

# LEGAL STATUS OF ARAB REFUGEES

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## INTRODUCTION

It is a source of special gratification to participate in a symposium on the Middle East Crisis, in which not only is attention focused on the basic legal issues but in which these issues are considered as a test of international law. If in the course of the last fifty or even the last twenty years the underlying legal principles had been observed—respect for the rights of peoples, the duties and responsibilities of states, and the sanctity of international pledges and undertakings—the recent history of the Middle East would not have been the tragic sequence we have witnessed. Now, in this moment of anxiety and concern experienced by the Arab states, it is understandable that the Arabs should plead unremittingly for their usurped rights. They expect to make this plea in an environment of understanding for the great issues of mankind, the issues of war and peace, of equity, of sovereign and human rights—the environment of our world's faltering steps toward international law and under such law.

## I

### SCOPE OF THE PROBLEM

The problem of the legal status of the Arab refugees involves the issue of their rights, the basis of these rights, how these rights have been affirmed or denied, what recourse is open to the refugees and what recourse is open to those concerned on their behalf, against the denial of their rights.

#### A. Definition and Number of Refugees

The Palestinian Arab refugees are primarily those victims of the 1947-48 tragedy, resulting in a mass exodus of the Arabs of Palestine, who have been living in exile since then. These are the *old refugees*. They number 1,344,576 registered with the United Nations Relief and Works Agency for Palestine Refugees (UNRWA) according to the last census, with 722,687 in Jordan, 316,776 in Gaza, 160,723 in Lebanon, and 144,390 in Syria.<sup>1</sup> There is a second generation of refugees, children of parents themselves born after May 1948. These and the inhabitants of border villages who lost their property or their livelihood, or both, but did not lose the bare walls of their homes, have been ineligible for UNRWA assistance, despite ex-

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<sup>1</sup>Report of the Commissioner-General of the United Nations Relief and Works Agency, 22 U.N. GAOR, Supp. 13, tables 1 and 2, at 59, 60, U.N. Doc. A/6713 (1967).

treme need.<sup>2</sup> UNRWA relief has always been withheld from 282,000 in villages on the Jordan frontier and in the Gaza Strip. Unquestionably, any Palestinian shut out from his homeland and stripped of money and property falls within the category of refugee. Half a million Palestinian Arabs, however, in addition to the numbers above given, have migrated and are self-supporting in the Arab states, the United States, Canada, South America, and other countries.

A second category of *intermediate refugees* includes over 11,000 Arab inhabitants of the Demilitarized Zones between Israel and the neighboring Arab countries and other areas who were made refugees without provision for help from UNRWA because they were expelled by Israel after July 1, 1952, the deadline for eligibility.<sup>3</sup>

The *new Arab refugees* are the victims of the June 5 war. According to the Report of the Commissioner-General of UNRWA submitted to the Twenty-second Session of the U.N. General Assembly, 234,000 Arabs were refugees from Jordan, Syria, and the Sinai Peninsula following the crisis of June 5, 1967, in addition to 100,000 "old" refugees who fled their refugee camps (where they were registered with UNRWA) when these were overrun by the Israeli army.<sup>4</sup> These numbers are on the increase day by day while the Israelis, systematically as in the past, apply terrorist methods to empty the Arab lands of their Arab inhabitants.

## II

### RIGHTS OF THE REFUGEES

#### A. Basic Human Rights

Since the events of the June 5 war, which are still fresh in our minds, the rights of the new refugees have been definitely defined. The Security Council on June 14, 1967 adopted Resolution 237,<sup>5</sup> and the General Assembly reaffirmed it by an overwhelming majority on July 4.<sup>6</sup> The Security Council Resolution specifically calls upon the Government of Israel "to ensure the safety, welfare and security of the inhabitants of the areas where military operations have taken place and to facilitate the return of those inhabitants who have fled the areas since the outbreak of hostilities." Both resolutions requested the Secretary-General to follow their effective implementation and to report thereon. The Secretary-General did report on these matters on September 15, 1967, after having sent a Special Representative, Nils Gussing, to the Middle East.<sup>7</sup> As therein reported and subsequently up until the present time, Israel has persistently refused to implement the two resolutions and

<sup>2</sup> Report of the Commissioner-General of the United Nations Relief and Works Agency, 20 U.N. GAOR, Supp. 13, at 4-5, U.N. Doc. A/6013 (1965).

<sup>3</sup> *Id.* at 4.

<sup>4</sup> Report of the Commissioner-General, *supra* note 1, at 11.

<sup>5</sup> 22 U.N. SCOR, 1361st meeting 1 (1967).

<sup>6</sup> G.A. Res. 2252, U.N. GAOR, 5th Emer. Spec. Sess., Supp. 1, at 3, U.N. Doc. A/6798 (1967).

