

THE ROLE OF THE UNITED NATIONS VIS-À-VIS THE PALESTINE QUESTION

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I

A SHORT REVIEW OF THE MAIN PROBLEM

The present Middle East Crisis is part and parcel of the Palestine problem, which has defied all efforts for a solution for the past fifty years. This is because, in attempting to solve the problem, no adequate weight was given to the rule of law, which embodies the right of every people to self-determination.

A review of this question shows that from the very beginning the law of nations was disregarded. Its first defiance took place in 1897 when the leaders of the Zionist movement resolved at Basle, Switzerland, to establish a Jewish state in Palestine.¹ It was later defied in 1917 when Lord Balfour, British Secretary of State for Foreign Affairs, promulgated the Balfour Declaration,² promising to facilitate the establishment of a national home for the Jewish peoples on Arab land without reference to the will of the vast majority of the legitimate inhabitants. No matter how we look at this promise it came from one who was giving what he did not own.

I would like to emphasize in this connection that the phrase "a national home for the Jewish people" provoked much controversy.³ But, regardless of whether it was intended to mean creating a Jewish state or a "homeland," it conflicted with Arab rights. In 1937, twenty years after the Declaration was issued, the Palestine Royal Commission, after a thorough examination of the records bearing upon the question, came to the conclusion that

His Majesty's Government could not commit itself to the establishment of a Jewish State. It could only undertake to facilitate the growth of a Home. It would depend mainly on the zeal and enterprise of the Jews whether the Home would grow big enough to become a State.⁴

The Zionist leaders got the hint and planned for the usurpation of Palestine through their zeal, ability, and enterprise, reflected in an organized campaign of

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¹ See I PALESTINE: A STUDY OF JEWISH, ARAB, AND BRITISH POLICIES (Esco Foundation for Palestine, Inc.) 40-42 (1947); C. SYKES, CROSSROADS TO ISRAEL 10-11 (1965).

² The text of the declaration is officially quoted in PALESTINE ROYAL COMMISSION, REPORT, CMD. NO. 5479, at 22 (1937).

³ See references cited note 1 *supra*.

⁴ CMD. NO. 5479, *supra* note 2, at 24.

political action, fund-raising, and propaganda. This organized campaign ignored all Arab rights including the reservations embodied in the Balfour Declaration that:

[N]othing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine, or the rights and political status enjoyed by Jews in any other country.

The Arabs of Palestine own 94.6 per cent of Palestine, and it is obvious that any attempt to establish a state conflicts with existing Arab rights. The Zionists, therefore, turned to President Truman and other Americans to commit another injustice in defiance of the legitimate rights of the Arab people of Palestine.

Thus, again, international law was utterly ignored when the question of Palestine became an issue of domestic politics in the United States, and American governors, senators, congressmen, mayors, and every conceivable aspirant for public office, with a few notable exceptions, pledged the establishment of a Jewish state in Palestine.

It might be noted in this connection that President Wilson, in his address of 4 July 1918, laid down the following as one of the four great ends for which the associated peoples of the world were fighting:

The settlement of every question, whether of territory, of sovereignty, of economic arrangement, or of political relationship, upon the basis of the free acceptance of that settlement by the people immediately concerned, and not upon the basis of the material interest or advantage of any other nation or people which may desire a different settlement for the sake of its own exterior influence or mastery.⁵

It should be stressed that the Arab peoples were among the associated peoples who fought with the United States, as allies and friends, for this principle, and who were promised complete independence only to be betrayed later on by their very allies and friends.

What is more, international law was disregarded when duress and pressure took the place of law and equity during the United Nations debate of 1947 that led to the recommendation calling for the partition of Palestine against the will of its people in violation of their inherent right to self-determination. Indeed, international law was disregarded when the General Assembly in 1947 rejected a request of Sub-Committee II of its Ad Hoc Committee on the Palestinian Question to the effect that, before recommending any solution to the Palestine problem, the International Court of Justice should be requested to give an advisory opinion on certain legal questions connected with or arising from the problem, including questions concerning the competence of the United Nations to recommend or enforce any solution contrary to the wishes of the majority of the people of Palestine.⁶

Why has the United Nations side-stepped international law by refusing to submit

⁵ W. WILSON, *Four Factors of World Peace*, in *SELECTED ADDRESSES AND PUBLIC PAPERS OF WOODROW WILSON* 266, 268 (A.B. Hart ed. 1918).

