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THE JERUSALEM PROBLEM IN PUBLIC INTERNATIONAL LAW: JURIDICAL STATUS AND A START TOWARDS SOLUTION

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**The Jerusalem Problem in Public International
Law
Juridical Status and a Start Towards Solution**

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THE JERUSALEM PROBLEM IN PUBLIC INTERNATIONAL LAW : JURIDICAL STATUS AND A START TOWARDS SOLUTION

I. Jerusalem : Religion and Sovereignty

It is well known that each of the great monotheistic religions of universal moral values regards Jerusalem as a Holy City. The religious claims of Judaism, Islam and Christianity are each unique in the sense that they contain doctrinal differences and they each accord different significance to particular places in Jerusalem. The religious claims are not unique, however, in the practical sense that if each is to be respected, the claimants must also respect the claims of the others. In this fundamental sense the religious claims are shared. Although it is important to

distinguish religious claims from claims to political control or sovereignty, the religious claims may properly seek and receive recognition and protection from the law which is to be applied in Jerusalem.

If the religious claims were to be treated as a sound basis for political control, it is apparent that each of the religions could advance a case for sovereignty over Jerusalem with the inevitable result of political conflict. In addition, it should be recognized that some of the religious claimants specifically reject political claims. At the end of the nineteenth century, at the time of the rise of Zionist nationalism, it made territorial claims on behalf of "the Jewish people." Palestinian Jews, however, including those living in Jerusalem, were among the first to oppose the Zionists and their political and territorial claims.¹ There are religious Jews living in Jerusalem today who regard political Zionism and its State of Israel as inconsistent with the religious precepts of Judaism.² With this in mind, the claim of the State of Israel that a long continued Jewish religious connection with Jerusalem provides authority for Israeli political control and sovereignty over the city is fallacious. The State of Israel claim of political right based upon religious connection is, however, consistent with the Zionist ideology which attempts to incorporate the religion of Judaism and make it an instrument of Zionist nationalism.³

A brief summary of the history of Palestine including Jerusalem indicates that the Canaanites were the first known inhabitants of Palestine.⁴ In about 1000 B.C. David, who had temporarily united a number of Jewish tribes, conquered Jerusalem from the Jebusites. David's son, Solomon, built the first Jewish Temple in Jerusalem. After Solomon's death, the kingdom was divided into Israel and Judah with Jerusalem as the Capital of the latter. These two kingdoms were frequently at war with each other and soon both were defeated by the Assyrians. Thereafter, Assyrian, Babylonian, and Macedonian conquerors, in sequence, ruled Palestine. The Roman Conquest took place in 73 B.C., and in 135 A.D. Hadrian expelled the Jews from Palestine including Jerusalem. From about 400 A.D. until the Islamic Conquest in 637 A.D., Palestine was

part of the Byzantine Empire. The rule of the Crusaders began in 1099 and lasted only until 1187. In that year Palestine came under Arab rule following the conquest by Salah-El-Din who allowed Jews to return to the country and worship in their own way. Palestine remained under Arab domination until it was conquered by the Turks in 1517 and became a part of the Ottoman Empire. In all, Palestine and Jerusalem were under the control of rulers who professed Islam for approximately thirteen centuries and this was broken only by the Crusader rule of less than a century. Jerusalem was under the control of rulers who professed Judaism for a much shorter time period and in a more remote historical epoch. If the religious identification of its historic rulers provides authority for contemporary sovereignty, it is clear that the adherents of Islam have a far better claim than the adherents of Judaism or Christianity.

II. Jerusalem and the League of Nations Mandate for Palestine (1922-1948)

At the end of the First World War, President Woodrow Wilson sent the King-Crane Commission to the Middle East to ascertain the facts on the ground.⁵ In its recommendations to the Peace Conference at Versailles, the King-Crane Report stated that the Commissioners had started with a strong pre-disposition in favor of Zionism.⁶ Apparently their experience in the Middle East brought the indigenous nationalism to their attention, and their report states that British officers in Palestine thought that "a force of not less than fifty thousand soldiers" would be required to start the Zionist program.⁷ They continued :

Decisions, requiring armies to carry out, are sometimes necessary, but they are surely not gratuitously to be taken in the interests of a serious injustice.⁸

The League of Nations Covenant prescribed the Mandate system for "peoples not yet able to stand by themselves under the strenuous conditions of the modern world...."⁹ The Covenant also recognized as provisionally independent certain

“communities formerly belonging to the Turkish Empire”¹⁰ and this was interpreted, without dissent, as including Palestine. These communities became the Class “A” Mandates which were to be led to independence in a short time there were two safeguard clauses, the first of these safeguard clauses was designed to protect the rights of the overwhelming majority of Palestinians who were Muslims and Christians ; the second safeguard was designed to protect the rights of Jews in any country other than Palestine and particularly to preserve their legal nationality status and to prevent their involuntary inclusion in the Zionist Claimed constituency of “the Jewish People”. Both safe guards clauses were strenuously opposed by Dr. Chaim Weizmann, The Principal Zionist negotiator , but his attempts to have them eliminated, or at least softened, were unsuccessful. Weizmann termed the Balfour Declaration “a painful recession from what the Government itself was prepared to offer”¹¹ to the Zionists before the intervention of Montagu and other anti-Zionist Jews. The significance of incorporating the Balfour declaration in the Mandate is that it provided the authority of the League of Nations and its member states for maintaining the rights specified in the safeguards clauses.¹² At the time of its issuance, the Balfour Declaration merely stated the policy of the British Government, but through its incorporation in the Palestine Mandate it became an international legal obligation.

The British Government’s official interpretation of the Mandate and the Balfour Declaration was set forth in the statement by the Colonial Secretary of 1 July 1922 which is known as “The Churchill white paper.”¹³ It pointed out that the Declaration did “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.”¹⁴ Dr. Chaim Weizmann, replying on behalf of the Zionist Organization, agreed to the provisions of the White Paper and added :

*It (the Zionist Organization) has repeatedly made it clear both in word and deed that nothing is further from its purpose than to prejudice in the smallest degree the civil or religious rights or the material interests of the non-Jewish population.*¹⁵

In the negotiations leading to the issuance of the original Balfour Declaration, both the anti-Zionist Jews and the British Government, reacting to pressure from them, believed it essential to protect the then existing rights of the Palestinians. The word “civil” was used in opposition to the word “religious” and was intended to cover civil rights in a broad manner which included political rights.¹⁶ Territorial limitations were placed upon the application of the Balfour Declaration. Consistent with article 25 of the Mandate, the British Government provided that the Balfour Declaration and other related provisions of the Palestine Mandate should not be applied in the territories between the Jordan River and the eastern boundary of Palestine. In this way, the territory which later became the Hashemite Kingdom of Jordan was excluded from the operation of the Mandate.

