MS-603: Rabbi Marc H. Tanenbaum Collection, 1945-1992.

Series D: International Relations Activities. 1961-1992

Box 75, Folder 1, United Nations - anti-Israel, 1975-1980.

3101 Clifton Ave, Cincinnati, Ohio 45220
(513) 221-1875 phone, (513) 221-7812 fax
americanjewisharchives.org

MAILGRAM SERVICE CENTER
MIDDLETOWN VA 22645

western union Mailgram® UNITED STATES POSTAL SERVICE U.S.MAIL

4-119002U326011 11/21/80 ICS NY30293 NYBB
00073 MLTN VA 11/21/80

RABBI MARC TANNENBAUM
AMER JEWISH COMMITTEE
165 E 56TH ST
NEW YORK NY 10022

HEREIN IS THE STATEMENT OF THE COMMITTEE FOR U.N. INTEGRITY TO BE RELEASED AT THE CONVOCATION IN NEW YORK CITY SUNDAY, DECEMBER 7, 1980. THE CONVOCATION IS SCHEDULED TO TAKE PLACE AT THE GRADUATE CENTER OF THE CITY UNIVERSITY OF NEW YORK, 33 WEST 42ND STREET, FROM 10:30 A.M. TO 3:00 P.M. IN ROOM 1700.

RELIGIOUS, HUMAN RIGHTS

WE ARE REPRESENTATIVES OF THE INTERNATIONAL ACADEMIC, ARTS AND SCIENCE COMMUNITIES WHO HAVE ASSEMBLED IN NEW YORK CITY ON THIS SEVENTH DAY OF DECEMBER 1980 TO VOICE OUR ALARM AT THE GROWING DANGER TO WORLD PEACE RESULTING FROM THE EROSION OF THE UNITED NATIONS.

THE UNITED NATIONS WAS ESTABLISHED 35 YEARS AGO IN THE WAKE OF THE DEVASTATION OF WORLD WAR II TO PROMOTE PEACE AMONG THE NATIONS AND THE WELL-BEING OF ALL THEIR PEOPLES. IT CAME INTO BEING WITH A MANDATE TO OPPOSE VIOLENCE AND TO PREVENT WAR, TO FIGHT HUNGER AND DISEASE, TO EXPLORE AND ADVANCE THE HUMAN CONDITION.

BUT THE UNITED NATIONS IS NO LONGER THE GUARDIAN OF SOCIAL JUSTICE, HUMAN RIGHTS AND EQUALITY AMONG NATIONS. INDEED, PERVERTED BY IRRELEVANT POLITICAL MACHINATIONS, IT IS IN DANGER OF BECOMING A FORCE AGAINST PEACE ITSELF.

SO ANTI-ISR

NOWHERE IS THE FAILURE OF THE UNITED NATIONS MORE TRAGIC THAN IN THE MIDDLE EAST. THE SOVIET INVASION OF AFGHANISTAN, THE WAR BETWEEN IRAN AND IRAQ, THE PROLONGED INCARCERATION OF AMERICAN HOSTAGES IN TEHERAN, GRAVE CRISES IN INDOCHINA AND ELSEWHERE GO VIRTUALLY UNCHALLENGED WHILE THE UNITED NATIONS PURSUES A COURSE OF ACTION DESTINED TO UNDERMINE THE PRINCIPLES ON WHICH THE ORGANIZATION WAS FOUNDED.

THIS CONVOCATION MUST BEAR WITNESS TO THE ASSAULTS ORCHESTRATED BY THE SOVIET AND ARAB BLOCS IN THEIR CAMPAIGN TO ISOLATE AND DISCREDIT ISRAEL. THE UNITED NATIONS CONDEMNS THE HISTORIC EGYPTIAN-ISRAELI PEACE TREATY AND EXALTS PLO TERRORISTS. THOSE WHO VOW TO ELIMINATE THE STATE OF ISRAEL AND REFUSE TO MAKE PEACE ARE PERMITTED TO SIT IN THE COUNCILS OF THE PEACEMAKERS, WHILE ISRAEL, A MEMBER STATE CREATED IN FIDELITY TO THE PRINCIPLES OF THE UNITED NATIONS, IS SLANDERED AND FACED WITH THE THREAT OF DELEGITIMIZATION.

THE UNITED NATIONS RESOLUTION WHICH BRANDED ZIONISM - THE

6241 (R1/78)

11- Rm 1700 City Univ Grad Center 33 W. 42

western union Mailgram® UNITED STATES POSTAL SERVICE U.S. MAIL

NATIONAL LIBERATION MOVEMENT OF THE JEWISH PEOPLE - WITH THE FALSE LABEL OF RACISM MUST BEAR SOME RESPONSIBILITY FOR THE SCOURGE OF ANTI-SEMITISM NOW REAPPEARING IN MANY PARTS OF THE WORLD.

IN ITS OBSESSION WITH PALESTINIAN "RIGHTS," THE UNITED NATIONS NEGLECTS THE PLIGHT OF MILLIONS OF MEN, WOMEN AND CHILDREN IN OTHER PARTS OF THE WORLD WHO ARE IN IMMEDIATE DANGER OF DEATH FROM FAMINE, DISEASE AND WAR.

THE MANIPULATION OF THE WORLD FORUM HAS REACHED BEYOND THE HALLS OF THE GENERAL ASSEMBLY AND HAS POLITICIZED, AND THEREBY CRIPPLED MANY OF THE UNITED NATIONS SPECIALIZED AGENCIES. THE CAMPAIGN TO OSTRACIZE ISRAEL HAS OBSTRUCTED THE EFFORTS OF THE INTERNATIONAL LABOR ORGANIZATION, THE WORLD HEALTH ORGANIZATION, THE UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION, AMONG OTHERS, ALL DEDICATED TO PROMOTING HIGHER STANDARDS OF LIVING, SOCIAL AND ECONOMIC PROGRESS, INTERNATIONAL CULTURAL AND EDUCATIONAL COOPERATION. IT HAS MADE AN INTERNATIONAL CHARADE OF THEIR LABORS TO EXTEND FREEDOM OF SPEECH AND PRESS, TO HELP THE WORKING MAN AND WOMAN, TO MEET THE NEEDS OF CHILDREN, TO ACHIEVE EQUALITY FOR WOMEN.

