



# AN INTERNATIONAL LAW ANALYSIS OF THE MAJOR UNITED NATIONS RESOLUTIONS CONCERNING THE PALESTINE QUESTION

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Note

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## INTRODUCTION

The objective of this study is to provide a legal analysis of the major General Assembly and Security Council resolutions dealing with the Palestine Question. The relevant texts are examined in the context of international law. Consistent with the consulting arrangements with the United Nations, no direct use has been made of the formal negotiating history of the resolutions or of the informal unrecorded consultations which led to the adoption of particular wordings.

The provisions of the United Nations Charter are particularly important in this study. The stated purposes of the United Nations include the maintenance of international peace and security by means which are "in conformity with the principles of justice and international law". The purposes also include "respect for the principle of equal rights and self-determination of peoples" as well as the promotion of human rights on a non-discriminatory basis. The stated principles of the Charter include reference to the traditional concept of "sovereign equality" of States which is applied to the members of the United Nations. Another principle prohibits "the threat or use of force" for aggressive purposes. Other important principles require Member-States to carry out Charter obligations in good faith and to "give the United Nations every assistance in any action it takes in accordance with the present Charter..."

Sources other than the Charter itself are considered where they are relevant. For example, the League of Nations Covenant and the League's Palestine Mandate provide indispensable background for a consideration of the General Assembly Palestine Partition Resolution and they must be considered briefly in connection with the analysis of partition.

Because this is a juridical study, it is necessary to make basic distinctions concerning subjects which are often treated with imprecision. The terms "Jew" and "Jewish" are used to refer to adherents of a particular monotheistic religion of universal moral values. The terms "Zionism" and "Zionist" refer to a particular national movement, with its political programme of first a "national home" and then a national state located in Palestine.

Detailed consideration of the international humanitarian law, including the obligations of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 1949 in the Arab territories under Israeli occupation, is beyond the scope of this study although there have been important United Nations resolutions on this subject.

An analysis of the United Nations' juridical competence concerning a particular subject requires an examination of the accepted methods of making international law. These methods are sometimes referred to as sources of law which are available to decision-makers for the resolution of particular controversies.

## I. THE JURIDICAL COMPETENCE OF THE POLITICAL ORGANS OF THE UNITED NATIONS

### A. International Law Making

Article 38 of the Statute of the International Court of Justice merely purports to specify the sources of law which shall be applied by the Court. It is, nevertheless, widely accepted as describing the sources which are available generally in international law. The first paragraph of the article lists treaties, customs and general principles as the main sources. 1/ Custom is specified to be "international custom as evidence of a general practice accepted as law". It should be mentioned that this carefully worded provision does not require evidence of a universal practice. In the same way, the historic customary law making process demonstrates that the rules which are regarded as legally established are based upon the assent of a substantial majority of States. 2/ It has not been considered necessary that universal assent be obtained. General principles are specified as "the general principles of law recognized by civilized nations". The requirements here are not a combination of state practice and assent as in customary law, but rather a combination of state articulation or formulation along with assent. 3/

Customs are the more historic method of international law making, as compared with treaties. In 1625 when Grotius wrote his classic treatise, 4/ custom stood as the almost unique method of prescribing international law. While conventions are created by the explicit agreement of States, customary law is based upon implicit agreement. In traditional legal analysis it is usually stated that customary law grows out of state usages or practices. A classic formulation of this view appears in Lauterpacht's *Oppenheim* :

"As usages have a tendency to become custom, the question presents itself: at what stage does a usage turn into a custom? This question is one of fact, not of theory. All that theory can say is this : Wherever and as soon as a line of international conduct frequently adopted by States is considered legally obligatory or legally right, the rule which may be abstracted from such conduct is a rule of customary International Law". 5/

This quotation also indicates with accuracy that it is not necessary that the usage or practice be continued for a long time. The passage of time is only significant as to the existence of the practice which may also be evidenced in other ways. Although much international law has grown out of state practice, it is an error to think that this is the only way that such law can be created or prescribed. An example may be drawn from the international humanitarian law of armed conflict. Article 9 of the Brussels Declaration of 1874 6/ provided that irregular combatants who met certain specified criteria, not including governmental authorization but including adherence to the laws and customs of war, 7/ were to be accorded the privileged status of prisoners of war upon capture. The practice of the Prussian Government during the Franco-Prussian War in which it summarily executed all franc-tireurs who could not produce a specific authorization of combatant status from the French Government was thereby rejected in the provisions drafted by the community of States represented at Brussels. Although the Brussels Declaration was intended to become a multilateral convention, it remained unratified. However, many of its provisions, including article 9, were widely accepted as embodying accurate formulations of the applicable international law on the subject. The substantive provisions of article 9 were set forth in The Laws of War on Land published by the Institute of International Law at Oxford in 1880. 8/ The purpose of this manual was to reflect the existing law rather than to recommend innovations. 9/ This provides evidence that the Brussels Declaration was then regarded as embodying the applicable principles of law concerning irregular combatants. There was little or no evidence of

usage or practice applying article 9 during the decade and a half following 1874. Further evidence that these principles were accepted as law is provided by the fact that they were, without significant controversy, written into article 1 of the Annexed Regulations to Hague Convention II of 1899. <sup>10/</sup> The same provisions were written into article 1 of the Annexed Regulations to Hague Convention IV of 1907, <sup>11/</sup> and they also appear in the Geneva Prisoners of War Convention of 1949. <sup>12/</sup> Each of these conventions was widely ratified and became a multilateral treaty in force. It is important that article 9 of the unratified Brussels Declaration was designed to change the pre-existing Prussian State practice.

#### B. The United Nations as an International Law Maker

Although much international law is based upon pre-existing state practice, the community of States has the legal capacity and authority to formulate legal rules or principles through a multilateral conference, as at Brussels, or otherwise, even in the absence of pre-existing practice. The provisions of the United Nations Charter are designed to operate in the context of the contemporary international law decision-making process. <sup>13/</sup> Following the ratification and the implementation of the Charter, States retain their pre-existing law making competence. The Security Council (in subject matter restricted to international peace and security) and the General Assembly (concerning a wide range of subjects) are institutions which facilitate the making of international law. The fact that the General Assembly, which is representative of the community of States, is a political body like a national legislature does not diminish its role as a prescriber of international law. The widespread use and reliance upon resolutions of the General Assembly and Security Council which are intended to have law making effect provide convincing indication that the matters relied upon constitute, at the least, important evidence of the existence of particular rules or principles of international law. <sup>14/</sup>

In her treatise entitled The Development of International Law Through the Political Organs of the United Nations, <sup>15/</sup> Dr. Rosalyn Higgins provides persuasive evidence, under several subject matter headings, of the law making role of the General Assembly as a principal political organ of the United Nations. Dr. Higgins' analysis is much less innovative than it may appear to be at first glance, since traditional international law making by multilateral treaty, custom, or general principle, has always been a highly political process which reflects the views of a substantial majority of States at any given time. In summary of her thesis, she states: "With the development of international organizations, the votes and views of states have come to have legal significance as evidence of customary law. Moreover, the practice of states comprises their collective acts as well as the total of their individual acts; and the number of occasions on which states see fit to act collectively has been greatly increased by the activities of international organizations. Collective acts of states, repeated by and acquiesced in by sufficient numbers with sufficient frequency, eventually attain the status of law. The existence of the United Nations -- and especially its accelerated trend towards universality of membership since 1955 -- now provides a very clear, very concentrated, focal point for state practice", <sup>16/</sup>

Dr. Higgins' analysis does not rely upon the law making methods which are based upon the individual acts of States. She points out that customary law making may be accomplished through the collective acts of States as now manifested preeminently by General Assembly resolutions. Although the outcome of this law making method is usually characterized as "evidence of customary law" <sup>17/</sup> rather than customary law itself, the effects of the two are very similar since either provides a legal basis for subsequent action taken in reliance upon it.

Judge Tanaka's distinguished dissenting opinion in the South West Africa cases (1966) <sup>18/</sup> differed with the holding of the International Court of Justice (decided by the narrow margin of the casting vote of the President) because he determined that there was a legal norm of equality which was violated by the South African Government's apartheid system. For present purposes the Tanaka opinion is important for the penetrating insight it provides into the collective customary law making process:

"The appearance of organizations such as the League of Nations and the United Nations, with their agencies and affiliated institutions, replacing an important part of the traditional individualistic method of international negotiating by the method of 'parliamentary diplomacy'..., is bound to influence the mode of generation of customary international law. A State, instead of pronouncing its view to a few States directly concerned, has the opportunity, through the medium of an organization, to declare its position to all members of the organization and to know immediately their reaction on the same matter. In former days, practice, repetition and opinio juris sive necessitatis, which are the ingredients of customary law might be combined together in a very long and slow process extending over centuries. In the contemporary age of highly developed techniques of communication and information, the formation of a custom through the medium of international organization is greatly facilitated and accelerated; the establishment of such a custom would require no more than one generation or even far less than that". <sup>19/</sup>

While the rather similar quoted analyses of Dr. Higgins and Judge Tanaka do not expressly refer to "the general principles of law recognized by civilized nations", it should be apparent that their arguments, a fortiori, may also lead to the conclusion that some resolutions of the General Assembly prescribe such general principles. In summary, the Higgins and Tanaka analyses find the state practice requirement for customary law making in the collective acts of States (as in voting in favor of particular General Assembly resolutions) as well as in their individual acts.

The United Nations Charter is a multilateral treaty which creates the United Nations as a separate factual participant and legal subject of international law. <sup>20/</sup> In addition, the Charter specifies particular purposes and principles including doctrines of international law which are to be effectuated. For example, article 1 (1) provides that a main purpose of the United Nations is to maintain international peace and security, and this is to be done "by peaceful means, and in conformity with the principles of justice and international law". The basic Charter provisions must be interpreted and applied by the two main political organs of the United Nations. The Security Council must interpret the articles concerning international peace and security which confer authority upon it. In the same way, the General Assembly must interpret those articles which relate to its authority. <sup>21/</sup> These interpretations are legally meaningful.

The main articles which empower the Security Council to carry out its functions concerning international peace and security appear in section VI (articles 33-38) and section VII (articles 39-51). The interpretation and exercise of these basic powers must be carried out in a manner consistent with the organizational and procedural rules of law specified in section V (articles 23-32). For example, the Security Council may make decisions on both procedural and substantive matters, but decisions on substantive matters must be made by a specified affirmative vote which includes "the concurring votes of the permanent members". <sup>22/</sup> This provision has been interpreted by the Security Council to mean that the abstention or absence of a permanent member does not prevent the Council from making a decision on a substantive matter. <sup>23/</sup>

The broad powers of the General Assembly are set forth in articles 10, 11 and 14, each of which empowers the General Assembly to act through "recommendations".

Article 12 (1) provides that the Assembly may not act when the Council is exercising the functions assigned to it "in respect of any dispute or situation" relating to the maintenance of international peace and security. Article 14 provides a comprehensive authority for the General Assembly and states:

"Subject to the provisions of Article 12, the General Assembly may recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations, including situations resulting from a violation of the provisions of the present Charter setting forth the Purposes and Principles of the United Nations".

Article 10 is even more comprehensive in subject matter scope and provides:

"The General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in 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". Because of the considerations previously mentioned, "recommendations" of the General Assembly may in particular instances have

significant legal import. 24/ It is necessary to recognize that the General Assembly has two distinct functions. The first is as a major political organ of the United Nations with a separate legal identity. 25/ The second is as a collective meeting of the States of the world community which comprise its membership. In this second function the legal authority of the Assembly is derived directly from the Member States who have the same legal authority to develop and make international law in the General Assembly as they do outside of it. The advantageous feature of such activity in the Assembly is that it can be done more rapidly and efficiently than the same activity in a less institutionalized environment. The States of the world community since the early years of the United Nations have in fact used the General Assembly as an instrument to express consensus on major international legal issues by majorities substantially in excess of the two-thirds vote required by the Charter for important questions. 26/ It is a matter of legal theory as to the precise allocation of authority between the powers derived directly from the Charter and those derived directly from the Member States. The crucial point is that drawing on both sources of authority, the great majority of the Member States have adopted the practice of expressing consensus on legal issues through the General Assembly. This practice is particularly evident in General Assembly resolutions concerning Palestine, Israel and the Middle East. The General Assembly has employed its legal authority to provide authorization for two national States in Palestine, 27/ to recognize the right of return of the Palestine Arab refugees, 28/ to specify the national rights of the Palestinian people, 29/ and to prescribe the juridical status of Jerusalem. 30/ The Security Council, which is limited by the great power negative vote, has used its powers concerning international peace and security intermittently concerning the Middle East but has not thus far succeeded in bringing peace or security to the area. 31/

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## II. THE PALESTINE PARTITION RESOLUTION 181 (II)

A.

### The Background of the Partition Resolution

1. The General Assembly Special Session on Palestine It is not realistic to make a legal analysis of the Palestine Partition Resolution 32/ without awareness of the circumstances which brought about United Nations action. The British Government policy of promoting Zionist immigration, at least until the White Paper of 1939, 33/ had brought about the dangerous conflict situation in Palestine. This conflict arose from Palestinian resistance to the increasing determination of the European colonists under Zionist leadership to secure their overriding political objective of creating the "national home", which was later changed to a national State, for "the Jewish people". 34/ This was to be done without regard to the rights of the native Palestinians, including the Palestinian Jews who opposed Zionism from the beginning. 35/ After it was too late to control the effects of Zionist policies, notwithstanding the provisions of the League of Nations Mandate for Palestine designed to protect Palestinian rights, 36/ the British Government concluded that the Mandate was unworkable because of the irreconcilability of the native Palestinians' aspiration for self-determination with the political objectives of the Zionists. In 1946 and 1947 the violence between the European immigrants and the native Palestinians was increasing sharply. 37/ Great Britain indicated that it planned to terminate its role as the Mandatory Power and it requested a special meeting of the General Assembly. The First Special Session was convened in April 1947. 38/ The Zionist case was presented at the Session by the Jewish Agency, which is the other name for the World Zionist Organization. Article 4 of the League of Nations Mandate for Palestine provided that the Zionist Organization was recognized as a public body and was designated as the Jewish Agency to cooperate with the Mandatory Government. 39/ The Zionist arguments emphasized claimed "historic rights" as well as the Zionist interpretations of the Balfour Declaration and the Mandate for Palestine which were said to give primacy to the Zionist claims over the claims of the native Palestinians. The Zionists also claimed that "the Jewish problem" and the situation of Jewish refugees in Europe should be integrally linked to a resolution of the Palestine issue.

The Palestinian case was presented by the Arab Higher Committee of Palestine. It advanced the traditional view that the purpose of the League of Nations Mandate System, including the Palestine Mandate, was to bring self-determination and independence to the existing inhabitants of a country. It was pointed out that the Arab population numbered 1,200,000 while the Jewish population claimed by the Zionists was approximately 600,000. Of these, about 100,000 were native Palestinian Jews who were not supporters of Zionist nationalism. 40/ The Higher Committee expressed sympathy for the European Jewish refugees but pointed out that the responsibility to provide for them was an international one. The view was that Palestine had already received far more than its fair share of these refugees. In summary, these claims postulated the natural right of the Arab majority in Palestine to remain in undisputed possession of the country and to receive recognition by the General Assembly of their right to self-determination and independence.

