AN EXAMINATION OF DOCUMENTS ON WHICH THE STATE OF ISRAEL IS BASED

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Beirut — Lebanon
September 1970

This book was published at the expense of the Kuwait
Ministry of Guidance and Information

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I

GENERAL BACKGROUND

A brief survey of the essential elements of a state will prepare the ground for a political and legal definition of Israel. For it is this type of survey which points to the classical and general norms of statehood and by so doing clarifies the position of every state within the context of the law of nations.

ESSENTIAL ELEMENTS OF A STATE

A state, a representative in every way of what is called a subject of international law, i.e., a true international person, must have the following characteristics :

1. Territory
2. Population
3. Government
4. Independence[1] (i.e. Sovereignty)

With regard to territorial sovereignty, two important factors must be considered :

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(1) Gerhard Von Glahn, *Law Among Nations*, (New York: The Macmillan Company, 1965), Chapters 6-12.
J.L. Brierly, *The Law of Nations*, (Oxford : University Press, 1963), Chapter IV.

A. The state's boundaries.
B. The nature of the state's right over the territory in question.

The extent of the territory subject to the jurisdiction of any state is determined by definite boundary lines, as in the case of domestic real property of any citizen.

But definite boundary lines are not only essential from a juridical viewpoint. They are also essential in creating effective citizenship or membership of a certain state.

It is the sharing of the same territory as defined by drawn boundaries which creates common interests and solidarity among the citizens.

It is also very important to point out the significance of a defined territory for a state, large or small, in view of the fact that this definition indicates the area within which its internal policies can be carried out and outside which its foreign policy will be conducted.

Accordingly, defined boundaries are an integral part of statehood especially denoting state jurisdiction, effective citizenship, and the nature of state authority and power.

When a state exercises authority over a certain territory, or in other words, when a state has sovereignty over a definite part of the surface of the earth, special reference is made to the nature of the rights over the territory in question.

(Territorial sovereignty bears an obvious resemblance to ownership in private law. As a result of this resem-

blance early international law borrowed the Roman concept for the acquisition of property and adapted it to the acquisition of territory. These rules are still the fundamentals of the law on the subject.)

Under the dictates of the modern body of rules of international law, state sovereignty — real state title — over a territory is acquired through the following means:

a. Occupation
b. Prescription
c. Cession
d. Conquest
e. Accretion[2]

Each of these means should exhibit certain required elements to be considered lawful. For example:

Occupation may be defined, here, as a means of acquiring territory not already forming a part of the domain of any state. Also, in order to create a title to territory, occupation must be "effective occupation," that is to say, it must be followed up by action which shows that the state not only desires to, but can and does control the territory claimed or occupied.

Title by prescription arises out of a long continued possession, where no original source of proprietary right can be shown to exist, or when possession in the first instance being wrongful, the legitimate proprietor has neglected to assert his right, or has been unable to do so. Long possession, in this case, must be continu-

(2) *Ibid.* Gerhard Von Glahn, Chapter 16. J.L. Brierly, Chapter V.

ous, public and peaceful in order to have the effect of extinguishing a prior title to sovereignty. In other words a continuous, public, and undisturbed exercise or display of state authority must be shown.

Cession is a form of transferring the title to territory from one state to another. It results sometimes from war, sometimes from peaceful negotiation; it may either be gratuitous or for some consideration.

Title through conquest, however, is rare because the annexation of territory after a war is generally carried out by a treaty of cession. Also conquest, the acquisition of the territory of an enemy by its complete and final subjugation and a declaration of the conquering state's intention to annex it, receives an obvious moral objection to its legality. In fact the coming into force of the United Nations Charter ended the legality of the acquisition of title to territory through conquest.

The Purposes of the United Nations are:

> "1. To maintain international peace and security, and to that end to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;
> 2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;
> 3. To achieve international co-operation in solv-

> ing international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for all without distinction as to race, sex, language, or religion; and
> 4. To be a centre for harmonizing the actions of nations in the attainment of these common ends."[3]

Title through accretion is the result of a natural operation, e.g., the addition of new territory to the existing territory of a state by the drying of a river.

This framework of definition of the legality of territorial claims, reflecting international law, provides very limited or no chances under which a state may speak in terms of a right to annex new territories. At the same time it reflects the international value of definite boundary lines of a state which conditions its jurisdiction and thereby its external policy and relations.

Territorial provisions affect the number of population in a state; also this number influences a state's territorial policies. The interaction of these two factors has been a major dynamic in statecraft. However, in the modern era, and with the above framework in mind, the starting point in a discussion on the population of a state is, generally, built on the assumption that territory is the constant factor.

An approach to the study of population as an element of a state, and an obvious element, involves the following considerations:

A. The size of population in relation to the

(3) Charter of the United Nations, Chapter One, Article One.

land territory, i.e., the capacity of the land to maintain the population.

B. The economic conditions of the population.

The rate of population growth within the boundaries of a state is viewed in connection with the land resources available. Some states are sparsely populated, others are densely populated; some states put their land resources to maximum utilization with the use of modern methods and techniques, others have high resource potential awaiting development; also the relatively equilibrating movements of factors of production among the different states contribute to the problems of population pressure or scarcity. The size of population is thus actually viewed in relation to the means of sustenance and to the state of development of the means of production. Other or additional reflections on the problem vary according to different public policies and concerns.

State policies promoting unusual rates of increase in the size of population have been those inclined to do so for militaristic purposes or to put into use areas of unexploited territories. Otherwise, the size of population is ordinarily weighed with a desired standard of living for the masses.

The economic conditions of population are presumably related to its size and to the material resources of the state. Some states, due to their natural bounties, and regardless of the size of population may afford a comfortable living standard for the majority. This, however, may not always be the case.

Natural resources may be used for purposes other

than the welfare of the masses. For example, they may be consumed by the needs of the military element of the nation; they may not be exploited at all and the masses kept within the vicious circle of poverty and want; and they may be scarce and yet, the population, relying on external opportunities and resources, may enjoy a decent level of living.

Thus the economic conditions of the people in a state are primarily related to natural wealth and secondly to public policies and the institutions of the state.

The composition of the population also contributes to its economic conditions, especially when the concept of unity is implied. It is national unity which leads to expediency in state welfare which is one in promoting the desired qualities of the citizens.

The availability of natural resources in a state and the institutional setup of the people tend to be the two major factors in upholding solidarity. (Solidarity, in this respect, implies a high degree of autonomy, the desired degree of individual welfare, and the necessary spirit of nationalism.)

Thus territory and people (the first factor being considered as constant) are found to their best advantage within a state when the institutional framework, at all levels, functions in a smooth manner of coordination for the general welfare.

At this point the third characteristic of a state comes into view. It is the operation of a government. Without this type of operation or institutional setup,

there could be no assurance of internal stability and of the ability to fulfil international obligations.

According to the rule of law, a state needs an instrument for the exercise of its power. This instrument is its government. The inherent authority of a state (for every state has authority inherent in itself) is only exercised by the government as its agent.

By definition a government consists of all those persons, institutions, and agencies by which the will and policy of the state is expressed and carried out.

The basic fact of any government is that it acts for the whole community. This means, first, that the whole community will come under its control; no individual or group may claim the right to evade the operation of measures designed to apply to all.

It thus may be said that the government is the important indispensable machinery by means of which the state maintains its existence, carries on its functions, and realizes its policies and objectives. (The form of government varies with the purposes of the state.)

An overall picture of the entity of a state, however, could be seen through the concept of sovereignty or independence. Here all the state elements are viewed in a unified manner reflecting the ability of the state to regulate its internal affairs without outside interference or control.

Sovereignty, an essential characteristic of statehood, is very much dependent on the machinery of government, on the public policy, the size of the state, and on the economic conditions of the citizens.

Sovereignty also, in its internal manifestation and its external exercise, is restricted by international rules and regulations. This is the case especially in connection with external sovereignty. Just as the rules of local law limit the activities of individuals, so also does international law limit the conduct of states.

The preceding brief survey of the essential elements of the state:

1. Territory
2. Population
3. Government
4. Independence

form a sort of political and legal statement or a political and legal standard in the light of which some judgement may be passed concerning Israel as a state.

ESSENTIAL ELEMENTS OF ISRAEL

Since Israel is an expression of Zionism, it is discussed as a state in the light of the principles and objectives of this doctrine.

Dr. Nahum Goldmann, President of the World Zionist Organization, in his address celebrating the Seventieth Anniversary of the Foundation of the Zionist Organization said:

> "Nations realize their ideal in our century through the forms of a state. The state was never the main objective of Zionism... The sovereign state of the nineteenth and the twentieth century

> is a modern invention, not a Jewish one. Its greatest protagonist was a great philosopher but a Prussian philosopher, Hegel. He conceived the idea that the sovereign state, towering over everything, which can afford to do anything, is the peak, the highest form of expression of human civilization. In my humble opinion, this is an absolutely barbaric idea... Some time will pass, and I will not live to see it, but I hope that my children will, until the sovereign state no longer exists... If we were only a movement for the founding of state, we would have achieved our aim marvellously and would be able to step down from the arena of Jewish history and world history with a great sense of triumph, with dignity. But when one knows that if this state (referring to Israel) becomes a state like all others, another Lebanon or another Syria, or perhaps even qualitatively a little better, then it will not be able to discharge its historical task, and that instead this state must be an instrument to realize the specific Jewish ideas from the prophets down to Ahad Ha'Am, Martin Buber and Gordon, to realize them and not only to preach them, when one knows all this, then one understands that the State of Israel and the Zionist movement, which is, as it were, its parent, still has vast tasks..."[4]

The above quotation reflects some reluctance in Zionism to accept the modern concept of state—subject of international law. In fact the same reluctance, on the part of Zionism, is true of its view of international law at large. Mr. Abba Eban, then Israeli Ambassador to the United States, on Edward Murrow's television program "Person

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(4) Organization Department, World Zionist Organization, *Basle 1897 - Israel 1967, Assembly to Mark the Seventieth Anniversary of the Foundation of the Zionist Organization at the First Zionist Congress,* (Publishing Department of the Jewish Agency, 1967), pp. 25-36.

to Person" on September 20, 1957, said: "International law is the law which the wicked do not obey and which the righteous do not enforce."

Bearing this in mind and with the derivative assumption that Israel, therefore, may be treated as an exception, a survey comparing the elements of this state with the norms of international law may help us to judge its nature.

1. THE TERRITORY OF ISRAEL

What is the territory of Israel ? This shall always remain an open question as long as statehood is not the ultimate aim of Zionism. The final goal is the redemption of the Jewish people — the Ingathering of the Exiles in Israel — an area which is not defined.

Speaking about the Declaration of Independence, David Ben-Gurion stated:

> "The problem was whether to declare the State without specifying its borders or to specify the borders as fixed by the United Nations. I was opposed to specifying the borders. I pointed out that no borders were named in the American Declaration of Independance and maintained that we were under no obligation to designate them."[5]

The declaration of the establishment of the State of

(5) David Ben-Gurion, *Israel : Years of Challenge,* (New York : Holt, Rinehart and Winston, 1963), p. 40.

Israel uses the United Nations' General Assembly resolution of November 1947 concerning the partitioning of Palestine as the immediate justification.[6]

> "On the 29th November, 1947, the United Nations General Assembly passed a resolution calling for the establishment of a Jewish State in Eretz Israel; the General Assembly required the inhabitants of Eretz Israel to take such steps as were necessary on their part for the implementation of that resolution. This recognition by the United Nations of the right of the Jewish people to establish their State is irrevocable."[7]

Did Israel keep within the territorial limits of the United Nations Resolution of November 1947?

The acceptance of this United Nations resolution by the Zionists is, in reality, a paradoxical acceptance. For the State of Israel did not keep within the limits of this resolution, nor did the Zionists acquire all the land for their state building in a manner compatible with the Charter of the United Nations.

The representative of the Jewish Agency for Palestine addressing the *ad hoc* Committee at the fourth meeting on October 2, 1947, showed dissatisfaction with the majority proposal for the partitioning of Palestine. He said:

> "According to David Lloyd George, then British Prime Minister, the Balfour Declaration implied

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(6) A discussion of the legality of this resolution is presented in Chapter Two.

(7) Joseph Badi, editor, *Fundamental Law of Israel*, (New York : Twayne Publishers, 1961), p. 9.

> that the whole of Palestine, including Transjordan should ultimately become a Jewish state."[8]

Total Jewish ownership in Palestine by 1948 was roughly 1,971,014 dunums. This compared to the total area of Palestine — 27,027,023 dunums (including water area of 704,000 dunums) reflected the ratio of Jewish ownership to the total area of the land, viz., 7.6%.[9] When the State of Israel was declared, 80.5% of the land of Palestine was acquired. This means that 76.6% was at that time acquired by force or conquest.[10]

A. Title to the acquired land area of Palestine is here very much bound to the spirit of the Mandate over the country and to the power of the United Nations resolution of November 1947.

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(8) *Year Book of the United Nations 1947-1948,* (New York : Department of Public Information - United Nations, 1949), p. 234.

(9) The above data have been compiled from Zionist sources. However,statistics of Mandatory Government (Village Statistics, March 1945) show that the share to Jews of land distribution was 1,491,700 dunums. Out of this share 175,000 dunums represented long-term land leases by the government. Thus Jewish ownership, in actuality, was then 1,316,700 dunums. Consideration should also be given to 100,928 dunums which were bought by Jews by that date but not registered. Thus the figure of Jewish land ownership rises to 1,417,628 dunums. Yusuf Sayegh, *The Israeli Economy* (Beirut : Research Center - Palestine Liberation Organization, 1966), pp. 74-77.

(10) 3.9% represented land purchase by the Jewish National Fund during a period of 45 years. 76.6% captured land within a period of less than a year through the media of force. Angelina Helou, *Interaction of Political, Military and Economic Factors in Israel* (Beirut : Palestine Research Center, 1969), p. 88.

1. The 76.6% of the land area of Palestine represents the domain of the people of Palestine upon the termination of the Mandate. Therefore its occupation by a simple minority was illegal.[11]
2. The United Nations resolution of November 1947 was only a recommendation. This is because the United Nations, under its Charter, does not have the power to implement this type of resolution. In other words, it does not have the power to create states.

B. Nor could title be transferred to Israel over the territories it occupies through prescription.

A title acquired through prescription is conditional to :

1. Absence or silence of original claim to the occupied land.
2. Possession of the territory be long, continuous, public and undisturbed.