IN DEVOTION TO THE FULFILLMENT OF THE UNITED NATIONS' HUMANITARIAN AND PEACEFUL GOALS, WE CANNOT REMAIN SILENT WHILE FORCES WHICH INCITE HATRED AND FOMENT WAR BETRAY OUR HOPES FOR WORLD PEACE AND PROGRESS. WE CALL UPON THE UNITED NATIONS - AND EACH MEMBER NATION - TO EMBRACE ONCE AGAIN THE IDEALS OF THE UNITED NATIONS CHARTER AND TO RESTORE THE PROMISE THAT THE UNITED NATIONS CAN ACHIEVE A BETTER WORLD FOR ALL HUMANITY.

PLEASE CALL COLLECT 212-532-5009 TO LET US KNOW IF:

1. WE MAY USE YOUR NAME AND AFFILIATION (FOR IDENTIFICATION PURPOSES ONLY) FOR POSSIBLE PUBLIC RELEASE

2. YOU ARE ABLE TO ATTEND.

THE COMMITTEE FOR U.N. INTEGRITY [Natalie Goldman Noam Cohen

KENNETH ARROW
SIR ISAIAH BERLIN
HANS A. BETHE
FELIX BLOCH
ROBERT J. KIBBEE
ANDRE LWOFF
ELIE WIESEL

23:53 EST

MGMCOMP

6241 (R1/78)

western union Mailgram®

UNITED STATES POSTAL SERVICE U.S.MAIL

HANS A. BETHE
FELIX BLOCH
ROBERT J. KIBBEE
ANDRE LWOFF
ELIE WIESEL

01:17 EST

MGMCOMP

5241 (R1/78)

MAILGRAM SERVICE CENTER
MIDDLETOWN, VA. 22645

western union Mailgram

UNITED STATES POSTAL SERVICE U.S.MAIL

1-127001U316050 11/12/80 ICS NY30293 NYBA
00057 MLTN VA 11/11/80

Call yes hoping to join return telegram

RABBI MARC TANNENBAUM
AMERICAN JEWISH COMMITTEE
165 E 56TH ST
NEW YORK NY 10022.

WE ARE ALARMED AT THE GROWING DANGER TO ISRAEL RESULTING FROM THE MANIPULATION OF THE UNITED NATIONS BY ISRAEL'S ENEMIES. WE ARE THEREFORE CALLING AN EMERGENCY INTERNATIONAL CONVOCATION IN NEW YORK CITY ON SUNDAY, DECEMBER 7, 1980, (DETAILS TO FOLLOW). THE CONVOCATION WILL BEAR WITNESS TO THE VICIOUS ASSAULTS ORCHESTRATED BY SOVIET AND ARAB BLOCS IN THEIR CAMPAIGN TO ISOLATE AND DISCREDIT ISRAEL. THE U.N. CONDEMNS THE HISTORIC EGYPTIAN-ISRAELI PEACE TREATY AND EXALTS THE PLO TERRORISTS WHO VOW TO ELIMINATE THE STATE OF ISRAEL. GRAVE CRISES IN AFGHANISTAN, IRAN AND IRAQ, AND ELSEWHERE GO VIRTUALLY UNCHALLENGED WHILE THE U.N. IS OBSESSED WITH "PALESTINIAN RIGHTS." BY LABELLING ZIONISM AS RACISM, THE U.N. MAY BE PERCEIVED AS LEGITIMIZING THE RISE OF ANTI-SEMITISM. THE U.N. IS NO LONGER THE GUARDIAN OF SOCIAL JUSTICE, HUMAN RIGHTS AND EQUALITY AMONG NATIONS, BUT IN MANY WAYS SEEMINGLY A FORCE AGAINST PEACE ITSELF. OUR CONVOCATION WILL REMIND THE INTERNATIONAL COMMUNITY THAT THE U.N. WAS ESTABLISHED IN THE WAKE OF WORLD WAR II TO OPPOSE TYRANNY; ISRAEL, A MEMBER STATE CREATED IN FIDELITY TO THE PRINCIPLES OF THE UNITED NATIONS, SHOULD NOT BE SACRIFICED TO A NEW GENERATION OF TYRANNY.

FOR THE U.N. TO PERSIST IN THIS PATH CAN ONLY UNDERMINE THE PRINCIPLES ON WHICH THE ORGANIZATION WAS FOUNDED, AND THE REASON FOR ITS VERY EXISTENCE. FOR THOSE OF US WHO HAVE DEVOTED OURSELVES TO THE FULFILLMENT OF THE HUMANITARIAN AND PEACEFUL GOALS ORIGINALLY FORMULATED FOR THE U.N., ITS PRESENT COURSE MAY WELL LEAD SOME TO QUESTION CONTINUED PARTICIPATION IN THE WORK OF ITS VARIOUS AGENCIES.

MAY WE ADD YOUR NAME TO THE LIST OF DISTINGUISHED SPONSORS OF THE CONVOCATION AND MAY WE COUNT ON YOU TO PARTICIPATE ON SUNDAY, DECEMBER 7, 1980. YOUR PRESENCE WILL STRENGTHEN OUR APPEAL. PLEASE RSVP COLLECT TO (212) 532-5009. WE ALSO HOPE YOU WILL SIGN THE CALL TO CONSCIENCE TO BE PRESENTED TO U.N. SECRETARY GENERAL WALDHEIM AND RELEASED PUBLICLY. WE SHALL SEND THE TEXT TO YOU FOR APPROVAL.

COMMITTEE FOR U.N. INTEGRITY

KENNETH ARROW
SIR ISAIAH BERLIN

6241 (R1/78)

TO REPLY BY MAILGRAM, SEE REVERSE SIDE FOR WESTERN UNION'S TOLL - FREE PHONE NUMBERS

THE NEW REPUBLIC

December 20, 1975

Barbarous Parliament

Paul Johnson

The Civilized Countries *v.* a UN Majority

Barbarous Parliament

by Paul Johnson

The recent votes at the United Nations—first in the UN Social, Humanitarian and Cultural Committee, more recently in the General Assembly—that sought to stigmatize Zionism as a racist ideology, and Israel as a racist and imperialist state—have at least served one useful purpose. The voting lists enable us to draw a clear and decisive line between the civilized and the noncivilized states that compose the world organization. It is true that some civilized states, for a variety of political, military and economic reasons, lacked the courage to vote "no" and took refuge in abstention—just as, for instance, in the Second World War, Sweden and Switzerland were too terrified of Hitler to declare themselves against him.

In general, however, the head-count of nations was wholly accurate and casts a penetrating beam of light across the world political landscape. On Israel's side were the chief repositories of civilized culture: states—including it should be clear Third World states—that uphold and support the rule of law; where there is freedom of the press, speech and public assembly; where representative parliaments are freely elected by secret ballot, in a multi-party system; where governments are dismissed by votes, not force; where the armed forces are the servants of the civil power, not its masters; and where the citizen feels that he can play some part in running his country.

