of Lausanne to the declaration of November 2 1917, Turkey, as the state which had possessed sovereignty over Palestine in the past, did not, upon renunciation of such sovereignty, mortgage the future of Palestine with any obligation relating to the establishment of a Jewish national home. The Treaty left the future of Palestine, and other Arab territories, to be decided by 'the parties concerned'. This expression was not defined, but it can only mean the communities which inhabited these territories, since they were the parties primarily concerned.

It is also significant that the renunciation by Turkey of 'all rights and title' over the Arab territories detached from it was not made in favour of the signatory Powers or of any Power in particular. This is in contrast with Article 15 in the same Treaty wherein 'Turkey renounces in favour of Italy all rights and title' over certain specified islands. The difference between the two renunciation provisions can be ascribed to two reasons: first, it was not the intention that the Principal Allied Powers or any one of them should acquire sovereignty over the Arab provinces; secondly, the Arab communities in the provinces detached from Turkey were the original inhabitants and already possessed sovereignty over their own territories. Hence they were not in need of any renunciation to be made in their favour, in contrast with Italy, which needed a renunciation of sovereignty in its favour to enable it to acquire sovereignty over the islands which came under its occupation. In this regard Turkey's

<sup>13</sup> See the text of Article 95 of the Treaty of Sèvres in Hurewitz, *Diplomacy in the Near and Middle East* (D. Van Nostrand, New Jersey, 1956), Vol. II, p. 84.

renunciation by the Treaty of Lausanne of its sovereignty over the Arab territories is comparable to Spain's relinquishment of its sovereignty over Cuba by the Treaty of Paris, 1898. In both cases the renunciation of sovereignty was not made in favour of the occupying Power. In the case of Cuba Spain's renunciation was held to vest sovereignty in the inhabitants:

In the present case, as the United States expressly disclaimed any intention to exercise sovereignty, jurisdiction, or control over the island, 'except for the pacification thereof', the ownership of the island, upon the relinquishment by Spain of her sovereignty over it, immediately passed to the inhabitants of Cuba, who, in the resolutions referred to, were declared to be free and independent, and in whom, therefore, abstractly considered, sovereignty resided.

Had the language been 'Spain cedes to the United States the island of Cuba' as by Article II she did Porto Rico, that would have divested her of all title to and, by consequence, all sovereignty over Cuba, both of which would then immediately have passed to the United States, as they did in the case of Porto Rico; subject, however, to the rights of the people. True, when, pursuant to the treaty, the United States occupied the island, the inhabitants thereof during such occupancy undoubtedly owed allegiance to the United States, i.e., fidelity and obedience for the protection they received, but that did not divest them of their inherent rights. (*Galban and Company, A Corporation v. the United States*, 40 Ct. Cls. (1905), 495, 506-507.)<sup>14</sup>

Although Palestine had as a result of these developments become a separate and independent political entity, distinct from the political entity of which it previously formed part, and possessed of its own sovereignty, its people were prevented from the exercise of full and effective sovereignty as a result of two circumstances: the existence of a military occupier, and subsequently the grant in 1922 by the Council of the League of Nations of a mandate to the British Government to administer Palestine.

It is necessary, therefore, to consider whether the grant to the British Government of a mandate over Palestine affected the sovereignty of its inhabitants.

Conflicting views have been expressed in the past as to who possessed sovereignty in the case of a mandated territory. Some have argued that

<sup>14</sup> Hackworth, *Digest of International Law*, Vol. I, page 425.



sovereignty lay in the Principal Allied Powers<sup>15</sup> or in the League of Nations<sup>16</sup> or in the mandatory<sup>17</sup> or jointly in the League of Nations and the mandatory<sup>18</sup> or in the inhabitants of the mandated territory.<sup>19</sup> All the various views which have been expressed on the point—except that which considers sovereignty to reside in the inhabitants of the mandated territory—have now been abandoned or discredited. None of the views that sought to vest sovereignty elsewhere than in the inhabitants of the mandated territory appears to rest on an acceptable legal or logical basis.

It is obvious, on the one hand, that the Peace Treaties concluded with Germany and Turkey at the end of the First World War did not embody any renunciation by these states of their sovereignty over the territories detached from them in favour of the principal Allied Powers or the League of Nations or the mandatory Power. It is equally obvious, on the other hand, that it was not the intention of the Covenant of the League of Nations or the mandates that the principal Allied Powers or the League of Nations or the mandatory Power should acquire sovereignty over the mandated territories. The terms of the mandates granted by the League of Nations in respect of former Turkish and German territories did not involve any cession of territory or transfer of sovereignty to the mandatory Power. The International Court of Justice has recently confirmed this principle with regard to the mandate for South-West Africa. The Court said:

The terms of this Mandate, as well as the provisions of Article 22 of the Covenant and the principles embodied therein, show that the creation of this new international institution (i.e., the mandate) did not involve any cession of territory or transfer of sovereignty to the Union of South Africa. The Union Government was to exercise an international function of administration on behalf of the League, with the object of promoting the well-being and development of the inhabitants.<sup>20</sup>

<sup>15</sup> Hoijer, *Le Pacte de la Société des Nations* (1926) (Spes, Paris, 1926), p. 374.

<sup>16</sup> Redšlob, *Le Système des Mandats Internationaux*, p. 196.

<sup>17</sup> H. Rolin, *Le Système des Mandats Internationaux*, *Revue de Droit International et de Législation Comparée* (1920), p. 302.

<sup>18</sup> Quincy Wright, *Sovereignty of the Mandates*, *AJIL* (1923), p. 698.

<sup>19</sup> P. Pic, *Le Régime du Mandat d'après le Traité de Versailles*, *RGDIP*, Vol. 30, 1923, p. 334; Millot, *Les Mandats Internationaux*, p. 91; Stoyanovsky, *La Théorie Générale des Mandats Internationaux*, p. 92.

<sup>20</sup> Advisory Opinion of the International Court of Justice regarding the Status of South-West Africa, *I.C.J. Reports* (1950), p. 132.

The view that sovereignty over a mandated territory lies in its inhabitants received the support of several writers, and was summarized by Mr. Van Rees, Vice-President of the Permanent Mandates Commission, as follows:

Enfin, un dernier groupe d'auteurs—divisé en deux fractions—le seul groupe qui a tenu compte du principe de non-annexion adopté par la Conférence de la Paix, soutient que les auteurs du Pacte ont voulu tenir en suspens ou bien la souveraineté elle-même sur les territoires sous mandat pour une période équivalente à la durée des mandats respectifs (Lee D. Campbell, *The Mandate for Mesopotamia and the principle of trusteeship in English law*, p. 19; A. Mendelssohn Bartholdi, *Les Mandats africains* (traduction), Archiv für politik und Geschite, Hamburg, 1925) ou bien l'exercice des pouvoirs souverains dont furent provisoirement chargées certaines nations en qualité de tuteurs. D'après ce dernier point de vue la souveraineté elle-même serait détenue, depuis la renonciation des anciens Empires, par les communautés et les populations autochtones des différents territoires. En d'autres termes, les anciens Empires ayant renoncé à leurs droits et titres sur les territoires en question sans qu'il y ait eu transfert de ces droits et titres à d'autres Puissances, la souveraineté, qui appartient à ces divers peuples et communautés jusqu'au moment de leur soumission à l'Allemagne et à la Turquie, renaît automatiquement du fait de la renonciation susdite. (Paul Pic, *Le régime des mandats d'après le Traité de Versailles*, RGDIP, Paris, 1923, p. 14; Albert Millot, *Les mandats internationaux*, Paris, 1924, pp. 114-118; J. Stoyanovski, *La théorie générale des mandats internationaux*, Paris, pp. 83 and 86.)<sup>21</sup>

The same author pointed out that the view which held that sovereignty lies in the indigenous communities and populations of the mandated territory 'is the only one which at least takes into account the principle of non-annexion unanimously adopted by the Peace Conference'.<sup>22</sup>

The concept of sovereignty is not strained by recognizing the attribute of sovereignty to the inhabitants of mandated territories. Westlake has said: 'The duties and rights of States are only the duties and rights of the men who compose them.'<sup>23</sup> Article 22 of the Covenant of the League of Nations specifically recognized, as we have seen, the existence

<sup>21</sup> D. F. W. Van Rees, *Les Mandats Internationaux* (Rousseau, Paris, 1927), p. 20.