The two million and a half Palestinians never gave up the call for the basic human right of a people to their

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(11) Article 22 of the Mandate provided that the object of the mandate system is to ensure the "well being and development" of the inhabitants of these territories, as a "sacred trust of civilization." The mandate is described as a "tutelage," exercised on behalf of the League and in its name. This notion of tutelage was borrowed from private law and was a novelty in international law. Yet the spirit of the mandate accordingly insures the concept of free self.determination.

homes and property. In addition to this, this right has been codified in the body of international law through the United Nations resolutions. For example, paragraph 11 of the General Assembly resolution 194 reads:

> "Resolves that the refugees wishing to return to their homes and live at peace with their neighbors should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Government or authorities responsible.
> "Instructs the Conciliation Commission to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation, and to maintain close relations with the Director of the United Nations Relief for Palestine Refugees and, through him, with the appropriate organs and agencies of the United Nations."[12]

Though for the last twenty years Zionist occupation of Arab land may be viewed as relatively continuous and public, it cannot be defined as either long or undisturbed.

Even if the continuous state of war between Israel and the Arab countries is disregarded, the emergence of the Palestinian guerrilla forces and their activities have made the territorial occupation of the Zionists far from undisturbed.

C. Arab resistance does not allow Zionism to claim

(12) *Year Book of the United Nations 1948-1949*, (New-York : Department of Public Information - United Nations, 1950), p. 203.

title to Palestine or any other occupied Arab territory through cession or through conquest. (Annexation of territories as a result of conquest is generally carried out by a treaty of cession. The Arabs have never been party to such a treaty.)

A new factor in this resistance is the rise and development of the different movements for the liberation of Palestine from Zionism. These forces reinforce Arab resistance and at the same time make it impossible, in the long run, for the Zionists to vindicate any claim to the Arab land.

The fact remains, however, that the Zionists are in Palestine and other Arab territories by conquest — a conquest which the Arabs chose to resist. A peace treaty in the area between Israel and the Arabs, which has been the official call of the Israeli Government since its inception, implies a treaty of cession. Some points of controversy arise here:

1. A peace treaty with the Arab States could not be binding on the Palestinians. But it may be interpreted that the Arab countries, by so signing, recognize the Zionist occupation of and claim to the territory of Palestine.

2. A peace treaty with the Arab States may be viewed as a treaty of cession because the Arab States have taken the role of legal sponsors of the people of Palestine. (It is not until the Palestinian people

form a government of their own, in exile, that they can, in a legal sense and thus effectively, protect their rights from any treaty of this type.)

Thus the territorial claim of Zionism to the occupied Arab areas must be treated in an exceptional manner. And this is an instance of a theme of exceptions which ushered in the development of political Zionism and its application.

It is of importance to mention at this point that the founder of political Zionism, Theodor Herzl, made the human element in the formation of the Jewish state of a greater significance than the territorial element. He said:

> "It is true that the Jewish state is conceived as a peculiarly modern structure on unspecified territory. But a state is formed, not by pieces of land, but rather by a number of men united under sovereign rule... Man is the human, land the objective, groundwork of a state; the human basis being the more important of the two."[13]

The significance of the so-called human element in statehood here, surpasses ordinary comprehension. Herzl introduced certain concepts to explain this:

1. The concept of a willing people. "The Jews wish for a state — they shall have it, and they shall earn it for themselves."[14]
2. The concept of a Gestor — "The director of affairs not strictly his own. He has

(13) Theodor Herzl, *The Jewish State,* (New York: The Maccabaean Publishing Co., 1904), p. 98.
(14) *Ibid.*, Author's Preface, p. xx.

> received no warrant — that is no human warrant — higher obligations authorize him to act."[15]

A human and a superhuman element becomes basic in the formation of a Jewish State. "As a matter of fact, a mixture of human and superhuman goes to the making of the state."[16] The human element being the people, and the superhuman, the directive force of the Gestor. (World Zionist Organization taking the role of the Gestor.)

Jewish state building, then, takes the form of two momentums: accumulation of willing people under the direction of a "state forming power," the Gestor, and the accumulation of the objective, the land — a never ending process.

Therefore the territorial element in Zionism, by the nature of the doctrine, is not a stable element within fixed boundary lines. It is always in a state of becoming.

While the declaration of the establishment of the state of Israel did not provide for fixed boundaries, it did provide for the Ingathering of the Exiles.

> "The State of Israel will be open for Jewish immigration and for the Ingathering of the Exiles..."[17]

The territory of the Jewish state is thus obviously made flexible to the demands of the waves of Jewish

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(15) *Ibid.*, p. 79.
(16) *Ibidem.*
(17) Joseph Badi, editor, *op. cit.*, p. 9.

ingathering and to the requirements of the "state-forming power," the World Zionist Organization.

2. *THE POPULATION OF ISRAEL*

This is a case of different waves of immigrants from different parts of the world, united only in their Jewish religion, coming to settle on a land belonging to the Arabs.

The immigrants have expelled the Arabs, who had been peacefully settled in their own homes and on their own property, and in their place they have established a system of colonization.

It is strange to find out how Zionist leaders justify these acts of colonization. At one moment Dr. Nahum Goldmann, President of the World Zionist Organization, refers to the Arabs as the Indians of America and almost in the same breath speaks of their history as the history of a great civilization. He says :

> "When we appeared on the scene of history, most progressive groups in the world were our best friends. Many of them are no longer. But when these opponents argue that we did the Arabs wrong, that while we may not have expelled a large group, hundreds of thousands of people, we have brought it about that they are no longer masters of their land, when one asks 'why not give America back to the Indians,' the only answer to that is that we have a higher right on our side... We have the higher right for two simple reasons. One is what I would call a metaphysical, a religio-mystical reason, because Jewish history

> is unthinkable without the central position of Eretz Israel... However, in the totality of Arab history, the history of a great civilization, the centers are Damascus, Baghdad, Granada, Spain, but Palestine has played a very minor role...
> "And the second reason is the fact that for the Arabs who have large areas of land, which they will not have settled in a hundred years, Palestine, which is one or two percent of this area, does not play a decisive role..."[18]

The population element in the State of Israel is to be looked upon as the result of a process of transplanting people with all the consequences and influences that this involves.

The figures below reveal the growth in the Jewish population of Palestine. In 1882, the number of Jews living in Palestine approximated 24,000. The approximate numbers of Jews entering the country until the declaration of the formation of the State of Israel were:

Period	Number[19]
1883 — 1903	25,000
1904 — 1914	40,000
1918	56,671
1919 — 1923	36,000
1924 — 1931	84,000
1932 — 1939	265,000
1940 — 1948	130,165

(18) Organization Department, World Zionist Organization, *Basle 1897 - Israel 1967, Assembly to Mark the Seventieth Anniversary of the Foundation of the Zionist Organization at the First Zionist Congress, op. cit.*, pp. 27-28.

(19) The Central Bureau of Statistics, *Statistical Abstract of Israel 1958-1959*, (Jerusalem : the Government Printer, 1959), p. 7.

There was also the natural increase in Jewish population resident in Palestine and some emigration from Palestine. The total number of Jews in Palestine at the time of the proclamation of the state was 649,633.

At the beginning of 1967 Israel's Jewish population had reached 2,344,900. The following table gives some indication of natural increase since 1948 and that due to immigration.

The average immigration balance from the total increase in population is 42% per year. Current figures of the recent number of immigrants to Israel roughly show the same average per year with a slightly positive rate of increase.

Unlimited immigration has always been the policy of the State of Israel. Consequently great efforts are made to encourage the incoming of more and more immigrants. Among the first laws issued by the state, for example, was the Law of Return which has conferred upon every Jew in every part of the world the right of "Aliyah" — (immigration) to Israel. This law starts with the following statement: "Every Jew has the right to come to this country as an oleh"—[22] (i.e., immigrant).

Addressing the conference of leaders of Jewish organizations, Mr. Eshkol, late prime minister, issued a strong appeal for Aliyah:

> "Will it be said, Heaven forbid, that this generation witnessed the new dawn of Jewish statehood and the sunset of the Jewish people."[23]

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(22) Joseph Badi, editor, *op. cit.*, p. 156.
(23) *Jerusalem Post*, January 9, 1969, p. 8.

Period (Beginning)	Natural Increase	Migration Balance	Total Increase	% of Migration Balance from Total Increase
1948—'51	88.4	+ 666.4	754.8	88.3
1952—'54	101.4	+ 20.2	121.6	16.6
1955—'57	100.7	+ 136.1	236.8	57.5
1958—'60	101.5	+ 46.9	148.4	31.6
1961—'64	134.2	+ 193.8	328.0	59.1
1961	32.7	+ 37.8	70.5	53.6
1962	32.2	+ 55.0	87.2	63.1
1963	33.7	+ 53.0	86.7	61.1
1964	35.6	+ 48.0	83.6	57.4
1965	37.0	+ 22.9	59.9	38.2
1966	37.5	+ 8.3	45.8	18.1[20]
1967	34.4	+ 4.3	38.7	11.1[21]

(20) The Central Bureau of Statistics, *Statistical Abstract of Israel 1967*, (Jerusalem : The Government Printer, 1967), p. 20. Figures in thousands.

(21) The Central Bureau of Statistics, *Statistical Abstract of Israel 1968*, (Jerusalem : The Government Printer, 1968), p. 18. Figures in thousands.

Rabbi Nissim reminded the delegates that "no Jew can be at peace with himself and with his people except in the Land of Israel." While speaking on the vital relationship between a nation and its land, he declared that "the hour of salvation would come when Diaspora Jews came to Israel."[24]

Thus the population element in the State of Israel is quite different from the population element of other states of the world. Here the state is regarded as an instrument to serve all the Jews all over the world; it is an instrument to ingather the exiles.

> "The purpose of the state is to secure the existence of the Jewish people. Not only of the two and a half million Jews who live in Israel today or the three or four millions of tomorrow. The purpose of Zionism is to safeguard the existence, the uniqueness and the identity of all Jews in the world, above all of those who can lead a full life in their own state, something which the Jews of the Golah cannot do. This is the greatest argument for aliya if one wishes to cooperate in building a future for the Jewish people. But the purpose is to use the instrument of the State, of the Jewish majority, of a country of one's own, a language of one's own, a culture of one's own, to secure the threatened existence of the nation."[25]

As the State of Israel is an instrument to serve the

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(24) *Ibid.*

(25) Organization Department, World Zionist Organization, *Basle 1897 - Israel 1967, Assembly to Mark the Seventieth Anniversary of the Foundation of the Zionist Organization at the First Zionist Congress, op. cit.*, p. 26.

purpose of Zionism as quoted above from the words of the President of the World Zionist Organization, Dr. Nahum Goldmann, so it is an instrument to secure the land territory necessary for the increasing numbers. General Yitzhak Rabin declared:

> "I would venture to say that Israel's victory in the Six Day War was the greatest Jewish military achievement in the history of our people. It was the greatest of our wars, and its results have established the broadest boundaries that the history of the Jewish State in the Land of Israel has ever known."[26]

Israel, thus, in the form of a state, reflects a process of colonization seeking ultimate fulfilment in the consolidation of the Jewish nation — i.e., the ingathering of world Jewry in one area. And, this means that neither the territory nor the population of the State of Israel represent an actual state of affairs and therefore do not fall within the general standards of statehood. The two essential elements of the State of Israel represent then a very peculiar condition — a dangerous precedent for the formation of statehood.

3. *GOVERNMENT AND SOVEREIGNTY*

In terms of Zionist ideology, the government of Israel is also a potential government. The basic fact of all governments, as has been mentioned before, is that they

(26) *Ibid.*, p. 38.

act for the whole community.

In Zionism the whole community, being the total number of Jews all over the world, means that it is legally impossible for the government of Israel to be acting for the whole Jewish community. Accordingly there is a gap in the power of the Israeli government which is filled by the presence of the World Zionist Organization. If the Israeli government were the ultimate Israeli government in the view of Zionism, then there would be no need for maintaining the structure of the World Zionist Organization.

Thus the government of Israel is in an anomalous position:

A. It is expected to be acting for the whole Jewish community.

1. The presence of the World Zionist Organization as a public body does not make this fully possible.
2. Any claim it makes to authority over nationals of other countries, who have the Jewish faith, brings it into conflict with those countries.

B. By endorsing a policy of free immigration, the government of Israel is not fulfilling its full reponsibilities to its own citizens. A few of the implications involved are:

1. The presence of an incoming group is always a factor affecting the distribution

of the national wealth.

2. The receiving of immigrants on such a large scale unsettles the economy of the country and gives a feeling of instability and economical insecurity to the existing Israeli population.
3. A policy of free immigration has to be translated into a policy of expansionism since Israel does not own a land area sufficient to absorb the waves of immigrants. Heavy expenditure is needed for defence purposes.

   Thus the government of Israel, by encouraging and working for free immigration, simultaneously prepares a well-equipped army to secure the necessary land area.

   The open, free immigration policy creates even greater hostility from the Arabs who are aware that this will lead to expansion. This hostility finds its expression in Arab defence and desire to eliminate the dangers to them from this expansionist Zionist entity.

   Actually both viewpoints are quite logical. The truth of both stands clear. The result is a state of constant insecurity on the part of the average Israeli citizen.
4. Foreign and defence policies of the state take the predominant position making the

> life of the Israeli citizen largely dependent on outside relations and the power of the military.

The relation of the government of Israel with the World Zionist Organization, with world Jewry and its obligations to the average Israeli citizen certainly affect its characteristics as a government. It is the policy of unlimited immigration which renders the Israeli government a special character of its own — a character which puts it in a position which affects the fate of nationals of other countries and at the same time perpetuates conditions of discomfort inside the country itself.

The following words were said during the first few years of statehood, but still apply to Israel as long as its immigration policy remains the same:

> "With unlimited immigration on top of defence and development, it is miraculous that Israel continues to survive at all. No country has ever attempted such a policy before; no people other than the Jewish people, in Israel and the Diaspora, could have succeeded. But at what a cost in struggle and discomfort for everyone concerned — from immigrants themselves to the settled population and to the Government."[27]

The critical position of the government of Israel due to being an agent of a state with undefined boundaries and population, to its anomalous relationships with the World

(27) Edwin Samuel, *Problems of Government in the State of Israel*, (Jerusalem : Rubin Mass, Publisher, 1959), p. 22.

Zionist Organization, to its identification with world Zionism, and due to inadequacy in meeting the demands of the Israeli citizens and thus fulfilling the normal functions and duties of a state towards its own public — the multiplicity of all these factors reflect the contradictory position of the government in the State of Israel.

Sovereignty, the fourth essential characteristic of a state, is here, in the case of Israel, an impaired sovereignty.

A. The overall sovereignty of the State of Israel is to be related to the nature of the right this state has over the territory of Israel. It was mentioned previously that the legality of the right Israel has over the occupied territories is not confirmed. According to the laws of nations, Israel's ownership or exercise of power over occupied Palestine is not legal. Basically, therefore, Israel cannot exercise sovereignty over Palestine.

B. If the State of Israel is viewed as an instrument of Zionism, then it lacks independence.

C. If the State of Israel is responsible for the welfare of the Jews all over the world, then its sovereignty in relation to its own deemed territory is only partial.