Voting against Israel, using all the resources of the massive doublespeak and non-think vernacular, was the entire alliance of the barbarous states, what can accurately be called a *pandemonium* of powers. Here were to be found Soviet Russia, the world's most efficient tyranny, and its dutiful cohort of East European colonies: nations, once civilized, held in abject subservience by political police and their concentration camps, backed by the threat of Soviet tanks and missiles. And here, too, was the Arab-Moslem bloc: all its members

---

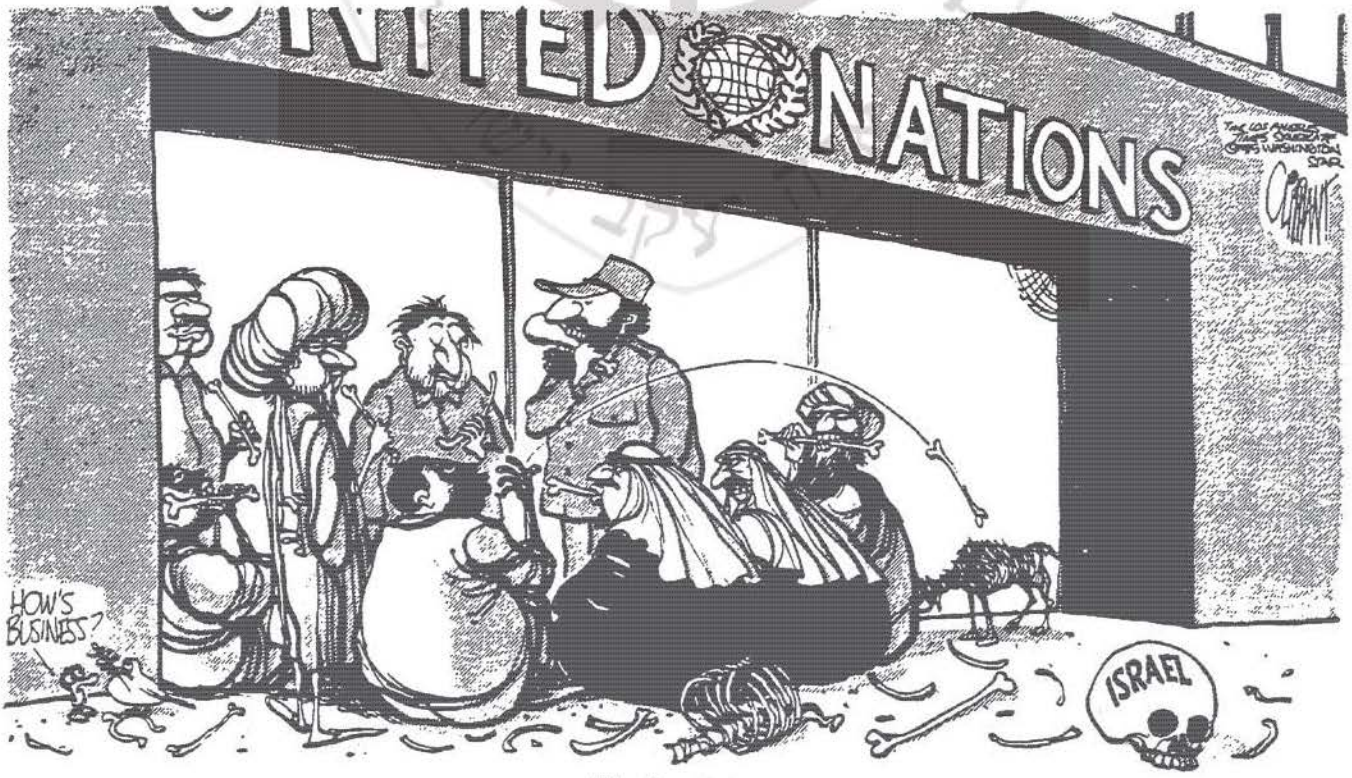
Paul Johnson is the former editor (1965-1970) of the British Socialist weekly *New Statesman*.

one-party military dictatorships, police states or feudal monarchies of unspeakable degradation—the one exception, Lebanon, torn to bloody pieces by uncontrollable civil war. Joining these two foci of barbarism were a multitude of new recruits from Africa and Asia: former colonies ruthlessly turned into Soviet-or China-style one-party regimes, with a full panoply of secret police, torture-dungeons, camps, execution-centers and mass, unmarked burial-grounds; or, alternatively, those which had quickly degenerated into pre-colonial tribal kingdoms, ruled by savages, jovial or brutal according to their mood, exercising arbitrary justice over a terrified populace.

Consider some of the outstanding figures in this motley coalition of antidemocratic regimes, who took it upon themselves to condemn Israel as racist and imperialist. Leonid Brezhnev, for instance, the party machine-boss who personally directed the occupation of civilized Czechoslovakia by Soviet tanks, and who had its legal premier, Dubček, dragged before him like a recaptured slave in an oriental despotism, to listen to his jeers and insults. Or Gaddafi, the military dictator of Libya, whose delight in terrorist violence is such that he freely supplies arms to both Protestant and Catholic factions in Ulster. Or, perhaps most notable of all, "Field Marshal" Amin of Uganda, the ferocious—perhaps demented—former sergeant, whose tribal warriors have slaughtered many thousands of his compatriots, and who himself is said to have supervised the beating to death of the Uganda Lord Chief Justice for daring to defy his edicts in court. Amin, though feared by some African leaders, indeed disdained by the best of them, is not without honor in his own continent, since he was recently elected chairman of the Organization of African Unity, and presided uproariously over their weird festivities in Kampala.

What made the condemnation of Israel by this confederation so uniquely gruesome was that, with few exceptions, all practice blatant forms of racist or collective inhumanity. Soviet anti-Semitism, masquerading as anti-Zionism, is notorious; but the central Soviet state systematically persecutes more than a score of minority groups in its vast empire, solely on grounds of race. Iraq, often the raucous leader of the Arab pack against Israel, has recently expelled, with the utmost callousness and brutality, more than 300,000 Kurds, whose only crime against the dominant Arab race was their ethnic origins and ancient culture. Nor must we forget—it is too often forgotten—that the Arab states collectively, from Morocco to Iraq—have dispossessed, over the past 20 years, more than 500,000 Jews, from enclaves in which they have lived often for nearly two millenia, since before the Arabs came. These half-million victims of Arab racist persecution, perhaps more numerous, if the truth could be finally established, than the Palestinian Arabs allegedly "forced out" during the struggles of 1947-8, have all been quietly and successfully absorbed in the Israeli state, without the need for appeals to international money and sympathy.