It is particularly important for present purposes that Jerusalem was not specifically mentioned in the Palestine Mandate with the Juridical result that it was simply treated as an integral part of Palestine. The inhabitants of Jerusalem. Like other Palestinians, were to receive the protection of the first safeguard in the Balfour Declaration. The Palestine Mandate also provided for a single Palestinian citizenship without discrimination concerning religious identification.¹⁷ In addition, the Mandate contained provisions concerning the responsibility of the Mandatory to protect the Holy Places of the three religions, most of which are located in Jerusalem.¹⁸ Article 6 provided for the facilitation of Jewish immigration “while ensuring that the rights of other sections of the population are not prejudiced.” It is well known that large numbers of Zionist immigrants came to Palestine¹⁹ and that the numerous provisions of the Mandate protecting the rights of the indigenous inhabitants,²⁰ including the inhabitants of Jerusalem, were systematically violated. The result was that in 1947 and 1948 the great majority of the Palestinians either fled or were driven away from their homes and property.

III. The United Nations and Jerusalem

The Palestine Partition Resolution 181 (II)²¹ of

29 November 1947 provided for the establishment of two states in Palestine and thereby recognized both Israeli and Palestinian national rights. The principal advocate and supporter of this plan for self-determination in two states was the United States Government. The Partition Resolution was the first statement in which the General Assembly enunciated principles concerning a separate international status for Jerusalem. Its terms provided that "the Mandate for Palestine shall terminate as soon as possible but in any case not later than 1 August 1948" and the **corpus separatum** for Jerusalem was then to go into effect. In the actual event, as one result of the intense hostilities of 1947-1948, Jerusalem was divided on a **de facto** basis between Israel and Jordan.

A. General Assembly Resolutions

Part III of resolution 181, the plan of Partition with Economic Union, concerns Jerusalem and provides in relevant part :

A. Special Regime

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

B. Boundaries of the City

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

The partition Resolution provisions concerning Jerusalem were not implemented, and the General Assembly then adopted resolution 194 on 11 December 1948²³ which stated in paragraph 8 that the General Assembly :

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

The basic consistency between these resolution and the Palestine partition Resolution is that both set forth a separate status for Jerusalem and place

it under United Nations control.

In resolution 303 of 9 December 1949,²³ the General Assembly refers to both resolutions 181 and 194 in the first prefatory paragraph. The first operative paragraph provides that the General Assembly decides concerning Jerusalem :

To restate, therefore, its intention that Jerusalem should be placed under a permanent international regime, which should envisage appropriate guarantees for the protection of the Holy Places, both within and outside Jerusalem, and to confirm specifically the following provisions of General Assembly resolution 181 (II) :

(1) the City of Jerusalem shall be established as a **corpus separatum** under a special international regime and shall be administered by the United Nations : (2) the Trusteeship Council shall be designated to discharge the responsibilities of the Administering Authority... : and (3) the City of Jerusalem shall include the present municipality of Jerusalem plus the surrounding villages and towns...

The second operative paragraph of this resolution requests the Trusteeship Council to complete preparation of the Statute of Jerusalem considering "the fundamental principles of the international regime for Jerusalem set forth in General Assembly resolution 181 (II)" and to "proceed immediately with its implementation." The Statute, approved by the Trusteeship Council on 4 April 1950, which provided for, inter alia, protection for the Holy Places and for human rights and fundamental freedoms for all persons in the City,²⁴ has not been implemented. However, there has been no change in the basic international Juridical status envisaged for Jerusalem in the three General Assembly resolutions just considered.

Following the intense hostilities of June 1967, the Government of Israel incorporated for municipal administrative purposes that portion of Jerusalem previously controlled by Jordan. On 4 July 1967 the General Assembly adopted resolution 1253²⁵ which provided that the General Assembly :

Deeply concerned at the situation prevailing in Jerusalem as a result of the measures taken by Israel to change the status of the City,

1. **Considers** that these measures are invalid ;
2. **Calls upon** Israel to rescind all measures already

aken and to desist forthwith from taking any action which would alter the status of Jerusalem.

The days later the General Assembly adopted resolution 2254²⁶ which, after recalling and noting non-compliance with resolution 2253, stated that the General Assembly :

1. **Deplores** the failure of Israel to implement General Assembly resolution 2235 (ES-V).

2. **Reiterates** its call to Israel in that resolution to rescind all measures already taken and to desist forthwith from taking any action which would alter the status of Jerusalem.

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

During the summer of 1980 the Seventh Emergency Session of the General Assembly met pursuant to the 1950 Uniting for peace Resolution²⁷ of the Assembly which had been initiated and adopted under the leadership of the United States when the Security Council was unable to act during the Korean War because of the Soviet negative vote, and this Session adopted resolution ES-7/2.²⁸ The following prefatory paragraph explains the circumstances in which the General Assembly met :

Noting with regret and concern that the Security Council, at its 2220th meeting on 30 April 1980, failed to take a decision, as a result of the negative vote of the United States of America, on the recommendations of the Committee on the Exercise of the Inalienable Rights of the Palestinian People endorsed by the General Assembly in its resolutions 31/20 of 24 November 1976, 32/40 A of 2 December 1977, 33/28 A of 7 December 1978 and 34/65 of 29 November 1979.

In the seventh operative paragraph, the General Assembly stated that it :

Calls upon Israel to withdraw completely and unconditionally from all the Palestinian and other Arab territories occupied since June 1967, including Jerusalem, with all property and services intact, and urges that such withdrawal from all the occupied territories should start before 15 November 1980.

This provision for Israeli withdrawal from Jerusalem and the other territories occupied in 1967 may be interpreted as a first step which does not prejudice the long-range efficacy of the **corpus separatum** concept.

B. Security Council Resolutions

The famous Security Council resolution 242 of 22 November 1967,²⁹ which is sometimes referred to as the widely accepted basis for peace in Palestine and in the Middle East, does not mention Jerusalem by name. A key preambular paragraph, however, emphasizes "the inadmissibility of the acquisition of territory by war..." This basic principle is as applicable to Jerusalem as to any other part of Palestine. The First operative paragraph of this resolution sets forth basic principles which should be applied in order to establish "a just and lasting peace in the Middle East." The first such principle is stated as : "withdrawal of Israel armed forces from territories occupied in the recent conflict..."