D. The dependence of the State of Israel on world Jewry and Zionism to fulfil its own tasks cripples its sovereignty.

The sovereignty of Israel is, of its very nature, within the scope of a wider concept of sovereignty — Zionist sovereignty.

Zionist sovereignty is a new concept understood only within the framework of Zionist action all over the world.

How Zionist sovereignty stands in relation to international law, is a question which is not answered as yet. The same question also arises in relation to the position of Israel as an instrument of Zionism.

However the World Zionist Organization has no international authority. But its control over the policies of Israel with regard to such Zionist concepts as the "Jewish people" which is basic to Zionism and the "Ingathering" policy in the State of Israel,bring Israel into conflict with other states. The United States Department of State has commented upon the "Jewish people" concept as follows:

> "The Department of State recognizes the State of Israel as a sovereign State and citizenship of the State of Israel. It recognizes no other sovereignty or citizenship in connection therewith. It does not recognize a legal-political relationship based upon the religious identification of American citizens. It does not in any way discriminate among American citizens upon the basis of their religion.
> Accordingly, it should be clear that the Department of State does not regard the 'Jewish people' concept as a concept of international law."[28]

(28) Letter from Assistant Secretary of State Talbot to Dr. Elmer Berger, Executive Vice-President of the American Council for Judaism. April 20, 1964, *Digest of International Law* 35 (1967).

The founder of political Zionism gave the World Zionist Organization the qualification of a "state forming power." However the State of Israel was formed and the World Zionist Organization is still in a process of development. Thus it could be concluded that the role of Zionism in state formation is incomplete. At least this is what the existence of the World Zionist Organization after the establishment of the State of Israel denotes.

Should judgement then be made on the State of Israel now or in the future when it is developed to the extent conceived in Zionism? What should be the position of international law regarding a process of state formation like that undertaken by the Zionist effort?

The State of Israel, as it has been defined by Zionist leaders, is an instrument of Zionism. Zionism is an ideology which finds its material realization in the World Zionist Organization. This organization, which has no international status, is the prime mover of Israel.

II

LEGAL INSTRUMENTS FOR ISRAEL

In the last chapter Israel was defined within the terms of the basic elements of a state according to international law. A further definition can be obtained from the examination of the basic documents used by Zionists to bring that state about.

Although the Basle Programme of 1897 has no legal standing — it is from this that Zionism finds its basis and it must be examined before passing to the documents that have received — rightly or wrongly — some international recognition; the Balfour Declaration; the Mandate over Palestine; and the United Nations Partition Resolution on Palestine. For it is from these four documents that Zionism has put forward its claim to Palestine and founded Israel.

1. THE BASLE PROGRAMME — 1897

The First Zionist Congress was held in Basle, Switzerland, in August, 1897. The following draft resolution was the result of that meeting.

> "The aim of Zionism is to create for the Jewish people a publicly legally assured home in Palestine.

> In order to attain this the Congress adopts the following means :
> A. To promote the settlement in Palestine of Jewish agriculturalists, handicraftsmen, industrialists and those following professions.
> B. The centralization of the entire Jewish people by means of general institutions, agreeable to the laws of the land.
> C. To strengthen Jewish sentiment and national self-consciousness.
> D. To obtain sanction of governments to the carrying out of the objects of Zionism."[29]

The significance of this programme stems from the Zionist concept of a nation. Answering Major Evans Gordon, before the British Commission on alien immigration in August, 1902, Dr. Herzl said:

> "I will give you my definition of a nation, and you can add the adjective 'Jewish'. A nation is, in my mind, a historical group of men of a recognizable cohesion held together by a common enemy. That is in my view a nation. Then if you add to that the word 'Jewish' you have what I understand to be the Jewish nation."[30]

According to this definition, therefore, the First Zionist Congress may be viewed as a national assembly representing the will of the Jewish people. The legality of this assembly, in the Zionist context, is further confirmed by the position given in this ideology to what is termed the "Gestor." For if there was any doubt that the congressmen were representing the Jewish people,

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(29) Theodor Herzl, *The Jewish State, op. cit.*, editor's preface, p. x.
(30) *Ibid.*, p. 9 fn.

the allowance for a "Gestor's" position in Zionism removed this doubt.

The element of the superhuman is seen again in the Zionist deliberation. If the Basle Programme did not represent the will of the people *per se*, it represented a higher form of order binding upon the people — the Jewish nation.

Nevertheless what the First Zionist Congress did was to make public the "will" — the "wish" of the Jewish people. In other words, it promoted this "will" or "wish" to the form of law — a Zionist law. "The Jews wish for a state — they shall have it, and they shall earn it for themselves."[31]

In the same way that the Basle Programme put the will of the Jewish people into law, it also gave form to the "Jewish State."

> "If I were to sum up the Basle Congress in one word — at Basle I founded the Jewish state."[32]

From this simple conclusion, the Zionist effort started to seek public recognition for the Basle resolution. Again it is noticed that public recognition was requested in a special manner. Public recognition is given to states when they fulfil the requirements of statehood. In this case, however, public recognition was

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(31) Theodor Herzl, *The Jewish State, op. cit.*, Author's Preface, p. xx.

(32) Theodor Herzl's Diary Notes - Vienna 3rd September, 1897, quoted in the *Role and Function of the Zionist Congress*, (Jerusalem : Keren Hayesod, 1951), pp. 1-2.

requested by Zionism for the idea of a state — for a state that did not exist at all. But, definitely, a public recognition in this manner meant to the Zionist leaders a precommitment to recognise a state to come. Accordingly the public recognition for the Basle Programme was a recognition for a state in the making. It meant a blank endorsement on the part of the recognising governments for the Zionist activities necessary to bring their state into being.

It was the idea more than the practicality of the Basle Programme which dominated the minds of the Zionist leaders at the early stages. And, this is quite natural. However, the Zionist concept of a Jewish state in Palestine embodied dangerous implications.

A. The danger of imposing a Jewish state in Palestine by expelling the legal owners (original inhabitants).

B. The involvement of powers in a project the scope of which was not less than a perpetual process of colonization — not the formation of a state in the real sense of the word.

C. The danger of creating in modern history such a precedent which not only brought back to life the renounced concept of colonization, but also reestablished fanaticism and racialism in a modern guise.

D. The controversies that would ensue due to the difference between Zionist outlooks and understanding and the general

national and international norms and procedures.

What, in reality, the Basle Programme reflected should be viewed in two ways:

What it meant for the Zionists.

What it implied for the non-Zionists.

To the Zionists the Basle Congress of 1897 was a proclamation of their will which they were determined to establish as a binding law — a legislative decree within their own community — the Jewish people. Thus the concept of the Jewish nation, "one people," was given confirmation. Accordingly, this nation becomes sovereign regardless of the separate legal nationalities of its members. The Jewish nationality was thus given precedence over other nationalities.

As to the non-Zionist commitment to the recognition of the Zionist project, it was more of a complicated commitment than expected. There appear no legal indications into which such a commitment could fit. The resulting ambiguities of such an act complicate the issue further. The Balfour Declaration is one example. So is the Mandate over Palestine. The United Nations Resolution of 1947 to partition Palestine is another example.

2 *THE BALFOUR DECLARATION — 1917*

The Basle Programme was given recognition by Great Britain on November 2, 1917, in the form of a letter written by Lord Balfour in his capacity as Foreign

Secretary to Lord Rothschild. This document reads as follows:

> "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 this 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 the rights and political status enjoyed by Jews in any country."[33]

Zionist colonization in Palestine, however, had not waited for public recognition from any government. Thus it may be interpreted that:

A. Zionist law, as put into practice, depends primarily on the "will" of the Jewish people. In other words, the will of the people is the basic law.

B. Recognition of other powers is a secondary matter. It is a needed instrument. The Balfour Declaration served as this kind of instrument.

The superiority of the law of the Jewish nation comes to view again here. Herzl's judgement of the world order serves as a good example. He said: "The Jewish state is essential to the world, it will therefore be created."[34]

Although Zionism used public recognition for its

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(33) *Official Documents, Pledges and Resolutions*, (New York : The Palestine Arab Refugee Office, 1959), p. 12.

(34) Theodor Herzl, *The Jewish State*, Author's Preface, p. xix.

policies as instruments for its development and application, this very use served, at the same time, to expose the nature of these policies to the non-Zionists — a fact which began to work against Zionism. For example, a quick look at the Balfour Declaration shows:

i) The British Government views with favour the establishment of a National Home for the Jewish people in Palestine.

ii) This should not affect the civil and religious rights of non-Jewish communities in Palestine.

iii) This should not affect the political status enjoyed by the Jews in any country.

The first point agrees with Zionist colonization, the second posed the question of the reaction of the natives of Palestine which did not appear at all in the Basle Programme and the third point anticipated the state of unrest that would face the Jews due to the rising concept of Jewish nationality — a Zionist concept.

But Lord Balfour showed himself to be an exception in his explanation of his statement of policy. Thus he made the Balfour Declaration fit the Zionist comprehension of things and the order of their rule of precedence. In a speech delivered at a public demonstration held by the English Zionist Federation under the chairmanship of Lord Rothschild, Lord Balfour said:

> "For long I have been a convinced Zionist, and it is in that character that I come before you today, though in my most sanguine moments I never foresaw, I never even conceived, the possibili-

> ty that the great work of Palestinian reconstruction would happen so soon, or that indeed it was likely to happen in my own lifetime... Let us not forget in our feelings of legitimate triumph all the difficulties which still lie before us... Among these difficulties I am not sure that I do not rate the highest, or at all events first, the inevitable difficulty of dealing with the Arab question as it presents itself within the limits of Palestine... The second difficulty arises from the fact that the critics of this movement shelter themselves behind the principles of self-determination, and say that, if you apply that principle logically and honestly it is to the majority of the existing population of Palestine that the future destinies of Palestine should be committed... But looking back upon the history of the world, upon the history more particularly of all the most civilised portions of the world, I say that the case of Jewry in all countries is absolutely exceptional, falls outside all the ordinary rules and maxims, cannot be contained in a formula or explained in a sentence .. The case of the Jews is absolutely exceptional, and must be treated by exceptional methods... The third difficulty is of a wholly different order of magnitude and character. It is the physical difficulty... Palestine is but a small and petty country looked at as a geographical unit."[35]

With this line of reasoning, it was in order to issue such a statement as the Balfour Declaration when it contradicted prior obligations on the part of the British Government to the Arabs. Those obligations took a contractual form between Sharif Husain of Mecca, on behalf of the Arabs, and Sir Henry McMahon, His Majesty's High Commissioner in Cairo, representing Great Britain.

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(35) Israel Cohen, editor, *Speeches on Zionism,* (London : J.W. Arrowsmith Ltd., 1928), p. 21.

Accused in the House of Lords of this contradiction by Lord Islington, Lord Balfour said:

> "But that is not the only charge which my noble friend made. He told us also that we were doing a great injustice to the Arab race as a whole, and that our policy was in contradiction of pledges given by General McMahon... Of all the charges made against this country I must say that the charge that we have been unjust to the Arab race seems to me the strangest."[36]

In brief the contractual obligations between Great Britain and the Arabs took the following form of action.

A. A determination and a request from the Sharif of Mecca on behalf of the Arabs.

> "Whereas the entire Arab nation without exception is determined to assert its right to live, gain its freedom and administer its own affairs in name and in fact; and whereas the Arabs believe it to be in Great Britain's interest to lend them assistance and support in the fulfilment of their steadfast and legitimate aims to the exclusion of all other aims; and whereas it is similarly to the advantage of the Arabs, in view of their geographical position and their economic interests, and in view of the well-known attitude of the Government of Great Britain to prefer British assistance to any other; for these reasons, the Arab nation has decided to approach the Government of Great Britain with a request for the approval, through one of their representatives if they think fit... of the following basic provisions...
> 1. Great Britain recognises the independence of the Arab countries which are bounded: on the north, by the line Mersin-Adana to parallel 370

(36) *Ibid.*, p. 57.

N. and thence along the line Birejik - Urfa-Mardin - Midiat-Jazirat (Ibn Umar) - Amadia to the Persian frontier; on the east, by the Persian frontier down to the Persian Gulf; on the south, by the Indian Ocean (with the exclusion of Aden whose status will remain as at present); on the west, by the Red Sea and the Mediterranean Sea back to Mersin.

2. Great Britain will agree to the proclamation of an Arab Caliphate for Islam.

3. The Sharifian Arab Government undertakes, other things being equal, to grant Great Britain preference in all economic enterprises in the Arab countries.

4. With a view to ensuring the stability of Arab independence and the efficacy of the promised preference in economic enterprise, the two contracting parties undertake, in the event of any foreign state attacking either of them, to come to each other's assistance with all the resources of their military and naval forces; it being understood peace will be concluded only when both parties concur.

In the event of one of the two parties embarking upon a war of offence the other party will adopt an attitude of neutrality but, if invited to join, will agree to confer with the other party as to the conditions of joint action.

5. Great Britain agrees to the abolition of Capitulations in the Arab countries, and undertakes to assist the Sharifian Government in summoning an international congress to decree their abolition.

6. Clauses 3 and 4 of the present Agreement are to remain in force for a period of fifteen years. Should either party desire an extension, due notice of one year before the expiry of that period will have to be given."[37]

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(37) The Sharif Husain's First Note to Sir Henry McMahon : July 14, 1915, *Official Documents, Pledges and Resolutions*, (New York : the Palestine Arab Refugee Office, 1959), pp. 1-2.

B. An answer from the British Government through Sir Henry McMahon agreeing in principle to the offer of the Sharif.

> "In earnest of this, we hereby confirm to you the declaration of Lord Kitchener as communicated to you through 'Ali Efendi, in which was manifested our desire for the independence of the Arab countries and their inhabitants, and our readiness to approve an Arab caliphate upon its proclamation...
> We now declare once more that the government of Great Britain would welcome the reversion of the caliphate to a true Arab born of the blessed stock of the Prophet.
> As for the question of the frontiers and boundaries, negotiations would appear to be premature and a waste of time on details at this stage, with the War in progress and the Turks in effective occupation of the region."[38]

C. Further contractual negotiations were carried on between the Arabs and Great Britain in connection with the matter of the boundaries. Here it is worth mentioning the relevant points which were mentioned in the documents.

