QUESTION OF PALESTINE: LEGAL ASPECTS (Document 4)

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The papers contained in the present compilation have been reproduced in the form in which they were submitted at the seminars, with minor editorial changes.

VIII. EIGHTH UNITED NATIONS SEMINAR ON THE QUESTION OF PALESTINE

(9-13 May 1983, Jakarta, Indonesia)

A. ISRAELI POLICIES AND PRACTICES IN THE OCCUPIED PALESTINIAN AND ARAB TERRITORIES IN THE LIGHT OF RECENT EVENTS IN THE REGION

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(Chairman of the United Nations Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories)

The Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories has been in existence since 1968. Its creation followed immediately after the efforts of the Security Council, which had started immediately after the hostilities of June 1967. The reports of the Special Committee have attempted to bring before the United Nations General Assembly the reality of the human rights situation which the Special Committee has catalogued from year to year, and each year the Assembly has renewed the mandate of the Special Committee.

The renewal of the mandate constitutes a sign of concern with the situation and of confidence in the Special Committee. However, in spite of this, the human rights situation in these territories has steadily deteriorated over the years. This deterioration provokes the need to enquire into its causes to see what could be done not only to stop this deterioration but also to reverse a dangerous situation.

Fifteen years of occupation have been utilized by the occupying Power to impose an infrastructure aimed at the eventual eviction of the Palestinians and Syrians from their respective homelands. Indeed, in the case of the occupied Syrian territory in the Golan Heights, the Government of Israel in December 1981 promulgated legislation purporting to annex this territory.

The Special Committee has found that the fundamental right to self-determination is being utterly disregarded. It is a matter of record because it has been so stated by the present Government of Israel at least during the last five years that this disregard is a natural result of the so-called "homeland" doctrine. According to this doctrine, international law notwithstanding, the territory occupied in 1967 constituted part of the "Jewish homeland" and therefore ceased to be "occupied territory" in the eyes of the present Israeli authorities. Based on that assumption, a policy has been elaborated and implemented which would envisage the extension of Israeli sovereignty over these territories.

It may be pertinent here to dwell briefly upon what constitutes the human rights of the population in the occupied territories. In the first place there is the right to self-determination. As regards the civilian population of the Golan Heights it would mean the reintegration of the territory and the people with the Syrian Arab Republic, and as regards the West Bank and the Gaza Strip the right to self-determination of the Palestinian people as repeatedly confirmed by the international community.

In addition to the right to self-determination, international law recognizes the fundamental rights of civilians under military occupation; these rights protect the person and the property of the civilian during such occupation and include such basic rights as the right to life and integrity of the person. Essentially international law considers military occupation to be a "temporary de facto situation" where the only modifications allowed to the local regime are those required by the need for the maintenance of order and security. Thus the Fourth Geneva Convention of 1949 1/ expressly prohibits any measures affecting the right to life or the physical integrity of the person, the arbitrary destruction of property, any measures affecting the ownership of property in an occupied territory, including the attempt to annex territories under occupation, and of course the transfer of civilians from the territory of the occupying Power into the occupied territory.

The Government of Israel has been a party to this Convention without any reservation since the early 1950s.

At present there are over 130 settlements physically established in the West Bank, the Gaza Strip and the Golan Heights, all of which are inhabited by Israeli citizens transferred thereto by express intent of the Israeli Government.

The map reproduced in annex I to the latest report of the Special Committee (A/37/485) is a graphic presentation of officially announced Israeli measures for the establishment of such settlements. It may be noted that by comparison with the territory concerned these settlements constitute a conscious and deliberate infiltration of Israeli presence in the territories occupied in 1967.

In its successive reports the Special Committee brought to the attention of the Assembly that by May 1976 64 settlements had been established (A/31/218, para. 329) and by the following year 84 settlements (A/32/284, para. 247). It will be seen that the establishment of settlements, which was started immediately upon the occupation of 1967, has not ceased. Indeed, it is somewhat ironical to recall the explanation given by the Government of Israel to a complaint by the Government of Jordan about the incursion of a group of Israelis into Hebron in 1968: the Government of Israel then offered the explanation that this group of Israelis were no more than a group of religious Jews intending to celebrate Passover in Hebron. This group was in fact the origin of the Israeli settlement in Hebron is known as Kiriat-Arba, which is to be found today settled on the hills overlooking Hebron. They are today a community numbering several hundreds Israelis, with their own court and their own militia, still expanding and encroaching steadily on Palestinian property in their periphery and beyond.

That progression of settlement and encroachment has not stopped. Attention may be drawn to a report from Jerusalem as reported in the Times of London on 11 November 1982, according to which the number of settlers in the occupied West Bank was to double in the next year. The report reflects a statement by a senior official of the World Zionist Organization (Mr. Ze'ev ben Yosef) and speaks of a "massive new influx of settlers" and the construction of thousands of permanent new housing units. According to this statement, the number of Israeli settlers in the occupied territories was to double, from 25,000 to 50,000, not including East Jerusalem, over the next year; it will reach 100,000 by 1987 and 1.4 million by 2010.

The settlements are constructed on land which belongs to several types of proprietors; as reflected in the report of the Special Committee, land has been taken over through various devices such as outright expropriation, without reasons being given, expropriations for "security" purposes, which was fashionable in the late 1960s and early 1970s, and more recently purchase of land by the World Zionist Organization through agencies set up for the purpose, albeit illegally, such as the "Himanuta Company" operating from Bethlehem. In its reports to date the Special Committee has repeatedly described the various devices used to take over land in the occupied territories. Nor should one lose sight when speaking of expropriation, of Jerusalem where Palestinians have been systematically removed throughout the occupation, leaving today a handful of Palestinian Arab families, all of whom may eventually have to go elsewhere if Israeli policy is allowed to continue.

The extent of the expropriation of land in the occupied territories is reflected in a study by Mr. Meron Benvenisti, former Deputy Mayor of West Jerusalem, undertaken for New York University, which shows that Israel may seize some 60 per cent of West Bank lands (as reported in Ha'aretz on 14 September 1982). Additional reports on the confiscation of large tracts of Arab land have continued throughout the first months of this year. Indeed, no later than the beginning of March 1983, it was revealed that Israel was planning to build a Jewish town above the largest Arab city in the West Bank, Nablus; it may be recalled that it is in Kiryat-Arba, the Jewish town built above Hebron, that most of the recent anti-Arab acts by Jewish settlers were initiated.

As the number of settlements increased over the years of occupation, so did the number of settlers. Let it be noted in this context that under international law, the Government of Israel bears full responsibility for the acts of the settlers planted in the occupied territories. Reference may be made to article 53 of the Fourth Geneva Convention. Up to some five years ago the role of the settlers in regard to the human rights situation of the civilians was perhaps marginal. However, as the Special Committee had occasion to learn already in 1979, the settlers were involved more and more frequently in reports of forced expropriation of property, including acts of violence on local civilians. By 1980 (A/34/631, para. 373) the activities of these settlers had become so marked that the Special Committee found it necessary to single out this phenomenon. During that year there were reports of rampage by Israeli settlers on a large scale, damaging property, afflicting personal injuries and in certain cases death, in the occupied territories (A/35/425, para. 299). One does not need to be reminded of the fate - the maiming - of Mayor Shaqaa of Nablus and Major Khalaf of Ramallah in 1980 and the perpetrators of that deed remain at large. During the months of February and March 1983 not one day passed without reports on "punitive actions and acts of vandalism or provocation perpetrated by settlers against the local Arab population". This wave of violence culminated in mid-March in the abortive attempt by a large group of settlers to occupy one of Islam's holiest sites - the Temple Mount (Haram El-Sharif) in Jerusalem. In its 1981 report the Special Committee had occasion to underline this phenomenon once more (A/36/579, para. 394) and indicated its conclusions that the Israeli authorities were indeed conniving at the settlers' activities, of which the civilian population was the victim.

The classic case illustrating the policy of annexation of the territories occupied in 1967 is that of the Golan Heights. In December 1981, the Government of Israel formally extended the jurisdiction of Israeli law to the Golan Heights purporting to "annex" this territory of Syria. The redoubtable resistance of the Syrian Druze population is a matter of record. Few would endure what they were subjected to for months on end in early 1982 at the hands of the Israeli army and what they are at this very moment still undergoing.

The official Israeli view on the future of the West Bank and the Gaza Strip was reflected in a declaration by the Israeli Foreign Minister, Yitzhak Shamir, reported on 3 March 1983 in the Jerusalem Post. Mr. Shamir stated that Israel "did not conquer the territories from their legal owners, but liberated them from countries that conquered them in 1948. We have not 'annexed' them, and shall not 'annex' them. They are part of Eretz Yisrael, and what is part of your country you do not annex".

In addition to the measures that the Special Committee referred to, aimed mainly at alienating land from the civilian population, one would surely have seen if not from the report of the Special Committee, then from the international press about the individual Palestinians in the West Bank and the Gaza Strip and the Syrians in the Golan Heights, who are the victims of continuing measures aimed at forcing them to leave their homeland or to remain only as second class citizens. For example, it is statistically correct that in the years of occupation, the agricultural community has dwindled significantly, primarily because of the shortage of land and the discouraging prospect for farmers in the West Bank and the Gaza Strip. The labour force thus displaced has had to accept work in the Israeli construction industry or depart as migrant labour in other Arab countries. In the case of those who leave for other Arab countries, it should be known that the right to return to their West Bank and Gaza homes, once they leave, is subject to severe restrictions. Indeed all aspects of economic activities in the occupied territories are minutely controlled by the military authorities quite contrary to the Geneva Convention.

Military Order No. 854 was promulgated with the avowed purpose of reforming education. It has been used purely and simply as a device to prevent the evolution of the higher educational institutions that had taken root in the early years of occupation, and to suppress every manifestation of Palestinian patriotism.

The efforts at the application of Order 854 have resulted in the dismissal of several academics who refused to sign undertakings not to support the Palestine Liberation Organization as a condition for receiving licences to teach.

The iniquity of Order 854 was pronounced last November by the United States Secretary of State, Mr. George Shultz, when he stated that the Order was a problem of freedom of thought and an abridgement of academic freedom totally unnecessary for Israel's security. The Secretary of State, himself a former university teacher, appropriately compared Order 854 to the highly controversial loyalty oaths sought from the American academic community in the late 1940s and 1950s.

The same question may be posed as to why the military authorities seek to dismantle the municipal structure elected at the initiative of the occupying authorities themselves earlier in the occupation. Order 947, purporting to set up a "civil administration", led to the removal of the lawfully elected municipal councils and mayors and their substitution in the occupied territories by the so-called "village league" councils made up of a few hand-picked nominees having no popular mandate whatsoever.

A valuable study was published by the International Commission of Jurists in 1981 showing how the military authorities had in fact legislate don all aspects of civilian life, changing the entire legal regime applied in the territories. The average civilian finds himself answerable to a completely new legal system in all aspects of his everyday life, and interfering with his day-to-day existence and a normal life.

It is only to be expected that the civilian population finds it hard to live with these limitations. The table contained in paragraph 150 of document A/37/485 gives a calendar of incidents recorded over the period covered by the report, occurring in various towns and villages and attributed to sources which no one has yet questioned. This table is itself a shortened version and is intended only to give an idea of what the average civilian in the occupied territories has to face. It is not shown to justify violence, although each incident reflects violence. It is meant to reflect the tenacity and determination with which the Palestinians in the West Bank and the Gaza Strip and the Syrians in the Golan Heights are in fact resisting the military occupation that has been their lot since 1967. Last year and the first months of this year in particular have been characterized by bloodshed, the extent of which has not been witnessed before. Neither is it realistic to imagine that these people will disappear and thus end the problem. One should remember that these are people who have been under occupation for 15 years, an occupation whose duration is without parallel in this century.

Notes

1/ United Nations, Treaty Series, vol. 75, No. 973.

B. JEWISH SETTLEMENTS IN THE OCCUPIED WEST BANK - HOW THE LAND WAS ACQUIRED FOR THEIR USE AND HOW THEY ARE STRUCTURED

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The present study is being written as the settlement drive, which has been going on at a fast pace for several years, is still continuing. The passage of time makes it possible, however, to arrive at concise formulations of the methods that have been and continue to be used for the take-over by Jewish settlers of the West Bank Arab lands. It is also clear now what plans have been made for those lands that have already been acquired as well as for the remaining parts of the West Bank.

The present Israeli Government's policy towards the West Bank land is to acquire, for Jewish settlements, all the land that it is possible at this stage to acquire by the legal methods that are being presently employed. As to the remaining areas, the policy is to prevent, as far as possible, Arab developments on them.

This paper will be divided into two sections. The first will describe the methods used for the acquisition of Arab land and the second will discuss the Israeli settlements and the laws and plans that have been made to restrict Arab development in land that has not yet been transferred to the settlements.

Methods used to acquire Arab lands

The settlement of Jews in the occupied West Bank started with the beginning of the occupation.1/ Different Governments in Israel have pursued different settlement policies, and the objectives they have sought to achieve through settlements as well as their policies towards the West Bank have undergone many changes. The settlement had continued although the methods for acquiring lands have changed and have had to be adapted to the changing policies. When the drive for settlement intensified, new means for acquiring extensive areas of Arab land had to be adopted.

It is possible to proceed chronologically to discuss the developments of the various methods for acquiring land and the use of each at different historical stages, while at the same time relating these developments to the changes in the Government's settlement policy. However, such an approach may complicate an already complex subject, and there has always been an overlap when different methods have been employed simultaneously according to the conditions applicable to each area of land to be acquired.

The order of discussion to be followed, therefore, will be to start with the more usual methods employed for the acquisition of land for Jewish settlement, and then to describe less commonly used methods.

Acquisition of land by declaring it to be "State land"

When the occupation of the West Bank by Israel began in June 1967, only one third of all West Bank land had been registered under the operation of the Settlement of Disputes over Land and Water law.2/ Registration was begun by the British Mandate Government.3/ The Jordanian Government continued it, but it was a slow, protracted process.

In 1967, the Israeli authorities suspended all operations under the settlement of disputes law.4/ Ownership of the remaining two thirds is attested by possession of a Turkish or British certificate or registration, or through registration in the tax registers. Title under Jordanian law is also proven through purchase and use.

The law that continues to govern land holdings in the West Bank is the Ottoman Land Code,5/ as amended and developed by legislation passed during the Jordanian regime and the military orders issued by the military authority since the occupation. The theoretical basis of the Ottoman Land Code, however, continues to apply.

According to the Land Code, all lands in the West Bank are classified into the following categories:

(a) Waqf land, which is land that is dedicated to pious purposes;

(b) Mulk land, which is the land that was initially given out by the Ottoman conqueror of the area (who considered himself the owner, by conquest, of all the lands he occupied) to the Muslim residents and the Khuraj lands handed over to non-Muslims;

(c) Miri, matruke and mawat lands, all considered by the Israeli authorities to be "State lands"; miri lands are lands that the Ottoman Amir did not allow to be dedicated as waqf or given out to be possessed as mulk. It is land whose raqabah (or ultimate ownership) continues to reside with the Amir, but whose use he has allowed for the public under certain conditions.

The theoretical basis of this conforms to the theoretical basis of other systems of land law, e.g., English land law. There also, all the land came into the ownership of the Crown with the Norman invasion when it was acquired by conquest. The Crown has given out the land to the people to use in accordance with different rules. But the maxim "no land is without a lord" has always applied, and the ultimate lord is the Crown. However, this only provides the theoretical basis. In practice, the only lands that are in the actual ownership and possession of the Crown in England are those areas that are classified as crownhold. The rest are in the actual ownership and possession of their registered owner or user, as the case may be.

Similarly, the theoretical basis of the Palestinian land law was never altered, but the actual implications of the law have been subjected to several amendments during the Turkish, British and Jordanian regimes. Jordanian law No. 49 of 1953,6/ or example, removed all the restrictions previously existing on the extent of the use that the possessor of miri land could make of the land, thus removing any practical difference that existed between the powers of the owner of mulk land and the owner of miri land. Similarly, a Jordanian law of 1953 7/ declared all miri lands falling within the municipal areas as transferred to mulk land. Some differences, however, continue to exist in the way each category of land devolves upon the death of the owner. The present Israeli policy, however, is to consider miri land as State land, confusing the theoretical with the actual.

Another category of land that is considered to be State land by the military authorities is matruke land. This category (as the name in Arabic implies) is land that has been left for public purposes, such as the building of roads, cemeteries, etc. The third category is mawat land, which is considered dead land because it lies further from the village "than the human voice could be heard" (in the words of the Ottoman Land Code).

The Ottoman system and all later Governments until 1967 acknowledged that the land surrounding the village was for the use of the villagers, either as common pastures or for the future development of the village. The inhabitants of the village did not have any need or opportunity to register their lands. They knew amongst themselves which of the village lands belonged to which families and which were owned in common (Mashaa).

The land that has been registered under the operation of the law for the settlement of disputes includes lands that fall under each of the above five categories, with the exception of some type of waqf land, which, having been inalienably dedicated to the Almighty, cannot be registered in the name of a private owner.

Although according to the Ottoman Land Code there was no category of public or State land, the Government of the British Mandate introduced this category through the 1922 Order-in-Council.8/ Article 2 of the order-in-council defined public lands as "all lands in Palestine which are subject to the control of the Government in Palestine by virtue of treaty, convention, agreement or succession and all lands which are or shall be acquired for the public service or otherwise".

It is apparent from the definition that public lands are restricted to lands that are subject to the control of the Government and used in the execution of its purposes, such as the erection of government buildings, etc. They do not include land that is not the subject of a grant to the public, and therefore do not include miri, mawat and matruke lands, whose raqabah remains with the Sultan, but upon which no actual control is exercised by the Sultan. The definition includes lands that are to be acquired for the public service, by expropriation, for example. The High Commissioner was vested with all rights in or in relation to such public lands in trust for the Government of Palestine. The position of the Sultan as the ultimate owner of the land (the holder of the raqabah) was necessarily transferred to the High Commissioner who replaced him and who inherited the Sultan's ultimate theoretical ownership of all the lands in Palestine.

The Jordanian Government proceeded on a similar basis. The term "State or public land" is defined in two Jordanian laws. The first, passed in 1961,9/ deals with the protection of State land and property. The definition given is as follows: State lands and properties are all immovable properties registered in the name of the Treasury as principal or on behalf of those having an interest therein, or registered in the registry of mahlul lands and any other lands or properties of the State. They include mawat lands, but not forested land, the protection of which is vested in the forestry department.

The above definition must be read in conjunction with article 8 (3) and (4) of the Law for the Settlement of Disputes over Land and Water of 1952. Article 8 (3) provides that "lands used for public purposes which are of the metruke category shall be registered in the name of the Treasury on behalf of those who have use thereof". Article 8 (4) provides that "any right in any land or water that is not proven by any claimant shall be registered in the name of the Treasury".

The 1961 law, from which the definition of State land quoted above is taken, declared the establishment of a special court to investigate cases of trespass on land. It was intended to provide for the protection of lands registered in the name of the State and lands without a registered owner. That is why mawat lands were included in the definition of State lands given in that law. The other Jordanian law that defines State lands is a 1965 law.10/

State land is defined there as all immovable property that the State uses or owns according to the laws in force. It is significant that the definition of State land in the later law did not refer specifically to the earlier, 1961, law. When the definition of State land in the two laws is compared, it becomes clear that the definition in the 1965 law is the more general one, whereas the earlier law defines State land only "for the purpose of the law". As has been mentioned above, the 1961 law was to provide for the protection of the lands registered in the name of the State and lands without a registered owner. The inclusion of mawat land in the definition of State land is understandable in view of the aim that the law was passed to achieve.

Inspection of the records of lands that were registered before 1967 shows that a certain (although small) proportion of the land on the West Bank is in fact registered in the name of the State. This includes land that the Jordanian Government expropriated under the Law of Land Expropriation for Public Purposes 11/ and land that was acquired under the 1935 (Emergency) Defence Regulations.12/

It was never the practice of the Jordanian Government before 1967 nor is it now the practice of the present Government in Jordan to consider all lands except land falling in the waqf and miri categories as State land. It is therefore correct to conclude that in June 1967 State lands comprised those lands that were already registered by the operation or one or another of the laws in force in Jordan that allowed the State to acquire land for public or military purposes. That category of State land was not thought to be a closed one. Other lands were liable to be included in it in accordance with articles 8 (3) and (4) of the settlement of disputes law quoted above. However, that could not occur after 1967 because Order No. 291 13/ issued by the West Bank area commander suspended all the operations of the settlement of disputes over land law.

This was the condition of the land law and registration when Military Order No. 59 14/ was issued by the area commander on 31 July 1967.

The Order defined State property and it provided that the "person appointed to implement the Order may assume possession over State property and carry out whatever action he sees as necessary for this".

It is not difficult to appreciate the justification for issuing Order No. 59 so soon after the occupation. During the first days of the occupation, many military orders were passed relating to the assumption of power and control over various aspects of life in the occupied territory. It is not, therefore, surprising that an order should be passed concerning the assumption of control over State property. Military Order No. 58 15/ also concerns the assumption of possession of another category of property (absentee property, which is discussed below). A few days before that, Order No. 25 16/ was issued. Later, however, Order No. 59 was amended to serve an entirely different purpose, which does not seem to have been foreseen when the Order was issued.

It is by virtue of Order No. 59 that hundreds of thousands of dunums - which constitutes the majority of land used for settlement - were declared State land and transferred to the settlers.

A careful reading of Order No. 59 in its original unamended form reveals that it was intended to enable the custodian of government property to assume control over and manage the property of the Jordanian Government for the duration of the occupation.

Pursuant to this objective, the order empowers the military commander to make arrangements concerning the means of supervising government property. The assumption of such powers over government property is to enable the Custodian to fulfil his duties and powers under the order of managing the properties of the Jordanian Government pending termination of the occupation. The present use to which this order is put, namely to declare non-registered property State land and to transfer it to the exclusive use of Jewish settlers, is clearly an improper and illegal extension of the original order, which could be justified in its original form. It is also inconsistent with article 2 of the order, which empowers the Custodian to assume possession of State property and to take whatever action he deems necessary for this. It cannot possibly be deemed necessary for the fulfilment of the intention of the order to transfer the use and ownership of government property to private individuals to use for private purposes as owners for long periods.

The present use of Order No. 59 to declare areas of land State property according to an enlarged definition began in 1979. It coincided with the decision of the Likud Government of Israel to intensify its settlement activities in the West Bank.

Before 1979 small areas of land were being acquired for the Jewish settlement of the West Bank. The methods which were used to acquire them will be described later. None of them sufficed to facilitate the transferral of the areas of land required by the Likud Government to fulfil its large-scale plans for the Jewish settlement of the West Bank. To assess the availability of legal methods that the military authorities could employ to acquire the areas of land required, a comprehensive survey of the ownership and registration status of all West Bank lands was begun in December 1979 by the Office of the Custodian of Absentee Property (which is under the control of the Israeli Land Authority) under Mrs. Plia Albeck, a legal expert working with the Israeli Ministry of Justice.

Palestinian employees of the Land Department, the Survey Department and the Office of the Custodian of Absentee Property were requested to investigate the land records and make reports. Experts in the local land law, such as Mr. Yusuf Atallah, the Director of the Lands, were encouraged to make available their knowledge about the land law.17/

At the same time, an important development took place, which made it imperative for new means of acquiring lands for settlement to be found. This was the decision of the Israeli High Court of Justice in the Elon Moreh case.18/

The case was the first instance of the Israeli High Court of Justice (because of the presence of special circumstances, such as conflicting affidavits as to the security necessity of the Elon Moreh settlement, and the settler's own statement that the settlement was for ideological and not security grounds) questioning the motives and professional judgements of those entrusted with the security of the State. The decision of the Court was that reasons of security, in this case, did not justify the requisition of privately owned land for the purpose of building a Jewish settlement. The Court also held that the Hague Regulations of 1907 were binding on Israel's governance of the territories it occupied in 1967. The Court imposed two limitations on any future recourse to the High Court in cases of land requisition or possession by military authorities:

(a) The High Court was not prepared to intervene in any dispute over the ownership status of land;

(b) Only seizures of privately owned land could be prevented or reversed by recourse to the High Court.

The decision indicated the method to be employed for future acquisitions of West Bank land for settlement purposes. The ground was already prepared for this new direction. Order No. 59 was already on the books, and Order No. 364 19/ amended article 2 A of the Order to add the following section: "Where the person responsible approved by written certificate, signed by him, that any property is State property, it will be considered as State property until the opposite is proved." This meant that the burden of proof lay on whoever intended to oppose a declaration of land as State land. Order No. 172 had already given the Objection Committee jurisdiction to hear all appeals submitted against decisions made in accordance with Order No. 59.

The comprehensive survey had revealed that the majority of land in the West Bank was not registered and fell into the categories of miri, matruke and mawat lands. The Government, therefore, decided to consider all unregistered lands falling into any one of these categories to be State land. Declarations of land as

State land began to be made. Under the alterations that were carried out in the judicial system described in the second part of the present paper, the only tribunal competent to hear appeals against such decisions is the Objection Committee, which is controlled and administered by the military authorities who make the declaration. The Israeli High Court of Justice had already decided in the Elon Moreh case (as has been mentioned above) that it was not prepared to intervene in any disputes concerning the ownership of land and that it would only hear appeals concerning seizure of privately owned land. The military authorities have arrived at an arrangement that enables them to have full control over the process of land acquisition for Jewish settlement as well as over appeals submitted against any decisions made pursuant to it.20/

Following these changes, the acquisition of hundreds of thousands of dunums of land proceeded at a very past face and is continuing at the time of writing.

This method is the one most commonly used to acquire possession of lands in the West Bank for Jewish settlements. Before proceeding to discuss the other methods that are used, it is necessary to describe the actual steps by which land in the West Bank is acquired using this method.

When the Ministerial Settlement Committee decides to establish a new settlement in the West Bank or to enlarge an already existing one, the area of land required is considered by the legal experts at the Israeli Ministry of Justice. Their decision is passed to the Israel Land Authority and to the Office of the Custodian of Absentee and State Lands in the area where the land in question is situated. The Custodian usually summons the mukhtar (village elder) and takes him to the area that has been declared State land and points it out to him. It then becomes the responsibility of the mukhtar to inform those members of his village whom he believes own plots within this area. They are informed that if they wish to appeal the decision, they should apply to the military Objection Committee.

With such a vague reference to the land that is the subject of the declaration, confusion often occurs as to the exact boundaries and area of the land so declared. The first indication to landowners that their land has been the subject of a State land declaration is often the sight of bulldozers working the land to prepare it for the establishment of a settlement. This is because many of the mukhtars are appointed by the military authorities and are not on good terms with the residents of the village.

If, however, the landowners are served with a written declaration, a photocopy of a map is usually appended to it. On the photocopy the boundaries of the area, the subject of the declaration, are drawn with a thick pen. The first question, therefore, becomes to ascertain the exact location of the area in question. The Office of the Custodian is rarely cooperative in this regard.

After overcoming the initial difficulty of discovering the exact area of land involved, those claiming ownership can choose to submit an appeal against the declaration to the Objection Committee. However, in deciding whether or not to resort to the Objection Committee, they must take into consideration the fact that the declaration that the land is State land is declarative and not constitutive. A decision by the tribunal in favour of the State can only add legal weight to the authority's decision.

According to the rules provided by Order No. 172 concerning appeals against a declaration of State land, an appellant (upon whom falls the burden of proving that the land in question is not State land) must submit with his appeal a survey map of the whole area in dispute prepared by a licenced surveyor, which shows the exact boundaries of all the plots claimed by the various appellants.

The area of land involved in such cases is often more than 2,000 dunums (a dunum is 1,000 square metres). The expense involved in preparing a survey map of such a large area of land can be exorbitant. The rules require that each appellant submit with the appeal a sworn statement declaring the basis on which he claims ownership of the land, as well as copies of all documents upon which his claim is based. All these must be submitted 30 days after the declaration is made. The Custodian then submits his reply to this appeal and the case is heard by the Objection Committee.

The Committee is unwilling to accept receipts for payment of tax on the land or registration in the tax department as sufficient proof of ownership. If use is the basis of the ownership claim, the appellant must prove continuous use, that is, cultivation for the preceding 10 years.

The Custodian has available to him the aerial photographs of the West Bank which have been taken periodically. These are often presented to the Committee as proof that the land has not been continuously cultivated. It is the case that the authorities have refused to grant permits to Arab farmers for the drilling of artesian wells. Agriculture, in most cases, is therefore dependent upon the uncertain rainfall. In some years the rainfall is so slight as to make not worthwhile to cultivate the land. It is also the case that, since the occupation, some West Bank residents, attracted by the availability of work in Israeli factories, have left their lands to work instead for the more secure wage provided by Israeli employers. These circumstances, together with the conditions that the Objection Committee places upon the appellants, have resulted in a low success rate for such appeals. It can also be said that the expenses involved, including payment for the professional services of a surveyor and a lawyer, are often much higher than what an average villager in the West Bank can afford.

Even if an appellant succeeds in meeting the standard of proof required by the Objection Committee, the Committee could still decide against him. Article 5 of Order 59 provides that "every transaction made in good faith between the Custodian and another person concerning property which the Custodian considered, at the time of making the transaction, to be State property, shall not be cancelled and shall continue to be binding even if it is proven that the property in question was not State property at the time when the transaction was made."

The standard of proof required to satisfy the Committee that the transaction was entered into by the Custodian in good faith is not high.

In December 1974, Military Order No. 569 21/ established a department for the registration of special transactions in land. Article 2 states that transactions involving land that has been declared State land of that has been taken for military purposes should be registered. Inspection of the register has been restricted (by Order No. 605 22/ amending Order No. 569) to those who are empowered to make transactions concerning State lands. Regulations concerning registration of these special transactions were published on 17 December 1974.

It is not clear what the reasons behind creating this department are. One possibility is that it is to enable registration of sales of property without the public exposure that might discourage some vendors if the transaction were to be registered in the local land registration department, especially in view of the fact that the employees in the local land departments are Arabs.

The more important objective of the order, however, seems to be to facilitate the registration of State land or land acquired for military purposes by the authorities in the name of Jewish corporations or individuals for the establishment of settlements. Article 7 of Order No. 569 states that registration under this order shall be considered as proper registration for the purposes of any law requiring the registration of transactions in land.

Because of the prohibition of public inspection of this register, it is not possible to estimate the area of the land that has been so registered. However, if, as appears possible from a careful reading of the order, the register is intended for the registration, in the name of private and corporate Jewish settlers, of land acquired by the authorities through declarations of the land as State land and by requisition for military purposes, then it is very likely that all land on which Jewish settlements have been established is registered here.

I have discussed above how the law in force in the West Bank has been misinterpreted as far as State land is concerned. Even if the definition of State land were correct, the Hague regulations state that an occupying Power shall be regarded only as the usufructuary and administrator of State property. It must safeguard the capital of the property and administer it in accordance with the rules of usufruct. A usufructuary may enjoy the use of the property but may not impair its substance or alter the character of the property.

Acquisition of property through declared it "abandoned"

The concept of "abandoned" property has its origin in the thinking of the early Zionists prior to the establishment of the State of Israel. Consistent with their belief that the Arabs did not have a strong tie to their land, Zionist activists were inclined to believe that many Arabs had abandoned or were willing to abandon their property if offered property elsewhere in the Arab world. The absentee landowners, the feudal lords who lived outside Palestine, were the first targets.

After the establishment of the State of Israel in 1948, the exiled Palestinians left behind immovable property with an estimated value of 100,383,784 Palestinian pounds. They also left behind 19,100,000 Palestinians pounds' worth of movable property. This property included extensive stone quarries, 40,000 dunums of vineyards, 95 per cent of Israel's olive groves, nearly 100,000 dunums of citrus groves and 10,000 shops, businesses and stores.23/

Many of those Arabs who stayed were termed "internal absentees" and 40 per cent of the lands of those remaining Palestinians were confiscated as abandoned property.24/

Islamic waqf land (land that is dedicated for a pious purpose) amounting to hundreds of thousands of dunums in Israel was also considered to be absentee land. In 1950 the Absentee Property Law 25/ was passed by virtue of which a custodian was appointed to manage this property. The Development Authority - Transfer of Property Law (also of 1950) 26/ established a Development Authority, which was permitted to buy the lands placed by the earlier law under the control of the Custodian of Absentee Property. Lands so acquired may not be alienated. The Development Authority has eight members from the Jewish National Fund and seven representatives of the State of Israel.

The Israeli Absentee Property Law defined an absentee as, inter alia, someone who left for a country that is in a state of war with Israel. The military order on the same subject passed in 1967 by the military commander of the West Bank, Military Order No. 58 27/ defines an absentee as someone who has left the area of the West Bank before, during or after the time of the 1967 war. This definition renders a Palestinian who was resident in June 1967 in the United States, for example, which is not a country in a state of war with Israel, an absentee. This strict application of the definition, however, has not in practice been applied in the West Bank so far.

The control of the military authorities over the land registers and their successful penetration of Arab society in the West Bank helped them to identify which property is (according to the Order) "abandoned" property. However, even when the owner of the property has not left the area (and therefore his property does not qualify as absentee property) and a Jewish settlement is in need of land to establish or develop, the Custodian can still acquire possession of it and enter into transaction with third parties who are either individuals or Israeli development companies. In one such incident involving land registered in the name of an Arab who lives in an area with which the author is personally familiar, the Custodian sold over 70 dunums of land to private Israelis who were living in a settlement adjacent to this land and who wanted to enlarge their settlement. When the owner objected, the Custodian invoked article 5 of Order No. 58, which states that "any transaction carried out in good faith between the Custodian of Absentee Property and any other person, concerning property which the Custodian believed, when he entered into the transaction, to be abandoned property, may not be annulled and remains valid even it if were proved that the property was not at that time abandoned property". The tribunal authorized under the existing orders to hear appeals against decisions by the Custodian of Absentee Property is the Objection Committee constituted by Order No. 172.

The head office of the Custodian of Absentee Property is in West Jerusalem. The office is called "The State of Israel, The Lands of Authority of Israel, Custodian of State Property and Absentee Property in the Districts of Judea and Samaria". As the title implies, the Custodian of Absentee Lands in the West Bank is administered by the Israel Lands Administration (whose director is the Israeli Minister of Agriculture, ex officio), which supervises the use of 93 per cent of Israel's land area and has effective responsibility for the supervision of land acquisition and use in the West Bank.

The Jerusalem head office acts through offices in each of the major West Bank towns. Those employed in these offices (Arabs and Jews) are constantly on the lookout for more land to acquire under the pretext that it is abandoned property. They are helped in this by the legal and administrative changes that have rendered the approval of the Custodian necessary for most transactions in the land. This includes all sales and the reregistration of land, although it does not involve any transfer of land. It also includes registration of land in the name of the heirs of deceased owners. The obvious objective here is to identify any share in the land that devolves upon a non-resident that the Custodian will be able to take.

The administrative network of the offices of the Custodian also have a role in identifying and arranging for the acquisition of land under the pretext that it is State land, as has been explained above.