The major Security Council resolutions specifically concerning Jerusalem were not adopted until 1968 and 1969. Security Council resolution 252 of 21 May 1968,³⁰ after recalling General Assembly resolutions 2253 and 2254, provides in its first three operative paragraphs that the Security Council :

1. Deplores the failure of Israel to comply with the General Assembly resolutions mentioned above.
2. **Considers** that all legislative and administrative measures and actions taken by Israel, including expropriation of land and properties thereon, which tend to change the legal status of Jerusalem are invalid and cannot change that status ;
3. **Urgently calls upon** Israel to rescind all such measures already taken and to desist forthwith from taking any further action which tends to change the status of Jerusalem.

The first quoted paragraph manifests Security Council concurrence with the broad terms of General Assembly resolutions 2253 and 2254. The second refers to the invalidity of "all legislative and administrative measures and actions taken by Israel" without limitation of time. The most significant feature of the second paragraph is the setting forth of "the legal status of Jerusalem" as the standard and providing that actions which tend to change it are invalid. The only legal status that has been provided for Jerusalem is the one establishing it as a **corpus separatum**.

The state of Israel failed to comply with the terms of resolution 252, and on 3 July 1969 the Security Council adopted resolution 267³¹ which recalled its resolution 252 and General Assembly resolutions 2253 and 2254. Its first five operative paragraphs provide that the Council :

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

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

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

Security Council resolution 298 was adopted on 25 September 1971.³² Its first preambular paragraph recalls Security Council resolutions 252 and 267 as well as General Assembly resolution 2253 and 2254 and describes them as "concerning measures and actions by Israel designed to change the status of the Israeli-occupied section of Jerusalem." It appears to be the intention of the Security Council to restrict by this language the scope of the recalled resolutions to the post-1967 situation. Although it is within the authority of the Council to interpret its own resolutions, it is beyond its power to impose limitations on the meaning of General Assembly resolutions. The third preambular paragraph of resolution 298 reaffirms "the principle that acquisition of territory by military conquest is inadmissible," and no time limitation is imposed upon the application of this principle.

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

1. **Reaffirms** its resolutions 252 (1968) and 267 (1969).
2. **Deplores** the failure of Israel to respect the previous resolutions adopted by the United Nations concerning measures and actions by Israel purporting to affect the status of the City of Jerusalem.
3. **Confirms** in the clearest possible terms that all legislative and administrative actions taken by Israel to change the status of the City of Jerusalem, including expropriation of land and

properties, transfer of population and legislation aimed at the incorporation of the occupied section, are totally invalid and cannot change that status.

Urgently calls upon Israel to rescind all previous measures and actions and to take no further steps in the occupied section of Jerusalem which may purport to change the status of the City or which would prejudice the rights of the inhabitants and the interests of the international community, or a just and lasting peace.

The second operative paragraph deplores the failure of Israel to respect the prior resolutions of the United Nations, thereby including both General Assembly and Security Council resolutions. The second and fourth operative paragraphs refer to "the status of the City." The third operative paragraph, in comprehensive terms, states that "all legislative and administrative actions taken by Israel" aimed at the incorporation of the occupied section "are totally invalid" and ineffective in changing the status of the City. The fourth paragraph calls upon Israel to rescind "all previous measures and actions" and to not take further steps "in the occupied section of Jerusalem" to change the City's status and prejudice other important interests. The references in these operative paragraphs, as well as in the first and last paragraphs of the preamble, to the "occupied section" apparently refer to the section of Jerusalem which was occupied by Israel following the intense hostilities of June 1967. These references also raise the implication that in the view of the Security Council, there may be an occupied section of Jerusalem. However, along with these references, the first operative paragraph of resolution 298 reaffirms resolution 52 and, therefore, its standard of "the legal status of Jerusalem" which is the *corpus separatum*.

Security Council resolution 271 of 15 September 1969³³ was adopted in response to the damage caused by arson to the Al Aqsa Mosque in Jerusalem on 21 August 1969. The first operative paragraph of the resolution reaffirmed resolutions 52 (1968) and 267 (1969). The third operative paragraph provides that the Security Council :

determines that the execrable act of desecration and profanation of the Holy Al Aqsa Mosque emphasizes the immediate necessity of Israel's desisting from acting in violation of the aforesaid

resolutions and rescinding forthwith all measures and actions taken by it designed to alter the status of Jerusalem...

There is a suggestion of further action by the Security Council in the sixth operative paragraph in which it :

Reiterates the determination in paragraph 7 of resolution 267 (1969) that, in the event of a negative response or no response, the Security Council shall convene without delay to consider what further action should be taken in this matter...

Security Council resolution 298 of 25 September 1971 provided in its third operative paragraph that the Council :

Confirms in the clearest possible terms that all legislative and administrative actions taken by Israel to change the status of the City of Jerusalem, including expropriation of land and properties, transfer of populations and legislation aimed at the incorporation of the occupied section, are totally invalid and cannot change that status...

This wording is particularly severe including the phrase "totally invalid." However, no enforcement action was taken in the face of continued non-compliance by the Government of Israel.

On 11 November 1976³⁴, the Security Council issued a unanimous Consensus Statement. While such a statement reflects the considered views of the Council, it has considerably less legal significance than a resolution. This statement was made at a time shortly after the United States presidential election of 1979 in which the Carter Administration had been elected but the Ford Administration still remained in office with the result that neither administration could be solely responsible for any adverse domestic political consequences. The fourth numbered paragraph reaffirmed the prior positions of the Security Council on the illegality of Israeli measures "which tend to change the legal status of Jerusalem." The third numbered paragraph was particularly important since it "strongly deplored" the Israeli measures that alter the "demographic composition" of the occupied territories. This includes the forcible eviction of Arabs from Jerusalem and the settlement of Zionist Jews there.

In resolution 446 of 22 March 1979,³⁵ the Security Council established a commission consisting of three members of the Council to examine the situation relating to the settlements in the Arab territories occupied since 1967 including Jerusalem. The Government of Israel refused to cooperate with the Commission. In the unanimous resolution 465 of 1 March 1980³⁶ the Security Council commended the work done by the Commission and called upon the Government of Israel to cooperate with it. In the fifth operative paragraph, the Security Council stated that it:

Determines that all measures taken by Israel to change the physical character, demographic composition, institutional structure or status of the Palestinian and other Arab territories occupied since 1967, including Jerusalem, or any part thereof, have no legal validity and that Israel's policy and practices of settling parts of its population and new immigrants in those territories constitutes a flagrant violation of the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War and also constitutes a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East.