The General Assembly, in resolution 106 (S-1) of 15 May 1947, 41/ created the United Nations Special Committee on Palestine (UNSCOP) to consist of the following eleven members: Australia, Canada, Czechoslovakia, Guatemala, India, Iran, Netherlands, Peru, Sweden, Uruguay and Yugoslavia. This resolution permitted UNSCOP to link the problem of the European Jewish refugees to a solution of the Palestine problem by providing that the Special Committee "shall conduct investigations in Palestine and wherever it may deem useful". 42/ Operative paragraph 6 of the resolution provided in full:

"The Special Committee shall prepare a report to the General Assembly and shall submit such proposals as it may consider appropriate for the solution of the problem of Palestine".

The fact that there was no reference in the resolution to independence for Palestine brought about protests by both the Arab Higher Committee and the Arab States.

2. The United Nations Special Committee on Palestine (UNSCOP)

Before making its recommendations, UNSCOP examined "the Jewish case" and "the Arab case". 43/ The Arab case as considered was principally that made by the Arab Higher Committee before the First Special Session of the General Assembly and summarized above. In paragraph 126 of its report, UNSCOP stated:

"The Jewish case, as herein considered, is mainly the case advanced by the Jewish Agency which, by the terms of the Mandate, has a special status with regard to Jewish interests in Palestine".

Even though UNSCOP thereby recognized that "the Jewish case" was actually the Zionist case, it thereafter referred to the Zionist case as "the Jewish case", 44/ and it gave scant attention to the views of distinguished anti-Zionist Jews such as Dr. Judah Magnes 45/ in Palestine and Rabbi Elmer Berger 46/ in the United States.

The UNSCOP Majority Report contained several inaccurate interpretations. For example, paragraph 146 states:

"Both the Balfour Declaration and the Mandate involved international commitments to the Jewish people as a whole. It was obvious that these commitments were not limited only to the Jewish population of Palestine, since at the time there were only some 80,000 Jews there".

Apparently the majority was somewhat aware of the untenable implications in the quoted paragraph since the ensuing paragraph

states:

"This would imply that all Jews in the world who wish to go to Palestine would have the right to do so. This view, however, would seem to be unrealistic in the sense that a country as small and poor as Palestine could never accommodate all the Jews in the world".

The inaccuracies of paragraph 146, however, are much more fundamental than the qualifications raised by UNSCOP. It is difficult to find anything in either the Balfour Declaration (which was incorporated virtually unchanged in the Palestine Mandate) or in other provisions of the Palestine Mandate which involved "international commitments to the Jewish people as a whole". The prefatory clause of the Balfour Declaration states that the British Government "views with favour the establishment in Palestine of a national home for the Jewish people". The only "rights" specified in the Balfour Declaration are those which appear in the two safeguards clauses. The first safeguard was designed to protect the rights of the Palestinians, and the second safeguard was designed to protect the rights of Jews living in any other country than Palestine. The safeguard clauses were inserted at the insistence of Edwin Montagu, the only Jewish member of the Cabinet at that time, and the Zionist efforts to have them removed failed. <sup>47/</sup> The contentions made by the Zionists that the Mandate specified rights for the claimed legal entity of "the Jewish people" are not tenable either in fact or in law because the great majority of this entity consisted of Jews who had nationality status in their home countries. To recognize them as members of "the Jewish people" would impose an additional functional nationality status upon them without their consent. This would be in derogation of their existing nationality status and rights as well as a violation of the second safeguard clause of the Balfour Declaration which protected Jewish "rights and political status" and thereby prevented their involuntary inclusion in the Zionist concept of "the Jewish people". <sup>48/</sup>

Another example of inaccuracy in the UNSCOP Majority Report is provided by paragraph 164 of the report:

"The Arab population, despite the strenuous efforts of Jews to acquire land in Palestine, at present remains in possession of approximately 85 per cent of the land. The provisions of the land transfer regulations of 1940, which gave effect to the 1939 White Paper policy, have severely restricted the Jewish efforts to acquire new land".

The error of fact here involves the implication that Jews as individuals were making efforts to acquire land in Palestine. There is no evidence to support this statement other than isolated actions by individual Jews who, in the normal course of events, acquired land for their personal or business purposes and without regard to the Zionist political objectives. <sup>49/</sup> In contrast to the quoted statement, the actual fact was that the Jewish National Fund, a principal Zionist institution, then, as now, was responsible for the acquisition of land for "the Jewish people" and land which was acquired by it was subjected to discriminatory restrictive covenants prohibiting the employment of Arabs on the land and indeed, any Arab connection with the land. <sup>50/</sup> The quoted UNSCOP statement reveals a surprising ignorance of Zionist nationalism and an inability to distinguish its acts from the acts of individual Jews.

UNSCOP unanimously recommended that the Palestine Mandate be terminated and that independence be granted "in Palestine" on a partition basis following a transitional period under United Nations responsibility. <sup>51/</sup> It is significant that in spite of the factual and legal misconceptions, UNSCOP's Recommendation VII entitled "Democratic Principles and Protection of Minorities" set forth basic requirements for human rights including full protection for the rights and interests of minorities, specifying "full equality of all citizens with regard to political, civil and religious matters". <sup>52/</sup> The Zionist objective of establishing an exclusivist Jewish State falls far short of this standard. Recommendation VI asked the General Assembly to immediately provide for an international arrangement to deal with "the problem of distressed European Jews" as "a matter of extreme urgency". <sup>53/</sup> It was added that this would lessen Immigration pressure on Palestine and create "a better climate" for solution of the Palestine question. <sup>54/</sup>

The principal majority recommendations, supported by seven of the eleven members of UNSCOP, involved a plan of partition with economic union. The majority also proposed that the City of Jerusalem be placed under international trusteeship. In addition, it was recommended by the majority (with the dissent of two members and with one recording no opinion) that:

"In the appraisal of the Palestine question it be accepted as incontrovertible that any solution for Palestine cannot be considered as a solution of the Jewish problem in general". <sup>55/</sup>

This reflects a clear rejection of the Zionist attempt to link the solution of "the Jewish problem" with the proposed State in Palestine. A minority of three (India, Iran and Yugoslavia) recommended independence for Palestine as a federal State comprising, in internal structure, an Arab State and a Jewish State. One of the reasons advanced was that federation would create a situation where it would be in the interest of Arabs and Jews to work together. Under the heading of "Justification for the federal-state solution", the minority stated in paragraph 4:

"The basic assumption underlying the views herein expressed is that the proposal of other members of the Committee for a union under artificial arrangements designed to achieve essential economic and social unity after first creating political and geographical disunity by partition, is impracticable, unworkable, and could not possibly provide for two reasonably viable states". <sup>56/</sup>

These adverse comments made upon the majority's Partition Plan appear to be prescient in view of the failure, thus far, of the basic features of that plan including its attempt to create two States in Palestine.

## B. The Plan of Partition with Economic Union

### 1. The Votes on the Plan

Upon convening in September 1947, the Second UN General Assembly constituted itself as the Ad Hoc Committee to Consider the Palestine Question, which was a committee of the whole Assembly. <sup>57/</sup> The Ad Hoc Committee voted on 25 November 1947 in favor of the substance of the UNSCOP majority proposal for the Partition of Palestine by 25 votes to 13 with 17 abstentions. Prominent among the supporters of partition were both the United States and the Soviet Union.

Because a two-thirds majority was not required in the Ad Hoc Committee, the proposal in favor of partition was recommended to the General Assembly. On 29 November 1947, the General Assembly voted in favor of partition, adopting resolution 181 (II) <sup>58/</sup> by 33 votes in favor to 13 against with 10 abstentions. Haiti, Liberia and the Philippines which had not previously supported partition voted in favor of it.

### 2. General Provisions

General Assembly resolution 181, adopted with the full authority of a two-thirds vote as required for important questions, constitutes a recommendation by the General Assembly to Great Britain, as the Mandatory Power, and to all other members of the United Nations for the adoption and implementation of the Plan of Partition with Economic Union for Palestine. The Partition Resolution provided that "the Mandate for Palestine shall terminate as soon as possible but in any case not later than 1 August 1948". <sup>59/</sup> It also provided that the armed forces of the Mandatory Power should be withdrawn from Palestine as soon as possible but in no event later than 1 August 1948. Two independent States, which were not specifically designated by name but were referred to as "the Jewish State" and "the Arab State", and the special International Régime for the City of Jerusalem should come into existence two months after the evacuation of the armed forces of the Mandatory Power but in no event later than 1 October 1948.

Among the steps preparatory to independence which were prescribed, a Commission on Palestine was to be established consisting of five Member States to be elected by the General Assembly. The administration of Palestine should be progressively turned over to the Commission as the Mandatory Power withdrew its armed forces. The Mandatory Power was to cooperate with the Commission as the latter took over and administered areas which had been evacuated by the Mandatory Power. Upon its arrival in Palestine, the Commission should take measures to establish the frontiers of the "Arab" and "Jewish" States and the City of Jerusalem in accordance

with the geographic boundaries spelled out in the Partition Plan except that the specified boundaries should be modified in such a way that, as a general rule, villages should not be divided by state boundaries. The Resolution provided that the Commission, after consultation with "democratic parties and other public organizations", should select and establish in each State a Provisional Council of Government. The activities of these councils should be carried out under the general direction of the Commission. During the transition period the Provisional Council should have authority in the areas under their control while acting under the over-all authority of the Commission. The Council in each State should progressively receive full governmental authority and it should provide for the holding of elections "which shall be conducted on democratic lines" with Arabs and Jews entitled to vote in the State where they would become citizens. Other provisions of the Partition Plan specified freedom of transit, a customs union, a joint currency system, and other similar measures to bring about the economic union of Palestine. The provisions to draw the boundaries of the two States were extremely complex. In over-simple summary, the territory of Palestine was divided into eight parts with three each allocated to the Jewish State and to the Arab State, while the seventh, Jaffa, was to form an Arab enclave in the Jewish State. The eighth part was to be the City of Jerusalem, established as a corpus separatum under a special international régime, which was to be administered by the UN Trusteeship Council for an initial period of ten years. There was not, however, compliance with the provisions of the Partition Resolution. The territorial boundaries were determined de facto by the outcome of the conflict situation in Palestine rather than by the provisions of the Partition Resolution. One of the provisions of the Resolution which was shown to be impracticable was that which stated that the Provisional Council in each State should recruit an armed militia but that the ultimate control of the militia should remain in the Palestine Commission through the transition period. <sup>60/</sup> The native Palestinians had had no significant military force since the British Army had decisively put down the Palestinian rebellion during 1936-1939.

In striking contrast, the Jewish Agency/Zionist Organization had long had effective regular military forces in the Hagana and the Palmach. <sup>61/</sup> In addition, although there were apparent disagreements on tactics, the Zionist terrorist organizations including the Irgun and the Stern Gang worked effectively with the Jewish Agency in achieving Zionist political and territorial objectives by military means. <sup>62/</sup> The Palestine Commission was unable under these conditions to exert effective control.

### 3. Human Rights Provisions

Among the most important human rights provisions of the Partition Plan is Section 10 (d) of Part I B which states:

"The Constituent Assembly of each State shall draft a democratic constitution for its State and choose a provisional government to succeed the Provisional Council of Government appointed by the Commission. The constitutions of the States shall embody chapters 1 and 2 of the Declaration provided for in section C below and include inter alia provisions for:...

"(d) 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, including freedom of religion, language, speech and publication, education, assembly and association".

Part I C, entitled "Declaration", contains chapters 1 and 2 referred to above as well as the following two introductory paragraphs:

"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:

"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 1, entitled "Holy Places, religious buildings and sites", makes detailed provisions for protection of the Holy Places and for the preservation of access to and rights concerning them. Chapter 2, entitled "Religious and minority rights", has the following provisions in its first three paragraphs:

"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".

The Partition Resolution contains analogous human rights provisions for the inhabitants of the City of Jerusalem encompassing "the enjoyment of human rights and fundamental freedoms including freedom of conscience, religion and worship..." <sup>63/</sup> It was expressly provided that "(no) discrimination of any kind shall be made between the inhabitants [of Jerusalem] on the grounds of race, religion, language or sex". <sup>64/</sup> Detailed provisions were also made for protection of the holy places including existing rights concerning them. <sup>65/</sup>

The human rights provisions of the Partition Resolution qualify the authority to establish each of the two States by providing a reciprocal system of in which the exercise of the right to create a State is conditioned upon the obligation to implement human rights. The provisions for human rights in Part I B Section 10 (b) are explicit and there cannot be any rational interpretation of the Partition Resolution which circumvents them. These provisions of the Partition Resolution are not surprising in view of the human rights provisions of the United Nations Charter. In addition to the basic provisions of articles 55 and 56, article 1 (3) specifies as one of the major purposes of the United Nations, "promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion".

The legal significance of the human rights provisions is that they do not concede the Zionist claims to establish an exclusivist State. The Declaration of Establishment of the State of Israel of 14 May 1948 contains wording which is addressed to the maintenance of human rights. It provides that the State of Israel :

"... will ensure the complete equality of social and political rights to all its inhabitants irrespective of religion, race or sex; it will guarantee freedom of religion, conscience, language, education and culture". <sup>66/</sup>

The test of compliance with the human rights provisions of the Partition Resolution is not, however, merely a verbal one. The test, is whether or not the State which seeks to justify its legal authority under the Partition Resolution complies with the human rights provisions in fact. The State of Israel has no constitution as required by the Resolution. <sup>67/</sup> It has made no attempt to enact and enforce non-discriminatory human rights provisions. Its "basic laws" are a group of statutes of particular Zionist importance which provide for the fundamental discrimination. <sup>68/</sup> Among these "basic laws" of the State of Israel which are in violation of the Palestine Partition Resolution are the Law of Return <sup>69/</sup> and the Nationality Law <sup>70/</sup> under which a member of "the Jewish people" from anywhere in the world is entitled as a claimed legal right to come to the State of Israel and acquire citizenship. Under the same municipal laws a Palestinian Arab native is not entitled to return to his homeland. <sup>71/</sup> This type of discrimination, and other analogous ones, are unequivocally prohibited under the human rights provisions of the Resolution. <sup>72/</sup>

If a Palestinian Arab State is established pursuant to the Partition Resolution and subsequent resolutions of the General Assembly, the same human rights provisions will constitute equally binding obligations upon it.

### C. The Juridical Status of the Partition Resolution

#### 1. Claims of Invalidity

There are a number of claims that the Partition Resolution is in violation of law. One such claim is that article 22 of the League of Nations Covenant was a decolonization provision which was conditioned only by a temporary period of Mandate status as a preparation for independence. This is particularly true of Palestine, it is claimed, because Palestine was provisionally recognized as independent along with other parts of the former Turkish Empire by the Covenant. <sup>73/</sup>

There is a single claim which underlies several of the charges of violation of particular articles of the Palestine Mandate. It is that the

Palestine Mandate was in effect when the General Assembly acted in November 1947 and that there was no authority to deprive the native

Palestinians of rights and protections which were secured to them at the time by the Mandate. 74/

Article 5 of the Mandate is one of several articles that placed obligations upon the Mandatory Power which made it a trustee for the Palestinians. It is contended that the provision against ceding Palestinian territory to "the control of the Government of any foreign Power" was violated by the General Assembly when it ceded the territory allocated to "the Jewish State" to the Jewish Agency/Zionist Organization. The view is that the Jewish Agency may have been a domestic power while it complied with the limitations placed upon it by article 4 of the Mandate which specified that it be "subject always to the control of the Mandatory Administration". However, at least from the time of the Anglo-American Committee of Inquiry of 1946 when it was characterized as a "shadow Government" which "has ceased to cooperate with the Mandatory] Administration... in the suppression of terrorism", 75/ the Jewish Agency was a foreign power and the allocation of control of territory to it as the de facto government of "the Jewish State" in the Partition Resolution was a clear violation of article 5.

