

# SOME LEGAL IMPLICATIONS OF THE 1947 PARTITION RESOLUTION AND THE 1949 ARMISTICE AGREEMENTS

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## I

### PLAN OF PARTITION WITH ECONOMIC UNION

The legal aspects of the 1947 partition resolution may today appear merely academic, outdated events of the past, fit for oblivion and without relevance to the future. The future, however, is determined by the accumulation of past events, and no reasonable concern for the future can possibly exclude a firm grasp of past events.

Discussing the legal aspects of any problem is imperative, if a correct assessment is to be accomplished; more so in the case of Palestine, since the legal considerations were consistently disregarded when the decisions were taken. Even the United Nations, which was created to save succeeding generations from the scourge of war and reaffirm faith in fundamental human rights so that justice could always be maintained, failed to consider the juridical aspects of the Palestine question.

The fate of the Palestinians was decided for them by the United Nations, to their detriment, without reference to the rule of law. No impartial observer could, in all fairness, deny that the United Nations was rushed into far-reaching actions affecting the lives of nearly two million Palestinians without having given careful and thorough examination to the legal implications involved. The legitimate aspirations and the high hopes of the whole Arab nation were consequently shattered when they saw with deep sorrow that the United Nations, the supposed conscience of mankind, had reached biased conclusions that brought grievous damage to the cause of justice and international morality.

In fact, throughout the twenty-year debate on Palestine in the United Nations, the international organization deviated time and again from the path which justice, law, and ethics would dictate. The law of the Charter was sacrificed for the convenience of political expediency.

A comprehensive treatment of the various historical developments is beyond the scope of this presentation. It is only proposed to examine how the United Nations proceeded to decide the fate of Palestine without due regard to the rule of law and the basic requirements of justice.

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Great Britain brought the question of Palestine before the United Nations by letter of April 2, 1947,<sup>1</sup> indicating the wish to relinquish the Mandate which had been conferred upon it by the League of Nations, and suggesting that the United Nations make recommendations for the future government of Palestine.

As stated in the Preamble of the Mandate for Palestine, the United Kingdom undertook "to exercise it on behalf of the League of Nations."<sup>2</sup> The Mandate must be considered in the light of the Covenant. One of the primary responsibilities of the Mandatory Power was to assist the peoples of the territory to achieve full self-government and independence at the earliest possible date. Article 22, paragraph 1 of the Covenant stipulated that "the well-being and development of such peoples form a sacred trust of civilization." Palestine also fell within the scope of Article 22, paragraph 4, of the Covenant, which stipulated that

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 power until such time as they are able to stand alone.

The provisions of that paragraph undoubtedly encompassed Palestine, and as a constitutional instrument, the Covenant's stipulations should supersede any previous rule which might contradict it. Likewise, any subsequent agreement regarding the communities formerly constituting the Turkish Empire was pre-conditioned by the legal status declared in the same paragraph 4, namely, that their existence as independent nations "can be provisionally recognized." Hence, it was originally envisioned that when the stage of rendering administrative advice and assistance had been concluded and the Mandate had come to an end, Palestine would be independent as of that date, since its provisional independence as a nation was legally acknowledged by the Covenant. The only limitation imposed by the League's Covenant upon the sovereignty and full independence of the people of Palestine was a temporary tutelage entrusted to a Mandatory Power. As already stated, this was foreseen as a means of rendering advice and assistance to the Palestinians "until such time as they are able to stand alone." Moreover, the Covenant clearly differentiated between the communities which formerly belonged to the Turkish Empire and other, less advanced, people. Regarding the latter, the Mandatory Power was held responsible for the complete administration of the territory and was not confined to administrative advice and assistance.<sup>3</sup> These distinct arrangements can be interpreted as further recognition by the Covenant of the special status of the former Turkish territories.

Accordingly, the only course of action which the Charter dictated in 1947 was

<sup>1</sup> Letter from the United Kingdom delegation, U.N. GAOR, 1st Spec. Sess., Plenary, Annex 1, at 183 (1947).

<sup>2</sup> Cmd. No. 1785 (1923), reprinted in Report of the U.N. Special Committee on Palestine [hereinafter cited as UNSCOP Report], 2 U.N. GAOR, Supp. 11, vol. II, at 18, U.N. Doc. A/292 (1947).