This Key provision, and each of the other provisions of resolution 465, is entirely consistent with prior positions of the United States Government manifested both inside and outside the United Nations. Subsequent to President Carter's statement, made more than forty eight hours later, that the United States' affirmative vote was a mistake resulting from a "failure to communicate" and should have been an abstention, the Department of State submitted forty official documents to the House of Representatives Foreign Affairs Committee which demonstrate the consistency of resolution 465 with prior positions of the Government.⁷³ Even if the United States had abstained on resolution 465, however, the legal result in the Security Council would not be changed. The United States could have cast a negative vote and blocked the resolution, but this course of action was not even contemplated.

C. Basic Juridical Principles of the United Nations Concerning Jerusalem

Thus there is apparent lack of clarity in the post 1967 General Assembly resolutions and in the Security Council resolutions as to whether the status of Jerusalem referred to in particular instances is the legal status of the corpus separatum provided for in General Assembly resolutions 181, 194 and 303, and in the specific reference to "the legal status" in Security Council resolution 252, or the factual status of the pre-June 1967 divided City. However, examining the Security Council resolutions along with those of the General Assembly, it appears that there is, at the least, an intent to preserve the principle of the corpus separatum even though these resolutions, following the intense hostilities of June 1967, put special emphasis upon the post-1967 Israeli actions.

There are two preeminent juridical principles which appear in the United Nations resolutions which have been analyzed. One is the principle of the invalidity of the 1967 Israeli annexation of East Jerusalem; the other is the principle of the corpus separatum. Together they provide juridical determinations which are grounded on a wide and growing consensus of the world community expressed through the authorized organs of the United Nations. In each instance where the consensus is expressed in General Assembly resolutions, it is broader than the two-thirds vote required by the United Nations Charter for important questions. Although the Security Council, unlike the General Assembly, is not directly representative of the world community of states, it is important to recall that it cannot adopt a resolution in the face of a negative vote by one more of the five great powers which have permanent seats. The Security Council, therefore, typically reflects a consensus of the great powers in its resolutions. These consensus determinations also indicate the starting place for a solution to the problem of Jerusalem.

It is appropriate here to refer to the constructive work of the General Assembly committee on the Exercise of the Inalienable Rights of the Palestinian People since its creation in 1976. It has

made recommendations which include East Jerusalem, approved by the General Assembly, to achieve the right of return for individual Palestinians and self-determination for the Palestinian people without impinging upon legitimate Israeli national interest.³⁸

IV. Solutions for Jerusalem.

Before turning to a recommended solution to the problem of Jerusalem, it is useful to make a brief survey of some of the principal alternative solutions which have been advanced.³⁹

A. Survey of Principal Alternative Solutions

1. The Status Quo since 1967

This approach involves a continuation of the comprehensive Israeli political and military control of Jerusalem since the intense hostilities of June 1967. It is in opposition to the determinations of both the United Nations General Assembly and the Security Council, and it is in direct violation of the basic principle of the "inadmissibility of the acquisition of territory by war" as specified by the widely approved Security Council resolution 242. It is a form of "enforced solution" but one which is enforced unilaterally by the Government of Israel rather than by consensus of the authorized organs of the world community. The practical effect of this plan for Jerusalem would be to further embitter the Palestinians as well as others who have a legitimate interest in the City. The continuation of this status quo in Jerusalem would make it more difficult, if not impossible, to solve the Palestine problem.

2. A Return to Substantially the Status Quo Between 1948 and 1967

This plan involves a re-division of Jerusalem substantially along the lines that obtained from 1948 to 1967, with the western section remaining under Israeli control and the eastern section returned to Arab control. East Jerusalem could be returned to Arab control directly or through an interim United Nations regime to act as trustee for the Palestinians pending the full implementation of Palestinian self-determination. Some most undesirable practices which were associated with

the 1948 to 1967 division between Jordan and Israel would need to be corrected. Among these were the facts of the inaccessibility of the Wailing Wall to Israeli Jews and the desecration of the Armenian Church of St. Savior on Mt. Zion by the Israeli Army. As in any workable plan, there must be protection of and access to the Holy Places. In addition, a change should be made from the former situation of division by barbed wire and machine gun emplacements. There is no doubt but that a peaceful border here would require detailed administrative arrangements and a considerable measure of good faith on both sides, but the importance of the results to be achieved would fully justify the efforts involved in achieving them. This plan would have the advantage to the Israelis of providing international legal authority for their presence in West Jerusalem for the first time.

3. An Arab-Israeli Condominium

The solution of a condominium plan for Jerusalem would involve joint Arab-Israeli sovereignty over the entire City and advisory arrangements with the three main religious groups so as to obtain completely satisfactory protection of and access to the respective Holy Places. If it could be successfully implemented, it has a number of positive features including the prospect of meaningful Arab-Israeli cooperation. Unfortunately, the plan seems totally impractical now or in the foreseeable future because of the lack of confidence on each side in the good faith of the other side. No condominium arrangement could possibly succeed unless there were at the outset a strong measure of good faith and integrity on both sides and a willingness, and indeed a determination, to work together for the common benefit.

4. The *corpus Separatum*

The plan for internationalization of the entire City of Jerusalem is the one specified by the General Assembly resolution 181 and subsequently referred to in the language of both General Assembly and Security Council

resolutions as "the legal status of the City." The city would be administered and protected under the authority of the United Nations. Under this plan, the City would be given a separate international status quite apart from the State of Israel and the General Assembly specifications for a Palestinian State, and neither the capital of Israel nor the capital of the Palestinian State could be located within Jerusalem.

This plan has the advantages of providing for a unified open City and for effective international protection of the Holy Places of each of the religions. It would also be based upon a centralized United Nations administration rather than upon hoped for Arab-Israeli cooperation. The disadvantage is that international administration, as indicated in prior practice in other cities, is both theoretically complicated and practically difficult.