⁶ 2 U.N. GAOR, Ad Hoc Comm. on the Palestine Question 203 (1947). See remarks by Sir Mohammed Zafrullah Khan, 2 U.N. GAOR 1373 (1947).

basic legal issues in the Palestine case to the International Court of Justice? Is it not because it was clear to all political forces at the United Nations that, like Lord Balfour, the United Nations could not grant sovereignty to a Jewish state since the United Nations itself does not possess the sovereignty in order to be able to dispose of it, and, therefore, usurpation through votes, force and politics should be the answer?

II

THE PRESENT CRISIS

I have so far spoken about the past. But it is the past which makes and conditions the present, and it is the present which molds the future. Let us now turn to the present crisis.

On 5 June, 1967 Israel, in a surprise attack, destroyed the Egyptian air force as well as that of Syria and Jordan. It subsequently occupied all of Sinai, all of the Gaza Strip, all of the West Bank of Jordan and a part of Syrian territory.

This Israeli attack is in most respects no different from the Sinai Campaign of 1956. The one factual difference is that Israel this time occupied both Jordanian and Syrian territories in addition to Sinai and the Gaza Strip. In 1956 only Sinai and Gaza were occupied.

But despite the gravity and the nature of the Israeli attack, a short comparison between the action of political forces in the United Nations vis-à-vis the 1956 invasion and the present one would show a different behaviour on the part of some of the big powers vis-à-vis this crisis. Thus, international law which was upheld in 1956 was trampled on in 1967.

On the Sinai invasion of 1956, firm and strict adherence to the rule of the Charter was championed by the overwhelming majority of members of the United Nations. The United States played a leading role in this matter. Former President Eisenhower said to the nation: "[A]s I review the march of world events in recent years, I am ever more deeply convinced that the processes of the United Nations represent the soundest hope for peace in the world."⁷ Neither Zionist pressure, in an American election year, nor any other consideration was able to prevail in substituting political expediency for accepted norms of international law.

The basic facts in the present crisis are the same—the invasion, the occupation, the designs, the tactics, the planning, and the election year. And both Israeli invasions were intended to bring about further expansion.

The 1956 Sinai Campaign was preceded by the Israeli attacks on Gaza in February 1955 which led to a United Nations resolution calling once more upon Israel to take all necessary measures to prevent the recurrence of such actions.⁸

The 1967 Israeli invasion of the three Arab territories was preceded by many

⁷ PUBLIC PAPERS OF THE PRESIDENTS OF THE UNITED STATES: DWIGHT D. EISENHOWER, 1956, at 1065.

⁸ S.C. Res. 106 (1955).

acts of provocation culminating in the Israeli invasion of Es Samu' in 1966 which led to a United Nations resolution of condemnation censuring Israel for "this large-scale military action."⁹

In both the 1956 and the 1967 cases the attempt was made by Israel to retain control of occupied areas. In 1956 the attempt failed. The outcome of the 1967 attempt is still pending before the United Nations.

There is a risk today threatening the very integrity of the United Nations. It may not be an exaggeration to state that the future of the United Nations and the rule of law would be at stake if the practice of 1947 is repeated and political expediency, in an American election year, is allowed to play a role. One wonders whether it would be in the interest of the United States to be part of such an attempt, or lend its support to it.

International law today is facing a real test. So is the United Nations which is the organization created to uphold the rule of law and safeguard the values enshrined in its Charter. Members of the world organization, scholars, and students of law know what brought about the end of the League of Nations. The memory of the Italian occupation of Ethiopia and the action of the King of Italy in declaring himself Emperor, as a result of this conquest, is still very vivid in the minds of these people. They are rightly disturbed about the future of the United Nations.