<sup>3</sup> Article 22, para. 5, Covenant of the League of Nations.

for the United Nations to ascertain the wishes of the lawful inhabitants of Palestine. International law and justice required that those Jews and Arabs who, by virtue of birth, length or status of residence, could satisfy the general requirements of "nationals," should determine the future government of Palestine. However, it is axiomatic that only legal residents have a legitimate right to participate in any plebiscite. Rules to this effect are embodied in the laws of all countries and are universally accepted.

In 1947, over two-thirds of the Palestinians were Arabs who would unreservedly have opted for independence. Any alteration of their lawful and inalienable right to self-determination would run counter to the principles on which the Charter was founded. Yet, when five Arab states communicated to the Secretary-General their request that the agenda of the General Assembly's special session include an item entitled "the termination of the Mandate over Palestine and the declaration of its independence," the General Committee declined to recommend its inclusion.<sup>4</sup> The argument raised by the Arab delegates, namely, that their item should be included on the agenda, since it sought not to limit debate but to assure that independence was taken into account as a possible solution, was disregarded.

The Arab states, from the outset, demanded the independence of Palestine as the only logical solution to the termination of the Mandate. They based their case on the terms of Mandate and Covenant, mentioned above, and on the fact that all other mandated areas covered by Article 22, paragraph 4 of the Covenant, obtained their independence when the respective Mandates came to an end. The rights of the minorities could have been properly safeguarded in accordance with international law and the United Nations Charter.

This analysis seems to be substantiated by the United Nations Charter, the prime purposes of which, as set forth in Article 1, include, *inter alia*, the development of friendly relations among nations "based on respect for the principle of equal rights and self-determination of peoples."

It might be argued that the Palestine Mandate was, however, conditioned by the international recognition accorded the Balfour Declaration.<sup>5</sup> This pronouncement could not have altered the legitimacy of Palestine's independence. The fate of the Palestinians as a whole, Arabs and Jews alike, was governed by the relevant provisions of the Covenant and, subsequently, the Charter. These fundamental documents, having a much higher legal value, took precedence over any provision incorporated in a mandate or trusteeship agreement.

The General Assembly, having refused to include independence for Palestine as a separate item on its agenda, established a Special Committee on Palestine (UNSCOP) to prepare a report for the second session of the Assembly. Logic

<sup>4</sup> U.N. GAOR, 1st Spec. Sess., General Comm. 81 (1947).

<sup>5</sup> For text, see Cmd. No. 5479, at 22 (1937); UNSCOP Report, *supra* note 2.

would have required UNSCOP to confine its investigation solely to the problem of Palestine. The fact that there were destitute and homeless Europeans of Jewish faith outside of Palestine should not have been a factor in deciding the future government in Palestine.

However, it was decided in the General Assembly resolution of May 15, 1947,<sup>6</sup> which established UNSCOP, to give the Committee broad powers. Paragraph 4 of that resolution permits it to conduct its investigations "wherever it may deem useful." The resolution also allowed it to receive and examine testimony not only from the Palestinians, both Arabs and Jews, and the governments concerned, but also "from such organizations and individuals as it may deem necessary." This was considered as giving UNSCOP the right to tackle questions beyond the boundaries of Palestine such as the problem of the displaced persons in Europe. This interpretation was reaffirmed by the broad terms of reference embodied in paragraph 2 of the same resolution which vested UNSCOP with "the widest powers to ascertain and record facts . . . *relevant* to the problem of Palestine."<sup>7</sup> One is inclined to believe that by so broadening the scope of the Special Committee's investigative authority, the United Nations prejudiced the fate of Palestinian Arabs. This course of action could hardly have contributed to the achievement of an impartial and just solution for Palestine.