5. Partial Internationalization

The plan for a limited or partial international enclave of Jerusalem has been proposed by Evan M. Wilson⁴⁰ who was formerly the Consul-General of the United States in Jerusalem. Mr. Wilson's involves the recommendation that Jerusalem be divided, as it was before 1967, between Arab and Israeli authorities but that there be a small international area comprising the old Walled City plus a few specified places outside of the Wall. The enclave would be under the authority of a United Nations administrator assisted by a consultative council. It would involve the de-militarization of the City and the provision of measures to secure protection for and access to the religious shrines. The United Nations administrator would have an effective police power to insure the sanctity of the Holy Places. The advantage of this plan, as Mr. Wilson has pointed out, is that it would have positive aspects from both Arab and Israeli perspectives and that it would be sufficiently limited in scope to be capable of efficient administration. From the Israeli standpoint, it would provide international legal authority for their presence in West Jerusalem. Foreign embassies which now, contrary to the oft-expressed desire of the Government of Israel, remain rooted in Tel Aviv could be moved to West

Jerusalem without ensuing difficulties. In the same way, the proposed Palestinian State in the West Bank and the Gaza Strip could locate its capital in East Jerusalem. For Jews, Christians, and Muslims, without discrimination in terms of their national identity, it would provide protection and access to the Holy places of the Walled City, and it would be consistent with justice and peace in the remainder of Palestine for both Israelis and Palestinians.

6. Other Suggestions

Other Suggestions which have been advanced include one for the functional internationalization of the Holy Places. This would involve international control and protection of the religious sites only. In practice such a plan would be very difficult to achieve with sovereignty over each of the two parts of Jerusalem residing in a national state. Among the theoretical advantages of the plan is that the Holy Places could be administered without their being subjected to national political interests and controls. So far as is Known, no detailed plan of functional internationalization has yet been prepared, and this certainly demonstrates its difficulties.

It has also been suggested that a combination of features from various plans might be adopted. For example, Jerusalem could be internationalized with the eastern portion under a trusteeship administered by the not yet existing Palestinian State and the western portion under Israeli trusteeship. This, and similar suggestions, appear to be quite general and lacking in specific detail.

Self-determination for the present City of Jerusalem alone, which has also been suggested, would not be just in view of the Israeli practice of systematic displacement of the Arab inhabitants and the bringing in of Zionist Jews. As stated in a study prepared by the Congressional Research Service of the Library of Congress in Washington: The Israeli census taken after the war showed an Arab population of 70,000, which would mean that some 60,000 Arabs left the Jerusalem region either during the war or immediately afterward.⁴¹

The demographic changes in Jerusalem, brought about by the Zionist ideology and practice of the Government of Israel, have been continuing since 1967.

3. The Recommended Step-by-Step Solution
In recommending a step-by-step solution, we wish to make it clear that we are referring to steps forward and not to the steps associated with the Camp David "autonomy negotiations" which at best have been steps in place, and all too often have appeared to be steps backward.

A solution for Jerusalem cannot be and should not be considered in isolation from the solution for Palestine as a whole. At the outset, it is essential that a workable solution must be based upon the compromise between extremes which is embodied in the world community consensus enunciated by the General Assembly and the Security Council. Dr. Seth Tillman has accurately characterized this as "the consensus of moderates."⁴² It involves each of the elements enunciated by the General Assembly and the Security Council including the indispensable requirements of Israeli withdrawal to the pre-June 1967 boundaries and Palestinian self-determination in the remainder of Mandatory Palestine (which is approximately one-quarter of the whole)⁴³ In addition to broad world community support, this plan has the tacit approval of the Palestine Liberation Organization and significant minority support in Israel. Since it is a compromise between two nationalisms, it involves rejection of the Israeli claim to what the Zionists have termed the "God-covenanted land" and the sometimes expressed Palestinian claim to establish a "democratic, secular state" throughout Palestine. Concurrent with this rejection of extremes, the United Nations consensus accepts the legitimate national claims of both Israelis and Palestinians. It is necessary to emphasize that the United Nations has accepted and accorded juridical legitimacy to the State of Israel within its pre-June 1967 boundaries and to Palestinian self-determination including independence in the remainder of Palestine. This consensus involves as much justice as is compatible with the necessity of compromise. Like the peace established by the Congress of Vienna in 1815, it accepts legitimate national claims while rejecting extremes. The

United Nations is, in all probability, a more effective protector of legitimate Israeli national interests than is the Government of Israel because it is not possible for Israel to protect itself indefinitely while continuing to attempt the ruthless suppression of Palestinian nationalism.⁴⁴ The United States is certain to despair of its present role as the unqualified supporter of Zionist nationalism and return to its principled advocacy of self-determination for all peoples including the Palestinian people. It is a matter of immediate national interest to the State of Israel to facilitate the achievement of Palestinian self-determination now rather than at a later time following more bloodshed and destruction. This conclusion is not a novel one. It was reached in a publication of the Center for Strategic Studies of Tel Aviv University a year ago.⁴⁵

General Assembly resolution 3236 of 22 November 1974,⁴⁶ which has been reaffirmed regularly with increasing majorities, has preeminent importance concerning Palestinian national rights. Its Preamble recognizes that "the Palestinian people is entitled to self-determination in accordance with the Charter of the United Nations." The first operative paragraph reaffirms the "inalienable rights of the Palestinian people in Palestine" and specifies Palestinian self-determination as including the "right to national independence and sovereignty. Other resolutions of both the General Assembly and the Security Council accord at least de facto recognition to the territorial boundaries of the State of Israel as they existed prior to June 1967. Consequently, the Palestinian State is to be established in Palestine, but outside of the June 1967 de facto boundaries of the State of Israel. Such boundaries are considerably in excess of the territory allocated to the State of Israel by the Palestine Partition Resolution in 1947.

The recommended first step for solution for Jerusalem is to return to the pre-June 1967 division of Jerusalem between Arab and Israeli control. A principal difference between the recommended solution and the pre-June 1967 situation is that instead of East Jerusalem being returned to Jordan as such, it would be returned to the United Nations to act as a temporary trustee

for Palestinian and other Arab interests pending a more permanent solution. This single first step would stop the Zionization of East Jerusalem which is being relentlessly carried forward. It would stop the bringing in of additional Zionist settlers and displacing of Palestinians in East Jerusalem in further violation of the Geneva Civilians Convention of 1949.⁷⁴ In addition, it would also be a first step in the implementation of Security Council resolution 242⁴⁸ by undoing a portion of the Israeli "acquisition of territory by war." Its preeminent immediate advantage would be renewed faith by men and women of good will all over the world in the United Nations as the agent of the world community for obtaining justice and peace through law. It would also provide renewed faith and hope to persons living in the State of Israel and in the occupied territories who are committed to a solution for both Jerusalem and Palestine consistent with peace and justice.