<sup>7</sup> U.N. Doc. A/6797, Sept. 15, 1967.

has adopted further illegitimate measures against the civilian population left in the occupied territories.

We submit it is clear that the Palestinian Arab refugees have certain inalienable rights:

1. the right of sovereignty over Palestine
2. the right to nationality—the Palestinian nationality
3. the right to individual property, together with the right to compensation for property arbitrarily expropriated or taken by force
4. the right of return
5. civil and religious rights
6. the right of visitation to the Holy Places
7. the rights of Palestinians inside Palestine

These rights are not mere claims. There are international documents to validate them—treaties, statements, declarations, pledges, and scores of U.N. resolutions. The denial of these rights constitutes, in essence, what is referred to as the Problem of the Palestine Arab Refugees, which has been and will continue to be the powderkeg of the Middle East. The first such transgression of these rights was the Balfour Declaration,<sup>8</sup> which Henry Cattán has denounced in the following words:

The Balfour Declaration of 1917 which the Zionists have utilized almost as a document of title for the establishment of a national home in Palestine has never possessed any juridical value. Emanating from the British Government which at no moment possessed any right of sovereignty over Palestine the Balfour Declaration could not validly recognize a right of sovereignty in favour of the Jews because a donor can not dispose of what does not belong to him.<sup>9</sup>

Historically, Syria, an integral part of the Arab world, stretched from the Taurus mountains on the north to Egypt on the south, with no intervening linguistic, natural, or racial boundaries of importance, and unbroken, in the nineteenth century, by any national frontier. The sea on the west, the mountains on the north, the desert south and east gave it unity. But by 1922 this area had been carved up in the interests of power politics. Palestine was one of the fragments, created to implement the Balfour Declaration and satisfy World Zionism. The official report of the Shaw Commission, which the British sent to Palestine in 1929, contained the comment: "Viewed in the light of the history of at least the last six centuries, Palestine is an artificial conception."<sup>10</sup>

In spite of these transgressions, pledges came from the Great Powers to safeguard Arab rights. One could cite the safeguard clause of the Balfour Declaration itself: ". . . it being clearly understood that nothing shall be done which may prejudice the

<sup>8</sup> The text is officially quoted in CMD. No. 5479, at 22 (1937).

<sup>9</sup> H. CATTÁN, *TO WHOM DOES PALESTINE BELONG?* 5 (1967).

<sup>10</sup> CMD. No. 3530 (1930), reprinted in J.M.N. JEFFRIES, *PALESTINE, THE REALITY* 2 (1939).

civil and religious rights of existing non-Jewish communities in Palestine." The Anglo-French Declaration to the Arabs of (undivided) Syria and Mesopotamia on November 7, 1918 is explicit: "The object aimed at by France and Great Britain . . . is . . . the establishment of National Governments and administrations deriving their authority from the initiative and free choice of the indigenous populations."<sup>11</sup>

The King-Crane Commission, which was dispatched to the area by President Wilson so that he could ascertain the wishes of the population, recommended, in its report issued June 29, 1919, "that the unity of Syria be preserved, in accordance with the earnest petition of the great majority of the people of Syria." In the words of the report:

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 recommendation here made.

. . . .  
 . . . 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 . . . ."<sup>12</sup>

Article 22 of the Covenant of the League of Nations signed on June 22, 1919 is of particular importance, because it was the basis of what later came to be known as the "A" Mandates over Palestine, Transjordan, Iraq, Lebanon, and Syria: "there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilization and that securities for the performance of this trust should be embodied in this Covenant."<sup>13</sup>

Remembering the rights of the Palestine Arab refugees claimed above, let us very briefly look into the Palestine Mandate itself. Article 5 stipulated that "The Mandatory shall be responsible for seeing that no Palestine territory shall be ceded or leased to, or in any way placed under control of, the Government of any foreign Power"; article 7 stated that "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 Palestine citizenship by Jews who take up their permanent residence in Palestine."<sup>14</sup>

Specific attention should be paid to article 7, because of the right of the refugees to Palestinian nationality, which has been referred to above. The article is unequivocal that the nationality is the Palestinian nationality, that the Jews who take up their permanent residence in Palestine may take up this nationality. Now this

<sup>11</sup> Joint Anglo-French Declaration, Nov. 7, 1918, reprinted in *Cmd. No. 5479*, at 25 (1937).

<sup>12</sup> [1919] 12 *FOREIGN REL. U.S.* 745, 792 (1949), reprinted in 2 J. HUREWITZ, *DIPLOMACY IN THE MIDDLE EAST—A DOCUMENTARY RECORD 1914-1956*, at 66, 69, 70 (1956).