As for the African states that so glibly lined themselves against Israeli "racism," it is hard to think of one that does not practice forms of mass discrimination. Some have expelled or persecuted white and Indian minorities, stealing their property, as Hitler once robbed the Jews, or reducing them by legal *diktat* to



The Cannibals

the rank of second-class citizens. In other states, such as the Sudan—once, under the Anglo-Egyptian condominium, a multiracial society where all were equal before the law—the dominant Arab element has persecuted the blacks of the Upper Nile, has murdered them in their thousands using modern jet aircraft supplied by the Soviet Union, and still subjects them to a variety of legal and administrative disabilities. This is a common pattern in African states where Arabs have the upper hand—as, indeed, they had in the 19th century, until Britain and then France destroyed African slavery. More common, more insidious and usually still more cruel and reprehensible, is the intertribal persecution that is the hallmark of many African states, especially in central Africa. The existence of tribal paramountcies, with the consequent racist bullying of weaker or less well armed tribes, is known to UN officials; but such facts are not allowed to rob the strutting representatives of these states at the UN of the right to cast their votes against Israeli "racism." That is not the way the UN works.

Nor are these varieties of racism confined to Africa. In Indonesia, for instance, and to some extent in other Asian states, there has been, for many years, systematic racist persecution of the Chinese trading communities. Even in imperial times the Chinese sometimes faced trouble in these parts; in Dutch territories, they were discriminated against by law. But their position today is in all respects infinitely worse; for they are subject to sudden and unpredictable pogroms, in which their lives are taken and property confiscated—without the possibility of recourse to the courts—just as, in Tsarist times, the Russian Jews were at the mercy of marauding Cossack bands. Such Chinese minorities are tolerated, if at all, solely because the internal economies of these ill-administered countries simply cannot function without a measure of Chinese skill and industry.

Finally let us not forget that the worst form of racism is slavery itself, invariably practiced against the most defenseless and primitive African communities. The one remaining world center of slavery, as abundant evidence testifies, is the Arab Middle East; and the chief offender in this area is Saudi Arabia, richest of all the oil states, paymaster of Arab aggression and terrorism against Israel, ringleader of the movement to brand Israel as racist, and whose UN representative, the unctuous Mr. Baroodi, sets the record, even by United Nations standards, for humbugging hypocrisy.

So much for the UN votes against Israel. They can carry no weight whatsoever. They have no effectiveness. As I say, they even have the merit of demonstrating that the civilized world has aligned itself with Israel's right to independence and freedom. Yet they cannot be ignored either, for in some respects they demonstrate a marked and perhaps irreversible declension in the moral authority and practical effectiveness of the United Nations. History may come to see them, as for instance it now sees the Nazi reoccupation and militarization of the Rhineland, as a watershed in the political landscape, a point from which there could be no return to the past. For Israel and the United Nations have always had a special relationship. It was UN recognition, almost as much as the struggles of the Palestine Jews themselves, that brought the Israeli state into being. Indeed, without UN endorsement and moral and political support, it is at least arguable that the Zionist state might not have survived. Israel could be termed the first born of the United Nations, the first former colonial state brought into fully independent existence within the context of the UN concept of international law. Or, to vary the metaphor, if the UN cannot claim to be the father of Israel, it has a case for claiming to be the midwife. Moreover, and even more important, the creation of Israel, and its recognition by the UN, set the pattern for post-colonial development. Israel was the prototype for many scores of new states, brought into being with UN encouragement and moral support, and rapidly granted the membership and privileges of the organization. Israel's part in this continuing process has been by no means passive. No other state, certainly no other state of its size and resources, has tried to do more to assist the new countries of the Third World, both in the preparatory period before independence, and in the difficult years of autonomous existence. Israel has always been conscious of its anti-colonial and post-colonial origins, and has felt a special sympathy—demonstrated in practical terms—for those undergoing the same process of self-creation.

Israel has also tried to help the new states in what ought to be the most effective manner: by example. There are a great many things wrong with Israel, as the Israelis—surely the most self-critical people on earth—are the first to point out. But on all the things that really matter, it is a model to any neophyte country. Despite all Israel's troubles, it has remained a social democracy, perhaps the nearest approach to a free Socialist state in the world; its people and government have a profound respect for human life, so passionate indeed that, despite every conceivable provocation, they have refused for a quarter of a century to execute a single captured terrorist. No country certainly takes greater pains to avoid the civilian populace in warfare. They also have an ancient but vigorous culture, and a flourishing modern technology. The combination of national qualities they have assembled in their brief existence as a state ought to point the way for many other new members of the UN.

There is a third manner in which Israel and the UN have, or ought to have, a special relationship, which arises not only from Israel's origins, but from the UN's own. For the organization came into being not as a world assembly but as an alliance of free states against the Hitlerian tyranny. As such, it was flawed from the

start, since the sheer necessity of survival forced the Western democracies into a military pact with the Soviet Union based on nothing more morally substantial than *Realpolitik*. All the same, the fact remains that the UN, initially a British concept, came into existence as an instrument for fighting the racist terror of Hitler. It was, within its limitations, an expression of human brotherhood and equality, and the victims of Hitlerism were to be seen as entitled to its special regard and protection. Hitler was a racist aggressor of unparalleled ferocity. He killed five percent of the population of Poland; more than 10 percent of the varied peoples of Yugoslavia. But in the case of the Jews, he killed more than one in three of their total global population. For this reason, if for this reason alone, the Jews have a historical and moral right, above that of any other people, to enlist the support and sustenance of the UN both as an institution and a collection of nations. And it was this historical and moral right, I think, that undoubtedly played a part in giving the new state of Israel the rapid recognition that helped it to survive.

In view of all these reasons, we can now grasp the full moral enormity of the votes against Israel. They amount not merely to a blatant defiance of truth and reality—for all know that Israel, far from being "a threat to world peace," stands in perpetual danger of extermination by its neighbors—but to a complete and total repudiation of the UN past. Everything for which the UN was originally created, everything for which, at its best, it has stood in the years of its existence, was denied by these barbarous majorities. The UN building still glitters above the East River. Its officials and delegates still scurry about in varying postures of self-importance. But the truth is, at the moment when the General Assembly branded Israel as a racist state, the organization lost its ethical heart, and its moral justification for existing at all. How Hitler would have laughed! How Stalin, permitting himself one of his rare and Arctic smiles, would have rubbed his hands! These two monsters would have joined in self-congratulation that the instrument of international probity should prove so vulnerable to assault, and so easy to capture by men like themselves.