It is clear both from the working of Military Order No. 58, in particular the provision on transactions made in good faith, and from the practice of Israeli Governments in the past and in the West Bank at present, that it is not the intention of Israel to hold the property of absentees in trust and in accordance with the rules of usufruct pending the resolution of the conflict. The Custodian is handling that property as if he were an absolute owner and transferring it to third parties for use in a long term permanent manner.

Lands requisitioned for military purposes

Privately owned land can be seized by unnumbered military orders that proclaim that the land is needed for "vital and immediately military requirements". Such lands remain theoretically under private ownership. Many settlements have in fact been built on these lands.

Lands closed for military purposes

The military authorities may declare under Order No. 5 certain areas in the West Bank to be closed areas. Although the power to make such declarations is wide and can be used for many reasons, including, for example, the prevention of reporters from visiting a place where there is a demonstration that the military authorities do not wish to have reported, this power is more often used to "close" areas on the grounds that they are "security zones" claimed to be needed by the army as training grounds, firing ranges, etc. Closed lands later tend to become requisitioned, as was the case of the land on which the Jewish settlement near Hebron, Kiryat Arba, was established.

Land expropriated for public purposes

According to Jordanian Law No. 2, Expropriation of Land for Public Purposes of 1953,28/ an authority or corporate body wanting to expropriate land must first publish in the Official Gazette its intention to submit to the Council of Ministers the application for expropriation of the land specified in detail in the Official Gazette. If no objections are submitted within 15 days, the approval of the Council of Ministers is applied for. When this approval is obtained, it must be endorsed

by the King. It is then published in the Official Gazette and thereafter the person, authority or body interested in making the expropriation submits to the Registrar of Lands in the area where the land is situated the list of names of the owners of the land in question as well as a copy of the decision of the Council of Ministers endorsed by the King. The body requesting the order must then compensate the owners of the land with an amount equal to the market value of the property on the date of expropriation. The competent court to which any of the above decisions may be appealed is the Court of First Instance in whose area of jurisdiction the land falls.

The military orders amending this law have brought about the following changes:

(a) A military authority appointed by the area commander has been given all the powers and privileges which, according to the Expropriation Law, were vested in the Jordanian Government;

(b) The requirement to publish the intention to carry out an expropriation, the need to obtain the approval of the Council of Ministers and the endorsement of the King, the necessity to publish the approval again and the requirement to submit the pertinent documents to the land registrar are not applicable when the body seeking the expropriation order is one appointed by the Military Commander;

(c) The right of the owner of the land to appeal against the expropriation or the compensation to be paid for the land has been transferred from the Court of First Instance to the Objection Committee;

(d) A new article has been added to the law whereby the area commander may order that force be used to evacuate the owner of the land if he refuses to vacate it within the period decided upon by the area commander. Anyone resisting such an order may be imprisoned for a period of five years or fined or made to suffer both punishments.

The effect of the above changes is to make it possible for sponsors of Israeli settlements and any other body of which the military Government approves to expropriate land quietly without having to go through the requirements of announcing his intention or obtaining permission from non-military bodies. It also removes from the local courts the power to review decisions as to expropriation or as to the compensation to be paid for the expropriated land. The aggrieved party is left with the remedy only of appealing to the Objection Committee, which as explained earlier is composed entirely of military personnel. Finally, in many cases it has imposed a heavy punishment on any owner resisting the execution of the order.

The Expropriation Law as amended has been used by the military authorities to acquire land for roads, including arterial and access roads to Israeli settlements, Israeli settlers having been recognized by the Israeli High Court in one of its decisions 29/ as part of the population of the West Bank.30/ The use of this method of acquiring land has been on the increase since the amendment of the regional plan (RJ 5, which is discussed below).

Acquisition of land for Jewish settlement by purchase

All the methods discussed above for acquisition of land for Jewish settlements are based on security grounds, or the authorities have been enabled to use them because of the state of emergency in existence in the West Bank, or they are based on some alteration or special interpretation of local law. Consequently, if peace negotiations are started or if the status of lands on which Jewish settlements have been established comes under review by a neutral body, the basis on which the land was acquired may be put in doubt. It is for this reason that acquisition of Arab land by purchase remains the method most preferred by the settlers.

It is difficult, in view of the restrictions placed on inspection by the public of the records of the Land Department, to estimate the amount of land that has been sold by Palestinians to the settlers. It is not estimated, however, that the percentage of land acquired through this method is large in relation to the areas acquired through other methods.

Jordanian law, as it existed at the time when the occupation of the West Bank began, restricted the transfer of immovable property to foreigners. The Law for the Lease and Sale of Immoveable Property to Foreigners of 1953, published in the Jordanian Official Gazette No. 1134 on 16 February 1953, prohibits "a non-Jordanian citizen from taking ownership of immovable property in the Hashemite Kingdom of Jordan except under the following conditions:

"1. That the lands he takes over the ownership of be situated within the municipal boundaries or the blocks of the town;

"2. That he first obtains a permit from the Council of Ministers;

"3. That he undertakes to be subject to the laws in force in the Hashemite Kingdom of Jordan."

Article 2 of the above law also prohibits a non-Jordanian from leasing immovable property in Jordan for a period or periods the total of which exceeds three years, unless he first obtains permission from the Council of Ministers.

Similarly, article 5 (1) of the Law Concerning the Possession of Immovable Property by Juridical Bodies of 1953 31/ (Jordanian Official Gazette No. 1140 of 16 April 1953) prohibits foreign juridical bodies from acquiring ownership or possession of property except with the permission of the Council of Ministers and provided the immovable property is within the towns and villages and that it does not exceed what the organization needs for its purposes and that it is not for mere possession or for trading. Article 8 (3) of the law allows such bodies to acquire immovable property outside the towns and villages if public interest requires it and provided the conditions mentioned above are complied with.

The area commander has acquired the powers of the Council of Ministers, and the powers of the Registrar of Companies have been acquired by the Officer in Charge of the Judiciary. The Jewish National Fund,32/ for example, has registered as local companies in the West Bank branches of the Fund which have as their objectives the acquisition of property. One such branch is Hamanuta, registered in 1971. Although all the shareholders are non-Jordanian and its registration was not in accordance with the Law, having acquired the status of a local company, the restrictions placed upon foreign persons and organizations possessing land in the West Bank do not apply.

Until 1979 this was amongst the most common methods of acquiring land in the West Bank by Jewish organizations. Other public Jewish companies not registered in the West Bank required a permit to acquire lands in the West Bank and they were given that permit by the military authorities. After 1979 the restriction on Israeli citizens to buy land in the West Bank in their own individual names was removed and permits began to be given without difficulty and they continue to be given to date.33/

Sale of land by Arabs to Jews in the West Bank has always been considered an act of treason by the community (in Jordan it has been made a crime, carrying the death penalty, for a Jordanian citizen - which all West Bankers are - to sell land to Jews). The reason for this is the belief that, since the interest of Israel is to annex the West Bank and prevent Palestinians from having a State of their own, the sale of land is tantamount to assisting a policy of denying the society the opportunity to exercise its basic right of self-determination. Being aware of this, the military authorities have attempted to acquire all the powers of control over matters of land in

the West Bank, as well as making whatever changes in the law that could enable those desirous of transferring their lands to Jews to do so in secret and without needing to resort to any public department. The following changes have been made which have bearing on this:

(a) Order No. 25 has made it mandatory to obtain the consent of the office in charge of the judiciary for any transaction involving land. Since the Camp David agreements, the powers of the officer in charge of the judiciary under this order and the powers of the director of Lands and Survey Departments which had been transferred to him are now vested in another officer. The reason for this seems to be that there was a readiness by Israel to hand over the judiciary to the local population and so the changes described in the second part of the present paper were carried out. This was the last in the series of those changes by which all the necessary powers needed for the fulfilment of the plans of Israel over the West Bank were divested on the local judicial system. Similarly, Orders No. 450 34/ and No. 451 35/ of 6 October 1979 declared that all the powers by virtue of the law vested in the director of the Lands and Survey Departments are transferred to the Officer in Charge of the Judiciary and as far as the Survey Law is concerned, to the Officer in Charge of Survey Matters;36/

(b) The irrevocable power of attorney through which land may be sold by an irrevocable authorization that is given by the owner to a named attorney to register the land in the name of the buyer whose name is mentioned in the document was valid under Jordanian law for five years. Military Orders No. 814 37/ and No. 847 38/ prolonged the period of validity of such instruments from 5 to 10 years and later to 15. Israeli notaries public were permitted to authenticate the signatures appearing on these instruments and Israeli consuls were declared the only authority outside the West Bank with power to legalize powers of attorney. The Officer in Charge of the Judiciary was given the authority to legalize the signatures of the Israeli consuls;

(c) Military Order No. 1024 39/ granted a general permission to the juridical bodies whose names are published in the appendix of the Order the right to acquire immovable property in the West Bank despite the restrictions on acquisition by foreign bodies of immovable property in the West Bank which have been mentioned above;

(d) Public inspection of the Land Registration Department has been completely restricted as far as the local Arab population is concerned. Only an owner or one who holds a power of attorney from him may acquire an extract of the deed of registration of his or his principal's property. If an extract is required for starting litigation in court, the court to which the case is submitted must grant permission to obtain the extract and the registration department will only provide the extract of the deed after receiving the court's written order;

(e) The condition of the local courts, the lack of independence of the judiciary and the power under Military Order No. 841 40/ of the Officer in Charge of the Judiciary to withdraw and inspect files being heard by the courts (there are several land cases that are known to this author where files have been withdrawn by the officer from the court, causing delays and attempting to influence the outcome) make it possible to present to the court cases where one party agree with another to take up a case concerning land in which the defendant either has some interest or is only remotely connected with. The parties decide before the court to settle their apparent dispute and register the settlement in the court. By virtue of this settlement, the land is registered in the name of the plaintiff. This is one of the illegal means used to register land in the name of someone other than the owner without the owner's consent. There are many other ways in which registration of the property of another is achieved. A method commonly used is to apply for the registration of a plot of land under the Jordanian Law for Registration of Immoveable Property No. 6 of 1964,41/ as amended by Military Order No. 448.42/ The process of registration under this law is used to register land that has not become registered under the settlement of disputes operations. Any application to carry out such registration must be approved by the officer appointed under Military Order No. 25. Order No. 448 has amended the Jordanian law, giving the Objection Committee the power to hear appeals and making the presence of the Custodian of Absentee and Government Property a requirement. There are reported instances when the signatures of the owners adjoining the land to be registered and that of the mukhtar have been forged and all other information given incorrectly with the result that the small area which has been sold to Jews is registered as several times larger than the area actually sold. There are also reported cases of threats being used as well as deception to entice owners to sign contracts for the sale of their land;

(f) A special department for the registration of transactions in specific lands has been established by virtue of Military Order No. 569.43/ Although the primary purpose for establishing this department is to register the transactions made of what is called State property to Jewish settlers, owners of property which has been requisitioned who wish to sell their property may register the sale with this department.

Legal structures of the settlements

In the first section of the present paper the methods used by the military authorities to acquire land for Jewish settlements have been described. Whatever the methods used, the land is eventually transferred to private individuals or corporate bodies for use in establishing or enlarging Jewish settlements. Often land is acquired by the Jewish agency which then leases it for long terms to private individuals who live in the settlements. Private homes and community facilities are built; roads constructed and the use for which the land is put has all the signs of permanency. A department has been established for the registration of these transactions in land, as has been described above.

The process of the land acquisition is still continuing at the time of writing. On 18 April it came to the knowledge of this author that approximately 10,000 dunums (1 dunum equals 1,000 square metres) belonging to the village of Sourif near Hebron had been declared State land. This is in addition to other such declarations being made in the same period concerning other areas, with the result that a great proportion of all land in the West Bank has already been acquired for the settlements.

This section will deal with the legal structures of the settlements. It will also discuss the regional planning scheme for a large part of the West Bank, which has already been prepared and which determines the planning of the Arab centres and Jewish settlements falling within its area.

It will become clear that methods have been adopted to restrict the development of the Arabs and prevent them from using those areas that have not yet been acquired by the settlers, either because there is already within the settlers possession of more land than they can use, or because legal obstacles stood in the way of their possession. It will then become clear how the Israeli policy towards the West Bank is to acquire as much Arab land for Jewish settlement as is possible and to ensure that the development of the Arabs in those areas that have not been acquired is restricted. In this way the development of the Jewish community in the West Bank will be encouraged and that of the Arab community stagnated and stifled.

Region Jerusalem 5

In the first section the methods used by the military authorities to acquire land in the West Bank have been described. The approximate area of land that has been acquired using these methods is 60 per cent of the total area of the West Bank.

The present section will describe the plans that have been made to ensure that the areas of land that have not yet been acquired will not be capable of development by Arabs.

The discussion will focus mainly on Regional Plan RJ 5 (short for Region Jerusalem 5), avoiding all the area of enlarged Jerusalem and concerning only the West

Bank without the enlarged Jerusalem are, because at the time of writing this is the only regional plan that has been completed an published, although it is known that other plans are nearing completion and no doubt what applies to RJ 5 will also characterize the other plans to come.

On the map, the area is divided into several zones, among which are agricultural areas marked with green, areas where building is allowed marked in red, areas for future development (as Higher Town Planning Council will decide) marked with light green, areas that are natural reserves marked in green and surrounded with black lines and areas that are called special lands marked in yellow.

The plan does not affect municipalities, although the boundaries of the municipalities are marked and no development is allowed beyond the boundaries. Some villages are also marked and their development is limited to within the designated borders; others are completely left out. The plan prohibits building in areas designated as agricultural lands. In the category of "special lands", which are not defined, it is left to the discretion of the Higher Town Planning Council to decide their allocation.

The map also shows the Jewish settlements. The areas where building is allowed for Jewish centres are large, as are the areas where no building may now take place, but where it is left to the Council to decide future allocations.

The general effect of the plan is to allow maximum room for the Jewish settlements to develop, while limiting the possibilities for the development of the Arab towns and villages. The future of the development of the area has therefore been determined. The plan puts into effect the policy of developing Jewish settlements and the consequences of this on the Arab population centres, which are denied the opportunity to develop except within the small areas that are designated on the map.

A good case can of course be made for the necessity and desirability of planning. The question is whether planning is according to law and the objectives that the law was designed to fulfill. The Jordanian law for the Planning of Towns and Villages and Buildings, No. 79 of 1966,44/ declares the establishment of several planning boards and provides the manner in which their work must proceed and the considerations and standards they must observe. At the highest level is the Higher Town Planning Council, which includes on it representatives of the Government, the municipalities, the housing corporation, the Attorney General, the engineers, union, etc. This council is given the responsibility of declaring planning zones for the towns, their enlargement and amendment, endorsing regional plans, annulling licences issued contrary to this law, hearing appeals against decisions of the District Planning Commission, etc.

The subordinate authority is the Central Department for the Planning of Towns and Villages, which has the duty of making the physical and social surveys necessary to implement the objectives of town and village planning, preparing regional plans for all districts, providing advice to all local town planning authorities, etc.

Then there is the District, Town, Village and Building Planning Council, which has the duty of approving the detailed planning schemes, hearing objections on regional plans in its area and making recommendations to the Higher Town Planning Council, and hearing appeals of the decisions of the local town planning council.

The duties of the municipal council of the town, the local town planning council, include issuing building licences according to law.

Military Order No. 418 45/ of 23 March 1971 transferred the powers of all the above authorities to the Higher Town Planning Council by abolishing some of the lower councils and declaring that the Higher Town Planning Council shall appoint the members of the other remaining authorities. The provisions of the law concerning the constitution of the Council have not been followed and the Council only comprises officers of the Israeli military Government without representation of any of the bodies that the law specifies.

When the 1966 law 44/ was passed, many areas in the West Bank had already been declared planning zones according to the laws that were in force before the 1966 law. Article 13 (3) of the law, as amended, provided that any declaration of an area as a planning area made by virtue of previous laws shall be considered as having been made by virtue of this law.

Within the areas declared as planning zones, those areas affected in RJ 5 are included. The British planner Kender had apparently prepared, during the time of the British Mandate, a regional plan for the Jerusalem area - RJ 5 (which was referred to as the Kendel Plan). But it was not completed or subsequently finalized. The plan had not come into effect when the occupation began in 1967. According to article 16 of the 1966 law, the Director of the Central Department for Town and Village Planning had the duty under the law to submit to the Regional Planning Council regional planning schemes within two years from the date of the passing of the order declaring an area to be a planning zone. The two years had not elapsed when the war began. When the occupation began in 1967, there was no regional plan in existence for the area included in RJ 5. The Kendel plan was, according to all concerned, lost, but the area was declared a planning zone. In an affidavit submitted by Mr. Shlomo Khaiat, head of the Regional Town Planning Committee and a member of the Higher Town Planning Council, in the case of the Society for Teachers' Housing, he stated in paragraph 113 that the Kendel plan (RJ 5) was lost. Later on the authorities claimed that a copy of the plan had been found with an Israeli professor.

Until April 1982, building permits continued to be given by the municipalities within the areas over which they had jurisdiction and the Higher Town Planning Council gave permits for building in all other areas. Although permission was never given to build in areas where Jewish settlements were established or planned, the great limitation placed on the development of the existing Palestinian communities only became clear with the publication of the RJ 5 Regional Planning Scheme.

Article 8 of the Jordanian Planning Law of 1966 imposes on the Minister of Affairs of Municipalities and Village Councils (all of whose powers were transferred by Order No. 418 to the person whom the area commander appointed) the responsibility of ensuring that there is coordination in the use of all lands in Jordan in the interest of the public and in accordance with the region's economic planning. He also has the duty to ensure that the planning of all towns and villages is consistent with the Government's social policy, the development of the society and its progress.

The "person responsible" who has been appointed by the area commander to replace the Minister apparently considers his obligation and that of the Higher Town Planning Council to be to fulfill the Israeli Government's economic and planning policy as far as the Jewish population of the West Bank is concerned. As for the Palestinians who constitute the majority of the population, the only policy is one of ensuring that they are not permitted to develop outside the confines of their towns and villages (when the existence of these has been recognized). Only if this is considered to be the primary objective of the authors of RJ 5 can one understand why it was drawn up in the way that it was.

The existence of the Higher Town Planning Council to serve only the best interests of the Jewish settlers is confirmed by the fact that the main office of the Council, where the plans are drawn up, is now located in the Jewish settlement Maaleh Adumim. Considering the restrictions imposed on a Palestinian's entry into a settlement, the office is practically out of reach for the majority of the population. It should also be noted that the statutory notices of the Council are placed in the English-language Jerusalem Post and the Arabic Al Arba which are published by the Israeli authorities. Both papers have very limited readership among Palestinians.

The other office of the Council is in Ramallah and is where the Arab employees of the Council work. They are employed to execute the bare minimum

requirements of the law by which the Council has in theory been concerned to abide.

The Jordanian law of 1966 provides for a number of steps that must be taken before work can begin on preparing a planning scheme. Surveys must be made of the area to investigate the demographic and topographic aspects, the existence of public places, communications, natural resources, etc. The Director of the Central Department for the Planning of Towns and Villages must consult with the district and local planning committees; then for two years after the order declaring an area to be a planning area, a regional plan is prepared.

RJ 5 has been announced not as a new plan made by virtue of article 16 of the 1966 law. It is referred to as an "amendment of the Regional Plan RJ 5". This means that what the Higher Town Planning Council considered to be the case is that the regional plan was already in existence and it only amended it. However, it is clear from article 13 (3) of the 1966 law, as amended, that RJ 5 was not a recognized plan when the occupation took place. And even if it were, there is no power according to the existing law for the Council to amend an already existing plan, unless it is obliged to do so in accordance with the objectives of the law as provided in article 4 (referred to above) for the benefit of the population. If the newly announced amended version of RJ 5 is in fact based on the Kendel plan, then it seems to be the case that the plan of the Mandate times has been used to keep the areas where Palestinians live as they were more than 40 years ago with very slight changes, while the rest of the area has been planned to enable the numerous newly created Jewish settlements to develop to fill up as much of the areas in between as they could possibly handle.

At present the amended regional plan RJ 5 has just been announced and objections are being submitted by those affected. Hundred of people have submitted their objections. Some of those have already been heard. By virtue of Military Order No. 604,46/ amendment No. 2 to Military Order No. 418, the area commander is empowered to appoint a "special planning council" in a planning area if, inter alia, the planning area does not include the areas of a municipality or village council. The order also empowers the area commander to transfer to this special planning council all the powers of the District Planning Council. This includes the power to hear objections to the regional planning schemes and send its recommendations to the Higher Town Planning Council. It is this special board that now hears objections submitted to RJ 5. The objections are heard by one of the assistants to the legal adviser of the military Government and a senior employee of the Higher Town Planning Council who is known to be among the author of RJ 5. Already the consequences of RJ 5 are being felt by the society. Building licences outside municipal areas have not been issued on the grounds that only after more detailed schemes are prepared could this be done. The Arabs in the few areas left where development is allowed cannot do so until detailed schemes are made. The scheme prohibits anyone from submitting an application to the District Council (replaced by the Special Planning Council) until he proves his ownership of the land through registration or in another manner which the Council deems appropriate, which is not required by law. No building is allowed in an area designated as an agricultural area (the areas with the oblique green lines on the map) except buildings necessary for water and electricity installations or which are specified for agricultural reasons or which are for a guard or for storage. One residence for the farmer is allowed in the area when the area is not less than 1,000 square metres and provided that the residence is not more than 150 square metres. The use of all non-agricultural lands in this green area shall only be as authorized by the Higher Town Planning Council.

On 24 January 1983, Order No. 1043 47/ amended the Planning Law to increase the fines payable for building without a licence to twice the value of the building concerned. It also provides for the punishment of any employee of a planning authority or local authority who decides orally or in writing that it is possible to give a licence or who issued or recommended issuance of a licence contrary to a regional planning scheme. The stated sentence is one year' imprisonment or a fine of 100,000 new shekels.

The use to which the lands designated as reserved for future development and those designated as special areas may be put shall be, according to the plan specified by the Higher Town Planning Council. Another area from which many landowners have already been suffering is the large areas which are being expropriated to build roads. Most of these roads are needed to connect the settlements with Israel. They cross the lands of Palestinians who are not allowed to use the land for building in an area of 150 metres on either side from the centre of the road in the case of arterial roads, 100 metres for district roads and 75 metres for main local roads.

Legal structure of the Israeli settlement

The two units of local government possible under Jordanian law are the municipality and village councils. The Jewish settlements in the West Bank are organized as regional and local councils. The regulations which apply to these two structures seem identical to the Israeli regional and local council laws. They have been introduced to the West Bank in the form of regulations passed by virtue of military orders.

The first legislation relating to the organization of settlements was issued on 25 March 1979. Order No. 783 48/ provided for the creation in the West Bank of regional councils for "any one of the settlements listed in the appendix to the order which is given the name appearing in the appendix". Article 2 of the order stated that the administration of regional councils would be in accordance with the wishes of the area commander.

The second major legislation on the settlements was Order No. 892 of 1 March 1981 concerning the administration of local councils. The regulations passed both by virtue of Orders No. 783 and No. 892 are published either by posting them on the notice board in the offices of the council, or by publishing them in the collection of the council's regulations. Since Palestinians do not have access to the settlements, the regulations are beyond their reach.

Following is a comparison between the powers and functions of the local councils of the Jewish settlements with those of the Arab municipalities according to Jordanian law.

Functions. The municipal council has power over such areas and functions as roads, buildings, water, electricity, gas, sewage, crafts and industries, health, cleanliness, public places, parks, etc. Some of these powers are similar to the ones given in the local councils. However, the local councils enjoy additional powers. To begin with, a local council acts as the trustee, custodian or representative in any public case involving the inhabitants of the locality.49/ It is also empowered to administer, implement and establish services, projects and institutions that it believes are important for the welfare of the inhabitants living within its area.50/ It is empowered to oversee the development of the locality, the improvement of life within it, and the development of the financial, social and educational affairs of its inhabitants or any sector of them.51/ It can also organize, restrict or prevent the establishment or administration of any service, project, public institution or other organization, craft works or industry of any kind.52/ It is also empowered to oversee irrigation, pastures, the preservation of the soil and any other matter of agricultural significance, provided that it is administered for the benefit of the various farmers within the area of the local council.53/ The council may establish any corporation, cooperative, or other organization for the execution of any of its functions and may buy shares in it. It is empowered to prepare emergency facilities and to operate them at a time of emergency, including the organization of rationing and provision of the necessary services.54/ The council is also empowered to give certificates and to issue licences for any of the matters included within its powers.

According to article 88 of the regulations may be virtue of Order No. 892, the council administering a locality may, with the agreement of the person responsible, make regulations concerning any matter over which the council has jurisdiction. Article 93 stipulates that these regulations shall be considered security legislation issued by the area commander. They shall be posted on the notice board in the offices of the council and in other public places within the locality or in any other way that the council shall decide. Municipal courts, on the other hand, may make regulations only after a decision to this effect is taken by the Council of Ministers with the agreement of the King.

Taxes. A local council may, with the agreement of the person responsible, impose property taxes (arnona), membership fees and other obligatory payments.54/ The council is empowered to impose any additions on the arnona after publishing a notice to this effect in the area of the local council.55/ The council may likewise reduce the tax or fine for lay payment, taking into consideration the financial situation of those on whom it is levied, or for any other reason.56/

A municipal council, on the other hand may impose taxes on vegetables and fruits for sale in the market, and on other items included within its powers in article 41 of the Municipalities Law. Amounts and percentages are determined in regulations issued by the council with the agreement of the Council of Ministers.57/

Finances. A municipal council may borrow money only after obtaining the agreement of the Minister of the Interior, who will consider who the lender is and the purpose for which the fund is to be used.58/ It is on the basis of this stipulation that many municipalities in the West Bank are prevented from collecting money contributed to them from Palestinians outside.

Property tax payable to the municipality is collected by the Ministry of Finance. The customs authority collects customs duties on combustible liquids according to percentages specified in the law (article 59). By virtue of article 52, all funds collected for the municipalities by the Ministry of Finance are kept in trust for the municipalities and distributed by the percentage decided upon by the Council of Ministers, on the recommendation of the Minister of the Interior. Criteria for distribution are mentioned in article 52 (2). Some of these funds may be allocated to finance other matters.

The yearly budget for the municipality is acted upon after it is approved by the council and authorized by the Minister of the Interior (article 56).

A local council needs the approval of the person responsible for its yearly budget (article 97 of the regulations). However, it does not need to get approval for borrowing money or for receiving contributions (article 101).

Whereas the accountant who inspects the finances of a municipality is selected by the Council of Ministers, a local council appoints its own accountant. Also, the Minister of the Interior, with the agreement of the Council of Ministers, publishes regulations concerning the proper administration of the municipalities' financial matters; a local council has discretion to administer its own finances without any interference. Regulations are made for the municipalities as to tenders, purchase of material, and all other financial matters; a local council decides these matters without interference except when the sale involves a monopoly or a concession.

Chapter 16 of the regulations mentions powers that the area commander and the person responsible have in special cases. These include interference in the administration of the local council if they see that the council is failing to carry out any of its functions under the regulations or under a security order. In case of an emergency and when there is no possibility for convening the council to take a decision which needs to be made, the person responsible may order the head of the council to act in accordance with the regulations, if he deems that the prompt execution of such action is necessary for the safety of the locality. The area commander may also appoint a new council if it has been proven to him that the council is not carrying out its duties according to the regulations or that there are financial misdealings. But he can do this only after he has warned the council and it did not make heed of his notice.

Defence of the settlements. When considering the powers and functions of a local council, it is necessary to mention a number of related orders dealing with what is called "the defence of villages". These orders are modelled after the Israeli Local Authorities Regulation of Guard Service of Law of 1961.59/ This Law states in its preamble that "the officer in charge of the guard service" is to be appointed by the brigadier in command or a person empowered by him. In instances where the guard service is in the hands of the police, the brigadier in command is to empower the person responsible on behalf of the police for the guard service. "Guard service" is defined as including exercises and any activity that, in the opinion of the officer in charge, is required for protecting the security of the inhabitants of a settlement or their property. "Local authority" is defined as a municipal or local council. Article 2 of the Israeli law states that "the Minister of the Interior may, after consultation with the Minister of Defence, impose, by order, the duty of guard service on the inhabitants of any settlement or settlements".

The military orders in question are not simply modelled on Israeli law. Article 2 of Order No. 432,60/ the first of the orders passed by the West Bank military commander, provides that anyone injured while performing guard service in the settlements shall be considered similarly to someone injured during performance of guard service in accordance with the above-mentioned Israeli law. This direct reference to an application of an Israeli law was one of the first to be made in the military proclamations in force in the West Bank.

Order No. 432 defines a village as a community that was established after 1967. Defence is defined as training or any other activity deemed necessary by the person appointed by the military commander of the West Bank as the officer responsible under the order. The officer is empowered by the order to impose upon every settler the duty to defend the settlement. He is also empowered to appoint an authority to carry out the defence. Order No. 669 61/ amends the definition of a resident in Order No. 432 to include "whoever lives in the village and is unregistered as a resident in its registers whether he was from the West Bank or from Israel and who does not carry out guard duty in any other village". The order also sets the age of persons eligible for guard duty as from 18 to 60 and provides that, whenever guard duty is imposed on a person, he shall be presumed to be eligible as long as he has not proved otherwise in a way that shall be provided by order. A fine is imposed on persons who refuse to carry out guard duty. Order No. 817 62/ empowers "whoever has been appointed director of guard duty according to Order No. 432" to oblige pupils of any institutions (defined as "a kindergarten, elementary school, junior high school, field school, advanced sports/cultural institution in which education is provided") over 16 years of age, as well as their parents, the principal of the institution, the teachers and the workers, to do guard duty (article 2). In special circumstances the director may order that an institution be guarded by paid police. If the director believes that facilities should be installed in the institution for its protection, he may, with the consent of the police, order the institution's owners to install them.

Order No. 844 63/ of 18 June 1980 increases the number of hours per week of guard duty per person to 6 and enables the director to order that the number of hours be increased to 10 per week for a 30-day period. An increase above 10 hours needs the approval of the commander of the area.

A fifth amendment to Order No. 432 64/ substantially increased the powers of the settlers. Article 3 of Order No. 898 empowers them: (a) to oblige the person whom the settlers have any reason to suspect of having committed any offence contrary to any military order to show them his identification card; (b) to arrest any person whose identity has not been proved and to transfer him to the nearest police station; and (c) to arrest any person without a warrant: (i) if he commits before them a felony punishable by five years' imprisonment, or if they have reason to believe that he has of late committed a misdemeanor or a felony punishable by the military orders with five years' imprisonment; or (ii) if they saw him in suspicious circumstances taking precautionary measures to disguise himself without being able to give any reasonable explanation for his actions. A person who arrests another in such circumstances must turn him over to the police as soon as possible. Anyone refusing to obey the orders of the settlers will be considered to be contravening the military order on security of 1970.65/ Appended to the order is the format of the card with which the settlers will be issued. The above powers are printed on the card. As with all the other 1,049 military orders in force in the West Bank, the power to interpret the provisions of this order are vested in the military courts.

It has been common practice for settlers to exceed their powers of guard duty and interfere with Arab inhabitants of the West Bank. For example, thee have been many reported instances of settlers setting up roadblocks and searching passers-by. Two members of the Israeli military reserve were quoted in the Israeli English newspaper, The Jerusalem Post, as saying after Jewish student settlers from the local yeshiva and from Kiryat Arba in Hebron had manned the army checkpoints alongside them, "This is the first time and the last time we will serve in this area". The settlers had joined them at the checkpoint because they said that they preferred to defend themselves after the incident in Hebron, where several of them had been killed.

With the promulgation of the orders for the defence of the settlements, the organization of the military territorial defence system of Jewish settlers in the West

Bank has been completed.

It is clear, therefore, that the Jewish settlements have a distinctive and separate legal structure from the Palestinians. The Israeli ministries use the councils of the settlements as providers of State services, with the budgetary allocations for such services incorporated in the general budgets of the respective ministries. Although theoretically the powers of the Israeli councils are limited to municipal affairs, "because of the special status of the municipal authorities", explains Moshe Drori 66/"and the fact that they constitute an Israeli 'island' in Judea and Samaria, there is room to consider extending the powers of these local councils so that they may serve as channels through which the Israeli Government authorities can operate".

Drori also writes that "in Judea and Samaria, the determination of the boundaries of the Israeli municipal authorities involves a clear political aspect: within those boundaries, only Israeli authorities will operate, and these areas will be under de facto Israeli control".67/

There are at present three types of regional councils:68/ (a) regional councils with "contiguous boundaries: the Jordan Valley and "megillot" (Dead Sea councils). In these areas there are almost no Arab inhabitants and most of the land has been expropriated or declared State land; (b) local councils whose jurisdiction is limited to the planned areas of the urban centres; (c) regional councils with non-contiguous areas encompassing all "uncultivatable" lands. The areas are irregular in shape. It is clearly the case that enough land has been acquired by now to enable hundreds of thousands of Jewish settlers to move into the West Bank. It is also the case that the "legal problems" involved in ensuring that Israeli law applies to settlers in the West Bank, while the area is not de jure annexed to Israel and while the non-Jewish population continues to live under different laws, have all by now been solved. It is also true that the construction of the infrastructure, as well as the physical structure of the settlements, is well underway. The only remaining question as far as the feasibility of Jewish settlement in the West Bank is concerned is whether the required number of Jews will come to live in the settlements. There is no doubt that the Government is providing all possible economic inducements at its disposal to encourage settlement. Whether the people concerned will use their better judgement or not remains to be seen.

As this study is being written reports are coming of thousands of dunums of land being declared State land or acquired for Jewish settlements using one or another of the methods described above (e.g., in January 1983, 35,000 dunums south of the village of Thahvieh were declared State property).

It is clear from the above analysis that the legality of the methods used is questionable. Furthermore, in some cases methods are used to force the cooperation of landowners in the transfer of their lands and in operations, which, even under the changes that have been made to the law in force, are illegal, so that the transactions end up being registered with all the traces of the illegal steps erased from the record.

The land question is at the heart of the Palestinian-Israeli conflict. If all the land is acquired by one side, peaceful resolution of this conflict will be forever frustrated. Most countries of the world do not accept that Israel has any other status in the West Bank except that of an occupier. If the present take-over of Arab lands through "legal" methods continues, the time will soon come when Israel will be able to declare that its hold on the West Bank is not based upon its occupation of the land by force, but upon the fact that it is now the owner of the majority of it. Such a claim will frustrate the efforts of those who hope that a resolution that is fair and just will be reached through negotiations.

If such an eventuality is to be avoided, the appointment of an international body to look into the present status of West Bank land may be necessary before events have moved too far for it to be feasible for such a body to make its investigation and discover the true status and legality of all methods used for the acquisition of Arab lands by Jews.

Notes

1/ See W. W. Harris, Taking Root: Israeli Settlement in the West Bank, the Golan and Gaza-Sinai, 1967-1980 (London, 1980); M. Benvenisti, West Bank Data Base Project 1982.