<sup>13</sup> 3 *TREATIES, CONVENTIONS, INTERNATIONAL ACTS, PROTOCOLS AND AGREEMENTS BETWEEN THE UNITED STATES AND OTHER POWERS 1910-1923*, at 3336, 3342 (Redmond ed. 1923).

<sup>14</sup> *Cmd. No. 1785* (1922), reprinted in 2 J. HUREWITZ, *supra* note 12, at 106, 108.

same nationality is denied to the people who comprised, when that article was formulated, ninety-eight per cent of the total population of Palestine, namely, the Arabs.

The history of Palestine from the institution of the Mandate until 1939 was the history of an Arab people in almost continuous armed rebellion as they saw themselves gradually subjugated by piecemeal conquest which became full conquest in 1947. They saw their right to self-determination being denied and minority status imposed upon them.

Meanwhile, the British government realized the conflict of interests between Arabs and Jews in Palestine. It would be cumbersome to discuss all the British statements of policy issued during this period affirming, time after time, Arab rights under the Mandate. Only two will be mentioned here. First, the Churchill Memorandum or "White Paper" of 1922, which states:

Unauthorized statements have been made to the effect that the purpose in view is to create a wholly Jewish Palestine. Phrases have been used such as that Palestine is to become "as Jewish as England is English." His Majesty's Government regard any such expectation as impracticable and have no such aim in view. Nor have they at any time contemplated, as appears to be feared by the Arab Delegation, the disappearance or the subordination of the Arabic population, language or culture in Palestine. They would draw attention to the fact that the terms of the Declaration referred to do not contemplate that Palestine as a whole should be converted into a Jewish National Home, but that such a Home should be founded *in Palestine*.<sup>15</sup>

Second, the British statement of May 1939, known as the MacDonald "White Paper," reaffirmed the obligation under the Mandate "to safeguard the civil and religious rights of all the inhabitants of Palestine," and asserted that "His Majesty's Government believe that the framers of the Mandate in which the Balfour Declaration was embodied could not have intended that Palestine should be converted into a Jewish State against the will of the Arab population of the country."<sup>16</sup>

These documents and pledges are not obsolete—not matters of academic interest only. They are ineradicable facts, to be reckoned with in assessing later events, and the denial to the Arab people of Palestine, by the act of the Great Powers in backing Zionist nationality claims and institutions, of their right to self-determination. That was the "original sin." One has to remember that Syria, Lebanon, Transjordan, and Iraq all became independent states. Palestine alone, of the "A" Mandate countries, did not, and this was not a mere accident of history.

Even fifty years ago, according to the pronouncements of the Great Powers, the indissoluble, immutable character of fundamental human rights and the concept

<sup>15</sup> BRITISH POLICY IN PALESTINE, CMD. No. 1700, at 18 (1922), reprinted in 2 J. HUREWITZ, *supra* note 12, at 103, 104.

<sup>16</sup> PALESTINE: STATEMENT OF POLICY, CMD. No. 6019, at 2, 3 (1939), reprinted in 2 J. HUREWITZ, *supra* note 12, at 218, 219, 220.

of right could not be altered by any act of man. If legality and ethics have not been dissipated in the interval, we must observe that the Zionist state of Israel, the aggressor in the June 5 war, had dubious rights to be in Palestine in the first place. Small wonder, then, that in the League of Nations and now in the United Nations the Palestine problem with its derivative disputes has been interminably on their agenda.

### B. Rights as Recognized by United Nations

We turn now to the present, to see in what manner Israel has acted while the United Nations attempts, in debate and through processes of law, to adjudicate the derivative disputes.

The birth certificate of the State of Israel was General Assembly Resolution 181 of November 29, 1947,<sup>17</sup> recommending the annexed Plan of Partition with Economic Union.<sup>18</sup> Political forces were then at play to secure a favorable vote on Partition, at any cost and by any means. The Arab delegations requested that legal aspects of the Palestine question be referred to the International Court of Justice,<sup>19</sup> as the recourse provided by article 36 of the U.N. Charter, and by article 26 of the Mandate, which provided:

The Mandatory agrees that if any dispute whatever should arise between the Mandatory and another Member of the League of Nations relating to the interpretation or the application of the provisions of the mandate, such dispute, if it cannot be settled by negotiation, shall be submitted to the Permanent Court of International Justice . . . .

It should be noted that Egypt and Iraq, which were among the sponsors of this request, had been members of the League of Nations, which made the provision just quoted unequivocal in its application. When the most important of these requests for adjudication was voted on, however, the count was 20 for, 21 against.<sup>20</sup> One vote decided the fate of Palestine.