In addition to its immediate advantages, it would provide the opportunity for the United Nations as the representative of the world community to then plan and implement a second step which would be a more permanent solution for Jerusalem in the context of the more permanent solution for Palestine. The more permanent solution, which would be consistent with the United Nations consensus, should be either the corpus separatum for all or part of Jerusalem or a more permanent division of the City between a Palestinian State and the State of Israel with provision to effectively protect the legitimate religious interests of all.

In proposing only a modest first step toward solution now, we draw comfort from the ancient wisdom that a journey of a thousand miles must begin with a single step. We also recognize that the first step in a solution for Jerusalem is long overdue.

V. Jerusalem: The Urgent Need for Sanctions and Enforcement to Maintain the World Legal Order

The Jerusalem problem has too often been regarded as so difficult that it should be delayed until it can be made part of a comprehensive settlement. The fact is that delay makes the problem of Jerusalem much harder to solve⁴⁹. It

the world community had reacted with vigor in 1967 by using the available economic and military sanctions provided for in the United Nations Charter, the problem of Jerusalem would have been much easier to solve and its solution would have greatly facilitated the solution of the Palestine problem. If the problem of Jerusalem deferred for another week, another year, another decade, it thereby becomes much more difficult to solve than it is now. The wasted years of good intentions including General Assembly and Security Council resolutions based upon sound and just premises but without enforcement can now be retrieved.

The maintenance of public order is the most basic task of any legal system, whether domestic or international. The responsibility of a domestic order system is to exercise effective community control over private violence. In the same way, the responsibility of a world legal order is to exercise effective community control of violence and coercion exercised by national states.⁵⁰ The world legal order must, at the very least, protect individuals and national states from coercion and aggression. Such an order, which may be characterized as a minimum order system, prescribed by the United Nations Charter prohibition upon "the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."⁵¹ The Charter also contains a complementary provision which authorizes the use of force only for "defensive purposes."⁵² An optimum world legal order includes the basic elements of the minimum system and also embraces a context in which individuals and national states may seek their value objectives in a peaceful and nondiscriminatory environment. Optimum order will be achieved when the minimum order provisions of the Charter are effectively enforced and when the economic and social provisions including the Key provisions on human rights are also achieved. It is clear that the Palestinians who have been the victims of organized Zionist terror since the time of the Balfour Declaration and who have been victimized by the Government of Israel's highly institutionalized state terror sit

1948 have not received the benefits of a minimum order system. In the same way, those Israelis who have been the victims of the Palestinian counter-terror have not received the benefits of such a system.⁵⁵ The great opportunity which solutions to Jerusalem and Palestine present to the world community acting through the United Nations is to provide Palestinians and Israelis alike with first the protection of minimum order and then the expanding benefits of optimum order. In this era of weapons of mass destruction, the effects of which

Fall upon the just and the unjust alike, the probable alternatives to the achievement of at least minimum order include a further destructive war in the Middle East and a world conflagration of mutual mass destruction as well.

The State of Israel, Like other members of the United Nations, has obligations under the Charter. In addition, at the time when Israel was seeking admission to United Nations, it, through Mr. Abba Eban, made positive undertakings concerning the Palestinian refugees and the international status of Jerusalem. Mr. Eban stated, *inter alia*:

I do not think that article 2, paragraph 7, of the Charter, which relates to domestic Jurisdiction, could possibly affect the Jerusalem problem since the legal status of Jerusalem is different from that of the territory in which Israel is sovereign⁵⁶

General Assembly resolution 273 (III) of 11 May 1949⁵⁷ which admitted Israel to membership stated in the preamble:

Nating furthermore the declaration by the State of Israel that it 'unreservedly accepts the obligations of the United Nations Charter and undertakes to honour them from the day when it becomes a Member of the United Nations.'

Unfortunately, these undertakings have not

been complied with.

If there is any single that has been made most clearly in the United Nations dealings with the State of Israel and Zionist nationalism over a period more than three decades, it is that there will be no solution in Jerusalem and in Palestine until effective sanctions are applied to the Government of Israel? Because of the continuing Israeli economic crisis, largely caused by the militarization of its foreign policy and its domestic

society, there is every reason to believe that economic sanctions would be successful. Such sanctions⁵⁸ would immediately raise a new hope within Israel on the part of those patriotic and enlightened Israeli citizens who have been urging their government to enter into a peaceful settlement based upon Law and Justice. In the unlikely event that the economic sanctions were unsuccessful, the military sanctions are available under the United Nations Charter.⁵⁹

The applications of sanctions to enforce the world community concerning Jerusalem manifested through the authorized organs of the United Nations is now indispensable. No organized community, domestic or international, can achieve a minimum legal order without the ability and will to use the necessary force and coercion to obtain it. The essential element is that coercion must be in the responsible hands of the community and not in the hands of a militaristic and expansionist state whether Nazi, Zionist, or another similar ideology.⁶⁰ The central point was made by J.W. Fulbright sometime ago when he wrote, 'The crucial distinction is not between coercion and voluntarism, but between duly constituted force, applied through law and as a last resort, and the arbitrary coercion of the weak by the strong.'⁶¹

One of the objections that will be made to this recommendation for the application of adequate sanctions is the often stated position of the United States Government that it opposes an 'imposed settlement.'⁶² This objection should be clearly understood both in its explicit meaning and in its implication. Its explicit meaning is that an 'imposed settlement' by the world community under law is opposed. Its unexpressed but necessary implication is that the existing imposed settlement by the military power of the Government of Israel, armed and supported by the United States, is to be condoned, or at the least, to be continued for the indefinite future. In addition, the position of the United States seems to apply only to the Israeli-Palestinian conflict. It overlooks the highly successful imposition of a settlement on Japan by the United States in the years following the end of the Second World War. It also neglects to mention the United States participation in the imposed

settlement in Europe at the end of the same war. No mention of historic settlements would be complete without reference to the peace which the Congress of Vienna imposed on France beginning in 1815.⁶⁵ The justice involved in that settlement, including the recognition of legitimate French national interests, resulted in less coercion being required than would otherwise have been necessary. Both justice and coercion are typically required in peace settlements and where justice is used less, coercion must be used more. The absence of substantial justice in the unilateral military settlement now imposed upon Jerusalem and Palestine leads to great and increasing use of coercion.