2/ Settlement of Disputes over Land and Water, Law No. 40 of 1952, Official Gazette, No. 1113, 16 June 1952.

3/ Mandatory Settlement Law - The Land Settlement Ordinance 1928-1933.

4/ Military Order No. 291, Order Concerning Settlement of Disputes over Land and Water.

5/ Ottoman Land Code, 1858.

6/ Law Concerning the Use of Real Property, No. 49 of 1953, Official Gazette, No. 1135, 1 March 1953.

7/ Law to Transfer the Land from Miri to Mulk, No. 41 of 1953, Official Gazette, No. 1134, 16 February 1953.

8/ 1922, Order in Council, Law of Palestine, 1933, vol. III, p. 2569.

9/ State Land Law, No. 14 of 1961, Official Gazette, No. 1541, 1 April 1961.

10/ Law for Administering State Property, No. 32 of 1965, Official Gazette, No. 1863, 1 August 1965.

11/ Law of Land Expropriation for Public Purposes, No. 2 of 1953, Official Gazette, No. 1130, 1 January 1953.

12/ 1935 Emergency Defence Regulations, Palestine, Official Gazette, No. 1130 of 17 March 1935.

13/ Military Order No. 291, Order Concerning Settlement over Land and Water, 19 December 1968.

14/ Military Order No. 59, Order Concerning Government Properties, 31 July 1967, according to which State property is:

1. All property that was on the specified date pertaining to one of the following:

(a) The enemy State;

(b) The judicial body in which the enemy State possessed any right whether directly or indirectly and whether this right referred to control or not.

2. The property that was registered on the specified date in the name of one of the two mentioned above.

3. The property in which two was a partner on the specified date.

4. The property which was on the specified date pertaining to a juridical body of which one of the two mentioned above was a partner, registered as owner or having possession over.

15/ Military Order No. 58, Order Concerning Abandoned Property (Private Property), 23 July 1967.

16/ Military Order No. 25, Order Concerning Transactions in Real Property, 18 June 1967, which makes it illegal to conduct any business transaction involving real property without a permit from the military authorities.

17/ The officer in charge of the judiciary published for Mr. Yusuf Atallah the book entitled The Collection of Land Laws in 1979.

18/ Izat Mohammed Mustafa Dwaikat and Others v. Government of Israel and Others, High Court of Justice 370/79 (1980) 34, P.D. (1) 1.

19/ Military Order No. 364, Order Concerning Government Properties (Amendment No. 4), 29 December 1969.

20/ It should be noted that the decisions of the Objection Committee are no more than recommendations, which are submitted to the area commander, who may accept or refuse them.

21/ Military Order No. 569, Order Concerning the Registration of Special Transactions in Land, 17 December 1974.

22/ Military Order No. 605, Order Concerning the Registration of Special Transactions in Land (Amendment), 24 July 1975.

23/ Don Peretz, Problems of Arab Refugee Compensation, p. 404.

24/ Don Peretz, Israel and the Palestine Arabs, p. 142.

25/ Absentees Property Law No. 20, 5710-1950, L.S.1, vol. 4, p. 68.

26/ Development Authority (Transfer of Property) Law No. 62, 5710-1950, L.S.1, vol. 4.

27/ Military Order No. 58, Order Concerning Abandoned Property (Abandoned Property), 23 July 1967.

28/ Law of Land Expropriation for Public Purposes, No. 2 of 1953, Official Gazette, No. 1130, 1 January 1953.

29/ 1972, High Court case.

30/ Benvenisti, op.cit., p. 25.

31/ Jordan, Official Gazette, No. 1140 of 16 April 1953.

32/ See Walter Lehn, "And the Fund Still Lives", Journal of Palestine Studies, Summer 1978, p. 3-33.

33/ Benvenisti, op.cit., p. 25.

34/ Military Order No. 450, Order Concerning Land Laws, 6 October 1971.

35/ Military Order No. 451, Order Concerning Land Survey, 6 October 1971.

36/ See appointments published on 10 October 1971 on page 1146 of the collection of orders, proclamations and appointments.

37/ Military Order No. 814, Order Concerning Amendments to Immoveable Property Law, 23 November 1979.

38/ Military Order No. 847, Order Concerning Amendments to Immoveable Property Law (Amendment), 1 June 1967.

39/ Military Order No. 1024.

40/ Military Order No. 841, Order Concerning Closing Files, 15 May 1980.

41/ Law for the Registration of Immoveable Property, No. 6 of 1964, Official Gazette.

42/ Military Order No. 448, Order Concerning Registration of Immoveable Property, 26 September 1971.

43/ Military Order No. 569, Order concerning the Registration of Special Transactions in Land, 17 December 1974.

44/ Law for the Planning of Towns and Villages and Construction, No. 79 of 1966, Official Gazette, No. 1952, 25 September 1966.

45/ Military Order No. 418, Order Concerning Town and Village Planning and Construction Law, 23 March 1971.

46/ Military Order No. 604, Order Concerning Town and Village Planning and Construction Law (Amendment 2), 20 July 1975.

47/ Military Order No. 1043, Order Concerning Town and Village Planning and Construction Law (Amendment), 24 January 1983.

48/ Military Order No. 783, Order Concerning the Administration of Regional Councils, 20 March 1979.

49/ Article 68 (3) of the Regulations.

50/ Article 68 (1).

51/ Article 68 (2).

52/ Article 68 (6).

53/ Article 68 (11).

54/ Article 76.

55/ Article 81.

56/ Article 87.

57/ Jordanian Municipalities Law, 1955, article 41.

58/ Jordanian Municipalities Law, article 45.

59/ Local Authorities Regulation of Guard Service Law 1961, L.S.1, 1961, p. 169.

60/ Military Order No. 432, Order Concerning Organization of Guard Duty in the Settlements, 1 June 1971.

61/ Military Order No. 669, Order Concerning Regulation of Village Guards (Amendment), 27 July 1976.

62/ Military Order No. 817, Order Concerning the Protection of Educational Institutions, 21 February 1980.

63/ Military Order No. 844, Order Concerning Arrangements for Guard Duty, 18 June 1980.

64/ Military Order No. 898, Order Concerning Arrangements for Guard Duty (Amendment), 2 March 1981.

65/ Military Order No. 378.

66/ Moshe Drori, "The Israeli settlements in Judea and Samaria: legal aspects", in Judea, Samaria and Gaza: Views on the Present and Future, ed. Daniel Elazar (American Enterprise Institute, Studies in Foreign Policy, Washington, D.C., 1982), p. 66.

67/ Drori, op.cit., p. 64.

68/ Benvenisti, op.cit., p. 37.

C. ISRAEL'S POLICIES AND PRACTICES IN THE ARAB OCCUPIED TERRITORIES IN THE LIGHT OF PREVAILING INTERNATIONAL LAW

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The aggressive war launched by Israel on June 1967 culminated in the military occupation by the Israeli armed forces of certain undisputedly Arab territories, i.e. Sinai, the West Bank, Gaza and the Golan Heights. All peaceful means to restore these territories to the legitimate sovereignties to which they belonged prior to that unlawful occupation have so far failed, save the Sinai Peninsula and a small part of the Golan Heights. Thanks to the now universally exposed, expansionist Zionist policies, Israel still maintains its firm control over the West Bank, Gaza and the remained of the occupied parts of the Golan Heights. Israel furthermore found it convenient, in 1980, to annex officially the Arab part of the Holy City of Jerusalem thus proclaiming the whole city as its "eternal and permanent capital", and by the end of 1981, it declared the applicability of Israeli laws and regulations to the Golan Heights, a mischievous way of factually annexing this integral part of the sovereign Syrian Arab Republic to its domain. Notwithstanding the abhorrence of the whole civilized world, especially through the United Nations, the Israeli authorities lent a deaf ear to the cry of morality and law and arrogantly refused to yield to the voice of wisdom and logic.

On the other hand, in the West Bank and Gaza, the Israeli authorities have persistently and rudely carried out a policy, the aim of which, in the long run, is to prepare these undisputably Arab territories for annexation by creating facts which would, to say the least, make any so-called peaceful negotiation on the future of said territories a negotiation on the future of the Arab "inhabitants" there and not on sovereignty, which the Palestinian people wish to choose freely.

The aim of this short paper is to examine the legality of Israel's behaviour regarding two central questions: the policies and practices of Israel concerning annexation of the occupied territories; and the policies and practices of Israel in the Arab occupied territories.

1. Israel's annexation of Palestinian and other Arab territories

It is a cardinal rule of the international law of armed conflict that occupation does not displace or transfer sovereignty. This rule, which was first heralded by Vattel and later elaborated upon by Heffter in his treaties "Das europäische Völkerrecht der Gegenwart"1/ is now firmly upheld not only by the most highly qualified publicists in the world, but also by international treaties, the most important of which is indeed the constitution of international relations, i.e. the Charter of the United Nations. Oppenheim states that "the authority of the occupant is not sovereignty".2/ Castrén likewise points out that "sovereignty over occupied territories is not transferred to the occupying Power ... occupied territory may not be annexed and any unilateral declarations to this effect are consequently void of legal effect".3/ Stone expresses the same view stating that "an occupant is not legally entitled to annex...".4/ Hans Kelsen is rather clearer on this point when he strongly states that:

"It is a rule of general international law that by mere occupation of enemy territory in the course of war, the occupied territory does not become territory of the occupying belligerent or - as it is usually formulated - the occupying belligerent does not acquire sovereignty over this territory".5/

Ironically, even a well-known Israeli authority, Yehuda Z. Blum, presently Permanent Representative of Israel to the United Nations, writes that:

"Just as annexation of occupied territory by a belligerent occupant is obviously prohibited before the cease-fire or the armistice, it is equally prohibited under the international law after the cease-fire or armistice as long as this remains in force".6/

It seems, however, that pure political expediency made Prof. Blum contradict his own opinion all the way when he spoke before the Security Council and the General Assembly of the United Nations justifying his Government's annexation of the Golan Heights.7/ What a mockery!

Likewise, the lawlessness of the annexation of an occupied territory by the occupying authority has long since been declared by international tribunals such as the Permanent Court of International Justice.8/ And many celebrated multilateral treaties went further to outlaw the mere infringement upon the territorial integrity of any State:

(a) The Hague Conventions and Declarations of 1899 and 1907;

(b) The Covenant of the League of Nations;

(c) The Geneva Protocol of 1924;

(d) The Kellog-Briand Pact of 1928 (known as the Paris Pact);

(e) The Charter of the United Nations, which pronounced, as one of the principles of the Organizations, to be strictly observed by Member States, that all members should "refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State or in any other manner inconsistent with the Purposes of the United Nations".

It was certainly in the light of the above-mentioned basic norms that Security Council resolution 242 (1967) of 27 November 1967 emphasized, in its second preambular paragraph the "inadmissibility of acquisition of territory by war". In its first operative paragraph, the Council affirms that the fulfilment of the Charter's principles requires the establishment of a just and lasting peace in the Middle East which should include the withdrawal of Israel's armed forces from territories occupied in the recent conflict. Read as a single document, as it should be according to the well-established rules of interpretation of international legal documents,9/ resolution 242 (1967) could not have meant but the withdrawal of Israel from occupied territories. The debate of the Council preceding the adoption of that resolution undoubtedly supports this argument.10/ Be that as it may, resolution 242 (1967), which is legally binding in the light of Article 25 of the charter and the jurisprudence of the International Court of Justice,11/ could not, in any way, be interpreted so as to allow the aggressor to cultivate the fruits of his aggression, especially by annexing the occupied territo- ries.12/

Yet, Israel has done this twice so far, once in Jerusalem 13/ and again in the Golan 14/ despite the fact that by resolution 3314 (XXIX) of 14 December 1974, the General Assembly unanimously declared annexation of other territories as an act of aggression against which Chapter VII of the Charter should be invoked. Moreover, individuals committing such aggressions are considered to have committed a crime against peace to which the principles of Nuremberg and Tokyo apply.15/

I, therefore, consider that Security Council resolutions 478 (1980) and 497 (1981) and General Assembly resolutions 226/36 A and B of 17 December 1981 and ES-9/1 of 5 February 1982 are of a declaratory character in as far as the admissibility of the annexation of territories as a consequence of military occupation is a well-established principle of international law. With this, all States in the world concur except one: Israel, whose history in breaching the rules of international law is a phenomenon in contemporary international relations.

It follows, therefore, that:

(a) The annexation of Jerusalem and the Golan Heights to use the term of the competent United Nations organs are "null and void and without international legal effect";

(b) All Palestinian and other Arab territories presently under Israeli occupation are subject to the provisions of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949.

Furthermore, all other States Members of the United Nations should conduct their relations with Israel in accordance with the above-stated two conclusions, i.e. they should in no way (de facto or de jure) recognize "the change of title" for the Golan or Jerusalem. Otherwise, they could be held responsible for violating a well-founded principle of international law according to which no recognition could be extended to a forcible acquisition of territory (The Stimson Doctrine).16/ "Ex injuria jus non oritur".

2. The policies and practices of Israel in the Arab occupied territories

It took the whole of the nineteenth century to develop the rules of international law regulating occupation. They are now universally recognized and in many

respects have been enacted in articles 42 to 56 of the Hague Conventions and Declarations. They were supplemented and expanded in the Fourth Geneva Convention of 1949 relating to the Protection of the Civilian Population in Time of War. And still another supplementary document, the First Geneva Protocol, was enacted in 1977. All parties involved in the Arab-Israeli armed conflict are signatories to the Geneva Convention: (Syria 4 May 1954, Jordan 29 November 1951, Lebanon 10 October 1951 and Israel 6 June 1952).17/

The central question at this juncture is how far and to what extent has Israel, as an occupying Power and not merely as an invader,18/ abided by the Geneva Convention, especially in recent time.

The clauses of the Convention pertinent to the question at hand are as follows:

"Article 1

"The high contracting parties undertake to respect and to ensure respect for the present Convention in all circumstances.

"Article 2

"... the Convention shall also apply to all cases of partial or total occupation of the territory of a high contracting party even if the said occupation meets with no armed resistance.

"Article 4

"... persons protected by the Convention are those who, at a given moment, and in manner whatsoever, find themselves in case of a conflict or occupation in the hands of a Party to the conflict or occupying Power of which they are not nationals.

"Article 6

"... The present Convention shall apply from the outset of any conflict or occupation mentioned in article 2."19/

The essence of the Geneva Convention in question is to determine clearly the rights and obligations of the occupying Power vis-à-vis the civilian inhabitants of an occupied territory.20/ Articles 47 and 48 of the Convention are of relevance in this connection.

Israel has consistently and insolently taken the position that "The Fourth Geneva Convention is not applicable to the Israeli occupation of the West Bank and Gaza," showing particular concern regarding a clause in article 49 which prohibits the occupying Power from taking measures to transfer parts of its own civilian population into the territory it occupies.21/ The Committee on the Exercise of the Inalienable Rights of the Palestinian People published an invaluable paper in 1979 entitled "The question of the observance of the Fourth Geneva Convention of 1949 in Gaza and the West Bank, including Jerusalem, occupied by Israel in June 1967". It is enough, here, to refer to this paper as it contains all arguments 22/ and facts concerning the non-observance by Israel of this Convention and a resumé of the voluminous condemnation of Israeli misconduct in this respect by the various organs of the United Nations, the Red Cross and even some Israelis.

What should merit our special attention at present, since we are to focus on the policies and practices of Israel in Palestinian and other Arab territories in the light of recent events in the region, is the escalation by the Israeli occupant of its annexationist policies through land expropriations, colonial settlements and the campaign of terror against the Palestinian people. Let it be noted that by placing special emphasis on the foregoing policy, we in no way attempt to lessen the significance of other unlawful Israeli policies and practices examined in the United Nations paper referred to above. It is, I believe, just because the final usurpation of the West Bank and Gaza is the ultimate goal of the Israeli authorities that I am prompted to consider it the central issue.

Contrary to articles 47 and 49 (b) of the Convention and notwithstanding world-wide condemnation, Israel does not conceal its attention to annex the West Bank and Gaza by all factual means in order to face the world with a fait accompli with which any Arab negotiator, the United Nations and the whole world would have to live.

Israel is steadily, surely and audaciously continuing its policy of establishing more and more colonial settlements in the West Bank according to what is known as the "Master Plan for the Development of Settlement in the Judea and Samaria 1979-1983", prepared by the World Zionist Organization. The first principle of this plan states "Settlement throughout the entire land of Israel is for security and by right".23/ The plan envisages the settlement of 27,000 families (over 100,000 persons) by both establishing new settlements and "thickening of existing settlements on the West Bank". Aside from the reports of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories up to 1979, BBC television recently broadcasted a documentary programme entitled "People without a land" in which many high-ranking Israeli officials were interviewed. The essence of their statements could be summarized in two main points:

(a) The transfer of the whole West Bank to become an integral part of Israel is the main goal of the Israeli Government;

(b) The presence of Arab inhabitants is undesirable. They may stay under Israeli sovereignty or they may leave. The second choice was the preference of those Israeli officials.

On the other hand, Arab populations interviewed in the programme indicated strong willingness to defend their land or die on it.

Thus, a direct and, most likely, bloody confrontation will probably now ensue between the Arab Palestinian residents of the West Bank supposedly protected by international law, and a ruthless aggressive expansionist occupant quite determined to turn them into a people without a land.

In light of this painful, yet true, phenomenon, many recent Israeli practices can be well understood. The following observations should not be overlooked:

(a) It was not a mere coincidence that the inalienable right of the Palestinian people, systematically upheld by the various organs of the United Nations since 1970, especially their very right to self-determination, was in the Camp David "Framework for peace in the Middle East" minimized to the mere right of the inhabitants of the West Bank and Gaza to "autonomy". The term autonomy, ambiguous as it may be, is far less so than "independence" or even "self-government" according to prevailing international law.25/ Autonomy, especially as foreseen by the Camp David accords, (however illegal those accords may be according to the Law of Treaties)26/ cannot legally be interpreted to mean self-determination, which in its simplified form means the right of a people to choose the sovereignty to which they wish to belong and the form of government which they freely wish to have, politically, economically, socially and otherwise. 27/ On the contrary, in the Camp David accords, the will of the population of the West Bank and Gaza is subject to the Israelis' decision alone. A closer and objective reading of those accords and the exchange of letters annexed thereto makes any further elaboration unnecessary;

(b) It was not a sheer coincidence that Israel obstructed negotiations on the implementation of the future of the West Bank and Gaza in as much as Israel had not yet fulfilled its real objective, i.e. to Judaize the said area before confronting the Arab side and the world with the fact that the West Bank and Gaza had become factually part and parcel of Israeli territory. In the light of this purpose, we may understand the replacement of the military commander in the Bank by a civilian authority, which is against the international law of armed conflict;28/

(c) It was very meaningful to appoint Ariel Sharon, former Minister of Defence and a war criminal, according to the Nuremburg and Tokyo principles, as the Minister responsible for settlement in the West Bank. He will undoubtedly accomplish, through terror and horror, what he did in Lebanon (e.g. Sabra and Shatila);

(d) It should be stressed that the ruthless Israeli campaign to expropriate more and more Arab land in the West Bank has been increased and intensified. Thanks to objective press media, the facts of this unholy campaign have reached every home in the world. There is, thus, no excuse for any peace-loving humanitarian official to claim lack of information or ignorance of facts;

(e) The campaign of terror against Arab civilians in the West Bank has become a daily headline in the news. This terror includes, inter alia, repression, administrative detention, destruction of homes, collective punishment, intoxication by gas and drinking water, biological experiments and above all premeditated attacks on the holy shrines of Muslim and Christian Arabs. The Aqsa Mosque has recently become an open target for gangs sponsored by the Israeli Government. One of the latest reports reaching the consulates of many Western States in Jerusalem affirmed that certain Israeli groups, in full collaboration with the Likud, are conspiring for sabotage and blood baths in the West Bank, particularly in Jerusalem, with the purpose of driving civilians to Jordan.29/ According to these reports, a Zionist foundation has been instituted in New York with branches in many other American States. The main theme of this foundation is "Palestine means Jordan". The said foundation is financially sponsored by Zionists and Israeli sources to publish advertisements and articles in the main newspapers warning the Arab people in the West Bank to leave for Jordan before it is too late. This practice is the exact implementation of what Rabbi Meir Kahane wrote in his book Let Them Go.

It follows, then that, unless stopped, somehow, Israel will not be satisfied before it consolidates an effective and forceful Jewish presence in the Bank which would make any so-called negotiation on its future meaningless. My fear is that when the time matures in its favour, Israel will be willing to negotiate, but on a single point, i.e. how to dispose of the "inhabitants" of the remainder of Palestine! No more nor less. It is doing so in flagrant violation of all principles of international law and of the call of the international community. Mention should be made here of the fact that, while this paper was under preparation, Israel challenged the Security Council again, when it rudely refused to abide by the Council's decision of 4 April 1983 to investigate the mysterious poisoning of over 1,000 young Arab women in the West Bank in one week.

On the other hand, let it be recalled that the Security Council, in its resolution 497 (1981), instructed Israel to continue the observance, in the Golan Heights, of all provisions of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, but that Israel refused to obey this mandatory directive, just as it refused to comply with General Assembly resolution ES-9/1 of 5 February 1982.

Thus, the Permanent Representative of Syria to the United Nations, in a series of complaints, addressed the world Organization on the agony of the Syrian nationals in the Golan, pursuant to the Israeli decision to annex the Heights. The Israeli breaches of the Fourth Geneva Convention of 1949 may be categorized, inter alia, as follows:

(a) Repression of civilians who staged a peaceful strike against annexation;

(b) Collective arrest and detention of civilians;

(c) Demolition of houses and sealing of stores;

(d) Confiscation of more Syrian land for the establishment of more colonial settlements;

(e) Prevention of civilians from completing the irrigation of their agricultural projects;

(f) Prevention of civilian farmers from marketing their crops;

(g) Imposition of continuous curfew;

(h) Replacement of the Syrian educational curriculum by that of the occupying Power;

(i) Imposition of high Israeli taxes and duties on Syrian civilians in the Heights;

(j) Prohibition of leaders in the Golan from meeting with the representatives of international organizations, etc.

Ambassador Fattal quoted the Israeli Communication Minister as saying that "The Golan Heights is ours and anyone who regards himself a Syrian should be allowed, in a democratic fashion, to move to Syria (The New York Times, 18 February 1982). Again, on 3 March 1982, Ambassador Fattal addressed the Secretary-General about the continuation of the above-mentioned breaches in addition to a new set of violations, the meaning of which is that despite the mandatory power of Security Council resolution 497 (1981) and the basic rule of international law against annexation, Israel was acting in the Golan as if it had become a part of its territory, and a second class part too.30/

So, Israeli defiance was brought once more before the Commission on Human Rights at its 38th session, in 1982. Ambassador Daoudi of Syria presented the Commission with abundant examples of the ceaseless illegal policies and practices of Israel in Arab occupied territories, including the Golan, and indicated facts and figures that Israel had persistently and presumptuously refused to observe the Geneva Convention of 1949 on the Golan as an occupied territory. The Commission, having heard all points of view, adopted its resolution 1/1982 concerning the Israeli breaches of human rights in the Arab occupied territories, including Palestine, and resolution 2/1982 on the Israeli breaches of human rights in the Golan. In the latter resolution, the Commission recalled General Assembly resolution 3314 (XXIV) of 14 December 1974 on the meaning of aggression (which includes annexation of territories), Security Council resolution 497 (1981) of 17 December 1981 on the illegality of the imposition of Israeli laws on the Golan (considering that such imposition as null and void), the Commission's own resolution 1 (XXXVII) of 11 December 1981 whereby the Commission strongly condemned Israeli policies and practices in occupied territories, including annexation of those territories and General Assembly resolution 36/226 B of 17 December 1981. It went on to condemn strongly the Israeli decision of 14 December 1981 annexing the Golan by imposing its laws, legislation and administration on that part of Syrian soil. The Commission reiterated the position of all organs of the United Nations and specialized agencies that the annexation was null and void and without legal effect and that the persistence of Israel in its policies and practices endangered international peace and security. Further, the Commission called on all Member States to apply the measures indicated in paragraphs 11 to 13 and 15 of General Assembly resolution ES-9/1. By resolution 1/1982, referred to above, the Commission, in a near unanimous vote, insisted that the Fourth Geneva Convention of 1949 should apply to all Arab

occupied territories. The United States delegate was the only one who cast a negative vote, and no wonder![31]/

3. Conclusion

To say that the policies and practices of the Israeli occupant in Palestinian and other Arab territories have not recently worsened to a totally unacceptable degree according to any moral or legal standard would be the understatement of the decade. Such policies and practices not only run contrary to universal ethics, but flagrantly breach the most fundamental principles of international law, both customary and conventional. The various political organs of the United Nations have, so far, given the Palestinian people voluminous resolutions and decisions acknowledging their inalienable rights, including their sacred right to self-determination. They have also deplored and condemned Israel's behaviour toward Arab States (e.g. Syria) and the most certainly illegal annexation of the Golan Heights. But is this all that the United Nations can do? In other words, what is the real value of all the United Nations resolutions recognizing the inalienable rights of the Palestinian people against the bitter fact that Israel is about to dispose of the remainder of the territory of Palestine in toto? How effective, in reality, are the Security Council decisions and the General Assembly resolutions?

Notes

1/ L.F.L. Oppenheim, International Law: A Treatise, 7th ed., H. Lauterpacht, ed. (1960), pp. 432-433.

2/ Oppenheim, op.cit., p. 439.

3/ Castrén, The Present Law of War and Neutrality (1954), pp. 215-216.

4/ J. Stone, Legal Controls of International Conflict, rev. ed. (1959), p. 720.

5/ H. Kelsen, Principles of International Law, 2nd ed. (1967), p. 139. See, to the same effect, Glahn, The Occupation of Enemy Territory (1957), p. 274 and L. Fenwick, International Law, 3rd ed. (1948), p. 149.

6/ Yehuda Blum, "The missing reversioner: reflection on the status of Judea and Samaria", The Arab-Israeli Conflict, John Norton Moor, ed., vol. II (1974), p. 299.

7/ Security Council document S/14796.

8/ The Permanent Court of International Justice repeatedly held that a unilateral act which is not in accordance with law cannot confer upon a State a legal right. See the Order of 6 December 1930 in "The Case of Free Zones of Upper Savoy and the District of Gex (2nd phase)". Cited together with similar cases by Oppenheim, op.cit., p. 142.

9/ See for guidance article 31 of the Vienna Convention on the Law of Treaties of 1969.

10/ The Arab-Israeli Conflict, vol. III, p. 1008 et seq.

11/ ICJ Reports 1971, p. 16. The Court held that all resolutions of the Security Council were mandatory within the terms of the Charter. See also Brownlie, Principles of Public International Law, 3rd ed. (1979), p. 515.

12/ This is an argument used at times by certain partisan writers such as S. Schwebel, "The Middle East: prospects for peace", The Arab-Israeli Conflict, p. 133 et seq.

13/ See Security Council resolutions 252 (1968), 267 (1969), 271 (1969), 298 (1971), 465 (1980) and 478 (1980). With regard to Jerusalem, annexation was effected gradually.

14/ Security Council resolution 497 (1981).

15/ Articles 11 and 25 of the First Geneva Protocol (1979), M. A. Shukri, History and Nature of International Humanitarian Law, a paper presented to the First Arabic Middle East Seminar on International Humanitarian Law, held at Amman from 5 to 13 April 1981 (see the final report of the Seminar, p. 39 et seq.

16/ Professor Fenwick writes "Ethiopia was annexed by Italy in 1936, but in this case the annexation, being in violation of the Stimson Doctrine and the principle announced by the Assembly of the League of Nations, was not recognized by other States" (op.cit., p. 150). The Stimson Doctrine becomes pertinent for those few States, however, which transferred their embassies in Israel to Jerusalem. It must not be forgotten that above cited Security Council resolutions are "erga omnes".

17/ Study by the Committee on the Exercise of the Inalienable Rights of the Palestinian People, "The question of the observance of the Fourth Geneva Convention of 1949 in Gaza and the West Bank, including Jerusalem, occupied by Israel in June 1967 (1979), p. 3.

18/ For the differences between invasion and occupation, see Oppenheim, op.cit., p. 430 et seq., and Van Ghahn, chap. 31, p. 664 et seq.

19/ "The question of the observance of the Fourth Geneva Convention of 1949 in Gaza and the West Bank, including Jerusalem, occupied by Israel in June 1967 (1979)".

20/ Oppenheim and Van Ghahn, op.cit.

21/ "The question of the observance of the Fourth Geneva Convention of 1949 in Gaza and the West Bank, including Jerusalem, occupied by Israel in June 1967 (1979)".

22/ The argument of Yehuda Blum (Israel) and Shebel (United States) for Israel, on pp. 5 and 6 of the document cited in note 17, and that of Professor Mallison (United States), who correctly refuted the Zionist point of view (p. 7) are rather intriguing. I may add, however, that the Israeli position in general is baseless on any legal grounds. Legally, Israel cannot simply base its title to "sovereignty" on the so-called historic rights of the Jewish people. Israel owes its existence as an entity to General Assembly resolution 181 (II) of 29 November 1947. So neither Gaza nor the West Bank was allocated to the Jewish State. In fact the whole of Palestine was unlawfully partitioned to allow Israel to come into being within the border defined by that resolution, which means that according to the United Nations itself, the remainder of Palestine was left for the Palestinian people, who were uprooted and displaced by Israel itself and consequently prevented from exercising their right to self-determination, including forming their own State, but who are now legally represented by the Palestine Liberation Organization and the claim of Israel for "Eretz Yisrael" is legally a fallacy. On the other hand, the position taken by the Israeli Supreme Court is bewildering indeed. The fact that the Geneva Conventions of 1949 were not deemed admissible because they had not been promulgated by municipal legislation runs contrary to the Law of Treaties (article 27). Thus the Israeli Government's legal argument is self-contradictory to say the least.

23/ "The question of the observance of the Fourth Geneva Convention of 1949 in Gaza and the West Bank, including Jerusalem, occupied by Israel in June 1967 (1979)", p. 19.

24/ M. A. Shukri, Palestine and Self-Determination, a paper presented to Colloque Palestine at Brussels, 1976.

25/ M. A. Shukri, The Concept of Self-Determination in the United Nations, a doctoral thesis, (Dar El Fikr, Damascus, Syria, 1965), p. 71 et seq. and Chapters XI and XII of the Charter of the United Nations.

26/ It is illegal in so far as the Palestinian people are concerned since it created rights and obligations to a third party, contrary to articles 34 and 35 of the Vienna Convention on The Law of Treaties without their consent.

27/ See article I of the two international covenants on human rights of 1966, and Shukri, op.cit., p. 239 ff.

28/ This is illegal according to international law. Oppenheim (op.cit.) writes "The administration of the occupant is in no wise to be compared with ordinary administration for it is distinctly and precisely military administration", p. 437.

29/ The daily Al-Qabas, Kuwait, No. 3906, pp. 1 and 24, 29 March 1983.

30/ For the many Syrian complaints concerning Israeli breaches of the Geneva Convention of 1949, see United Nations documents A/36/850-S/14808, A/37/106-S/14893 and A/37/192-S/14876.

31/ Ministry of Foreign Affairs of the Syrian Arab Republic, "A report on the work of the Commission on Human Rights on its thirty-eighth session" (1982).

D. AL-QUDS: A HOLY CITY WITHOUT A STATUS

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Unquestionably, the existence of Israel cannot fail to appear to an impartial observer who has sufficiently distanced himself from the heat of the events as the result of a series of disasters the tragic consequences of which have been borne by the Arabs in general and by the Palestinian people first and foremost. It is equally certain that the existence of Israel will appear also as the product of a series of legal frauds for which the United Nations and the international community will be paying for a long time. From the League of Nations Mandate, which incorporated the essential features of the Balfour Declaration, to the forces of the United Nations Interim Force in Lebanon (UNIFIL), defied and humiliated - to say the least - during the invasion of Lebanon, the denial of justice to the Palestinian people has been systematically accompanied by a challenge launched on a permanent basis to international law and a constant violation of its least controversial principles. Nothing illustrates better this constant of the international attitude, tragically impotent and itself caught in numerous contradictions, than the current situation of Jerusalem, a city "without a status".

More than any other place in the world, Jerusalem presents a challenge to the universal conscience. But what are we doing about it and what can we do? The minimum is to endeavour to accord it a de facto position in accordance with the right of peoples to self-determination and with the eminence conferred on it by the three monotheistic religions. For once, the United Nations, Judaism, Christianity and Islam converge at a deep level. The question can be cleared up and the confusions and intricacies of the current situation straightened out only by positing that the status of Jerusalem derives not only from religious awareness and sacred symbolism but is also historical, legal and political. Thus, only a sense of justice and all that can satisfy it can restore to the Holy City a status worthy of all that it has symbolized and still symbolizes for man.

It is an understatement to say of Jerusalem that it belongs to all mankind. By the place which it occupies in the symbolism of the three revealed religions, by the affective and mythical resonances which it evokes, by the weight of the real or imaginary past, it belongs not only to all believers, Jews, Christians or Moslems, but even to agnostics. Jerusalem is the earthly round city: it is the celestial four square city; it is heaven on earth, it is earth in heaven. It is the archetype par excellence beyond all our experiences and this side of any revelations. Is it necessary to recall its history that is inseparable from Genesis? At all events, the site was mentioned as early as the second millenium before Christ. That makes it one of the earliest places to be exalted by mankind. However, it was David who, in the tenth century before Christ, made it the capital of his kingdom. Solomon built the Temple of the Lord Nebuchadnezzar, the Temple had been regularly rebuilt before Antichius Epiphanes made it a bridgehead of triumphant paganism. Jerusalem had to stand up to Rome. As elsewhere, favouring radical solutions, the Romans razed the City. The Temple disappeared definitively, and the Jewish city ceased to exist in 132 A.D., after the failure of the revolt of Simeon Bar Kokhba. The Colonia Aelia Capitolina was built on the site, and access to it was, moreover, forbidden to Jews.

After Judaism and the pagan interlude came Christianity, for which Jerusalem was one of the birthplaces and, in any event, the scene of many "crucial" events: the passion, the crucifixion, the resurrection ... for Christians, the celestial City is more than a sacred area or a place of pilgrimage; it is the witness to the suffering of the Son; it has lived the mystery of the incarnation of the Father; it bears the eternal mark of the manifestation of the Holy Ghost. It is the symbol of peace, justice and union. It is the promise of the Messianic Kingdom. It is the Mother Church open to all the peoples of the earth. It is even, in the words of the Book of Revelation (21/23), the place sent by God.

"And I ... saw the holy city, new Jerusalem, coming down from God out of heaven ... And I heard a great voice out of heaven saying, Behold the tabernacle of God is

with men, and he will dwell with them, and they shall be his people, and God himself shall be with them, and be their God. And God shall wipe away all tears from their eyes; and there shall be no more death, neither sorrow, nor crying, neither shall there be any more pain: for the former things are passed away".

More than a symbol, Jerusalem bears witness to man's faith in his own future. Constantine, by building the first Basilica of the Holy Sepulchre and, by inaugurating a new and Christian era for the City, set up new and lasting symbols.