This same birth certificate outlined the provisions of the declaration of independence of Israel. Article 10 of Part I of the Plan of Partition stipulated that "The Constituent Assembly of each State [*i.e.*, the proposed Jewish and Arab states] shall draft a democratic constitution for its State and choose a provisional government to succeed the Provisional Council of Government appointed by the [U.N. Palestine] Commission." The constitution, according to paragraph (d) of this article, was to guarantee "equal and non-discriminatory rights in civil, political, economic and religious matters and the enjoyment of human rights and fundamental freedoms."

<sup>17</sup> 2 U.N. GAOR, Resolutions, at 131 (1947).

<sup>18</sup> *Id.* at 132.

<sup>19</sup> 2 U.N. GAOR, Ad Hoc Comm. on the Palestinian Question 299-300 (1947).

<sup>20</sup> *Id.* at 203.

On May 14, 1948 Count Folke Bernadotte was appointed Mediator<sup>21</sup> pursuant to a resolution of the General Assembly.<sup>22</sup> In his report to the Third Session of the General Assembly, he stated:

6. [N]o settlement can be just and complete if recognition is not accorded to the right of the Arab refugee to return to the home from which he has been dislodged by the hazards and strategy of the armed conflict between Arabs and Jews in Palestine. The majority of these refugees have come from territory which, under the Assembly resolution of 29 November, was to be included in the Jewish State. . . . It would be an offence against the principles of elemental justice if these innocent victims of the conflict were denied the right to return to their homes while Jewish immigrants flow into Palestine, and, indeed, at least offer the threat of permanent replacement of the Arab refugees who have been rooted in the land for centuries.<sup>23</sup>

Obviously the Zionists, who wanted a state as Jewish as England is English, could not have kept the Arabs in their state, since they would have constituted a majority in that state. Count Bernadotte goes on to affirm the large-scale looting, pillaging, plundering, and the destruction of villages without apparent military necessity. He states further: "The liability of the Provisional Government of Israel to restore private property to its Arab owners and to indemnify those owners for property wantonly destroyed is clear, irrespective of any indemnities which the Provisional Government may claim from the Arab States."<sup>24</sup>

But Count Bernadotte was assassinated, with one of his aides, in September 1948, in the holy city of Jerusalem, and the Security Council could only express shock at the "cowardly act" of a "criminal group of terrorists."<sup>25</sup> A month later the Security Council noted with concern "that the Provisional Government of Israel has to date submitted no report to the Security Council or to the Acting Mediator regarding the progress of the investigation into the assassinations," and reminded ". . . the Governments and authorities concerned that all the obligations and responsibilities set forth are to be discharged fully and in good faith."<sup>26</sup>

On December 11, 1948 the United Nations General Assembly adopted Resolution 194, paragraph 11 of which

. . . *resolves* that the refugees wishing to return to their homes and live at peace with their neighbors should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the governments or authorities responsible.<sup>27</sup>

<sup>21</sup> 3 U.N. SCOR, 299th meeting 4 (1948).

<sup>22</sup> G.A. Res. 186, U.N. GAOR, 2d Spec. Sess., Supp. 2, at 5 (1948).

<sup>23</sup> Progress Report of the United Nations Mediator on Palestine, 3 U.N. GAOR, Supp. 11, at 14, U.N. Doc. A/648 (1948).

<sup>24</sup> *Id.*

<sup>25</sup> S.C. Res. 57 (1948).

<sup>26</sup> S.C. Res. 59 (1948).

<sup>27</sup> 3 U.N. GAOR, Resolutions, at 21, 24 (1948).

The same resolution established a Conciliation Commission with the purpose of implementing the above-quoted paragraph.

On May 11, 1949, the General Assembly voted to accept Israel as a member of the United Nations. Paragraph 4 of the preamble to this resolution took note of "the declaration by the State of Israel that it 'unreservedly accepts the obligations of the United Nations Charter and undertakes to honour them from the day when it becomes a Member of the United Nations.'"<sup>28</sup>

On May 12, 1949, under the auspices of the U.N. Conciliation Commission, the Lausanne Protocol was signed.<sup>29</sup> In the text it is stated that

The United Nations Conciliation Commission for Palestine, anxious to achieve as quickly as possible the objectives of the General Assembly resolution of December 11, 1948, regarding refugees, the respect for their rights and the preservation of their property, as well as territorial and other questions, has proposed to the delegation of Israel and to the delegations of the Arab States that the "working documents" attached hereto be taken as basis for discussion with the Commission.<sup>30</sup>

To this document was annexed a map on which were indicated the boundaries defined in the General Assembly Resolution 181(II) of November 29, 1947, which was taken as the basis of discussion with the Commission.<sup>31</sup>