1. Great Britain suggested modifications in regard to the proposed boundaries of Arab independence. The modifications that may bear some relevance to Palestine are as follows :

> "The district of Mersin and Alexandretta, and portions of Syria lying to the west of the districts

(38) Sir Henry McMahon's First Note to the Sharif Husain, August 30, 1915, *op cit.*, p. 2.

of Damascus, Homs, Hama and Aleppo, cannot be said to be purely Arab, and must on that account be excepted from the proposed delimitation..."[39]

2. The Arab answer was:

"In order to facilitate agreement and serve the cause of Islam by the removal of possible sources of hardship and tribulation, and in earnest of the particular esteem in which we hold Great Britain, we no longer insist on the inclusion of the districts of Mersin and Adana in the Arab kingdom. As for the villayets of Aleppo and Beirut and their western maritime coasts, these are purely Arab provinces in which the Moslem is indistinguishable from the Christian, for they are both the descendants of one forefather. And we Moslems intend, in those provinces, to follow the precepts laid down by the commander of the faithful, 'Umar Ibn Al-Khattab (God have mercy upon him), and the callphs who came after him, when he enjoined upon the Moslems to treat the Christians on a footing with themselves..."[40]

3. Great Britain responded with reservations due to the war conditions and her alliance with France.

"As for the two villayets of Aleppo and Beirut, the Government of Great Britain have fully understood your statement in that respect and noted it with the greatest care. But as the interests of their ally France are involved in those two provinces, the question calls for careful consider-

(39) Sir Henry McMahon's Second Note to the Sharif Husain, October 24, 1915, *op. cit.*, pp. 3-4.

(40) The Sharif Husain's Third Note to Sir Henry McMahon, November 5, 1915, *op. cit., pp.* 5-6.

> ation. We shall communicate again with you on this subject, at the appropriate time."[41]

However, assurance was made to the Arabs of the earnestness of Great Britain for their liberation and freedom.

> "In these circumstances the Government of Great Britain have authorised me to declare to your Lordship that you may rest confident that Great Britain does not intend to conclude any peace whatsoever, of which the freedom of the Arab peoples and their liberation from German and Turkish domination do not form an essential condition."[42]

4. The Sharif acknowledged his cooperation with Great Britain to win the war by consenting not to impair her friendship with her ally, France. But he stressed the claim of the Arabs to the mentioned districts as soon as the war was over. He said:

> "We have felt bound to steer clear of that which might have impaired the alliance between Great Britain and France and their concord during the calamities of the present war. On the other hand — and this your excellency must clearly understand — we shall deem it our duty, at the earliest opportunity after the conclusion of the war, to claim from you Beirut and its coastal regions which we will overlook for the moment on account of France.. Any concession designed to give France or any other power possession of a

(41) Sir Henry McMahon's Third Note to the Sharif Husain December 13, 1915, *op. cit.*, p. 7.

(42) Sir Henry McMahon's Third Note to the Sharif Husain, December 13, 1915, *op. cit.*, p. 8.

> single square foot of territory in those parts is quite out of the question."[43]

5. Britain was satisfied with the comments of the Arabs concerning the importance of the alliance with France.

> "As for the northern regions, we note with great satisfaction your desire to avoid anything that might impair the alliance between Great Britain and France."[44]

There is silence about the other comments of Husain concerning the status of the mentioned regions after the war. This silence together with the earlier general promises for Arab freedom and liberation, means one thing and that is the consent of Great Britain to these comments.

From a legal viewpoint the Husain-McMahon correspondence has a stronger binding force than the Balfour Declaration. This is because:

A. In general, the two parties of the Husain-McMahon correspondence were eligible parties to carry out contractual agreements. Lord Balfour, however, promised the Jews Palestine, an area which was not under the British dominion, nor was it Jewish.

B. When on the one hand Great Britain was binding itself to get the support of the Arabs against the Turks

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(43) The Sharif Husain's Fourth Note to Sir Henry McMahon, January 1, 1916, *op cit.*, p. 8-9.

(44) Sir Henry McMahon's Fourth Note to the Sharif Husain, January 30, 1916, *op. cit.*, p. 9.

and the Germans, that is to free the Arabs from the Turkish rule, it was through the Balfour Declaration, on the other hand, signing a pact with the Jews against the Arabs. This means that Great Britain while signing a pact of friendship with the Arabs was at the same time signing a pact of enmity against them with the Jews. For the Jewish colonization in Palestine as the early Zionist viewed the case was an act of conquest. The following literature was written in the introduction of *The Keren Hayesod Book — Colonisation Problems of the Eretz-Israel (Palestine) Foundation Fund :*

> "The peaceful method of conquest called colonization has, in our days, undergone the same transformation as the methods of conquest by force of arms called war. In olden days both required men rather than money. The cost of the Napoleonic Wars would seem ridiculous compared to modern standards, even in proportion to the numbers of men employed. The same can be said, roughly speaking, of colonization as it was in the past. Conditions, now, have changed. The proportion between numbers of men and amounts of money required has shifted enormously in favour of the second element in both war and colonization.
>
> The first European settlers in America or Australia, once landed on new shore, needed hardly any money to go on with. As to land—it was unoccupied, and theirs for taking; even if in possession of some native tribe it was 'purchased' by rough and ready methods, dangerous but cheap. They built their cabins of logs for which they paid nothing; they shot wild game for food; in the winter they dressed in bear skins which cost them just one gunload of lead. And water was richly provided by nature, free of charge.
>
> Modern pioneering in Palestine develops under

> quite different conditions. The task confronting us is much more complex and exacting than the problems with which an ordinary constituted state has usually to deal: it is the *creation* of a state. In modern times, colonization on such a scale has only been undertaken by Governments, and if we wish to succeed we must adopt, as much as possible the methods, the conceptions, the very mentality of a constituted nation led by a constituted Government. The whole of our success or failure depends on the ability of the Jewish people to rise to this height of political consciousness. We feel confident that it will."[45]

Thus it is very clearly seen that the spirit of law is contradicted by what had been negotiated with the Arabs and what had been expressed in the Balfour Declaration to the Jews. If these documents are to be weighed in law, other things being equal, the following are derived:

A. The Husain-McMahon correspondence was prior to the Balfour Declaration and since there was no agreement between Britain and the Arabs to rescind the Agreement contained in that correspondence, it takes precedence over the Balfour Declaration.

B. Although the Arabs were at that time under the Turkish Empire, Sherif Husain was an accepted Arab leader negotiating on behalf of the Arab people, whose lands wehe being discussed. Lord Rothschild was a private citizen, a British subject, and in no way a representative of the Jewish nation. For in international law no such thing as a Jewish nation

(45) The Publicity Department of the 'Keren Hayesod', *The Keren Hayesod Book - Colonisation Problems of The Eretz - Israel (Palestine) Foundation Fund,* (London: Leonard Parsons, Ltd., 1921), pp. 9-14.

existed.

Yet to Lord Balfour there appeared no contradiction in the British policy. For he saw in the Zionist endeavour a kind of economic enterprise which would enrich the area and at the same time create a National Home for the Jews who accordingly could express their own traditions and culture.

> "... But if the population who were trampled under the heel of the Turk until the end of the war are really to gain all the benefits that they might, it can only be by the introduction of the most modern methods, fed by streams of capital from all parts of the world, and that can only be provided, so far as I can see, by carrying out this great scheme which the vast majority of the Jews — not all, I quite agree, and very often, perhaps commonly, not the wealthiest — the great mass of the Jews in east and west and north and south believe to be a great step forward in the alleviation of the lot which their race has had too long to bear. I do not think I need dwell upon this imaginary wrong which the Jewish Home is going to inflict upon the local Arabs...
> But we have never pretended, certainly I have never pretended, that it was purely from these materialistic considerations that the Declaration of November, 1917, originally sprung. I regard this not as a solution, but as a partial solution of the great and abiding Jewish problem... But their position (the Jews) and their history, their connection with world religion and with world politics, is absolutely unique... We should then have given them what every other nation has, some place, some local habitation, where they can develop the culture and the traditions which are peculiarly their own."[46]

(46) Israel Cohen, editor, *Speeches on Zionism, op. cit.*, pp. 55-63.

The confirmation of the Balfour Declaration in the Articles of the Mandate over Palestine was in accord with Lord Balfour's interpretation of events. The broader framework of Great Britain's agreements with the Arabs allows for the incoming of a group like the Jews.

This was the attitude of Lord Balfour and even after the following declarations were made by the Allies:

i. The Anglo-French Declaration of November 7, 1918.

> "The goal envisaged by France and Great Britain in prosecuting in the East the war set in train by German ambition is the complete and final liberation of the peoples who have for so long been oppressed by the Turks, and the setting up of national governments and administrations that shall derive their authority from the free exercise of the initiative and choice of the indigenous population."[47]

ii. The British Government Declaration to the Seven Arabs, June 16, 1918.

> "With regard to the territories occupied by the Allied armies His Majesty's Government's policy towards the inhabitants of those regions, is that the future government of those territories should be based upon the principles of the consent of the governed. This policy will always be that of His Majesty's Government."[48]

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(47) *Official Documents, Pledges and Resolution, op. cit.*, p. 15.

(48) *Ibid.*, p. 14.

Again Lord Balfour attempted to cover these facts with an exceptional justification. The confirmation of the Balfour Declaration in the Articles of the Mandate seemed to him to be an act of partnership between Great Britain and the Zionists.

> "We are embarked on a great adventure and I say 'we' advisedly, and by 'we' I mean on the one side the Jewish people, and I mean, on the other side, the Mandatory Power of Palestine. We are partners in this great enterprise. If we fail you, you cannot succeed. If you fail us, you cannot succeed. But I feel assured that we shall not fail you and that you will not fail us; and if I am right as I am sure I am, in this prophecy of hope and confidence, then surely we may look forward with a happy gaze to a future in which Palestine will indeed, and in the fullest measure and degree of success, be made a home for the Jewish people."[49]

This partnership was envisaged as an economic enterprise and not as a political alliance. Accordingly there is, in principle, no refutation of the promises made to the Arabs. In support of this Lord Balfour said:

> "I cannot imagine any political interests exercised under greater safeguards than the political interests of the Arab population of Palestine. Every act of the Government will be jealously watched. The Zionist organisation has no attribution of political power. If it uses or usurps political powers it is an act of usurpation."[50]

Defending the partnership he also said:

(49) Israel Cohen, editor, *Speeches on Zionism*, pp. 30-31.
(50) *Ibid.*, p. 47.

> "I have endeavoured to defend it from the point of view of the existing population, and I have shown — I hope with some effect — that their prosperity (the Arabs) also is intimately bound up with the success of Zionism."[51]

With this simple and superficial interpretation, Lord Balfour tried to prove that the British behaviour towards the Zionists was not in conflict with the pledges to the Arabs.

3. *THE MANDATE OVER PALESTINE*

The mandate system introduced by the League of Nations presented to the Zionists a new international framework of order in which to develop their project.

Article 22 of the Covenant of the League of Nations, which introduced the mandate system, stated:

> "1. To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the states which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilisation and that securities for the performance of this trust should be embodied in this Covenant.
> 2. The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations who by reason of their resources, their experience or their

(51) *Ibid.*, p. 63.

geographical position can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as Mandatories on behalf of the League.

3. The character of the mandate must differ according to the stage of the development of the people, the geographical situation of the territory, its economic conditions and other similar circumstances.

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

5. Other peoples, especially those of Central Africa, are at such a stage that the Mandatory must be responsible for the administration of the territory under conditions which will guarantee freedom of conscience and religion, subject only to the maintenance of public order and morals, the prohibition of abuses such as the slave trade, the arms traffic and the liquor traffic, and the prevention of the establishment of fortifications or military and naval bases and of military training of the natives for other than police purposes and the defence of territory, and will also secure equal opportunities for the trade and commerce of other Members of the League.

6. There are territories, such as South-West Africa and certain of the South Pacific Islands, which, owing to the sparseness of their population, or their small size, or their remoteness from the centres of civilisation, or their geographical contiguity to the territory of the Mandatory, and other circumstances, can be best administered under the laws of the Mandatory as integral portions of its territory, subject to the safeguards above mentioned in the interests of the indigenous population.

7. In every case of mandate, the Mandatory shall

render to the Council an annual report in reference to the territory committed to its charge.
8. The degree of authority, control or administration to be exercised by the Mandatory shall, if not previously agreed upon by the Members of the League, be explicitly defined in each case by the Council.
9. A permanent Commission shall be constituted to receive and examine the annual reports of the Mandatories and to advise the Council on all matters relating to the observance of the mandates."[52]

The basic elements of the system of the mandate — its principles — are reflected in the following points:

The mandate is a "sacred trust of civilisation."

The mandate is an "act of tutelage."

The acceptance of the mandate entails an obligation. A trustee in this case is to ensure the well-being and development of the people of the territories concerned. There is a double responsibility : responsibility to the international community in the form of the League and responsibility to the nationals of the territories under the mandate. Thus both the League and the nationals are put in an international legal position to pass judgement upon the action of the trustee — the mandatory power.

"Tutelage" emphasizes the moral aspects of the "trust" and at the same time the presence of a time element, after which the people under the mandate become ready to run their affairs on their own.

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(52) Secretariat of the League of Nations, *Ten Years of World Co-operation*, (London: Hazell, Watson & Viney, Ltd., 1930), pp. 427-428.

Here it is significant to refer to the divisions of the mandate system into categories:

A-Mandates — Syria and Lebanon, Palestine and Transjordan, Iraq.

B-Mandates -- the Cameroons, Togoland, Tanganyika, Ruanda Urundi.

C-Mandates -- South-West Africa and the South Pacific Islands.

A-Mandates were in conformity with paragraph 4 of Article 22 of the Covenant of the League: "Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognised..."

It is important to note the recognition by the League of the independence of Syria, Lebanon, Palestine, Transjordan and Iraq as provisional independence "subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone."

In addition to recognition of the provisional independence of these territories the Covenant of the League stated the significance of the "wishes of these people." "The wishes of these communities must be a principal consideration in the selection of the Mandatory."

The Covenant of the League thus:

i Recognised provisionally the independence of

Palestine.

ii. Gave the Mandatory power an advisory and assistantship role.

iii. Made the "wishes" of the Palestinians a principal consideration in the choice of the Mandatory. This implies that these wishes shall be the principal consideration in the functioning of the mandate and its termination.

Compared with these international principles, the draft of the Mandate over Palestine appeared very peculiar. It tried to maintain Article 22 of the League of Nations and at the same time it tried to negate it.

> "Whereas the Principal Allied Powers have agreed, for the purpose of giving effect to the provisions of Article 22 of the Covenant of the League of Nations, to entrust to a Mandatory selected by the said Powers the administration of the territory of Palestine, which formerly belonged to the Turkish Empire, within such boundaries as may be fixed by them; and:
> Whereas the Principal Allied Powers have also agreed that the Mandatory should be responsible for putting into effect the declaration originally made on November 2nd, 1917, by the Government of His Britannic Majesty, and adopted by the said Powers, in favour of the establishment in Palestine of a national home for the Jewish people, it being clearly understood that nothing should be done which might prejudice the civil and religious rights of existing non-Jewish communities in Palestine, or the rights and political status enjoyed by Jews in any other country."[53]

(53) John Marlowe, *The Seat of Pilate*, (London : The Cresset Press, 1959), p. 267.

The inclusion of the Balfour Declaration in the text of the Mandate served as a complete negation of the principles of provisional independence stated in paragraph four of Article 22 of the Covenant of the League of Nations.