The UN fell to a fatal combination of two forces: Soviet diplomacy and Arab oil money. Neither, in itself, was powerful enough to bring the edifice down. The diplomatic resources of the Soviet empire—the last, now that the Portuguese has gone, of the great 19th-century style empires—are considerable, taken in conjunction with the fact that it can control the votes of certain client states it arms or those it effectively occupies. Yet Russia alone has never been able to swing more than a third of the General Assembly behind itself. The alliance with the Arabs did the trick. For since the Yom Kippur war, and the revolution in oil prices, the Arab states can, in effect, purchase the votes of a score of countries, and the silence (or abstention) of a dozen more. Oil has proved the great corrupter of the human race. There is a passage in Golda Meir's recent autobiography that struck me as symptomatic of our age. She attended the meeting of the Socialist International following the Yom Kippur war, during which several states with Socialist governments had taken deliberate steps that might have led to the total defeat of the Israeli forces, and the consequent destruction of the Israeli people. She asked the assembled Socialist leaders—some of them prime ministers—whether such behavior toward a fellow-Socialist state was justifiable. No one answered. Then, she relates, someone behind her said: "Of course they can't talk. Their throats are choked with oil."

The UN itself is choked with oil. Though it does not even pay its share of costs for Palestine refugees—the US bears the burden here as in everything else at the UN—Arab oil money has turned the organization into one of the most corrupt and corrupting creations in the whole history of human institutions. The decisive moment came, I believe, when it agreed to provide a form of recognition to Yasir Arafat and his terrorist organization. At this point the UN, by its own action, repudiated its primal principle that disputes should be settled by negotiations and not by force. The PLO gets the point, too: every indication of international sanction has been followed by some death-happening at terrorist hands. For the Arafat organization, and its backers in the Arab and Soviet worlds, most emphatically do not believe in negotiations; they put their entire trust in force. Arafat's gang has no mode of operation other than the exercise of violence, usually against the innocent and defenseless. Recently Arafat's so-called "foreign minister" made the objects, intentions and methods of his organization brutally clear in an interview with *Newsweek*. Much of what he said, of course, was merely the violent rodomontade of a racist street-corner orator: "Any Arab state is more democratic than Israel by definition . . . Even Saudi Arabia." But much of what he said has to be taken as a serious statement of intentions that will actually be carried out if he and his colleagues and backers ever get the chance. He flatly denied the right of the Israeli people to have a state of their own, irrespective of any frontier concessions: "In time they will have to accept it." "We have," he said, "no alternative but to fight and you can expect we will escalate our activities . . . We have become good warriors and we are fond of it." He offered the Israelis the alternative of total political surrender, or a war to destruction: "If they choose the latter, they will surely die and we will surely win." And he concluded with a boast: "We grow stronger every day. My Arabs are getting billions of petroleum dollars. The future is mine, so why should I worry?"

"The future is ours" was a favorite expression of Hitler's when he spoke to the German people. His future ended in a burning bunker below the burning streets of his capital. Where will Mr. Arafat's future

end? Or, a much more important question, what future is there for the United Nations itself? There are already a growing number of people in the West, especially in the United States, who wish to withdraw from the UN entirely. The whole squalid circus would then be sent packing from New York and, with the withdrawal of US financial support, the organization would rapidly become—and be seen by everyone to have become—a Soviet-Arab rump, devoid even of the pretense of world authority. This is one possible solution, and we may well come to it.

On the other hand, there are those who argue that the UN still has useful services to perform, and that its moral imperfections are by no means so incurable as is often supposed. They claim, with circumstantial detail, that the two votes against Israel were lost, at least in part, through the ineptitude of Western diplomacy within the building, and in particular by the unskillfulness of the US delegation. We have, of course, heard this argument before. More to the point is that Ambassador Moynihan insists on speaking truth, which is a rare occurrence—and it does not please his superiors, who are themselves tilting toward the terrorists, now casually relabeled "moderates." But there is one factor in the situation that is itself an indictment of the UN: the unwillingness of first-rate Western diplomats to serve, at any rate for long, in what they regard as its fetid moral atmosphere and its ambiance of cynical horsetrading and actual financial corruption.

My own instinct, at this stage, is to advise a middle course. Certain UN agencies, especially the World Health Organization and the Food and Agricultural Organization, should be strongly supported; they do work that is always useful, and often indispensable (it is characteristic of the Soviet government, which regularly comes with its grain begging-bowl to the United States, Canada and Australia, that it refuses to have anything to do with the FAO—one reason the body functions so effectively). On the other hand support should be immediately withdrawn from UNESCO, an agency whose value has always been dubious (I write as a former member of the British Commission for UNESCO) and which has now, in effect, been captured by a combination of Arab oil cash and Communist-Marxist diplomacy. At the UN itself, the Western democracies should retain a watching brief. They must continue to block further Communist-Arab attempts to debauch the organization, but they must be prepared, if the situation grows still worse—as I fear it will—to leave altogether.

In the meantime there is a case for preparing an alternative organization of civilized nations, which will impose clear and compulsory qualifications for membership: respect for the rule of law, both national and international; democratic institutions that function effectively; freedom of speech, religion and the press; and equality of all races and creeds before the law. I do not think problems of definition will prove too obdurate. We all know a free and civilized country when we see and visit it. Such an organization would be a beacon of light to oppressed and fearful people all over the world. It would be, in the first place, a defensive organization, designed to protect its peoples from the scourge of international terrorism, now, in my opinion, a greater threat to the peace and future of the world than the risk of thermonuclear war, or the supposed depletion of our natural resources. For terrorism has become the reflex outlet of just about every grievance, great or small, real or imagined and also the vicarious experiment of cowards.

But I do not think such a league of civilized powers should be content with a role of passive defense. I recall a noble passage spoken by W.E. Gladstone in 1881, when the gunmen were first getting their deathly grip on Ireland: "If it shall appear that there is still to be fought a final conflict in Ireland between law on the one side and sheer lawlessness on the other . . . then I say, gentlemen, without hesitation, the resources of civilization against its enemies are not yet exhausted." Nor are they exhausted today. It is time for us to remind ourselves that we still have the power, even if we sometimes appear to lack the will, to seize the enemies of civilization by the throat. For too long—for a quarter of a century, in fact—Western civilization, even accounting for its considerable cruelties, has behaved toward the rest of the world with an imbecile combination of unnecessary guilt and misplaced generosity. We have given aid and comfort and received, on the whole, little but abuse and violence. We have not won the friendship of the world beyond; we have simply forfeited its respect. Isn't it odd that the United States, which in Vietnam and Chile could be so brazen in its criminal indecency, should now be so cowardly in hesitating to retrieve the more humane aspects of its tradition—or for that matter to assert its own deepest interests?