International law on the present Middle East Crisis is very clear. It is axiomatic that, by an illegal act, no legal result can be produced, no right acquired; no fruits for aggression. No reminder is needed of the "Stimson Doctrine" of 1932, nor of the position of the United States regarding the invasion of China by Japan in 1932. Equally well known is the position of the American states which, in 1936, declared the following as an accepted principle in the "American Community of Nations": (a) "Proscription of territorial conquest and that, in consequence, no acquisition made through violence shall be recognized."¹⁰ This is part of what is known as the Buenos Aires Declaration of 1936. Again in 1938 the American states adopted the Lima Declaration, in which they reiterated: "[T]he occupation or acquisition of territory or any other modification or territorial or boundary arrangement obtained through conquest by force or by non-pacific means shall not be valid or have legal effect."¹¹ The Charter of the Organization of American States¹² signed at Bogotá on 30 April, 1948 embodies in Article 17 thereof the following: "No territorial acquisitions or special advantages obtained either by force or by other means of coercion shall be recognized."

⁹ S.C. Res. 228 (1966).

¹⁰ Report of the Delegation of the United States of America to the Inter-American Conference for the Maintenance of Peace, Buenos Aires, 1936, pp. 227, 228, quoted in 5 M. WHITEMAN, *DIGEST OF INTERNATIONAL LAW* 880-81 (1965).

¹¹ Report of the Delegation of the United States of America to the Eighth International Conference of American States, Lima, 1938, pp. 132, 133, quoted in 5 M. WHITEMAN, *supra* note 10, at 881.

¹² 119 U.N.T.S. 3 [1948] 2 U.S.T. 2394; T.I.A.S. No. 2361.

In July 1967, while the Middle East situation was being debated in the General Assembly's Special Session, and before any action was taken, Israel proceeded nevertheless to take steps to annex the City of Jerusalem and face the United Nations with a *fait accompli*. The General Assembly met this challenge with a resolution No. 2253 (ES-V) on 4 July, 1967, adopted by 99 votes with abstentions unfortunately including that of the United States.¹³ This resolution in effect affirmed the above principles of international law:

The General Assembly,

Deeply concerned at the situation prevailing in Jerusalem as a result of the measures taken by Israel to change the status of the City,

1. *Considers* that these measures are invalid;
2. *Calls upon* Israel to rescind all measures already taken and to desist forthwith from taking any action which would alter the status of Jerusalem;
3. *Requests* the Secretary-General to report to the General Assembly and the Security Council on the situation and on the implementation of the present resolution not later than one week from its adoption.¹⁴

In the face of Israel's defiance of this United Nations resolution, the General Assembly adopted another resolution on 14 July, 1967, deploring the failure of Israel to implement the first resolution and reiterating its request. The resolution reads as follows:

The General Assembly,

Recalling its resolution 2253(ES-V) of 4 July 1967,

Having received the report submitted by the Secretary-General,

Taking note with the deepest regret and concern of the non-compliance by Israel with resolution 2253 (ES-V),

1. *Deplores* the failure of Israel to implement General Assembly resolution 2253 (ES-V);
2. *Reiterates* its call to Israel in that resolution to rescind all measures already taken and to desist forthwith from taking any action which would alter the status of Jerusalem;
3. *Requests* the Secretary-General to report to the Security Council and the General Assembly on the situation and on the implementation of the present resolution.¹⁵

The Israeli answer was, in effect, that Jerusalem is not negotiable.¹⁶

At a later stage, Jordan raised the question of Jerusalem before the Security Council, and after lengthy deliberations the Council adopted resolution 252 (1968) of 21 May, 1968. It deplored the failure of Israel to comply with the above General Assembly resolutions. It considered all Israeli measures which tend to change the legal status of Jerusalem invalid, and requested the Secretary-General to report on the implementation of the present resolution.

¹³ U.N. Doc. A/PV. 1548, at 102-05 (1967).

¹⁴ G.A. Res. 2253 (ES-V), U.N. GAOR 5th Emer. Spec. Sess., Supp. 1, at 4, U.N. Doc. A/6798 (1967).