What took place later is described by the Conciliation Commission in paragraph 23 of the Third Progress Report: "The signing of the Protocol of 12 May 1949 provided both a starting-point and framework for the discussion of territorial questions."<sup>32</sup> The delegation of Israel submitted proposals regarding the territorial questions, demanding that the international frontiers of Mandatory Palestine be considered the frontiers of Israel. When the Arab delegations protested that these proposals constituted a repudiation by Israel of the terms of the Protocol signed on May 12, the Israeli delegation replied that "it could not accept a certain proportionate distribution of territory agreed upon in 1947 as a criterion for a territorial settlement in present circumstances."<sup>33</sup>

When the Israeli army stands where it stands today, in occupied territories of three Arab states, members of the United Nations, and makes the withdrawal of its troops conditional on having "secure and agreed upon borders," one can, ironically, see how history repeats itself.

<sup>28</sup> G.A. Res. 273, 3 U.N. GAOR, pt. 2, Resolutions, at 18 (1949). The quoted words are those of the Foreign Minister on behalf of the Israeli State Council. 3 U.N. SCOR, Supp. Dec. 1948, at 118, U.N. Doc. S/1093 (1948).

<sup>29</sup> Third Progress Report of the Palestine Conciliation Commission, 4 U.N. GAOR, Ad Hoc Pol. Comm., Annex, vol. II, at 6, U.N. Doc. A/927 (1949).

<sup>30</sup> *Id.* at 9.

<sup>31</sup> G.A. Res. 181, *supra* note 17, at 150.

<sup>32</sup> Third Progress Report of the Palestine Conciliation Commission, *supra* note 29, at 7.

<sup>33</sup> *Id.* at 8.



### C. Legal Implications of Paragraph 11 of Resolution 194 of December 11, 1948

The provisions of paragraph 11, sub-paragraph 1, of the General Assembly Resolution 194 of December 11, 1948 affirm the right of the refugees to return to their homes and their right to compensation, classified as compensation to refugees *not* choosing to return, and compensation to refugees for loss of or damage to property.<sup>34</sup> These rights, according to paragraph 11, are to be implemented "under principles of international law or in equity." What is involved here?

In a working paper prepared by the Legal Department of the U.N. Secretariat in March 1950 for the guidance of the Conciliation Commission on the implementation of paragraph 11 of Resolution 194,<sup>35</sup> the principles of repatriation and compensation were dealt with at length and many precedents cited, from the periods before and after the Second World War. It points out that in the former Axis and Axis-occupied countries—France, Rumania, Italy, Bulgaria, Czechoslovakia, Holland, and Yugoslavia—various laws were passed between November 1944 and May 1945 for restitution or compensation to the victims of Nazi action. In the United States occupied zone of Germany a General Claims law was passed in 1949 for restitution to those Nazi victims who had "suffered damage to life and limb, health, liberty, possessions, property or economic advancement."

It further points out that during the Second World War the Institute of Jewish Affairs of the World Jewish Congress took up the question of compensation for Jewish refugees and in 1944 published a book, *Indemnities and Reparations*, by Nehemiah Robinson.<sup>36</sup> The thesis was that great injustice would result from following the general rule that states may seek indemnification from foreign nations only on behalf of their own citizens who were also their citizens at the time the injury occurred. Victims of Axis countries who later acquired the citizenship of these states or merely became residents there would be excluded. As to victims who remained in or would be willing to return to their homeland, the author makes a strong case that the United Nations must intervene on their behalf.

The working paper also refers to a refugee problem of comparatively recent date which presents some similarity with the problem of the Palestine refugees:

The Pakistan and India Governments agreed on the principle that the ownership of refugees' property, movable as well as immovable, should remain vested in the refugees. Custodians were appointed to look after and manage such property on behalf of the owners. Similarly, registrars of claims were appointed and instructed to make records of the property left behind by the evacuees.<sup>37</sup>

<sup>34</sup> 3 U.N. GAOR, Resolutions, at 21, 24 (1948).

<sup>35</sup> Historical Survey of Efforts of the United Nations Conciliation Commission for Palestine to Secure Implementation of Paragraph 11 of G.A. Res. 194(III), U.N. Doc. A/AC.25/W81/Rev. 2 (1961).

<sup>36</sup> N. ROBINSON, *INDEMNITIES AND REPARATIONS* (1944).

<sup>37</sup> Historical Survey of Efforts, *supra* note 35.