<sup>22</sup> Translation from D. F. W. Van Rees, *Certains Aspects du Régime des Mandats Internationaux* (Bibliotheca Visseriana, 1931), p. 21.

<sup>23</sup> Westlake, *Collected Papers*, p. 78.

of certain communities as independent nations. Independence implies sovereignty. In its resolution adopted in 1931 the Institute of International Law described the communities under mandate as subjects of international law.<sup>24</sup> The international personality of communities under mandate first recognized by the Covenant of the League of Nations has now come to be accepted as a principle of international law.<sup>25</sup> Pélichet has observed:

La personnalité internationale ne fut longtemps reconnue qu'aux Etats. Ce n'est qu'à la fin du XIX<sup>e</sup> siècle, sous l'influence de Mancini et de l'école italienne, qu'on admit que certaines collectivités, étrangères aux Etats, pouvaient relever du droit des Gens et en devenir des sujets. Cette opinion a de plus en plus prévalu.<sup>26</sup>

One of the first writers who proclaimed the principle that sovereignty lies in the inhabitants of the mandated territory was Professor Pic. He said:

Les rédacteurs du Traité de Versailles, s'inspirant avant tout d'un droit pour les peuples de disposer d'eux-mêmes, ont formellement proclamé qu'il n'y aurait *aucune annexion* des territoires sous mandat par une puissance quelconque, pas plus par la collectivité des Etats ayant nom Société des Nations et siégeant à Genève, que par tel ou tel Etat particulier. Ces territoires appartiennent virtuellement aux populations ou communautés autochtones, dont la Société des Nations s'est constituée le défenseur, et au regard desquelles elle joue un peu le rôle d'un conseil de famille. Or, en droit interne, un conseil de famille n'a, pas plus que le tuteur qu'il désigne, et dont il contrôle les actes, de droit privatif sur les biens du pupille.<sup>27</sup>

A somewhat similar view was held by Professor Quincy Wright with respect to the 'A' mandates. He observed:

Communities under 'A' mandates doubtless approach very close to sovereignty.<sup>28</sup>

<sup>24</sup> *AJIL* (1932), p. 91.

<sup>25</sup> See in this regard E. Pélichet, *La Personnalité internationale distincte des collectivités sous mandat* (Rousseau, Paris, 1932), p. 183.

<sup>26</sup> E. Pélichet, *op. cit.*, p. 51.

<sup>27</sup> Professor P. Pic, *op. cit.*, p. 334.

<sup>28</sup> Quincy Wright, *Sovereignty of the Mandates*, *AJIL*, Vol. 17, 1923, p. 696. Mandates were classified into three types: 'A', 'B' and 'C'. This classification was made in a 'descending order of political individuality' according to their international status and the degree of authority given to the mandatory. The 'A' mandates applied to Iraq, Palestine, Syria and Lebanon. The 'B' mandates applied to German possessions in West

The Earl of Birkenhead thought that the 'A' mandated territories had a close similarity to protected States. He observed:

The question as to the sovereignty of the mandated territory raises difficulties. It may lie in the League of Nations, in the mandatory State or in the mandated territory. With regard to the 'A' territories their close similarity to protected States would suggest a solution; but . . . the 'B' and 'C' territories may have to await the happening of some crucial event . . . before its juristic position can be unquestionably defined.<sup>29</sup>

Referring to Palestine and Syria in particular, the same author said:

The position of Palestine and Syria is that they were integral portions of the Turkish Empire (which has renounced all right or title to them: Article 16 of the Treaty of Lausanne, 1923), they have become, administratively, partially dependent now upon an appointed mandatory State, but they are acknowledged—in the terms of Article 22 of the Covenant—to be entitled to provisional recognition of independence. . . . The status of Palestine and Syria resembles very closely that of States under suzerainty.<sup>30</sup>

Millot also vested sovereignty in the inhabitants of the mandated territory. He based his view upon Article 22 of the Covenant of the League of Nations and the intention of the Peace Conference which ended the First World War. Regarding the Arab territories detached from the Turkish Empire he said that Article 22 of the Covenant has declared these territories to be provisionally independent States and remarked that 'independent' means 'sovereign'.<sup>31</sup>

Stoyanovsky has argued that the people of a mandated territory are not deprived of the right of sovereignty but are deprived only temporarily of its *exercise*. The right of sovereignty belongs to the inhabitants of the mandated territory 'by virtue of the principles of nationality and self-determination which are the foundations of modern international law'.<sup>32</sup> The distinction between sovereignty and its exercise in the case of mandated territories is comparable to the distinction made

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Africa. The 'C' mandates related to German possessions in South-West Africa and to certain South Pacific Islands. It is to be remarked that only in the case of 'A' mandates were the communities concerned recognized by Article 22 of the Covenant as independent nations.

<sup>29</sup> Earl of Birkenhead, *International Law*, 6th ed., p. 99.

<sup>30</sup> Earl of Birkenhead, *op. cit.*, p. 40.

<sup>31</sup> Millot, *Les Mandats Internationaux*, pp. 91 et 115.

<sup>32</sup> Stoyanovsky, *La Théorie Générale des Mandats Internationaux*, p. 83.

under private law between ownership and its exercise in cases of guardianship, curatorship or other forms of tutelage.

Pélichet has advanced the view that communities under mandate enjoy real, not only virtual, sovereignty:

La jouissance des droits de souveraineté est détenue réellement, et non point virtuellement par les collectivités.<sup>33</sup>

In regard to Palestine, Pélichet pointed out that the United Kingdom, as the mandatory Power, has concluded agreements with Palestine, as the mandated territory. Thus a community under a mandate can acquire rights, conclude agreements and assume international obligations. In consequence, he concluded:

Nous estimons que la théorie de la souveraineté des peuples sous mandat est celle qui convient le mieux à l'esprit comme à la lettre de l'article 22.<sup>34</sup>

In his separate opinion concerning the International Status of South-West Africa, Lord McNair expressed the opinion that the mandate system does not fit into the old conceptions of sovereignty. According to Lord McNair sovereignty over a mandated territory is 'in abeyance'.<sup>35</sup>

The principle that sovereignty lies in the people of the mandated territory itself was recently applied to territories held under trusteeship in accordance with the Charter of the United Nations. Mandates and trusteeships possess the same legal affiliation. In the case of *Società A.B.C. v. Fontana and Della Rocca*, the Italian Court of Cassation held that 'sovereignty over the territory of Somaliland is vested in its population, although, under Article 2 of the Trusteeship Agreement, the administration of the territory, for the period specified in the Agreement, has been entrusted to Italy'.<sup>36</sup> The same view was expressed by Oppenheim, who observed:

In considering the question of sovereignty over trust territories—a question which is by no means of mere academic importance—the distinction must be borne in mind between sovereignty as such (or what may be described as residuary sovereignty) and the exercise of sovereignty. The latter

<sup>33</sup> E. Pélichet, *op. cit.*, p. 100.

<sup>34</sup> E. Pélichet, *op. cit.*, p. 108.