The text of the British Mandate over Palestine further included that:

> "The Mandatory shall be responsible for placing the country under such political, administrative and economic conditions as will secure the establishment of the Jewish national home, as laid down in the preamble, and the development of self-governing institutions, and also for safeguarding the civil and religious rights of all the inhabitants of Palestine, irrespective of race and religion.
> An appropriate Jewish agency shall be recognised as a public body for the purpose of advising and co-operating with the Administration of Palestine in such economic, social and other matters as may affect the establishment of the Jewish national home and the interests of the Jewish population in Palestine, and, subject always to the control of the Administration, to assist and take part in the development of the country.
> The Zionist organisation, so long as its organisation and constitution are in the opinion of the Mandatory appropriate, shall be recognised as such an agency. It shall take steps in consultation with His Britannic Majesty's Government to secure the cooperation of all Jews who are willing to assist in the establishment of the Jewish national home...
> The Administration of Palestine shall be responsible for enacting a nationality law. There shall be included in this law provisions framed so as to facilitate the acquisition of Palestinian citizenship by Jews who take up their permanent residence in Palestine."[54]

(54) *Ibid.*, pp. 268-269.

The main object of the mandate system which was to ensure the "well-being and development" of the territories concerned as a "sacred trust of civilisation," became termed in a different way in the articles of the British Mandate over Palestine. The creation of conditions in the country to promote the establishment of the Jewish national home became the real trust of the British power. In other words, the fate of the majority in Palestine became subjugated to the "wish" of the minority. (According to 1922 census the total population of the country was 752,048. The Moslems were 589,177, the Jews 83,790, the Christians 71,464 and other religous groups included 7,617 individuals. Thus the percentage of the Jews from the total represented only 11%.[55] It should be pointed out here that even this percentage does not show the number of Jews who were established in the country and assimilated in the society. This is because of the immigration of thousands of Jews as a result of the Balfour Declaration. This reduces the percentage of the established Jews to a very insignificant level in deciding the fate of Palestine.)

Nevertheless, to overcome criticism in this respect, it seems that in the views of the powers who drafted the Mandate and the Zionist authorities the wish of the Jewish minority in Palestine was representative of world Jewry. Thus, accordingly the text of the Mandate gave recognition to the World Zionist Organisation as a public

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(55) F. J. Jacoby, editor, *The Anglo-Palestine Year Book 1947-1948*, (London : The Anglo-Palestine Publication Ltd., 1947), p. 13.

body sharing the trust of establishing a Jewish national home with the mandatory power — coming into partnership with it.

Once more in the case of Palestine exceptions are made. The following exceptions are distinguished:

1. Instead of acting as a guardian to the inhabitants of the country, the indigenous people, the mandate over Palestine had the main purpose of promoting the incoming of outsiders.

2. Instead of promoting the recognised state of provisional independence of Palestine as implied in Article 22 of the Covenant of the League of Nations, the Mandate over Palestine undertook to transform the national character of the country paving the way for the expulsion of one nationality, the Arab majority, to be replaced by another nationality, the immigrant Jews.

3. Tutelage was carried in cooperation with a power, the Zionist Organisation, which is uninterested in the development of the national Palestine community.

4. A recognition of the World Zionist Organisation as a public body was, in effect, a recognition of the "state forming power" and of the governing institutions that may develop there from the new Jewish nation and its government.

These were the principles of the draft of the Mandate over Palestine. But it was not very satisfactory for the Zionists.

> "These boundaries and this Mandate, unsatisfactory as they are, do they afford us sufficient space and protection for immediately starting the work of colonisation? To this question the only reply can be: Yes."[56]

However, the Mandate served as a colonisation charter. Yet its significance as a written document is not to be compared with the wishes and energy of the Jewish masses.

> "Effort and energy are also the best and only remedies for whatever defects the Mandate or the boundaries agreement may contain. Live force, the force of masses, and the weight of their collective wealth, are stronger than any words written or omitted."[57]

The Mandate served as an instrument for colonisation but not enough of an instrument. The deficiency which seemed to be grave in the view of the Zionists was that the Mandate did not cover enough land for the requirements of the Jewish national home.

The Litani waters were outside the Mandate, so was Transjordan. Also parts of the area under the French mandate should have been included under the Mandate over Palestine. In spite of these deficiencies, according to the Zionists, they preferred to start their effort for the building of the Jewish national home within the circumstantial limits of the Mandate.

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(56) The Publicity Department of the 'Keren Hayesod', *The Keren Hayesod Book — Colonisation Problems of the Eretz-Israel (Palestine) Foundation Fund*, p. 24.

(57) *Ibid.*, p. 31.

> "It is much to be regretted that we must abandon, for the present, all plans concerning the Litani; and even the Yarmuk, when concessions are foreshadowed, will hardly tempt Jewish enterprise in any appreciable measure since the river and the whole district has been separated from Palestine...
> Transjordania is a part of the mandatory area under the same High Commission as Judea, Samaria or Galilee. This is a fact of the new international law established by international legislation and which could only be changed by the same cumbersome procedure. The special regime of Transjordania, on the contrary, is, legally speaking a one-sided act of the British Government, which can be changed with the same ease as it was decreed. We do not mean to imply that we consider this act as proof against criticism, even severe criticism; but there is, in any case, no legal obstacle to the liquidation of this special regime, and to the establishment in Transjordania of a system similar to that of Cis-Jordania as soon as Jewish colonisation beyond the river begins to change the character of the country...
> Furthermore, even the French zone of Palestine should not be considered as closed against Jewish colonisation. France has also signed the Balfour Declaration and the decision of San Remo, by which she has undertaken to further the National Home scheme within her sphere of influence. It is of course, questionable whether we can afford it at the present moment. But in principle the area open to Jewish colonisation, and, eventually, reserved for the establishment of the Jewish National Home is not limited to the British mandatory zone."[58]

Zionist dissatisfaction with the boundaries of the Mandate implied the nature of their colonisation process.

(58) *Ibid.*, pp. 25-26.

> "The first European settlers in America had to build for themselves, not for others to come. Their example, their success, incited thousands, even millions to follow them; but this was the result of their toil, not its object. The object of the modern Jewish pioneer in Palestine is to prepare room and work for the thousands and millions that wait outside."[59]

It also implied an inherent recognition of the realities, and hard realities, which faced the implementation of the Zionist colonisation of the scale that was desired.

> "But is there really any possibility of finding room for ourselves without expelling others? A few figures will most effectually serve to dispel this doubt.
>
> If we estimate the proportion of the surface of Palestine which is fit for cultivation at some 20,000,000 dunums (4,000,000 acres), and the number of agricultural holdings in Palestine at 80,000 to 100,000; and if, further, we consider the area needed for each holding as 100 dunums, we shall find that at least 100,000,000 dunums are available for settlement by Jews, retaining the same estimate for 100,000 families. If modern intensive methods are adopted, the number could be considerably increased.
>
> Now arises a second very important question. To whom does this land belong, and is it possible for us to acquire it for our colonisation? In considering this question we may divide the soil of Palestine into the following four classes: (a) No-man's land; (b) occupied but unregistered land; (c) State lands; (d) land privately owned;.. The good land can, as a rule, only be obtained from private owners."[60]

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(59) *Ibid.*, p. 10.
(60) *Ibid.*, pp. 46-47.

This recognition of the complex and hard realities of the total situation created in Palestine by the Basle Programme, the Balfour Declaration and the Mandate — that it was impossible to create a home for the Jews there without expelling the Arab natives — though expressed in this simple way by the Zionists, reflects a deep understanding of the nature of their colonisation process and its long-term implications.

It is of significance to refer at this point to quotations from the recommendations of the King-Crane Commission with regard to Syria-Palestine. (With the approval of the Supreme Council at the Paris Conference, President Wilson sent Dr. Henry C. King, president of Oberlin College, and Charles Crane, a businessman, to the Middle East to report on the situation there.)

> "We recommend, in the fifth place, serious modification of the extreme Zionist programme for Palestine of unlimited immigration of Jews, looking finally to making Palestine distinctly a Jewish state.
> (1) The Commissioners began their study of Zionism with minds predisposed in its favour, but the actual facts in Palestine coupled with the force of the general principles proclaimed by the Allies and accepted by the Syrians have driven them to the recommendations here made.
> (2) The Commission was abundantly supplied with literature on the Zionist programme by the Zionist commission to Palestine; heard in conference much concerning the Zionist colonies and their claims; and personally saw something of what had been accomplished. They found much to approve in the aspirations and plans of the Zionists, and had warm appreciation for the devotion of many of the colonists, and for their success, by modern methods, in overcoming great

natural obstacles.
(3) The Commission recognised also that definite encouragement had been given to the Zionists by the Allies in Mr. Balfour's often quoted statement, in its approval by other representatives of the Allies. If, however, the strict terms of the Balfour statement are adhered to — favouring the establishment in Palestine of a national home for the Jewish people, it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine — it can hardly be doubted that the extreme Zionist programme must be greatly modified.

For a national home for the Jewish people is not equivalent to making Palestine into a Jewish state; nor can the erection of such a Jewish state be accomplished without the gravest trespass upon the civil and religious rights of existing non-Jewish communities in Palestine. The fact came out repeatedly in the Commission's conferences with Jewish representatives, that the Zionists looked forward to a practically complete dispossession of the present non-Jewish inhabitants of Palestine, by various forms of purchase. In his address of July 4, 1918, President Wilson laid down the following principles as one of the four great 'ends for which the associated peoples of the world were fighting': 'The settlement of every question, whether of territory, of sovereignty, of economic arrangement, or of political relationship upon the basis of the free acceptance of that settlement by the people immediately concerned, and not upon the basis of the material interest or advantage of any other nation or people which may desire a different settlement for the sake of its own exterior influence or mastery.' If that principle is to rule, and so the wishes of Palestine's population are to be decisive as to what is to be done with Palestine, then it is to be remembered that the non-Jewish population of Palestine—nearly nine-tenths of the whole —are emphatically against the entire Zionist

programme. The tables show that there was no one thing upon which the population of Palestine were more agreed than upon this. To subject a people so minded to unlimited Jewish immigration, and to steady financial and social pressure to surrender the land, would be a gross violation of the principle just quoted, and of the people's rights, though it kept within the forms of law.

It is to be noted also that the feeling against the Zionist programme is not confined to Palestine, but shared very generally by the people throughout Syria, as our conferences clearly showed. More than seventy two per cent — 1,350 in all — of all the petitions in the whole of Syria were directed against the Zionist programme. Only two requests — those for a united Syria and for independence — had a larger support. This general feeling was duly voiced by the General Syrian Congress in the seventh, eighth and tenth resolutions of the statement.

The Peace Conference should not shut its eyes to the fact that the anti-Zionist feeling in Palestine and Syria is intense and not lightly to be flouted. No British officer, consulted by the Commissioners, believed that the Zionist programme could be carried out except by force of arms. The officers generally thought that a force of not less than 50,000 soldiers would be required even to initiate the programme. That of itself is evidence of a strong sense of the injustice of the Zionist programme, on the part of the non-Jewish population of Palestine and Syria. Decisions requiring armies to carry them out are sometimes necessary, but they are surely not gratuitously to be taken in the interests of serious injustice. For the initial claim, often submitted by Zionist representatives, that they have a 'right' to Palestine, based on an occupation of 2,000 years ago, can hardly be seriously considered.

There is a further consideration that cannot justly be ignored, if the world is to look forward to Palestine becoming a definitely Jewish state,

however gradually that may take place. That consideration grows out of the fact that Palestine is the Holy Land for Jews,Christians, and Moslems alike. Millions of Christians and Moslems all over the world are quite as much concerned as the Jews with conditions in Palestine, especially with those conditions which touch upon religious feeling and rights. The relations in these matters in Palestine are most delicate and difficult. With the best possible intentions, it may be doubted whether the Jews could possibly seem to either Christians or Moslems proper guardians of the Holy Places, or custodians of the Holy Land as a whole.

The reason is this: The places which are most sacred to Christians — those having to do with Jesus—and which are also sacred to Moslems, are not only not sacred to Jews, but abhorrent to them. It is simply impossible, under those circumstances, for Moslems and Christians to feel satisfied to have these places in Jewish hands, or under the custody of Jews. There are still other places about which Moslems must have the same feeling. In fact, from this point of view, the Moslems, just because the sacred places of all three religions are sacred to them, have made very naturally much more satisfactory custodians of the Holy places than the Jews could be. It must be believed that the precise meaning in this respect of the complete Jewish occupation of Palestine has not been fully sensed by those who urge the extreme Zionist programme. For it would intensify, with a certainly like fate, the anti-Jewish feeling both in Palestine and in all other portions of the world which look to Palestine as the Holy Land.

In view of all these considerations, and with deep sense of sympathy for the Jewish cause, the Commissioners feel bound to recommend that only a greatly reduced Zionist programme be attempted by the Peace Conference, and even that, only very gradually initiated. This would have to mean that Jewish immigration should be

> definitely limited, and that the project for making Palestine distinctly a Jewish commonwealth should be given up."[61]

The above judgement of the situation was submitted in August 1919. Nevertheless the Zionist programme was pushed for incorporation in the Mandate over Palestine. This instrument was, however, still short of the Zionists leaders' aspirations.

In 1942 the Zionist leaders declared the obsolesence of the Mandate. Instead, they substituted the Biltmore Programme.

> "In our generation, and in particular in the course of the past twenty years, the Jewish people have awakened and transformed their ancient homeland; from 50,000 at the end of the last war their numbers have increased to more than 500,000. They have made the waste places to bear fruit and the desert to blossom. Their pioneering achievements in agriculture and in industry, embodying new patterns of cooperative endeavour, have written a notable page in the history of colonisation...
>
> The conference declares that the new world order that will follow victory cannot be established on foundations of peace, justice and equality, unless the problem of Jewish homelessness is finally solved.
>
> The conference urges that the gates of Palestine be opened; that the Jewish Agency be vested with control of immigration into Palestine and with the necessary authority for upbuilding the country, including the development of its unoccupied and uncultivated lands; and that Palestine be established as a Jewish Commonwealth inte-

(61) *Official Documents, Pledges and Resolutions on Palestine, op. cit.*, pp. 20-22.

grated in the structure of the new democratic world."[62]

The implications of the programme may be stated as follows:

A. The achievements of the Zionists in Palestine accord with a strategy by which they develop and advance on their own. The Mandate regime, accordingly, represses this development and hinders its free course. (The Biltmore Conference was a direct reaction to the British Government White Paper of 1939 which limited the number of Jewish immigrants to Palestine.)

B. The establishment of a Jewish Commonwealth all over Palestine. The concept of a Jewish National Home in Palestine was thus superseded by the emphasis on a Jewish Commonwealth. Actually in this manner the paradoxical relationship between the concept of the Jewish National Home and the reality of Jewish colonization was corrected. A Jewish Commonwealth, as a concept, reflected clearly the achievements of Jewish colonization which the Zionists spoke about with pride -- "have written a notable page in the history of colonization."