In contrast to all this, and the fact that Israeli, Zionist and Jewish organizations and Jewish individuals have had over a billion dollars in reparations from Germany,<sup>38</sup> we find Israeli legislation providing for confiscation of lands of "absentee" Arab owners. In three laws passed in 1948-49 (the Abandoned Areas Ordinance, the Absentee Property Regulations, and the Emergency Cultivation of Waste Lands Regulations) an "absentee" is defined as any person who was, on or after November 29, 1947 (the date of the General Assembly Resolution concerning partition of Palestine)—

- (a) a citizen or subject of any of the Arab states
- (b) in any of these states, for any length of time
- (c) in any part of Palestine outside the Israeli-occupied area
- (d) in any place other than his habitual residence, even if such place as well as his habitual abode were within Israeli-occupied territory.<sup>39</sup>

A conquered, surrendered, or deserted area was declared to be abandoned and sold by the Israeli Custodian to a Development Authority.<sup>40</sup>

Enquiry into this matter from the standpoint of the ownership of land in Palestine shows the unbelievable dimensions and grave iniquity of the liquidation of Arab rights and interests. It is established by official statistics of the Mandatory Government of Palestine,<sup>41</sup> submitted to the United Nations in 1947, that Jewish property in Palestine did not exceed a proportion of 5.66 per cent of the total area of the country. The document contains a breakdown of the areas owned in each district. In 1948, in violation of the territorial limits proposed by the U.N. Partition Resolution, and in 1949, in violation of the armistice agreements concluded with the neighboring countries, Israel seized another 1,400 square miles of the territory of Palestine, gaining control over seventy-one per cent of the total area of the country. Under the Israeli legislation referred to, the Israeli authorities have legalized the seizure of Arab refugee property and assets and provided for the subsequent wholesale confiscation of further property belonging to Arabs, whether refugees or not.

For twenty years now the Conciliation Commission has failed to secure legitimate Arab rights. Nineteen resolutions passed from 1949 up till now, affirming and re-affirming those rights, regretting or deploring the non-implementation by Israel of previous resolutions, have been completely disregarded.

As to the rights of the "intermediate" refugees, article V of the General Armistice Agreement with Syria provided for the "return of civilians to villages and settlements in the Demilitarized Zone"<sup>42</sup> and Security Council resolutions have urged

<sup>38</sup> Selzer, *The Diplomacy of Atonement: Germany, Israel and the Jews*, ISSUES, Summer 1967, at 23.

<sup>39</sup> Absentees' Property Law, [1950] Laws of the State of Israel, vol. 4, p. 68; reprinted in FUNDAMENTAL LAWS OF THE STATE OF ISRAEL 129 (J. Badi ed. 1961).

<sup>40</sup> See S. HADAWI, PALESTINE, LOSS OF A HERITAGE 52 (1963).

<sup>41</sup> 2 U.N. GAOR, Ad Hoc Comm. on the Palestinian Question, Annex 25, at 270, 292-93; Appendix VI, at 307, U.N. Doc. A/AC.14/32 (1947).

<sup>42</sup> 4 U.N. SCOR, Spec. Supp. 2, at 4 (1949).

on Israel their return forthwith. We get a picture of the situation from the Secretary-General's Report on the Present Status of the Demilitarized Zone Set Up by the General Armistice Agreement Between Israel and Syria:

16. The part of the central sector of the D/Zone which is on the eastern bank of the Jordan River is a narrow strip of land, generally controlled by Syria, while the western bank, generally controlled by Israel, is a large area. On the western bank Arab villages have been demolished, their inhabitants evacuated. The inhabitants of the villages of Baqqara and Ghanname returned following the Security Council resolution of 18 May 1951 (S/2517). They were later (on 30 October 1956) forced to cross into Syria where they are still living. Their lands on the western bank of the river, and Khoury Farm in the same area, are cultivated by Israel nationals.<sup>43</sup>

The question duly arises here: Does the rule of force or a political decision terminate a legal right? Does conquest give the conqueror legal title to an occupied territory? Philip Marshal Brown has given one answer: "Military occupation by itself does not confer title or extinguish a nation. . . . [S]o long as a people do not accept military conquest; so long as they can manifest, in one way or another, their inalterable will to regain freedom, their sovereignty even though flouted, restricted, and sent in exile still persists."<sup>44</sup>

### III

#### RESPONSIBILITY FOR INITIATION OF HOSTILITIES

Now, it is widely assumed that the Arabs themselves were responsible for the misfortunes that befell them, because they were the ones who defied the U.N. Partition Resolution, and that all went peacefully in Palestine from November 29, 1947 until May 14, 1948, when the establishment of Israel was declared, with the Arabs attacking the new state. It has been concluded that the Arabs brought about the loss of their own rights through their aggression. Such is not the case. Emphasis on the real facts of the history of this period is not only relevant but necessary in the assessment of Arab claims.

To put the matter in perspective, I cite two official communications, one a letter sent by Brigadier General Patrick J. Hurley, Personal Representative of President Roosevelt, to the President from Cairo on May 5, 1943:<sup>45</sup>

For its part, the Zionist organization in Palestine has indicated its commitment to an enlarged program for (1) a sovereign Jewish State which would embrace Palestine and probably Transjordan, (2) an eventual transfer of the Arab population from Palestine to Iraq, and (3) Jewish leadership for the whole Middle East in the fields of economic development and control.