Islam further strengthened this sacred character of the City and was to preserve it with the utmost care up to the present. The first easterly focus of prayer, the royal path chosen for the ascension and for the entry into heaven of the Prophet Muhammad, Jerusalem ranks as one of the three Holy Cities of Islam. The Al-Aqsa mosque is the subject of a Koranic revelation and a "divine blessing extending round about" (The Koran, chapter XVII, verse 1). Thus, as early as 637, while Jerusalem continued to belong to the other revealed religions, Islam assumed responsibility for it. It made it the common heritage of the children of Abraham. Apart from the brief occupation by Frederick II - between 1229 and 1240 - it was to remain under Islamic control until the 1967 war. It was the Arabs who gave it the form and configuration that we still know today. The Umayyad Caliph Abd-al-Malik built the Dome of the Rock and the Mosque of Umar there; it was he and his successor, Al-Walid, who built, on the very precinct of the former temple, the Al-Aqsa Mosque. There was no Muslim sovereign who did not pay court to the City and bring it tribute. All made it a point of honour to embellish it and, if possible, to sanctify it further. They vied in dedicating ramparts, monumental gates, citadels, madrasas, caravanserais and public fountains to the monotheistic religions. After eight centuries of Jewish presence, three centuries of Roman paganism and four centuries of Christianity, Jerusalem came under the protection of Islam for 14 centuries. The secret of this permanent presence of the sacred lies in the spirit of tolerance with which Islam made Jerusalem accessible to the three monotheistic religions. The covenant of Umar, guaranteeing the Jews and the Christians freedom of worship, remains a rare model for the epoch - and even today - of an international text whose scope, intention and effect have, throughout the ages, been protection of freedom both of religious protection and of ritualistic practice.

Islam did this - and kept its promise - not for tactical reasons or calculation but because of the very essence of the message - ecumenical from the outset - of which it was the bearer. For Islam, there could not be several divergent and true religions. The unity of God is echoed at the level of the unity of the faiths, which, in turn, is reflected in the union of those who are the bearers of the same truth. The Koranic revelation is but a reprise of the very basis of Judaism and Christianity. Muhammad, far from renouncing Jesus, Moses, David, Solomon, Abraham and whole line of the Prophets of the Bible and the Gospels, takes the stand of one who continues and restores. Islam is the culmination of all revelations. It is the sum and the summit of all revelations. As such, it appreciates rightly the portion of truth borne, in the Jewish and Christian religions, by the beliefs, the believers, their relics and their monuments. The sacred is an absolute which admits of no exclusivity. Jerusalem, therefore, has remained throughout the centuries, from the seventh century to the present, a living and effective symbol of Islamic ecumenism. Free access to the Holy Sepulchre and the Wailing Wall has never - except perhaps in times of local or generalized unrest or war- suffered any lasting restriction. In all logical rigour, Islam has furnished proofs, unique in their kind, or tolerance towards others.

Thus, it is not the sacred aspect which raises problems, and the religious status of Jerusalem is clear: all religions participate by right. The problem of Jerusalem is, in fact, a national problem. It results from a blocked decolonization and is indissociable from the emergence of a modern nation in the very heart of an environment full of meaning and a vehicle of the sacred. Palestinian nationalism began to manifest itself on the eve of the First World War, as one component among others of the differentiation of the Ottoman Empire which was disintegrating rapidly into nations in the modern sense of the world. At that time, the Bilad-al-Sham comprised many administrative subdivisions, from which Jordan, Syria, Lebanon and Palestine proper were to emerge. The latter was formed, roughly speaking, of three sanjaks. One of these, Jerusalem, enjoyed a special status by reason, precisely, of the ecumenism that we have mentioned. Governed directly from the Sublime Porte, moreover, it sent its own delegates there. The sanjaks of Balqa and Acre, belonging to the vilayet of Beirut, made up, roughly speaking, the rest of Palestine.

However, whereas all the peoples of the region were shortly to be called upon to form nations, the Palestinians saw their future mortgaged, their aspirations shattered and their history diverted because of the intervention of factors that were totally alien not only to themselves but also to the region as a whole. These factors were the Balfour Declaration and the Hitlerian genocide perpetrated under the conditions which all know in Europe against the innocent Jewish people.

However, in 1917, the Palestinian people, on the same footing as the other peoples of the Ottoman Empire, already possessed the two principal attributes of a nation as accepted in international practice and law: a people established for centuries on a well-defined territory. Moreover, these two attributes were, in the unanimous opinion of observers, much more patent and obvious than in the case of many other States which have emerged since. The Palestinian nation, while it had not, to be sure, become fully conscious of itself - but that was also the case of Jordan or Saudi Arabia - formed a part, just as much as the others, of those entities which the League of Nations recognized as communities whose "existence as independent nations can be provisionally recognized". The Covenant of the League of Nations - in flagrant contradiction with itself and in order to take account of the Balfour Declaration - stipulated that the mandatory Power should provide for an administrative framework designed to facilitate transition to full independence, while facilitating the establishment of a "Jewish national home".

It would be impossible to be less serious or more pharisaical. On the one hand, consultation with the indigenous people of Palestine on a policy involving its very existence is neglected, and, on the other hand, most important, two nations, the one rooted in the soil and in the history and the other to be assembled from the rest of the world, but mainly from Europe, are cynically invited to fight over the same tiny territory. The latter, highly foreseeable failures, whether of the mandatory Power or of the League of Nations or the United Nations, far from "facilitating" anything, were to bring both of the two nations invited to settle in Palestine to an impasse. The international community, when called upon to resolve such difficult questions arising from these aberrant political choices, could only advocate false compromises in the guise of partitions unacceptable to both and painful transfers of persons. That natural incapacity, which is written in the very order of things, to organize the situation on he spot rationally, must leave, ultimately, no other ways than that of force. And we know what that did to Deir Yassin and to Sabra and Shatila.

Thus, the status of Jerusalem cannot be dissociated from that overall situation prevailing in Palestine, which both from the political viewpoint and from the viewpoint of the situation on the spot, is daily becoming more complicated.

However, from the legal viewpoint, nothing has happened to effect a transfer of sovereignty, neither the Mandate, article 5 or which explicitly prohibits any alienation, nor the United Nations partition plan, which has remained a dead letter. On the contrary, the General Assembly, since 1969 and by an overwhelming majority, has recognized and reaffirmed in a manner which allows of no ambiguity "the inalienable rights of the Palestinian people". Year after year, the General Assembly constantly reaffirms its wish to allow the Palestinian people effectively to enjoy the right of self-determination. This right is and remains imprescriptible, and nothing could render this fundamental principle of jus cogens obsolete.

It is obvious that this right of self-determination includes the population of Jerusalem itself as composed before the British Mandate.

The study prepared by W.T. and S.V. Mallison, at the request of the Committee on the Exercise of the Inalienable Rights of the Palestinian People (ST/SG/SER.F/4, pp. 49-54) analyses objectively and precisely the legal status of Jerusalem as the various resolutions of the United Nations have sought to determine it. The authors demonstrate its ambiguous character. At the time of the 1947 partition, the United Nations sketched the outlines of a special status. However, it seems to have resigned itself since to the de facto partition imposed by armed forces by Israel in 1949.

General Assembly resolution 303 (IV) of 9 December 1949 reaffirmed, in paragraph 1 the intention of the United Nations:

"... that Jerusalem should be placed under a permanent international regime, 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 191 (II): (1) the City of Jerusalem shall be established as a corpus separatum under a special international regime 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, ...".

Those provisions were to remain a dead letter, and the United Nations would - to our knowledge - revert to the question only on the occasion of the measures taken by Israel following the annexation of Jerusalem in 1967. Resolutions 2253 (ES-V) and 2254 (ES-V) of the General Assembly of the United Nations call upon Israel to rescind all the measures which it had taken to alter "the status of Jerusalem". But it is not really known what status is meant. Is it the status prevailing before the 1947 partition or that which the United Nations itself dreamed of and which would establish Jerusalem as a corpus separatum or, again, that which existed de facto when Jerusalem was partly under Jordanian control and partly under Israeli control? We can only share the view of Mr. and Mrs. Mallison, who denounce the lack of clarity in the resolutions adopted after 1967 by the General Assembly and the Security Council. The two jurists ask whether it is a question of "the legal status of the corpus separatum ... 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".

It emerges from all this analysis that Jerusalem has really no status and that the various forms of control exercised in the course of the last 65 years are but the successive products of on-the-spot situations which relate only distantly to the right of peoples to self-determination and the principles of the Charter of the United Nations.

In a remarkable document, "Cisjordan and the rule of law", the International Commission of Jurists sums up the situation by saying that, with regard to the status of the West Bank of Jordan (including East Jerusalem), the United Nations, supported by a majority of countries, regards this region as an occupied territory and the State of Israel as an officially belligerent occupier; the majority of the countries of the world adopt the same position. They all want cessation of the occupation and the retreat of the Israeli forces.

The United Nations, taking cognizance of the emergence of the Palestinian nation, now recognizes it formally and explicitly. It constantly and vigourously reaffirms its inalienable rights to self-determination and resolutely stresses the inadmissable character of the acquisition of territories by force. More specifically, on 10 December 1981, the General Assembly:

"Demands that Israel should withdraw completely and unconditionally from all the Palestinian and other Arab territories occupied since June 1967, including Jerusalem ...

"Further demands that Israel should fully comply with all the resolutions of the United Nations relevant to the historic character of the Holy City of Jerusalem, in particular Security Council resolutions 476 (1980) of 30 June 1980 and 478 (1980) of 20 August 1980, and rejects the enactment of a " 'Basic Law' by the Israel Knesset proclaiming Jerusalem the capital of Israel".

The right to self-determination, the withdrawal of the forces of occupation and the totality of the recognized inalienable rights of the Palestinian people thus include Jerusalem. When the Palestinians, represented by the PLO, call for the establishment of a State in Palestine with Jerusalem as its capital, they are in the direct line of international legitimacy.

It will be for the Palestinian people, which is, moreover, made up of Christians as well as Muslims, once it has recovered and given concrete expression to its independence, to determine freely what status it will give to Jerusalem.

Thus, however complex the question of Jerusalem may be there are certain established facts which should be taken into account and which may be summarized as follows:

(a) Jerusalem is an Arab city and has been since the seventh century;

(b) The question of Jerusalem is not a religious question but a national and colonial question;

(c) The United Nations has envisaged a special status but has been unable to ensure respect for it;

(d) Israel has annexed Jerusalem by force and is trying to Judaize it at any cost;

(e) The United Nations and the international community reject these pretentions;

(f) The fight of self-determination extends to the indigenous Arab population of Jerusalem.

Ultimately, it is within the framework of respect for the fundamental principle of the right of the Palestinian people to self-determination that the status of Jerusalem will find its solution.

E. JERUSALEM: THE PLIGHT OF THE HOLY CITY

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Introduction

The question of the status of the Holy City of Jerusalem has not had, in recent years, the glaring exposure before world public opinion that would be to the three monotheistic faiths: Islam, Christianity and Judaism, representing some 1.5 billion souls on this earth. Indeed, none of the previous seminars in this series has had any papers devoted to this burning question. Therefore, I believe that it is timely and appropriate that at this eighth United Nations Seminar on Palestine, held here in Jakarta, capital of the largest Moslem country in the world, the question of Jerusalem has been included as a subject for our consideration.

This paper will attempt to cover the status of Jerusalem from the period of the First World War onward, focusing specifically on the developments that took place during the League of Nations Mandate for Palestine, Jerusalem and the United Nations from 1947-1967 and the post-1967 period.

Prior to the League's granting of the Palestinian Mandate to Britain

On 24 July 1922, the League of Nations officially designated Great Britain as the Mandatory Power in Palestine. The League Mandate was specifically and openly designed to facilitate the establishment of a "Jewish National Home", as incorporated in the Balfour Declaration of 1917 which states:

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

This clear statement of British policy fully exposed the intent of the British to allow unrestricted Jewish immigration into Palestine, that would lead to a demographic domination by Jews and which would create the conditions necessary for the wholesale seizure of the territory by them. Indeed, the British could hardly claim ignorance as to the Zionist's ultimate designs since a Zionist draft was submitted to the British Government on 18 July 1917 calling for the British to adopt as their policy "the establishment of a Jewish National Colonizing Corporation that would further the resettlement and economic development of the country", (emphasis added).

The reference to a "National Home for the Jewish people" contained in the Leagues mandate to Britain can only be understood as a smokescreen by Britain because, as early as 1897 and again in 1903 the Zionist Movement unabashedly declared that their objective was the establishment of a Jewish State in Palestine endowed with all the attributes of sovereignty and not a Jewish National Home. Thus, when on 26 April 1920 the Allies adopted the Balfour Declaration designating Britain as the Mandatory Power in Palestine, the stage was already set for the treacherous abandonment of the promises made to Sherif Hussein regarding the establishment of the Arab people's sovereignty on the former territory of the Ottoman Empire. Throughout 1916, 1917 and 1918 repeated assurances were made by Britain affirming that the independence of the Arab countries was definitely recognized by the British Government.

All subsequent developments must be understood in the context that Britain was simultaneously making separate agreements with the Arabs and the Zionists. The Arabs, who rose in revolt against the Turks and allied themselves with Britain, were promised independence, which was always understood to include Palestine. On the other hand, the Zionists were promised "a national home in Palestine" which they always intended to convert into a national State.

During the period before the League of Nations' official designation of Great Britain as the Mandatory Power in Palestine, and even before the British were able fully to establish administrative control over Palestine and Jerusalem, the Zionists were already making a physical claim to areas in Jerusalem as demonstrated by their founding of the Hebrew University on Mount Scopus in July 1918. The behaviour of the Jews in Palestine, including the two Zionists battalions in the British Army stationed there and the Zionist Commission under Weizmann, which in March 1918 held political demonstrations that they called "public service" at the Wailing Wall, posed an overt provocation that led to 1,920 riots in April alone, in the course of which over 230 inhabitants were killed or wounded. And, if this is not enough, Weizmann, totally impervious to Arab sensitivities and exposing an audacity devoid of any consideration or respect for Moslem religious devotion, went so far as to offer to buy the land around the Wailing Wall which fully confirmed Arab fears that the Zionists were preparing to seize property of a Muslim religious site, particularly one that is connected with the third holiest place in Islam, the western wall of the Haram. The British attitude towards this was not as one might expect, immediately to forbid the Zionists to make such a potentially explosive move, but rather the Military Governor of Jerusalem actually took upon himself the task of acting as an intermediary in this venture that can only be described as an affront to all of Islam.

These events clearly demonstrate that the question of Jerusalem is not one that manifested itself only with the creation of the United Nations Special Committee on Palestine in 1947. Rather, the Zionist movement had as early as 1918 made overt efforts to alter what has come to be known as the "status quo" of Jerusalem by making territorial claims on areas in the Holy City in the guise of religious rights. Thus, the stage was already set in 1920 for the struggle against Zionist usurpation of Jerusalem.

This was no doubt an inauspicious beginning to the British mandatory regime: a tiny minority of about 8 per cent of the population claiming, with the protection of British bayonets, not only political dominance over the vast Arab majority, but also possession of part of the Haram itself in the Holy City of Jerusalem. Further, in 1917, the Jews owned 1.5 per cent of the land; by the end of the Mandate, it increased to 5.7 per cent but by 1947-1948 they held 73 per cent of Palestine.

The British Mandate under the League

Throughout the period of the British Mandate under the League of Nations, 1922-1947, the question of the status of Jerusalem was by and large limited to the maintenance of the status quo with regard to the Holy Places.

It should be noted, however, that the Mandate was granted without reference to the wishes of the people of Palestine, a violation of the Covenant of the League. What is more, the Balfour Declaration, which was incorporated into the Mandate was itself of dubious legal value since Great Britain had, at that time, no sovereignty, no title of ownership, and no right on the basis of which it could offer Palestine to the Zionist movement without the consultation of its population. Hence, it may be said and proven that this Declaration is a violation of the right of the Palestinian people to self-determination.

Further, the illegality of the Mandate for Palestine lies in the fact that Article 22 of the Covenant of the League of Nations states that the Mandatory Power has an obligation to maintain these territories in their original integrity and hence to respect he full rights of their population. The League of Nations, by including the Balfour Declaration in the Mandate for Palestine, violated Article 22 of the Covenant to which it owed its existence. Moreover, the Mandate for Palestine was class A, by which the Mandatory Power was to recognize its provisional independence and provide, within a very short time, for its full independence. According to Article 29 of the Covenant of the League of Nations and the Mandate itself, the exercise of sovereignty by the Palestinian people was suspended only temporarily. Upon the expiry of the Mandate, that sovereignty over Palestine including Jerusalem should have reverted in its original integrity to its legitimate holder: the Palestinian people. That was not the case. On the contrary, with waves of Jewish immigration facilitated by Great Britain and the expulsion of the Arab population by force and terror, the Zionists took possession of Palestine in order to find there, not a Jewish National Home in accordance with the Balfour Declaration, but a Zionist State.

In recognition of the special significance of the Holy Places which were on the whole Moslem and Christian and since the people of Palestine were overwhelmingly Moslem and Christian Arabs, the Mandate made special provisions for assuming full responsibility or preserving existing rights in all the Holy Places which can be considered the modern origin of the so-called "status quo".

Article 13 of the Mandate states:

"All responsibility in connection with the Holy Places ... including that of preserving existing rights and of securing free access ... is assumed by the Mandatary (Power) who shall be responsible solely to the League of Nations ... nothing in this Mandate shall be construed as conferring upon the Mandatory authority to interfere with the fabric of the management of purely Moslem sacred shrines, the immunities of which are guaranteed."

Article 14 states:

"A special commission shall be appointed by the Mandatary (Power) to study, define and determine the rights and claims in connection with the Holy Places and the rights and claims relating to the different religious communities in Palestine".

While Jerusalem is not specifically mentioned, the significance of these provisions in the Mandate for the Holy City should be obvious.

The Arab-Jewish struggle for the political, economic, military and administrative control of Jerusalem and Palestine began and intensified during the Mandate. However, the Wailing Wall was to become the focal point of the struggle for Jerusalem.

During the 1920s there was a mass immigration of Jews to Palestine which precipitated a heightening of tension throughout the region, particularly Jerusalem. The specific reasons for the hostilities shed light on the fact that for centuries oriental Jews and Arabs lived side by side in Jerusalem without incident and as good neighbours. However, with the massive influx of European Jews who no only were culturally alien to the indigenous population and who brought with them, not religious piety and respect for the other two monotheistic faiths of the Holy City, but rather a political movement which blurred any distinction between religion and political power and whose programme was designed to impose their ideological prescription for Palestine irrespective of the rights and wishes of all others. In a word, zionism was the harbinger of perpetual turmoil and conflict in Jerusalem, a Holy City that had for so many centuries represented the highest ideals of tolerance and respect between the three faiths of Christianity, Islam and Judaism. Thus, the Zionists were gathering strength in Palestine under the protectorate of the British and were already in the 1920s using religion, the question of Holy Places and Jerusalem itself, in their campaign to disenfranchise the Palestinians and the whole of the Arab world from their beloved land, especially their sacred Holy Places. During the period 1920-1929 alone, some 100,000 Jews had been admitted into Palestine, with many of them settling in West Jerusalem.

The Wailing Wall - Al Buraq

By the end of the 1920s the cauldron of enmity was to spread over the Holy City. All that was needed was a spark to ignite the fires of open hostility and the Wailing Wall was to provide that spark. During the first decade of the British Mandate, the Government in Jerusalem, assumed responsibility for maintaining the "status quo" which had existed during the Ottoman Empire. This requirement was indirectly established in article 13 of the Mandate which makes reference to "existing rights", an allusion to the conditions and rights that existed under the Ottoman Empire. However, the Zionist Movement was determined to undermine these provisions in any way possible and in 1925 under the pretext of religious rights, the Jews began to make good on the demands of Weizmann and claimed it to be in the possession of the Jews throughout the world. That year the Jews decided to test the veracity of British determination to uphold the principle of the "status quo", which was based on a Turkish decree of 1852 that subjected the Holy Places of Jerusalem to a rigorously enforced set of rules, by introducing accessories to their religious ceremonies at the Wall. Subsequently, a ruling by the Government banned the introduction of benches, seats and other items before the Wall. Despite this decree the Jews again attempted to place unacceptable objects in front of the Wall. In 1928 they placed a screen in front of the Wall in violation of the Government's decision. Although the screen was eventually removed by the British, the Jewish protestations and manoeuvres further convinced the Arab population that the Zionist aim was to take possession of the Mosque of Al-Aqsa gradually.

The politization of he Wailing Wall issue was fully realized when the Zionists triggered a new outbreak of violence on 15 August 1929. They used a Jewish holy day, Tish B'Av, commemorating the destruction of the Temple, to stage a political demonstration at the Wall, including political speeches, the raising of the Zionist flag and the singing of the Jewish National Anthem. This provoked a counter-demonstration by Arabs and the following week open violence broke out. Jews and Arabs battled from 23 to 29 August resulting in some 500 Jews and 350 Arabs killed or injured. If there was any positive result from this incident, it is that it prompted the British to appoint a commission to investigate and which issued a report that concluded: "A National Home for the Jews, in the sense in which it was widely understood was inconsistent with the demands of Arab nationalists while the claims of Arab nationalism, if admitted, would have rendered impossible the fulfilment of the pledge to the Jews".

Thus, the question had come full circle. The British were now ready to admit that their plan for a Jewish National Home, as stated in the Balfour Declaration and incorporated in the League's Mandate, was unworkable as it would deny to the Arab population their national rights. Having made this finding, the Commission limited itself to issuing detailed instructions regarding the use of the Wall to preserve the status quo of the holy places.

By 1936, the situation became untenable as Arabs of Palestine recognized that if something was not done, they would, by virtue of Jewish immigration, become a minority in their own land. During the period 1919-1932, 24,000 Jews had immigrated into Palestine. However, between 1933 and 1936, the number totaled over 164,000. Even though the total population of Jews in all of Palestine was 30 per cent of the general population, it was clear to all that, at the 1936 rate of immigration, European Jews would overwhelm the indigenous Arab population in a few brief years. In fact, by 1936 there were 49,000 Arabs in old Jerusalem, while the walled city was surrounded by 76,000 European Jews. Even the Royal Commission (the Peel report) reported that Palestine could become predominantly Jewish in only a decade.

It was this real threat to the very survival of Palestine and Jerusalem as a land of the indigenous population that incited the riots of April 1936. This was the most serious outbreak of violence during the Mandate period. It was also different in that not only did Arabs and Jews stage violent confrontations, but the Arabs also recognized the British as an adversary, owing to the refusal of the British Government to change its polity on Jewish immigration. Thus, the conflict went beyond Arab and Jewish enmity. It also involved open and violent incidents against the British by the Arabs. By the time the violence subsided, the killed or wounded numbered over 1,000 Arabs, 388 Jews and 243 of the Mandatory Government.

These repeated violent outbreaks of hostilities prompted the British to propose, in the Peel report, the partition of Palestine between Arabs and Jews, with a separate regime for Jerusalem. With regard to Jerusalem the report states:

"The partition of Palestine is subject to the overriding necessity of keeping the sanctity of Jerusalem and Bethlehem inviolate and ensuring free and safe access to them for all the world. That, in the fullest sense of the mandatory phrase, is a sacred trust of civilization, a trust on behalf not merely of the people of Palestine but of multitudes in other lands to whom those places, one or both, are Holy Places".

The partition plan was not implemented. However, it is very significant in that its basic elements were to become incorporated into the subsequent United Nations partition plan.

The one overriding conclusion that can be drawn from the period of the British mandate is that the Mandatary Power was a total failure because its policies included the abrogation of agreements and promises to the Arabs by the British. In the end, in fact, the British were clearly identified by the majority of the Arab population as an impediment to the securing of their rights and thus their struggle became not only against the Zionists usurpers but also against the Mandate itself.

Jerusalem under the United Nations

When the Palestine Question was taken up by the United Nations in 1947, the country was ravaged by conflict and war. Because of its religious significance and symbolism, Jerusalem became a centre of convergence and Arab-Jewish confrontation. A large number of Jewish immigrants had settled in a new expanded western sector while the ancient eastern sector, including the walled city, remained predominantly Arab. The United Nations Special Committee on Palestine, appointed by the General Assembly to submit proposals, estimated that there were about 100,000 Jews and 105,000 Arabs (and others) in Jerusalem. The Committee, recommending the partition of Palestine, called for the territorial internationalization of the Jerusalem area as an international conclave which was subsequently approved by the General Assembly on 29 November 1947 as resolution 181 (II). The resolution, inter alia, states: "The City of Jerusalem shall be established as a corpus separatum under a special international regime and shall be administered by the United Nations". It also stipulates that "the City of Jerusalem shall be demilitarized, its neutrality shall be declared and preserved..." and "free exercise of worship shall be secured in conformity with existing rights...". Thus, the principle of upholding "existing rights" in the Holy Places was maintained in that resolution. Other articles stipulate that these provisions"... shall be under the guarantee of the United Nations, and no modification shall be made without the consent of the General Assembly ...".

However, with the outbreak of war between the Palestinian Arabs and Zionist military organizations during early May 1948, Israeli territorial control expanded into the western sector of the Jerusalem conclave destined for internationalization under the resolution cited earlier, while the eastern sector including the walled city came under the occupation of Jordan. All of these developments led to the de facto partition of Jerusalem.

It is pertinent to note that another resolution of the General Assembly resolution 194 (III) of 11 December 1948 - resolved, inter alia, " ... that the Holy Places - including Nazareth - religious buildings and sites in Palestine should be protected and free access to them assured, in accordance with existing rights and historical practice ... " and that "... in view of its association with three world religions, the Jerusalem area ... should be accorded special and separate treatment from the rest of Palestine and should be placed under effective United Nations control".

Between them, these two resolutions maintained the principle of the internationalization of Jerusalem and the maintenance of "existing rights" and historical practice. None the less, the Knesset proclaimed Jerusalem as the capital of Israel on 23 January 1950 and by 1951 Israeli ministries moved into the New City. Earlier in September 1948, the Israeli Supreme Court was established in "New" Jerusalem. In fact, back in February 1949 the Knesset assembled and the President took the oath of office in the city.

Despite these serious set-backs, the United Nations continued its efforts to establish an international regime. The Arabs, notwithstanding their initial rejection of resolutions 181 (II) and 194 (III), supported the principle of internationalization before the Conciliation Commission for Palestine, which was spurned by Israel.

In December 1949, the General Assembly, referring to its previous major resolutions, reiterated the principle of internationalization of Jerusalem and requested the Trusteeship Council to finalize a statute, specifying that the Council "shall not allow any actions taken by any interested Government of Governments to divert it from adopting and implementing the statute of Jerusalem". On 4 April 1950 the Council approved a statute which conformed to the territorial internationalization plan embodied in resolution 181 (II) of 29 November 1947. Thus, during the period 1947-1950, the General Assembly reaffirmed the principle of maintenance of "existing rights" and an international corpus separatum status for Jerusalem, despite its de facto division between Israel and Jordan.

The division of Jerusalem from 1950 to 1967 between two hostile States brought with it certain consequences. As this division became protracted and progressively integrated into two hostile countries, the political barriers consolidated. The psychological rift also deepened as an essentially Arab society continued its traditions in East Jerusalem while West Jerusalem became more Europeanized.

United Nations efforts to secure the internationalization of Jerusalem faded after 1950 and the international acquiescence in the status quo of a divided Jerusalem was abruptly ended by Israel's occupation of East Jerusalem in 1967, which resulted in serious repercussions to the status of Jerusalem. With West Jerusalem already declared as its capital, subsequent Israeli actions through legislative measures brought evidence of Israel's intentions to annex the entire city. As a result, it refused to accept Security Council resolution 237 (1967) of 14 June 1967 which stipulated that the Geneva Conventions of 1949 were applicable to areas under military occupation. Further, Israel's refusal to heed two resolutions of the General Assembly - 2253 (ES-V) of 4 July 1967 and 2254 (ES-V) of 14 July 1967 - declaring, inter alia, that measures taken to alter the status of Jerusalem were invalid, left little doubt of Israel's intent of annexation. Both of these resolutions had received overwhelming support with no dissent but were nevertheless ignored by Israel, which defiantly moved its Supreme Court to East Jerusalem and extended its law to the newly occupied territories.

The Security Council also censured Israel and called for the rescinding of measures that affected the status of Jerusalem. Resolution 242 (1967) called for Israeli withdrawal from occupied territories, which also applies to Jerusalem. In addition, the Council adopted a number of resolutions specifically directed to the status of Jerusalem. Resolution 252 (1968) of 21 May 1968 considered that all measures taken by Israel were invalid and called upon Israel to rescind all such measures and desist forthwith from taking further action which tended to change the status of Jerusalem. Resolution 267 (1968) of 3 July 1968 censured Israel for its non-compliance with resolution 252 (1968).

Following the outbreak of fire in August 1969 in the Al-Aqsa Mosque, one of the holiest places for Islam, the Council, in resolution 271 (1968) of 15 September 1969 took the strong step of condemning Israel for flouting United Nations resolutions on Jerusalem. Yet another Security Council resolution 298 (1971) of 25 September 1971 declared all past Israeli actions and legislation in respect of Jerusalem "totally invalid".

All of the foregoing confirms the non-recognition of Israeli occupation of Jerusalem. It is relevant to draw attention in this context to the conclusions of the study entitled "The Status of Jerusalem", prepared for the Committee on the Inalienable Rights of the Palestinian People, which inter alia, concluded that:

"The resolutions of the General Assembly and the Security Council in relation to Jerusalem following the occupation of the entire city of Jerusalem by Israel in June 1967 also maintained the original principle of internationalization. Further, they required Israel to withdraw from territories occupied during the conflict, and to rescind all measures taken, as well as to refrain from taking further measures, to alter the status of Jerusalem".

It is clear, therefore, that the United Nations since 1947 has maintained the principle that the legal status of Jerusalem is that of a corpus separatum under an international regime as originally formulated in resolution 181 (II).

Thus, the United Nations has maintained a constant policy, either through the General Assembly, in particular in resolution 181 (II) of 1948, 194 (III) of 1949, 2253 (ES-V) and 2254 (ES-V), or through the Security Council, in particular in resolutions 252 (1968), 267 (1969), 298 (1971), 446 (1979) and 465 (1980). The Security

Council has condemned, in particular the occupation regime which aims at gradually establishing a process of annexation. The General Assembly, the Security Council and the whole international community, in this regard, have been unanimous in considering as null and void any unilateral measures taken by the occupation regime with the aim of transforming a de facto situation into a de jure one.

Jerusalem after 1967

The 5 June 1967 occupation of the remnants of what until 1948 had been a sprawling, heterogenous and prosperous city and environs, predominantly Palestinian Arab in population as well as in lands and properties, was only the final act in the relentless implementation of a carefully laid plan for the demise of a historical Jerusalem which, under all rules of law and equity, should have remained a sacred trust, a tolerant and ecumenical city and the inalienable procession and legacy of the indigenous inhabitants, who were predominantly Palestinian Arabs, without in the least dispossessing, excluding or discriminating against the Jewish faith or Christianity.

On 27 June 1967, the authorities of occupation adopted a resolution whereby the Government of Israel was authorized to apply "Israeli law" in any land area which it deemed necessary to annex to Israel. Thus, the Israeli army dissolved the legally elected Municipal Council of the Arab City of Jerusalem. On 20 June 1967, the military authorities abolished Jordanian laws and regulations, replaced them with Israeli laws and regulations, and set up an Israeli military body which subjected all of the Arab inhabitants to oppression.

Slowly but consistently, the Israeli authorities have implemented their expansionist designs and have enlarged the area of the city, by annexing to Jerusalem additional portions of the occupied West Bank. As a result of this deliberate policy, it is estimated now that approximately 30 per cent of the West Bank had been absorbed within the city limits.

The Israeli occupation of Palestine and all of Arab Jerusalem has, in fact, cut off tens of millions of Christian Arabs throughout the Middle East and hundreds of millions of Moslems from performing their prayers at their Holy Places for three decades in three fourths of Palestine and for over 16 years in Arab Jerusalem and the rest of the territories occupied since 1967. Further, after 1967, Moslem and Christian Holy Places in Jerusalem were placed under the jurisdiction of an Israeli Ministry and the Higher Islamic Council, Al-Haya al-Ilmiyyah al-Islamiya, was refused recognition by the occupation authorities. Also the encirclement of the 1967 occupied sector has become virtually complete with a massive ring of high-rise buildings to the north, south, west and east, thus effectively isolating Jerusalem from the Arab population in the West Bank.

After the occupation of the Old City, Israel embarked upon a programme to enlarge the three-metre-wide area between Al Buraq-As Sharif, or Wailing Wall, and the adjacent Moroccan and Bab-Al Silsila quarters. Both quarters, and many others, were Islamic Waqf religious endowments. They were all bulldozed to the ground in spite of condemnation by the international community.

After all of these actions came a plan to plunder Arab property. During the period of 1968-1976, the authorities of occupation committed wide-scale and wanton acts of confiscation and plunder. These include expropriation of vast tracts of land outside the city walls. Within the city walls the occupation authorities illegally seized over 600 buildings, composed of residential property. In addition, over 500 commercial buildings belonging to Arab proprietors were also seized and confiscated. The Israelis even turned into rubble all Arab buildings on over 89,000 dunums of Arab land seized between 1969 and 1976. In their place, they constructed industrial and residential complexes for Israeli settlers. By means of this plan the authorities of occupation acquired one third of the occupied West Bank.

Along with this destruction and seizure, the Israeli occupier has undermined and destroyed Moslem religious property under the pretext of archeological excavations. The result of these actions has been the collapse of Saqf property surrounding the Haran as-Shareef, which was of high religious and cultural value to all Moslems. In addition, the excavations have damaged Al-Zawiyah Al-Fakrieh and adjoining buildings. In fact, these excavations have reached under the southern wall of Al-Haram as Shareef, the lower courts of Al-Masjid Al-Aqsa, Masjid Omar and the south-eastern halls of Al-Aqsa, which threaten the structural integrity of the Al-Aqsa Mosque itself.

These steps evoked protests by the international community, especially UNESCO, against the destruction of millenia-old structures and the bulldozing of holy sites. It was determined that, if continued, these policies would alter the universal and indigenous character of the Holy City, both territorially and demographically and destroy the Arab character of the city.

Having seized so much Arab property outside and inside the walled, city, the Israelis embarked on the physical removal of the Arab population. They initiated a programme on 25 June 1974 that resulted in the forcible removal of nearly 20,00 Arabs from within the walled city alone. As a result over 5,000 Israelis now live within the city walls in the four Arab quarters from which the population was driven.

The Israeli occupiers have planned the total elimination of Arabs from Jerusalem through attrition by mortality of the old, the exodus of the young abroad for education and gainful employment and through intimidation and seizure of Arab property and by refusing to recognize Arab ownership if the owner is not permanently living on the property. At the same time, it should be noted the Israelis are attempting to sell Arab property to Jews in other countries who have never even been in Israel.