Has not the time come to change our strategy? I think that there are many millions of people all over the world, men and women of all races and colors and creeds, living under corrupt tyrannies or ferocious police states, who feel somehow that the West has let them down; that the civilized powers have failed to uphold the standards of international behavior set by their forebears. What these millions are waiting for, and what, needless to say, millions in the West are waiting for, is some positive sign that the Western countries are determined to revert to the principles of law and international decency; that they are going to uphold them in the most systematic, relentless and comprehensive manner. We must show that the resources of civilization are not, indeed, exhausted, and that the Brezhnevs and the Maos, the Amins, the Gaddafis and the Arafats will not be allowed to inherit the earth.

THE AMERICAN JEWISH COMMITTEE Institute of Human Relations, 165 E. 56 St., New York, N.Y. 10022, PLaza 1-4000

THE UN AND SOLEL BONEH

A Foreign Affairs Background Memorandum

by Yadin Kaufmann,
Research and Editorial Associate

The United Nations General Assembly is expected to decide within the next week on a contract whose handling so far appears to signify an anti-Israel bias within the UN administration.

The contract, for construction of a building complex to house the UN Environment Programme (UNEP) and several other UN offices in Kenya, normally would have been awarded to the subsidiary of an Israeli firm, Solel Boneh, which had submitted the lowest bid. But normal UN procedure was scrapped and the contract still has not been awarded, nearly ten months after the bids were opened.

Observers said this was the first case in memory in which the lowest bidder was denied a UN contract.

Attempted justifications for rejection of the low Israeli offer and the eight other bids include high cost of the project, the supposed inadequacy of international representation in the bidding, and a charge that Solel Boneh had conducted business with South Africa:

* Alleged extravagence: The original 1977 project was expected to cost more than $30 million. Since then, UN agencies have been directed by a General Assembly resolution to economize. Various UN agencies recently changed their plans and decided either not to move to the new center or that they would not require as much space as they had anticipated earlier. The World Bank, the High Commissioner on Refugees and the UN information center in Nairobi all decided late last year or early this year not to establish offices in the new complex, and it was also determined that earlier growth estimates for UNEP had been exaggeratedly high.

Thus, in his October 24th written report to the General Assembly, UNEP Executive Director Mostafa Tolba claimed that some of the features of the original project, including two 500-person conference rooms, were no longer justified given the reduced estimates of the organizations' needs at Gigiri, a suburb of Nairobi. "The rejection of all bids," Tolba stated in his report, "was based on 'the interests of the Organization' to ensure that United Nations resources are expended in the most economical manner." Tolba estimated potential savings to the UN at more than $5 million.

But observers challenged the authenticity of UNEP's alleged desire for economy by noting that the Assembly already had approved funds for the complex and that given world inflation, delayed construction of even a more modest complex was likely to be more, rather than less, expensive. Also, the cost to the United Nations of redrafting the project proposal was $329,000, despite the assertion by UNEP Chief of Administration Soleiman Tarbah last June that the revision "will not result in any immediate changes of the design and will not contain any extra fees for the architect." In addition, UNEP officials had previously been opposed to attempts to limit the scope of the project. So neither in the April 1980 meeting of the UNEP Governing Council nor in the June 25th UNEP Focal Points meeting was there any sign that changes in agency requirements would force revision of the building project.

* Alleged selectivity of bid invitations: Tarbah, a top UNEP official, claimed that "our invitations of bids was selective" and that it was therefore contrary to a General Assembly resolution on the internationalization of bidding for UN contracts. But the reasoning behind this charge appears to be spurious since 51 countries were invited to bid on the project. And a high UN official interviewed by the AJC admitted that the Gigiri project

.../continued

"probably had the widest international input of any project that the UN had contemplated up to that time."

* Alleged Solel Boneh-South Africa connection: Some quarters had asserted that Solel Boneh should be disqualified from obtaining the UN contract since it had conducted business with South Africa. But this charge was flatly denied by the company's Nairobi manager, J. Maoz, who declared that Solel Boneh "has at no time, past or present, had any dealings with the apartheid regime of South Africa" and that it had operated only in the developing countries of the continent. Maoz's claim has not been disproven and a UN source acknowledged that "if there was available any hard evidence (of a Solel Boneh-South Africa connection) it would have long since (been) produced."

Clearly, other factors were at play in the case, which an Israeli official interviewed by the AJC called "a very dangerous innovation" since it represents "the first time political criteria have been used in financial/administrative" matters with no basis in a UN resolution.

United Nations financial rule 110.21 stipulates that UN contracts "shall be awarded to the lowest acceptable bidder" unless the "interests of the Organization" require otherwise.

But despite the fact that Solel Boneh was the lowest bidder, and that it had already been "pre-selected" -- or deemed "acceptable" from architectural and financial viewpoints -- it has not yet been awarded the contract. A chronology of the contract dispute strengthens the impression that anti-Israel forces helped torpedo the award of the contract to Solel Boneh:

1972: UNEP is created. After sharp debate, Kenya is chosen to be the new organization's future home, marking the first time a major UN agency would be based in a Third World country.

December 1972: Kenya moves to support the center by providing land for the headquarters, paying half the rental fees for temporary offices, and providing communication facilities, liaison officers, and office space in the Kenyatta Conference Center.

1977: The General Assembly approves a plan for a permanent headquarters for UNEP and several other UN offices, to consist of 9 office blocks, two large conference halls, and a library. Total UN appropriation for the project in 1977 and 1979 was $34,780,000.

May 1979: The UN publishes in Kenyan newspapers an invitation to companies to begin the process of bidding on the UNEP complex contract. All the permanent missions to UNEP in Nairobi are notified that companies in their countries are welcome to bid.

July 1979: The architect for the project "pre-selects" Solel Boneh and 13 other firms from among the 30 that had expressed an interest in bidding.

Winter 1979/80: Solel Boneh submits a bid on the project along with 8 of the other pre-selected companies.

October 1980: UNEP informs Solel Boneh that the contract will be awarded within one month of the opening of the bids.

January 31, 1980: The 9 bids are opened. Solel Boneh, which had already built some of Nairobi's most prestigious structures, is found to be the lowest bidder. Its bid -- for $22.8 million -- was even lower than the original estimate for the project and was $1.4 million lower than its closest competitor.

March 1980: UNEP's Contracts Committee meets in Nairobi and refers the decision on the project to UN headquarters in New York. Although Tarbah said the "magnitude" of the contract prompted the Committee to refer the matter to New York "in accordance with headquarters advice," a UN source said the transfer

of authority in the case was due to a "misunderstanding" of the Organization's financial rules on the part of UN officials in Kenya.