Article 6 of the Mandate required the Mandatory Administration to "facilitate Jewish immigration" providing "that the rights and position of other sections of the population are not prejudiced". There are three subsidiary claims involved. The first is that the immigration which took place was not a Jewish immigration, but that it was a politically motivated Zionist immigration. The second claim is that it was not an "immigration" at all as the term is commonly understood in both its factual and its legal aspects. It was rather an invasion by Zionist masses which subverted the Palestinian community under the guise of immigration. The third claim is that, whether it should be termed an immigration or an invasion, it resulted in flagrant violation of "the rights and position of other sections of the population" including depriving them of their homes and their livelihood. The basic charge of illegality here is that the General Assembly compounded the illegalities of 'the Mandatory in this respect by acting upon and giving effect to the Zionist "immigration" which was carried out in violation of the Mandate provisions.

Article 1 of the United Nations Charter, dealing with the Purposes and Principles of the United Nations, sets forth as the second of these the development of "friendly relations among nations based upon respect for the principle of equal rights and self-determination of peoples". Article 73 concerning non-self-governing territories provides that members of the UN which assume trusteeship responsibilities accept "a sacred trust" and are obligated "to develop self-government to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions". The claim is that, even though these Charter provisions do not explicitly apply to the Palestine Mandate, they are nevertheless a fortiori applicable. It would, so the argument goes, be totally beyond the powers of the General Assembly to deal with a League Mandate in disregard of the Charter principle of self-determination which binds the United Nations including, of course, the General Assembly. 76/ The Partition Resolution, it is claimed, as a partition of the country against the will of the overwhelming majority of the native population, was a flagrant violation of the principle of self-determination and therefore illegal.

2. Claims of Validity

Article 2 (7) of the Charter prohibits the United Nations from intervening "in matters which are essentially within the domestic jurisdiction of any state". Palestine, however, had been regarded as a matter of international concern for some time prior to 1947. This is demonstrated by article 22 (4) of the League Covenant as well as by the Palestine Mandate. In 1947 Palestine, although under a Mandate, was not a State. Consequently, there was no possibility of claiming Palestinian domestic jurisdiction as a bar to action by the General Assembly. In addition, the presence of a large number of recently arrived European immigrants tended to make Palestine a continuing concern to the international community.

There can be no doubt but that the self-determination issue was a central one in the Palestine question. Self-determination is usually conceived as the right of the majority within an established political unit to determine its own future. There was strong evidence that Palestine was an established self-determination unit because of the provisions of the League Covenant 77/ and of the Palestine Mandate. 78/ The Palestinians and the Zionists in a sense were agreed upon what might be characterized broadly as self-determination for Palestine. The Palestinians' objective was self-determination for all the inhabitants of Palestine in a unitary State, whereas the Zionists' objective was self-determination for the European immigrant minority without regard to the rights of the majority population. Both the Palestinians and the Zionists agreed upon the entire area of Palestine as the appropriate unit, but with the central difference that each group wanted it for very different purposes. The existence of the self-determination issue made the Palestine question a particularly appropriate one for action by the General Assembly. From a practical standpoint there was no alternative forum which could have dealt with the issue so authoritatively.

In 1947 the Zionist terror 79/ along with the Palestinian counter-terror 80/ were creating a situation in which the most basic human rights were being denied including the right to life itself. This coercion situation made it essential for the United Nations to take immediate steps to protect human rights and it attempted to do so through the detailed human rights provisions of the Partition Resolution. The Charter treats the achievement of human rights as a basic principle and this provided additional authority for the General Assembly to act.

It should be recalled that Great Britain as the Mandatory Power addressed its request for United Nations assumption of responsibility concerning the future government of Palestine to the General Assembly. The General Assembly has comprehensive legal authority over the International Trusteeship system as provided in Chapter XII of the Charter. It also has supervisory authority in law over League of Nations Mandates as the successor to the Assembly of the League of Nations, as the International Court of Justice stated with particular reference to the South-West Africa Mandated Territory in the 1950 Advisory Opinion on the subject:

"The Court has arrived at the conclusion that the General Assembly of the United Nations is legally qualified to exercise the supervisory functions previously exercised by the League of Nations with regard to the administration of the Territory, and that the Union of South Africa is under an obligation to submit to supervision and control of the General Assembly and to render annual reports to it". 81/

Article 80 (1) of the UN Charter provides that, with the exception of provisions written into trusteeship agreements:

... nothing in this Chapter shall be construed in or of itself to alter in any manner the rights whatsoever of any states or any peoples or the terms of existing international instruments to which Members of the United Nations may respectively be parties". The comprehensive wording, "the rights whatsoever of any states or of any peoples", encompasses the rights which the native Palestinians had under the provisions of the Mandate for Palestine including the Balfour Declaration first safeguard clause. Upon the termination of the Palestine Mandate, the Partition Resolution constituted an undertaking to preserve human rights for all Palestinians on a non-discriminatory basis. The human rights provisions of the Partition Resolutions continue to bind the State of Israel because it does not have the legal authority to exercise rights under that resolution without complying with the correlative obligations.

3. The continuing Validity of the Partition Resolution

The adoption of the Partition Resolution by the two-thirds vote required for important questions gave it a high degree of legal authority. The representative of the Jewish Agency, Mr. Shertok (later the foreign minister and the prime minister of the Government of Israel), referred to its "binding force" on 27 April 1948:

"With regard to the status of Assembly resolutions in international law, it was admitted that any which touched the national

sovereignty of the Members of the United Nations were mere recommendations and not binding. However, the Palestine resolution was essentially different for it concerned the future of a territory subject to an international trust. Only the United Nations as a whole was competent to determine the future of the territory, and its decision, therefore, had a binding force. <sup>82/</sup> The State of Israel has placed heavy reliance upon the Partition Resolution as providing legal authority. <sup>83/</sup> Its Declaration of the Establishment of the State of Israel, after referring to General Assembly resolution 181 as "a resolution calling for the establishment of a Jewish State in Eretz-Israel", continues: "This resolution by the United Nations of the right of the Jewish people to establish their State is irrevocable". <sup>84/</sup> Another paragraph of the Declaration provides that the State is established "By virtue of our Natural and Historic Right and on the Strength of the Resolution of the United Nations General Assembly". <sup>85/</sup> Although the Preamble to the Palestine Mandate refers to "the historical connection of the Jewish people with Palestine", <sup>86/</sup> the negotiating history of this wording reveals that the Zionist claim of legal right on an historic basis was rejected. <sup>87/</sup> Therefore, it appears that the Partition Resolution is the preeminent juridical basis for the State of Israel.

The Arab States not only voted against partition, but they initially took the position that it was invalid. It is, therefore, significant that they have subsequently relied upon it in presenting legal arguments on behalf of the Palestinians. The Arab States are now not only supporting the basic principles of the Partition Resolution, but subsequent General Assembly resolutions which are consistent with those principles as well. <sup>88/</sup> The Arab States were deeply disturbed by what they initially regarded as the violation of the right of self-determination by the Partition Resolution. The self-determination issue may have been resolved in an unusual manner, but it is not possible to conclude as a matter of law that the particular method of self-determination in two States was invalid *per se*. The Partition Resolution continues to provide legal authority, combined with restrictions upon that authority, for each of two States in Palestine. It is important to recognize that validity in law is not dependent upon subsequent effectuation. Even though there has been little effectuation of many of the specific provisions of the Partition Resolution, it is not possible to say that this demonstrates its invalidity. The subsequent resolutions of the General Assembly recognizing the right of return of individual Palestinians, as well as those recognizing the Palestinians as a people with national rights, are consistent with the basic conception of partition and two States in Palestine. The subsequent resolutions of the General Assembly are also consistent with the continued existence of the State of Israel, as one of the States authorized in the Partition Resolution, provided that it complies with the obligations which are conjoined with the authorization to establish the State. <sup>89/</sup> The actions of the General Assembly concerning Palestine have been taken, it should be emphasized, with the affirmative participation of a substantial majority of the States of the world community which comprise the Assembly's membership and thereby constitute a worldwide consensus of support of the continuing validity of the basic principles of the Partition Resolution.

### III. THE RIGHT OF RETURN

#### A. The Background of the Right of Return in Practice and Law

For most individuals the actual practice of returning to one's home or country is so commonplace a part of everyday living that the right of return as a legal concept is given little attention. The great majority of people in the world are able to exercise the customary right of return based upon state practice. <sup>90/</sup> The Palestinians, however, are in an unusual situation because their right of return has been systematically denied to them ever since the events of 1947 and 1948. <sup>91/</sup>

Historically, the right of return was so universally accepted and practiced that it was not deemed necessary to prescribe or codify it in a formal manner. In 1215, at a time when rights were being questioned in England, the Magna Carta was agreed to by King John. It provided that: "It shall be lawful in the future for anyone... to leave our kingdom and to return, safe and secure by land and water..." <sup>92/</sup>

Particular provisions have been made to protect the right of return, termed "repatriation", in armed conflict and belligerent occupation situations. The four Geneva Conventions of 1949 concerning the protection of war victims <sup>93/</sup> contain many provisions relating to the repatriation of such victims. <sup>94/</sup>

These Geneva Conventions have been ratified by almost as many States as have ratified the United Nations Charter, including all of the States which have been involved in the recurring hostilities in the Middle East. Among the most important common provisions which appear in each of the four Conventions is one which limits the effect of a denunciation of the Convention by a state party during a conflict or a belligerent occupation. It provides that such a denunciation:

... shall not take effect until peace has been concluded, and until after operations connected with the release, repatriation and re-establishment of the persons protected by the present Convention have been terminated". <sup>95/</sup>

This provision is a recognition in multilateral treaty law of the importance of the right of return or repatriation. Its broad ambit applies to protected civilian persons <sup>96/</sup> as well as to prisoners of war <sup>97/</sup> and disabled military personnel. <sup>98/</sup>

The Geneva Civilian Convention of 1949 also contains a significant law making provision designed to prevent the removal of protected civilian persons so that they will not be in a position where they need to claim their right of return. The relevant article states:

"Individual or mass forcible transfers as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive". <sup>99/</sup>

This provision of the Convention is important for present purposes because it indicates that the state parties, including the State of Israel, were willing to go beyond the requirement of the right of return by prohibiting expulsions. Such a preventive approach can only be adopted by those who consider the less comprehensive right of return as being inadequate in belligerent occupation situations. The human values protected by the right of return and the prohibition of transfers and deportations are the same, although the advantage of effective prohibition is that it would make it unnecessary to exercise the right.

The Universal Declaration of Human Rights provides in relevant part: "Everyone has the right to leave any country, including his own, and to return to his country". <sup>100/</sup> The broad ambit of the quoted language, including the terms "everyone" and "country" requires some emphasis. Unless the right of return is interpreted with appropriate breadth, it would require no more than a legalistic trick to expel certain inhabitants and then to deny them return on the false grounds that they are not nationals of the expelling State. There has been an attempt to justify the denial of the right of return of the Palestinians by arguing that the quoted provision of the Universal Declaration obligates States "to permit the return of their citizens or nationals only". <sup>101/</sup> This argument would merely require discriminatory municipal statutes to bar the return of inhabitants to their country. <sup>102/</sup>

The International Covenant on Civil and Political Rights contains a similar provision which states: "No one shall be arbitrarily deprived of the right to enter his own country". <sup>103/</sup> Like the Universal Declaration, it avoids the use of narrow terms such as "nationals" and "state".

Count Folke Bernadotte, the United Nations Mediator for Palestine, in his Progress Report of 16 September 1948, <sup>104/</sup> set forth "seven basic premises" concerning the situation in Palestine. One of them, under the heading of the "Right of Repatriation", stated that:

"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". 105/  
This basic premise was restated in the same Progress Report as a specific recommendation to the United Nations:

"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..." 106/

It is significant that Count Bernadotte did not recommend the creation of a new right, but instead recommended that the right to return "be affirmed by the United Nations". Consistent with this recommendation, subsequent resolutions of the General Assembly have sought to affirm and make effective an existing right. The right of return, based on state practice, was apparently regarded as an established part of customary international law as well as one of "the general principles of law recognized by civilized nations".

#### B. General Assembly Resolutions applying the Right of Return

##### 1. Resolutions 194 (III) and 513 (VI) concerning the 1947-1948 Refugees

Count Bernadotte's mediation mission was ended on 17 September 1948 when he was assassinated by Israeli terrorists. On 11 December 1948, the General Assembly adopted resolution 194 (III) 107/ entitled "Palestine--Progress Report of the United Nations Mediator". This resolution was a comprehensive effort to deal with the ongoing conflict situation in Palestine and consisted of fifteen paragraphs. It established a Conciliation Commission for Palestine composed of three Member States of the United Nations (France, Turkey and the United States). The Commission was given broad authority to carry out the functions previously entrusted to the United Nations Mediator for Palestine and was instructed to assist the governments and authorities involved in the Palestine conflict with the purpose of achieving "a final settlement of all questions outstanding between them". 108/ In the context of this major diplomatic and negotiating role assigned to the Conciliation Commission, paragraph 11 deals with the refugees by stating that the General Assembly:

"Resolves 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 the 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, and to maintain close relations with the Director of the United Nations Relief and Works Agency for Palestine Refugees and, through him, with the appropriate organs and agencies of the United Nations".

The text of paragraph 11 appears to have been written on the assumption that the principle or right of return was not in issue and that the central task was achieving practical implementation of repatriation. Therefore, it authorized the Conciliation Commission to deal with the Government of Israel on the subject. The conciliatory wording of the entire resolution was apparently based on the assumption that the Government of Israel would cooperate in good faith with the Conciliation Commission and "take all possible steps to assist in the implementation of the present resolution". 109/ It was realized later that the efforts of the Conciliation Commission, like those of the United Nations Mediator before it, were a failure and did not effectuate the right of return of the Palestinian Arab refugees.

Paragraph 11 provides for two specifics concerning the implementation of the right of return. First, the refugees themselves are entitled to choose whether or not they wish to return to their homes within the de facto boundaries of the State of Israel. Second, the refugees are to be compensated for the loss of or damage to their property whether or not they choose to return. The specification that the refugees wishing to return should also wish to "live at peace with their neighbours" should be interpreted as a reassurance to the State of Israel that it would not be faced with an internal security problem following the return of the refugees. The additional provision that return should be carried out at the "earliest practicable date" is consistent with the approach that the Conciliation Commission was to use diplomatic and mediation efforts to have the State of Israel comply with the terms of the resolution.

The Conciliation Commission for Palestine has given a careful interpretation to paragraph 11:

"The General Assembly had laid down the principle of the right of the refugees to exercise a free choice between returning to their homes and being compensated for the loss of or damage to their property on the one hand, or, on the other, of not returning to their homes and being adequately compensated for the value of the property abandoned by them". 110/

This interpretation is consistent with General Assembly resolution 194 (III) as well as subsequent resolutions.