<sup>43</sup> U.N. Doc. S/7573, at 4-5, Nov. 2, 1966.

<sup>44</sup> Brown, *Sovereignty in Exile*, 35 AM. J. INT'L L. 666, 667 (1941).

<sup>45</sup> Letter from Brig. Gen. Patrick Hurley to President Roosevelt, [1943] 4 FOREIGN REL. U.S. 776, 777 (1964).

The other was a telegram sent from Cairo by U.S. Minister Kirk in Egypt to the Secretary of State on January 23, 1943:

On the Jewish side I have found Zionist officials of the Jewish Agency uncompromisingly outspoken in their determination that Palestine at end of this war shall become not merely a national home for the Jews, but a Jewish state despite any opposition from the 1,000,000 Arabs living there. In various ways main result of many of their efforts seems to be to goad Palestinian Arabs into breaking informal truce that has existed since war began. . . .

It is no secret that the Hagana, their secret Jewish military organization, has plans fully made and is well equipped not only with small arms, but also with tommy-guns and machine guns many of them purchased from Vichy French forces in Syria and smuggled into Palestine during past 2 years.<sup>46</sup>

As to what really happened, rather than the propagandized version, we have the aid of I. F. Stone, American author of *Underground to Palestine* and *This is Israel*, who tells us that he

first arrived in Palestine on Balfour Day, Nov. 2, 1945, the day the Haganah blew up bridges and watch towers to begin its struggle against the British and immigration restrictions. The following spring I was the first newspaperman to travel with illegal Jewish immigrants from the Polish-Czech border through the British blockade. In 1947 I celebrated Passover in the British detention camps in Cyprus and in 1948 I covered the Arab-Jewish war.<sup>47</sup>

In an article published August 3, 1967 he goes on to say:

Jewish terrorism, not only by the Irgun, in such savage massacres as Deir Yassin, but in milder form by the Haganah, itself "encouraged" Arabs to leave areas the Jews wished to take over for strategic or demographic reasons. They tried to make as much of Israel as free of Arabs as possible.<sup>48</sup>

He also points out that:

The myth that the Arab refugees fled because the Arab radios urged them to do so was analyzed by Erskine B. Childers in the London *Spectator* May 12, 1961. An examination of British and U.S. radio monitoring records turned up no such appeals and "even orders to the civilians of Palestine, to stay put."<sup>49</sup>

Irrefutable proof that the Zionists were the first aggressors in the war of 1947-48 is given by Menachem Begin, the alleged perpetrator of the Deir Yassin massacre, in his book *The Revolt*.<sup>50</sup> He tells us how the Haganah, the recognized "defense" force of the Zionist establishment in Palestine, having gone over to the principle of "offensive defense," joined forces with the Irgun, the terrorist group, and of the

<sup>46</sup> Letter from Minister Kirk to Secretary of State, [1943] 4 FOREIGN REL. U.S. 747-48 (1964).

<sup>47</sup> I.F. Stone, in review of special issue of *Les Temps Moderne* entitled *Le Conflict Israélo-Arabe*, *The New York Review of Books*, Aug. 3, 1967, at 12, col. 4.

<sup>48</sup> *Id.* at 10, col. 3.

<sup>49</sup> *Id.* at 10, col. 2.

<sup>50</sup> M. BEGIN, *THE REVOLT, STORY OF THE IRGUN* (1951).

signing of a secret agreement between the Jewish Agency, as the supreme authority over the Haganah, and the Irgun Zvai Leumi for attack on the Arabs. This was in January 1948, while the duly constituted Commission of the United Nations was still seeking a peaceful implementation of the General Assembly's recommendation. In a chapter entitled "The Conquest of Jaffa" he states:

In the months preceding the Arab invasion . . . we continued to make sallies into the Arab area. In the early days of 1948, we were explaining to our officers and men, however, that this was not enough. Attacks of this nature carried out by any Jewish forces were indeed of great psychological importance; and their military effect, to the extent that they widened the Arab front and forced the enemies on to the defensive, was not without value. But it was clear to us that even most daring sallies carried out by partisan troops would never be able to decide the issue. Our hope lay in gaining control of territory.