A part of this despicable policy has been the exile of the social, political, religious and economic leadership of Arab Jerusalem to deprive the people of their representatives thereby making them more easily controllable by the occupation regime.

In tandem with all of the aforementioned, Israelis have committed heinous attacks against Muslim Holy Places in Jerusalem. With Muslim Holy Places placed under the direct control of the Israelis, we have witnessed repeated attempts to destroy those sites. In August 1969, there was an arson attempt against the Aqsa Mosque. Then a month later a plot was uncovered to blow up the venerated Aqsa Mosque and the unmatched Dome of the Rock, the first Kiblat in Islam and the third holiest sanctuary.

As recently as last year, an Israeli soldier invaded the Al-Aqsa Mosque,. His murderous designs resulted in many Arab deaths and the destruction of various portions of the Dome of the Rock. In this regard, Christian Holy Places have also not been spared, having been subjected to various forms of destruction, robbery, arson and seizures.

The aim of all these policies has been the ultimate Judaization of all of Jerusalem, including the essential infrastructure dealing with all aspects of Arab society. With regard to the economy, all Arab banks were closed, including the Arab Bank, the Cairo Bank, the Jordan Bank, the Real Estate Bank, the National Bank and Intra Bank. These banks were not only closed, but their assets were confiscated. Israeli currency was introduced as also the Israeli system of taxation, including the supplementary tax and the defence tax which is collected from the Arabs for the benefit of the Israeli army, occupiers of their land. The result was a total paralysis of the Arab economy and a continuous Arab exodus from Jerusalem to the East Bank into Jordan. The effect of these measures was to force the Arab economy, in all its aspects, into dependency on Israel so that the Arab population would become an inseparable part of Israel's economy.

In this same way the Arab educational system including its curriculum was totally taken over by Israel. The occupiers seized all government schools and educational organizations. They subjected those institutions to the same Israeli curriculum which had been forced on Arabs since 1948. About 20,000 Arab students in the city of Jerusalem are now obliged to study the Israeli curriculum and Hebrew history, without any reference to the history, culture and religion of the Arabs. The Israelis have, in this way, used psychological warfare through which the Arabs are forced to accept Israeli ideological prescriptions for their expansionist schemes.

Yet another aspect of Judaization was the sullying of the official Islamic judiciary. They removed the High Court of Appeal from Jerusalem and they amalgamated the Courts of Peace and the Courts of First Instance with the Israeli courts. They forced Arab judges and employees to become part of the Israeli Law Ministry. Thus, the official judiciary of Arab Jerusalem was completely linked to the judiciary of Israel. Because of the total refusal of Arab lawyers and judges to submit themselves to these illegal sections, the Israelis ignored all judgements of Muslim religious courts and refused to accept the petitions from the Muslim Waqf or the Muslim Committee on Jerusalem.

The inevitable result of Israeli policies in Arab Jerusalem since 1967 has been to preclude any chance for peaceful coexistence between Arabs and Jews. The plan of economic, political and social strangulation has polarized Jerusalem into two camps, one Jewish and free and the other a prison for Arabs who are deprived of all rights and means of economic, social and national sustenance.

The Israeli Government took the further step, in the face of international condemnation, to decree on 30 July 1980 that Jerusalem complete and united, is the eternal capital of Israel; that Jerusalem is the seat of the President of the State, the Knesset, he Government and the Supreme Court.

The international community was quick and forceful in its response. The Security Council unanimously adopted resolution 465 (1980) which declared that the Israeli move had no legal validity. Those few States which had embassies in occupied West Jerusalem withdrew their embassies from Jerusalem. And even Israel's friends in Europe adopted the EEC Venice Declaration which stresses that they will not accept any unilateral initiative designed to change the status of Jerusalem and that any agreement on the City's status should guarantee freedom of access to the holy places. What is more, the leader of the Catholic Church, His Holiness Pope Paul II, in June 1980 issued a categorical, ecumenical and universal statement on Jerusalem, which called for the internationalization of the Holy City. It can be said that, if there is unanimous agreement among all countries in the world, among all peoples of the world, among all the different political and social institutions in the world and among all of the major religions, including some of the leaders of Judaism, it is that Jerusalem and all the Holy Places in the city must be protected and preserved for all of humanity. It is with that objective in mind that the United Nations has maintained an unwavering commitment to General Assembly resolutions 181 (II) and 194 (III).

Conclusion

For over 1,000 years Jerusalem has been an Arab city, the capital of no State and open to all men of faith. It has always been al-Quds (the Sanctuary). Through the centuries, Muslim law, later as British policy, had preserved the character of the city in its entirety until 1948 and in its eastern half until 1967. However, after the conquests of the June 1967 war and the subsequent process of Judaization, secularization and oppression, the Holy City (the trust of humanity) has been subordinated to the ideological commitments of zionism. It thus became the capital of a secular State and the victim of military, political and ideological aggression.

It has been universally recognized that the core of the Middle East conflict is the Palestinian cause and that the core of the Palestinian cause is the denial to them of their right to self-determination, including the establishment of an independent State. The case of Jerusalem is analogous to this. Jerusalem has for a millenium been the home of the Arab people and its holy places have always been a sacred trust of the respective faiths. The unavoidable conclusion is that until the day comes when the rights including sovereignty of the Palestinian people are restored in the occupied territories and Jerusalem and until the rights of the Muslim and Christian faithful in the Holy City are re-established, it is difficult to foresee peace in the Middle East.

The status of Jerusalem has been time and again reaffirmed by the United Nations on the basis of General Assembly resolution 181 (II) and 194 (III). While these and subsequent resolutions remain unimplemented they do serve an important, indeed, crucial purpose. These resolutions have established the proper and legal status of Jerusalem irrespective of all Israeli claims to the contrary. Further, they reaffirm that for any comprehensive settlement of the Middle East conflict the status of Jerusalem will be of an importance that will not allow this question to become relegated to the background. To the Arab nation and the faithful of the three monotheistic religions, the United Nations internationalization plan is an important component of, and perhaps the litmus test for the durability of any general Middle East settlement.

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F. THE STATUS OF THE HOLY CITY OF JERUSALEM

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No capital in modern times has aroused as much interest as Al-Quds (Jerusalem). Differences of opinion have existed about many cities. After the Second World War and the subsequent division of many countries all over the world, there were many disagreements, specifically about the capitals, and generally about the future, of these divided countries. However, the disagreement about Al-Quds (Jerusalem) is more complex. It is not only a matter of which side will take it, as is the case with Berlin, or whether it remains a capital or is transferred, as is the case with Hanoi or Saigon. The problem about Jerusalem touches on the political, social, human and historical levels. This problem goes beyond the sovereignty of a group of people to the character of the place itself. It goes beyond the present situation to thousands of years back. It goes beyond, with regard to origin, history and historiography, the conflict between two human groups now present in the area. Jerusalem is an administrative entity involving people living very far from the city, but very closely affected emotionally by it because of its religious character. In fact, millions or hundreds of millions in Asia, Africa, Europe and the two Americas believe in its holiness. The Muslims are as much attached to it as they are to Mecca. Christians are as much involved in it as they are with the Vatican or any other holy or religious place. Similarly, people following the Judaic creed believe in the holiness of the city and go there on pilgrimage, just as the others do.

The numerous invasions, conquests, wars and armies that have attacked Al-Quds (Jerusalem) and departed from it and the many nations and monarchs that have made it their capital, starting from 3000 B.C. up to the present, reflect the political struggle of the different Powers to dominate this Holy City. This struggle was not limited to the regional Powers but included many armies coming from outside the area. In recent history, the Tartars came from Asia, the Franks from Europe, then Napoleon, and between these two the Ottoman Turks from Asia Minor, then the English and finally, the waves of colonizing Jewish immigrants (also a foreign occupation) from eastern Europe, mid-Europe, then from western Europe and finally from all parts of the world.

In each case, the Holy City was the target and motive of the armies. This is because its holiness among different peoples goes back in history to the time of its foundation. It therefore stands to reason that the "liberation" of Jerusalem was an expressed motive for each new army coming towards it. Today the Holy City has maintained the same position and the same impact. The simplest example that illustrates this point is the title of the present Seminar on the Holy City of

Jerusalem. This city occupies a prominent place in the realities of today and in the lives of many people; it plays a crucial role in the eventual establishment of peace or of war in the Middle East and beyond it.

What are the factors behind the importance of this city? The answer to this lies in its geography and its history. Geographically, the city lies on the crossroads between the two most ancient known civilizations, the Babylonian to the east and the Egyptian to its south-west. Moreover, it overlooks the shores of the eastern Mediterranean with all the civilizations there. It was also a stop for caravans coming from the Arabian peninsula in the south-east and from India and Iran in the east. The geographic location of Al-Quds (Jerusalem) is in itself important because of the strategic position of the land of Palestine among three continents, Asia, Africa and Europe. It is therefore not by chance that some historians of Jerusalem have said it is the centre of the Holy Land and the meeting point of nations, "the centre of the planet upon which we live".

The historical factor coincides with the geographical one. The unique geographical location of the city helped to build up its human heritage and its religious character. All three monotheistic religions with all their sects believe in its holiness and have sites to which they go on pilgrimage. All year round, the city receives pilgrims from different sects and with different beliefs. The Israeli occupation, especially after the war of 1967, put an end to the pilgrimage of Muslims and of Christian Arabs, even after the peace treaty between Israel and Egypt, since Arab Jerusalem is under Israeli occupation.

It is therefore ironic that this Holy City, which has been called the House of Peace (Dar al Salam), the City of Peace (Madinat al Salam) and the Village of Peace (Qariat al Salam) is today a major problem in the way of any agreement between the conflicting parties and, unless an agreement can be reached, it will be a cause for future wars and their ideological cover too.

The unique situation of the Holy City has led to its unique status in relation to the activities related to the Arab-Israeli conflict, be they military, cultural, political or economic. The dispute about the Holy City covers all fields. The conflicting parties try by different means, such as research and publications, etc., to prove their right to the city and to justify the prevailing situation or the one that they are calling for. In fact, the Israeli side is characterized by the practical steps it takes, i.e. occupation, settlements, expulsion, destruction of houses and changing its legal status, etc. In addition to challenging international will and neglecting the resolutions of international organizations, it undertakes effective propaganda aimed at world public opinion to the effect that the Holy City has been a Jewish city from the time of its foundation up till now. One must also mention that a great effort is being undertaken by Palestinian, by Arab and by international organizations to clarify the truth about the history of the city. More work is necessary in this respect. But in spite of the importance of propaganda and of clarifying historical truths, many people in our world today are directly interested, in a pragmatic way most of the time, to find a "solution" that saves the region, peoples and the world further suffering from wars. In any case, in a seminar like the present one, everyone agrees that Al-Quds (Jerusalem) is a unique city in its situation and in its character, that its problems are very intricate and sensitive, that the spiritual side plays a fundamental role in involving a wide geographic area and a number of parties interested in its fate and future.

Let us abandon optimism and pessimism and the dispute about the past without neglecting its effect on the present. We will try to examine the present status of the Holy City and the different projects that have been proposed, as well as other possibilities for the future.

During the British Mandate of 1922-1948, Al-Quds (Jerusalem) was the capital of Palestine. Before that, when it was under Ottoman rule, it had a special administrative status, since it was directly linked to the capital of the Ottoman State. Jerusalem remained the capital of Palestine until its western sector was occupied in 1948, at which time it became considered part of the State of Israel. In January 1950, Israel announced that Jerusalem had been its capital since the foundation of the State. The main Government offices were transferred there from Tel Aviv and the Israeli Knesset was meeting there before the end of 1949.

This was not a surprise to those familiar with the history of Zionist advances on Palestine. With each of these advances, the international organizations recommended that the Holy City be under international supervision, but Zionist leadership rejected this. But in 1949, the Jewish Agency accepted the principle of internationalization as part of the agreement of the United Nations to the partition project (which the Arab States totally rejected). When Israel applied for membership at the United Nations, the Israeli delegate gave assurances that Israel would not "follow any policies about any matter ... not in agreement with the resolutions of the United Nations and the Security Council". The Israeli delegate then gave written assurances that Israel would not oppose the internationalization of Al-Quds (Jerusalem). The resolutions of the United Nations mentioned these assurances. But as soon as it was granted membership, it voted against resolutions concerning the system governing the city under internationalization.

In April 1950, the West Bank was joined to the Hashemite Kingdom of Jordan, with Amman as its capital. The sector of the city that remained was called Arab Jerusalem. A protocol was established as part of the Israeli-Jordanian truce and a line was drawn between Arab Jerusalem and West Jerusalem. Both the Israeli and the Jordanian sides considered the city as part of their territory and it was then that the term "the two Jerusalems" appeared and became familiar to the world. During the war of June 1967, the Israeli forces hurried to occupy the remaining part of the city, in addition to what was left of Palestine (the West Bank of the Jordan River and the Gaza Strip). Although during 13 years the occupation forces had been taking steps to annex the western sector of the city, administratively, municipally, economically, culturally and educationally, its annexation was not officially announced until 30 July 1980 by a decision of the Knesset - this against all international resolutions denouncing these steps. In the meantime, the international community, with the exception of the Arab States and those States that have not recognized the State of Israel, has maintained its position about the internationalization of the Holy City. General Assembly resolution 181 (II) of 29 November 1947, which recommended the partition of Palestine, specified that Jerusalem and the surrounding area (including Bethlehem) should have a separate identity under an international system supervised by the United Nations. Generally speaking, the United Nations has maintained this position over the years. It is true that between 1950 up to the announcement by the State of Israel of the annexation of the western sector of the city, the international community did not undertake any action about Jerusalem. But most of the Member States made a point of not accepting the annexation by refusing to set up their embassies in Jerusalem and by refraining from going on official visits to the occupied city.

After 1967, several resolutions were adopted by international organizations condemning the steps taken by the occupying Israeli authorities in such matters as expelling the Arab inhabitants, confiscating their property, destroying their houses, changing the architectural character of the city and changing its legal status, etc. At the same time, they maintained their position with regard to General Assembly resolutions 181 (II) of 29 November 1947, 194 (III) of 11 December 1949 and 303 (IV) of 9 December 1949 concerning the situation of the city under international supervision.

The Arab States, after having rejected the steps taken by the Israeli occupation and the Jordanian annexation, maintained this position towards the Israeli occupation and accepted de facto the Jordanian annexation, continue to reject the idea that Jerusalem is the capital of Israel. The Twelfth Arab Summit Conference, held at Fez, Morocco, in September 1982 supported the idea of an independent Palestinian State with Al-Quds (Jerusalem) as its capital. It asked for the complete withdrawal from the Arab territories occupied in 1967, including Arab Jerusalem. However, one can notice that the Arab States always accepted the resolutions of the General Assembly and the Security Council which condemned the Israeli measures, even though the United Nations resolutions in question were based on older ones like 181 (II) on the internationalization of the city.

The only exception among the international community, specifically among the permanent members of the Security Council, was the United States. The United States supported the resolutions on the internationalization of the city from the start but, after 1967, it abstained from voting on any resolution condemning the activities of the occupying authorities. The probable motive was its protection for the State of Israel and, generally, its sympathy and support for it. Nevertheless, the United States can, if it wishes, exchange the option of "internationalization" for others. In fact, one could interpret as such the declarations made by its officials, such as the refusal to "divide the city again" or the fact that it does not mention internationalization in any of the peace projects for the Middle East. It is possible that the motive behind this position is to postpone the question of Al-Quds (Jerusalem) to the last stages of the peace process led by the United States because it is

the most complicated problem. One new point was recently made obvious in an article entitled "Support Reagan's initiative" by Allan G. Kreczko in Foreign Policy. The writer is Assistant Legal Adviser for Near Eastern and South Asian Affairs at the State Department. He had served as Legal Adviser to Ambassador Robert Strauss and Sol Linowitz during their tenures as United States negotiators in the Camp David accords and as Legal Adviser to Ambassador Richard Fairbanks. The importance of his statements is increased by the fact that Ambassador Fairbanks thinks they reflect precisely the present position of the United States Government, which is in agreement with the Camp David accords. Because of its importance, we quote the text about Jerusalem:

"Jerusalem. The President's position is that Jerusalem should be undivided and that its final status must be negotiate. In letters accompanying the Camp David framework and signed on the same day, Egypt, Israel, and the United States set forth their conflicting views concerning Jerusalem. The U.S. letter said: 'The position of the United States on Jerusalem remains as stated by Ambassador Goldberg in the United Nations General Assembly on July 14, 1967, and subsequently by Ambassador Yost in the United Nations Security Council on July 1, 1969.' The Goldberg statement affirmed the U.S. position that Jerusalem 'must necessarily be considered in the context of a statement of all problems arising out of the recent conflict,' and the Yost statement emphasized that 'we (the United States) have consistently refused to recognize these (unilateral) measures as having anything but a provisional character and do not accept them as affecting the ultimate status of Jerusalem.' The Prescient's position was fully in accord with these statements and reflects a long-standing position of the United States". (p. 146)

Then, at the end of his article, he said,

"Also, the United States has consistently advanced the view that the City of Jerusalem should be undivided. When questioned about the relationship between the U.S. view that East Jerusalem is occupied territory and that the City of Jerusalem should be undivided, former Secretary of State Cyrus Vance replied in testimony before the Senate Committee on Foreign Relations on March 20, 1980.

"If you will go back to 1970 and the statements which were made at that time, we said then that there was occupied territory in Jerusalem, namely East Jerusalem, yet, at the same time, the U.S. Government believed that it should be a united or undivided city. What that meant, very simply, was that it should be physically undivided: that never again should there be barbed wire between the various parts. It did not purport to say what the final political solution should be. It did not speak to the ultimate question of sovereignty. It talked to the question of what the city would be in terms of its physical characteristics." (p. 153)

Another new attitude is obvious on the part of the great Powers regarding Jerusalem: the appendix of the friendship and cooperation treaty between the Soviet Union and Syria considered that the Israeli occupiers should withdraw from the West Bank, including Arab Jerusalem. A prominent Soviet spokesman and orientalist, Kirilian, the Deputy Director of the Oriental Institute of Moscow, explained the Brezhnev project during a seminar held at Beirut in 1981 on peace in the Middle East. It asks for Israeli withdrawal from Arab Jerusalem. There has recently, moreover, been repeated official Soviet support and support from the media for an Israeli withdrawal from all Arab territories, including Arab Jerusalem. The declarations of Brezhnev during dinner party in honour of the Yemeni Prime Minister, Muhamad Ali Nasser, after the Fez Summit, stand out particularly. The Soviet-Palestinian final communiqué after the visit of Yasser Arafat to Moscow in the second week of January 1983 repeats the demand for immediate and unconditional Israeli withdrawal from all the territories occupied after 1967, including the eastern part of Jerusalem.

But the most important new element is the emergence of the Palestinians as an independent party with an organized framework, which is the PLO. This organization is gaining increasing recognition from the international community. It announced an interim programme years ago for an independent Palestinian State on Palestinian land from which the Israeli occupation force would withdraw, with Al-Quds (Jerusalem) as its capital. Al-Quds (Jerusalem) has in fact become the symbol of the Palestinian homeland and nationality. This cannot be overlooked.

In other words, the international position about the internationalization of Al-Quds (Jerusalem) is not as it was before. It is true that internationalization remains as one alternative but there are other alternatives as well.

At the present time, the attitudes of the different parties with regard to the Holy City can be summarized as follows:

(a) The Arab Palestinian people and their representative, the PLO, insist that Al-Quds (Jerusalem) be the capital of an independent State on liberated Palestinian land;

(b) The State of Israel and all the Israeli community want Jerusalem to be the eternal capital of the State, never to be divided again;

(c) The Arab States support the Palestinian attitude;

(d) The Islamic States support the Arab-Palestinian position, specifically with regard to Al-Quds;

(e) The international community continues to reject the measures regarding the annexation, officially at least, and to support resolution 181 (II) of 29 November 1947;

(f) Obscure changes in the attitudes of the United States and the Soviet Union are open to further discussion;

(g) The Vatican adopts the idea of internationalization in some of its declarations.

All these parties have means at their disposal to realize their objectives with methods varying in their effectiveness.

The PLO continues the struggle by different means available to it. But it faces a rejection from the West, especially from the United States, with regard to its recognition as the sole legal representative of the Palestinian people and its role in the peace negotiations and negotiations about the Holy City.

As for Israel, it utterly rejects any negotiations with, or recognition of, the PLO. It also absolutely rejects Reagan's proposal. At the same time, it continues to change the character of the land in Al-Quds (Jerusalem) and its surroundings and in all the West Bank, in preparation for its political annexation of the occupied lands.

Until now, the United States has been using the method of separating the different problems related to the conflict and dividing the concerned parties, postponing the complicated issues, one of which is that of Al-Quds (Jerusalem). From time to time, it declares that it objects to a particular Israeli measure. The objection is usually made outside the United Nations framework. But it uses no real pressure against the State of Israel to make it change or to stop or freeze what it is doing.

The Israelis know, however, that there are limits to the United States protests and that is why they are quickly changing the character of the land and creating new realities, with the hope that the United States will find something in its own interest, as with the Israeli attack of Lebanon and the siege of Beirut.

As for the Arab side, its activities are limited to international organizations and getting declarations or condemnation, and the international community usually complies. The situation with Islamic States and States supporting the Arabs and Palestinians is the same.

In the meantime, there is the unchanging fact that the occupying Power continues to modify the character of the city, mindless of all protests and condemnations. So the question arises, what is to be done?

This is not an invitation to despair or war.

However, it is clear that what is being done now is insufficient, in spite of the great changes in world public opinion regarding the justice of Arab demands on Jerusalem. Moreover, it is not possible to maintain that time is to the advantage of the geographical and historical factors. They may be stable truths, while the Israeli measures are changeable, but the passing years are not simply paper calendars. The inhabitants of Jerusalem live under occupation, with threats of expulsion and continual attacks of religious sites. The month of March 1983 witnessed more than 10 such attacks from Jewish extremists. The Israeli authorities detained hundreds of Arab youths who protested and severely wounded some of them with their shooting. The only positive point in these events is that the Zionist propaganda that says that the Israelis protect religious freedom for all beliefs is shown to be false. Perhaps they wish to maintain freedom for tourism to all religious places but religion is not the same thing as tourism. In fact freedom of tourism can be an encroachment on the religious sites.

We can now leave aside the stress under which the Palestinian Arabs live and the humiliation for Christians and Muslims all over the world at the actions of the extremists, who are protected by the occupying authorities, and turn to take a look at the future.

The continued Israeli measures against the city and its inhabitants and the creation of new residential quarters on confiscated land in order to settle Jewish inhabitants and expel the Arab population will not negate the struggle. In fact, it is likely to give it a new motivation in trying to modify the balance of power and create more bitterness. The settlers of Yamit in Sinai had to be convinced by physical force. In fact, there is still a group calling itself the "return to Sinai group". One can easily imagine the situation with regard to settlements established in and around the Holy City.

One has, unfortunately, to expect that every measure by the Israeli authorities against the city and its inhabitants is like a bill that will have to be repaid in the future. Perhaps the interest will be high, too. If the international community does not move to put pressure on the aggressors to stop their acts, make them withdraw from the Holy City and force them to respect human rights and international conventions and resolutions, the suffering of these people will increase and peace and security will be more and more endangered every day (as affirmed in Security Council resolution 478 (1980).

A possible solution for the international community is to adopt the PLO programme by considering it the sole legal representative of the Palestinian Arab people. The PLO also asks for the realization of the inalienable rights of the Palestinian people, such as the right to return to their homeland and the right of self-determination and of setting up an independent State, with Arab Jerusalem as its capital. In the light of such a programme, the creation of a State in the framework set up by the PLO, with its commitment to set up a democratic State on the land of Palestine where all, whether Christians, Muslims or Jews, will have the same legal rights, will open a door to the road of a just and lasting peace in the Middle East and Jerusalem will become, as it has always been, the capital of all the faithful in the world, of all human beings and of all Palestine.

Notes

1/ Al-Dajani, Curuba wa-Islam wa Mucasara (Manshurat Falastin al-Muhtalla, Beirut, 1982).

2/ Ibrahim Abu-Lughod, translated by Dr. Razzouk Asaad, Transformation of Palestine (Beirut, PLO Research Centre, 1972).

3/ Mary Ellen Lundesten, Wall Politics in Palestine (Jerusalem, 1928).

4/ Palestine Studies Journal 29, vol. VIII, No. 1 (Autumn 1978), (Beirut), pp. 3-27.

5/ Henry Cattan, "The Status of Jerusalem", Palestine Studies Journal 39, vol. X, No. 3.

6/ "The destruction of an Islamic heritage in Jerusalem", special report, Arab Studies Quarterly, vol. 2, No. 2 (Spring 1980) (New York).

7/ Avi Plascov, "A Palestinian State? Examining the Alternatives", Adelphi Papers 163, (London, International Institute for Strategic Studies, Spring 1981).

8/ Allan Kreczko, "Support Reagan's initiative", Foreign Policy, vol. 49 (Winter 1982-1983), pp. 140-153.

G. JERUSALEM (AL-QUDS/KUDUS-I SERIF) UNDER THE OTTOMAN EMPIRE

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The question of Palestine which, in broad terms, entails the struggle for the rights of the Palestinian people to return home and to assert their national determination, has been identified by the United Nations and other international organizations and authors alike as the core of the Middle East conflict. For some authors, the status of Jerusalem is not only the heart of the Palestine question, but also, among all the issues concerned, prove to be the most difficult to resolve.1/ If the roots of the Palestine question can be traced to the emergence of the Zionist movement, which around the 1880s set its eyes upon Jerusalem and environs as the future Jewish State, then the history of the Arab-Israeli conflict could be examined, by using the legal sovereignty over the country as the determinant, under three periods: Ottoman, British and Israeli. Although pioneering efforts have been made in the investigation of the Palestine conflict from the Turkish primary sources,2/ not much is known on the status of Jerusalem under the Ottomans whose occupation over Palestine dated back to 1517, encompassing four centuries of

uninterrupted rule.

When mentioned, however, the status of Jerusalem under Ottoman rule is mostly sketched in most derogatory terms. Under the Turks, it is stated in a recent book, Jerusalem "sank into four centuries of political obscurity until British sentiment, influenced by Christianity and the romance of the Crusades, rehabilitated Jerusalem as the administrative capital of Palestine under the Mandate".3/ The Ottoman provincial administration is portrayed as "repressive" and "corrupt", and the people as "ground to poverty by crippling taxation and corruption at all levels of administration till honest enterprise was killed; and "the land fell derelict and was bought up by native landlords and by Levantine speculators and moneylenders, who eventually sold the land to the Jews".4/ It must have been obvious that the author aimed to whitewash the subsequent British (Christian) and Israeli (Jewish) colonial practices at Jerusalem by using the Turkish (Muslim) rule as a pretext. If the Turkish rule could be presented in darkest colours, then, perhaps the "achievements" of the British and Israeli "civilizing missions" could be appreciated and their excesses excused. In the following account, an attempt will be made to give a truer picture of Jerusalem under the Ottoman Empire, with special emphasis on the nineteenth and early twentieth centuries.

During the early centuries of Ottoman rule, Palestine was a geographical expression commonly known as the Arz-l Filistin or Arz-i-Mukaddese, but did not form a political administrative unit on its own. It was divided into several districts (sanjaks) which, up to the beginning of the seventeenth century, were part of the Damascus province (eyalet). Later on, most districts in central and southern Palestine, as well as those in the area east of the Jordan River, continued to be at least nominally under the jurisdiction of Damascus, while the Galilee districts were transferred to the newly established eyâlet of Sidon. In 1841, after a decade of Egyptian occupation, all the Palestinian districts except for the area east of Jordan were placed in the province of Sidon (later called the vilayet of Beirut).5/ In the second half of the nineteenth century, however, Palestine began to assume a distinct administrative entity of its own. The sanjak of Jerusalem was given higher status, and organized as a mutasarriflik - an enlarged administrative unit which included also the sanjaks of Nablus and Gaza and was governed by a mutasarrif. During the Crimean War, this area was elevated for a short time to the status of an independent province, and its governor, a pasha with the rank of vali, was directly responsible to Istanbul. The Ottoman Provincial Regulation of 1876 not only confirmed this reorganization of Palestine, but also incorporated Acre with the Mutasarriflik of Jerusalem.6/

When in 1517, the Ottoman Sultan, Selim I, put an end to the Mamlûk dynasty, Jerusalem with the rest of Syria passed to the Ottomans who gave the land a new life. One of the most notable of these sultans, Süleyman I (1520-1566) was not only a great soldier, but took a considerable interest in building and Jerusalem benefited from this. Lavish sums were spent on the restoration and maintenance of all holy places, Christian, Jewish and Muslims alike. The Sultan also had the city walls renovated and gave them the form they still have today.7/ Since Jerusalem, due to its international prestige as the holy place common to all the three monotheistic religions, attracted pilgrims and travellers all over the world, the successive Ottoman sultans took great pride in keeping the city in exemplary shape and order. Thus, under the Turkish rule, law and order reigned, and the government administration was properly organized. The population grew and the economy developed.8/

The status of holy places became, especially since the nineteenth century, a growing problem in the Sultan's relations with the European Powers. Jerusalem had, since the time of the Crusades, been the theatre of operations for missionary societies, religious orders and educational establishments characterized by rivalries among these different denominations. The Ottomans, despite their peace-making efforts among the communities in Jerusalem, inherited such problems. With the nineteenth century, the question of the holy places was carried from the halls of the Divan to the international arena. It is necessary, therefore, to look very briefly into the interests of the Powers in Palestine.

The French connection with Palestine in this respect was the oldest of all European Powers, stretching back to the rule of Francis I.9/ As a result of the privileges granted by Süleyman the Magnificent, France had monopolized the custody of the sanctuaries and the protection of the Latin clergy in its relations with the Turkish Government.10/ The tendency of France to regard itself as the sole protector of Roman Catholic interests in Palestine was reduced when Italy 11/ and Germany 12/ in the 1880s decided to champion the cause of their Catholic subjects in the Holy Land. In the face of desertions from its protégé system, France could have only retained its prestige by offering better facilities to pilgrims, and occupational services to local converts.13/ This could have been possible with more funds, but the statesmen of the Third Republic did not share Louis Napoleon's religious convictions, nor thought that Christianity was worth exporting. In contrast with the French religious establishment, Russian interests in Palestine were endowed with both resources and government backing.14/ With the Treaty of Kuçük Kaynarca in 1774 the Russians had secured the claim to protect and intercede for the Orthodox Christians of the Ottoman Empire. In 1882 the Russians established, under the presidency of the Grand Duke Sergei, the Imperial Orthodox Palestine Society, whose prima facie aims included helping the pilgrims, the founding of schools, hospitals, hostels, granting of material aid to the local inhabitants, churches, monasteries and clergy, and supporting its creed in the Holy Land.15/ Similar functions were also undertaken by the British, whose mission in Palestine during the last quarter of the nineteenth century was represented by the London Jewish Society and the Church Missionary Society as well as an Anglican Bishopric.16/ The only German interest in Palestine was the Templar (Tempelgemeinde) Society, whose followers were part of the pietistic stream of Protestant theologists who wished to revive the way of the life of the early Christians.17/

Religious considerations as outlined above were not the only interests of the Powers in the Near East for, more importantly, each had certain strategic, political and economic commitments as dictated by their respective national policies. Considering the scope of this paper, there is no need to go into detail with the policies of the Powers but, nevertheless, it is indispensable to mention the effects of the Capitulations and the protégé system upon the relations between the Porte and the Powers.

One of the most important avenues through which the Powers tried to place Turkey under their tutelage was by the extensive use of the Capitulations.18/ The Turks never had a great disposition towards commercial activities which they considered to be degrading to their chivalric culture. The rationale, therefore, behind the issuing of extraterritorial privileges was to attract foreign merchants and companies to Turkey. This was how the early Ottoman sultans thought they could cultivate the rich economic resources of the Empire. These Capitulations were issued from a position of strength and, as far as the Sultan was concerned, possessed no binding obligations. He had then the power to cancel them altogether. With the advent of the nineteenth century, the Ottoman Empire, having lost its initial vitality, was placed within the pale of the European political system whose more powerful members in 1856 at the Congress of Paris undertook to preserve its territorial integrity. As a result, the Capitulations acquired the features of law, becoming, inter alia, an instrument to exploit Turkey's economic resources on the one hand and to swell the Turkish market with European industrial products on the other.

The most objectionable abuse of the Capitulations, from the Turkish point of view, was the way in which it led to the emergence of the "protégé" (Himâye) system. The protégé system was an institution by which Ottoman subjects could acquire foreign nationality or foreign protection without being required to reside in the country granting the protection, and thereby be entitled to the capitulatory privileges enjoyed by the nationals of the donor country in Turkey. With the nineteenth century, however, the protégé system became very attractive to the non-Muslim subjects of the Empire. First of all, at a time when the Ottomans levied higher taxes to make up for the depleted sources of the Empire, the protégé system proved to be a convenient device in escaping such a burden, for the protégés of foreign powers, according to the Capitulations were immune from the Ottoman fiscal system altogether. Secondly, the protégé system, as far as the non-Muslim subjects of the Sultan were concerned, brought with it an important political advantage. Under the protective wing of the Powers, the nationalist movement within the Empire could afford to become more militant in the pursuit of their separatist ambitions. The Turks thoughts that the extension of the protégé system was a step in the direction of the secession of the territories inhabited by the protected nationals.19/

The great Powers also reaped substantial benefits from such an alliance with the non-Muslim groups in the Ottoman Empire. First of all, the influence of the West in the Orient had increased. The greater the number of its protégés, the greater would be the concerned country's exploitation of the Capitulations. Secondly, the non-Muslim protégés in Turkey had also provided the great Powers with the pretext to intervene in Ottoman internal affairs. By upholding the so-called rights of the Ottoman minorities, the great Powers more often than not tried to shape Ottoman policies to fit their imperial interests. In Palestine too, the great Powers were

exploiting religious differences in order to establish their respective spheres of interest in the region.20/ It was France, as the champion of Catholicism, which placed the Maronites, Jacobites and Uniates under its protective wing, while Britain did the same for the Druze, Protestants and Jews, Germany for the Templars and finally Russia for the Orthodox, Copts and Abyssinians.

Viewed within the context of international politics, Jerusalem appears to be more than an arena of inter-missionary activity and struggle between various religious sects. In this connection, the cooperation of the activities of the missions and their Governments was crucial. The Templars, for example, thought that if they could convince the German Government of their usefulness in the cause of the Drang nach Osten, then the latter would, in turn, reward them with the material benefits that they had been denied by previous administrations.21/ The British evangelical missions, with the help of Consul Finn, who was a member of the London Jewish Society, had plunged deep into the troubled waters of religion in the Holy Land and attempted to create an English party by issuing certificates of protection to their converts. Policies of one mission caused deep-seated resentment and suspicion to others, the manifestations of which resulted in violent clashes between their followers.23/ When these incidents were communicated to Europe, the Powers came to believe that the other party was harbouring aggressive designs over Jerusalem at their expense.