At any rate, the UNSCOP report to the General Assembly did contain two recommendations relevant to the problem of displaced persons of Jewish faith in Europe. The first (recommendation VI) was adopted unanimously.<sup>8</sup> It requested the Assembly to undertake immediately the necessary measures whereby the problem of the displaced European Jews would be dealt with as a matter of extreme urgency. This was recommended as an important factor in allaying the fears of Arabs in Palestine as well as in other Arab states, so that their countries would not be marked as the sole place of settlement for the Jews of the world. Thus UNSCOP expressly stated that the problem of the displaced European Jews should not be solved at the expense of the Arabs. The second recommendation, approved by a substantial majority, stated that "in the appraisal of the Palestine question, it accepted as incontrovertible that any solution for Palestine can not be considered as a solution of the Jewish problem in general."<sup>9</sup>

It would seem abundantly clear that although the majority of UNSCOP did recommend partition and the creation of a Jewish state in Palestine, it was not suggested that the creation of this state would be the solution for displaced European Jews. Unlimited Jewish immigration was not espoused by the members of UNSCOP. In fact, the essence of recommendation VI entitled "Jewish displaced

<sup>6</sup> G.A. Res. 106, U.N. GAOR, 1st Spec. Sess., Resolutions 6, U.N. Doc. A/310 (1947).

<sup>7</sup> Emphasis added.

<sup>8</sup> UNSCOP Report, *supra* note 2, vol. I, at 44.

<sup>9</sup> Recommendation XII, *id.* at 46.

persons,"<sup>10</sup> was that this problem was an international responsibility emanating from the Second World War, and should have been dealt with separately. In other words, immigration to Palestine was clearly ruled out as the only solution to this humanitarian question. It can be inferred from the UNSCOP recommendation that the countries of the new world, whose vastness, and potentialities could easily accommodate hundreds of thousands, should be called upon to open their doors for the displaced Europeans. Even President Roosevelt had accepted this premise in dealing with Mr. Churchill during the Second World War.<sup>11</sup> Alleviating the sufferings of the Nazi victims in a noble humanitarian endeavour was not, however, explored seriously by the General Assembly, which forsook the lofty principles of the Charter and sought, instead, to foster the political objectives of Zionism.

In the committee stage of the second regular session of the General Assembly, the Palestine case was handled by the Ad Hoc Committee on the Palestinian Question, which based its work on the report of UNSCOP. Instead of considering adoption of the Report's unanimous recommendations, and then endeavoring to reconcile the divergent views, the Ad Hoc Committee chose a path which widened the cleavages between proponents of the majority and minority plans.

It seems anomalous that the procedure adopted for the consideration of the report was delegated to two subcommittees of the Ad Hoc Committee, one composed of pro-partition delegates and the other of Arab delegates plus Colombia and Pakistan, which were sympathetic to the Arab cause. It was obvious that those two subcommittees were so unbalanced as to be unable to achieve anything constructive. As was later made evident, the task of reconciling their conflicting recommendations was impossible. In such circumstances, it was not surprising that no serious attention was given to the legitimate aspirations of the Palestinians.

Subcommittee 2 attempted to draw the attention of the Assembly to the legal and constitutional issues involved. It sought to ascertain not only the competence of the General Assembly to deal with the problem, but equally its ability to recommend and enforce any specific solution.

Its report recommended the adoption of three proposals, of which one called for the submission of eight questions to the International Court of Justice for advisory opinions in accordance with Article 96 of the Charter and Chapter 4 of the Statute of the Court. The questions called for interpretations of commitments, obligations, and responsibilities growing out of the administration of Palestine under the League of Nations, and the competence of the United Nations to recommend partition or trusteeship for Palestine without obtaining the consent of the inhabitants. It was proposed specifically that the Court be asked to decide

Whether the United Nations, or any of its Member States, is competent to enforce or recommend the enforcement of any proposal concerning the constitution and

<sup>10</sup> UNSCOP Report, *supra* note 2, vol. I, at 44.

<sup>11</sup> R. STEVENS, *AMERICAN ZIONISM AND UNITED STATES FOREIGN POLICY 1942-1947*, at 71 (1962).

future government of Palestine, in particular, any plan of partition which is contrary to the wishes, or adopted without the consent of, the inhabitants of Palestine.<sup>12</sup>

The vote on these questions is of considerable significance and indicates that legal aspects were not clear in the minds of a substantial number of states. Seven of the questions were defeated by twenty-five countries voting against while eighteen voted in favor and eleven abstained. The eighth question, quoted above, was defeated by twenty-one votes to twenty, with thirteen abstentions.<sup>13</sup> Doubts which existed continued to persist and remained unanswered. It was obvious that it was extremely difficult for many delegations to pronounce any judgment without further study and reference to the total dimensions of the problem. Yet, the General Assembly rejected all attempts to postpone the voting on the partition resolution<sup>14</sup> and proceeded to vote on partition while member states were unjustifiably denied a reasonable period of time to study the relevant aspects in order to satisfy their conscience. Now, it is not even of academic value to speculate on the outcome of the Assembly's debate, had the legal issues been clarified.