The General Assembly again confronted the situation caused by the failure of repatriation on 26 January 1952 when it adopted resolution 513 (VI) 111/ which provided in paragraph 2 that its provisions were without prejudice to the repatriation provisions of resolution 194, paragraph 11. Paragraph 2 continued by endorsing a program proposed by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) designed to expedite the reintegration of the displaced Arabs into the economic life of the area. It provides that this is to be accomplished either by repatriation, as enunciated in resolution 194, or through resettlement elsewhere. Resettlement was apparently offered as a practical alternative to the principle of repatriation which had thus far not been practically obtainable.

##### 2. Resolutions 2452 (XXIII), 2535 (XXIV) and 2963 (XXVII) concerning the 1947-1948 and 1967 Refugees.

In the years following the intense hostilities of June 1967, the General Assembly adopted a series of resolutions which treat separately the right of return of the group of Palestinians displaced as a result of the 1947-1948 conflict and of the group displaced as a result of the 1967 conflict. The dichotomy first appears in General Assembly resolution 2452 of 19 December 1968 112/ which serves as the functional paradigm for the significant substantive resolutions that followed, specifically resolutions 2535 and 2963. The prefatory language of General Assembly resolution 2452 B, dealing with the 1947-1948 refugees, after recalling both resolutions 194 and 513, further recalls those resolutions which affirm the principles of repatriation and resettlement stated in 194 and 513. Consistent with the tenor of the preceding resolutions, operative paragraph 1 of resolution 2452 B provides that the General Assembly:

"Notes with deep regret that repatriation or compensation of the refugees as provided for in paragraph 11 of General Assembly resolution 194 (III) has not been effected, that no substantial progress has been made in the programme endorsed in paragraph 2 of resolution 513 (VI) for the reintegration of refugees either by repatriation or resettlement and that, therefore, the situation of the refugees continues to be a matter of serious concern".

Operative paragraph 4 of the same resolution states that the General Assembly:

"Notes with regret that the United Nations Conciliation Commission for Palestine was unable to find a means of achieving progress in the implementation of paragraph 11 of General Assembly resolution 194 (III), and requests the Commission to exert continued efforts towards the implementation thereof".

In summary, in spite of past failure the General Assembly continued to rely upon diplomatic methods by the Conciliation Commission to obtain implementation of the right of return of the 1947-1948 refugees.

Resolution 2452 A, dealing with the 1967 refugees, recalls Security Council resolution 237 of 14 June 1967 which calls upon the Government of Israel "to facilitate the return of those inhabitants who have fled the areas since the outbreak of hostilities". The prefatory wording of 2452 A emphasizes the "requirement" of the refugees' "speedy return to their homes and to the camps which they formerly occupied". This wording indicates accurately that some of the 1947-1948 refugees who had fled to camps on the West

Bank of the Jordan were again made refugees in 1967.

In resolution 2452 A, the General Assembly bypasses the Conciliation Commission for Palestine, addresses the Government of Israel directly concerning the 1967 refugees, and asks the Secretary-General to follow and report upon "the effective implementation of the resolution". <sup>113/</sup> Unlike resolution 194, there is no reassurance to the State of Israel that those returning desire to "live at peace with their neighbours". Israel is directly called upon to take "effective and immediate steps for the return without delay" <sup>114/</sup> of the inhabitants who fled the area since the outbreak of hostilities. Like resolution 194 (III), it appears to be written upon the assumption that the right of return is established and that the central task is to obtain its implementation.

On 10 December 1969, almost one year after the adoption of resolution 2452, the General Assembly adopted resolution 2535. <sup>115/</sup> Resolution 2535 A concerning the 1947-1948 refugees recalls, *inter alia*, resolutions 194, 513 and 2452. Like 2452 B, resolution 2535 A expresses regret over the fact that the refugees of the 1947-1948 conflict have not been repatriated or resettled pursuant to resolutions 194 and 513. As with earlier resolutions, it requests the Conciliation Commission to continue efforts towards implementation of the right of return of the 1947-1948 refugees.

Resolution 2535 B deals with the 1967 refugees. Its first preambular paragraph states:

"Recognizing that the problem of the Palestine Arab refugees has arisen from the denial of their inalienable rights under the Charter of the United Nations and the Universal Declaration of Human Rights".

The resolution recalls Security Council resolution 237 (1967) and General Assembly resolutions 2252 and 2452 A, all of which deal with the 1967 refugees. The operative paragraphs of resolution 2535 B reaffirm "the inalienable rights of the people of Palestine", <sup>116/</sup> draw attention to the State of Israel's refusal to implement the resolutions concerning the 1967 refugees <sup>117/</sup> and request the Security Council to take effective measures to ensure their implementation. <sup>118/</sup> General Assembly resolution 2963 of 13 December 1972 <sup>119/</sup> deals with several important matters including the national rights of the people of Palestine. It follows the general pattern of the resolutions just considered concerning the return of the refugees. Resolution 2963 A recalls the relevant resolutions and notes with deep regret that resolution 194, paragraph 11 concerning the 1947-1948 refugees remains unimplemented. It requests the Conciliation Commission to continue efforts towards its implementation. Resolution 2963 D, in contrast, recalls the relevant resolutions dealing particularly with the 1967 refugees and in operative paragraph 1 affirms "the right of the displaced inhabitants to return to their homes and camps". Operative paragraph 4 states that the General Assembly "Calls once more upon Israel immediately to take steps for the return of the displaced inhabitants". Operative paragraph 6 requests the Secretary-General to report upon implementation. Resolution 2963 C concerns the refugees expelled from the Gaza Strip, and operative paragraph 4 calls upon Israel "to take immediate and effective steps for the return of the refugees concerned to the camps from which they were removed..."

3. Resolutions 3089 (XXVIII), 3236 (XXIX) and Subsequent Resolutions concerning the Inalienable Right to Return to the Area of Palestine

Resolution 3089 of 7 December 1973 <sup>120/</sup> follows a somewhat similar pattern to resolution 2963 which has just been considered. The 1947-1948 refugees are dealt with in resolution 3089 B in a manner like that employed in earlier resolutions requesting the Conciliation Commission "to exert continued efforts" to effectuate the right of return provided for in resolution 194. Resolution 3089 C concerns the 1967 refugees and those expelled from the Gaza Strip and elsewhere during and after the intense hostilities of October 1973. It provides recognition and reaffirmation of their right of return in operative paragraph 1 which explicitly reaffirms "the right of the displaced inhabitants, including those displaced as a result of recent hostilities, to return to their homes and camps". Operative paragraph 3 of resolution 3089 D refers to "the inalienable rights of the people of Palestine" and states that "the enjoyment by the Palestine Arab refugees of their right to return to their homes and property, recognized by the General Assembly in resolution 194 (III) of 11 December 1948, which has been repeatedly reaffirmed by the Assembly since that date" is indispensable for "a just settlement of the refugee problem". The broad reference to the right of the refugees "to return to their homes and property" should be interpreted as including return to the State of Israel as it existed with pre-June 1967 *de facto* boundaries as well as to the Israeli-occupied Arab territories. It is clear that the right of return, as a right of individual Palestinians, may be exercised throughout Palestine including the State of Israel within whatever *de facto* boundaries it may have now or *de jure* boundaries that may be ultimately determined for that State.

Resolution 3236 of 22 November 1974 <sup>121/</sup> is one of the most fundamental actions of the General Assembly concerning the right of return and is notable in that it does not contain the dichotomy of separate provisions previously utilized for the 1947-1948 refugees and those of 1967 and 1973. After referring in operative paragraph 1 to the national inalienable rights of "the Palestinian people", <sup>122/</sup> this resolution provides in operative paragraph 2 that the General Assembly:

"Reaffirms also the inalienable rights of the Palestinians to return to their homes and property from which they have been displaced and uprooted, and calls for their return".

This paragraph emphasizes the significance of the right of return of the Palestinians by describing it as "inalienable". The characterization of rights as "inalienable" should be interpreted as meaning that they cannot be surrendered or otherwise terminated. Such fundamental rights may consequently be regarded as having unusual strength and permanence of a kind not associated with less important rights.

It should be mentioned that the right specified here, as in resolution 3089 D, is of individual Palestinians to return, as distinguished from Palestinian national rights. The geographical reference of paragraph 2 is a comprehensive one. The term "their homes and property" covers areas of the State of Israel, whether as defined by the Palestine Partition Resolution or as it existed *de facto* prior to June 1967, and it also includes homes and property which are located in the territories occupied by Israel since 1967.

The present interpretation of resolution 3236 is not only required by the different wording of operative paragraph 1 dealing with national rights and operative paragraph 2 dealing with individual rights, but it is also required by the previous resolutions of the General Assembly including the Palestine Partition Resolution 181. There is nothing in resolution 3236 which derogates from resolution 181. Resolution 3236 is entirely consistent with the basic principle of two national States in Palestine which is embodied in resolution 181. It should also be mentioned that resolution 3236 is fully consistent with the provisions of the United Nations Charter including the principle of the sovereign equality of Member States. The sovereign equality of the State of Israel is not in question but, like other States, it must have its boundaries established in a lawful manner and honor the right of return as established in law and recognized by the world community through the General Assembly.

It may be suggested in opposition to the Palestinian right of return to the area within the lawful authority of the State of Israel that this would change "the Jewish character" of the State of Israel. It must be recognized that the term, "the Jewish character", is really a euphemism for the Zionist discriminatory statutes of the State of Israel which violate the human rights provisions of the Partition Resolution. <sup>123/</sup> The matter was put directly by then Israeli Defense Minister Dayan shortly after the intense hostilities of June 1967. He gave the following response to a reporter's question about Israel's ability to absorb the Arab population in the then recently occupied territories:

"Economically we can; but I think that is not in accord with our aims in the future. It would turn Israel into either a binational or poly-Arab-Jewish state instead of the Jewish State, and we want to have a Jewish state. We can absorb them, but then it won't be the same country". <sup>124/</sup>

The United Nations is under no more of a legal obligation to maintain Zionism in Israel than it is to maintain *apartheid* in the Republic of South Africa.

Some subsequent resolutions concerning the right of return have reflected the earlier distinction between the 1947-1948 refugees and the 1967 and subsequent ones. For example, resolution 31/15 A of 23 November 1976 <sup>125/</sup> dealing with the 1947-1948 refugees

notes with deep regret that repatriation or compensation as provided for in paragraph 11 of General Assembly resolution 194 has not been achieved. Resolution 31/15 D dealing with the refugees displaced since 1967 reaffirms their right "to return to their homes and camps in the territory occupied by Israel since 1967". The same resolution calls upon Israel again to take "immediate steps" for the return of the displaced inhabitants and to desist from all measures obstructing their return.

Other subsequent resolutions, such as 3376 (XXX) of 10 November 1975 126/ have followed the pattern of resolution 3236 by referring to the exercise by the Palestinians of "their inalienable right to return to their homes and property from which they have been uprooted". Resolution 33/28 A 127/ of 7 December 1978 reaffirms that a just and lasting peace in the Middle East cannot be achieved without, inter alia, the attainment of "the inalienable rights of the Palestinian people, including the right of return..."

#### C. Security Council Resolutions

The Security Council has had, at the most, a minor role in dealing with the Palestinian refugees. Its resolution 73 of 11 August 1949 128/ expressed the hope that the "Governments and authorities concerned" in the 1947-1948 conflict would undertake to seek agreement "by negotiations conducted either with the Conciliation Commission or directly" to achieve agreement on "all questions outstanding between them" 129/ including necessarily the refugee question, although it was not specifically mentioned. The parties did not achieve any agreement in spite of the efforts of the Conciliation Commission. The Palestinians were, of course, concerned with the crucial issues at stake in Palestine, but they had at that time neither a government nor a public body which could effectively represent their interests.

Following the intense hostilities of June 1967, the Security Council adopted resolution 237 of 14 June 1967. 130/ The first operative paragraph of the resolutions calls upon the Government of Israel to facilitate the return of those inhabitants who have fled the areas since the outbreak of hostilities". In view of the time of the resolution and of the conflict situation, this should be taken to refer to the 1967 refugees. Other provisions of the resolution seek to obtain adherence to the obligations of the Geneva Prisoners of War and Civilians Conventions of 1949.

Security Council resolution 242 of 22 November 1967 131/ attempts to establish a framework for "a just and lasting peace in the Middle East" 132/ by enunciating certain principles. Among these, "the necessity" for "achieving a just settlement of the refugee problem" 133/ is set forth. There are no elements of such a just settlement stated in the resolution and the only authoritative principles adopted by the United Nations on this subject remain the General Assembly resolutions which have been considered above. Security Council resolution 338 of 22 October 1973 134/ calls for a cease fire in the then intense hostilities in the Middle East. It may also have some connection with the Palestinian refugees since operative paragraph 2 calls upon the parties concerned to start implementing all of the parts of Security Council resolution 242 immediately following the cease fire. To the present time resolution 242, including the reference to the refugees, has not been implemented although it has been consistently referred to as the basis upon which peace must be established.

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## IV. THE NATIONAL RIGHTS OF THE PEOPLE OF PALESTINE

The United Nations Charter pertains to peoples as well as to States. Among the purposes of the United Nations specified in the first article of the Charter is:

"To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples..." 135/

This marks a significant departure from the old legal theory that international law accords rights only to States and Governments and not to groups or individuals. 136/

#### A. The Recognition of the Palestinians as a People

The Palestinians, without distinction as to religion, were a people de facto as the inhabitants of the country named Palestine long before the twentieth century, and they had close connections with their fellow-Arabs in adjoining Syria and Lebanon. The Palestinians, Syrians and Lebanese, along with other Arab peoples, were under the rule of the Ottoman Empire until the First World War. Following that conflict, Great Britain was designated as the Mandatory Power under the League of Nations Mandate for Palestine. 137/ Because the Mandate, consistent with the requirements of article 22 of the League of Nations Covenant, was designed to lead the people of the country to independence, it contained an implicit recognition of Palestinian national identity. 138/ The United Nations accorded the Palestinians de jure recognition of their status as a people with national rights in the provisions of the Palestine Partition Resolution authorizing them to establish "the Arab State". 139/ From the time of that resolution in 1947 until 1969, however, the United Nations emphasized the Palestinians' de facto role as individuals who were refugees and war victims. The United Nations' actions of that period were designed to implement their right of return 140/ and achieve their elementary human rights.