This belief in the zero-sum-game of Palestinian politics led the European Governments to participate directly in the affairs of the land, trying to redress the balance of power whenever they felt that it was being disturbed by another party. A typical example was provided by he funeral of M. Ledoulx, the French Consul in Jerusalem. "The feeling that Latin interests have for some time been giving way to those of the Greek Church, and that French prestige has been losing ground whilst Russian influence has been on the increase, caused the French clerical party, supported by the Franciscan monks and the Roman Catholic community in general, to avail themselves of the death of the French Consul-General for making as great a religious demonstration and display as was possible".24/ It was true that Russia managed to "destroy the influence in Palestine of the Greek Ecumenical Patriarch of Constantinople, and to put that of Russia in its place"25/ and in doing so, enhanced its political influence in the area. A British official wrote from Damascus that "Russian influence gains in strength almost daily, and it would hardly be an exaggeration to say that steady and persistent efforts are being made to "Russianize" the Greek Orthodox community in this province".26/ These proceedings of Russia seriously occupied the attention of the French Government, which believed in the "importance du protectorat religieux pour le prestige de la politique française".27/ As observed by the British Consul at Jerusalem, the "establishment by Jesuits of a medical school at Beirut is no doubt a countermove to Russian scholastic activity".28/ Both the Russians 29/ and the French 30/were worried about increasing German activities in Palestine. The Templars were believed to be the "outposts of Teutonism, whose services to the Fatherland were harnessed by the Wilhelmstrasse to further Germany's political and economic penetration into the Middle East".31/ International rivalry was so intense in Palestine that even allies like France and Russia could not form, at the suggestion of Mouravieff,32/ the Russian ambassador in Istanbul, a common front against their mutual enemy, Germany.

International rivalry in Jerusalem was bound to arouse the suspicion of the Turkish rulers, whose prime consideration was to preserve the territorial integrity and political sovereignty of the Ottoman Empire against the incursions of the European Powers. The sultans knew that the rivalries among the Powers in the Middle East and their lack of consensus with respect to the fate of Turkey prevented the impending partition of the empire, but they realized that they could not rely on external factors for the well-being of the country. Thus, from the second half of the nineteenth century, the Ottoman rules carried out an extensive reform programme with the aim of modernizing their declining empire. The rationale behind the Tanzimat reforms was to curtail, if not entirely terminate, foreign intervention in the affairs of the Sultanate.34/

Before the Tanzimat, the Porte delegated its power to the leading families in the provinces. With the decline of the central authority to supervise their affairs, these local notables (esraf or âyan) assumed feudal prerogatives, taxing and policing the region at their will, a practice which caused great discomfort to the populace at large. Thus, the successive reforms initiated in the second half of the nineteenth century aimed in principle to establish the democratization and secularization on the one hand, and the centralization of the Ottoman administration on the other. The Porte centralized control over its civil servants in Palestine, establishing direct lines of communication between them and Istanbul. The Turks also insured that Jerusalem was filled with able, honest and efficient personnel. Associated with the governor (mutasarrif) were administrative departments whose officials, such as the provincial accountant, public works supervisor and the judge, were appointed by Istanbul and were responsible to their superiors in the capital. The activities of the different departments in Jerusalem were coordinated by the Administrative Assembly, consisting of the mutasarrif, department heads and six representative members, three Muslims and three non-Muslims, elected from among the inhabitants. Moreover, advisory councils were formed to introduce the elective representative principle into the functioning of local government, for the first time in the history of Palestine under Turkish rule. The Provincial General Assembly of Jerusalem was composed of a combination of two Muslims and two non-Muslims elected by the Acre, Nablus, Beirut and Jerusalem. Convoked by the governor, the Assembly was charged with matters related to the construction and the upkeep of roads and bridges, tax collection, improvement of agriculture and commerce in the region. At the lowest level, the Council of Elders, one of the oldest representative organs in the Ottoman Empire, was retained. Each millet in the village elected its own Council and a headman, the electors consisting of male Ottoman subjects over the age of 18 who paid a specified sum in direct taxes annually.35/

The new provincial system also brought some improvement in the distribution of justice in the provinces. Palestine shared with the rest of the country the most characteristic tenet of the Ottoman judicial system: its lack of unity.36/ There were at least four court systems operating at the same time supervised by different governmental authorities. While the consular courts had jurisdiction in trade disputes involving their own subjects and other matters reserved for them by the Capitulations, the non-Muslim subjects of the Crown had their own millet courts, to arbitrate disputes that might arise within their communities. Muslims had their own Seriat (Shariah) court, based upon the legal precepts established by the Qu'ran, and directly responsible to the office of Seyhülislam in Istanbul. To put an end to this state of judicial anarchy, the Tanzimat introduced the Nizamiye courts which aimed to set the standards and procedures in the criminal and civil courts for all Ottoman subjects, irrespective of their creed and nationality. Although the minorities and their Christian patrons refused to adopt the new system, it was nevertheless true that the judicial improvements in Palestine as well as in other sections of the Empire did materialize.

Effective measures of public security were also introduced.37/ Keeping peace and order in Palestine and Syria was the duty of the Fifth Army, called the Army of Arabia, based at Damascus. In line with the centralizing tendencies of the Sultan, Abdulhamid II, these forces were placed under the command of a field marshal who was appointed by and responsible to the War Ministry at Istanbul, thus completely ending the governor's control of the military forces within his domains. The Fifth Army, thanks to the modernizing efforts of the Sultan, was better organized and equipped than before in so far as financial stringencies permitted. The Sultan, however, was not going to be content to rely on the regular army to prevent or suppress any upheavals that might occur which would lead to general intervention on behalf of the Powers. When Muslim refugees in the face of growing repression in the Balkans and Russia fled to Turkey, the Sultan settled them in the valley of Hauran and organized them as a militia force.38/ The Sultan knew that the local gendarmerie formed by the Muslims would be the most effective way of suppressing any disintegrating tendencies among the various minority groups in Palestine. It was obvious that the Muslim refugees, living with the memories of how their loved ones had been murdered and their homes and properties stolen, would not be accommodating towards the ambitions of their persecutors' co-religionists in Palestine. The Muslim militia proved itself to be so effective a deterrent to possible breaches of peace that the British consul at Jerusalem wrote that "more readiness was manifested on the part of the police to cope with evil-doers and to maintain order".39/

Finally, certain steps were taken to improve the province in the economic sense. First of all, model farms were established in arable districts as experimental stations to demonstrate new techniques of cultivation and use of equipment. Considering the importance of trade and commerce in the prosperity of a region, Abdulhamid II, the Sultan, granted a concession to a French concern, Chemin de fer de la Palestine, in 1888, to build railways between Jaffa and Jerusalem, Haifa and Jaffa. Before this line was actually completed in 1892, similar concessions were made to the French to link Palestine with Beirut, Damascus and Aleppo, all of which opened their services to freight and passengers no later than 1906. Abdulhamid II also made it clear to the Germans that both the Berlin-Baghdad and the Hejaz railways should establish subsidiary connections with Palestine. As a result of these efforts, Jaffa and Haifa prospered as commercially successful ports, opening Syrian and even Arabian markets to European customers. Exports consisting of oil, wine, cereals, citrus, sesame, tobacco and silk from Palestine were shipped to most European countries, yielding a substantial profit to the local producers and revenue to the Ottoman economy. To organize and improve commercial transactions, chambers of commerce were founded at Beirut, Jerusalem, Jaffa and Hauran as early as 1880, to be followed by banks. The Imperial Ottoman Bank was

formed in 1887 with French capital, opening branches at Haifa, Beirut, Hama, Homs, Jaffa, Jerusalem and Saida, whilst its German counterpart, the Deutsche Palestina Bank was established in 1889 with branches at Beirut, Damascus, Gaza, Haifa, Jaffa, Jerusalem, Nablus and Nazareth. Economic activity was in such a flourishing state that Palestine during the entire reign of Abdulhamid II and of Resad never faced a deficit in its provincial economy. On the contrary, the financial situation in Palestine contrasted very favourably with that of the Empire as a whole, with the revenues constantly exceeding the expenditures necessary for the maintenance and improvement of the province.

As an overall view, one can confidently state that Jerusalem and environs under Ottoman administration was in process of gradual improvement in the various spheres of life: religious, economic, political and physical security.40/ The British Foreign Office commented with surprise, and perhaps with considerable regret, that "taken as a whole the (Turkish) regime in Palestine marked imperial progress, and is open to less criticism than elsewhere in Turkey. There were, of course, bad 41/ features - the same nervousness of foreign encroachment as in other provinces, the same suspicious and jealous system of administration. But there was no general sense of oppression and terror".42/

Suspicion of European encroachment was not the only apprehension entertained by the Ottomans in the late nineteenth century. Palestine in the 1880s also became the focus of Zionists who were aiming to deliver their followers to the Promised Land. Their leader, Theodor Herzl, admitted that the "decision is in the sole hands of His Majesty the Sultan".43/ His strategy to convince the Sultan was to make him a financial offer he would not dare to refuse. Herzl came to Istanbul in the middle of June 1896, and requested the Sultan to issue a Charter, enabling the Jews to colonize Palestine in return for 20 million pounds. Sultan Abdulhamid II, however, was adamant. He told Herzl "not to take another step in this matter. I cannot sell even a foot of land, for it does not belong to me, but to my people".44/

Upon the emergence of the Zionist movement in Europe, the Ottoman ambassadors were alerted to these disconcerting developments. The Ottoman ambassadors at Berlin (Ahmed Tevfik Pasha) and Vienna (Mahmud Nedim Pasha) not only interviewed Herzl and other Zionist notables, but also sent agents to the congresses to obtain healthy information respecting the ultimate aims of the Zionists. In a detailed report to the Porte, Ahmed Tevfik Pasha wrote on 17 August 1900 that "we must have no illusions about zionism. Although the speakers at the Congress dwelled upon vague generalities such as the future of the Jewish people, the Zionists, in effect, aim at the formation of a great Jewish State in Jerusalem and environs, which would also spread towards the neighbouring countries". According to the Ottoman ambassador, the Zionists would use a Judaized Jerusalem as a base for their future expansionist activities.45/

Ahmed Tevfik Pasha's worries fell upon sympathetic ears in Istanbul. Abdulhamid worried that, by allowing the Jews in Jerusalem, the Turkish Government would sign the death warrant of its Arab co-religionists, since the new settlers would, in no time, gather great power in their hands and use it against their Arab hosts.46/ The Porte stressed that it "does not desire to sell any part of its Arabian country, and no matter how many millions of gold are offered this determination will not be altered".47/ Instead, the Porte came to believe that the "time has come for His Majesty to take certain measures to repair the fault which his ancestors had committed by allowing the non-Muslim communities to settle in Palestine".48/ The Ottomans were determined to preserve the dominant Muslim and Arab characteristics of Jerusalem and Palestine. Thus, the Ottoman Government should to the best of its efforts prevent Jewish immigration and settlement in the mutasarriflik of Jerusalem. A series of "entry restrictions" were immediately imposed, and those Jews who managed to penetrate the country were denied ability to acquire land, either urban or rural.49/ These restrictions were kept in force by the Young Turks even after the fall of Abdulhamid II until 1917, when Palestine passed to the hands of the British.

In the light of evidence drawn mostly from Turkish and Western sources, it appears that, under the Ottomans, Jerusalem was a "city of peace" characterized by public security and prosperity. Jerusalem, of all the provinces that fell to the Turks - with the possible exception of the Hejaz lands - commanded a special place in the eyes of its rulers. As faithful Muslims, the sultans were extremely keen to preserve the city to match the dignity of the Aksa and the Omer Mosque. Moreover, knowing the Jerusalem was the home both for Christianity and Judaism, Turks also took great pride in keeping these sanctuaries in good order and in providing free access to their followers. Nevertheless, weary of Western involvement in their internal affairs, the Turks had no tolerance for European meddling with the affairs of missions. Most of the improvements introduced in the nineteenth-century Jerusalem sprang from their determination to curb, if not completely dissociate international rivalry among the Powers over Palestine. The regional history of Jerusalem was the history of a tug of war between the Porte, which wished to maintain the native Muslim predominance in Jerusalem, and the Powers, who were craving to place the city under their respective spheres of interest. The Ottoman struggle to uphold Jerusalem's Muslim character in the late nineteenth and early twentieth centuries also involved an effort to stop Zionist settlement and immigration in Palestine. It was true that the Ottomans, though they formulated exceptional restrictions against the Zionists, feared the Judaization of Jerusalem more than they had Western influence. Abdulhamid II admitted in 1911 that the efforts of the Zionists in Palestine were just an introduction preparing the groundwork for accomplishing their ultimate goal: "I am sure that with time, they can and they will be successful in establishing their own State in Palestine".50/

Notes

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41/ Sic!

42/ [Great Britain] Her Majesty's Stationary Office, Handbooks on Syria and Palestine, 1920, p. 45. A similar view could also be found in A Handbook of Syria Including Palestine, prepared by the Geographical Section of Naval Intelligence Division, Naval Staff, Admiralty, London, n.d. [1902?].

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48/ Ibid., No. 9550/63, Ali Ferruh to Tevfik Pasha, Washington, 29 April 1898; BA, YPA C II/1325/120/5.

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H. JERUSALEM FROM THE STANDPOINT OF THE HISTORIC RIGHT AND PRINCIPLE OF SELF-DETERMINATION

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"For the second time, Israel has conquered Palestine, the land of the Philistines. It is curious to note that the various phases of this second conquest present many similarities with the events at the time of the patriarchs, Joshua and David. First of all, there is the peaceful infiltration of isolated families, the purchase of land, coexistence with the inhabitants of the country, followed by mass immigration, consolidation of positions acquired, and lastly, military conquest of the whole country. Over a span of three or four millenia, history repeats itself."

It is in these terms that Carl Keller, professor of the Old Testament and history of religions at the University of Lausanne, examined the relationship between the beginning of the conquest of Canaan in the thirteenth century B.C. and the spectacle which is now taking place before our very eyes in Jerusalem - the centre of convergence of the three monotheistic religions and "land of peace". In their appeal to the Christian conscience, the Eastern patriarchs, meeting at Damascus in May 1971, declared that "the aim - sometimes acknowledged, sometimes disguised - of zionism is to suppress the heritage of Palestine in general and of Jerusalem in particular, which were the cradle of civilization in its two forms, human and superhuman, and to turn the land into a racist and religious State".

At its thirtieth session, the United Nations General Assembly established, by its resolution 3376 (XXX), the Committee on the Exercise of the Inalienable Rights of the Palestinian People, and defined the terms of reference of that Committee in paragraphs 5 and 6 of resolution 31/120. In pursuance of the resolution, which requested that seminars be organized on the question of Palestine during the 1982-1983 biennium and since this eighth seminar should be devoted to the overall problem of Jerusalem viewed in its historical, juridical, political and human aspects, we shall try to focus our contribution on the status of Jerusalem from the standpoint of the historic right and the principle of self-determination embodied in international law.

Three essential facts should be considered first before examining the status of Jerusalem:

(a) The problem of Palestine cannot be dissociated from the general problem of Palestine from which it arises;

(b) It cannot be regarded in terms of the ancient city, occupied from 1948 to 1967 by Jordan, and the new city, occupied by Israel during the period and later, when it conquered the ancient city and the rest of Palestine. It may be recalled that, in resolution 181 (II) of 29 November 1947, whereby the General Assembly recommended that Israel should be established as a corpus separatum, the city was defined as including the present municipality of Jerusalem plus the surrounding villages and towns of Abu Dis, Bethlehem, Ein Karim and Shu-fat;

(c) Lastly, the problem of Jerusalem cannot be viewed as a problem of religious conflict over the Holy Places. The above-mentioned resolution 181 (II), in enumerating the extensive powers of the government and administration of Jerusalem, had guaranteed religious rights, minority rights and property rights.

Let us briefly examine first of all the claim of the historic right of "biblical right" invoked by the Government of Tel Aviv for the annexation of Jerusalem. By virtue of that right, it proclaims that "Jerusalem was and remains the unified and eternal capital of Israel". In reality, that right is no more than a myth, according to the words of Pastor Georges Pidoux, former professor of the Old Testament in the faculty of theology of the University of Lausanne, who adds, "Fanaticism, like racism, feeds on myth. In the case of Israel, this is not difficult to demonstrate. What is serious, however, is that myths are like a neurosis which no reasoning can cure".

In evoking the "Promised Land", the land of Canaan, to the Jewish people, the "chosen people", the Zionist movement has claimed that it was King David 3,000 years ago who built Jerusalem after his victory over the Jebusites. However, history - or more accurately, pre-history - gives the lie to that claim following the latest archaeological discoveries, which have proved that Jerusalem existed some 2,000 years before Christ, in other words, about a thousand years before the arrival of David. John Gray, professor of Hebrew and Semitic languages at the University of Aberdeen, relates in his History of Jerusalem that the first historical documents mentioning Jerusalem are texts written in hieratic hieroglyphs found at Luxor in Upper Egypt. They date from the nineteenth century B.C.

According to those documents, the Jebusites, Canaanite tribes that had emigrated from the Arabian peninsula, had built Uru-Shalem, the name given to Jerusalem and signifying "house of peace". From the time of the Arab king Malki Sadek in the nineteenth century B.C., the city experienced tremendous growth. It was the period of Abraham and the third dynasty in Egypt. The pharaohs maintained trade and political relations with all the countries of the region, and Egypt had a profound influence on the land of Canaan (Palestine). Jerusalem, its capital, was known well before the arrival of the Israelites in Canaan. It is mentioned in the texts of that period. We know of some of its kings, including Malki Sadek and Abdi Hiba, who allied himself with Egypt and called on the Pharaoh Amenophis IV for help against the Hapiru invaders from Transjordan. "Hapiru", in the Canaanite language, meant "country people", from which was derived the name "Hebrew" given to the Jews.

Jerusalem subsequently passed under the Amorite dynasty, and it was not until the thirteenth century B.C. that the Amorite kingdom was attacked by the Jews under the command of Joshua. The King of Jerusalem at that time was Adoni Sadek and was allied with four minor kings of the land of Canaan. The battle went in Joshua's favour and the five kings were put to the sword. But Jerusalem did not fall into the hands of the invaders. Neither did it fall into the hands of the Judges, because its inhabitants were able to hold out after barricading themselves on Mount Zion.

For more than three centuries after the reign of Joshua, the attacks against Jerusalem continued ceaselessly and it was not until the year 1000 B.C. that David entered Jerusalem through cunning much more that through conquest, since he had previously been in the service of the Amorite kings and had learned their methods of combat. Having become King of Israel, after the death of Saul, David achieved resounding victories against the Philistines. He chose for himself another capital, Sichem, and found in Jerusalem an Amorite population, a considerable number of them having remained after the conquest. Thus, the Israelites did not reach Jerusalem until 2,000 years after it had been founded.

We turn now to the invasions which took place before and after David and which were of short duration. Jerusalem was, in fact, invaded and destroyed 16 times in the course of its history. Its Canaanite - and therefore Arab - population remained and constituted the majority. At the time of David, the Jews were in the minority, although they had established their authority over the city. Neither David nor King Solomon sought to Judaize the city. The latter had the Temple built which bears his name.

The pharaohs of the twenty-second dynasty began to attack the kingdom of Judea after the death of Solomon in 931 B.C., following the divisions which had occurred in that kingdom. Then came the turn of the Assyrians, the Persians and others. The Kingdom of Israel enjoyed peace for only 70 years, and experienced the vicissitudes of fortune until its final collapse. After many wanderings, disasters and the deportation of Israelite kings and leaders, particularly to Babylon, Persia and Mesopotamia, Jerusalem was captured by the Assyrian King Nebuchadnezzar in the sixth century B.C., its kind was deported, his sons were beheaded and the Temple of Solomon was destroyed in 587. The population was also deported and that was the origin of the diaspora. Thus, the Kingdom of Israel and that of Judea, the outcome of a split, collapsed.

After conquering Jerusalem, Cyrus, King of Persia, in 538 B.C. invited the Jews who had been deported to Mesopotamia to return to the ancient city, which had been rebuilt. Only a few thousand, coming from Babylon, accepted, whereas members of a prosperous Jewish community preferred to remain where they were. Indeed, it was in Babylon that the Hebrew scribes composed the definitive text of the Torah.

Jesus Christ was born in Jerusalem, and it was within its walls that the new message resounded, following the example of the messages brought previously by dozens of prophets. The Holy City changed hands after the advent of Christianity. The Eastern Church was established at Jerusalem, where there were few Jews and where virtually all that was left was the Wailing Wall beside the churches and temples that were built and which remain to the present day.

Fifteen years after the death of the prophet Mohammed, the second Caliph Omar-Ibnu Al-Khattab received from the hands of the representatives of the Eastern empire of Constantinople the keys of Jerusalem without a shot being fired. Thus, the Holy City returned to its Arab origins. Abdulmalek-Ibnu Marwan, the Ummaya caliph, built the Al-Aqsa mosque beside the dome of Al-Haram Al-Ibrahimi. There was an interruption of one century in which Jerusalem was besieged by the crusades until the time when Salah Addin Al-Ayyubi defeated them at Hittin and liberated the Holy City in 1187. It retained its Arab character under the Ottoman Empire, which succeeded the Arab caliphate. As Palestine was part of that empire, the Palestinians, on the same footing as the other Arabs of the Middle East, were full citizens enjoying the same rights as the Turkish citizens and shared with them sovereignty over all the provinces of the empire. Thus, the sovereignty of the Palestinian people was exercised continuously over Jerusalem until the establishment of the British mandate over Palestine.

Before the end of the First World War, Palestine was invaded by British forces and detached from the Ottoman Empire to be administered by the Government in London. Jerusalem became the capital of Palestine. Following peace negotiations, Palestine was placed under a League of Nations mandate with Great Britain as the mandatary Power, and the text adopted by the Council of the League of Nations on 27 July 1922 assumed force of law in September 1923. Although the Palestinian people have been ignored in the international debate on the fate of their country, the Covenant of the League of Nations in article 22, paragraph 4, stipulated:

"Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognized subject to the rendering of administrative advice and assistance by the Mandatary until such time as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the Mandatary."

Under the terms of that article, the fact that a mandate had been assigned to a mandatary Power to administer Palestine did not affect the identity of that country and did not divest the Palestinian people of their sovereignty over their territory. "The rights to sovereignty are enjoyed in fact and no in theory by the societies in the mandated territories", stated E. Pélichet (in La personnalité internationale des collectivités sous mandat). Consequently, the mandatary Power acquires no attribute of sovereignty over the country under its mandate. With regard to the international status of South-West Africa, the International Court of Justice is as explicit as can be when it declares that the mandate implies neither the cession of territory nor the transfer of sovereignty.

Thus, there is no doubt that sovereignty over Jerusalem as an integral part of Palestine has belonged to the Palestinians since the seventh century and during the Ottoman period. That sovereignty, although not respected by the mandatary Power from 1922 to 1948, has not been formally affected by the detachment of Palestine from Turkey. It was, however, sorely tested as a result of the Israeli invasion.

At the request of the Government of Great Britain, the problem of Palestine was in 1947 brought before the United Nations, which concluded by partitioning Palestine into two independent States, Arab and Jewish, and by internationalizing Jerusalem under General Assembly resolution 181 (II) of 29 November 1947. As in the case of the establishment of the Mandate, neither the Palestinian people nor even the population of Jerusalem, participated either in the debate or the decision concerning internationalization. Nevertheless, resolution 181 (II) did not confer on the United Nations sovereignty over the Holy City. Neither did it divest the Palestinians of their sovereignty over Jerusalem. "The legislative and fiscal powers as well as the judicial power, which are the attributes of sovereignty, were reserved for the inhabitants". An example is provided by the city of Tangier, which, although subject to an international, six-Power regime, remained under the sovereignty of the Sultan of Morocco even when that country was a protectorate.

The clauses of the new statute of Jerusalem provided for its establishment as corpus separatum under special international regime administered by the United Nations. The Trusteeship Council was designated to discharge the responsibilities of administering the city. However, neither the Trusteeship Council nor the General Assembly could implement the statute, because of the opposition - each party acting for its own reasons - of Jordan and Israel to internationalization. For their part, the Arab States and the High Arab Committee for Palestine rejected resolution 181 (II), declaring that the United Nations had exceeded its competence by deciding on the partition of Palestine.

The subsequent course of events is well known: it ended in the occupation by the Israeli Haganah of the new city of Jerusalem, while the Jordanian Legion took possession of the old city; this situation lasted until 1967. Israel took over jurisdiction of the part of Jerusalem which it had conquered, while Transjordan became the Hashemite Kingdom of Jordan. Thus, Jerusalem remained divided for about two decades instead of being international in accordance with the wish of the General Assembly. The internationalization was not, however, rescinded. On the contrary, it was reaffirmed by the Assembly in its resolution 194 (III) of 11 December 1948 and 303 (IV) of 9 December 1949. Both the Assembly and the Security Council continued to draw attention to the international status of Jerusalem in their

subsequent resolutions concerning that city.

From 7 June 1967, after the outbreak of the Six-Day War, Israel occupied East Jerusalem and extended its legislative measures to that part, thereby giving advance indication of its intention to annex it. That stand was reinforced by measures of a municipal nature, the most notorious being the demolition of the historic Maghreb Quarter situated in front of the Wailing Wall. Furthermore, the Government at Tel Aviv did not hide its intention to annex Jerusalem on the pretext of the historic or biblical right to restore the capital of David and Solomon, a right the futility of which has been proved.

When, however, we examine the claim of the Zionist theoreticians, we feel obligated to emphasize that the Jews who emigrated to Palestine during the period of the British mandate and who were for the most part the promoters of the creation of Israel, are not descendants of the biblical Jews, but converts to Judaism who exploited religion for political and nationalist ends.

Immediately after the Six-Day War, the General Assembly adopted on 4 and 14 July 1967, resolutions 2253 (ES-V) and 2254 (ES-V), in which it considered that all measures taken by Israel were invalid and called upon Israel to "rescind all measures already taken and to desist forthwith from taking any action which would alter the status of Jerusalem". The Security Council, for its part, condemned Israel on several occasions and called for the rescission of measures altering the status of the Holy City. In the well-known resolution 242 (1967) of 22 November 1967, it emphasized "the inadmissibility of the acquisition of territory by war" and called for the withdrawal of Israeli armed forces" from the occupied territories. The same call was reaffirmed by the Security Council in its resolution 267 (1969) of 3 July 1969, after having censured "in the strongest terms all measures taken to change the status of the City of Jerusalem". The Council reiterated its call in vain in resolutions 465 of 1 March 1980 and 476 of 30 June 1980.

Since Jerusalem (Al-Quds) is the clear custodian of the spiritual heritage of the three monotheistic religions, the fire which was set in the Al-Aqsa Mosque on 21 August 1969 aroused the indignation of the Islamic world and led to the birth of the organization bearing its name.

The Organization of the Islamic Conference, it its first summit meeting, held in September 1969, solemnly proclaimed that the Islamic Government and peoples resolutely rejected any solution to the problem of Palestine that refused to restore Arab sovereignty over Jerusalem. since its establishment, that Organization has adopted resolutions declaring null and void all measures of judaization which had been implemented in the Holy City and which had culminated in its annexation on 30 July 1980.

The Sixth Conference of Ministers for Foreign Affairs, meeting in July 1975 at Jedda, decided to establish the Al-Quds Committee comprising elected representatives of 14 Islamic countries and to institute a fund to promote action to safeguard the Arab character of the Holy City. At the Tenth Islamic Conference, held at Fez in May 1979, the chairmanship of the Committee was unanimously assigned to His Majesty Hassan II, King of Morocco.

Since then, the Al-Quds Committee, under the chairmanship of the Moroccan sovereign, has held seven meetings at the level of ministers for foreign affairs. The latest was its culmination, since it also included the Committee of Seven set up at the Twelfth Arab Summit Conference held at Fez in September 1982, which adopted the well-known Arab Peace Plan 1/ for a just solution of the problem of Palestine. The Moroccan sovereign thus wished to have the Islamic world join with the Arab world in order to propose a comprehensive and just solution to the thorny problem of Palestine and Jerusalem.

The action of the Al-Quds Committee over the past five years has taken place at three levels - Arab, Islamic and international. It has tackled the various aspects of the problem and has helped to promote the world-wide awareness of the gravity of the problem, the adoption of positions favourable to the cause of Palestine and the increasing international isolation of Israel.

None the less, the Zionist entity, because of its annexationist nature and its methods that recall the era of terrestrial conquest by armed force, continues to ignore international opinion expressed in resolutions of the United Nations and its competent bodies and in resolutions of other international organizations, and the positions taken by various Governments or groups of States. Relying solely on brute force, Israel persists in the conquest of new Arab territories with a view to annexing them as an ultimate step.

The annexation of Jerusalem following the adoption by the Israeli Knesset of a "basic law" making Jerusalem the "unified and eternal capital of Israel" was the subject of Security Council resolution 478 (1980) of 20 August 1980, in which the Council:

"1. Censures in the strongest terms the enactment by Israel of the 'basic law' on Jerusalem and the refusal to comply with relevant Security Council resolutions;

"2. Affirms that the enactment of the 'basic law' by Israel constitutes a violation of international law and does not affect the continued application of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, in the Palestinian 2/ and other Arab territories occupied since June 1967, including Jerusalem;

"3. Determines that all legislative and administrative measures and actions taken by Israel, the occupying Power, which have altered or purport to alter the character and status of the Holy City of Jerusalem, and in particular the recent 'basic law' on Jerusalem, are null and void and must be rescinded forthwith;

"4. Affirms also that this action constitutes a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East;

"5. Decides not to recognize the "basic law" and such other actions by Israel ... and calls upon:

(a) All Member States to accept this decision;

(b) Those States that have established diplomatic missions at Jerusalem to withdraw such missions from the Holy City;

"..."

It is obvious that the occupation and annexation of Jerusalem violate United Nations resolutions. Israel cannot with all impunity acquire rights and achieve territorial gains by infringing United Nations resolutions, particularly General Assembly resolution 181 (II), to which it owes its existence.

It is accordingly well established that an occupying Power acquires no attribute of sovereignty over the occupied territory and that "its occupation does not annul the sovereignty of the legitimate sovereign".

That principle, which corroborates that of the self-determination of peoples, has become one of the fundamental rules of international law since Nice and Savoy were finally reunited with France in 1860 following a plebiscite by their population and by virtue of the Treaty of Turin.

The First World War gave a new impetus to the principle of self-determination and led to a decline in the practice of acquisition of territories by hostilities and the use of force. President Wilson solemnly proclaimed the principle in his speech of 8 January 1918 when presenting his 14-point peace plan. The principle of the self-determination of peoples was explicitly enunciated by the signatory Powers to the 1928 Pact of Paris in these terms:

"Conquest has ceased to be means of acquisition of territories since the general prohibition of the resort to force."

The Atlantic pact solemnly proclaimed in August 1941 also prohibited the acquisition of territory by military conquest, and that principle was embodied in Article 2 of the Charter of the United Nations.

It is through the application of that principle and the principle of self-determination that the existence of Poland as a State was restored despite the occupation and annexation of its territory from the end of the eighteenth century until 1919. It was the same in the case of Ethiopia after its conquest and annexation by Italy in 1936, Austria after its invasion and annexation by Nazi Germany, and so on.

By annexing Jerusalem through conquest and the use of force, Israel infringes one of the fundamental principles proclaimed by the United Nations and which forms the basis of international security. In doing so, it deliberately violates the Charter of the United Nations and calls into question one of the foundations of international law.

Thus, we may state in conclusion that:

(a) The annexation of Jerusalem by Israel is a violation of the principle of self-determination. It was undertaken on the basis of a myth which stands up neither to historical reality nor to international law. Like all myths, it is deceptive and lingers on. It shall constantly be reiterated that Jerusalem was built by the Jebusites, an Arab tribe, and has always been the capital of Canaan (Palestine);

(b) The right of sovereignty over Jerusalem with its two parts, East and West, belongs to the Palestinian people who, to the exclusion of all other parties, are masters of their own territory. Apart from several periods limited in time and space, the Palestinian people have always enjoyed sovereignty over Jerusalem. Furthermore, they have always rejected the faits accompli imposed from outside;

(c) Any solution to the question of Palestine, including the problem of Jerusalem, behind the backs of the Palestinian people, is contrary to the principles of international law and consequently null and void. The same therefore applies to the internationalization of Jerusalem, which was decided without the Palestinian people having taken part in the debate and the decisions. The same goes for the annexation of Jerusalem by Israel: that measure is bereft of legitimacy, because it is the outcome of military conquest. The other measures resulting from that conquest and aimed at changing the specific nature of the Holy City, expropriating land and establishing settlements, are null and void;

(d) The status of Jerusalem, based on the resolutions and decisions of the international community, may be envisaged only in accordance with two criteria:

(i) The return to the interim situation of the Holy City before the Six-Day War that erupted on 5 June 1967;

(ii) The return to international status on the basis of General Assembly resolution 181 (II), with the creation of two States, Arab and Jewish.

Those two solutions, having been rejected by the Palestinian people on the basis of the above-mentioned considerations, only a solution based on the self-determination of the Palestinian people is valid. That implies the rescission of all measures which contravene that principle and, in particular, the return of the Palestinian people to their territory in order to exercise their right to self-determination in full freedom and to determine the status of Jerusalem.

Notes

1/ A/37/696-S/15510, annex.

2/ United Nations, Treaty Series, vol. 75, No. 973.

IX. NINTH UNITED NATIONS SEMINAR ON THE QUESTION OF PALESTINE

(14-17 August 1984, Tunis, Tunisia)

A. THE STATUS OF THE HOLY CITY OF JERUSALEM

Bulent Akarcali
(Member of Parliament, Turkey)

Al-Quds al-Sharif is a unique city which is sacred for three monotheistic religions, respectively Judaism, Christianity and Islam. For the almost 1.5 million believers of these three religions, Jerusalem has always been a focus of deepest religious inspiration and attachment.

For Turkey, this attachment stems from a solid historical association and religious ties. Indeed, Muslim rule over this holy city lasted almost 13 centuries and

Turkish rule specifically for 8 centuries. Caliph Omar entered Al-Quds in 638, Salah-el-Din recaptured this city in 1187 following brief Crusader sovereignty and, in 1517, this holy city became a part of the Ottoman Empire during the reign of Sultan Yavuz Selim, who built the walls surrounding the city which still embellishes Beit-ul Maqdis. And ever since, we have been the custodians of Al-Quds and its holy places and have resolutely defended their Arab and Islamic character. This attitude has become an inseparable part of our unfaltering support of the Arab cause.

Conscious of the importance of Al-Quds for the adherents of other religions, the Muslims and Ottomans, from the very first day, showed great tolerance and bestowed freedom of worship.

Later on, the Ottomans, as a result of the special significance they attributed to Jerusalem and Palestine as a whole, so jealously protected, the Arab and Muslim character of these holy places, even at difficult times, and so strongly resisted all attempts and pressure to induce them to allow Jewish immigration to these sacred territories that their rule constitutes a glorious chapter in the annals of the history of the Turkish nation.