However, no definite plan should have been endorsed by the United Nations without a comprehensive study of the manifold legal problems involved. True, it might have been somewhat difficult to scrutinize the conflicting claims under the confused and chaotic conditions which prevailed in Palestine in 1947. Nevertheless, this fact should not suggest that such scrutiny was too much to expect from the international community.

Partition—at least partition under the above-mentioned circumstances—was not the inevitable solution which the Assembly had no alternative but to recommend. What was and is unacceptable was the recommendation of partition of Palestine without clarifying the sound legal objections raised by the Arabs. What was and is inconceivable was the allocation of forty-two per cent of the total area of Palestine to two-thirds of the population, while the remaining one-third of the population was generously granted over fifty-six per cent.

Today, in retrospect, it might be proper to refrain from passing judgment on the merits of the concept of partition. Yet, it is safe to state that the complete dereliction by the United Nations of its duty toward the legitimate interests of Palestinians is directly responsible for the bloodshed that has distressed the area for over twenty years.

The General Assembly did recommend the partition of Palestine<sup>14a</sup> and that is a historic fact. However, the Assembly's powers according to Articles 10, 11, 12, and 14 of the Charter are only recommendatory and without binding force on Member States. Hence, the Arab states did not contravene their Charter obligations when

<sup>12</sup> 2 U.N. GAOR Ad Hoc Comm. on the Palestinian Question, Annex 25, at 300-01, U.N. Doc. A/AC.14/32 and Add. 1 (1947).

<sup>13</sup> Both votes are recorded, *id.* at 203.

<sup>14</sup> *E.g.*, *id.* at 201 (Colombia).

<sup>14a</sup> G.A. Res. 181, 2 U.N. GAOR, Resolutions 131, 132 (1947).

they, responding to the will of the Palestine Arab majority, rejected the Partition Plan.

After this somewhat lengthy, yet inexhaustive review of what may be called "the ancestry of partition," it is now appropriate to make special reference to two of the consequences of the partition resolution which have far-reaching legal implication.

#### A. The Legal Nature of the Partition Resolution

The first is that Israel considered the General Assembly resolution as the legal basis for its establishment. On May 14, 1948, the following declaration was issued in Tel Aviv:<sup>15</sup>

We, members of the People's Council, representatives of the Jewish Community of Eretz-Israel and of the Zionist Movement, are here assembled on the day of the termination of the British mandate over Eretz-Israel and, by virtue of our natural and historic right and on the strength of *the resolution of the United Nations General Assembly*, hereby declare the establishment of a Jewish State in Eretz-Israel, to be known as the State of Israel.

I shall refrain from discussing the alleged national and historic rights with roots which are thousands of years old and which are, to say the least, fraught with controversy and ambiguity. Nevertheless, even if established, it is doubtful that these factors could create a legal right which supersedes the right of the Palestinian Arabs. As to the partition resolution itself, it is to be reiterated and clearly understood that the General Assembly could do no more than recommend a solution and that its recommendation was not accepted by an Arab majority in Palestine. Hence, it could not possibly be considered as a valid legal foundation for the 1948 Zionist declaration of statehood. To this should be added the fundamental fact that the General Assembly resolution of November 29, 1947, recommended the partition of Palestine between an Arab and a Jewish state, with an economic union linking them. The Assembly took great care in drawing their respective boundaries. Although as mentioned above the distribution of land was detrimental to the legitimate rights of the overwhelming majority of the Palestinians, namely the Arabs, yet the boundaries allotted to the Jewish state constitutes a categorical limitation on Israel to claim legitimacy beyond them. Every addition to the 1947 boundaries has been accrued by the use of force contrary to the principles of the United Nations Charter and the rules of the contemporary law of nations.