<sup>35</sup> Advisory Opinion of the International Court of Justice regarding the Status of South-West Africa, *I.C.J. Reports* (1950), p. 150.

<sup>36</sup> Decision dated August 10 1954, *International Law Reports* (1955), Vol. 22, p. 77.



is clearly vested with the trustee powers subject to supervision by and accountability to the United Nations.<sup>37</sup>

We can, therefore, conclude this inquiry by remarking that the grant by the Council of the League of Nations of a mandate to the British Government to administer Palestine did not deprive its people of their right of sovereignty. The legal status of Palestine under international law during the British mandate and upon its termination on May 15 1948 can, therefore, be summarized as follows: during the currency of the mandate the people of Palestine enjoyed an independent international status and possessed sovereignty over their land; Palestine possessed its own identity, which was distinct from that of the mandatory power; its administration was theoretically its own though, in fact, it was in the hands of the mandatory; the Government of Palestine, as representative of the people of Palestine, concluded agreements with the mandatory power and became party, through the instrumentality of the mandatory, to a number of international treaties and conventions; however, the full exercise of sovereignty by the people of Palestine was restricted in certain respects by the powers of administration entrusted to the mandatory power by the League of Nations; upon the termination of the mandate the mandatory's powers of administration came to an end and, as a result, the restrictions upon exercise of full sovereignty by the people of Palestine ceased, so that by virtue of this right as well as by virtue of their right of self-determination they became entitled to govern themselves and to determine their future in accordance with normal democratic principles and procedures. The first and fundamental rule in any democracy is the rule of the majority. This rule, however, was not respected by the General Assembly of the United Nations, which recommended in 1947, in circumstances and under political pressures already mentioned, the partition of the country between Arab and Jewish states. The events which followed and the emergence of Israel have prevented the Palestinian people from exercising their right of sovereignty over their own land. The question which we have now to consider is whether the emergence of Israel and its occupation in 1948 and 1949 of various territories of Palestine did deprive the people of Palestine of their sovereignty. In other words, did Israel acquire legal sovereignty over such territories? For reasons of

<sup>37</sup> Oppenheim, *International Law* (Longmans, London, 1955), Vol. I, 8th ed., p. 236.

clarity in the discussion rather than because of any difference in conclusions, this inquiry into the legitimacy or illegitimacy of Israel's title will be made separately in respect of the territory destined for the Jewish state by the United Nations partition resolution and of the other territories which Israel seized in excess of the same resolution.

## 2 HAS ISRAEL ACQUIRED LEGAL SOVEREIGNTY OVER THE TERRITORY ALLOCATED TO THE JEWISH STATE BY THE PARTITION RESOLUTION?

The question as to whether Israel has acquired sovereignty over the territory which was allocated to the Jewish state by the partition resolution can be examined in the light of three political developments with a view to determining whether any one of them could have conferred title or sovereignty upon Israel. These three developments are: the Balfour Declaration of November 2 1917; the United Nations resolution on the partition of Palestine of November 29 1947, and the forcible occupation by Israel in 1948 and in 1949 of the territory earmarked for the proposed Jewish state by the said resolution.

### a *No grant of sovereignty was or could have been involved in the Balfour Declaration*

The Balfour Declaration, which the Zionists have utilized almost as a document of title for the establishment of a Jewish state in Palestine, never possessed any juridical value. At no time did the British Government as the author of such declaration possess any right of sovereignty over Palestine, whether on the date on which the Balfour Declaration was made or at any time thereafter, which could have enabled it to recognize any rights in favour of the Jewish people in or over Palestine. Hence the British Government was not in a position validly to grant any title or any rights to the Jews over Palestine because a donor cannot give away what does not belong to him. Professor W. T. Mallison, Jr., has observed:

Perhaps even more fundamental than analysis of the Balfour Declaration

agreement is the issue of the juridical authority of the British Government to make a promise of political support in favor of Zionist nationalism.<sup>38</sup>

It has also been remarked that,

The most significant and incontrovertible fact is, however, that by itself the (Balfour) Declaration was legally impotent. For Great Britain had no sovereign rights over Palestine; it had no proprietary interest; it had no authority to dispose of the land. The Declaration was merely a statement of British intentions and no more.<sup>39</sup>

Moreover, neither party to the Declaration, namely, the Zionist Jews and the British Government, intended that it should convey any territorial rights to the Jews or result in their acquisition of sovereignty over Palestine. On the one hand, the Zionists, at least outwardly, emphatically denied that the Jewish national home mentioned in the Balfour Declaration did envisage the establishment of a Jewish state or the grant of sovereignty to the Jews. Writing in 1919, Sokolow, who is the Zionist historian, stated:

It has been said, and is still being obstinately repeated by anti-Zionists again and again, that Zionism aims at the creation of an independent 'Jewish State'. But this is wholly fallacious. The 'Jewish State' was never a part of the Zionist programme.<sup>40</sup>

Mr. Norman Bentwich, a Zionist Jew who held for several years the office of Attorney-General of Palestine during the British Mandate, has declared on a number of occasions that sovereignty was no part of the Jewish national home. He said:

State sovereignty is not essential to the Jewish national ideal. Freedom for the Jew to develop according to his own tradition, in his own environment, is the main, if not the whole demand.<sup>41</sup>

He also wrote:

It has often been made an objection to Zionist hopes that the Moslem Arabs now in possession of Palestine lands, already numbering more than a

<sup>38</sup> W. T. Mallison, Jr., *The Zionist—Israel Juridical Claims to Constitute the 'Jewish People' Nationality Entity and to Confer Membership in it: Appraisal in International Law*, *The George Washington Law Review*, Vol. 32, p. 1002, June 1964.

<sup>39</sup> Sol M. Linowitz, *Analysis of a Tinderbox: The Legal Basis for the State of Israel*, *American Bar Association Journal*, Vol. 43, 1957, pp. 522-523.

<sup>40</sup> Sokolow, *History of Zionism*, xxiv.

<sup>41</sup> Norman Bentwich, *Palestine of the Jews* (London, 1919), p. 195.

quarter of a million, cannot be ejected. . . . But it is neither to be expected, nor is it desired, that the Jews should occupy and appropriate the whole country.<sup>42</sup>

Mr. Bentwich defined the concept of the Jewish national home as not implying the grant of rights of political sovereignty but as offering the opportunity for cultural development. He said:

The idea of a national home for a homeless people is now embodied in this single mandate (The Mandate for Palestine). . . . It signifies a territory in which a people, without receiving rights of political sovereignty, has, nevertheless, a recognized legal position and the opportunity of developing its moral, social and intellectual ideas.<sup>43</sup>

In 1934, Mr. Bentwich distinguished between a national home and a state in the following terms:

A national home, as distinguished from a state, is a country where a people are acknowledged as having a recognized legal position and the opportunity of developing their cultural, social and intellectual ideals without receiving political sovereignty.<sup>44</sup>

Mr. Bentwich thought that the Jews should integrate within Palestine together with the Arab inhabitants:

The Jewish people on their side do not ask for political power or national sovereignty. . . . They have no need or desire to rule over others. Ultimately, they would ask within the territory to form an integral part of the government of the land, together with the Arab inhabitants.<sup>45</sup>

On the other hand, the British Government as author of the Balfour Declaration did not intend to grant any political sovereignty to the Jewish people in Palestine. In its Statement of Policy of 1922, the British Government declared that the interpretation which His Majesty's Government place upon the Declaration of 1917, 'need not cause alarm to the Arab population of Palestine. . . . His Majesty's Government

<sup>42</sup> *Ibid.*, pp. 206-207. It may be remarked in passing that his reference to the Moslem Arabs numbering 'more than a quarter of a million' was a gross underestimate of the number of Moslem Arabs who inhabited Palestine at the time.