Moreover, in 1754, by a firman of the Ottoman Sultan, a special autonomous status was granted Jerusalem, especially with regard to the holy places. This status has since constituted the main basis for the designation of holy places. Indeed, the first pertinent United Nations resolution, General Assembly resolution 181 (II) of 29 November 1947, which recognized Jerusalem as a corpus separatum under an international regime compatible with its historical and religious significance to the world, must have been inspired by the special autonomy the Ottomans gave to Al-Quds al-Sharif.

In our opinion, the only legal status which Jerusalem possesses today is the one laid down in resolution 181 (II). Yet, to our dismay, this status has been severely damaged by the policies and acts perpetrated by Israel.

Following the occupation of West Jerusalem in 1948 and the eastern part in 1967, Israelis not only proceeded with transformation of the city's demographic composition, physical features, institutional structures and historic character by establishing settlements, annexation and enlargement of the municipal boundaries of the city, but also took other measures in violation of the city's legal status. In addition to excavations held around the Haram al-Sharif of the Al-Aqsa Mosque and Kubbet-us Sahra (Dome of the Rock), Israel perpetrated various acts of desecration and criminal sacrilege against the places. These unfortunate developments have provoked enormous indignation and affected Turkey as deeply as the rest of the Islamic world.

We follow with grave concern the assaults on the blessed Al-Aqsa Mosque and the other Islamic holy places in Al-Quds and the faits accomplis perpetrated by Israel with a view to altering and effacing the Arab and Muslim character of the Holy City of Jerusalem in disdain for the sentiments of the Islamic world and in defiance of all human values. We consider these acts as flagrant intentions to destroy the Islamic sites of worship in Jerusalem.

Furthermore, Israel's adoption of the Basic Law, which declared Jerusalem as its eternal capital in July 1980, caused great abhorrence and revulsion in Turkey and, aware of our historical sense of responsibility for the Holy City, we clearly expressed our protest to the said declaration by demoting the level of our diplomatic relations with Israel.

The Israeli policy was also insistently condemned at the international level and regarded as an aggression and flagrant violation of international law and the United Nations resolutions that provided an international regime for Jerusalem.

The most recent examples of such condemnations are the articles of the Fez Arab Peace Plan,1/ adopted in September 1982, and the Geneva Declaration on Palestine,2/adopted at Geneva in September 1983, which emphasized "the need to reaffirm as null and void all legislative and administrative measures and actions taken by Israel, the occupying Power, which altered or purported to alter the character and status of the Holy City of Jerusalem, including the expropriation of land and property situated thereon and in particular the so-called Basic Law on Jerusalem and the proclamation of Jerusalem as the capital of Israel".

Unfortunately, in utter defiance of international law and United Nations resolutions, Israel still persists in pursuing policies of occupation, aggression, expansion, establishment of illegal settlements in Jerusalem and in the occupied territories as a whole. Moreover, we have been recently witnessing a new trend that would further contribute to the Israeli policy of altering the status of Jerusalem. In violation of Security Council resolution 478 (1980), adopted in 1980 following the enactment of the Basic Law by Israel, some countries have transferred their embassies from Tel Aviv to Jerusalem. Such action only sanctions Israeli annexation, further entrenches Israeli presence in the occupied territories and seriously damages the universal acceptance of the international community and the commitments made by the United Nations to the special status of Jerusalem.

While recognizing the complexity and emotional implications of the issues pertaining to the status of Jerusalem, we believe that it has to be considered within the general context of the Middle East question, since these acts, perpetrated by Israel with a view to altering the status of Jerusalem constitute a serious impediment to achieving a comprehensive, just and lasting peace in the Middle East. Therefore, in our opinion, a solution to the Arab-Israeli conflict must include reference to the legal status of Jerusalem as a corpus separatum under a special international regime as defined in resolution 181 (II), recognizing the unique pluralistic and religious character of the Holy City, in such a way that its historic character may be restored and that it may again become a stable place of encounter for the adherents of all three religions.

I would like to conclude that, as consistent and active support for Arab causes has become an integral part of Turkish foreign policy, we will continue to do our utmost to join in the efforts designed to dissuade Israel from further attempting to strengthen its presence in Jerusalem and the occupied territories and from changing the internationalized status of the Holy City.

With these considerations in mind, we take this opportunity to call once again upon the world community to impel Israel to withdraw from Al-Quds Al-Sharif and the Arab territories occupied since 1967, in compliance with the pertinent United Nations resolutions.

Notes

1/ A/37/696-S-15510, annex.

2/ A/CONF.114/42.

B. THE STATUS OF THE HOLY CITY OF JERUSALEM

Abdel Waheb Bouhdiba
(Professor, University of Tunis, Tunisia)

I am happy first of all to express my deep thanks and my pride to find myself speaking again from this rostrum, which is unique in its kind, about a thorny problem, a problem which I believe represents a turning point in the history of our age. I mean the problem of the dispersed and uprooted people: the Palestinian people, whose essential rights had been exploited. I would enter this problem through a door which is at the same time narrow and wide - the door of Jerusalem.

I believe that the case for the United Nations and for this blessed Committee is not a matter of conviction. I think that if we have come to this meeting, it is because we are convinced, in one way or another, of the subject. I believe that the problem is absolutely not a problem of analysing the historical basis of the status of Jerusalem. We have spoken about that many times and scrutinized the problem and showed how insidious, unjust and false are Israel's pretensions. I think that the problem is not here. It does not consist in adopting resolutions, reminding people of history or of political or moral legitimacy. But the problem is concentrated, in my view, in a basic action. What are we to do? How can we, after having been convinced and after having analysed, and made a halt to examine, the circumstances of the present situation, what can we, peoples, States and individuals, do to advance one step with this problem? I would like this Committee kindly to examine the results it has achieved during its previous meetings in order to link that past with the present and with what we and the international community are expecting in terms of action. What do we have to do?

First, when we look at the problem, we can see that it rests on various data. On one hand, there are the legal situation, a historical situation and a moral situation of which my colleague from Turkey, who spoke before me, reminded us. Besides this theoretical legal situation, there is the bitter fact which is the exploitation of the situation by Israel, which is absolutely inconsistent with international legitimacy. Nor does it respond to the will of peoples and of humanity. This is so only because it arises from a balance of forces which do not serve, at present, the interests of the Palestinian people and the triumph of right. I feel that we have to ask ourselves about this discrepancy as we were reminded of that by some speakers this morning, this discrepancy between what the situation must be and what it is really about. In my view, consequent to our analysis of this balance or rather this imbalance of forces, some elements may be selected as a basis for action that may transpose the Palestinian issue from the historical deadlock in which it has been stagnating to some preliminaries, let us hope, to attaining some solutions.

The question is therefore how to change the balance of forces; for this balance has to and must change, if not within a year, within two or four or ten. It must change on three levels: first, inside Israel itself; second, at the level of world opinion; and third, within the framework of the thinking and Arab action which have failed to achieve a significant solution in recent years. Our role in this kind of meeting consists therefore, in my view, in awakening the energies and trying to make aware human conscience, so that we may work according to this fact. I say it briefly: our only weapon here is the weapon of information, the weapon of analysis, the weapon of reaching out to public opinion.

All this may be summarized in different aspects of the Palestinian question. But it appears very clearly when we look at the case of Jerusalem. Israel has absolutely no right to Jerusalem, from the geographical point of view as well as from political, moral and cultural stands. It is not me who says that but the founder of Israel itself. For we can read in the autobiography of Chaim Weizmann, which was published in London in 1940, the following, which I textually quote according to the French text which is before me. The founder of the State of Israel, who is, therefore, a historically and politically essentially responsible person for what he wrote and what he thinks, said:

"There was no holy site in Palestine which is in fact physically claimed by the Jews except perhaps the tomb of Rachel [situated between Jerusalem and Bethlehem] which has never been a subject of controversy. The lamentation was not and had never been our property, since the destruction of the Temple."

The founder of the Zionist entity thus says that there were no rights of the Zionist entity from the material point of view, to any inch of Jerusalem. We know that the Wailing Wall itself was a Moslem "waqf" which the Administrator of that time put at the disposal of those abiding by the Jewish faith, for worshipping, grace-asking and for lamenting, etc. So, if that were the situation, how can world public opinion accept, after this explicit recognition, that it be said that this monument, these villages and this old city, Jerusalem, be identified with the Zionist entity?

The only answer to this question is the weakness of Arab information and the strength of Israeli information which has succeeded in making of a groundless issue a right, and to support this right by force. Our role, therefore, is to reinforce our information system so that we may understand and make others understand what is, in reality, the factual situation concerning Jerusalem.

Without entering into historical details which we have mentioned in previous meetings and which there is no benefit in reiterating and without repeating what our colleagues said, we may say that the difference is the fact that Jerusalem has no law, has no status from the legal point of view.

Yes, the United Nations, in the resolution about the division of Palestine, recommended establishing a separate entity, a corpus separatum. But this has never been implemented and has remained at the level of a theoretical resolution, which was never applied when there was a transition from the status of British protectorate to the factual division in 1948 and thereafter, with the transition to the spoliation of 1967. The case remains therefore in itself standing and we may say that from the legal point of view, the status by which Jerusalem was distinguished under the Ottoman Caliphate was the last legal mandatory thing. But the historical fact, naturally, was transcended by events. Therefore, what we must understand is that we have to link the status of Jerusalem to the whole status of Palestine and the whole situation in the Middle East and realize that the particular status of Jerusalem is not a special status that must be resolved from the legal point of view or from the military point of view or the political point of view. It is part and parcel of the Palestinian issue. But this status is a religious and moral one, that is we must not hide behind it or take the pretext of religious status to retrogress or place it into a special framework. From the political and legal points of view, it is part and parcel of the mother issue, the core issue, the Palestinian issue and the case of the Palestinian people. When we speak of special status at the belief level or at the religious level and that of relations among the revealed religions, Jerusalem is an inspiring city for at least one third of humanity. There is no other city, there is no other inch of land on the earth and in the world which has the importance of Jerusalem for human souls. And it is this perhaps that we must take into consideration in order to place the issue into a new framework, so that we may understand Palestine and make others understand that zionism has nothing to do with Christianity nor Islam nor Judaism itself. Zionism is against the three religions. What we have to exploit in our information action concerning the Palestinian issue, and I believe also in our future action, is to make of the Palestinian issue a goal and to try to change the understanding of world public opinion on the Middle East question. Because we have in Jerusalem the example that expresses in the best way the intentions of zionism and the behaviour of the Israeli State, because of this, I believe that we have to progress another step forward in our work and perhaps change something in our activities so that we may address world public opinion inside Israel, inside the Western countries, inside the United States and inside all countries of the world, even inside the Arab countries themselves. I believe that history and excavations as well as the political and cultural analysis of the status of Jerusalem, allow us to penetrate the minds of those who have a deep influence, in my view, on politicians, especially in the countries which enjoy democracy. If we adopt this means, it may give another image of the Palestinian issue, a new image of the question of Jerusalem and I think, if we succeed, through publications and pamphlets exposing adequately the analysis made at a very high level in these meetings which you have yourself supervised, perhaps we may come out from this narrow framework of the experts and enter the framework of souls and of the international world. I personally believe that the return of the Palestinians to their land and the restoration of their rights is not only the responsibility of the Arab peoples. It is a victory which must be shared by all members of mankind because, whether we are Arabs or non-Arabs, we all believe that right prevails and nothing prevails over it and that supporting this right is supporting rights in general, supporting the principles of the United Nations and justice and freedom.

C. THE STATUS OF THE HOLY CITY OF JERUSALEM

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Jerusalem is a unique town. An important centre of spiritual culture, it is a place where three world's great religions - Christianity, Islam and Judaism - either originated or flourished, and its numerous places of religious worship make it a truly holy city.

Jerusalem's status after the adoption by the United Nations of a resolution on the division of Palestine

Jerusalem's Christian, Judaic and Moslem traditions were not forgotten in 1947 when the United Nations General Assembly discussed the future of Palestine; on the contrary, they lay behind its decisions. The majority of the members of the United Nations Special Committee on Palestine (UNSCOP) decided, on 31 August 1947, in a draft project on the division of Palestine, to express its support for granting Jerusalem international status, thereby emphasizing the unique character of the holy city, freely accessible to the faithful of all religions.1/

General Assembly resolution 181 (II) of 29 November 1947 declared, inter alia, "The City of Jerusalem shall be established as a corpus separatum under a special international regime and shall be administered by the United Nations. The Trusteeship Council shall be designated to discharge the responsibilities of the Administering Authority of the United Nations". The official languages of the city would be Arabic and Hebrew, however, other "working languages" were not excluded in the resolution. It was also stressed that "free access to the Holy Places and religious buildings or sites and the free exercise of worship shall be secured in conformity with existing rights and subject to requirements of public order and decorum.

The 1948 war rendered impossible the implementation of the resolutions on the division of Palestine and prevented the decisions on Jerusalem from being put into effect. Jerusalem's western part (new town) was occupied by Israel, while its eastern part (old town) fell under Jordanian control. Faced with these developments, General Assembly resolution 194 (III) of 11 December 1948 called upon the conflicting parties to turn Jerusalem over to international administration. The call was repeated in resolution 303 (IV) of 9 December 1949.

Despite the United Nations resolutions, the then Israeli Prime Minister declared western Jerusalem the capital of Israel in a statement issued as early as December 1949. Only a few weeks later, on 23 January 1950, the statement adopted by the Knesset said that Jerusalem was, is and shall for ever remain Israel's capital. Soon afterwards, the Israeli Ministry for Foreign Affairs was moved to the city's western part.

The Israeli step was rejected by an overwhelming majority of States including Western capitals and significantly, the United States, for which Israel was at the time the chief outpost for its interests in the Middle East.

The fall-out of the "six-day" war

The Israeli aggression of June 1967 gave new momentum to the Jerusalem problem. The Israelis occupied the whole of the city and soon the Israeli authorities were making energetic moves to alter the status of the city and make it part of the Israeli State. Israel not only refused to endorse the United Nations decisions but went even further by taking unilateral decisions which threatened grave political, demographic, cultural and economic consequences for the Palestinian inhabitants of Jerusalem. An amendment to a bill of 1948 adopted by the Knesset on 28 June 1967 empowered the authorities to extend Israeli administration rule and jurisdiction to the entire city of Jerusalem.2/ On 29 June 1967, the Arab Municipal Council was disbanded and its powers taken over by an Israeli council. At the same time the municipal area of Jerusalem was stretched from 38 square kilometre to 108 square kilometre, which indicated moves to annex areas surrounding Jerusalem along with the city's eastern part.

Moves towards changing the city's legal status were accompanied by measures designed to alter the national composition of its residents, including large-scale demolition of Arab houses under the pretext of protecting Jewish holy places or on an excuse of real estate development. The Arab population was being increasingly removed to give room to Israeli settlers.

These actions meant a de facto incorporation of eastern Jerusalem into Israel and the city as a whole came to be treated as Israel's capital in contravention of the United Nations decision on the international status of Jerusalem.

In an attempt to justify its policy of annexation, the Israeli authorities insisted that prior to 1967, Jerusalem had not been under Israeli or any other State's sovereignty, and argued that, in the event, Israel had not annexed territory of any country.

Such a line of reasoning could not be accepted as correct in the light of the existing norms of international law or the principles of State coexistence. The recognition of Israeli conduct would be tantamount to a reward for an aggressor and would mean an acceptance of the occupation, which generally contradicts the United Nations Charter and Security Council resolution 242 (1967) stating in its Preamble the inadmissibility of the acquisition of territory by war. The Israeli annexation of Jerusalem was denounced by an overwhelming majority of States. The fifth emergency special session of the General Assembly in resolution 2253 (ES-V) of 4 July 1967 voiced its deep concern "at the situation prevailing in Jerusalem as a result of the measures taken by Israel to change the status of the City, rescind all measures already taken and desist forthwith from taking any action which would alter the status of Jerusalem", while another resolution of 14 July 1967 denounced Israel for its failure to submit to that decision.

Evolution of the policy of annexation

For several years Israel held that the decisions taken in the wake of the 1967 war established in principle the legal status of Jerusalem as part of the Israeli State. This assumption propelled the process of judaization of Jerusalem which continued undisrupted and in disregard of international protest.

When the Likud took power in Israel in 1977, a new dimension was added to the Jerusalem issue. While Israel's major political forces spoke in one voice about a "united" Jerusalem remaining the State's capital, Likud took a step further towards reinforcing Jerusalem's status with legislative guarantees.

Likud's position was consolidated already during the Camp David talks in 1978 when the Israeli side decided that the Jerusalem question must remain outside any

discussion. It was further reaffirmed in a letter of 18 September 1978 from Prime Minister Menachem Begin to United States President Jimmy Carter.3/ On 20 March 1979, just before the treaty with Egypt was signed, Begin declared in his famous "three times never" that a "united" Jerusalem shall remain for ages the capital of Israel and shall never again be divided.4/

Under the Likud rule Israel drew up various plans providing for a fast expansion of Jewish settlements in Jerusalem and a quick judaization of the city. Today Jerusalem has 400,000 residents, including 290,000 Jews and 110,000 Arabs, but Likud plans for the next quarter century envision a population swell of up to 650,000. In order to increase the number of Jewish residents in Jerusalem (today there are 72 per cent Jews as against 28 per cent Arabs), new housing projects for Jewish settlers were established within the City's administrative limits, and it is only due to financial obstacles that the development plans are behind schedule.

The policy pursued by Likud not only encouraged but openly inspired the extreme right and religious groupings in their efforts to step up the annexation of the occupied territories. Riding on the crest of these moods, a representative of the extreme right, Ms. Geulah Cohen, motioned that Knesset should formally endorse the annexation of eastern Jerusalem in a law. The Israeli right, which is politically even more conservative than Likud, sought to win legal guarantees that Jerusalem would forever be Israel's capital as compensation for the return of Sinai. The motion was accepted in the form of a law passed by the Israeli parliament on 30 July 1980. Its article 1 declares a united Jerusalem to be in its entirety the capital of Israel. Article 2 states that the city is the seat of the President's office, the Knesset and the Supreme Court.

A question arises in this context: how much did the new law alter the status quo? As mentioned above, the decisions made by the Israeli authorities after the war of 1967 meant a de facto annexation of eastern Jerusalem. A government decree issued in July 1967, on the basis of the Knesset law of 28 June 1967, declared Jerusalem an indivisible town and the capital of the State of Israel.5/

In answer to this question, it can be said that the new law was incorporated into a body of so-called "basic laws" which play the role of constitutional norms. Therefore, it may have important and far-reaching consequences while the very fact of making it one of the basic laws was intended to give it a character of an irreversible decision. In this way Menachem Begin intended to preserve his achievement and effectively prevent successive Governments from taking a reverse decision or even trying to negotiate the future of the city with Arabs.

International repercussions

The Knesset law on Jerusalem touched off a tide of protests all over the world. Among others the decision was firmly opposed by the Islamic Conference's Commission on Jerusalem meeting in Fez from 16-20 September 1980. The "Jerusalem and Palestine summit" which gathered heads of Islamic States in Taif in January 1981 adopted resolutions which read as follows:

"The Kings, Emirs and Presidents of Islamic countries agreed to declare jihad to rescue Jerusalem, support the Palestinian people and ensure withdrawal from the occupied Arab territories. The Islamic countries made it clear in their resolutions that the word jihad is used in its Islamic sense, which is not susceptible to interpretation or misunderstanding and that the practical measures for its implementation will be taken in conformity with this and in constant consultation between the Islamic countries."6/

The Knesset bill was adopted despite Security Council resolution 476 (1980) of 30 June 1980 which denied Israel the right to change the status of Jerusalem. Its resolution 478 (1980) of 20 August condemned the Israeli decision and declared it null and void.

The Israeli policy of annexation of Jerusalem totally contravene numerous international decisions including resolutions of the United Nations, especially General Assembly resolutions 2253 (ES-V), 2254 (ES-V), 31/106, 32/5, 32/91, 34/90, 36/120 and 37/88. They clearly demonstrate that the Israeli schemes are against international law, United Nations decisions and international conventions concerning the conduct in time of war and as such, are unlawful. For example, resolution 36/120 reads:

"The General Assembly,

"... bearing in mind the specific status of Jerusalem and, in particular, the need for protection and preservation of the unique spiritual and religious dimension of the Holy Places in the city,

"1. Determines once again that all legislative and administrative actions taken by Israel, the occupying Power, which have altered or purport to alter the character and status of the Holy City of Jerusalem and, in particular, the so-called "basic law" on Jerusalem and the proclamation of Jerusalem as the capital of Israel, are null and void and must be rescinded forthwith;

"2. Affirms that such actions constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East, and a threat to international peace and security ...".

A similar stance was expressed in the decisions of the Security Council including the most important resolutions - 252 (1968), 267 (1969), 271 (1969), 446 (1979), 452 (1980), 465 (1980), 476 (1980) and 478 (1980). All of them have determined that the Israeli policy aimed at developing settlements on the occupied territories and a change of the status of Jerusalem was invalid in the light of international law and infringes upon the Geneva Convention relative to the Protection of Civilian Persons in Time of War of August 1949.

The question of Jerusalem is an important item on the United Nations agenda. United Nations decisions are still binding and it should be added that the status of Jerusalem elicits more unanimity within the United Nations than other aspects of the Middle East conflict. An unquestionable majority of States believe that the unilateral acts of annexation of the holy city, which infringe upon the rights of Palestinian Arabs, Moslems and Christians alike, are invalid and contravene the principles of international law. Giving the annexation of Jerusalem the status of a basic law marks an important step towards subsequent annexation of the Arab territories occupied by Israel. The fate of the holy city cannot be considered separately from its Middle East and Palestinian context. A unilateral annexation of Jerusalem must be rejected and its future should be made part and parcel of an overall agreement with the Palestinian people whose inalienable rights to self-determination are reaffirmed by the United Nations and the general international provisions of the law of nations and cannot be denied by Tel Aviv. For its part, Israel ought to abide by United Nations decisions all the more so that it had been called into being precisely by that Organization. By doing otherwise Israel questions the legal international foundations of its very existence. The Israeli decision on the status of Jerusalem raises questions which should be the subject of a more searching discussion. They could include, inter alia,

(a) Practical, economic and demographic consequences that the annexation brings to the Palestinian people;

(b) An assessment of the implementation of the Geneva Declaration on Palestine of August 1983;

(c) The annexation of Jerusalem and the preservation of the Moslem places of religious worship;

(d) The damage to the Arab culture;

(e) Attempts at annexation of the occupied territories, including Jerusalem, as a move towards undermining the Palestinian identity.

Notes

1/ Official Records of the General Assembly, Second Session, Supplement No. 11 (A/364), vol. II, maps.

2/ Cf. R. al-Kathib, The Judaization of Jerusalem (Amman, 1979), Suppl.1 and 2.

3/ For the text of the document, see Journal of Palestine Studies, No. 2, 1979.

4/ Le Monde, 22 March 1979.

5/ See Journal of Palestine Studies, No. 2, 1979.

6/ For the text of the document, see Journal of Palestine Studies, No. 3, 1981.

X. TWELFTH UNITED NATIONS SEMINAR ON THE QUESTION OF PALESTINE

(8-9 July 1985, New York, United States of America)

THE CENTRAL ROLE OF LAW IN THE INTERNATIONAL PEACE CONFERENCE ON THE MIDDLE EAST

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Introduction

In resolution 38/58 C of 13 December 1983 concerning the question of Palestine,1/ the General Assembly noted with satisfaction the Report of the International Conference on the Question of Palestine.2/ The Conference was held at Geneva from 29 August to 7 September 1983 and endorsed the Geneva Declaration on Palestine, which was adopted by that Conference by consensus. In her closing statement to that Conference, its Secretary-General, Mrs. Lucille Mair, stated: "I submit that the presence in the documents just adopted of so many reference to international law is of further inestimable importance in resolving a question in which such law has so long been ignored".

General Assembly resolution 38/58 C continues the emphasis upon law and justice as the solution to the question of Palestine. Consistent with the recommendations of the International Conference on the Question of Palestine, it endorses the call for an International Peace Conference on the Middle East in conformity with, inter alia, the following guidelines:

(a) The attainment by the Palestinian people of its legitimate inalienable rights, including the right of return, the right to self-determination and the right to establish its own independent State in Palestine;

...

(f) The right of all States in the region to existence within secure and internationally recognized boundaries, with justice and security for all the people, the sine qua non of which is the recognition and attainment of the legitimate, inalienable rights of the Palestinian people as stated in subparagraph (a) above.

The guidelines specified by the General Assembly are based on a recognition of the indispensable role of law in achieving the greatest possible measure of justice and security for both Israelis and Palestinians. In view of the tremendous destruction of human and material values that has taken place through the use of military force outside the world legal order, law is not only the basis of a just solution, but it provides the only practical solution.

1. Methods of international law-making

Customs are the more historic methods of international law-making, as compared with treaties.3/ In 1625, when Grotius wrote his classic treaties, De Jure Belli ac Pacis, custom stood as the almost unique method of prescribing international law. While conventions or treaties are created by the explicit agreement of States, customary law is based upon implicit agreement. Article 38 of the Statute of the International Court of Justice merely purports to specify the sources of law that shall be applied by the Court. It is, nevertheless, widely accepted as prescribing the sources that are available generally in international law. The first paragraph of the article lists treaties, customs and general principles as the main sources. Custom is specified to be "international custom as evidence of a general practice accepted as law". This carefully worded provision does not require evidence of a universal practice. The historical 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. It has not been considered necessary that universal assent be obtained. General principles are specified as being "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.

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, even in the absence of pre-existing practice. The Charter of the United Nations is a multilateral treaty by which States created the United Nations as a separate factual participant and legal subject of international law.4/ The principles set forth in the Charter are binding on all those States that have accepted it as a treaty and become Member States. The provisions of the Charter are designed to operate in the context of the contemporary international law decision-making process. Following the ratification and 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 that facilitate the making of law. Authoritative international law writers have found the State practice requirement for customary law-making in the collective acts of States as well as in their individual acts.5/ The General Assembly is a collective meeting of the States of the world community which comprise its membership. Its authority is derived directly from the Member States, which 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. Since the early years of the United Nations the States of the world community 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. It is a matter of legal theory as to the precise allocation of authority between the powers derived 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. The widespread use of and reliance upon resolutions of the General Assembly and the Security Council, which, by their terms, 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.

It is sometimes erroneously stated, relying upon the word "recommendation" in Article 18 of the Charter, that the General Assembly may only make recommendations. However, it should be recognized that General Assembly resolutions on important matters that are adopted by two-thirds or larger majorities and repeated consistently over a period of time have law-making authority, whether based upon the powers of the General Assembly specified in the Charter, or upon the existing law-making authority of the community of States, or both.

2. Development of the law of self-determination by the community of States

The authority of the community of States to develop and make law is exemplified in the matter of self-determination.

(a) Historical development

The practice of self-determination preceded the development of the legal right. The American Revolution and the subsequent Latin American revolutions against European colonialism provide pre-eminent historic examples. President Woodrow Wilson first articulated self-determination as a norm to be applied in the post-World War I settlement when he included it among his Fourteen Points. Point XII provided that:

"[T]he other [non-Turkish] nationalities [which included the Palestinian people] which are now under Turkish rule should be assured an undoubted security of life and an absolutely unmolested opportunity of autonomous development ...".

Professor Kissinger has accurately described the situation as it existed at the 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."6/

The concept of self-determination was reflected in the Mandate provisions of the Covenant of the League of Nations Covenant.7/ All of the peoples who were placed under League mandates have exercised self-determination except the Palestinians and the Namibians (South West Africans).

(b) The provisions of the Charter of the United Nations

(i) Grants of authority for self-determination

The Charter of the United Nations goes beyond the League Covenant in recognizing the right of self-determination. One of the major purposes of the United Nations, specified in the first article of the Charter is the development of friendly relations based upon respect for "the principle of equal rights and self-determination of peoples". It is important to be aware that this specification of equal rights and self-determination is a right "of peoples". This is a major departure from the once widely recognized legal theory that international law accorded rights only to States and Governments and not to peoples.

It is widely and accurately recognized that the Bill of Rights (the first 10 Amendments) of the United States Constitution embodies a basic value judgement of faith in individual human beings and a fundamental distrust of Governments. In the same way, Charter of the United Nations includes basic value judgements. One of the most important, made manifest in both the letter and the spirit, is faith in the capacity and legal right of individuals to determine their political destiny by exercising self-determination. The correlative is a rejection of colonialism, whether manifested through overt or covert coercion.

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 is not persuasive because of the Charter's repeated emphasis upon self-determination and the practice of the world community in implementing it. In addition, the carefully drafted and equally authentic French text states, "du principe de l'égalité de droits des peuples et de leur droit a dispose d'eux- mêmes".8/ By using the word droit in connection with self-determination, the French text removes any possible ambiguity. Article 55 of the Charter re-emphasizes the importance of self-determination. Article 73 (b), 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 peoples, and to assist them in the progressive development of their free political institutions".

Chapter XII of the Charter (Articles 75-85) gives the General Assembly comprehensive legal authority over the international trusteeship system. The International Court of Justice addressed this point with particular reference to the South-West Africa Mandated Territory in the 1950 Advisory Opinion on the International Status of South-West Africa:

"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."9/

The result is that the General Assembly has comprehensive authority over League of Nations Mandates including the power to grant self-determination and impose limitations on it.

(ii) Limitations on authority for self-determination

The United Nations is also committed to human rights on a non-discriminatory basis, as indicated clearly in Article 55 of the Charter, which provides in the relevant part:

"With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

"...

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

Article 56, in which all Members pledge themselves to implement the purposes set forth in Article 55, is regarded as making the provisions of Article 55 into legal rights. Consistent with these Charter provisions, the General Assembly is required to impose basic human rights standards, which are limitations upon States created under its authority.

These legal requirements are specified in the Palestine partition resolution, General Assembly resolution 181 (II), which was adopted on 29 November 1947 with the full authority of a two thirds vote as required by the Charter for important questions. It provided for an unusual method of self-determination by the establishment of two independent States in Palestine, referred to as "the Jewish State" and "the Arab State". A special international regime was provided for the city of Jerusalem, which was not to be part of either State. Because of the widespread destruction of human and material values taking place as a result of the Zionist institutionalized terror and responding Palestinian violence, there was an urgent need to invoke and apply the human rights standards of the Charter. The partition resolution includes the human rights standards of the Charter and human rights provisions, which limit the authority to establish each of the two States by providing a reciprocal system of rights and obligations in which the exercise of the right to create a State is conditioned upon the obligation to implement human rights. Some of the most important human rights provisions of the partition resolution are contained in paragraph 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 and 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".

These provisions for human rights are explicit and there cannot be any accurate interpretation of the partition resolution that circumvents them. They are not surprising in view of the human rights provisions of the Charter. In addition to the basic Charter 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 State of Israel's lack of a constitution and the existence of its basic Zionist laws are in violation of the human rights provisions of both the Charter and the partition resolution. For example, the Law of Return,10/ allows anyone identified in Israeli law as a member of "the Jewish people" (defined, inter alia, by tracing ancestry) to immigrate and acquire instant citizenship, but denies return to a Palestinian refugee born in the country.

In addition, the Charter also contains a further limitation upon self-determination in its prohibition upon the threat or use of force against "the territorial integrity" of States.11/ The negotiating history demonstrates that in the committee considering self-determination, it was regarded as implying "the right of self-government of peoples and not the right of secession".12/ The right of self-determination cannot be interpreted as including a comprehensive right to secede from a State by any group which regards itself as having national characteristics.13/ If self-determination were so misconstrued it would not have received the existing support of the community of States along with a prominent place in the Charter.

(c) The development of the law of the Charter

General Assembly resolution 1514 (XV) of 14 December 1950 entitled "Declaration on the Granting of Independence to Colonial Countries and Territories" is a landmark in the development of the right of self-determination. 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 favour to none against, with 9 abstentions. Since there were no opposing votes, the 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, there

can be no doubt but that the present membership provides full support for the views expressed in the 1960 resolution. Subsequent applications of self- determination as reflected in resolution 1514 (XV) to Algeria, Angola and to Zimbabwe (Rhodesia) and others indicate the view of the General Assembly that a right of self-determination is established in law,14/ and the entire course of action taken by the United Nations since 1960 is consistent with this basic practice.

General Assembly resolution 2625 (XXV) of 24 October 1970 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. There are four principal bases for the authoritativeness of this resolution.15/ First, it is based on the Charter, and therefore its principles were already binding on the Member States through their adherence to the Charter. Second, it was developed and adopted by consensus and the negotiating history indicates that a number of Governments regard it as binding international law either under Article 38 (1)(c) of the Statute of the International Court of Justice concerning "general principles of law recognized by civilized nations", or as a "subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions" in accordance with article 31 (3)(a) of the Vienna Convention on the Law of Treaties.16/ The third basis for the authority of resolution 2625 (XXV) is that it was developed to provide a statement of law, not of policy or aspirations. The title itself and the final paragraph which provides that "The principles of the Charter which are embodied in this Declaration constitute basic principles of international law", are further indication of the intent of the Member States that this resolution be a binding statement of international law.

The Declaration considers a number of legal principles. Under the heading "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 conjoining of "equal rights" and "self-determination" both in the Charter and in the Declaration means that the peoples who have not yet achieved self-determination have the same equal right to it as did those who exercised it previously.

There is a fourth significant basis for the high degree of legal authority of both the 1960 Declaration on Decolonization and the 1970 Declaration on International Law and Friendly Relations. It is that their substantive provisions concerning self-determination and independence have been implemented in the practice of States. This practice is manifested by the exercise of self-determination since the establishment of the United Nations, which has resulted in its more than tripling membership. The practice of States is the same requisite element in making customary law which has existed for centuries prior to the establishment of the United Nations.17/ It is probable, therefore, that if the legal formulations of self-determination had not been developed beyond those in the Charter, the practice of States would have made self-determination a doctrine of customary law without either the 1960 or 1970 resolutions. In the present situation, self-determination is law because of the Charter, the development of the Charter in the subsequent resolutions and the assent and practice of States which have made it customary law.

The opponents of self-determination usually contrast the law of the Charter, including the relevant resolutions of the General Assembly, with the traditional law which existed prior to 1945.18/ General Assembly resolutions concerning the right of self-determination which have been adopted by consensus or by large majorities have been subjected to particular criticism as being politically motivated.19/ One of the main weaknesses of their arguments is that the law of self-determination has been developed and implemented by precisely the same methods of assent and practice which characterized law-making in the pre-1945 traditional law. The making of customary international law has always been based upon the political consensus of a substantial majority of the community of States. Professor Rosalyn Higgins has written: "Customary international law is therefore perhaps the most 'political' form of international law, reflecting the consensus of the great majority of states".20/ Such political decision was the basis for the abolition of the slave trade in the nineteenth century.