#### B. Admission of Israel to the United Nations

The second consequence of Partition to be considered was the admission of Israel to the United Nations, which was based, *inter alia*, on the following factors as indicated in the relevant resolution of the General Assembly:<sup>16</sup>

<sup>15</sup> [1948] Laws of the State of Israel, vol. I, p. 3.

<sup>16</sup> G.A. Res. 273, 3 U.N. GAOR, pt. II, Resolutions 18, U.N. Doc. 900 (1949).

*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 29 November 1947 and 11 December 1948 and taking note of the declarations and explanations made by the representative of the Government of Israel before the *ad hoc* Political Committee in respect of the implementation of the said resolution . . . .

Here again, the General Assembly deviated from the law of the Charter by ascribing legal effects to its recommendation of partition.

Since the General Assembly's partition resolution was taken as a legal justification for both Israel's existence as a state and its subsequent admission to the United Nations, the least which might have been expected from Israel was to respect and fully abide by all United Nations resolutions and every obligation which emanates from them. Ironically, this has not been the case.

The General Assembly resolution of December 11, 1948,<sup>17</sup> referred to in the last quoted paragraph, which represents an endeavor by the United Nations to apply certain principles of justice to the Palestine question, also sheds light on the Assembly's decision to admit Israel.

One of the most thorny and outstanding questions was undoubtedly the refugee problem, which was provided for in paragraph 11 of that resolution.<sup>18</sup> The principle of repatriation or compensation is a just one and was worthy of immediate implementation. The Palestine Conciliation Commission, established by the same resolution, was, in fact, engaged in its arduous task of aiding the parties to reach agreement on this and other relevant questions at the time Israel was admitted to membership. Its failure with respect to the refugee question was due to the failure and refusal of Israel to comply with the Assembly's recommendation on the subject.

## II

### THE ARMISTICE AGREEMENTS

The hostilities which broke out upon the end of the Mandate in May 1948, led to the conclusion in 1949 of separate armistice agreements between Israel and Jordan,<sup>19</sup> Israel and Syria,<sup>20</sup> Israel and Egypt,<sup>21</sup> and Israel and Lebanon.<sup>22</sup> Apart from the United Nations Charter, the armistice agreements represent the only

<sup>17</sup> G.A. Res. 194 (III), 3 U.N. GAOR, pt. I, Resolutions 21, U.N. Doc. A/810 (1948).

<sup>18</sup> "Resolves that the refugees wishing to return to their homes and live at peace with their neighbors 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;

"Instructs the Conciliation Commission to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation . . . ."

<sup>19</sup> 42 U.N.T.S. 303, no. 656; 4 U.N. SCOR, Spec. Supp. 1, U.N. Doc. S/1302/Rev. 1 (1949).

<sup>20</sup> 42 U.N.T.S. 327, no. 657; 4 U.N. SCOR, Spec. Supp. 2, U.N. Doc. S/1353/Rev. 1 (1949).

<sup>21</sup> 42 U.N.T.S. 251, no. 654; 4 U.N. SCOR, Spec. Supp. 3, U.N. Doc. S/1264/Rev. 1 (1949).

<sup>22</sup> 42 U.N.T.S. 287, no. 655; 4 U.N. SCOR, Spec. Supp. 4, U.N. Doc. S/1296/Rev. 1 (1949).

legal instruments which regulate the relationship between Israel and the Arab states. This fact, per se, should add greater weight to the binding force of the agreements. The parties to the four armistice agreements were, according to the preambles, "responding to the Security Council resolution of 16 November 1948" which called upon them "as a further provisional measure under Article 40 of the Charter of the United Nations to seek agreement forthwith."<sup>23</sup> The preambles further state that the parties "decided to enter into negotiations under United Nations chairmanship" concerning the implementation of that resolution. It should be emphasized that the resolutions in question envisaged action under Chapter VII of the U.N. Charter. The reference to Chapter VII is of paramount importance for it implies that the resolution is a decision and not a recommendation; according to Article 25, United Nations members "agree to accept and carry out the decisions of the Security Council."