In 1969 the General Assembly shifted its perspective to acknowledge the Palestinians as a people having rights under the United Nations Charter. The first preambular paragraph of General Assembly resolution 2535 B (XXIV) of 10 December 1969 141/ recognizes "that the problem of the Palestine Arab refugees has arisen from the denial of their inalienable rights under the Charter of the United Nations and the Universal Declaration of Human Rights". The first operative paragraph provides recognition by the United Nations of the Palestinians as a people with a national identity by reaffirming "the inalienable rights of the people of Palestine". This recognition of Juridical status has been reaffirmed by all subsequent resolutions of the General Assembly which deal with the subject. General Assembly resolution 2672 C (XXV) of 8 December 1970 142/ follows the pattern of the resolution just considered. A preambular paragraph reaffirms the inalienable rights of "the people of Palestine" and the first operative paragraph uses the same words in referring to the people's national rights. The second operative paragraph repeats the identical words in declaring that full respect for the people's inalienable rights is indispensable for the achievement of a just and lasting peace. General Assembly resolution 3210 (XXIX) 143/ concerns the status of the people by providing that "the Palestinian people is a principal party to the question of Palestine". It also concerns the status of its representative by inviting the Palestine Liberation Organization as "the representative of the Palestinian people" to participate in plenary meetings of the General Assembly concerning the question of Palestine. This status is further augmented by the seventh operative paragraph of resolution 3236 144/ which "Requests the Secretary-General to establish contacts with the Palestine Liberation Organization on all matters concerning the question of Palestine". In resolution 3237 (XXIX) of 22 November 1974 145/, the General Assembly invites the Palestine Liberation Organization to participate in the sessions and work of the General Assembly and of all international conferences convened under the auspices of the General Assembly in the capacity of observer. The people of Palestine have a relationship to the Palestine Liberation Organization similar to the French people's relationship to the Free French Organization (later known as the Fighting French) when France was under military occupation. It provides useful clarification to contrast the Palestinian people with "the Jewish people" claimed by the State of Israel. 146/ The Zionist "Jewish people" concept was developed by the Zionist Organization/Jewish Agency prior to the establishment of the State of Israel. Before the rise of Zionist nationalism, "the Jewish people" referred simply to voluntary adherents of the religion of Judaism, the oldest of the monotheistic religions of universal moral values. The Zionists have impressed their own secular meaning upon the term and have given it a more precise juridical definition through various Israeli statutes. "The Jewish people" concept within the State of Israel accords its members certain privileges and rights on a discriminatory basis which are denied to other Israelis. The same concept applied to persons outside the State of Israel imposes upon them a juridical link with the State of Israel whether they desire it or not. For example, in the Eichmann Case, the Israeli District Court stated that "the connection between the Jewish people and the State of Israel constitutes an integral part of the law of nations". 147/ Because of the discriminatory characteristics of "the

Jewish people" concept, it would constitute a violation of articles 55 and 56 of the Charter of the United Nations if the General Assembly recognized it. The United States Government has explicitly rejected "the Jewish people" concept as a valid concept of international law in a letter from Assistant Secretary of State Phillips Talbot addressed to Rabbi Elmer Berger. 148/

The United Nations Charter provides that "the United Nations shall promote", inter alia:

"...universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion". 149/

Consistent with this requirement, "the Palestinian people" must comprise all Palestinians on a non-discriminatory basis. If it did not do so, it could not be recognized by the General Assembly without violation of the Charter provisions concerning human rights. In summary, "the Palestinian people" includes individuals of diverse religious identification today as it did before the rise of Zionist nationalism. It also would be essential to maintain this characteristic in the establishment of the Palestinian State in order to comply with the human rights requirements for each of the two States authorized by the Palestine Partition Resolution as well as with the human rights provisions of the United Nations Charter.

B. The Right of Self-Determination in International Law  
The practice of self-determination preceded the development of the principle or right of self-determination in international law. The American Revolution and the subsequent Latin American revolutions against European colonialism provide preeminent historic examples. The idea of self-determination was present in President Woodrow Wilson's Fourteen Points. 150/ Professor Kissinger has accurately described the situation as it existed at the post-First World War peace settlement :

"In 1919, the Austro-Hungarian Empire disintegrated not so much from the impact of the war as from the nature of the peace, because its continued existence was incompatible with national self-determination, the legitimizing principle of the new international order". 151/

It is important to note that the principle of self-determination was reflected in the provisions of the League of Nations Covenant through the mandates system with the mandatory powers assuming "a sacred trust" to promote "the well being and development of such peoples". 152/ At the present time, the only examples of peoples who were placed under the mandates system who have not achieved self-determination are the people of Palestine and the people of Namibia (Southwest Africa). The widespread implementation of self-determination since the end of the Second World War is reflected directly in the membership of the United Nations.

One of the major purposes of the United Nations, which has been set forth above, is the development of friendly relations based upon respect for "the principle of equal rights and self-determination of peoples..." 153/ It is sometimes contended by those who oppose self-determination for others that the Charter only states that self-determination is a principle and not a right. This view lacks merit since the carefully drafted and equally authentic French text states, "du principe de l'égalité de droits des peuples et de leur droit à disposer d'eux-mêmes..." By using the word "droit" in connection with self-determination, the French text removes any possible ambiguity. Article 55 of the Charter emphasizes the importance of self-determination, by stating that peaceful and friendly relations are based on respect for it. Article 73 of Chapter XI concerning non-self-governing territories provides that members assuming responsibility for such territories are required to "develop self-government, to take due account of the political aspirations of the people, and to assist them in the progressive development of their free political institutions..." 154/

The General Assembly has performed the task of interpreting and developing these principles from the early history of the organization to the present time. It should be recalled that the Palestine Partition Resolution 181 provides authority for two distinct national self-determinations in Palestine. General Assembly resolution 1514 (XV) of 14 December 1960, 155/ entitled "Declaration on the Granting of Independence to Colonial Countries and Territories", is an important statement of basic principles and rights. The first two operative paragraphs of this resolution provide:

1. The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation.

2. All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development".

The vote on this resolution was 90 votes in favor to none opposed, with 9 abstentions. Since there were no opposing votes, this resolution must be interpreted as reflecting the stated legal views of the then full membership of the United Nations. In view of the increasing implementation of self-determination since 1960, the present membership of the General Assembly provides strong support for the views expressed in the 1960 resolution. Subsequent applications of the self-determination principle of resolution 1514 to Algeria, Angola and to Zimbabwe (Rhodesia) indicate the view of the General Assembly that a right of self-determination is established in law. 156/ The entire course of action taken by the United Nations and the overwhelming majority of its members since 1960 is consistent with this basic self-determination resolution.

General Assembly resolution 2625 (XXV) of 24 October 1970, 157/ entitled "Declaration on Principles of International Law concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations", provides further development of the right of self-determination. It considers a number of principles and under the heading of the "principle of equal rights and self-determination of peoples", the first paragraph states:

"By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter".

The vote on this authoritative interpretation of the Charter was 86 votes in favor to 5 opposed, with 15 abstentions.

C. The Application of the Right of Self-Determination to the People of Palestine: General Assembly Resolutions 2649 (XXV), 2672 C (XXV), 3089 D (XXVIII) and 3236 (XXIX) and Subsequent Ones.

The provisions of the Palestine Partition Resolution which provide authority for the establishment of "the Arab State" constitute the first direct recognition of the Palestinian national right of self-determination. 158/ The second such recognition is provided by General Assembly resolution 2649 of 30 November 1970. 159/ This resolution expresses concern that, because of alien domination, many peoples were being denied the right to self-determination. It then condemns those governments which deny the right to peoples "recognized as being entitled to it, especially the peoples of southern Africa and Palestine". 160/ The legal effect of this significant resolution is that the prior resolutions setting forth the basic right of self-determination, resolutions 1514 and 2625 considered above, are now specifically applicable to the Palestinian people.

With the adoption of resolution 2672 C on 8 December 1970, 161/ the General Assembly moved toward acknowledging the correlation between the right of self-determination and other inalienable rights. The second preambular paragraph recalls resolution 2535 B and the first such paragraph reiterates the language contained in that resolution providing that the Palestine Arab refugee problem had arisen from the denial of their inalienable rights. The two operative paragraphs of resolution 2672 C state that the General Assembly:

"1. Recognizes that the people of Palestine are entitled to equal rights and self-determination, in accordance with the Charter of the United Nations;

"2. Declares that full respect for the inalienable rights of the people of Palestine is an indispensable element in the establishment of a just and lasting peace in the Middle East".

In addition to reiterating the specific Palestinian national right of self-determination, this resolution links the achievement of Palestinian inalienable rights to the achievement of peace in the Middle East. It should be recalled that article 1 of the Charter requires the United Nations to bring about peace "in conformity with the principles of justice and international law". It should be clear that neither of these principles is honored unless Palestinian Rights are implemented. General Assembly resolution 3089 D of 7 December 1973, 162/ which has been considered concerning the right of return, enunciates the relationship between the rights of self-determination and return by providing in its third operative paragraph that the General Assembly:

"Declares that full respect for and realization of the inalienable rights of the people of Palestine, particularly its right to self-determination, are indispensable for the establishment of a just and lasting peace in the Middle East, and that the enjoyment by the Palestine Arab refugees of their right to return to their homes and property... is indispensable... for the exercise by the people of Palestine of its right to self-determination".

The necessary legal linkage of return and self-determination is designed to assure Palestinians the practical exercise of national self-determination as a "people". It is based on the common sense conception that there can be no self-determination without return to the areas where self-determination may be exercised.

An analysis of operative paragraph 3 reveals that while the General Assembly understandably views the achievement of return as a necessary prerequisite to the effective exercise of self-determination, the right of self-determination of Palestinians as a national group was apparently not intended to follow invariably from the return of individual Palestinians. The pertinent wording provides that the "Palestine Arab refugees" are entitled to enjoy "their right to return to their homes and property", while the "people of Palestine" is entitled to exercise "its right to self-determination". The use of "Palestine Arab refugees" when referring to return is apparently meant to stand in contradistinction to the use of "people of Palestine" when reference is made to self-determination.

General Assembly resolution 3236 of 22 November 1974 has been considered in connection with the right of return. 163/ It also has preeminent importance concerning the right of self-determination. Its fifth preambular paragraph recognizes that "the Palestinian people is entitled to self-determination in accordance with the Charter of the United Nations". The first operative paragraph provides that the General Assembly:

"Reaffirms the inalienable rights of the Palestinian people in Palestine, including:

(a) The right to self-determination without external interference;

(b) The right to national independence and sovereignty".

The exact boundaries of the area in Palestine in which these inalienable rights apply must be settled de jure. 164/ The language of the resolution quoted above includes the "right to national independence and sovereignty" as a particularization of the self-determination right.

In operative paragraph 5, resolution 3236 refers to methods by which rights may be regained. It provides that the General Assembly:

"Further recognizes the right of the Palestinian people to regain its rights by all means in accordance With the purposes and principles of the Charter of the United Nations".

Further specification concerning methods is provided in General Assembly resolution 3070 of 30 November 1973 165/ which, after reaffirming the inalienable right to self-determination of all peoples under alien subjugation, 166/ provides that the General Assembly:

"Also reaffirms the legitimacy of the peoples struggle for liberation from... alien subjugation by all means including armed struggle". 167/

Since the American Revolution relied upon armed struggle to achieve self-determination about a century and a third before the principle of self-determination was used in the post World War I peace settlement, 168/ it is not surprising that the General Assembly specifies it as a permissible method now. Its permissibility is legally significant as an authoritative General Assembly assertion that armed struggle for self-determination is consistent with the purposes and principles of the United Nations Charter. In a situation such as Palestine where the people has been denied its right of self-determination by armed force, the right to regain it by armed struggle is considered permissible under article 51 of the Charter concerning self-defense.

#### D. The Geographical Area to which Palestinian Self-Determination applies

Where "in Palestine", to use the wording of resolution 3236, may Palestinian national self-determination including independence and sovereignty be exercised? General Assembly resolution 2625 (XXV) dealing with "Principles of International Law concerning Friendly Relations", which has been considered concerning the right of self-determination, 169/ also provides basic legal interpretation concerning areas where self-determination may be exercised. Under the heading of the "principle of equal rights and self-determination of peoples" the penultimate paragraph provides:

"Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent states conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour".

The quoted wording is of particular importance since it is designed to preserve the territorial integrity or political unity of non-discriminatory States which have a government "representing the whole people belonging to the territory". The State of Israel cannot qualify as such a State as long as its discriminatory Zionist features, including the denial of the right of return of Palestinians to their homes and property, are maintained in municipal law and practice. Pursuant to this provision of resolution 2625, the General Assembly may provide for lawful de jure boundaries for the State of Israel which do not preserve its "territorial integrity or political unity" as they may exist de facto at a particular time as a result of military conquest and of illegal annexation. 170/ The prohibition on the acquisition of territory by military conquest is regarded as fundamental in the United Nations Charter 171/ and in resolutions of both the General Assembly and the Security Council.

The only de jure boundaries which the State of Israel has ever had are those which were specified for "the Jewish State" in the Palestine Partition Resolution. 172/ Following the Armistice Agreements of 1949, which did not fix de jure boundaries, the State of Israel existed within de facto boundaries until June 1967. It is possible that those pre-1967 boundaries may have received some international assent. Security Council resolution 242 of 22 November 1967, after emphasizing "the inadmissibility of the acquisition of territory by war", 173/ refers in the first operative paragraph to the principle of "withdrawal of Israel armed forces from territories occupied in the recent conflict". Since there is no statement of withdrawal from territories occupied at a time before 1967, this may amount to an indirect recognition of the pre-June 1967 boundaries. Operative paragraph 1 also refers to the principle of the "territorial integrity and political independence of every State in the area and their right to live in peace within secure and recognized boundaries".

It is clear that two different national exercises of the right of self-determination cannot take place simultaneously upon precisely the same territory, and the careful wording of resolution 3236 is consistent with this reality. Consequently, those Palestinians who choose to exercise their right of return within the State of Israel cannot exercise Palestinian national self-determination within that State. Since resolution 181 established the principle of two States in the area and subsequent resolutions have not departed from this concept, it is clear that it is not the intent of the General Assembly to authorize Palestinian self-determination within the State of Israel. The Palestinian national right of self-determination as recognized in General Assembly resolutions may be exercised "in Palestine" within the de jure boundaries of the Palestinian State which are yet to be determined, and outside the de jure boundaries of the State of Israel as ultimately determined.

## V. THE JURIDICAL STATUS OF JERUSALEM

Jerusalem has profound religious significance to the adherents of Judaism, Christianity and Islam which gives it a universal character. This is reflected in the basic provisions which the General Assembly has specified for the protection of the Holy Places without discrimination of any kind. Universality is also reflected in the provisions concerning the establishment of Jerusalem as a corpus separatum which is not under the control of any nationalism.

A. General Assembly Resolutions 181 (II), 194 (III), 303 (IV), 2253 (ES-V) and 2254 (ES-V)

The Palestine Partition Resolution 181 174/ was the first statement in which the General Assembly enunciated principles concerning the international legal status of the City of Jerusalem. Part III of the Plan of Partition with Economic Union concerns Jerusalem and provides in relevant part:

### "A. Special Régime

The City of Jerusalem shall be established as a corpus separatum under a special international régime and shall be administered by the United Nations. The Trusteeship Council shall be designated to discharge the responsibilities of the Administering authority on behalf of the United Nations.

### "B. Boundaries of the City

The City of Jerusalem shall include the present municipality of Jerusalem plus the surrounding villages and towns..."

The Partition Resolution provisions concerning Jerusalem were not implemented. The General Assembly then adopted resolution 194 175/ which, in addition to the provisions concerning return analyzed earlier, stated in paragraph 8 that the General Assembly:

"Resolves that... the Jerusalem area..., should be accorded special and separate treatment from the rest of Palestine and should be placed under effective United Nations control".

The basic consistency between this resolution and the Palestine Partition Resolution is that both set forth a separate status for Jerusalem and place it under United Nations control.

In resolution 303 of 9 December 1949, 176/ the General Assembly refers to both resolutions 181 and 194 in the first prefatory paragraph. The first operative paragraph provides that the General Assembly decides concerning Jerusalem:

"To restate, therefore, its intention that Jerusalem should be placed under a permanent international régime, which should envisage appropriate guarantees for the protection of the Holy Places, both within and outside Jerusalem, and to confirm specifically the following provisions of General Assembly resolution 181 (II): (1) the City of Jerusalem shall be established as a corpus separatum under a special international régime and shall be administered by the United Nations; (2) the Trusteeship Council shall be designated to discharge the responsibilities of the Administering Authority...; and (3) the City of Jerusalem shall include the present municipality of Jerusalem plus the surrounding villages and towns..."