At the end of January, 1948, at a meeting of the Command of the Irgun in which the Planning Section participated, we outlined four strategic objectives: (1) Jerusalem; (2) Jaffa; (3) the Lydda-Ramleh plain; and (4) the Triangle.<sup>51</sup>

(According to the Partition plan, Jerusalem was to be a *corpus separatum*, and Jaffa was definitely to be part of the Arab state.) On April 25, 1948 (three weeks before the alleged Arab initiation of hostilities), Begin addressed his troops, en route to Jaffa: "Men of the Irgun! We are going out to conquer Jaffa. We are going into one of the decisive battles for the independence of Israel."<sup>52</sup> After an account of the battle, he assures us that "The conquest of Jaffa was one of the fateful events in the Hebrew war of independence."<sup>53</sup>

Thus the Palestine refugee problem originated, for Jaffa was practically all Arab in population. Before any Arab soldier set foot on the soil of Palestine, 400,000 Arabs had fled their Palestinian homeland in terror.

Of course, the Zionists had their own view of activities such as this, expressed by a member of the Haganah, Munya M. Mardor (now Director-General of the Israel Weapons Research and Development Authority) in a book entitled *Haganah*.<sup>54</sup> He tells of secret arms purchases in foreign countries: "We were conspirators, outside the law, and yet obeying what to us was a higher law."<sup>55</sup>

In the name of compromise, realism, and *fait accompli*, the Arabs are asked to recognize these achievements "outside the law" and admit the "conspirators" as lawful and legal successors to their land and rights.

#### CONCLUSION

It must have become clear that the legal imperatives affirming Arab rights in Palestine are firm and unequivocal, but that Israel and World Zionism have been

<sup>51</sup> *Id.* at 348.

<sup>52</sup> *Id.* at 354.

<sup>53</sup> *Id.* at 371.

<sup>54</sup> M. MARDOR, *HAGANAH* (1957).

<sup>55</sup> *Id.* at 230.

able to flout them and disregard not only all international safeguards and guarantees prior to 1947, but also the scores of U.N. resolutions concerning Arab rights.

The argument has time and again been made that the Arabs should accept the *fait accompli* established by Israel, but between 1947 and today there has been not one but several *fait accompli* to subvert Arab rights.

The Arabs prefer to see not only what is, but what ought to be and what might be, and agree with U.S. Secretary of Labor W. Willard Wirtz when he told the Labor Ministers' Conference in Venezuela: "Change is our ally, and we face squarely those who fight change because the status quo has been good to them. The divine right of the successful is as false a notion as the divine right of kings."<sup>56</sup>

Does a *fait accompli* constitute a norm for international law and behavior—since we are dealing with basic legal considerations? We hold, with the two American legal authorities quoted below, that no *fait accompli* can establish a precedent to be accepted in international law so long as the victims of the *fait accompli* object to it.

In 1954 the Legal Adviser of the State Department, Mr. Herman Phleger, made this statement:

International law has been defined as those rules for international conduct which have met general acceptance among the community of nations . . . .

. . . .

But there is such a thing as international law. It has had a long and honorable, though chequered, career. I predict that it will play an even more important part in world affairs in the future than it has in the past. Indeed, in this rapidly shrinking world, it becomes increasingly evident that our survival may depend upon our success in substituting the rule of law for the rule of force.<sup>57</sup>

From the American Law Institute comes a *Restatement of the Foreign Relations Law of the United States*, which contains the following:

*e. Objection to practice as means of preventing its acceptance as rule of law.* The growth of practice into a rule of international law depends on the degree of its acceptance by the international community. If a state initiates a practice for which there is no precedent in international law, the fact that other states do not object to it is significant evidence that they do not regard it as illegal. If this practice becomes more general without objections from other states, the practice may give rise to a rule of international law. Because failure to object to practice may amount to recognition of it, the objection by a state to a practice of another is an important means of preventing or controlling in some degree the development of rules of international law.<sup>58</sup>

The *fait accompli* of Israel, doing away with Arab rights, has been objected to, not only by the Arab states, but by the majority of Members of the United Nations, who throughout twenty years past have affirmed and reaffirmed the rights of Arab

<sup>56</sup> N.Y. Times, May 11, 1966, at 18, col. 2.

<sup>57</sup> I M. WHITEMAN, DIGEST OF INTERNATIONAL LAW 2 (1963).

<sup>58</sup> RESTATEMENT (SECOND) OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 1, comment *e* (1965).

refugees for return or compensation. The United States Government has voted consistently in favor of those resolutions, while regrettably opposing draft resolutions designed to safeguard Arab property rights.

The most succinct and telling objection to Israel's *fait accompli* that I call to mind is implicit in the words of Secretary-General U Thant, in his Annual Report to the 22nd Session of the General Assembly: "People everywhere, and this certainly applies to the Palestinian refugees, have a natural right to be in their homeland and to have a future."<sup>59</sup>

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<sup>59</sup> 22 U.N. GAOR, Supp. 1A, at 7, U.N. Doc. A/6701/Add. 1 (1967).