An analagous situation to the one which has existed in Jerusalem and Palestine since 1967 arose in 1957 following the Anglo-French- Israeli aggression against Egypt. Pursuant to resolutions of the General Assembly, the British and French armed forces were withdrawn from territory acquired by war. Then, as now, the Government of Israel refused to withdraw. The President of the United States at time was a man who, like one of the founders of the United Nations, President Franklin D. Roosevelt, was committed to the principles of the United Nations Charter and to the maintenance of its legal order system.

On February 20, 1957, in the face of continued Israeli defiance of the United Nations, President Dwight D. Eisenhower stated in an address which was heard and reported on a world- wide basis: We are approaching a fateful moment when either we must recognize that the United Nations is unable to restore peace in this area or the United Nations must renew with increased vigor its efforts to bring about Israeli withdrawal.⁶⁴

This raises a basic question of principle. Should a nation which attacks and occupies foreign territory in the face of United Nations disapproval be allowed to impose conditions on its own withdrawal ?

If we agree that armed attack can properly achieve the purposes of the assailant, then I fear we will have turned back the clock of international order. We will, in effect, have countenanced the use of force as a means of settling international differences and through this gaining national

advantages.⁶⁵

The United Nations must not fail. I believe that in the interests of peace the United Nations has no choice but to exert pressure upon Israel to comply with the withdrawal resolutions. Of course, we still hope that the Government of Israel will see that its best immediate and long- term interests lie in compliance with the United Nations and placing its trust in the resolutions of the United Nations and in the declaration of the United States with reference to the future.⁶⁶

The ensuing Israeli withdrawal is well known. The present writers, as United States citizens, look forward to the time when our Government returns to the principled policy and practice associated with the names of Roosevelt and Eisenhower. Until that day, the other members of the United Nations retain their obligation and opportunity to uphold the United Nations Legal order. When the western European members of the United Nations act without hesitancy to fulfill their Charter obligations, it will have a significant, and perhaps decisive, impact upon the United States Government.

Notes

1. See, e.g., the opposition to Zionism stated by Joseph Hayyim Sonnenfeld, one of the preeminent leaders of the Palestinian Jewish community, in 1898 and referred to and quoted in E. Marmorstein, *Heaven at Bay: The Jewish Kulturkampf in the Holy Land*, pp. 79-80 (London, 1969).
2. E. G., *the Naturei Karta*.
3. Jewish criticism of the Zionist use of religion appears in Berger, 'An Examination of the Claim of Zionism to Divine Authorization for Establishing Settlements', *I Arab Perspectives*, No. 2, P. 24 (May, 1980).
4. See George Adam Smith, *Jerusalem: The Topography, Economics, and History from Earliest Times to A.D. 70*, (2 vols., London, 1908) and Gaius Glenn Atkins, *Jerusalem past and present* (London, 1918).
5. The authoritative study of the work of the Commission is Harry N. Howard, *The King- Crane Commission* (Beirut, 1963).
6. 1919 Foreign Relations of the U.S.: The Paris Peace Conference, vol. 12, P. 792 (1947).
7. *Id.* at P. 794.
8. *Id.*
9. Art. 22, para. 1.
10. Art. 22, para. 4.
11. *Trial and Error: The Autobiography of Chaim Weizmann*, P. 260 (East and West Library, London, 1950).

12. The United States was not a member of the League of Nations but agreed the terms of the Palestine Mandate including the Balfour Declaration in the Anglo- American Convention on Palestine, 44 U.S. State., P. 2184 (1924).

13. cmd. 1700, at PP. 17-21, Gt. Brit. House of Commons, Sessional Papers, Vol. 23 (1922).

14. Id.

15. Jewish Agency for Palestine, Book of Documents Submitted to the General Assembly of the United Nations Relating to the Establishment of the National Home for the Jewish People, P. 32 at 33 (New York, May, 1947).

16. Mallison, supra note 13, at PP. 90-93.

17. Supra note 12, arts. and 15.

18. id. arts. 13-16.

19. The rise of the Nazi terror in 1933 led to the greatly increased immigration of German refugees into Palestine.

20. Supra note 12. In addition to the Balfour Declaration first safeguard clause, the main protective provisions are in arts. 3, 5, 6, 9, 15 and 16.

21. G.A. Res. 181 (11) concerning the Future Government of Palestine (29 November 1947), 2 U.N. GAOR, Resolutions, PP. 131-32, (16 Sept. - 29 Nov. 1947).

22. 3 U.N. GAOR, Resolutions, PP. 21-25, U.N. Doc. A/810, (21 Sept. - 12 Dec. 1948).

23. 4 U.N. GAOR, Resolutions, P. 25, U.N. Doc. A/1251, (20 Sept. - 12 Dec. 1948).

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

25. 22 U.N. GAOR, (Es-V), Supp. P. 1, P.4.

26. Id.

27. G.A. Res. 377A (V), Nov. 1950, U.N. GAOR, Supp. 20 (A/1775), PP. 10-12.

28. Adopted on 29 July 1980 by a vote of 122 to 7 (including the U.S), with 24 abstentions (including a number of Western European states).

29. U.N. SCOR, Twenty- second Year, PP. 8-9.

30. Id. at Twenty- third Year, PP. 9-10.

31. Id. at Twenty- Fourty Year, PP. 3-4.

32. Id. Twenty- sixth Year, P. 6.

33. Id. Twenty- fourth Year, P. 5.

34. 75 U.S. Dep't State Bull., P. 693 (6 Dec. 1976).

35. U.N. SCOR, Thirty- fourth Year, P. 4.

36. The Security Council Official Records are not yet available for 1980. Resolution 465 is set forth in full in the Appendix.

37. The 40 documents were enclosures to the letter from Asst. Sec. of State Atwood to Chairman Zablocki of the U.S. House of Representatives Committee, received on March 12, 1980.

38. The first Report of the Committee on the Exercise of the Inalienable Rights of the Palestinian People (including recommendations) is in 31 U.N. GAOR, Supp. No. 35 (A/31/35) (1976). The most recent such report is in 35 id. (A/35/35) (1980).

39. Alternative plans for Jerusalem are also set forth in R.H. pfaff, Jerusalem: keystone of an Arab- Israeli Settlement, PP. 52-54 (Amer. Enterprise Inst., 1969).

40. Jerusalem: key to peace (Middle East Inst., 1970).

41. Jerusalem: The Future of the Holy City for Three Monotheisms, Hearing Before the Subcommittee on the Near East of the Committee on Foreign Affairs of the U.S. House of Representatives, 92nd Cong., 1st Sess., Appendix 111, P. 145 at 159 (July 28, 1971).