The second operative paragraph of this resolution requests the Trusteeship Council to complete preparation of the Statute of Jerusalem considering "the fundamental principles of the international régime for Jerusalem set forth in General Assembly resolution 181 (II)" and to "proceed immediately with its implementation". The Statute, which was approved by the Trusteeship Council on 4 April 1950, provided for, inter alia, protection for the Holy Places and for human rights and fundamental freedoms for all persons in the City. 177/ There has been no change in the basic international juridical status envisaged for Jerusalem in the three General Assembly resolutions just considered.

Following the intense hostilities of June 1967, the Government of Israel incorporated, through Israeli municipal law, that portion of Jerusalem previously controlled by Jordan. On 4 July 1967, the General Assembly adopted resolution 2253 178/ which provided that 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".

Ten days later, the General Assembly adopted resolution 2254 which, after recalling and noting non-compliance with resolution 2253, stated that the General Assembly:

"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".

There is an apparent ambiguity in these two resolutions. The preambular paragraph of resolution 2253 refers to "the status of the City" and the second operative of each of the two resolutions refers to "the status of Jerusalem". These terms may be interpreted as referring either to the juridical status of Jerusalem as a corpus separatum or, since there is no mention in these post-1967 resolutions of resolutions 181, 194 or 303, to the de facto status of the City as it existed under partial Jordanian and partial Israeli control prior to the intense hostilities of June 1967. The broad phrase "all measures already taken" which appears in the second operative paragraph of each of the foregoing resolutions may be interpreted as meaning that the State of Israel is called upon to rescind its measures, without specific *reference* to the time when the measures were taken. So interpreted, the Israeli measures to be rescinded would include those taken after the conquest of the Western part of Jerusalem in the intense hostilities of 1947-1948 as well as those taken after the conquest of the Eastern part of the City in 1967.

B. Security Council Resolutions 252 (1968), 267 (1969) and 298 (1971)

The major Security Council resolutions concerning Jerusalem were not adopted until 1968 and 1969. Security Council resolution 252 of 21 May 1968, LW after recalling General Assembly resolutions 2253 and 2254, provides in its first three operative paragraphs that the Security Council:

"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".

The first quoted paragraph manifests Security Council concurrence with the broad terms of General Assembly resolutions 2253 and 2254. The second quoted paragraph refers to the invalidity of "all legislative and administrative measures and actions taken by Israel" without limitation of time. The most significant feature of the second paragraph is the setting forth of "the legal status of Jerusalem"

as the standard and providing that actions which tend to change it are invalid. The only legal status that has been provided for Jerusalem is the one establishing it as a corpus separatum. The State of Israel failed to comply with the terms of resolution 252, and on 3 July 1969, the Security Council adopted resolution 267 180/ which recalled its resolution 252 and resolutions 2253 and 2254. Its first five operative paragraphs provide that the Council:

- "1. Reaffirms its resolution 252 (1968);
- "2. Deplores the failure of Israel to show any regard for the resolutions of the General Assembly and the Security Council mentioned above;
- "3. Censures in the strongest terms all measures taken to change the status of the City of Jerusalem;
- "4. Confirms that all legislative and administrative measures and actions taken by Israel which purport to alter the status of Jerusalem; including expropriation of land and properties thereon, are invalid and cannot change that status;
- "5. Urgently calls once more upon Israel to rescind forthwith all measures taken by it which may tend to change the status of the City of Jerusalem, and in future to refrain from all actions likely to have such an effect".

The first quoted paragraph reaffirms resolution 252 which includes the norm of "the legal status of Jerusalem" which is the corpus separatum. 181/ The fourth quoted paragraph confirms the invalidity of "all" Israeli measures and actions which purport to alter the status of Jerusalem", again without reference to time.

Although resolutions 252 and 267 reflect similar legal principles, the latter contains some particularly strict language. For instance, paragraph 3 of resolution 252 simply urges that the State of Israel "rescind all such measures already taken", whereas paragraph 5 of resolution 267 explicitly states that such rescission must be made "forthwith". Moreover, paragraph 5 of resolution 267 urges Israel not only to rescind measures which may tend to change the status, but also to refrain comprehensively "from all actions likely to have such an effect".

Security Council resolution 298 was adopted on 25 September 1971. 182/ Its first preambular paragraph recalls Security Council resolutions 252 and 267 as well as General Assembly resolutions 2253 and 2254 and describes them as "concerning measures and actions by Israel designed to change the status of the Israeli-occupied section of Jerusalem". It appears to be the intention of the Security Council to restrict by this language the scope of the recalled resolutions to the post-1967 situation. Although it is within the authority of the Council to interpret its own resolutions, it is beyond its power to impose limitations on the meaning of General Assembly resolutions. 183/ The third preambular paragraph of resolution 298 reaffirms "the principle that acquisition of territory by military conquest is inadmissible" and no time frame is set forth for the application of this principle.

The first four operative paragraphs of resolution 298 provide that the Security Council:

- "1. Reaffirms its resolutions 252 (1968) and 267 (1969);
- "2. Deplores the failure of Israel to respect the previous resolutions adopted by the United Nations concerning measures and actions by Israel purporting to affect the status of the City of Jerusalem;
- "3. Confirms in the clearest possible terms that all legislative and administrative actions taken by Israel to change the status of the City of Jerusalem including expropriation of land and properties, transfer of population and legislation aimed at the incorporation of the occupied section, are totally invalid and cannot change that status;
- "4. Urgently calls upon Israel to rescind all previous measures and actions and to take no further steps in the occupied section of Jerusalem which may purport to change the status of the City or which would prejudice the rights of the inhabitants and the interests of the international community, or a just and lasting peace".

The second operative paragraph deplores the failure of Israel to respect the prior resolutions of the United Nations, thereby including both General Assembly and Security Council resolutions. The second and fourth operative paragraphs refer to "the status of the City". The third operative paragraph, in comprehensive terms, states that "all legislative and administrative actions taken by Israel" aimed at "the incorporation of the occupied section" are totally invalid" and ineffective in changing the status of the City. The fourth paragraph calls upon Israel to rescind "all previous measures and actions" and to not take further steps "in the occupied section of Jerusalem" to change the City's status and prejudice other important interests. The term "occupied section" in these operative paragraphs, as well as in the first and last paragraphs of the Preamble, apparently refers to the section of Jerusalem which was occupied by Israel following the intense hostilities of June 1967. These references also raise the implication that in the view of the Security Council there may be an unoccupied section of Jerusalem. However, it must be noted that the first operative paragraph of resolution 298 in reaffirming resolution 252 retains its standard of "the legal status of Jerusalem" which is the corpus separatum. Thus there is apparent lack of clarity in the post 1967 General Assembly resolutions. and in the Security Council resolutions as to whether the status of Jerusalem referred to in particular instances is the legal status of the corpus separatum provided for in General Assembly resolutions 181, 194 and 303, and in the specific reference to "the legal status" in Security Council resolution 252, or the factual status of the pre-June 1967 divided City. However, in examining the Security Council resolutions along with those of the General Assembly, it appears that there is, at the least, an implicit intent to preserve the principle of the corpus separatum even though these resolutions, following the intense hostilities of June 1967, put special emphasis upon the post-1967 Israeli actions.

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## VI. TWO STATES IN PALESTINE WITH RIGHTS AND OBLIGATIONS FOR EACH

In the Palestine Partition Resolution, 184/ the General Assembly acted to resolve a situation of conflict and crisis by authorizing the establishment of two democratic States in the territory of the Palestine Mandate. The rights to establish the States were balanced by concomitant obligations to do so in accordance with the United Nations Charter and the terms of the Partition Resolution. The ensuing resolutions of the General Assembly adhere to the basic elements of the Partition Resolution.

General Assembly resolution 33/28 A of 14 December 1978, 185/ focusing on Palestinian rights which have not yet been implemented, is consistent with this basic concept. It recalls and reaffirms resolutions 3236 (XXIX) of 22 November 1974, 186/ 3375 (XXX) 187/ and 3376 (XXX) 188/ of 10 November 1975, 31/20 of 24 November 1976 189/ and 32/40 A and B of 2 December 1977. 190/ Its first operative paragraph points out the central character of the problem of Palestine. The second such paragraph summarizes Palestinian rights including the right of return and the national rights. The third; emphasizes the representational role of the Palestine Liberation Organization, and the fourth States directly that the validity of peace agreements concerning the Palestine problem is dependent upon adherence to the United Nations Charter and the relevant resolutions.

Security Council resolution 242 of 22 November 1967 191/ concerning "a just and lasting peace in the Middle East" has been supplemented by the resolutions of the General Assembly which have been considered here. In particular, resolution 242's undefined "just settlement of the refugee problem" is made specific by the General Assembly's recognition of the right of return for individual Palestinians. In addition, the General Assembly has recognized the national rights of the Palestinian people in carefully formulated

terms which do not infringe upon the legitimate rights of the State of Israel. These Israeli national rights which remain inviolate include, among others, the rights to self-determination and to national independence and sovereign equality with other States consistent with international law including the pertinent United Nations resolutions. The Israeli rights do not include, among others, supposed rights to deny self-determination and independence to the Palestinian people and a supposed right to establish Israeli borders on the basis of military conquest and illegal annexations.

The outcome of the United Nations resolutions is that there is continuing authority for the establishment of two States in Palestine. The authority to provide for a State carries with it the authority to impose limitations including those based upon the human rights provisions of the Charter. A limitation which is inherent in the authorization of the two States is that each may exercise its national rights conditioned on, at the least, the requirement of non-obstruction of the national rights of the other. The Member States of the United Nations which have authorized the two States in the international forum of the General Assembly are now required by the Charter to "fulfill in good faith the obligations assumed by them in accordance with the present Charter". 192/

APPENDIX  
APPENDIX

TABLE INDICATING VOTING ON MAJOR RESOLUTIONS

General Assembly

		<u>In favour</u>	<u>Against</u>	<u>Abstentions</u>
181 (II)	29 November 1947	30	17	9
194 (III)	11 December 1948	35	15	8
273 (III)	11 May 1949	37	12	9
303 (IV)	9 December 1949	38	14	7
1514 (XV)*	14 December 1960	89	0	9
2253 (ES-V)	4 July 1967	99	0	20
2254 (ES-V)	14 July 1967	99	0	18
2443 (XXIII)	19 December 1968	60	22	37
2452 (XXIII)	19 December 1968 :			
2452 A		100	1	6
2452 B		105	0	3
2452 C		106	0	0
2535 (XXIV)	10 December 1969 :			
2535 A		110	0	1
2535 B		48	22	47
2535 C		108	0	3
2625 (XXV)*	24 October 1970	Adopted without vote		
2628 (XXV)	4 November 1970	57	16	39
2649 (XXV)*	30 November 1970	71	12	28
2672 (XXV)	8 December 1970 :			
2672 A		111	2	1
2672 B		114	1	2
2672 C		47	22	50
2672 D		93	5	17
2949 (XXVII)	8 December 1972	86	7	31

\* denotes resolutions not applicable exclusively to the Palestine Question.



General Assembly (Cont'd)

	<u>In favour</u>	<u>Against</u>	<u>Abstentions</u>
2963 (XXVII) 13 December 1972 :			
2963 A	124	0	1
2963 B	125	0	0
2963 C	95	6	24
2963 D	93	5	26
2963 E	67	21	37
2663 F	Adopted without vote		
3070 (XXVIII)* 30 November 1973	97	5	28
3089 (XXVIII) 7 December 1973 :			
3089 A	122	0	2
3089 B	121	0	3
3089 C	110	4	12
3089 D	87	6	33
3089 E	81	3	41
3210 (XXIX) 14 October 1974	105	4	20
3236 (XXIX) 22 November 1974	89	8	37
3237 (XXIX) 22 November 1974	95	17	19
3240 (XXIX) 29 November 1974 :			
3240 A	95	4	31
3240 B	121	0	7
3240 C	89	4	36
3375 (XXX) 10 November 1975	101	8	25
3376 (XXX) 10 November 1975	93	18	27
3414 (XXX) 8 December 1975	84	17	27
3525 (XXX) 15 December 1975 :			
3525 A	87	7	26
3525 B	112	2	7
3525 C	87	2	32
3525 D	82	5	33

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\* denotes resolutions not applicable exclusively to the Palestine Question.

General Assembly (Cont'd)

		<u>In favour</u>	<u>Against</u>	<u>Abstentions</u>
31/15	23 November 1976 :			
31/15 A		115	0	2
31/15 B			Unanimous	
31/15 C			Unanimous	
31/15 D		118	2	3
31/15 E		118	2	3
31/20	24 November 1976	90	16	30
31/106	16 December 1976 :			
31/106 A		129	3	4
31/106 B		134	0	2
31/106 C		100	5	30
31/106 D		97	3	36
32/40	2 December 1977 :			
32/40 A		110	12	29
32/40 B		95	20	26
32/91	13 December 1977 :			
32/91 A		131	1	1
32/91 B		96	1	37
32/91 C		98	2	32
33/28	7 December 1978 :			
33/28 A		97	19	25
33/28 B		103	14	24
33/28 C		98	17	26
33/39	7 December 1978	100	4	33

Security Council

		<u>In favour</u>	<u>Against</u>	<u>Abstentions</u>
73	11 August 1949	9	0	2
237	14 June 1967		Unanimous	
242	22 November 1967		Unanimous	
252	21 May 1968	13	0	2
267	3 July 1969		Unanimous	
298	25 September 1971	14	0	1
338	22 October 1973	14	0	(one did not participate)
446**	22 March 1979	12	0	3
452**	20 July 1979	14	0	1

\*\* Adopted after the date of completion of the present study.