<sup>43</sup> Norman Bentwich, *The Mandates System* (Longmans, London, 1930), p. 24.

<sup>44</sup> Norman Bentwich, *Palestine* (E. Benn, London, 1934), p. 101.

<sup>45</sup> *Ibid.*, p. 288.

have not contemplated . . . the disappearance or the subordination of the Arabic population. . . . They would draw attention to the fact that the terms of the (Balfour) Declaration referred to do not contemplate that Palestine as a whole should be converted into a Jewish National Home, but that such a Home should be founded in Palestine.’<sup>46</sup> This interpretation of the Jewish National Home was again confirmed in the Statement of Policy issued by the British Government in October 1930.<sup>47</sup> In the Statement of Policy of May 1939 the British Government dealt at length with the meaning it attributed to the Jewish national home:

3. The Royal Commission and previous Commissions of Enquiry have drawn attention to the ambiguity of certain expressions in the Mandate, such as the expression ‘a national home for the Jewish people’, and they have found in this ambiguity and the resulting uncertainty as to the objectives of policy a fundamental cause of unrest and hostility between Arabs and Jews. . . .

4. It has been urged that the expression ‘a national home for the Jewish people’ offered a prospect that Palestine might in due course become a Jewish State or Commonwealth. His Majesty’s Government do not wish to contest the view, which was expressed by the Royal Commission, that the Zionist leaders at the time of the issue of the Balfour Declaration recognized that an ultimate Jewish State was not precluded by the terms of the Declaration. But, with the Royal Commission, His Majesty’s Government believe that the framers of the Mandate in which the Balfour Declaration was embodied could not have intended that Palestine should be converted into a Jewish State against the will of the Arab population of the country. That Palestine was not to be converted into a Jewish State might be held to be implied in the passage from the Command Paper of 1922, which reads as follows:

Unauthorized statements have been made to the effect that the purpose in view is to create a wholly Jewish Palestine. Phrases have been used such as that ‘Palestine is to become as Jewish as England is English’. His Majesty’s Government regard any such expectation as impracticable and have no such aim in view. Nor have they at any time contemplated . . . the disappearance or the subordination of the Arabic population, language or culture in Palestine. They would draw attention to the fact that the terms of the (Balfour) Declaration referred to do not contemplate that

<sup>46</sup> *Cmd.* 1700, p. 18.

<sup>47</sup> *Cmd.* 3692.



Palestine as a whole should be converted into a Jewish National Home, but that such a home should be founded in Palestine.

But this statement has not removed doubts, and His Majesty's Government therefore now declare unequivocally that it is not part of their policy that Palestine should become a Jewish State. They would indeed regard it as contrary to their obligations to the Arabs under the Mandate, as well as to the assurances which have been given to the Arab people in the past, that the Arab population of Palestine should be made the subjects of a Jewish State against their will.<sup>48</sup>

Finally—and this is the most important consideration—whatever may have been the meaning and intention of the Balfour Declaration—the people of Palestine, who were the party most directly concerned as the owners of the country, were not consulted about the British promise to the Jews. They never gave their consent to the establishment of a Jewish national home in Palestine and never accepted the British Declaration. Neither did the other Arabs accept the Balfour Declaration. The Agreement made between Emir Faisal and Dr. Chaim Weizmann on January 3 1919 regarding the carrying into effect of the Declaration of November 2 1917 might appear to be an exception. It should be observed, however, that Emir Faisal possessed no representative capacity that entitled him to speak on behalf of the Arabs of Palestine or of the Arabs generally, or to commit the Arabs to an acceptance of the Balfour Declaration. Emir Faisal was then attending the Peace Conference at Paris in 1919 to secure political support for the claims of the Kingdom of Hejaz. In the so-called Faisal–Weizmann Agreement he is described as ‘representing and acting on behalf of the Arab Kingdom of Hejaz’. He did not represent or act on behalf of the Arabs of Palestine or the Arabs generally. Mr. George E. Kirk has observed,

At this stage the Palestine Arabs had never been consulted; they had given no mandate to Faisal to negotiate on their behalf; and his agreement with the Zionist leader could not be considered binding on anyone but himself and his father.<sup>49</sup>

Faisal's Agreement with Weizmann was repudiated by the Syro-Palestinian Congress of 1921. Even as regards Emir Faisal himself, the

<sup>48</sup> *Cmd.*, 6019, pp. 3 and 4.

<sup>49</sup> George E. Kirk, *A Short History of the Middle East* (Methuen and Co., London, 1948), p. 151.

Agreement lapsed in accordance with its own terms on the strength of a condition therein included by Emir Faisal that if the Arabs did not obtain their independence as demanded by him or if the slightest modification or departure were made to his demands the Agreement would be 'void and of no account or validity'. Since the conditions which he attached were not fulfilled, the Agreement never acquired validity.<sup>50</sup>

At the Anglo-Arab Conference of London in 1939, the Committee set up to consider the McMahon-Hussein Correspondence (1915-1918) came to the conclusion that it was evident from the statements made during and after the war that 'His Majesty's Government were not free to dispose of Palestine without regard for the wishes and interests of the inhabitants of Palestine, and that these statements must all be taken into account in any attempt to estimate the responsibilities which—upon any interpretation of the Correspondence—His Majesty's Government have incurred towards those inhabitants as a result of the Correspondence'.<sup>51</sup>

The Arabs have continuously protested against the Balfour Declaration from the first day it came to their knowledge. The Palestine Arabs have strenuously fought the Declaration. There cannot be the least doubt that their rights are not and cannot be impaired, diminished or in any way affected by a Declaration made by a third party against their interests. It is equally clear that the Jews did not gain any title or other right whatsoever in Palestine on the basis of the Declaration. From the juridical standpoint, therefore, any claim by the Jews to Palestine on the basis of the Balfour Declaration is entirely groundless, if not plainly nonsensical.

- b *No title was derived by Israel under the resolution on the partition of Palestine adopted by the General Assembly of the United Nations on November 29 1947*

We now turn to consider whether Israel has or could have acquired any title or sovereignty over the territory earmarked for the Jewish state by virtue of the resolution of November 29 1947, which recommended

<sup>50</sup> George Antonius, *The Arab Awakening* (Khayats, Beirut), pp. 285 and 286. George Antonius remarks that the main interest of the Faisal-Weizmann Agreement 'is in the evidence it affords of the lengths to which Faisal was prepared to go in the sense of Arab-Jewish co-operation so long as that did not conflict with Arab independence': p. 286.

<sup>51</sup> Report of the Committee, March 16 1939, *Cmd. 5974*, p. 11.

the partition of Palestine between Arab and Jewish states. This inquiry does not concern the wisdom or justice of partition or the circumstances of political pressure and undue influence by which the resolution was obtained. These aspects were considered earlier in Section 1 (3) of Part I. The present inquiry will be limited to an examination of the legal effect of the resolution and, in particular, of the question whether the General Assembly of the United Nations could juridically give any title to the Jews or to a Jewish State over any part of the territory of Palestine.

The legal position in this regard is quite clear and obvious. The United Nations are an organization of States which was formed for certain purposes mentioned in the Charter. At no time did this organization possess any sovereignty or other power in or over Palestine. The United Nations could not give what they did not possess. Neither individually nor collectively could the members of the United Nations alienate, reduce or otherwise affect the sovereignty of the people of Palestine, nor dispose of their territory, whether by partition or otherwise. Nor could the United Nations in any way impair or diminish the political rights of the original inhabitants or grant to alien immigrants any territorial or political rights in Palestine. Not only did the United Nations possess no sovereignty over Palestine but they did not even possess any power to administer the country. The League of Nations had assumed the power to supervise the administration of mandates established after the First World War in accordance with Article 22 of the Covenant. With the dissolution of the League of Nations the power of supervision which it possessed over mandates came to an end. Such a result was recognized by the resolution adopted at the last meeting of the League of Nations held on April 18 1946. The resolution stated that 'on the termination of the League's existence, its functions with respect to the mandated territories will come to an end'.<sup>52</sup> At the same meeting the Chinese delegate pointed out that the Charter of the United Nations made no provision for the assumption by the United Nations of the functions of the League with respect to mandates.<sup>53</sup> The Trusteeship system envisaged by Article 77 of the Charter of the United Nations did not apply to territories held under mandate except to the extent that they might be placed

<sup>52</sup> Twenty-first Ordinary Session of the Assembly of the League of Nations, *Document A.33*, 1946, pp 5-6.