42. American Interests in the Middle East, P. 49 (Middle East Inst., 1980).

43. The present writers agree with Dr. Tillman's basic conclusion that peace in Palestine (including Jerusalem) must be based upon two 'rock bottom ' requirements: (1) Israeli withdrawal to and security within the pre- 1967 boundaries: (2) Palestinian self- determination in Palestine outside of the pre - 1967 boundaries of Israel. Id. at PP. 48-51.

44. Dr. Tillman points out the inability of Israel to maintain the present militarily imposed status quo indefinitely. Id. at P. 49.

45. A. Shalev, The Autonomy and the Possible Solutions (1979). The Author is a retired brigadier general of the Israeli Army.

46. 29 U.N. GAOR, Supp. 31, P. 4.

47. Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 75, U.N.T.S., P. 287.

48. Supra note 32.

49. The harm done by delay and the urgent need for early enforcement were presented convincingly by Mr. John Reddaway in a paper entitled, ' Jerusalem and International Organizations, ' at the International Seminar on Jerusalem in London (3-5 December 1979).

50. The world legal order is considered systematically in M. S. Mc Dougal and Associates, Studies in World Public Order, (Yale, 1960).

51. United Nations Charter, ar, art. 2 (4).

52. Id., art. 51.

53. Id., arts 55-91.

54. Id., arts. 55 and 56.

55. Both the Israeli state terror and the Palestinian counterterror are described and analyzed in D. Hirst, The Gun and the Olive Branch: The Roots of Violence in the Middle East, (London, 1977). The Zionist institutionalized terror before the establishment of the State of Israel is described in M. Begin, The Revolt: Story of the Irgun (various printings in the United States between 1947 and 1977).

56. 3 U.N. GAOR, part 11, Ad Hoc Political Committee, PP. 186-87 (1949).

57. 3 U.N. GAOR, p.

58. United Nations Charter, arts. 39-50.

59. Id.

60. The past performance and present potential of such sanctions by the world community are analyzed in M.S. Mc Dougal and F.P. Feliciano, Law and Minimum World Public Order, Ch. 4 entitled, ' Community Sanctioning Process and Minimum Order ' (Yale, 1961).

61. J.W. Fulbright, The Crippled Giant, P. 108 (Vintage Books, 1972).

62. Opposition to such a settlement, applied to Israel, was expressed by Acting U.S. Ambassador to the United Nations, W. J. vanden Weuvel, in the Emergency Special Session of the General Assembly on Palestine on July 24, 1980. 80 U.S. Dep't State Bull. P. 67 (Sept., 1980).

63. See H. A. A World Restored: Metternich, Castlereagh and the problems of peace, 1812-1822 (Houghtin Mifflin, Senory ed., Undated).

64. 36 U.S. Dep't State Bull. P. 387 at 388 (Mar. 11, 1957).

65. Id. at P. 389.

66. Id. at P. 390.

Resolution 465 (1980)

**Adopted by the Security Council at its
2203rd meeting
on 1 March 1980
The Security Council,**

Taking note of the reports of the Commission of the Security Council established under resolution 446 (1979) to examine the situation relating to esttlements in the Arab territories occupied since 1967, including Jerusalem, contained in documents S/13450 and Corr. I and S/13679,

Taking note also of letters from the Permanent Representative of Jordan (S/13801) and the Permanent Representative of Morocco, Chairman of the Islamic Group (S/13802),

Stongly deploring the refusal by Israel to co-operate with the Commission and regretting its formal rejection of resolutions 446 (1976) and 452 (1979),

Affirming once more that the Fourth Geneva Convention relative to the protection of Civilian Persons in Time of 12 August 1949 is applicable to the Arab territories occupied by Israel since 1967, including jerusalem,

Deploring the decision of the Government of Israel to officially support Israeli settlement in the palestinian and other Arab territories occupied since 1967,

Deeply concerned over the practices of the Israeli authorities in implementing that settlement policy in the occupied Arab territories, including Jerusalem, and its consequences for the local Arab and Palestinian population,

Taking into account the need to consider measures for the impartial protection of private and puplic land and property, and water resources,

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

Drawing attention to the grave consequences whis settlement policy is bound to have on any attempt to reach a compehensive, just and lasting peace in the Hiddle East,

Recalling pertinent Security Council resolutions, specifically resolutions 237 (1967) of 14 June 1967, (1968) of 21 May 1968, 267 (1969) of 3 July 1969, 271 (1969) of 15 September 1969 and 298 (1971) of 25 September 1971, as well as the consesus statement made by the President of the Security

Council on 11 November 1976,

Having invited Mr. Fahd Qawasmeh, Mayor of Al-Khalil (Hebron), in the occupied territory, to supply it with supply it with information pursuant to rule 39 of the provisional rules of procedure,

1. Commends the work done by the Commission in preparing the report contained in document S/13679,

2. Accepts the conclusions and recommendations contained in the abovementioned report of the Commission,

3. Calls upon all parties, particulary the Government of Israel, to co-operate with the Commission,

a4. Strongly deplores the decision of Israel to prohibit the free travel of Mayor Fahd Qawasmeh in order to appear before the Security Council, and requests Israel to permit his free travel to the United Nations Headquarters for that purpose;

5. Determines that all measures taken by Israel to change the phsical character, demographic composition, institutional structure or status of the Palestinian and other Arab territories occupied since 1967, including Jerusalem, or any part thereor, have no legal validity and that Israel's policy and practices of settling parts of its population and immigrants in those territories constituies a flagrant violation of the Fourth Gention relative to the Protection of Civilian Persons in Time of War and also constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East;

6. Strongly deplres the continuation and persistence of Israel in pursuing those policies and practices and calls upon the Governmont and people of Israel to rescind those measures, to dismantle the existing settlements in particular to cease, on an urgent basis, the establishment, construction and planning of settlements in the Arab territories occupied since 1967, including Jerusalem;

7. Calls upon all States not to provide Israel with any assistance to be used specifically in connexion with settlements in the occupied territories;

8. Requests the Commission to continue to examine the situation relating to settlements in the Arab erritories occupied since 1967, including jerusalwm, to investigate the reported serious depletion of resources, particularly the water resources, with a view to ensuring the protection of those important natural resources of the territories under occupation, and to keep under close scutiny to implementation of the present reslution;

9. Request the commission to report to the Security Council before 1 September 1980, and decides to convene at the earliest possible date thereafte order to consider the report and the full implementation of the present resoution;