April 16-29, 1980: At the eighth session of the UNEP Governing Council, meeting in Kenya, the plan for Gigiri appears to be moving according to schedule. When J. Witek, the Polish delegate, calls for a halt to all construction work, claiming the site was too far from the center of Nairobi, he is sharply criticized by other delegates and by the local press. Peter Oltmanns, Executive Director of UNEP's Bureau of Funds and Management, discloses that some $6 million has already been spent on initial studies, surveys, and preliminary site works at Gigiri, and that the total cost of the headquarters would probably approach $32 million.

Spring 1980: Solel Boneh officials in New York complain to the United Nations that they have not yet been awarded the contract. Although the matter had been forwarded to the UN in New York in late March, not until two months later -- only 48 hours before the scheduled expiration of the validity of the bids -- were UN legal authorities approached for their advice on who -- New York or Kenya -- should make the decision, according to a UN source. United Nations legal advisers then ruled that the Executive Director of UNEP in Nairobi must decide on the contract. They also told UNEP that "if you maintain your project as it is you cannot for any reason change the bidding," a UN official told the AJC.

According to an American diplomatic source, Libyan and Moroccan officials warned UN authorities that there would be repercussions if an Israeli firm were to get the UN contract. (Both Secretary-General Kurt Waldheim and UNEP chief Mostafa Tolba are up for reelection soon -- Waldheim next year and Tolba in this fall's General Assembly -- and a number of countries reportedly threatened to withhold supportive votes if Solel Boneh were awarded the Kenya job.) In June, the Nairobi Daily Nation reported that the Afro-Arab group at the United Nations sent a letter to UN officials, declaring: "We strongly protest that Arab contributions to the United Nations are being considered for indirect assistance to the racist Israeli establishment. It is the firm belief of the Arab Group that Solel Boneh should not be considered for the project."

June 12, 1980: Tolba and Tarbah propose to the UNEP Contracts Committee a series of recommendations, including one to reject all bids, reassess UNEP's needs, and call for new bids at a later date on a scaled-down version of the project.

June 16, 1980: The Committee accepts this Tolba-Tarbah proposal "in the interests of economy." There was some internal dissent, however, as one Committee member abstained and two others requested additional clarifications. The Committee's Legal Adviser, furthermore, was reported to have declared: "The Committee is taking the wrong decision for the wrong reasons."

According to the Daily Nation, the Kenyan Foreign Ministry urged in an aide-mémoire to Tolba that Solel Boneh be denied the contract because of Afro-Arab disapproval, but also that the tender be awarded "immediately." Postponement of the bids, the Kenyans reportedly said, would be costly and "should be avoided at all costs." Therefore, the Government recommended that the contract be awarded to the second lowest bidder, Nairobi's N.K. Brothers. (The Daily Nation suggested other reasons for Kenya's eagerness to have the contract awarded without delay: construction would inject a sorely-needed cash flow into the country's building industry and would release precious office space, while a postponed and scaled-down UNEP center would mean that Kenya would have to provide and pay for outside facilities.)

June 17, 1980: Tolba cancels all nine bids on the proposed UNEP project.

June 25, 1980: At a stormy UNEP Focal Points meeting in Nairobi, many delegates attack the Agency's handling of the contract issue. Israeli representative Arieh Oded declares: "It seems to me that the statement (Tolba's decision to reject all bids) is just a 'cover-up' for discrimination against a United Nations Member State." He dismisses UNEP's alleged concern for fiscal restraint by asking "why this economy consideration came into being only after it was found that the tender was granted to a certain company which

happened to be an Israeli company." Oded asserted that if UNEP wanted to alter plans for the site, it could have followed "routine accepted procedures" for doing so without disqualifying Solel Boneh or calling for new bids. "We consider this a gross violation of UN rules and procedures," Oded stated.

Summer 1980: The United States, obviously attaching more than just perfunctory importance to the matter, repeatedly stressed to UN officials in New York and Nairobi its view that "the contract should be awarded according to UN rules," as one diplomat told the AJC. The New York Times reported that on June 19th, Acting Secretary of State Warren Christopher warned in a note to Secretary-General Waldheim that "grave consequences" might follow if the UN violated its financial rules. The United States did, in fact, "indefinitely defer" its second $5 million contribution for 1980 pending the satisfactory resolution of the contract question. In a letter to Congressman William Green which was made available to the AJC, the State Department added that it "will vigorously oppose specifications changes which are only cosmetic, and which do not effect verifiable savings to the Organization." Green had complained to the Department about the "anti-Israeli bias" in the case. The United States donates some 25% of UNEP's $38 million annual fund.

November 1980: The UN Advisory Committee on Administrative and Budgetary Questions reviews Tolba's revised plan for Gigiri. This plan drastically reduces the center's conference facilities and calls for rebidding for the contract. While the Advisory body found it "difficult to reconcile" the new plan with recommendations for conference space originally made by Secretary-General Waldheim, it nonetheless approved Tolba's proposal as being "based on a more accurate assessment of present and future requirements than the earlier ones by the Secretary-General."

The United States, for all that it seeks UN economy, presently advocates "rejection of the proposed revision and supports building the project as originally designed," according to Edmund McGill of the State Department International Organizations division.

Nonetheless, the U.S. probably will go along if the UN General Assembly Fifth Committee-- in whose hands the final decision rests -- accepts the revised proposal, and will make its share of UNEP's funds available.

Thus, the stage has been set for the UN, in an unprecedented administrative action, "legally" to take the contract away from an Israeli firm -- obviously just because it is an Israeli firm. Whether this process reaches its "logical" conclusion will be determined by the Assembly's decision later this month.

#80-550-45

December 1, 1980

UNITED NATIONS

GENERAL ASSEMBLY / SECURITY COUNCIL

Distr.
GENERAL

A/35/316
S/14045
3 July 1980

ORIGINAL: ENGLISH

GENERAL ASSEMBLY
Thirty-fifth session
Items 26, 51, 53, 57, 92, 106 and 109
of the preliminary list*
THE SITUATION IN THE MIDDLE EAST
PEACEFUL SETTLEMENT OF DISPUTES BETWEEN STATES
UNITED NATIONS RELIEF AND WORKS AGENCY FOR PALESTINE REFUGEES IN THE NEAR EAST
REPORT OF THE SPECIAL COMMITTEE TO INVESTIGATE ISRAELI PRACTICES AFFECTING THE HUMAN RIGHTS OF THE POPULATION OF THE OCCUPIED TERRITORIES
PROGRAMME BUDGET FOR THE BIENNIUM 1980-1981
REPORT OF THE SPECIAL COMMITTEE ON ENHANCING THE EFFECTIVENESS OF THE PRINCIPLE OF NON-USE OF FORCE IN INTERNATIONAL RELATIONS
REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION

SECURITY COUNCIL
Thirty-fifth year

Letter dated 27 June 1980 from the Permanent Representative of Israel to the United Nations addressed to the Secretary-General

I have the honour to refer to my letters of 16 November 1978 and 20 December 1978 (A/33/376 and A/33/543), in which I registered my Government's strong objection to the release of a United Nations Secretariat publication entitled The Origins and Evolution of the Palestine Problem, Part I: 1917-1947; 1/ and Part II: 1947-1977 2/ (ST/SG/SER.F/1). In those letters I expressed regret

* A/35/50.