The armistice agreements contained several basic principles which were subsequently flouted by Israel with impunity. Reference may be made in this connection to Article 1, paragraph 1, of each agreement, which prescribes that "the injunction of the Security Council against resort to military force in the settlement of the Palestine question shall henceforth be scrupulously respected by both parties." This would be relevant when recalling Article 4, paragraph 1, of the Egyptian-Israeli agreement (Article 2, paragraph 1, of the three other agreements), stating that "the principle that no military or political advantage should be gained under the truce ordered by the Security Council is recognized."

Also relevant is Article I, paragraph 2, of each agreement, which stipulates that "No aggressive action by the armed forces—land, sea or air—of either party shall be undertaken . . . ."

However, hardly two weeks after the signing of the agreement with Egypt, on February 24, 1949, Israel launched its long series of violations. Its armed columns advanced on March 10 to the Gulf of Aqaba and occupied the vicinity of Bir Qattar. This illegal occupation was put before the Egyptian-Israeli Mixed Armistice Commission,<sup>24</sup> and the Special Committee<sup>25</sup> decided on March 20, 1950 that, "The advance of Israel forces on 10 March 1949 to the Gulf of Akaba area and the occupation of Bir Qattar is a violation of article IV, paragraphs 1 and 2 of the Egyptian-Israel General Armistice Agreement."<sup>26</sup>

The matter was further examined by the Security Council which took note of the statement of the Government of Israel that Israel armed forces will evacuate Bir Qattar pursuant to the 20 March 1950 decision of the Special Committee provided for in article X, paragraph 4, of the Egyptian-Israel General Armistice

<sup>23</sup> S.C. Res. 62 (1948). The Egyptian-Israel Agreement also refers in this connection to S.C. Res. 61 (1948).

<sup>24</sup> Provided for in Art. X(1) of the Egyptian-Israel Armistice Agreement.

<sup>25</sup> Provided for in Art. X(4) of the Egyptian-Israel Armistice Agreement.

<sup>26</sup> Cf. 5 U.N. SCOR, 522d meeting 2 (1950).

Agreement, and that the Israel armed forces will withdraw to positions authorized by the Armistice Agreement.<sup>27</sup>

The failure and refusal of Israel to withdraw was a flagrant violation of the letter and spirit of the Armistice Agreement.

Another example of Israel's disrespect of the agreements is the fate of the demilitarized zones provided for in the agreements with Egypt and Syria. Long before its 1967 attack on the Arab states, Israel annexed by force parts of the demilitarized zones.<sup>28</sup>

For some time now, Israel has declared that it is no longer bound by the armistice agreements. Mr. Ben Gurion stated in November 1956 after the Suez war that, "[T]he armistice with Egypt is dead, as are the armistice lines, and no wizards or magicians can resurrect these lines."<sup>29</sup>

Thus, Israel claimed for itself the right to repudiate unilaterally an international agreement concluded under the auspices of the Security Council in conformity with Chapter VII powers.

Is Israel's disavowal of these international obligations vindicated under the norms of international law?

A thorough examination of the historical circumstances preceding the conclusion of the armistice and the legal and political consequences derived from its provisions definitely leads to only one conclusion: the armistice agreements could not be revoked by any one party. However, even when there might be mutual consent of the parties concerned, a decision of the competent United Nations organ would be necessary in order to terminate their effects legally.

A careful perusal of the deliberations and resolutions of the Security Council which relate to the armistice agreements clearly reveals that the armistice is a direct ancillary of decisions which fall within the scope of Chapter VII. Arguments

<sup>27</sup> S.C. Res. 89 (1950).

<sup>28</sup> The El Auja demilitarized zone was created by Article VIII(1) of the Egyptian-Israel General Armistice Agreement, providing as follows:

"The area comprising the village of El Auja and vicinity, as defined in paragraph 2 of this Article, shall be demilitarized, and both Egyptian and Israeli armed forces shall be totally excluded therefrom. The Chairman of the Mixed Armistice Commission established in Article X of this Agreement and United Nations Observers attached to the Commission shall be responsible for ensuring the full implementation of this provision."

This area has been occupied by Israel since 21 September 1955. See Report of the Secretary General . . . pursuant to the Council's resolution of 4 April 1956 on the Palestine Question, 11 U.N. SCOR, Supp. April-June 1956, at 30, 46-47, U.N. Doc. S/3596 (1956).