C A call for a different type of public recognition from that of the Mandate to insure the promotion of the Jewish Commonwealth — the promotion of the Jewish National Home at the new stage of its development. "The new world order that will follow victory cannot be estab-

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(62) Fred Khouri, *The Arab-Israeli Dilemma*, (New York · Syracuse University Press, 1968), pp. 362-363.

lished on foundations of peace, justice and equality, unless the problem of Jewish homelessness is finally solved."

The problem of Jewish homelessness discussed at the Biltmore Conference was not different, in the Zionist understanding, from that which was discussed at the Basle Conference in 1897.

The perpetual process of the Ingathering of the Exiles, a process of putting an end to Jewish homelessness, was now found at a different level of development, seeking international assistance.

At that moment of need, the United Nations Resolution of 1947 for the partitioning of Palestine into an Arab and a Jewish state, was manipulated by the Zionists as an instrument for the consolidation of their colonisation programme and its expansion along its necessary and innate trend.

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4 *UNITED NATIONS GENERAL ASSEMBLY RESOLUTION*

The British Mandate over Palestine failed to lead the country to independence and self-government — the main goal of a mandate system as implied in the Covenant of the League of Nation. It is quite obvious that the incorporation of the Jewish National Home concept in the Articles of the Mandate over Palestine was the direct cause for

this failure. For it was this incorporation which alienated the mandate system over Palestine from the genuine role of a mandate.

In the following quotation, the British Government confirms this.

> "The Government of Palestine were unable to make comparable progress towards the accomplishment of their third task, the preparation of the people for self-government, owing to the mutual hostility of Arabs and Jews. The existence of Arab opposition to the creation of a Jewish national home was apparent even before the Mandate began. The American King-Crane Commission sent out to the Middle East by President Wilson in 1919 had reported that: 'The Peace Conference should not shut its eyes to the fact that the anti-Zionist feeling in Palestine and Syria is intense and not lightly to be flouted. No British officer, consulted by the Commissioners, believed that the Zionist Programme could be carried out except by force of arms!'"[63]

The tampering with the mandate system, specified in the Covenant of the League of Nations, by the adoption of the Balfour Declaration not only prevented the British Mandate over Palestine from leading the country in true national development and thus fulfilling the concept of real self-determination of the people, but also prepared Palestine for the worst conditions of struggle and strife -- a great setback to what was described in the Covenant of the League of Nations as "provisional independence."

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(63) The Colonial Office and Foreign Office, *Palestine Termination of the Mandate 15th May, 1948,* (London: His Majesty's Stationery Office, 1948), p. 5.

> "The first outbreaks of anti-Jewish violence took place in 1920 and 1921. These were followed by more serious disturbances in 1929... By far the most serious outbreak of Arab violence, however, was the rebellion of 1936-1939... In all some 4000 people were killed and two divisions of British troops, together with several squadrons of R.A.F., had to be employed to suppress the rising, a task not completed until the end of 1939."[64]

Commenting on the Government statement of policy in the form of the White Paper of 1939 in which it was declared that "no further Jewish immigration would be permitted, unless the Arabs of Palestine were prepared to acquiesce in it," the British authorities stated:

> "The Jews, on the other hand, were bitterly opposed to it and its publication was immediately followed by an outburst of Jewish violence, which continued until the beginning of the war... 1939 also saw the beginning of organised attempts by large numbers of Jews to enter Palestine in excess of the permitted quota. These attempts have continued ever since, and, by exacerbating Arab resentment, have greatly increased the difficulty of maintaining law and order in Palestine... The control of illegal immigration not only burdened still further the British forces in Palestine and the Royal Navy, but was also the principal cause of the steady increase in Jewish terrorist activities... 84,000 troops, who received no co-operation from the Jewish community, had proved insufficient to maintain law and order in the face of a campaign of terrorism waged by highly organised Jewish forces equipped with all the weapons of the modern infantryman."[65]

(64) *Ibid.*, pp. 5-6.
(65) *Ibid.*, pp. 7-10.

Faced with the development of strife, renunciation of the Mandate on the part of the Zionists, and the dissolution of the League of Nations, Great Britain declared its intention to terminate the Mandate over Palestine and to submit the problem to the judgement of the United Nations, asking that body to recommend a solution.

In a speech to the House of Commons on 10th February, 1947, His Majesty's Principal Secretary of State for Foreign Affairs said:

> "His Majesty's Government have been faced with an irreconcilable conflict of principles. There are in Palestine about 1,200,000 Arabs and 600,000 Jews. For the Jews the essential point of principle is the creation of a sovereign Jewish state. For the Arabs, the essential point of principle is to resist to the last the establishment of Jewish sovereignty in any part of Palestine. The discussions of the last month have quite clearly shown that there is no prospect of resolving this conflict by any settlement negotiated between the parties. But if the conflict has to be resolved by an arbitrary decision, that is not a decision which His Majesty's Government are empowered, as Mandatory, to take. His Majesty's Government have of themselves no power, under the terms of the Mandate, to award the country either to the Arabs or to the Jews, or even to partition it between them."[66]

Legal Backgound

The legal background of the problem of Palestine deserves a brief repetition as the case was submitted to

(66) *Ibid.*, p. 6.

the United Nations.

1. British pledges and Allied declarations to the Arabs were legally irreconcilable with the Balfour Declaration.

2. Also, the contradictions implied in the articles of the draft of the Mandate over Palestine threw some light on the development of the situation in the country, giving effect to the incompatibility of the legal standing of this Mandate with that of the Covenant of the League of Nations and in particular Article 22 of the Covenant.

3. The position of Palestine in international law, upon the dissolution of the League of Nations and upon the declaration of the British Mandate over Palestine to terminate the mandate, became a vital point necessary for any settlement of the problem.

4. Another vital question came to view upon the British Government's declaration to end its mandate at a time of increased strife and that was to what extent Great Britain was to be accused, from a legal viewpoint, of leaving the scene at a critical moment in the history of Palestine.

a. In the spirit of the mandate, Great Britain was a trustee. At critical moments, an act of trusteeship or tutelage is to be judged in international law in the same manner it is to be judged in private law.

b. From a legal viewpoint, it was more in line with the spirit of the mandate to handle the situation in Palestine as a domestic matter rather than to submit it to the United Nations.

c. The power of the United Nations, under the

terms of its Charter, regarding territories under mandate, is limited to Chapter XII - International Trusteeship System. In principle, the nature of the mandate over Palestine, as classified in the Covenant of the League of Nations as A-Mandate, did not allow its transformation to trusteeship unless the mandatory power had misused its trust and the country was retarded. In this case the advisory opinion of the International Court of Justice stood as a prior step for any settlement of the issue.

d. The mandate was a trust and not an agreement between two parties. Thus the nature of the case, its legal and moral implications, do not allow its discontinuity upon the dissolution of the League of Nations. The Covenant of the League was always binding as a document of international law.

e. Considering the mandate over Palestine in the sense in which it was considered by Lord Balfour, a pact of partnership between Great Britain and Zionism, lent the legal justification for the former to withdraw from Palestine because: Its task in the promotion of the establishment of a Jewish national home was fulfilled.

> "The progress made towards the establishment in Palestine of a national home for the Jewish people has been remarkable. 400,000 Jewish immigrants have entered Palestine since 1920 and the total Jewish population has risen from 84,000 in 1922 to 640,000 today. Large areas of land, once neglected, have been brought into fruitful bearing and the area owned by Jews has increased from 650,000 dunums to over 1,600,000... The achievement of so much in so short a space of time is primarily due to the efforts, intelligence and devotion of the Jews themselves, and to the pro-

> tection and assistance afforded them by the Government of Palestine. To quote once more the Report of the United Nations Special Committee on Palestine, 'The present difficult circumstances should not distort the perspective of solid achievement arising from the joint efforts of the Jewish community and the Administration in laying the foundations of the National Home."[67]

These were the statements of the British Government, emphasizing more its role as a partner in achieving the Jewish National Home than its role as a mandatory power, at the time when the Palestine issue was submitted to the United Nations.

One of the parties broke the pact. The British Government accused the Jews of lack of cooperation and the Zionists accused Great Britain of a breach of agreement. Commenting on the land policy after 1939 which restricted the transfer of property titles to Jews in certain areas of the country, Ben-Gurion said:

> "The new land policy strikes at the heart of the Jewish national home by depriving the Jews of the right to settle on the land outside a small pale of settlement, and compels them — as in the Diaspora — to be town dwellers. This attempt to frustrate the age-long aspiration of the Jewish people to become rooted again in the soil of their ancient homeland is made at a time when millions of Jews are being mercilessly persecuted by a cruel enemy. And this blow is being inflicted by the government of the great nation which undertook to restore the Jewish people to their national home. The Jewish people will not submit to the conversion of the Jewish national home into a Ghetto; nor can it believe that Great Britain

(67) *Ibid.*, pp. 4-5.

> would consciously be responsible for such a travesty of its international reputation."[68]

By referring the problem to the United Nations, Great Britain had disregarded Article 13 of the Covenant of the League of Nations which in paragraph two states the following:

> "Disputes as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact which, if established, would constitute a breach of any international obligation, or as to the extent and nature of the reparation to be made for any such breach, are declared to be among those which are generally suitable for submission to arbitration or judicial settlement."[69]

Paragraph three of the same article stated that:

> "For the consideration of any such dispute, the court to which the case is referred shall be the Permanent Court of International Justice, established in accordance with Article 14, or any tribunal agreed on by the parties to the dispute or stipulated in any convention existing between them."[70]

To all the above mentioned points which form a part

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(68) Quoted by M. Shertok - Jewish Agency for Palestine in "Palestine and the Jews," a letter to the Editor of *The Times* February 29, 1940, *(The Times* March 4, 1940) in *Documents and Correspondence Relating to Palestine August 1939 - March 1940,* (London : Jewish Agency for Palestine, 1940), p. 28.

(69) Secretariat of the League of Nations, *Ten Years of World Co-Operation, op. cit.,* p. 422.

(70) *Ibid.*

of the legal archives of the Palestine Problem, should be added another: What were the trespasses to the natural rights of the native people of Palestine? Actually this question sums up the result of the development of the Palestinian problem as it neglected the wishes of the natives of the country which formed a basic principle in the Covenant of the League of Nations:

> "The wishes of these communities must be a principal consideration in the selection of the Mandatory."

The provision for the wishes of the Palestinians, in this manner, in the Covenant of the League is simply a confirmation and respect to the principle of self-determination of a people.

The Legality of the Resolution

It is also of importance to mention the relevant points that were brought up in the General Assembly and Security Council during the preliminary discussions of the problem.

In the general debate, which began during the *ad hoc* Committee's fifth meeting on October 4, 1947, the following proposals were made:

1. Iraq proposed that "the General Assembly submit the following legal point to the International Court of Justice for an advisory opinion under Article 96 of the Charter: Did not the pledges given by Great Britain to

the Sherif Husain of Mecca and her subsequent declarations, promises and assurances to the Arabs that in the event of Allied victory the Arab countries would obtain their independence, include Palestine and its inhabitants?"[71]

2. The Syrian proposal called for the addressing of a request for an advisory opinion to the International Court of Justice concerning the following questions:

> "Are the terms of the Act of Mandate (i.e., United Kingdom Mandate for Palestine)... consistent or not consistent with the Covenant of the League of Nations.., and with the fundamental rights of peoples and their right to self-determination and International Law ?
>
> Is a forcible plan of partition... consistent with the objectives of the mandate and with the principles of the Charter and with the ultimate fate of mandated territories referred to in Chapter XII of the Charter ?
>
> Does the plan of partition in its adoption and forcible execution fall within the jurisdiction of the General Assembly ?"[72]

(Syria further proposed at the nineteenth meeting of *ad hoc* Committee on October 21, 1947, the establishment of a sub-committee composed of jurists to consider the Assembly's competence to take and enforce a decision — as distinct from making a recommendation — and to deal with the legal aspects of the Palestine Mandate. The

(71) *Year Book of the United Nations 1947-1948, op. cit.*, p. 237.

(72) *Ibid.*

question of referring the whole issue to the International Court of Justice could be discussed after the *ad hoc* Committee had received the report of the committee of jurists, the representative of Syria declared.)

One of the resolutions submitted by Sub-Committee 2 to the *ad hoc* Committee for recommendation to the General Assembly reads as follows :

> DRAFT RESOLUTION REFERRING CERTAIN QUESTIONS TO THE INTERNATIONAL COURT OF JUSTICE.
>
> "Considering that the Palestine question raises certain legal issues connected, inter alia, with the inherent right of the indigenous population of Palestine to their country and to determine its future, the pledges and assurances given to the Arabs in the First World War regarding the independence of Arab countries, including Palestine, the validity and scope of the Balfour Declaration and the Mandate, the effect on the Mandate of the dissolution of the League of Nations and of the declaration by the Mandatory power of its intentions to withdraw from Palestine;
>
> Considering that the Palestine question also raises other legal issues connected with the competence of the United Nations to recommend any solution contrary to the Covenant of the League of Nations or the Charter of the United Nations, or to the wishes of the majority of the people of Palestine;
>
> Considering that doubts have been expressed by several Member states concerning the legality under the Charter of any action by the United Nations, or by any Member state or group of Member states, to enforce any proposal which is contrary to the wishes, or is made without the consent, of the majority of the inhabitants of Palestine;

Considering that these questions involve legal issues which so far have not been pronounced upon by any impartial or competent tribunal, and it is essential that such questions be authoritatively determined before the United Nations can recommend a solution of the Palestine question in conformity with the principles of justice and international law;

The General Assembly of the United Nations resolves to request the International Court of Justice to give an advisory opinion under Article 96 of the Charter and Chapter IV of the Statute of the Court on the following questions :

(i) Whether the indigenous population of Palestine has not an inherent right to Palestine and to determine its future constitution and government;

(ii) Whether the pledges and assurances given by Great Britain to the Arabs during the First World War (including the Anglo - French Declaration of 1918) concerning the independence and future of Arab countries at the end of the war did not include Palestine;

(iii) Whether the Balfour Declaration, which was made without the knowledge or consent of the indigenous population of Palestine, was valid and binding on the people of Palestine, or consistent with the earlier and subsequent pledges and assurances given to the Arabs;

(iv) Whether the provisions of the Mandate for Palestine regarding the establishment of a Jewish National Home in Palestine are in conformity or consistent with the objectives and provisions of the Covenant of the League of Nations (in particular Article 22), or are compatible with the provisions of the Mandate relating to the development of self-government and the preservation of the rights and position of the Arabs in Palestine;

(v) Whether the legal basis for the Mandate for Palestine has not disappeared with the dissolution of the League of Nations, and whether it is not the duty of the Mandatory Power to hand

over power and administration to a Government of Palestine representing the rightful people of Palestine;

(vi) Whether a plan to partition Palestine without the consent of the majority of its people is consistent with the objectives of the Covenant of the League of Nations, and with the provisions of the Mandate for Palestine;

(vii) Whether the United Nations is competent to recommend either of the two plans and recommendations of the majority or minority of the United Nations Special Committee on Palestine, or any other solution involving partition of the territory of Palestine, or a permanent trusteeship over any city or part of Palestine, without the consent of the majority of the people of Palestine;

(viii) Whether the United Nations, or any of its Member States, is competent to enforce or recommend the enforcement of any proposal concerning the constitution and future Government of Palestine, in particular, any plan of partition which is contrary to the wishes, or adopted without the consent of, the inhabitants of Palestine.