<sup>53</sup> *Ibid.*, p. 3.

thereunder by means of trusteeship agreements. Mr. Duncan Hall has summarized the position in these words:

In the case of mandates, the League died without a testament. . . . There was no transfer of sovereignty to the United Nations. . . . Sovereignty, wherever it might lie, certainly did not lie in the United Nations.<sup>54</sup>

Not possessing any sovereignty or any right of administration or any other right whatsoever over Palestine, the United Nations could not legally determine, as they sought to do in 1947, the future government of Palestine by recommending the partition of the country between Arab and Jewish states. Such action completely lacked any juridical basis. The Palestine Question was brought on the agenda of the General Assembly of the United Nations as a result of a request made by the mandatory power to the Assembly for a recommendation to be made under Article 10 of the Charter concerning the future government of Palestine. Article 10 provides as follows:

The General Assembly may discuss any questions or any matters within the scope of the present Charter . . . and, except as provided in Article 12, may make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters.

On the assumption that the Palestine Question was one of 'the questions or matters within the scope of the Charter' within the meaning of Article 10, and that consequently the General Assembly could discuss such a question or matter and make a recommendation to Members of the United Nations or to the Security Council, it is clear that the General Assembly had no power to make any recommendation that would be incompatible with the rights of the people of the country. In particular, the General Assembly did not possess the power to decide, impose or recommend the future form of Government of the country or to decide its partition between its original inhabitants and foreign immigrants, or otherwise to interfere with the sovereignty of its inhabitants. The question of the future government of Palestine was a matter which fell within the exclusive competence of its people and had to be decided in accordance with ordinary democratic principles and procedures. Any recommendation made by the General Assembly to the mandatory power whose functions were about to terminate could not

<sup>54</sup> H. Duncan Hall, *op. cit.*, p. 274.

affect the mandated territory, its integrity or the rights of its people. Any such recommendation, unless accepted by the original inhabitants of the country, had no value, either in law or in fact. Mr. P. B. Potter has observed that:

The United Nations has no right to dictate a solution in Palestine unless a basis for such authority can be worked out such as has not been done thus far.

Such a basis might be found by holding that sovereignty over Palestine, relinquished by Turkey in the Treaty of Lausanne, passed to the League of Nations, and had been inherited by the United Nations, a proposition which involves two hazardous steps. Or it might be held that the Mandate is still in force and that supervision thereof has passed to the United Nations, which is much more realistic but still somewhat hazardous juridically. The Arabs deny the binding force of the Mandate, now or ever, as they deny the validity of the Balfour Declaration on which it was based, and again they are probably quite correct juridically.<sup>55</sup>

Professor Quincy Wright has recently expressed the view that 'The legality of the General Assembly's recommendation for partition of Palestine was doubtful.'<sup>56</sup>

The same view was expressed by Professor I. Brownlie who said:

It is doubtful if the United Nations 'has a capacity to convey title', *inter alia* because the Organization cannot assume the role of territorial sovereign . . . Thus the resolution of 1947 containing a Partition plan for Palestine was probably *ultra vires* (outside the competence of the United Nations), and, if it was not, was not binding on member states in any case.<sup>57</sup>

The Palestinian Arabs questioned in 1947 the competence of the United Nations to recommend the partition of Palestine or otherwise prescribe the manner of its future government. In this regard, Sub-Committee 2 to the Ad Hoc Committee on the Palestine Question stated in its report dated November 11 1947 as follows:

15 (c) Before considering the effect of the provisions of the United Nations Charter on the Mandate, it should be pointed out that the United

<sup>55</sup> Pitman B. Potter, *The Palestine Problem Before the United Nations*, *AJIL* (1948), Vol. 42, p. 866.

<sup>56</sup> Quincy Wright, *The Middle Eastern Crisis*, an address to the Association of the Bar of the City of New York, November 1968.

<sup>57</sup> I. Brownlie: *Principles of Public International Law* (Clarendon Press, Oxford, 1966), pp. 161-162.



Nations Organization has not inherited the constitutional and political powers and functions of the League of Nations, that it cannot be treated in any way as the successor of the League of Nations in so far as the administration of mandates is concerned, and that such powers as the United Nations may exercise with respect to mandated territories are strictly limited and defined by the specific provisions of the Charter in this regard.

### *Competence of the United Nations*

16. A study of Chapter XII of the United Nations Charter leaves no room for doubt that unless and until the Mandatory Power negotiates a trusteeship agreement in accordance with Article 79 and presents it to the General Assembly for approval, neither the General Assembly nor any other organ of the United Nations is competent to entertain, still less to recommend or enforce, any solution with regard to a mandated territory. Paragraph 1 of Article 80 is quite clear on this point, and runs as follows:

‘Except as may be agreed upon in individual trusteeship agreements, made under Articles 77, 79, and 81, 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.’

18. In the case of Palestine, the Mandatory Power has not negotiated or presented a trusteeship agreement for the approval of the General Assembly. The question, therefore, of replacing the Mandate by trusteeship does not arise, quite apart from the obvious fact alluded to above that the people of Palestine are ripe for self-government and that it has been agreed on all hands that they should be made independent at the earliest possible date. It also follows from what has been said above, that the General Assembly is not competent to recommend, still less to enforce, any solution other than the recognition of the independence of Palestine, and that the settlement of the future government of Palestine is a matter solely for the people of Palestine.<sup>58</sup>

As previously observed in Section 1 (3) of Part I, all the requests which were made in 1947 by the Arabs at the United Nations for an advisory opinion by the International Court of Justice on the legal issues, including the question of competence of the General Assembly

<sup>58</sup> Document A/AC 14/32, November 11 1947, *Official Records of the Second Session of the General Assembly, AD HOC Committee on the Palestine Question*, pp. 276–277.

to recommend or implement partition, were turned down as a result of the political pressures exercised in favour of partition.

In adopting the resolution of November 29 1947 the General Assembly completely ignored the wishes of the people of Palestine and acted contrary to the will of the majority of the population. The principle of majority rule, which is one of the dogmas of modern civilization, was utterly ignored in 1947 in the case of Palestine. The partition resolution was pre-eminently a political decision which was engineered by Zionism and its friends in violation of the principles of law, justice and democracy. At no time was the partition resolution accepted by the Palestinians or by the Arab states. The partition resolution, therefore, lacked all juridical basis, was not within the powers of the General Assembly, and could not confer any valid title upon Israel over such part of Palestine as was earmarked for the Jewish state.