Israel claimed sovereignty, disregarding the fact that Article VIII(5) of the agreement in question stated that:

"The movement of armed forces of either Party to this Agreement into any part of the area defined in paragraph 2 of this Article, for any purpose, or failure by either Party to respect or fulfil any of the other provisions of this Article, when confirmed by the United Nations representatives, shall constitute a flagrant violation of this Agreement."

The demilitarized zone established by the Israeli-Syrian Armistice Agreement had been encroached upon by Israel since 1951, as stated in S.C. Res. 93 (1951), which called for withdrawal of Israeli police units which continued to exercise general control over the demilitarized zone.

<sup>29</sup> N.Y. Times, Nov. 8, 1956, at 6, col. 8.

advanced to suggest that either party is at liberty to relinquish obligations which arise under the agreements cannot be legally substantiated. Equally all arguments which purport to suggest that the mutual consent of the parties, without the approval of the Security Council, suffices to terminate the armistice agreements, ought to be discarded as inaccurate. It is submitted that even by mutual consent, the parties concerned cannot terminate the agreements without the endorsement of the Council. This view is fully corroborated by the fact that the Security Council on 16 November 1948 adopted resolution 62,<sup>30</sup> which, in the preamble, reaffirmed that organ's previous resolutions concerning the establishment and implementation of the truce in Palestine, and recalled, particularly, its resolution of July 15, 1948,<sup>31</sup> which determined that the situation in Palestine constituted a threat to the peace within the meaning of Article 39 of the Charter of the United Nations. The operative part of the former resolution is of particular importance and reads as follows:

1. *Decides* that, in order to eliminate the threat to the peace in Palestine and to facilitate the transition from the present truce to permanent peace in Palestine, an armistice shall be established in all sectors of Palestine;

2. *Calls upon* the parties directly involved in the conflict in Palestine, as a further provisional measure under Article 40 of the Charter, to seek agreement forthwith, by negotiations conducted either directly or through the Acting Mediator, with a view to the immediate establishment of the armistice, including:

(a) The delineation of permanent armistice demarcation lines beyond which the armed forces of the respective parties shall not move; (b) Such withdrawal and reduction of their armed forces as will ensure the maintenance of the armistice during the transition to permanent peace in Palestine.

By considering the situation in Palestine as "a threat to the peace," the Council established for itself an exclusive right of complete supervision of the functioning and the eventual termination of the armistice agreements. These agreements identically stated that each was concluded pursuant to the Security Council resolution of November 16, 1948. In order for the agreements to be terminated, the Security Council, the organ vested with primary responsibility for the maintenance of international peace and security under the Charter, would have to determine that the situation in Palestine had ceased to be a threat to the peace. Unless the Security Council undertakes this determination, thus endorsing the action embarked upon by the parties with their mutual consent, the armistice agreements are legally valid and the parties are bound by their provisions.

The Secretary-General states, in his annual report for 1966-1967, that "there has been no indication either in the General Assembly or in the Security Council that the validity and applicability of the Armistice Agreements have been changed as a result of the recent hostilities or of the war of 1956."<sup>32</sup> He further states that "there

<sup>30</sup> S.C. Res. 62 (1948).

<sup>31</sup> S.C. Res. 54 (1948).

<sup>32</sup> Introduction to the Annual Report of the Secretary-General on the Work of the Organization 16 June 1966-15 June 1967, 22 U.N. GAOR Supp. 1A, para. 42, U.N. Doc. No. A/6701/Add. 1 (1967).

is no provision in them for unilateral termination of their application. This has been the United Nations position all along and will continue to be the position until a competent organ decides otherwise."<sup>33</sup>

I submit that there is no innovation in this view. Indeed it has not been challenged even by the Israelis. In 1951, Mr. Rosenne, then Israel's Legal Adviser, stated that the most difficult question is the meaning of the phrase, "that each agreement shall remain in force until a peaceful settlement between the parties is achieved."<sup>34</sup> He answers this point by stating that

any purported peaceful settlement by the parties would be subject to review by one of the organs of the United Nations. This is particularly appropriate when it is remembered that the Security Council's action which preceded the Armistice negotiations was taken pursuant to provisions contained in Chapter VII.