¹⁵ *Id.*

¹⁶ Cf. Jones, *The Status of Jerusalem: Some National and International Aspects*, in this symposium, p. 169.

This Security Council resolution reads as follows:

- The Security Council,*
Recalling General Assembly resolutions 2253 (ES-V) and 2254 (ES-V) of 4 and 14 July 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 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.

III

THE JEWS AND THE WAILING WALL

An example of Zionist tactics and designs for expansion is afforded by consideration of the Wailing Wall Area. How did the Jewish claim to the area start? Did they have any title or any right of possession to the Wailing Wall and the adjacent area in the Arab City of Jerusalem?

The Government of Great Britain, the Administering Power, stated to Parliament in a White Paper, in November 1928, the following:

The Western or Wailing Wall formed part of the western exterior of the ancient Jewish Temple; as such, it is holy to the Jewish community, and their custom of praying there extends back to the Middle Ages and possibly further. The Wall is also part of the Haram-al-Sharif; as such, it is holy to Moslems. Moreover, it is legally the absolute property of the Moslem community, and the strip of pavement facing it is Waqf property, as is shown by documents preserved by the Guardian of the Waqf.¹⁷

It is thus clear that the Mandatory Power never doubted the exclusive legal ownership of the Wall and the adjacent pavement by the Moslem community.

Moreover, in 1930 an ad hoc international tribunal was appointed to determine the rights and the claims of both the Moslems and the Jews in connection with that area. This Tribunal consisted of three jurists—from Sweden, Switzerland and the

¹⁷ THE WESTERN OR WAILING WALL IN JERUSALEM: MEMORANDUM BY THE SECRETARY OF STATE FOR THE COLONIES, CMD. No. 3229, at 3 (1928).

Netherlands: Eliel Löfgren, formerly Swedish Minister for Foreign Affairs, member of the Upper Chamber of the Swedish Riksdag (to act as Chairman); Charles Barde, Vice-President of the Court of Justice at Geneva, President of the Austro-Roumanian Mixed Arbitration Tribunal, and C. J. van Kempen, formerly Governor of the East Coast of Sumatra, member of the States-General of the Netherlands.

The Tribunal held twenty-three meetings, during which it heard the arguments of both sides and engaged in hearing evidence. It heard fifty-two witnesses, twenty-one presented by the Jewish side, and thirty by the Moslem side and one British official called by the Tribunal.

In its verdict, the Tribunal emphasized that the "Jews do not claim any proprietorship to the Wall or to the Pavement in front of it."¹⁸ But the Tribunal nonetheless "considered it to be its duty to inquire into the question of legal ownership as a necessary basis for determining the legal position in the matter."¹⁹ As a result of thorough investigation, it reached the conclusion that

[T]he ownership of the Wall, as well as the possession of it and of those parts of its surroundings that are here in question, accrues to the Moslems. The Wall itself as being an integral part of the Haram-esh-Sherif area is Moslem property. From the inquiries conducted by the Commission [same Tribunal] partly in the Sharia Court and partly through the hearing of witnesses' evidence, it has emerged that the Pavement in front of the Wall, where the Jews perform their devotions, is also Moslem property.²⁰

The Tribunal went a step further and ascertained that "the area that is coincident with the said Pavement was constituted a Moslem Waqf by Afdal, the son of Saladin, in about the year 1193 A.D."²¹

It was also found that, in about 1320 A.D., what is known as the Magharba Quarter buildings were put up "to serve as lodgings for Moroccan pilgrims, those buildings were also made Waqf by a certain Abu Madian."²²

The Moslem inhabitants of Jerusalem have always objected to any Jewish acts calculated to change the status quo whereby to allege legal possession or ownership.