The conclusion herein reached that Israel cannot derive any valid title under the partition resolution is further strengthened by the consideration that, as previously mentioned, the Jewish state which emerged in 1948 and assumed the name of Israel was not established in conformity with the partition resolution. The manner of establishment of Israel and its organic structure have deviated in every material respect from the basic provisions of the United Nations resolution, whether they be territorial, demographic, political or constitutional. By forcibly displacing the Arab inhabitants of the Jewish state and by usurping a large part of the territory of the proposed Arab state, the Jews have created in Palestine something entirely and radically different from what the United Nations had contemplated in 1947. Territorially, Israel is not the Jewish state which was envisaged by the resolution of the United Nations. Demographically, Israel is not the Jewish state which was contemplated by the United Nations. Politically and constitutionally also, Israel cannot be considered to be the Jewish state envisaged by the United Nations. The Jewish state as envisaged by the General Assembly resolution was Jewish only in name, for in fact, as previously noted, it would have had an Arab majority.<sup>59</sup> Israel, as formed in 1948 and as it exists today, is a racist state in which its Arab population was reduced by

<sup>59</sup> The proposed Jewish state would have had a total population of 1,008,800 consisting of 509,780 Arabs and 499,020 Jews: U.N. Document A/AC 14/32 November 11 1947, Official Records of the 2nd session of the General Assembly, Ad Hoc Committee, 1947, p. 291. See also Section 1 (3) of Part I, *ante*.

methods already considered to about ten per cent of its original number. Thus, by its seizure of a large part of the territory of the proposed Arab state and by displacing the majority of its Arab population, Israel has completely distorted the concept of the Jewish state as originally envisaged by the United Nations. It is evident that the United Nations never intended to create a racist and theocratic state from which the original inhabitants of the country, both Moslems and Christians, would be ousted. Organically, Israel is not, and cannot be considered to constitute, the Jewish state whose creation was proposed by the United Nations in 1947, and hence cannot lay claim to the territorial and other rights, whatever their value, which were intended by the partition resolution for a materially different political and demographic entity.

*c No title was gained by Israel as a result of conquest or occupation*

Before May 14 1948 the state of Israel did not exist. On that date, a number of Jews—largely of foreign origin and most of them not even possessing the nationality of the country—proclaimed the existence of the state of Israel and proceeded by force of arms to seize a substantial area of Palestine after driving away its Arab inhabitants. Can such seizure give a legal title to Israel? The answer is obvious. Israel cannot under international law claim title to the territories which it seized in 1948 and 1949 either by conquest or by occupation.

The right of conquest does not exist any more. It is now established by the consensus of the civilized community that military conquest is not a ground of acquisition of territory. War cannot give title. This principle, which was recognized by Article 22 of the Covenant of the League of Nations, was expressed in no uncertain terms by the United Nations during the fifth emergency special session of the General Assembly which was convened in the summer of 1967 following Israel's aggression. The same principle was also reaffirmed by the Security Council in its resolutions of November 22 1967 and May 21 1968, both of which emphasized 'the inadmissibility of the acquisition of territory by war' (Appendices VIII and IX).

Neither can Israel derive any title by occupation. Several considerations relating to the nature of the territory which was seized, the identity of the occupiers and the circumstances of the occupation negate the acquisition by Israel of any legal title to such territory.

In accordance with accepted principles of international law, occupation as a means of acquiring territory can only be conceived in the case of a *terra nullius*. 'Occupation can only come into play when there is a *res nullius* to be occupied.'<sup>60</sup> Palestine was at no time *terra nullius*, so that it was not open for occupation nor capable of acquisition by any state or any group of alien settlers. Palestine belonged to the Palestinians, i.e., its original inhabitants who had been established there for centuries.

Turning to the identity of the occupiers, it has already been observed that they were mainly aliens—both in origin and nationality. The bulk of the Jews who seized a large area of Palestine and proclaimed the State of Israel on May 14 1948 were foreign immigrants—some of whom had been admitted by the mandatory power as 'legal immigrants' while others had penetrated the country illegally<sup>61</sup>—and who in all cases had entered the country against the wishes of its original inhabitants.<sup>62</sup> Only a small number of the Jews who lived in Palestine in 1948 were indigenous inhabitants, and these were mostly opposed to the concept and establishment of a Jewish State. Moreover, the majority of the Jews who proclaimed the state of Israel in 1948 were not even citizens of Palestine. Although the mandatory power facilitated the acquisition of Palestinian citizenship by Jewish immigrants and did not require more than two years' residence in order to give them the country's nationality, the total number of certificates of naturalization granted by the Government of Palestine between 1925 and 1945 to all categories of immigrants—Jews and others—did not exceed 91,350.<sup>63</sup> The number of Jewish immigrants who had acquired Palestinian citizenship up to 1945 was 132,616 persons.<sup>64</sup> Thus the total number of Jews who possessed Palestinian citizenship in 1948—comprising both the original Jewish inhabitants of

<sup>60</sup> Earl of Birkenhead, *International Law*, 6th ed., p. 93; Oppenheim, *op. cit.*, p. 555.

<sup>61</sup> The Palestine Government estimated the number of Jewish illegal immigrants in 1945 to have been between 50,000 and 60,000: Government of Palestine, *A Survey of Palestine*, Vol. I, p. 210.

<sup>62</sup> Most of Israel's political leaders, past and present, have come from Russia, Poland, South Africa and other countries, and cannot even claim to belong to the country by birth on its soil. Mr. Ben Gurion, Israel's former Prime Minister, has taken pride in asserting that he came to Palestine in 1906 as a Russian tourist on a three-months' visa and simply overstayed: Ben-Gurion, *Israel, Années de Lutte* (Flammarion, Paris, 1964), p. 9.

<sup>63</sup> Government of Palestine, *A Survey of Palestine*, Vol. I, p. 208; Government of Palestine, *Statistical Abstract, 1944-1945*, pp. 36 and 46.

<sup>64</sup> Government of Palestine, *A Survey of Palestine*, Vol. I, p. 208.

Palestine and naturalized Jewish immigrants—hardly reached one-third of the Jewish population<sup>65</sup> or one-ninth of the total population. In these circumstances, the establishment of Israel by a minority group of foreign settlers who in the main did not even possess the citizenship of the country cannot be viewed as the act of a section of the original inhabitants seceding from the mother country. It would be a ludicrous situation under international law if a minority of alien settlers owning no more than 6 per cent of the land should, by reason of a successful military seizure of 80 per cent of the area of the country, be deemed to have acquired title and sovereignty over the territory which they have usurped.

The circumstances of the occupation also negate the acquisition of any valid title by Israel to the territory which it has seized. The territory of Palestine was wrested from its owners by violence exercised by a small but strongly organized alien minority which displaced by terrorism, expulsions and fear the majority of the original inhabitants. Thus, the very origin of Israel's occupation was wrongful and illegitimate and its seizure of Palestine territory was a usurpation of a land that does not belong to it. Oppenheim points out that where an act alleged to be creative of a new right is done in violation of an existing rule of international law, it 'is tainted with illegality and incapable of producing legal results beneficial to the wrongdoer in the form of a new title or otherwise'.<sup>66</sup> Oppenheim further mentions that the Permanent Court of International Justice has repeatedly held that an act which is not in accordance with law cannot confer upon a state a legal right.<sup>67</sup>

### 3 HAS ISRAEL ACQUIRED LEGAL SOVEREIGNTY OVER TERRITORIES SEIZED IN EXCESS OF THE PARTITION RESOLUTION?

The legal position with respect to the territories which Israel seized in 1948 and 1949 in excess of the territorial limits of the Jewish state as

<sup>65</sup> Official Records of the 3rd Session of the General Assembly, First Committee, Part I, p. 849.

<sup>66</sup> Oppenheim, *op. cit.*, pp. 141-142.