3. The application of self-determination to the Palestinian people

(a) Specification of self-determination through international legal process

Critics of the right of self-determination as enunciated in the Charter and in the 1960 and 1970 resolutions point out the imprecision in these formulations. In particular, they emphasize that there is no precise definition of the "self" which qualifies as a national group of people entitled to self-determination. One such critic, Professor Julius Stone, has written:

"If, indeed, the references to self-determination in the Charter and in General Assembly declarations have established some legal (as distinct from political) principle, the legal criteria for identifying a people having this entitlement--the "self" entitled to determine itself--remain at best speculative."21/

It seems probable that Professor Stone's difficulty arises from his confusing the basic legal doctrines of the Charter and the 1960 and 1970 resolutions on decolonization and self-determination with the subsequent legal instruments which specify the identity of the people qualifying for self-determination. It is as much of a mistake to look for specifications in these general constitutional formulations as it is to look for specifics in the constitution of a State. The general principles of the constitutional doctrines are made specific by the subsequent legislative and judicial application of them.

There are at least two major issues which must be resolved in an application of the right of self-determination. In addition to the determination of the "people" which qualifies as a "self", a decision must be made concerning the territory in which self-determination is to be exercised.

(b) The recognition of the Palestinians as a national people

The League of Nations Mandate for Palestine of 24 July 1922 22/ treated Palestine as a national unit which was to be brought to independence as an undivided whole. The provision for a "Jewish national home" within Palestine did not change the basic legal character of the Mandate.23/ During the period of the Mandate, the British Government recognized the existence of the Palestinians as a people distinct from the European Zionist immigrants by negotiating with their leadership and by adopting the White Paper of 1939 restricting Zionist immigration in response to Palestinian demands. The United Nations accorded additional de jure recognition of their status as a people with national rights in the provisions of the Palestine partition resolution of 29 November 1947 authorizing them to establish "the Arab State". From the time of that resolution in 1947 until 1969, the United Nations dealt with the Palestinians in their de facto role as individuals who were refugees and war victims. The United Nations actions were designed to implement the right of return of Palestinian individuals and to achieve the elementary human rights of war victims under the humanitarian law of armed conflict. The individual right of return, long established in customary law,24/ was recognized as applicable to Palestinians by General Assembly resolution 194 (III) of 11 December 1948 and is repeated in the many subsequent resolutions on the subject. Nevertheless, very few Palestinians have been permitted to exercise the right.

In 1969 the General Assembly again recognized Palestinians as a people having rights as an entity under the Charter of the United Nations. The first preambular paragraph of General Assembly resolution 2535 B (XXIV) of 10 December 1969 recognizes that "the problem of the Palestine Arab refugees has risen 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 further 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 status as a national entity has been reaffirmed by all subsequent resolutions of the General Assembly that deal with the subject.

(c) General Assembly resolutions applying the right of self-determination to the Palestinian people

The first direct recognition by the General Assembly of the national right of the Palestinian people to self-determination and independence was in the Palestine partition provision of authority to establish "the Arab State". The second such recognition was General Assembly resolution 2649 (XXV) of 30 November 1970, which 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". The legal effect of this significant resolution is that the prior resolutions setting forth the basic right of self-determination, resolutions 1514 (XV) and 2625 (XXV) considered above, are now specifically applicable to the Palestinian people.

The many subsequent General Assembly resolutions on the subject, adopted by overwhelming majorities, reiterate the Palestinian national right to self-determination and thereby strengthen the authority for the right which is provided by the League of Nations Mandate for Palestine and the Palestine partition resolution.

General Assembly resolution 3236 (XXIX) of 22 November 1974 reiterates the customary law of the right of return. It also has pre-eminent importance in reaffirming the right of Palestinian self-determination enunciated earlier and consistently maintained subsequently. Its fifth preambular paragraph recognizes that "the Palestinian people is entitled to self-determination in accordance with the Charter of the United Nations". In the first operative paragraph, 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."

In operative paragraph 5, resolution 3236 (XXIX) refers to methods by which rights may be regained. It states 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."

(d) The geographical area to which Palestinian self-determination applies

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. 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. Security Council resolution 242 (1967) of 22 November 1967 refers in the first operative paragraph to the principle of "withdrawal of Israel forces from territories occupied in the recent conflict". Since there is no statement of withdrawal from territories beyond the partition resolution boundaries of Israel occupied at a time before 1967, this amounts to recognition of the pre-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". As Lord Caradon, the principal author of resolution 242 (1967) has stated, "the overriding principle" of resolution 242 is the "inadmissibility of the acquisition of territory by war" and this means Israeli withdrawal from Palestinian and other Arab lands must take place to the pre-June 1967 borders, subject to minor variations to be determined, preferably, by an impartial boundary commission.25/

It is clear that two different national exercises of the right of self-determination cannot take place simultaneously upon precisely the same territory. Since the General Assembly, in its resolution 181 (II), 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. Resolution 3236 (XXIX) is consistent with this intent and does not impinge upon the lawful boundaries of the State of Israel. The Palestinian national right of self-determination should be exercised "in Palestine" outside of the pre-June 1967 boundaries of the State of Israel.

4. The requirements for International Peace Conference on the Middle East to establish peace with justice

The dual prerequisites for the successful outcome of the Peace Conference are that the sanctioning process be both efficient and international.

The establishment of public order is a basic task of any legal system, whether domestic or international. The responsibility of a domestic order system is to exercise effective community control over private violence. By analogy, the responsibility of the world legal order is to exercise effective community prohibition of violence and coercion attempted by aggressors. The Secretary-General of the United Nations wrote in 1982: "Our most urgent goal is to reconstruct the Charter concept of collective action for peace and security so as to render the United Nations more capable of carrying out its primary function."26/ The world legal order must, at the very least, protect peoples and States from coercion and aggression. Such an order is prescribed by the Charter requirement of peaceful methods of dispute settlement 27/ combined with its prohibition of "the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations".28/ The Charter also contains the complementary provision which authorizes the use of force only for defensive purposes.29/ It is clear that the Palestinians, who have been the victims of organized Zionist terror since the time of the Balfour Declaration and who have been victimized by the Government of Israel's highly institutionalized State terror since 1948 have not received the benefits of the United Nations legal order. In the same way, those Israelis who have been victims of the Palestinian responding violence have not received the benefits of such a system.30/ The implementation of legal order would immediately raise a new hope within Israel on the part of those patriotic and enlightened Israeli citizens who have been urging their Government to enter into a peaceful settlement based upon law and justice.31/ The great opportunity that a solution to the Palestine problem presents to the world community acting through the United Nations, is to provide Palestinians and Israelis alike with individual and national security. In this era of weapons of mass destruction, the probable alternatives to the achievement of the legal order include increased State and group terrorism against civilians, further destructive armed conflicts in the Middle East,32/ and the danger of a world conflagration of mutual mass destruction as well.

The application of sanctions to enforce the world community consensus concerning Palestine manifested through the authorized organs of the United Nations is

indispensable. No organized community, domestic or international, can achieve a legal order without the ability and the will to use the necessary force and coercion to obtain it. The essential element is that coercion must be in the responsible hands of the community and not in the hands of a militaristic and expansionist State. The central point was made by J. W. Fulbright when he wrote, "The crucial distinction is not between coercion and voluntarism, but between duly constituted force applied through law ... and the arbitrary coercion of the weak by the strong".33/

One of the objections that will be made to this recommendation for the application of adequate sanctions is the often stated position of the United States Government that it opposes an "imposed settlement". This objection should be clearly understood both in its explicit meaning and in its implication. Its explicit meaning is that an imposed settlement by the world community under law is opposed. Its unexpressed but necessary implication is that the existing imposed settlement by the military power of the Government of Israel, armed and supported by the United States, is condoned. In the light of this situation, the repeated calls of the United States Government for "unconditional" and "direct" negotiations must be treated with considerable skepticism. It is remarkable that the position of the United States applies only to the Israeli-Palestinian conflict. It overlooks the highly successful imposition of a settlement on Japan in the years following the end of the Second World War. It also neglects to mention the imposed settlement in Europe at the end of the same war. No mention of historic settlements would be complete without reference to the peace which the Congress of Vienna imposed on France beginning in 1815.34/ The justice involved in that settlement, including the protection of legitimate French national interests, resulted in less coercion being required than would otherwise have been necessary. Both justice and coercion are typically required in peace settlements and where justice is used less, coercion must be mused more. The absence of elementary justice in the military arrangement now imposed upon Palestine leads to the threat and increasing use of coercion.

The Palestinian right of self-determination is firmly established in law. It is significant that the United States Government, in contrast with its present political opposition to the international legal consensus, has twice assented to and recognized the Palestinian right. Although not a member of the League of Nations, the United States agreed to the terms of the Palestine Mandate in the Anglo-American Convention on Palestine of 1924 35/ which incorporated the terms of the Mandate. The second such recognition was the adoption of the Palestine partition resolution under the leadership of the United States, in which the Palestinian right of self-determination was recognized. The central task of the International Peace Conference on the Middle East is to implement the existing legal right of Palestinian self-determination.

The International Conference on the Question of Palestine, which met at Geneva in 1983,36/ provided a practical demonstration of the world community consensus under law. In spite of the strenuous efforts in opposition to the Conference made by the State of Israel and the United States, 137 States attended (20 as observers) along with key national liberation movements and non-governmental organizations. When the principles of the Geneva Declaration on Palestine,37/ produced by the Conference, are implemented, the genuine national interests of both Israelis and Palestinians will be promoted.

With the application and enforcement of the law, the Israeli national rights that will 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.38/ 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. Analogous rights and limitations will apply to the Palestinian State. A limitation inherent in the authorization of two States is that each may exercise its national rights conditioned on, at the least, non-obstruction of the national right of the other.

There will be no solution of the Palestine problem until effective sanctions are applied. Because of the continuing economic crisis, largely caused by the militarization of its foreign policy and its domestic society, there is every reason to believe that economic sanctions would be successful against Israel. In the unlikely event that they were unsuccessful, military sanctions are available under the Charter of the United Nations. Such sanctions are also available to ensure compliance with the law by the Palestinian State.

It should be emphasized that sanctions must be conceptualized and applied as a comprehensive process, starting with persuasive measures and leading to increasingly coercive ones, rather than as a group of isolated and unrelated episodes.39/ The main authority to apply sanctions is allocated to the Security Council 40/ and its action may be blocked by the negative vote of a single permanent member.41/ The General Assembly may not act while the Security Council is exercising its functions under the Charter concerning any dispute or situation, but it may act when the Council is blocked by a great Power negative note on substantive issues.42/

When the other Member States of the United Nations act without hesitancy to assert leadership on achieving a peaceful settlement under law, it should have a significant impact upon the United States Government in bringing it back, sooner rather than later, to its principles of advocacy and practical support for self-determination for all juridically authorized national groups, including the Palestinian people.43/ With the concurrence of the United States in the enforcement process, as in President Eisenhower's position in 1957, it will be possible to effectuate the Palestinian people's right to its own sovereign State and to bring peace with justice to Palestinians and Israelis alike.

Notes

1/ The recorded vote on this resolution was: 124 in favour, 4 against (Australia, Canada, Israel and United States of America), 15 abstentions.

2/ United Nations publication, Sales No. E.83.I.21.

3/ The present section is based upon W. T. Mallison and S. V. Mallison, The Palestine Problem in International Law and World Order (London, Longman Group, 1985), chap. 3.

4/ Advisory opinion, Reparation for Injuries Suffered in the Service of the United Nations (I.C.J. Reports 1949), p. 174.

5/ R. Higgins, The Development of International Law Through the Political Organs of the United Nations 2 (1963). See also the distinguished dissenting opinion of Judge Tanaka in Ethiopia v. South Africa; Liberia v. South Africa, I.C.J. Reports 1966 248, pp. 291-293.

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

7/ Article 22 (1).

8/ Article 1 (2).

9/ Advisory opinion of 11 July 1950, I.C.J. Reports 1950, at p. 137. See also I.C.J. Reports 1955, at p. 76 and I.C.J. Reports 1971, at p. 43.

10/ 4 Israel Laws (authorized translation) (1950), p. 144, as amended.

11/ Article 2 (4).

12/ 6 United Nations Conference on International Organizations, Summary Report of the Sixth Meeting of Committee I/1, Doc. 343 I/1/16 (15 May 1945), p. 296.

13/ See J. A. Perkins, The Prudent Peace: Law as Foreign Policy (1981), p. 75.

14/ General Assembly resolution 1573 (XV) of 19 December 1960 concerning Algeria, General Assembly resolution 1603 (XV) of 20 April 1961 concerning Angola, and General Assembly resolution 1747 (XVI) concerning Zimbabwe (Rhodesia).

15/ For the first three of these bases, see Perkins, op.cit., p. 66.

16/ A/CONF.39/27, 8 International Legal Matters (1969), p. 679.

17/ In the famous case of The Paquete Habana, 175 U.S. 677 (1900), the United States Supreme Court based its holding concerning the immunity of coastal fishing boats from capture on the consensus of the community of States manifested by practice since the time of Henry IV.

18/ Zionist legal writers oppose self-determination as law. See, for example, Blum, "Reflections on the Changing Concept of Self-Determination", 10 Israel L. Rev. 509 (1975) which states on p. 511:

"Consequently, any attempt to convert self-determination into a legally recognized right amounts to an attempt to legitimize revolution and to absorb it into the existing legal system."

See also M. Pomerance, Self-determination in Law and Practice: The New Doctrine in the United Nations, (1982), passim.

19/ See, for example, J. Stone, Israel and Palestine: Assault on the Law of Nations, (1981), passim.

20/ Higgins, op.cit., p. 1.

21/ "Hopes and Loopholes in the 1979 definition of aggression", American Journal of International Law (1977), pp. 224 and 235.

22/ For the text of the Mandate of 24 July 1922, see Official Records of the General Assembly, Second Session, Supplement 11 (A/364), vol. II, pp. 18-22.

23/ "The Churchill White Paper", of 1 July 1922, Cmd. 1700, in 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, Tulin, ed. (1947), p. 110.

24/ Mallison and Mallison, op.cit., chap. 4.

25/ Lord Caradon, Goldberg, El-Zayyat and Eban, U.N. Security Council Resolution 242, (Georgetown University, 1981), p. 1 at 13. Concerning the powers of the Security Council, see J. Crawford, The Creation of States in International Law (1979), pp. 328-329.

26/ Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 1 (A/37/1).

27/ Article 2 (3).

28/ Article 2 (4).

29/ Article 51.

30/ Both the Israeli State terror and the Palestinian response are analyzed in Hirst, The Gun and the Olive Branch: The Roots of Violence in the Middle East, (1977), passim. Primary authority on State terror is in L. Rokach, Israel's Sacred Terrorism: A Study Based on Moshe Sharett's Personal Diary and Other Documents (Association of Arab-American University Graduates, 1980).

31/ See, for example, The Other Israel (Newsletter of the Israeli Council for Israeli-Palestinian Peace, Tel Aviv.

32/ A juridical analysis of the 1982 attack-invasion of Lebanon and the role of the United States Government appears in S. V. Mallison and W. T. Mallison, Armed Conflict in Lebanon, 1982: Humanitarian Law in a Real World Setting, (2nd ed.), (Washington, D.C., American Educational Trust, 1985).

33/ The Crippled Giant, 108 (Vintage Books, 1972).

34/ Kissinger, op.cit., passim.

35/ 44 U.S. Stat. 2184 (1924).

36/ See note 2 above and accompanying text.

37/ In the appendix to the Report.

38/ M. H. Heller, A Palestinian State: The Implications for Israel (Harvard, 1983). The thesis of this book (prepared under the auspices of the Centre for Strategic Studies of Tel Aviv University) is that, assuming Israeli interest in peace and security, the Palestinian State would be more consistent with such interest than any other alternative.

39/ The past performance and the present potential of such sanctions by the world community are analysed in M. S. McDougal and F. P. Feliciano, Law and Minimum World Public Order, 1961), chap. 4.

40/ Charter of the United Nations, Articles 39-51.

41/ Ibid., Article 27 (3).

42/ Ibid., Article 12 (1).

43/ S. P. Tillman, The United States in the Middle East: Interests and Obstacles (1982) demonstrates the United States national interests in a peaceful settlement under law.

XI. THIRTEENTH UNITED NATIONS SEMINAR ON THE QUESTION OF PALESTINE

(7-11 April 1986, Istanbul, Turkey)

THE INTERNATIONAL PEACE CONFERENCE ON THE MIDDLE EAST IS A LEGAL OBLIGATION AND A POLITICAL NECESSITY

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After having attended, during the last two decades, several international conferences on the question of Palestine, held in different corners of the world, it gives me great pleasure, as a Turk, to welcome you all to another one with a noble and practical purpose, now taking place in my own country. The occasion is all the more meaningful when one remembers that Turkey is not only a Middle Eastern State with deep interest in regional peace, but also has memories of Palestine, where the former Ottoman citizens, as Jews and Arabs, Moslem or Christian, enjoyed a remarkable degree of equality, freedom and justice.

Since then, Palestine witnessed a period of Mandate under the League of Nations, the Partition Resolution recommended by the United Nations, acts of aggression or breaches of peace. Wars are already being fought in the region, and among the discords all over the world or the ones in the Middle East, the Arab-Israeli conflict perhaps poses the greatest threat of global baptism of fire. All of the peoples who were placed under the League Mandates have exercised self-determination except the Palestinians and the Namibians.

The world has come to believe, in the process, that the idea of an International Peace Conference on the Middle East reflects the democratic will of the international community. The choice for such a formula is the result of a conviction based on objective facts and not of a mechanical majority in the United Nations. First, the initial image of Israel, as an undersized country bent only to survive, has been replaced by another prone to expansion, with a plan to annex neighbouring lands. Secondly, the international community now believes that peace cannot be achieved without going to the core of the problem. Thirdly, the Palestine question is different from some other questions (such as the Cyprus dispute) which may be a bilateral issue between the local actors. The one concerning Palestine is an international problem. The United Nations has inherited it since its establishment; it is seized with it; it cannot discard its responsibility. Only a comprehensive solution involving, on an equal footing and with equal rights, all concerned parties including the five permanent members of the Security Council and the Palestine Liberation Organization (PLO), can create the basis for a just and lasting peace. The International Peace Conference on the Middle East, under United Nations auspices, is the means for such a solution. It is a legal obligation and a political necessity.

The post-First World War history of Palestine is one of avoidance of justice. The amount of arbitrariness, outlawry and violence is appalling. This series of misdeeds and injury must be redressed. How can right be restored by means other than war?

One may assume that the following assertions conform to facts. Israel wants Arab recognition of the "legitimacy" of its conquests. It has no intention of negotiating a just and durable settlement; it wishes to impose one. It does not accept the United Nations resolutions on Palestine. It wants to consolidate its gains. It does not recognize the elementary rights of the Palestinians. It wants to make the ousting of the Palestinians from their own land an irreversible fact. It wants to keep Palestine without the Palestinians. It receives political, financial and military support from one of the great Powers and exerts pressure on the Arab States by virtue of its military occupation of some of their territories. Therefore, it is very doubtful that a solution may be reached through direct and bilateral negotiations with Israel, aided by one of the great Powers. As to the usefulness of conciliation as a means for settling the issue, what befell Count Bernadotte explains the futility in general of such procedure.

It seems that the only way to restore justice by means other than war is to lay down a formula for a lasting peace to be achieved within the framework of an international conference and with the guarantee of all the interested parties.

The principal obstacle to an international peace conference lies in the present tension between two currents. The first one, supported by the United States and Israel, envisions a settlement through State-to-State negotiations to the exclusion of the PLO. The second assumes the centrality of the Palestine question, an approach more compatible with global consensus.

A reading of the record leaves the impression that two United Nations Members, the United States and Israel, acting in concert, have been mainly responsible for frustrating an overall peace. These two States have repeatedly argued that Security Council resolutions 242 (1967) and 338 (1973) or the Camp David framework, or both, were the only practical bases for a settlement. The assertion that the PLO does not recognize these two United Nations resolutions does not rest on logical foundations. As expressed on several occasions, the PLO recognizes all United Nations resolutions concerning the Palestine question. No Palestinian leadership can accept resolutions 242 (1967) and 338 (1973) separately since they fail to acknowledge the PLO or the rights of the Palestinian people.

Israel has a "peace" concept, divorced from the reality of what peace in the region means. It has neither defined its borders, nor proposed a full peace plan. The

only de jure boundaries which Israel has ever had are those specified for the "Jewish State" in the Partition Resolution. In the past, it opposed several initiatives coming from the United Nations (1983 Geneva Conference), regional groupings (1982 Fez meeting), bilateral (Palestinian-Jordanian) and unilateral (Soviet) peace plans as well as actions of individuals (Jarring and Rogers). Israel has constantly violated international law, not abiding by the United Nations Charter, rejecting various United Nations resolutions and annexing land by force. It has carried its defiance of international norms to the hills of Lebanon, the atomic reactor of Baghdad and to Tunisia, which is neither a confrontation state, nor at war with Israel. Its policies of collective punishments, mass arrest, killing of civilians, tortures of detainees and deportations have become matters of daily life in the occupied territories. The colonization of occupied land, in defiance of the Fourth Geneva Convention, is gaining new momentum. As this international meeting is in progress, Israeli bulldozers are probably at work in the West Bank. Israel has taken over the control of water resources of the occupied lands. The Arab municipalities are dissolved, the mayors fired and some physically attacked and injured. A law was proposed by the Knesset in late 1985 prohibiting contacts between the Israelis and the PLO members. Not only the Africans, but the world public in general is very critical of the nuclear collaboration between Israel and the racist State of South Africa.

On the other hand, even the membership of Israel in the United Nations is conditional on the implementation of General Assembly resolutions 181 (II) of 29 November 1947 and 194 (III) of 11 December 1948. They relate to Israel's obligations concerning boundaries, respect for the rights of the Palestinians, the return of the refugees and the status of Jerusalem. Israel's application for United Nations membership was declined by the Security Council on 17 December 1948. Its second application on 24 February 1949 led to an Ad Hoc Political Committee inquiry as to whether Israel would accept the appropriate General Assembly resolutions. Israel's representative (Abba Eban) was specifically asked the question whether Israel, if admitted to United Nations membership, would invoke Article 2, paragraph 7, of the Charter, which deals with the domestic jurisdictions of States, in settling the question of Jerusalem and the refugee problem. The Israeli representative promised to co-operate with the General Assembly, and the Cuban representative, who summed up the statements on this inquiry, stated that Israel had given assurance that it would not regard such matters to be within its domestic jurisdiction. When Israel was admitted to membership on 11 May 1949, the resolution recalled the explanations made before this Ad Hoc Political Committee.

Israel violated resolutions 181 (II) and 194 (III) and failed to abide by its promises made prior to admission to the United Nations. Israel's membership in that international organization is different from that of any other State. Israel was created by the General Assembly. The same resolution established its borders and set certain obligations. Israel does not have unrestricted sovereignty. The United Nations, as the creator of Israel, has the right and the obligation to compel that State to abide by so many of the resolutions that go to the root of the problem as well as its formal explanations, which should be taken as a condition of Israel's membership in that international body.

However, there is a minority in Israel which believes in peace. The 400,000 people who demonstrated after the Sabra and Shatila massacre would be equivalent to 25 million Americans demonstrating in Washington, D.C. There is also a minority which believes that the West Bank and Gaza should remain forever in Israeli hands. There is a wavering majority between these two minorities. That majority should be convinced that the creation of a Palestinian national State is an integral part of the final settlement.

The United States has so far not allowed the international community to act in accordance with the well-established global consensus. It is unfortunate that the assumption considering Israel a strategic asset for the United States has rendered that great Power a partisan in this issue. The United States shoulders responsibility for its support of Israel especially when the use of American arms violates the laws of the United States and Israeli commitments, let alone international law.

Succeeding United States Administrations have thwarted a comprehensive settlement. Talks between the four great Powers, proposed by France in early 1969, were conceived as the initial step of attempts to strengthen the United Nations. They were frustrated by the Nixon Administration. On 29 September 1977, President Carter declared that if the PLO accepted resolution 242 (1967), the United States would begin to meet and work with it. A joint United States-USSR statement, dated 1 October 1977, referred to the "legitimate rights of the Palestinian people". Although "legitimate rights" were not defined and self-determination not mentioned, the simple recognition of "rights" and designation of the Palestinians as a "people" and not as "refugees" were a significant step for the United States. The Soviet recognition of the Palestinians and their rights was never doubted. This new Carter position lasted, however, only a few days. Moshe Dayan's instant visit to the United States led to a "working paper" in which there was again no reference to the "legitimate rights" of the Palestinians, who were once more divided into "Arabs" and "refugees". The period which extends from Camp David in 1978 to the present witnessed the abandoning of the idea of an international peace conference. The deceased Dr. Fayez A. Sayegh had described the Camp David framework in the following striking manner: "A fraction of the Palestinian people was promised a fraction of its rights in a fraction of its homeland, and this promise was to be fulfilled several years from now, through a step-by-step process in which Israel would be able at every point to exercise a decisive veto power over any agreement ...". The Arab Fahd (1981) and Fez (1982) plans as well as the Brezhnev plans (1981, 1982) tried to sway the United States towards an international approach. As evident in the Reagan Plan (1 September 1982), the United States chose to bypass the United Nations. The United States Administrations must bear the responsibility for this depressing record.

They must also bear responsibility for complicity in Israeli violations of Palestinian rights. Israel could not carry out its violations without the funding it receives from the United States. Moreover, the United States was aware, at least in some cases, that financial or military support would be used for such a purpose. Not only the participation of American planes in Israel's aggressions constituted complicity on the part of the United States, but also that Government did not encourage Israel to withdraw from the West Bank and Gaza. It has acquiesced in numerous violations of the rights of the Palestinians in the occupied territories.

On the other hand, as it is true with all the peoples of the world, there is a basic sense of fairness in the American people as well. It may be established in the minds of the American people that the Palestinian cause is just. One may add at this point that the United States Government recognized Palestinian rights when it agreed to the term of the Palestine Mandate in the Anglo-American Convention on Palestine in 1924 and also with the adoption of the Partition Resolution. A 1982 Gallup survey, commissioned by the Chicago Council on Foreign Relations, shows that the American public supports, by a two-to-one margin, the formation of a separate Palestinian State. If the Gallup tabulation reflects the tendency of the public realistically, the succeeding United States Governments' hostility to a Palestinian State then echoes the inclination of a minority of the United States public.

The United Nations has a clear responsibility to deal with this question. Being a Mandate of the League of Nations, Palestine was referred to its successor organization on the very same day the United Nations was established. After an agonizing debate, the General Assembly recommended the creation of a Jewish State, but has been unable so far to secure the establishment of a Palestinian State, as provided by the same resolution. The solution of problems connected with the creation of a State based on a primarily settler community on land whose indigenous people are still denied the same right deserves to continue to be an international responsibility.

Up to the 1967 aggression, the United Nations did not go beyond condemning some of Israel's violations of United Nations resolutions and of international law. The fact that this international body deplored some of the injustices but remained silent over some other had then encouraged Israel to continue to defy United Nations resolutions. It was only after the 1967 war that the United Nations began to feel the need for a lasting peace. The United States and the USSR differed in their approach in the emergency special session of the General Assembly and consequently their respective draft resolutions failed to gain the required majority for adoption.

The compromise resolution 242 (1967) of 22 November 1967 called, inter alia, for the withdrawal of Israeli armed forces from the occupied territories. Resolution 338 (1973) of 22 October 1973, following the 1973 war, requested a cease-fire and the implementation of resolution 242 (1967) in all of its parts. But neither of the two resolutions included a solution of the Palestine question. The former reflected the balance of forces amongst the belligerents of the 1967 war, Israel as victor and Syria, Egypt and Jordan as vanquished. The resolution did not redress the wrongs done to the Palestinians. There was not even a reference to the mass Jewish

immigration forced upon the original inhabitants, the usurpation of the territory of Palestine by an alien minority, the uprooting of its indigenous population and the plunder of their possessions. All that it offered was a mention of the "refugee problem", as if this constituted the whole of the Palestine question.

Resolution 242 (1967) even rewarded the guilty party. It required Israel to withdraw only from territory occupied in 1967. Prescribing respect for the "sovereignty, territorial integrity and political independence of every State in the area", it aimed to secure Arab recognition of Israel, including its sovereignty and conquests prior to 1967. Calling for the withdrawal of Israeli armed forces from territories occupied "in the recent conflict", it implied ratification of the Israeli conquest in excess of the Partition Resolution. The sovereignty, territorial integrity and political independence of the Arab States in the area were never in doubt. This was an attempt to "settle" the Arab-Israeli conflict, bypassing the Palestinians.

In recent years, the General Assembly adopted resolutions which lay stress on the inalienable rights of the Palestinian people. For instance, resolution 2535 B (XXIV) of 10 December 1969, declared that the "problem of the Palestine refugees has arisen from the denial of their inalienable rights". Resolution 2628 (XXV) of 4 November 1970 states that "respect for the rights of the Palestinians is an indispensable element in the establishment of a just and lasting peace in the Middle East". Resolution 2672 (XXV) of 8 December 1970, declares that "the people of Palestine are entitled to equal rights and self-determination". Resolution 2787 (XXVI) of 6 December 1971 reaffirms the rights of the Palestinians to freedom, equality and self-determination. Resolution 2949 (XXVII) of 8 December 1972 declared that the changes carried out by Israel in the occupied territories were null and void. Resolution 2963 (XXVII) of 13 December 1972 embraced seven resolutions which called on Israel to "desist forthwith from all measures affecting the physical, geographic and demographic structure of the occupied territories" and expressed "grave concern that the people of Palestine have not been permitted to enjoy their inalienable rights and to exercise their right to self-determination".

But since the International Conference on the Question of Palestine, held at Geneva from 29 August to 1 September 1983, the considered judgement of the United Nations is that the path to a comprehensive, just and lasting peace in the Middle East is through the convening of an international peace conference. It was the first time that so broad an international forum had met to consider the Palestine question. At total of 137 States, about 100 non-governmental organizations (NGOs), 9 United Nations specialized agencies, and several personalities especially invited for the occasion participated. A significant number of NGOs were from Israel, demonstrating that there exist in Israel fair-minded groups striving for a lasting peace in the area. A plan to deal with all aspects of the question was adopted at Geneva and embodied in two historical documents, namely the Geneva Declaration and a Programme of Action. The settlement emerging from these two documents is based on the following principles: (a) the settlement should be comprehensive, just and lasting; (b) the United Nations is the right place for such a settlement; and (c) the convening of an International Peace Conference on the Middle East is the most appropriate procedure to put such a settlement into effect. General Assembly resolution 38/58 C of 13 December 1983 welcomed the call for convening such a Conference.

The recognition of the rights of the Palestinians was a part of the Programme of Action of the Geneva Conference. The Palestinians were certainly no "rebels without a cause", no "nihilists", no "violent people" closing all doors for peaceful solutions. They are neither a non-existent fiction nor only "refugees". They are a people constituting a nation comprising no less than three groups: (a) 650,000 who are Israeli citizens; (b) 1.3 million more in the West Bank and Gaza, who since 1967 live under Israeli military occupation; and (c) the Palestinians in exile, originally 800,000 driven out in 1948.

During the Mandate, the British Government recognized the existence of the Palestinians as a people distinct from the European Jewish immigrants by negotiating with their leadership and by adopting the White Paper (1939) in response to Arab criticism of foreign colonization. The first direct recognition by the General Assembly of the national right of the Palestinian people to self-determination was in the Partition Resolution. The second such recognition was General Assembly resolution 2649 (XXV) of 30 November 1970. Many subsequent resolutions reiterate the Palestinian national right of self-determination.

The PLO is the sole legitimate representative of the Palestinian people. This was highlighted by a resolution passed by the General Assembly in 1974, inviting the PLO to participate in the debate relative to the Palestine question and conferring upon it the same rights of participation as that of a Member State. It was the first time that a non-State entity was accorded such status.

What juridical status does the PLO have? Traditionally, nation-States are the sole subjects of international law. However, non-territorial public bodies are also brought into existence through agreements. One of the most important non-territorial public bodies is the United Nations. Anti-colonial liberation movements, in addition to resistance groups against occupation forces, have come to be subjects of international law. The Geneva Protocol of 1977 extends its protective cover to include the armed forces, groups and units which are under a command responsibility to a "party", whether the party is represented by a Government or an authority.

There are two historical entities which may be taken as precedents developed in Palestine, namely the World Zionist Organization (Jewish Agency) and the Arab Executive Committee (Arab Higher Committee), recognized as public bodies. The former was originally a group of individuals with no territorial base. The Arab High Authority, which included all the political parties, represented the Palestinian Arabs. It entertained the same status until it was succeeded in 1964 by the PLO.

The PLO represents the embryonic Palestinian State and Government. It has been recognized by over 100 nation-States. It has opened offices equivalent to governmental diplomatic missions in 85 States. The PLO is also exercising certain governmental powers. It has typical sovereign Powers, including taxation, extradition, obtaining loans, granting governmental guarantees, signing treaties and cease-fire agreements. The Palestine National Council serves as a parliament with legislative authority. Its composition reflects Palestinian pluralism. The Executive Committee functions like a Cabinet with various departments and agencies. The PLO also has a judiciary.

Although arguments have been furthered that the PLO does not control a defined territory, the French Government-in-exile during the Nazi occupation of France, the Algerian Liberation Front or the Viet-Cong had command over their populations while their adversaries governed the territories.

It is counterproductive to the cause of peace to ignore the Palestinian contribution to the search for a settlement of the Arab-Israeli conflict. The PLO endorses all United Nations resolutions. It is unfair to the Palestinians, the primary victims of the conflict, to misinterpret their motivations.

The international backing for the overdue act of self-determination by the people of Palestine is now almost unanimous. The principle that only the Palestinians can choose their own representatives cannot be negated. The PLO is the only organization which can negotiate, sign and honour an agreement. No signature, even if it belongs to an individual originally from Palestine, can be binding unless it is affixed by properly chosen representatives and satisfies Palestinian aspirations. Attempts have been made in the past to find Arabs who have no PLO support. Their endeavours are bound to be fruitless.

The Israeli preference to negotiate exclusively with its Arab neighbours reveals an intention to bypass the representatives of the Palestinian people. The United Nations cannot allow an aggressor to reap the fruits of its policy. It should instead act as a peacemaker and also guarantee the results of the conference. Any comprehensive peace initiative needs to be coupled with a guarantee of its implementation. The United Nations has so far adopted about 200 resolutions none of which have been observed. The fact that these resolutions were often taken by overwhelming majorities certainly carries a moral weight with them. But it is at least equally important to implement them. There will be no compliance without international guarantees and no justice and peace without such compliance. For instance, Philip Habib, the special envoy of the United States President, gave Chairman Arafat a formal pledge to protect the Palestinian camps in West Beirut. This pledge was followed by the Sabra and Shatila massacre.

Let us appeal to the United States to join the overwhelming majority of nations for an international peace conference, the organization of which should be entrusted to the Security Council, where the United States may express its views in every step leading to its realization. In spite of difficulties, we have faith in the

prospects of peace. We believe in the ability of the United Nations to achieve it. 1986 is globally designated as the Year of Peace. There will be no peace without peace in the Middle East.

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