- 1/ I.C.J. Stat., art. 38 (1) a, b and c. Sub-section "d" lists judicial decisions and legal writings as subsidiary sources.
  - 2/ In the famous case of The Paquete Habana, 175 U.S. 677 (1900), the U.S. Supreme Court based its holding concerning the immunity of coastal fishing boats from capture on such assent. The same Point is made by legal writers. See, e.g., Professor Brierly who states: "It would hardly ever be practicable, and all but the strictest of positivists admit that it is not necessary, to show that every State has recognized a certain practice..." as creating customary law. J.L. Brierly, The Law of Nations (Oxford Univ. Press; 6th ed., Waldock, 1963) p. 61.
  - 3/ Professor Brierly has accurately characterized general principles as "a dynamic element in international law". Brierly, *supra* note 2, p. 63. It has also been pointed out that international arbitral tribunals employed general principles of law before the establishment of the International Court of Justice. 1 Oppenheim, International Law (Longmans, Green; London, 8th ed., Lauterpacht, 1955) p. 30.
  - 4/ De Jure Belli ac Pacis in J.B. Scott (ed.), Classics of International Law (Kelsey transl., Carnegie Endowment for International Peace, 1925).
  - 5/ Oppenheim, *supra* note 3, p. 27.
  - 6/ The Russian draft project, a summary of the discussions, and the final text of the Declaration are in 65 British and Foreign State Papers 1871-1874, pp. 1067-1109 (1881). The text also is in D. Schindler and J. Tomah (eds.), The Laws of Armed Conflicts; A Collection of Conventions, Resolutions and Other Documents (Sijthoff, Leiden, 1973) pp. 25-34.
  - 7/ The other criteria of article 9 are: military command, fixed distinctive emblem, and the open carrying of arms.
  - 8/ Art. 2 (2) and art. 3. The text of this Oxford Manual is in Schindler and Toman, *supra* note 6, pp. 35-48.
  - 9/ Preface to the Oxford Manual, *supra* note 8.
  - 10/ Hague Convention II With Respect to the Laws and Customs of War on Land, 29 July 1899, 32 U.S. Stat. 1803, U.S. Tr. Series No. 403, Gt. Brit. Tr., Series No. 11, Cmd. 5030 (1910).
  - 11/ Hague Convention IV respecting the Laws and Customs of War on Land, 18 October 1907, 36 U.S. Stat. 2227, U.S. Tr. Series No. 539, Gt. Brit. Tr. Series No. 9, Cmd. 5030 (1910).
  - 12/ Art. 4A (2), Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949, 75 U.N.T.S. 135, [1956], 6 U.S. Trs. and Other Int'l Agrees. 3316, U.S. Trs. and Other Int'l Acts Series No. 3364, Gt. Brit. Tr. Series No. 39, Cmd. 550, p. 94 (1958).
  - 13/ The Charter, a constitutional document, requires that international peace and security be achieved in accordance with "the principles of justice and international law". Art. 1 (1). Art. 51 incorporates "the inherent right" of self-defense which is the traditional international law on the subject. The Preamble refers to "the obligations arising from treaties and other sources of international law".
  - 14/ See the specific examples in Sections II through V *infra*.
  - 15/ Oxford Press, London (1963).
  - 16/ Higgins treatise, *id.* p. 2.
  - 17/ *Id.* p. 5.
  - 18/ Ethiopia v. South Africa; Liberia v. South Africa, Second Phase [1966] I.C.J. 6 p. 248
  - 19/ *Id.* p. 291.
  - 20/ Advisory Opinion on Reparation for Injuries Suffered in the Service of the United Nations, [1949] I.C.J., 174.
  - 21/ This system of Charter interpretation is analogous to the "coordinate construction" of the United States Constitution, which was the prevailing system until after the Civil War, under which each of the three main branches of the Federal Government interpreted the Constitution for its own purposes. An example is provided by President Andrew Jackson's veto of the Second National Bank Bill on the grounds of its unconstitutionality even though the Supreme Court had previously held the creation of a national bank to be constitutional. See C.B. Swisher, American Constitutional Development (Riverside Press, Cambridge, Mass., 1943) pp. 178-85.
  - 22/ U.N. Charter, art. 27 (3).
  - 23/ An analysis of the Security Council's interpretation of art. 27 (3), and the conclusion that it is legally sound, is in McDougal and Associates, Studies in World Public Order (Yale, New Haven, 1960) Ch. 7.
  - 24/ In addition to the examples analyzed *infra* in the present study, the Uniting for Peace Resolution of 3 November 1950 should be considered, G.A. Res. 377 (V). This resolution was adopted with the leadership of the United States Government following a Soviet Union veto in the Security Council which prevented the taking of enforcement measures there, 5 U.N. GAOR, Supp. 20, pp. 10-12.
  - 25/ *Supra* note 20.
  - 26/ The main expressions of world community consensus on legal issues relating to the Palestine Question are the principal subjects of the balance of the present study.
  - 27/ *Infra* Section II.
  - 28/ *Infra* Section III.
  - 29/ *Infra* Section IV.
  - 30/ *Infra* Section V.
  - 31/ The Security Council Resolution of 22 November 1967 concerning Principles for a Just and Lasting Peace in the Middle East, S.C. Res. 242 (1967), 22 U.N. SCOR, 1382nd meeting, pp. 8-9, which is considered in *infra* Ch. VI.
  - 32/ G.A. Res. 181 (II) concerning the Future Government of Palestine (29 November 1947), 2 U.N. GAOR Resolutions, pp. 131-32, (16 Sept.-29 Nov. 1947). The resolution embodied a Plan of Partition with Economic Union and it is widely termed the Palestine Partition Resolution. It is referred to hereinafter in this way and also as resolution 181.
  - 33/ Palestine: Statement by His Majesty's Government in the United Kingdom (17 May 1939), Cmd. 6019 (1939). The rise of the Nazi tyranny to power in Germany in 1933 was also a significant factor in increasing the immigration of German refugees to Palestine and other places.
  - 34/ The earlier Zionist stated position is reflected in the official history by a member of the Executive of the World Zionist Organization :
- "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".
- 1 N. Sokolow, History of Zionism (London, 1919) author's intro. at xxiv-xxv. The later Zionist position is reflected in this official interpretation:
- "The phrase [in the Balfour Declaration] 'the establishment in Palestine of a National Home for the Jewish people' was intended and understood by all concerned to mean at the time of the Balfour Declaration that Palestine would ultimately become a 'Jewish Commonwealth' or a 'Jewish State', if only Jews came and settled there in sufficient numbers".
- Jewish Agency for Palestine, Book of Documents Submitted to the General Assembly of the United Nations Relating to the Establishment of the National Home for the Jewish People (New York, May 1947) p. 5. The interpretations in this book were written by Mr. Abraham Tulin, legal counsel to the Jewish Agency.
- 35/ One of the preeminent leaders of the Palestinian Jewish community, Joseph Hayyim Sonnenfeld, wrote a criticism of the Zionists and their program in February 1898, a short time after the meeting of the First Zionist Congress in Basle in 1897. After stating that "(t)he chief of these ruffians (*biryonim*) in our Holy Land has uttered terrible words, full of denial of the Most High...", he continued: "They [the Zionists] have also asserted their view that the whole difference and distinction between Israel and the nations lies in nationalism, blood and race, and that the faith and the religion are superfluous". He concluded:
- "For us in the Holy Land it is a sure sign that Dr. Herzl comes not from the Lord but from 'the side of pollution', for we say, anyone who pleads in defence of Israel is exalted in the world by the Holy One, Blessed be He, while this evil man pleads in condemnation and multiplies accusation".
- Quoted in E. Marmorstein, Heaven at Bay: the Jewish Kulturkampf in the Holy Land (Oxford, London, 1969) pp. 79-80.
- The Orthodox Jewish opposition to Zionism is continued in the State of Israel today by Naturei Karta and the Sephardic Community of Jerusalem. See for similar manifestations of opposition in the United States today The Jewish Guardian, which is the periodical publication of Naturei Karta of U.S.A., G.P.O. Box 21 3, Brooklyn, N.Y. 11202.
- It is not surprising that the Zionists apparently had little more liking for Palestinian Jews than for Palestinian Muslims and Christians. See Dr. Weizmann's criticisms of Palestinian Jews in the chapter of his autobiography entitled,
- "The Zionist Commission: Chanukah Jewry". Trial and Error: The Autobiography of Chaim Weizmann (East and West Lib., London, 1950) ch. 20.
- 36/ The text of the Mandate of 24 July 1922 is in 2 UNSCOP, Report to the General Assembly, 2 U.N. GAOR, Supp. 11, pp. 18-22, U.N. Doc. A/364 Add.1, (9 Sept. 1947). The protective provisions include the Preamble and arts. 3, 5, 6, 9, 15 and 16.
- 37/ See, *inter alia*, Anglo-American Committee of Inquiry, Report to the United States Government and His Majesty's Government in the United Kingdom (U.S. Gov't Printing Office, 1946) *passim* and p. 39:
- "The Jews have developed, under the aegis of the Jewish Agency and the Vaad Leumi, a strong and tightly-woven community. There thus exists a virtual Jewish non-territorial State with its own executive and legislative organs, parallel in many respects to the Mandatory Administration, and serving as the concrete symbol of the Jewish National Home. This Jewish shadow Government has ceased to cooperate with the Administration in the maintenance of law and order, and in the suppression of terrorism.
- See also [1947] 5 Foreign Rels. U.S. (1971), pp. 999-1328, *passim* and under following headings in index: Terrorism in Palestine, Irgun Zvai Leumi, Stern Gang.
- 38/ U.N. GAOR, First Spec. Sess. Plenary, Gen. Series, U.N. Doc. A/286. The ensuing summary in the text is based primarily upon the cited General Assembly Official Records.
- 39/ Jewish Agency and World Zionist Organization remain the official names for the same entity. The World Zionist Organization - Jewish Agency (Status) Law, 7 Laws of the State of Israel (Israel Gov't Printer, auth. transl., 1952) p. 3 provides in sec. 3:
- "The World Zionist Organization, which is also the Jewish Agency, takes care as before of immigration and directs absorption and settlement projects in

the State".

40/ See supra note 35.

41/ 2 U.N. GAOR, Resolutions, pp. 6-7, U.N. Doc. A/310 (16 Sept.-29 Nov. 1947).

42/ Operative para. 4.

43/ The findings and recommendations of UNSCOP, which are examined in the ensuing text, are in 1 UNSCOP, Report to the General Assembly, 2 U.N. GAOR, Supp. 11, U.N. Doc. A/364, (3 Sept. 1947).

44/ The importance of labels should not be underestimated. Perspectives would have been different if the labels had been "the Zionist case" (or "the European case") and "the Palestinian case".

45/ Then president of the Hebrew University of Jerusalem. See Magnes, "A Solution Through Force?" in Gary V. Smith (ed.), Zionism--The Dream and the Reality: A Jewish Critique (Barnes and Noble, New York, 1974) p. 109.

46/ Then executive director of the American Council for Judaism and now president of American Jewish Alternatives to Zionism. See Berger, "The Real Issues in the Arab-Israeli-Zionist Conflict" in id. p. 218.

47/ The complete factual account of the negotiations leading to the Balfour Declaration is L. Stein, The Balfour Declaration (Valentine, Mitchell, London, 1961).

Ten years after the issuance of the Balfour Declaration the principal Zionist negotiator stated:

"The Balfour Declaration of 1917 was built on air, and a foundation had to be laid for it through years of exacting work; every day and every hour of these last ten years, when opening the newspapers, I thought: Whence will the next blow come? I trembled lest the British Government would call me and ask: 'Tell us, what is this Zionist Organisation? Where are they, your Zionists?' For these people think in terms different from ours. The Jews, they knew, were against us..."

C. Weizmann, Address at Czernowitz, Roumania in P. Goodman (ed.), Chaim Weizmann: A Tribute on his Seventieth Birthday (Victor Gollancz, London, 1945) p. 196 at 199.

The negotiations leading to the Balfour Declaration including the Jewish success in having the Zionist claims of legal right rejected are analyzed in W.T. Mallison, "The Balfour Declaration: An Appraisal in International Law" in I. Abu-Lughod (ed.), The Transformation of Palestine (Northwestern Univ., 1971) p. 61.

48/ The "Jewish people" nationality claims are analyzed in W.T. Mallison, "The Zionist-Israel Juridical Claims to Constitute 'The Jewish People' Nationality Entity and to Confer Membership in It: Appraisal in Public International Law", 32 Geo. Wash. L. Rev. 983 (1964) and reprinted as a monograph in 1964. The contrasting view that the claims are lawful is by the authoritative Zionist lawyer, Professor N. Feinberg: "The Recognition of the Jewish People in International Law", in The Jewish Yearbook of International Law, 1948 (Mass, Jerusalem) 1.

49/ See, e.g., the reference to Jewish agriculturists who, contrary to Zionist policy and Practice, spoke Arabic and employed Arabs on their farms: G.E. Kirk, A Short History of the Middle East (Praeger, N.Y., 7th Rev. Ed., 1974) p. 152.

50/ The 1954 basic agreement between the State of Israel (represented by its government) and the World Zionist Organization (represented by its executive) was designed to regularize and institutionalize, but not to change, the working arrangements between the two. Section 1 of the agreement, which is formally entitled Covenant Between the Government of Israel (Hereafter the Government) and the Zionist Executive Called also the Executive of the Jewish Agency (Hereafter the Executive), provides, inter alia, for "the acquisition and amelioration of land in Israel by the institutions of the Zionist Organization, the Keren Kayemeth LeIsrael [Jewish National Fund] and the Keren Hayesod [United Israel Appeal]". The United Israel Appeal is the parent organization which receives most of the funds raised by the United Jewish Appeal. In brief, the United Israel Appeal receives the funds and the Jewish National Fund uses them in the acquisition and improvement of land. The Covenant appears in the Appendix to W.T. Mallison, "The Legal Problems Concerning the Juridical Status and Political Activities of the Zionist Organization/Jewish Agency: A Study in International and United States Law", 9 Wm. and Mary L. Rev. 556 (1968) reprinted as a monograph in 1968.

The Jewish National Fund also has its own Covenant of 28 November 1961 with the Government of Israel. Executive Reports, 26th Zionist Congress 345 (December 1964). On the governmental and land acquisition functions of the Jewish National Fund see id. pp. 345-55.

For the U.S. Senate investigation into Zionist activities in the United States see Hearings on Activities of Non-diplomatic Representatives of Foreign Principals in the United States Before the Senate Committee on Foreign Relations, 88th Cong., 1st Sess., Part. 9, pp. 1211-1424 (23 May 1963) and Part. 12, pp. 1695-1782 (1 August 1963).

51/ The UNSCOP recommendations are in supra note 43, pp. 42-64.

52/ Supra note 41 at 45.

53/ Supra note 43 at 44.

54/ Id.

55/ Supra note 43 at 46.

56/ Supra note 43 at 59.

57/ 2 U.N. GAOR, Ad Hoc Committee on the Palestine Question.

58/ 2 U.N. GAOR, Resolutions, pp. 131-132, U.N. Doc. A/310.

59/ The ensuing text is based upon the provisions of G.A. Res. 181.

60/ G.A. Res. 181, Part I B (8).

61/ See in the Report of the Anglo-American Committee of Inquiry, supra note 37, the descriptions of the Hagana and the Palmach in Ch. 9, entitled "Public Security", pp. 45-46.

62/ See the descriptions of the Irgun and the Stern Gang in id. p. 47. Military cooperation between the Irgun and the Zionist regular forces is described in M. Begin, The Revolt (Nash, Los Angeles, 1948, new ed. 1972) Ch. 29 entitled "The Conquest of Jaffa", and passim.

63/ G.A. Res. 181, Part III C 12 (a).

64/ Id. at Part III C 12 (b).

65/ Id. at Part III C 13, 14.

66/ 1 Laws of the State of Israel (Israel Gov't Printer, auth. transl., 1948) p. 3 at para. 12.

67/ Some persons appeared to believe that a constitution would be drafted and adopted in spite of the difficulties which the human rights provisions of the Partition Resolution would present to the Government of Israel. See H.E. Baker, The Legal System of Israel (Steinmatsky, Tel Aviv; Sweet and Maxwell, London, 1961) p. 14.

68/ See, generally, id. pp. 31-49.

69/ Supra note 66 at 4 id. 48 (1950) as amended.

70/ 6 id. 50 (1952) as amended.

71/ On its face the Nationality Law, supra note 70, is not so obviously discriminatory as the Law of Return, supra note 69. However, its substantive provisions, including the requirement of "lawful" pre-existing residence within the State of Israel, effectively bar the return of Palestinian Arab natives who are determined by these municipal laws not to have such residence.