<sup>67</sup> Order of December 6 1930 in the case of the *Free Zones of Upper Savoy and the District of Gex* (2nd phase): *P.C.I.J.*, series A, No. 24; Order of August 3 1932, concerning the *South-Eastern Territory of Greenland*, *ibid.*, series A/B, No. 48, p. 285; Advisory Opinion of March 3 1928, the case of the *Jurisdiction of the Courts of Danzig*, *ibid.*, series B, No. 15, p. 26.



fixed by General Assembly resolution 181 (II) of November 29 1947 is also quite obvious.<sup>68</sup> On the one hand, the considerations already discussed that preclude the acquisition of legal sovereignty by Israel over the territory envisaged by the partition resolution for the Jewish state apply with equal force to the areas which Israel has seized in excess of the said resolution. Neither conquest nor occupation can give Israel any valid legal title to such territories. On the other hand, Israel's seizure of territories earmarked for the Arab state and the New City of Jerusalem can give it no title for the reason that such seizure is not only incompatible with international law but also constitutes a violation of General Assembly resolution 181 (II) of November 29 1947 which fixed and defined the geographical limits of the Jewish state, the Arab state and the City of Jerusalem. Juridically, therefore, Israel can have no possible claim to the territories which it seized in excess of the partition resolution, for it is inconceivable that it could acquire rights by violating a General Assembly resolution.

Israel has in turn invoked the partition resolution to justify its occupation of the territory envisaged for the Jewish state, and rejected and violated the same resolution by its seizure of territories earmarked for the Arab state.<sup>69</sup> In 1948 Count Bernadotte made it plain that Israel was not entitled to consider provisions of the partition resolution which are in its favour as effective and treat certain others of its provisions which are not in its favour as ineffective. In his reply dated July 6 1948 to the Israeli Government's letter of the preceding day wherein it objected to the Mediator's suggestions for a peaceful settlement of the Palestine Question on the ground of their 'deviations from the General Assembly resolution of November 29 1947',<sup>70</sup> Count Bernadotte stated as follows:

2. . . . You have not taken advantage of my invitation to offer counter-suggestions, unless I am to understand that your reference in Paragraphs 1 and 2 of your letter to the resolution of the General Assembly of November 29 1947 implies that you will be unwilling to consider any suggestions which do not correspond to the provisions of that resolution.

3. In paragraph 1 of your letter it is stated that my suggestions 'appear to ignore the resolution of the General Assembly of November 29 1947'. . . .

<sup>68</sup> The territories which Israel seized in excess of the partition resolution were described in Sections 2 and 3 (3) of Part I and are shown in Appendix VII.

<sup>69</sup> See Ben-Gurion, *Israel, Années de Lutte* (Flammarion, Paris, 1964), pp. 59 and 61.

<sup>70</sup> U.N. Document A/648, p. 9.

6. As regards paragraph 4 of your letter, I note that your Government no longer considers itself bound by the provisions for Economic Union set forth in the November 29 resolution for the reason that the Arab State envisaged by that resolution has not been established. In paragraphs 1 and 2, however, the same resolution is taken as your basic position. Whatever may be the precise legal significance and status of the November 29 resolution, it would seem quite clear to me that the situation is not of such a nature as to entitle either party to act on the assumption that such parts of the resolution as may be favourable to it may be regarded as effective, while those parts which may, by reason of changes in circumstances, be regarded as unfavourable are to be considered as ineffective.<sup>71</sup>

Israel may not blow hot and cold. It is elementary that Israel cannot claim title to the territory envisaged for the Jewish state under the General Assembly resolution and deny the title of the Palestinians to the territories envisaged for the Arab state under the same resolution. Such an attitude is tantamount to a denial by Israel of its birth certificate. In his Progress Report to the General Assembly of the United Nations, Count Bernadotte took the position, almost as a matter of course, that Israel is not entitled to retain the areas which it had occupied in excess of the partition resolution. He said in his Progress Report:

(C) The disposition of the territory of Palestine not included within the boundaries of the Jewish State should be left to the Governments of the Arab States in full consultation with the Arab inhabitants of Palestine, with the recommendation, however, that in view of the historical connexion and common interests of Transjordan and Palestine, there would be compelling reasons for merging the Arab territory of Palestine with the territory of Transjordan. . . .<sup>72</sup>

Count Bernadotte's view that Israel was not entitled to retain the areas which it seized in excess of the General Assembly's resolution was shared by the U.S. representatives at the third session of the General Assembly of the United Nations held at Paris in 1948. Dr. Philip C. Jessup, then U.S. representative, indicated the position of the United States as being that if Israel desired additions to the boundaries set forth

<sup>71</sup> Count Bernadotte's Progress Report to the General Assembly dated September 16 1948 (U.N. Document A/648) contains extracts only from the said letter. However, the full text of Count Bernadotte's letter to the Provisional Government of Israel dated July 6 1948 which contains the passages quoted above is set out in his diary published under the title *To Jerusalem* by Hodder and Stoughton, London, 1951, pp. 153-158.

<sup>72</sup> U.N. Document A/648, p. 18.

in the resolution of November 29 1947 'it would have to offer an appropriate exchange, acceptable to the Arabs, through negotiation',<sup>73</sup> Similarly, Mr. Rusk for the United States declared at the same session that 'any modifications in the boundaries fixed by the resolution of 29 November 1947 could only be made if acceptable to the state of Israel. That meant that the territory allocated to the State of Israel could not be reduced without its consent. If, on the other hand, Israel wished to enlarge that territory, it would have to offer an exchange through negotiation.'<sup>74</sup>

The U.S. Government maintained its view that Israel cannot keep territory seized in excess of the partition resolution when it appeared during the meetings of the Conciliation Commission for Palestine held in Lausanne in 1949 that Israel's obdurate attitude regarding territory and refugees was preventing any settlement on the basis of the Lausanne Protocol. On May 29 1949 the U.S. Government addressed through its Ambassador, Mr. James G. McDonald, a note to Israel which:

Expressed disappointment at the failure of Eytan (Israel's representative) at Lausanne to make any of the desired concessions on refugees and boundaries; interpreted Israel's attitude as dangerous to peace and as indicating disregard of the U.N. General Assembly resolutions of November 29 1947 (partition and frontiers), and December 11 1948 (refugees and internationalization of Jerusalem); reaffirmed insistence that territorial compensation should be made for territory taken in excess of November 29 resolution and that tangible refugee concessions should be made now as essential preliminary to any prospect for general settlement.<sup>75</sup>

During the debate in 1949 on Israel's application for admission to membership of the United Nations, Israel explained the discrepancy between the territory which it held at that time and the territory envisaged for the Jewish state by the resolution of November 29 1947 as follows:

All the areas occupied by Israel's forces at this time are so occupied with the agreement concluded with Arab States under the resolution of November 16.<sup>76</sup>

<sup>73</sup> Official Records of the 3rd Session of the General Assembly, Part I, 1948, First Committee, pp. 682 and 727.

<sup>74</sup> Official Records of the 3rd Session of the General Assembly, 1949, *supra*, p. 836.

<sup>75</sup> James G. McDonald, *My Mission to Israel* (Simon and Schuster, New York, 1951), pp. 181-182.

<sup>76</sup> Official Records of the 3rd Session of the General Assembly, 1949, Part II, p. 347.

The 'resolution of 16 November' to which reference is made in the aforementioned statement was resolution No. 62 of the Security Council dated November 16 1948. This resolution took note that 'the General Assembly is continuing its consideration of the future Government of Palestine in response to the request of the Security Council in its resolution 44 (1948) of April 1 1948' and called upon the parties involved in the conflict to seek agreement with a view to the immediate establishment of the armistice. The 'agreement' mentioned by Israel's representative as a basis for its occupation can, therefore, only refer to the Armistice Agreements which had then been concluded with Egypt, Lebanon and Jordan under a resolution of the Security Council which envisaged that 'the future Government of Palestine' was still under consideration by the United Nations. This can only mean that the whole question of Palestine was in suspension. Furthermore, Israel's occupation of Palestinian territory under the Armistice Agreements is not and cannot be a source of title. In fact, the Armistice Agreements specifically provided that the armistice lines are not to be construed as political or territorial boundaries and are delineated 'without prejudice to the ultimate settlement of the Palestine Question'.