The General Assembly instructs the Secretary-General to transmit this resolution to the International Court of Justice, accompanied by all documents likely to throw light upon the question under reference."[73]

When this resolution was put to vote, it was voted upon in two parts. The first, comprising questions 1 to 7 inclusive, was rejected by a vote of 25 to 18, with 11 abstentions. The second, comprising the last question, was rejected by a vote of 21 to 20, with 13 abstentions.

(73) *Ibid.*, p. 241. (Committee members were Afghanistan, Colombia, Egypt, Iraq, Lebanon, Pakistan, Saudi Arabia, Syria, Yemen).

The results of the voting show the first seven questions got 18 in favour, and 11 were not able to decide. The last question got 20 in favour and 13 were not able to decide. In the first case only 25 out of a total of 54 said no. In the second case 21 out of total 54 gave a negative vote.

At the 334th meeting on July 13, the Security Council received the following proposal from the Syrian representative:

> "The Security Council,
> Noting that the United Kingdom terminated its mandate on 15 May 1948, without having established any governmental organization to assume power of administration.
>
> **Requests :**
>
> The International Court of Justice, pursuant to Article 96 of the Charter, to give an advisory legal opinion as to the international status of Palestine arising from the termination of the mandate.
>
> The Secretariat and the parties concerned to supply the Court with the available documents and information on the subject.
>
> This request should be made provided it will not delay or impair the normal process of mediation."[74]

At the 335th meeting on July 14 the Belgian delegation expressed support for the Syrian draft resolution. He said:

"If the Arab States believed that a peaceful ad-

(74) *Ibid.*, p. 437.

> justment as contemplated in the General Assembly's Resolution of May 14, could be more easily reached if certain legal aspects of the question were clarified, then the Security Council should endorse such a request."[75]

During the same meeting the representative of China said:

> "The Juridical question pertaining to the status of Palestine was of considerable importance, and an advisory opinion from the International Court of Justice would be extremely helpful."[76]

The Syrian proposal to request the International Court of Justice to give an advisory opinion regarding the post-Mandate status of Palestine (S/894) was considered further by the Security Council at its 339th and 340th meetings on July 27, 1948.

During the 340th meeting the representative of Syria declared that while there were undoubtedly political aspects to the Palestine question there was an even more fundamental legal issue regarding the exact status of Palestine in international law. The Court itself could refuse to consider the request for an advisory opinion if it agreed with those who thought the Palestine problem was first and foremost a political issue. Referring the question to the Court, moreover, need not at all delay the conciliatory efforts of the United Nations Mediator.

The representative of Colombia proposed to add a

(75) *Ibid.*, p. 437.
(76) *Ibid.*

new paragraph to the Syrian proposal to the effect that the request for an advisory opinion from the Court should be made provided it would not "delay or impair the normal process of mediation."

The Syrian resolution as amended by the representative of Colombia was then put to a vote. It failed of adoption, receiving 6 votes in favor, 1 against, and 4 abstentions.[77]

Although the Syrian proposal failed to get the votes necessary for its adoption, it is of significance to notice the results of the voting. There was only one vote against the proposal.

The United Kingdom took a unilateral decision in terminating the Palestine Mandate and referring the Palestine question to the United Nations General Assembly.

The United Nations Charter, however, does not provide that this organization is an heir to the League of Nations, although in a moral sense and in spirit, it takes over the League's international responsibilities. But in statute, it stands as a new international enterprise.

However the United Kingdom took no steps to place Palestine under the United Nations Trusteeship. In other words, it took no steps to enter into a trusteeship agreement with the United Nations, an act which would have conformed to specific provisions of the United Nations

(77) It be noted that according to Article 27 of the Charter, "Decisions of the Security Council on procedural matters shall be made by an affirmative vote of nine members."

Charter concerning territories under mandate.

The request of the United Kingdom to place the question of Palestine on the agenda of the General Assembly came within the provisions of Chapter VI of the Charter — Pacific Settlement of Disputes. Article 35 of this chapter provides that:

> "Any member of the United Nations may bring any dispute, or any situation of the nature referred to in Article 34, to the attention of the Security Council or of the General Assembly."[78]

Article 11, paragraph 2, of the Charter also gave the following powers to the General Assembly:

> "The General Assembly may discuss any question relating to the maintenance of international peace and security brought before it by any member of the United Nations, or by the Security Council or by a state which is not a Member of the United Nations in accordance with Article 35, paragraph 2, and, except as provided in Article 12, may make recommendations with regard to any such question to the state or states concerned or to the Security Council or to both. Any such question on which action is necessary shall be referred to the Security Council by the General Assembly either before or after discussion."[79]

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(78) Article 34 provides that the Security Council may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security.

(79) Article 12 provides : 1. While the Security Council is exercising in respect of any dispute or situation the func- →

Within the above stated framework of powers, the request of the United Kingdom to put the question of Palestine on the agenda of the General Assembly was supposed to fit.

Actually the representative of the United Kingdom in a letter to the Secretary-General dated April 6, 1947 had requested, on behalf of his Government that the Question of Palestine be placed on the agenda of the General Assembly at its next regular annual session. In the same communication, the representative of the United Kingdom had requested the convening of a special session of the Assembly "for the purpose of constituting and instructing a special committee" to prepare for the consideration of the question of Palestine at the subsequent (second) regular session.

Pursuant to the request of the United Kingdom, the General Assembly had convened at Flushing Meadow, New York, on April 28, 1947, and on May 15, 1947, had established and instructed a Special Committee on Palestine (UNSCOP).[80]

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tions assigned to it in the present Charter, the General Assembly shall not make any recommendations with regard to that dispute or situation unless the Security Council so requests. 2. The Secretary-General with the consent of the Security Council, shall notify the General Assembly at each session of any matters relative to the maintenance of international peace and security which are being dealt with by the Security Council and shall similarly notify the General Assembly, or the Members of the United Nations if the General Assembly is not in session, immediately the Security Council ceases to deal with such matters.

(80) UNSCOP was composed of representatives of Australia, Canada, Czechoslovakia, Guatemala, India, Iran, Netherlands, Peru, Sweden, Uruguay and Yugoslavia.

This committee was given the "widest powers to ascertain and record facts, and to investigate all questions and issues relevant to the problem of Palestine." It was under instructions to report its recommendations to the Secretary-General not later than September 1, 1947.

Some outstanding features appeared during the Committee's period of investigation.

A. In response to a request from the Special Committee, the Government of Palestine and the Jewish Agency for Palestine appointed liaison officers. (There was no liaison officer appointed by the Arabs of Palestine who were the majority then.)

B. In addition to hearing representatives of the Palestine Government and of the Jewish Agency, the Special Committee also heard representatives of a number of other Jewish organizations and religious bodies, as well as Chaim Weizmann, to whom the Special Committee granted a hearing in his personal capacity.

C. Arab states were invited to express their views on the question of Palestine. The Special Committee met in Beirut to hear the views of the Arab states as they were expressed by the Lebanese Minister of Foreign Affairs, Hamid Franjieh.

D. The absence of the Palestinian Arabs — the overwhelming majority of the natives — did not appear to the Committee a factor which would ultimately prejudice its discussions and recommendations.

E. Between August 8 and 14, the Committee had decided, by vote of 6 to 4, with 1 abstention to set up a sub-committee to visit displaced persons' camps. During

its tour, the sub-committee visited camps at or near Munich, Salzburg, Vienna, Berlin, Hamburg and Hanover, and met the Austrian Chancellor, the Military Governor of the United States and United Kingdom officials in charge of displaced persons' affairs, as well as officials of the preparatory Commission of the International Refugee Organization.

The voting results showed that the tour of the sub-committee to Jewish camps in Europe was something different from the question of Palestine. There was no unanimous agreement for the creation of this sub-committee. Nevertheless, its creation was a factor to prejudice at least some members in handling the Palestine problem. Also one should weigh the fact of this tour against the above mentioned point, i.e., the absence of the Palestinian natives' voice from the investigations of the committee.

It is worth mentioning here the words of the representative of the Arab Higher Committee to the *ad hoc* Committee before the general debate on the UNSCOP recommendations took place.[51] He said:

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(81) During its Second Session, the General Assembly, at its 90th meeting on September 23, 1947, established an *ad hoc* Committee on the Palestinian Question, composed of all members, and referred to it the following agenda items for considerations and report.

1. Question of Palestine - Item proposed by the United Kingdom.
2. Report of the United Nations Special Committe on Palestine (UNSCOP).
3. Termination of the Mandate over Palestine and the recognition of its independence as one state.

> "No people would be more pleased than the Arabs to see the distressed Jews of Europe given permanent relief. But Palestine already had absorbed far more than its just share..."[82]

The representative of the Jewish Agency, in the same debate, said the following:

> "The Jewish problem in general was none other than the age-old question of Jewish homelessness for which there was but one solution, that given by the Balfour Declaration and the Mandate: The reconstruction of the Jewish National Home in Palestine."[83]

UNSCOP completed its work by August 31, 1947, with twelve general recommendations, eleven of which were unanimously adopted.
These recommendations were:

> "That the Mandate should be terminated and Palestine granted independence at the earliest practicable date (recommendations I and II);
>
> That there should be a short transitional period preceding the granting of independence to Palestine during which the authority responsible for administering Palestine should be responsible to the United Nations (recommendations III and IV);
>
> That the sacred character of the Holy Places and the rights of religious communities in Palestine should be preserved and stipulations concerning them inserted in the constitution of any state or states to be created and that a system should be found for settling impartially any disputes in-

(82) *Year Book of the United Nations 1947-1948, op cit.*, p. 233.
(83) *Ibid.*, p. 234.

volving religious rights (recommendation V);

That the General Assembly should take steps to see that the problem of distressed European Jews should be dealt with as a matter of urgency so as to alleviate their plight and the Palestine problem (recommendation VI);

That the constitution of the new state or states should be fundamentally democratic and should contain guarantees for the respect of human rights and fundamental freedoms and for the protection of minorities (recommendation VII);

That the undertakings contained in the Charter whereby states are to settle their disputes by peaceful means and to refrain from the threat or use of force in international relations in any way inconsistent with the purposes of the United Nations should be incorporated in the constitutional provisions applying to Palestine (recommendation VIII);

That the economic unity of Palestine should be preserved (recommendation IX);

That states whose nationals had enjoyed in Palestine privileges and immunities of foreigners, including those formerly enjoyed by capitulation or usage in the Ottoman Empire, should be invited to renounce any rights pertaining to them (recommendation X);

That the General Assembly should appeal to the peoples of Palestine to co-operate with the United Nations in its efforts to settle the situation there and exert every effort to put an end to acts of violence (recommendation XI)."

In addition to these eleven unanimously approved recommendations, the Special Committee, with two members dissenting and one member recording no opinion, also approved the following twelfth recommendation:

"It is recommended that in the appraisal of the

> Palestine question, it be accepted as incontrovertible that any solution for Palestine cannot be considered as a solution of the Jewish problem in general."[84]

The Majority Proposal was a Plan of Partition, with economic union. According to the plan of the majority (the representatives of Canada, Czechoslovakia, Guatemala, Netherlands, Peru, Sweden and Uruguay), Palestine was to be constituted into an Arab State, a Jewish State and the City of Jerusalem. The Arab and the Jewish States would become independent after a transitional period of two years beginning on September 1, 1947. Before their independence could be recognized, however, they must adopt a constitution in line with the pertinent recommendations of the Committee and make to the United Nations a declaration containing certain guarantees, and sign a treaty by which a system of economic collaboration would be established and the economic union of Palestine created.

The Minority Proposal was a Plan of a Federal State.

Three UNSCOP members (the representatives of India, Iran and Yugoslavia) proposed an independent federal state. This plan provided, inter alia, that an independent federal state of Palestine would be created following a transitional period not exceeding three years, during which responsibility for administering Palestine and preparing it for independence would be entrusted to an authority to be decided by the General

(84) *Ibid.*, pp. 229-230.

Assembly. The independent federal state would comprise an Arab State and a Jewish State. Jerusalem would be its capital.

The *ad hoc* Committee spent eleven sessions in a general debate. The outstanding features of its action were:

A. It did not vote on the general recommendations of the Special Committee.

B. Before voting on the Majority or Minority plans, two sub-committees were established, the members of which were named by the chairman of the *ad hoc* Committee.

Sub-Committee I was entrusted with drawing a detailed plan based on the Majority proposals of the Special Committee on Palestine. The members were: Canada, Czechoslovakia, Guatemala, Poland, South Africa, United States, Uruguay, USSR, Venezuela.

Sub-Committee II was entrusted to draw up a detailed plan for the recognition of Palestine as an independent unitary state. The members were: Afghanistan, Colombia, Egypt, Iraq, Lebanon, Pakistan, Saudi Arabia, Syria, Yemen. (Several delegations urged that the *ad hoc* Committee should itself make decisions on matters of principle and then entrust to a sub-committee the working out of details.)

It is quite obvious that the composition of the two committees do not represent a balanced composition. Subcommittee I members, for example, represent big powers and non-Asian countries.

It is quite obvious also that the nomination of these two committees was a step to implement the majority proposal even before voting on the principles. For instance the manner in which sub-committee I proceeded on its work speaks of the intention on partition.

Sub-committee I held 32 meetings. To expedite its work it organised seven working groups as follows:

Working Group on Citizenship
Working Group on International Conventions and Financial Obligations.
Working Group on Economic Union
Working Group on Boundaries
Working Group on Implementation (composed of representatives of Canada, Guatemala, USSR and United States)
Working Group on the City of Jerusalem.

Sub-Committee II, however, from the outset, decided to concentrate on three broad issues:

1. The legal question connected with or arising from the Palestine problem;
2. The Jewish refugees and displaced persons and their connection with the Palestine question.
3. The termination of the Mandate over Palestine and constitutional proposals for the establishment of a unitary and independent state.

During the general debate on the recommendations of sub-committees I and II, opinion in the *ad hoc* Committee was sharply divided. Voting was on the recommendations

of the sub-committees and not the original recommendations of UNSCOP. This indirectly introduced the principle of elimination which put on the floor:

a. Partition Plan as developed by sub-committee I.

b. Plan for a unitary state as recommended by sub-committee II.

(Thus the general recommendations of UNSCOP and the minority plan were eliminated.)