This I submit seems to be the correct interpretation of the Security Council's position vis-à-vis the termination of the armistice agreements.<sup>35</sup>

To sum up this point, recognition of the supervisory authority of the Security Council in this regard clearly indicates that the parties' mutual consent does not by itself terminate the armistice agreements. Obviously, unilateral repudiation is completely ruled out and could not possibly be sanctioned by the United Nations as stated in no ambiguous terms by the Secretary-General. Moreover, the Israelis themselves did not even allude to this possibility until 1956 when they invaded Egypt. Mr. Eban, then Israel's representative to the United Nations, stated in 1949 at the Security Council that "the effective position, therefore, is that these Agreements have no time limit and can be altered only by agreed amendments."<sup>36</sup>

### III

#### THE LAW OF TREATIES

Certain articles of the International Law Commission's draft on the Law of Treaties have a direct bearing on international agreements in general, and upon the present subject of discussion in particular.

Although the draft articles are still to be adopted, at the United Nations Conference on the Law of Treaties, which will open shortly in Vienna, and it might therefore be argued that the rules contained therein are not yet binding on any state, it may nevertheless be pointed out that they have been amply discussed in the Inter-

<sup>33</sup> *Id.*

<sup>34</sup> S. ROSENNE, ISRAEL'S ARMISTICE AGREEMENTS WITH THE ARAB STATES: A JURIDICAL INTERPRETATION 71 (1951).

<sup>35</sup> Although Mr. Rosenne stated later, *id.* at 72, "but it is believed that a more thorough analysis might show that this is not the case and that if the parties should decide themselves that a peaceful settlement is achieved between them, then the Security Council would have no alternative but formally to take note of the parties' decision and draw the proper consequences therefrom," it is submitted that he nevertheless impliedly acknowledged the supervisory authority of the Council towards the armistice agreements.

<sup>36</sup> 4 U.N. SCOR, 433d meeting 13 (1949).

national Law Commission, and in both the Sixth Committee and plenary sessions of the General Assembly. Therefore, they may be considered evidence of the contemporary norms of international law.

To put the matter in the right perspective, it should be recalled that having attacked and subsequently occupied Arab lands, Israel is now striving to consolidate its newest illegitimate *fait accompli*. It now declares its willingness to conclude new agreements with the Arab states using the occupied territories as a lever to extract concessions from the Arabs.

Would the rules of international law legitimize Israel's attempts? A glance at the law of treaties definitely reveals that what Israel seeks could not be sanctioned by the contemporary law of nations. This submission is in conformity with the International Law Commission's draft.<sup>37</sup> In Article 50, it is stipulated that "A treaty is void if it conflicts with a peremptory norm of general international law from which no derogation is permitted."<sup>38</sup> Hence, the Commission considered that treaties would be invalidated if they contradict a rule having the character of *ius cogens*. It is universally recognized that principles enshrined in the United Nations Charter such as sovereign equality and territorial integrity of states are pertinent examples of *ius cogens*.

Article 49 of the International Law Commission's draft stipulates that "A treaty is void, if its conclusion has been procured by the threat or use of force in violation of the principles of the Charter of the United Nations."<sup>39</sup> This article is self-explanatory and the provisions of the two articles would render any treaty concluded between the Arab states and Israel, resting on seizure of territories by force, void and not legally binding.

It is self-evident that the occupation by one state of territories belonging to other states is contrary to the principles of the United Nations and could only be considered as overt coercion upon the other parties which would invalidate any subsequent treaty.

#### CONCLUSION

In conclusion, it would seem imperative to require strict adherence from all parties to the armistice agreements as a step to establish stability in the Middle East. Justice is never accomplished unless full respect for international agreements is fully maintained. If peace is to be honestly strived for in the Middle East, the key measure undoubtedly lies in applying the rule of law and justice.

<sup>37</sup> Chapter 2 of the Report of the International Law Commission on the work of its eighteenth session, Geneva, 4 May-19 July 1966 (in Part II of the Reports of the Commission to the General Assembly, U.N. Doc. A/6309/Rev. 1) (1966), 2 Y.B. INT'L L. COMM'N 173, 177 (1966).

<sup>38</sup> *Id.* at 183.

<sup>39</sup> *Id.*