In order to justify the seizure of various areas falling outside the boundaries of the proposed Jewish state, Israel has suggested that it did not limit itself to the territorial boundaries of the partition resolution because the Arabs themselves had rejected the partition plan. According to Israel, the Arab refusal to accept partition and the military intervention of the Arab states have rendered the partition resolution null and void. This, in its view, opened the way for Israel to grab as much territory as it could. Israel's argument is specious and, of course, devoid of any legal basis. The Arabs had a perfect legal right to oppose the dismemberment of their country and to defend the territorial integrity of their homeland. The Arab refusal to accept partition and the ensuing strife between Arabs and Jews could in no way confer upon Israel the right to seize any part of the territory of Palestine and much less to usurp the territories reserved by the United Nations for the original people of Palestine. The fact that the latter were aggrieved by the partition resolution and considered it to be null and void and not binding upon them cannot be invoked by the Jews as an excuse for aggravating the wrong and usurping the remainder of Palestine. The Arab-Israeli conflict of 1948 did not take away, diminish or affect the rights of the Palestine Arabs nor enlarge the

rights of the Jews. As regards the intervention of the Arab states, it was proclaimed in 1948 that the object of their intervention was to go to the help of the Palestinians who were the victims of Jewish terrorism and were threatened by the superior military force of the Jews. Lieutenant-General Burns has remarked that the Arabs outside Palestine had as much right to come to the assistance of Arabs in Palestine as Jews outside Palestine to come to the assistance of Jews within.<sup>77</sup> Israel's seizure in 1948 and 1949 of territories outside the geographical limits of the Jewish state as fixed by the partition resolution is a clear and obvious usurpation committed in violation of the General Assembly resolution. The United Nations did not consider that the Arab-Israeli conflict of 1948 affected in any way their resolutions on Palestine or that the results of the conflict enlarged the rights of the Jews in Palestine, for, as noted earlier, the General Assembly accepted Israel into the fold of the United Nations only after 'recalling its resolutions of November 29 1947 and December 11 1948 and taking note of the declarations and explanations made by the representative of the Government of Israel before the Ad Hoc Committee in respect of the implementation of the said resolutions'.<sup>78</sup> This took place on May 11 1949 long after the end of the 1948 conflict. Furthermore, as already mentioned in Section 2 of Part I, the Jews themselves have largely contributed to the defeat of the partition resolution by their seizure before the end of the mandate of the greater part of the territories reserved for the Palestine Arabs by such resolution. Hence, they cannot, in order to justify their seizure of territories in excess of the partition resolution, say that such resolution has lapsed as a result of the armed conflict of 1948.

In the light of the preceding considerations it is safe to say that Israel did not and could not gain title either to the territory which, as a result of an excess of competence and authority, the General Assembly designated as the area of the proposed Jewish state or to the territories which the General Assembly designated as the area of the proposed Arab state. The legal status of Israel in relation to the entirety of the territory which it occupied prior to June 5 1967 is identical with its status in relation to the territories which it seized since June 5 1967: it is the status of a belligerent occupier. And it is indifferent whether Israel is considered a

<sup>77</sup> E. L. M. Burns, *Between Arab and Israeli* (George G. Harrap & Co., London, 1962), p. 127.

<sup>78</sup> Resolution No. 273 (III) of May 11 1949. See Section 3 (2) of Part IV.



belligerent occupier or a conqueror. In neither case can it acquire sovereignty. 'Israel, alone among all the countries of the world, possesses not a single square inch of territory which she could assuredly proclaim to be her own in perpetuity.'<sup>79</sup> Israel does not possess any recognized frontiers but only armistice lines. Its relationship with its neighbours is still technically today a state of war suspended by the Armistice Agreements of 1949 and the cease-fire resolutions of the Security Council of June 1967. It is settled under international law that a belligerent occupier does not acquire sovereignty.<sup>80</sup> The legitimate sovereign, though prevented from exercising his authority, retains legal sovereignty. Professor Jèze has pointed out that the belligerent occupier acquires a 'sovereignty in fact but not in law':

Cette prise de possession, qui repose exclusivement sur la force, n'entraîne pas au profit du vainqueur l'acquisition du territoire occupé. . . . Supposons d'abord que l'Etat dont le territoire est envahi se refuse à traiter, et que le vainqueur maintienne son occupation. La domination de l'Etat victorieux sera une souveraineté de fait et non de droit. . . . Tant que des protestations se feront entendre, il y aura bien une domination de fait, mais non un état de droit.<sup>81</sup>

The basic attributes of sovereignty were set out in the French Constitution of September 3 1791 which declared: 'sovereignty is one, indivisible, inalienable and imprescriptible'. Title over Palestine lies in its original inhabitants, in whom sovereignty vested upon detachment of the country from Turkey. Their sovereignty over their ancestral land is 'one, indivisible, inalienable and imprescriptible' and extends to the whole territory of Palestine regardless of any partition, occupation, usurpation or lapse of time.

The people of Palestine have never given their consent to any transfer of title over their country nor have they recognized any sovereignty in the occupier. 'In present day international law', observes Professor Schwarzenberger, 'it is by itself not sufficient to transform wartime occupation into a transfer of sovereignty. Even in the relations between

<sup>79</sup> Hedley V. Cooke, *Israel, A Blessing and a Curse* (Stevens and Sons, London, 1960), p. 186.

<sup>80</sup> Oppenheim, *International Law* (Longmans, London, 1963), 7th ed., Vol. II, p. 618.

<sup>81</sup> Gaston Jèze, *Etude Théorique et Pratique sur l'Occupation* (Paris, 1896), pp. 44-46. See also Ian Brownlie, *Principles of Public International Law* (Oxford, 1966) who refers to the continued existence of legal personality under international law despite that the process of government in an area falls into the hands of another state, pp. 100-102.

belligerents, not to speak of third States, the title requires to be consolidated by positive acts of recognition or consent or, at least, by acquiescence of the former territorial sovereign.<sup>82</sup>

It might perhaps be argued that Israel is a state which is recognized by a large number of other states. Such recognition, however, is not general. Israel is not recognized by the Arab states nor by a large number of other states. More important still, Israel is not recognized by the original people of Palestine in whom sovereignty lies. The fact of recognition by other states cannot give to Israel what it lacks: legal sovereignty. Under international law recognition does not confer sovereignty. The recognition or non-recognition of a state is not determined at present under international law by considerations relating to its legitimacy or regularity of origin. Professor Philip C. Jessup has observed that the practice of basing recognition on constitutional legitimacy instead of on actual existence and control of the country has not as yet been widely enough accepted to be acknowledged as having the force of customary law.<sup>83</sup> Recognition by other states does not remove the vice with which an occupation is tainted:

La reconnaissance par les Puissances ne peut avoir au point de vue juridique aucune influence sur la validité de l'occupation. . . . La reconnaissance du fait accompli par les Puissances civilisées est impuissante à couvrir le vice qui entache la prise de possession.<sup>84</sup>

Nor does lapse of time make legitimate Israel's wrongful occupation of Palestine. Professor Giraud has observed that in contrast to private law, no prescription is envisaged by international law to regularize irregular situations.<sup>85</sup>

<sup>82</sup> G. Schwarzenberger, *International Law*, 3rd ed., p. 302.

<sup>83</sup> *AJIL* (1931), p. 721.

<sup>84</sup> Gaston Jèze, *Etude Théorique et Pratique sur l'Occupation* (Paris, 1896), p. 298.

<sup>85</sup> E. Giraud, *Le Droit International et la Politique*, Académie de Droit International, *Recueil des Cours*, 1963, Vol. III, p. 425.



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