In spite of the procedure of the *ad hoc* Committee which was intentionally or unintentionally followed to put the partition plan in a strong position, the result of the voting was that the draft resolution of sub-committee I, partition with an economic union, was adopted by a vote of 25 to 13 with 17 abstentions. It is important to notice that although the 25 votes in favour hardly made the required 2/3 majority of those present and voting, nevertheless the number of those opposing and those declining from giving a decision was larger (13 + 17 = 30).

The three draft resolutions of sub-committee II were voted upon separately. Draft resolution I, providing for the reference to the International Court of Justice for an advisory opinion concerning eight legal questions connected with or arising out of the Palestine problem, was voted on in two parts.[85] The first, comprising questions 1 to 7 inclusive, was rejected by a vote of 25 to 18 with 11 abstentions. The second, comprising the last ques-

(85) Refer to pages 85-87 of the text.

tion, was rejected by a vote of 21 to 20 with 13 abstentions.

Draft resolution II dealing with Jewish refugees was voted on paragraph by paragraph but as a whole received 16 votes in favour and 16 against with 26 abstentions, and the committee decided, in view of this result, to include the text of the modified draft resolution verbatim in its report to the General Assembly.

Draft resolution III dealing with the establishment of an independent, unitary state of Palestine was rejected by a vote of 29 to 12 with 14 abstentions.

(It be noted that draft resolutions of sub-committee II were put to a vote before the draft resolutions of sub-committee I which is, in a way, a technique to ensure more votes in favour of the latter. But still the result was as shown previously.)

In the General Assembly, at the 124th to 128th plenary meetings from November 26 to 29, 1947, important points were brought up before the *ad hoc* Committee and recommendations concerning the partition of Palestine were put to a vote. It was shown that the plan of partition with economic union in the form recommended by the *ad hoc* Committee lacked provisions for implementation.

The plan violated the Charter and the principle of the right of self-determination to the Palestinian people. Representatives of several other member states declared themselves equally dissatisfied with the partition plan and its rival plan for a unitary Palestine.

It was requested that a decision on the Palestine ques-

tion be deferred and the matter referred back to the *ad hoc* Committee for further efforts at finding a solution acceptable to both Arabs and Jews. The Assembly's attention was drawn to the fact that the 12 general recommendations of UNSCOP had not been voted on in the *ad hoc* Committee and a suggestion that this be done in the General Assembly before a vote was taken on the plan of partition with Economic Union.

Nevertheless, the proposed plan of partition was put to vote and was passed with a vote of 33 to 13 with 10 abstentions.

Thus, considering the situation in Palestine then as "one which is likely to impair the general welfare of friendly relations among nations," the General Assembly recommended the adoption and implementation of the partition plan with Economic Union, and requested the Security Council to take the necessary measures as provided for in the plan for its implementation.

(As abiding by Article 14 of the Charter which states: "Subject to the provisions of Article 12, the General Assembly may recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations..."[86] The General Assembly recommended to the United Kingdom, as the mandatory power for Palestine, and to all other members of the United Nations the adoption and implementation, with regard to the future government of Palestine, of the plan

(86) See Article 12, p. 120.

of partition with Economic Union."[87]

The representative of the United Kingdom in the Security Council declared that his government would not participate in the implementation of the plan. He said:

> "While the United Kingdom would not oppose the Assembly's decision, it was not prepared to take part in enforcing a settlement which was not acceptable to both parties. The United Kingdom's repeated warnings about the necessity of providing means of implementation for the solution of the problem had been ignored by the Assembly, and British public opinion would not approve further involvement which required enforcement. The United Kingdom would abstain from voting on the question of enforcement."[88]

Some other views expressed in the Security Council were as follows:

1. The representative of the USA:

> "The Charter did not empower the Council to enforce a political settlement whether it was in pursuance of a recommendation made by the General Assembly or of one made by the Council itself. Concerning the current situation in Palestine the Council did not have sufficient evidence to conclude that a threat to the peace existed within the meaning of Chapter VII of the Charter."[89]

2. The representative of Syria:

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(87) *Year Book of the United Nations 1947 - 1948, op cit.*, p. 247.
(88) *Ibid.*, p. 404.
(89) *Ibid.*, p. 404.

> "The Council must carefully scrutinize the recommendations of the Assembly, which after hurriedly adopting the partition plan under pressure, had endeavoured to shift the burden of implementation to the Council. The Assembly, was not a world government empowered to create states and to violate the integrity of countries, to impose government regimes under specified constitutional forms, to dictate economic union between states or to detach territories and cities and put them under permanent Trusteeship. The partition plan was not in conformity with international law or with the Charter and was, in any case, a mere recommendation to members."[90]

3. The representative of Egypt said:

> "If the Security Council assisted in the implementation of the partition plan, as requested by the General Assembly, it would deal a fatal blow to world peace."[91]

4. The representative of Colombia said:

> "It was evident that the Security Council was not authorized to use force to partition Palestine."[92]

5. The representative of the Jewish Agency declared:

> "The Jews regarded partition as the irreducible minimum which they could accept and beyond which they could not go."[93]

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(90) *Ibid.*, pp. 404-405.
(91) *Ibid.*, p. 405.
(92) *Ibid.*, p. 407.
(93) *Ibid.*, p. 405.

The representative of the United Kingdom, speaking again, stated that:

> "The Council should examine whether a threat to the peace existed.. The United Kingdom could not support the United States proposal to accept the request of the Assembly, since it was opposed to participation in implementing a plan which involved coercion of one of the communities."[94]

In the final analysis, the Security Council rejected the Assembly's request concerning November 29, 1947 Resolution and called upon the General Assembly to convoke a special session to consider further the question of the future government of Palestine.

> "The Security Council,
>
> Having, on 9 December 1947, received the resolution of the General Assembly concerning Palestine dated 29 November 1947 and
>
> Having taken note of the United Nations Palestine Commission's First and Second Monthly Progress Reports and First Special Report on the problem of security, and
>
> Having, on 5 March 1948, called on the permanent members of the Council to consult, and
>
> Having taken note of the reports made concerning these consultations,
>
> Requests the Secretary-General, in accordance with Article 20 of the United Nations Charter, to convoke a special session of the General Assembly to consider further the question of the future government of Palestine."[95]

(94) *Ibid.*, p. 406.
(95) *Ibid.*, p. 410.

On April 1, 1948, the Secretary-General of the United Nations, acting in pursuance of a request of the Security Council, summoned by telegram the second special session of the General Assembly to meet at Flushing Meadow, New York, on April 16, to "consider further the question of the future government of Palestine."

This marked the first time that the Security Council, invoking Article 20 of the Charter, had taken the initiative in convening an Assembly session.[96]

The debate on the future government of Palestine took a new course that was initiated by the representative of the United States in the following manner:

> "It has been conclusively proved that resolution 181 (II) of the General Assembly, which called for the partition of Palestine with economic union and which had been adopted in November 29, 1947, could not be implemented by peaceful means, contrary to the hopes of the United States. Moreover, the Security Council had failed to adopt a United States proposal to place the Council formally behind the partition plan...
>
> Under the circumstances, the United States believed that the Assembly should consider the establishment of a Temporary Trusteeship for Palestine."[97]

The representative of the United Kingdom declared:

> "It had now proved that the partition resolution

(96) Article 20 states that the General Assembly shall meet in regular annual sessions and in such special sessions as occasion may require. Special sessions shall be convoked by the Secretary-General at the request of the Security Council or of a majority of the Members on the United Nations.

(97) *Ibid.*, p. 259.

> could only be enforced by the use of arms... Those who proposed to adhere to the resolution of November 29 should consider squarely whether their governments were prepared to assist in its enforcement, whether any enforcement action could secure the essential co-operation of the local population, and whether the necessary forces could be provided by May 15... Parts of the partition plan had not been conceived impartially and little attention had been paid to the difficulties of implementation... It was clear that partition could only be put through by force of arms and that the forces could not be supplied by May 15."[98]

The representative of the Arab Higher Committee said:

> "UNSCOP had ignored Arab opposition to the partition scheme, which could never be carried out peaceably without the consent of the majority of the population of Palestine."[99]

On the other hand the representative of the Jewish Agency showed his dissatisfaction with the Security Council by saying:

> "During one of their meetings, the five permanent members of the Security Council had been presented with a nine-point implementation program by the Jewish Agency. Not only had there been no action on that program, but it seemed that it had not even been discussed. The Jewish Agency had been forced to conclude that the decision to thrust aside the Assembly resolution had been arrived at by certain members of the Security Council even before the Council met to consider the matter ...

(98) *Ibid.*, p. 260.
(99) *Ibid.*, p. 261.

> The force needed—and force would be needed—to impose even a Temporary Trusteeship regime would better be used to enforce partition as a final solution."[100]

The representatives of China, Egypt, Pakistan and Syria argued that:

> "The Charter does not justify the use of force to implement a resolution such as that of November 29, 1947, which was a recommendation — not an enforceable decision."[101]

The result of the deliberations of this special session, however, appeared on May 13, with a resolution adopted by a vote of 35 to 6 with 10 abstentions, by the First Committee, and was forwarded to the General Assembly for its decision.

The General Assembly adopted the resolution proposed by the First Committee on May 14, 1948, by a vote of 31 to 7 with 16 abstentions.

The main items of the resolution were:

A. The creation of the office of Mediator to "promote peaceful adjustment of the future situation of Palestine."

B. The relief of the Palestine Commission from the further exercise of responsibilities under resolution 181 (II) of 29

(100) *Ibid.*, p. 262.
(101) *Ibid.*, p. 263.

November, 1947.[102]

Viewed in the sequence of the development of events, the General Assembly Resolution of November 29, 1947, for the partitioning of Palestine stands as a legally incapacitated document. This is because:

1. The manner in which it was drafted ignored the wishes of the vast majority of the people of Palestine, thus, in principle, making the document not binding.

2. As a document which implied the use of force for its implementation it is alienated from the purposes and principles of the Charter of the United Nations. Therefore it automatically loses its international character and becomes an incapacitated document.

3. The legal ambiguity concerning the international position of Palestine or the international nature of the Palestine problem did not allow the presence of clear-cut legal facts in the light of which the United Nations was in a power to judge, as its purposes and principles require,

(102) In accordance with the Partition Plan of Palestine "the administration of Palestine shall, as the mandatory power withdraws its armed forces, be progressively turned over to the Commission, which shall act in conformity with the recommendations of the General Assembly under the guidance of the Security Council." This Commission was dispatched to Palestine in early March before the Security Council responded to the Partition Resolution. The Commission, in a resolution adopted on April 2, 1948, recalled the mandate entrusted to it by the General Assembly on November 29, 1947, stated that it had received no guidance or instructions from the Security Council concerning the implementation of the General Assembly's resolution and noted the Council's request for the convocation of a special session of the General Assembly to consider further the question of the future government of Palestine.

"in conformity with principles of justice and international law." Accordingly, the November 29, 1947, resolution was drawn in a hurried and superficial manner. And, this logically and naturally, implied the inevitable withdrawal of this instrument and perhaps its condemnation as the real factors of the case were displayed and manifested. The reaction of the Security Council was a simple example of this evaluation. It is unnecessary to cite the development of all the events, since the adoption of the resolution, which one after the other, have proved the realities of the factors which were undervalued and unrecognised in the decision making process — a development of events which projected more clearly the superficiality of the document.

4. The Commission, the executive organ of the General Assembly entrusted with the implementation of the plan went to Palestine before the Security Council passed judgement on the plan. (The Charter of the United Nations states in Article 11, paragraph 2 "any such question on which action is necessary shall be referred to the Security Council by the General Assembly either before of after discussion.) This was one point which delays limits and even prevents the implementing of the resolution, and puts it back in its lawful place as a mere recommendation. And this was confirmed in the resolution of May 14, 1948, which relieved the commission of its work.

5. The Mandatory's declining from giving effective support to any settlement which did not receive the agreement of both parties: the Arabs and the Jews, in

principle, implied that the decision of the General Assembly was not in agreement with the legal authority in the country, the Mandatory power. Accordingly its implementation was sheer intervention in the domestic affairs of the country.

6. The convocation of the Second Session of the General Assembly, upon the request of the Security Council, "to consider further the question of the future government of Palestine" and the actual embarking of the Assembly on discussions to this effect, implies the possibility of rescinding the resolution of November 29, 1947.

Manipulation of the Resolution by Zionist Leaders.

The proclamation of the independence of the Jewish state incorporated the November 29, 1947, resolution in its text. The Zionist leaders had, by doing so, adopted this resolution and given it a prominent position in the body of the laws of their state.

The significant contribution of the partition recommendation to Zionism appears in the reality of its serving as a premise, an internationally formed premise — for the development of the application of their ideology.

For example, in Chapter One mention was made of the Zionist concept of "Gestor." Actually the role of a "gestor" was not forcefully practised in the Zionist history the way it was applied in the actual military conquest which brought about the establishment of the

Jewish state.

When the resolution of the United Nations lacked the means for its implementation in principle and in fact, Zionism came in to fill this gap. The element of superiority manifested in Zionist law and comprehension of things came to appearance again. If the United Nations, for instance, could not supply the means of enforcement, the Zionists were able to do so. In their own reasoning there was a situation — an international situation to be rescued and thus they appeared on the scene in the role of a "Gestor."

It was the Zionist military operations which put the partition plan into practice. However the Zionists were not content with merely taking what the UN with very dubious right had given them; they took more, for their acceptance of what they had been given had been conditional.

The act of over-stepping being a justifiable act not only because of the Zionist help rendered to the United Nations and thus to the world, as the Zionists view, but also on the grounds that acceptance of partition, on the part of Zionism, from the very beginning was a conditional acceptance. For example, the representative of the Jewish Agency, referring to the Arab states established as independent countries since the First World War, said:

> "That 17,000,000 Arabs now occupied an area of 1,290,000 square miles including all the principal Arab and Moslem centres, while Palestine, after the loss of Transjordan, was only 10,000 square miles; yet the majority plan proposed to reduce it by one half. UNSCOP proposed to eliminate

> Western Galilee from the Jewish State; that was an injustice and a grevious handicap to the development of the Jewish state.
> ... If this heavy sacrifice was the inexorable condition of a final solution, if it would make possible the immediate re-establishment of the Jewish state with sovereign control of its own immigration, then the Jewish Agency was prepared to recommend the acceptance of the partition solution, subject to further discussion of constitutional and territorial provisions."[103]

The Jewish state was proclaimed on May 14, 1948, by the virtue of the specially comprehended Zionist laws. Its "constitutional and territorial provisions" have been in a process of modification and adjustment ever since. But still it is not a state in the legal sense of the word. It is rather a cataclysm of wars, conflict — the natural outcome of the unlawful — of negating justice to the majority party, the Palestinian Arabs.

(103) *Ibid.*, p. 234.

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GHORAYEB PRESS - Beirut - Huvelin Street - Tel. : 246185