72/ To the extent that the Partition Resolution human rights provisions represent the applicable international law on the subject, the existence of the Israeli discriminatory municipal statutes do not constitute a defense to the charge of violation of international law. It is one of the most basic principles of international law, which may be termed a world order principle, that municipal law can never be used as a defense to a charge of violation of international law. See, inter alia, United States v. Guatemala (Shufeldt Claim, 1930), U.S. Dept. of State Arb. Series, p. 3 at p. 851, 876-77; reprinted in relevant part in W.W. Bishop (ed.), International Law: Cases and Materials (Little, Brown Co., Boston, 3rd ed., 1971) p. 83.

73/ League of Nations Covenant art. 22 (4).

74/ The League Mandate for Palestine is cited supra note 36. The ensuing text is based upon claimed violations of the provisions of the Partition Resolution, the terms of the League Mandate, and of the United Nations Charter.

Ambassador Loy Henderson, then serving as Director of the Office of Near Eastern and African Affairs in the U.S. Department of State, made several basic criticisms of UNSCOP's Plan of Partition in a memorandum of 22 September 1947 to the Secretary of State. For example, after stating that the UNSCOP plan violated both U.N. Charter and American principles, he continued:

"These proposals, for instance, ignore such principles as self-determination and majority rule. They recognize the principle of a theocratic racial state and even go so far in several instances as to discriminate on grounds of religion and race against persons outside of Palestine. We have hitherto always held that in our foreign relations American citizens, regardless of race or religion, are entitled to uniform treatment. The stress on whether persons are Jews or non-Jews is certain to strengthen feelings among both Jews and Gentiles in the United States and elsewhere that Jewish citizens are not the same as other citizens".

[1947] 5 Foreign Rel. U.S., p. 1153 at 1157 (1971).

Additional claims concerning the invalidity of the Partition Resolution are in H. Cattani, Palestine and International Law: The Legal Aspects of the Arab-Israeli Conflict (Longman, London, 2nd ed., 1976), Ch. 4 and passim.

75/ Supra note 37.

76/ Self-determination is considered in more detail in infra Section IV.

77/ Art. 22 (4).

78/ Inter alia, art. 2 (concerning "the development of self-governing institutions"), art. 3, art. 5 and art. 6.

79/ See D. Hirst, The Gun and the Olive Branch: The Roots of Violence in the Middle East (Faber and Faber, London, 1977) passim. See also [1947] 5 Foreign Rel. U.S., supra note 37.

80/ Id.

81/ International Status of South-West Africa, Advisory Opinion of 11 July 1950, [1950] I.C.J., p. 128 at 137. See also [1955] I.C.J., p. 67 at 76 and [1971] I.C.J., p. 16 at 43.

82/ U.N. Doc. A/C. 1/SR. 127, P. 7 (27 April 1948).

83/ In addition to the primary sources considered in the text, it is significant that the authoritative Zionist lawyer, Professor N. Feinberg, has argued in favor of the validity of the Partition Resolution. The Arab-Israel Conflict in International Law (Magnes Press, Jerusalem, 1970), Chapter VI. It is recognized that the Government of Israel has placed less reliance on the Partition Resolution since its extensive military conquests during the intense hostilities of June 1967.

84/ Supra note 66 at para. 9.

85/ Id. at para. 10.

86/ Supra note 36, Preamble para. 3.

87/ Dr. Weizmann states :

"The most serious difficulty arose in connection with a paragraph in the Preamble--the phrase which now reads: 'Recognizing the historical connection of the Jews with Palestine'. Zionists wanted to have it read: 'Recognizing the historic rights of the Jews to Palestine'. But Curzon [the British Foreign Secretary] would have none of it..."

Trial and Error: The Autobiography of Chaim Weizmann (East and West Lib., London, 1950), p. 348.

88/ See infra., Sections III, IV and V.

89/ The International Court of Justice has considered the relationship between obligations and rights in connection with the then Mandated Territory of South-West Africa:

"The authority which the Union Government exercises over the Territory is based on the Mandate. If the Mandate lapsed, as the Union Government contends, the latter's authority would equally have lapsed. To retain the rights derived from the Mandate and to deny the obligations thereunder could not be justified". Supra note 81, [1950], I.C.J., p. 128 at 133.

If the principle of reciprocal rights and obligations under the League Mandate for South-West Africa, was lawfully applied to the Union of South Africa, there is no reason why the principle should not be equally applicable to the State of Israel under the Palestine Partition Resolution.

90/ This usual state practice is apparently uncontroversial and, therefore, not the subject of diplomatic and juridical contention.

91/ In contrast to the usual or normal situation referred to in supra note 90, the denial of the right of return to the Palestinians has resulted in controversy. See e.g. infra note 101.

92/ Magna Carta, Ch. 42. The translation quoted is from S.E. Thorne et al., The Great Charter: Four Essays on Magna Carta and the History of our Liberty (Pantheon Books, N.Y., 1965) p. 133.

93/ The following are the four Conventions of 1949:

I. Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 75 U.N.T.S., p. 31; II. Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 75 U.N.T.S., p. 85; III. Geneva Convention Relative to the Treatment of Prisoners of War, 75 U.N.T.S., p. 135; IV. Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 75 U.N.T.S., p. 287.

94/ Conv. I: arts. 5, 63; Conv. II: arts. 6, 62; Conv. III: inter alia, arts. 5, 46-48, 109-119, 142; Conv. IV: inter alia, arts. 6, 36, 45 (2), 134, 158.

95/ Conv. I; art. 63 (3); Conv. II: art. 63 (3); Conv. III, art. 142 (3). Conv. IV: art. 158 (3).

96/ Defined in Conv. IV, art. 4.

97/ Defined in Conv. III, art. 4.

98/ Defined in Conv. I, art. 13 and in Conv. II, art. 13.

99/ Art. 49 (1).

100/ Art. 13 (2). The Universal Declaration was approved by G.A. Res. 217 A (III), (10 December 1948), 3 U.N. GAOR, Resolutions, pp. 71-77, U.N. Doc. A/810, (21 Sept.-12 Dec. 1948).

101/ K.N. Radley, "The Palestinian Refugees: The Right to Return in International Law", 72 Am. J. Int'l Law, p. 586 at 613 (1978).

102/ See the text accompanying supra notes 69, 70 and 71.

103/ Art. 12 (4). This International Covenant has been approved by G.A. Res. 2200 (XI) (16 December 1966), 21 U.N. GAOR, Supp. 16, pp. 49-60.

104/ 3 U.N. GAOR, Supp. 11, pp. 1-19; U.N. Doc. A/648, (21 Sept.-12 Dec. 1948).

105/ Supra note 104 at VIII 3 (e), p. 17.

106/ Id. at VIII 4 (i), p. 18.

107/ 3 U.N. GAOR, Resolutions, pp. 21-25, U.N. Doc. A/810, (21 Sept.-12 Dec. 1948).

108/ Id., para. 5.

109/ Id., para. 14.

110/ Historical Survey of Efforts of the U.N. Conciliation Commission for Palestine to Secure the Implementation of Paragraph 11 of G.A. Resolution 194 (III), para. 38.; U.N. Doc. A/AC.25/W.81/Rev.2, pp. 20-21.

111/ 6 U.N. GAOR, Supp. 20, pp. 12-13, (6 Nov. 1951-5 Feb. 1952).

112/ 23 U.N. GAOR, Supp. 18, pp. 21-22.

113/ Operative para. 2.

114/ Operative para. 1.

115/ 24 U.N. GAOR, Supp. 30, pp. 25-26.

116/ Para. 1.

117/ Para. 2.

118/ Para. 3.

119/ 27 U.N. GAOR, Supp. 30, pp. 27-29

120/ 28 U.N. GAOR, Supp. 30, pp. 26-28.

121/ 29 U.N. GAOR, Supp. 31, p. 4.

122/ Such national rights are considered in Section IV.

123/ See supra notes 69 and 70.

124/ Quoted by I.F. Stone, "For a New Approach to the Israeli-Arab Conflict" in Gary V. Smith (ed.) Zionism--The Dream and the Reality: A Jewish Critique (Barnes and Noble, New York, 1974) p. 197 at 209-210.

125/ 31 U.N. GAOR, Supp. 39, p. 48.

126/ 30 U.N. GAOR, Supp. 34, pp. 3-4.

127/ U.N. Press Release, p. 11, U.N. Doc. GA/5942, 33rd Sess., (5 Feb. 1979).

128/ U.N. SCOR, Fourth Year, pp. 8-9.

129/ Operative para. 1.

130/ U.S. SCOR, Twenty-second Year, pp. 5-6.

131/ U.N. SCOR, Twenty-second Year, pp. 8-9.

132/ Preambular para. 2.

133/ Operative para. 2 (b).

134/ U.N. SCOR, Twenty-eighth Year, p. 10.

135/ Art. 1 (2). The Preamble to the Charter states that "We the Peoples of the United Nations" acting through governments agree to the Charter and establish the United Nations. The human rights provisions of the Charter, arts. 55 and 56, encompass the rights of peoples and individuals. Art. 80 (1) refers to the rights of "any peoples". See Goodrich, Hambro and Simons, Charter of the United Nations: Commentary and Documents (Columbia Univ., New York, 3rd rev. ed., 1969) pp. 494-500.

136/ The contrast between the contemporary and older theories of international law is pointed up in McDougal, "Perspectives for an International Law of Human Dignity", 53 Proc. Am. Soc. Intl L. 107 (1959) /Address as president of the American Society of International Law 7.

137/ Supra note 36.

138/ Art. 2 of the League Mandate for Palestine, supra note 36, obligated the Mandatory Power to secure, inter alia, "the development of self-governing institutions".

139/ G.A. Res. 181 (II), Part IA (3) and passim.

140/ Supra Section III.

141/ 24 U.N. GAOR, Supp. 30, pp. 25-26.

142/ 25 U.N. GAOR, Supp. 28, p. 36.

143/ 29 U.N. GAOR, Supp. 31, P. 3, (14 October 1974).

144/ 29 U.N. GAOR, Supp. 31, p. 4.

145/ 29 U.N. GAOR, Supp. 31, p. 4.

146/ The present textual paragraph is based principally upon W.T. Mallison and N. Feinberg, supra note 48.

147/ Attorney General of the Government of Israel v. Adolf Eichmann, 36 Intl L. Reps., p. 5 at 53 (1961) [Opinion of the Israeli trial court, 12 December 1961], affirmed 36 Intl L. Reps., p. 277 at 304 [Opinion of the Supreme Court of Israel, 29 May 1962].

148/ After referring to United States non-discrimination among its citizens based upon religious identification, it stated: "Accordingly, it should be clear that the Department of State does not regard the 'Jewish people' concept as a concept of international law". 8 M. Whiteman, Digest of Intl Law (U.S. Gov't Prntg. Office, 1967), p. 34 at 35.

149/ Art. 55c.

150/ Point V concerning "colonial claims" provided that "the interests of the populations concerned must have equal weight with the equitable claims of the government whose title is to be determined". Point XII provided that "the other [non-Turkish] nationalities which are now under Turkish rule should be

assured an undoubted security of life and an absolutely unmolested opportunity of autonomous development..." [1918] Foreign Rels. of U.S., Supp. 1, Vol. 1, pp. 15-16 (1933).

151/ H.A. Kissinger, A World Restored: Metternich, Castlereagh and the Problems of Peace, 1812-1822 (Houghton Mifflin, Boston, Sentry ed., undated), p. 145.

152/ Art. 22 (1).

153/ U.N. Charter, art. 2 (1).

154/ Art. 73b.

155/ 15 U.N. GAOR, Supp. 16, pp. 66-67.

156/ G.A. Res. 1573 (XV) re Algeria; G.A. Res. 1603 (XV) re Angola; G.A. Res. 1747 (XVI) re Zimbabwe (Rhodesia).

157/ 25 U.N. GAOR, Supp. 28, pp. 121-124.

158/ Supra note 139.

159/ 25 U.N. GAOR, Supp. 28, pp. 73-74.

160/ Operative para. 5.

161/ 25 U.N. GAOR, Supp. 28, p. 36.

162/ 28 U.N. GAOR, Supp. 30, p. 78.

163/ Supra, Section III B (3).

164/ See infra, Section IV D.

165/ 28 U.N. GAOR, Supp. 30, p. 78.

166/ Operative para. 1.

167/ Operative para. 2.

168/ See the text accompanying supra note 151.

169/ See the text accompanying supra note 157.

170/ Art. 47 of the Geneva Civilians Convention, 75 U.N.T.S. 135, provides that protected persons in occupied territory shall not be deprived of the benefits of the Convention if the occupying power annexes "the whole or part of the occupied territory". This provision was written to avoid a repetition of the Nazi practice of using the annexation device to attempt to avoid the application of the law concerning occupation.

171/ It is based, in part, on art. 2 (3) and (4).

172/ G.A. Res. 181 (II), Part II B.

173/ Preambular para. 2.

174/ 29 November 1947, cited fully in supra note 32.

175/ 11 December 1948, cited fully in supra note 107.

176/ 4 U.N. GAOR, Resolutions, p. 25, U.N. Doc. A/1251, (20 Sept-12 Dec. 1948).

177/ U.N. Trusteeship Council Off. Recs., 2nd Sess., 3rd Part, Annex pp. 4-24, U.N. Doc. T/118/Rev. 2 (1948).

178/ 22 U.N. GAOR, (ES-V), Supp. 1, p. 4.

179/ U.N. SCOR, Twenty-third Year, pp. 9-10.

180/ U.N. SCOR, Twenty-fourth Year, pp. 3-4.

181/ Security Council resolution 252 is also reaffirmed, along with resolution 267, by the first operative paragraph of Security Council resolution 271 of 15 September 1969, which considers "the extensive damage caused by arson to the Holy Al Aqsa Mosque in Jerusalem on 21 August 1969 under the military occupation of Israel", as it is stated in its first preambular paragraph.

182/ U.N. SCOR, Twenty-sixth Year, p. 6.

183/ See supra note 21 and the accompanying text.

184/ Supra note 32.

185/ U.N. Press Release, Doc. GA/5942, 33rd Sess., (5 Feb. 1979).

186/ Supra Section III B (3) and Section IV C.

187/ 30 U.N. GAOR, Supp. 34, p. 3.

This resolution in operative paragraph 1 requests the Security Council to take measures to achieve the inalienable rights of the Palestinian people specified in G.A. Res. 3236. In operative paragraph 2 it calls for the invitation of the Palestine Liberation Organization to participate, "on an equal footing with other parties", in all United Nations activities concerning the Middle East.

188/ 30 U.N. GAOR, Supp. 34, pp. 3-4.

This resolution establishes a "Committee on the Exercise of the Inalienable Rights of the Palestinian People" and requests it to make appropriate recommendations.

189/ 31 U.N. GAOR, Supp. 39, pp. 21-22.

This resolution, inter alia, endorses the recommendations of the Committee on the Exercise of the Inalienable Rights of the Palestinian People.

190/ 32 U.N. GAOR, Supp. 45, pp. 24-25.

G.A. Res. 32/40 A, inter alia, endorses further recommendations of the Committee on the Exercise of the Inalienable Rights of the Palestinian People.

G.A. Res. 32/40 B, inter alia, requests the Secretary-General to establish in the Secretariat a Special Unit on Palestinian Rights.

191/ U.N. SCOR, Twenty-second Year, pp. 8-9.

192/ Art. 2 (2).