In 1911, the Guardian of the Abu Madian Waqf, *i.e.*, the Magharba Quarter, had complained that "the Jews, contrary to usage, had placed chairs on the pavement, and he requested that 'in order to avoid a future claim of ownership' the present state of affairs should be stopped."²³ The Administrative Council of Jerusalem thereupon decided that it was not permissible to place on the pavement any article that

¹⁸ Report of the Commission appointed by His Majesty's Government . . . with the approval of the Council of the League of Nations, to determine the rights and claims of Moslems and Jews in connection with the Western or Wailing Wall at Jerusalem, Dec. 1930, at 5-6 (London, 1931) (distributed in the United Nations as U.N. Docs. S/8427/Add. 1 and A/7057/Add. 1).

¹⁹ *Id.*

²⁰ *Id.* at 39-40.

²¹ *Id.* at 40.

²² *Id.*

²³ *Id.* at 45.

could be "considered as indications of ownership."²⁴ The Commission found that the evident motive for the petition and the decision was to prevent any future Jewish claim to ownership or possession.²⁵ It is this same Magharba Quarter which was recently bulldozed in utter disregard of law, equity, and indeed any moral or religious values and despite United Nations resolutions on this matter. It is clear now that the apparently innocent carrying of chairs, lamps and curtains by the Jewish worshippers was the first sinister step to deprive Arabs of their title. The present bulldozing of the whole Magharba Quarter proves that Arab apprehension was justified.

IV

OTHER ARAB TERRITORIES

What is more (and in pursuance of their theory that might gives right), the Israelis established Jewish settlements and expropriated lands in newly occupied Arab territories, with no legal basis for this other than force and conquest. But in international law, the present military supremacy cannot create new rights where none previously existed. The late Dag Hammarskjöld, as Secretary-General of the United Nations, said in a report concerning the 1956 crisis:

The United Nations cannot condone a change of the *status juris* resulting from military action contrary to the provisions of the Charter. The Organization must, therefore, maintain that the *status juris* existing prior to such military action be re-established by a withdrawal of troops, and by the relinquishment or nullification of rights asserted in territories covered by the military action and depending upon it.²⁶

It is evident that Israel cannot dictate its conditions for withdrawal. Military conquest cannot be the framework within which peace terms may be negotiated. How can Arabs be expected to accept any conditions for Israeli withdrawal from undisputed Arab territory? This has no justification in law or equity. It takes us to the law of the jungle. The Israeli request implies recognition of rights of conquest, and conquest conveys no right but imposes a duty. Yes, a duty on the conquered if no measures are taken by the world Organization to check this aggression, to liberate the homeland from the invaders. This Israeli behaviour should not be encouraged. Israel should receive no support in its dangerous and continued infringements on international law. The rule of law must be upheld, and, on this point, we entirely subscribe to the United States views, expressed on 16 November, 1956 by Mr. Herbert Hoover, the Under-Secretary of State, who reminded the Assembly that:

²⁴ Decision described *id.*

²⁵ *Id.* These findings about Moslem legal rights and property vis-à-vis the Western (Wailing) Wall and adajacent areas were incorporated under: "Palestine (Western or Wailing Wall) Order in Council 1931," which appeared in the *Official Gazette of the Government of Palestine* in an extraordinary gazette, Supplement No. 8/1931, 8 June, 1931. This Order came into force on 8th June, 1931.

²⁶ Report of the Secretary-General in pursuit of General Assembly Resolution 1123, 11 U.N. GAOR, Annexes, Agenda Item No. 66, at 47, U.N. Doc. A/3512 (1957).

The basic purpose of the Charter is peace with justice. The United States is convinced that the United Nations is the best instrument for achieving this end. Peace alone is not enough, for without justice, peace is illusory and temporary. On the other hand, without peace, justice would be submerged by the limitless injustices of war.²⁷

The same theory was reaffirmed by another United States Representative, Ambassador Lodge, when he said:

We do not believe that any Member is entitled to exact a price for its compliance with the elementary principle of this Organization that: all Members shall refrain from the use of force against the territorial integrity of any State, or in any other manner inconsistent with the purposes of the United Nations.²⁸

While debating the tripartite invasion before the General Assembly on 1 March, 1957, Mr. Lodge said:

[T]he United States has sought a solution which would be based on justice and which would take account of the legitimate interests of all the parties. The United States position was manifested from the very beginning in its draft resolution before the Security Council [S/3710], which called upon Israel to withdraw and which called for the withholding of assistance to Israel if it did not withdraw. The United States views in this respect have been steadfast. They were most recently and most authoritatively set forth by President Eisenhower in his public address of 20 February 1957. In this endeavour we have recognized that it is incompatible with the principles of the Charter and with the obligations of membership in the United Nations for any Member to seek political gains through the use of force or to use as a bargaining point a gain achieved by means of force.²⁹

Thus, if this Israeli theory is permitted to prevail, it will destroy the United Nations, the effectiveness of its Charter and the sanctity of international law. It certainly leads to more tension, more complications and more invitations to war in the future.

The Arab point of view, in the current crisis, is not different from the stand which the United States adopted in 1956.

Ambassador Goldberg, the distinguished United States representative on the Security Council and permanent United States representative to the United Nations, while arguing the case for the United States prior to the Israeli victory, said in May 1967 that restoration of the status quo is the first essential to peace.

I said that the short-range problem was restoration of the *status quo ante* in the Strait of Tiran—the status which has existed for eleven years—so that the Council, enjoying the breathing spell, the cooling-off period that the Secretary-General has suggested, could consider the underlying problems and arrive at a fair, just and honourable solution of these problems.³⁰

²⁷ 11 U.N. GAOR 91 (1956).

²⁸ *Id.* at 1052-53.

²⁹ *Id.* at 1277.

³⁰ U.N. Doc. S/PV. 1344, May 30, 1967, at 56.

Today, students of international law will certainly ponder the utter inconsistency between the United States policy announced in May and that announced in June of the same year, that is, after the Israeli victory, which said:

What the Near East needs today are new steps toward real peace, not just a cease-fire, which is what we have today; not just a fragile and perilous armistice, which is what we have had for eighteen years; not just withdrawal which is necessary but insufficient.³¹

Prior to the hostilities, Ambassador Goldberg stated to the Security Council that meaningful peace negotiations could not take place unless the Gulf of Aqaba was reopened to Israeli shipping thereby restoring the *status quo ante*. He added that it would not be possible to negotiate and explore the underlying causes of the Arab-Israeli dispute in the tense atmosphere created by the closing of the Gulf of Aqaba.³²

Following the Israeli victory the United States adopted an entirely contrary position. Ambassador Goldberg called the *status quo ante*, a "prescription for renewed hostilities."³³

This attitude, to a great extent, brought about the inaction of the Security Council, which encouraged Israel to refuse to withdraw. Israel now even insists on individual negotiations, *i.e.* under duress and coercion. This is what the Rt. Hon. Anthony Nutting called the doctrine of "divide and conquer" and these are what he called "conquerors' terms."³⁴

The Arab position is very clear. We maintain that a military solution or any forced solution is a "prescription for war." I need not remind the reader of the consequences of the Versailles Treaty, nor of the Munich Agreement, nor of what happened when Hitler became intoxicated by his victories. Where did his desire for expansion lead him? He occupied almost all of Europe. He reached Stalingrad and was on the outskirts of Moscow. His influence spread through North Africa and his troops reached the borders of Egypt. None of these territories accepted surrender as the solution or negotiations at gunpoint. His illegal occupation, conquest, and continued expansion did not improve his image. And where is Hitler now? Where is Nazism, and where is Fascism?

In our present case, then, should we accept the substitution of power for justice, might for right, or should justice and right and international law be our guiding principles?

³¹ U.N. Doc. S/PV. 1358, June 13, 1967, p. 51.

³² See U.N. Docs. S/PV. 1343, May 29, 1967, at 6-21, and S/PV. 1344, May 30, 1967, at 52-58.

³³ U.N. Doc. A/PV. 1527, June 30, 1967, at 16-17.

³⁴ Anthony Nutting, *The Tragedy of Palestine from the Balfour Declaration to Today*, address delivered at the annual conference of the American Council for Judaism, Nov. 2, 1967, at 6.