1/ United Nations publication, Sales No. E.78.I.19.

2/ United Nations publication, Sales No. E.78.I.20.

that the United Nations had been drawn into the pattern, so characteristic of certain régimes, of rewriting history according to the transient interests of a political body.

Since submitting those letters to you, three other "studies" have been released in the same series. They are entitled: The Right of Return of the Palestinian People (ST/SG/SER.F/2); 3/ The Right of Self-Determination of the Palestinian People (ST/SG/SER.F/3); 4/ and An International Law Analysis of the Major United Nations Resolutions Concerning the Palestine Question (ST/SG/SER.F/4). 5/

As in the case of the first "study", all the others were prepared by or under the aegis of the "Special Unit on Palestinian Rights" within the Secretariat, "under the close guidance" of the "Special Committee on the Exercise of the Inalienable Rights of the Palestinian People". The first three "studies" were published anonymously; the fourth is said to express the views only of its authors, W. Thomas Mallison and Sally Mallison.

The three new pseudo-scientific publications are no less objectionable than the first one. Emblazoned with the emblem of the United Nations, and carrying the imprimatur of the Secretary-General, these later "studies" are designed not only to give further currency to a completely misleading version of the history of the Arab-Israel conflict, but also to propagate bogus theories with regard to a number of complex legal issues connected with the Arab-Israel conflict.

The partisan views expressed in all the "studies", like the recommendations of the Committee under whose "guidance" they have been prepared, accord fully with those held by the terrorist PLO, an organization which is committed to the destruction of Israel, a Member State of the United Nations.

By producing and disseminating these publications, the United Nations is serving the cause of international terror, not the cause of international peace. In the process, the United Nations has once again misused international funds, gravely compromised the integrity of the Secretariat and exposed the Organization to severe and more than justified criticism.

The Government of Israel does not intend to reply to the gross distortions, misrepresentations and other improprieties taken with history and law in these "studies".

That notwithstanding, it has requested learned counsel, in the person of Professor Julius Stone, Member of the Institute of International Law; Distinguished Professor of International Law and Jurisprudence, University of

---

3/ United Nations publication, Sales No. E.78.I.21.

4/ United Nations publication, Sales No. E.78.I.22.

5/ United Nations publication, Sales No. E.79.I.19.

California Hastings College of the Law; Professor of Law, University of New South Wales; Emeritus Challis Professor of International Law and Jurisprudence, University of Sydney; author of numerous authoritative works in the field of international law, to peruse these "studies" from the legal point of view. I now enclose a memorandum of law which he has written and which deals with some of the main propositions which the "studies" seek to establish.

As will be seen, this memorandum of law shows that all the "studies" in the series rest on flawed foundations and that their conclusions are untenable.

The opinions expressed in the memorandum are those of learned counsel, and do not necessarily reflect those of the Government of Israel.

I have the honour to request that this letter and its enclosure be circulated as an official document of the General Assembly, under items 26, 51, 53, 57, 92, 106 and 109 of the preliminary list, and of the Security Council.

(Signed) Yehuda Z. BLUM
Ambassador
Permanent Representative of
Israel to the United Nations

ANNEX

Israel, the United Nations and International Law

Memorandum of Law

by

Julius Stone

S.J.D. (Harvard), LL.D. (Leeds, honoris causa), D.C.L. (Oxford), O.B.E.

Member, Institute of International Law; Distinguished Professor of International Law and Jurisprudence, University of California Hastings College of the Law; Professor of Law, University of New South Wales; Emeritus Challis Professor of International Law and Jurisprudence, University of Sydney; Barrister-at-Law, etc.

June, 1980

CONTENTS

INTRODUCTION

1. It is a commonplace among international lawyers that each organ of the United Nations is the interpreter of its own powers and procedures. This applies to the General Assembly, even when regrettably the majorities in that body are marshalled by means, such as the oil weapon, which do not reflect the legal or moral merits of the issues before it. General Assembly resolution 3376 (XXX) of 10 November 1975 established a "Committee on the Exercise of the Inalienable Rights of the Palestinian People". In its resolution 32/40 B of 2 December 1977, the General Assembly set up a "Special Unit on Palestinian Rights" in the Secretariat, which in 1978 and 1979 prepared and disseminated a series of tendentious studies "under the close guidance" of that Committee. A list of those "studies" and their brief titles as employed in this memorandum is as follows:

(a) The Origins and Evolution of the Palestine Problem (ST/SG/SER.F/1) (herein "Origins", published in two parts);

(b) The Right of Return of the Palestinian People (ST/SG/SER.F/2) (herein "Return");

(c) The Right of Self-Determination of the Palestinian People (ST/SG/SER.F/3) (herein "Self-Determination");

(d) An International Law Analysis of the Major United Nations Resolutions Concerning the Palestine Question (ST/SG/SER.F/4) (herein "Resolutions").

2. Resolutions, the latest of the "studies", rehearsing and overlapping much that appears in its predecessors, differs from them in that it discloses the identity of its authors, namely, W. T. Mallison, Professor of Law and Director, International Comparative Law Program, George Washington University, and Sally V. Mallison, Research Associate. Although that "study", like the others, was prepared and published "at the request of the Committee on the Exercise of the Inalienable Rights of the Palestinian People", the Secretariat found it necessary to distance itself from it by stating that "the views expressed are those of the authors", a caveat which does not appear in the three earlier anonymous "studies". The present examination of this entire series of explicitly partisan "studies", strangely emblazoned with the official emblem of the United Nations, indicates that the sponsoring Committee's caution in dissociating itself from Resolutions was well-advised and might well have been extended to all the anonymous "studies".

3. The structure of argument which the authors pursue to their conclusions is as follows. First, they seek to establish that the United Nations, and particularly the General Assembly, is "an international lawmaker". Second, they elaborate various implications of the Partition resolution, before its destruction by Arab rejection and armed aggression in 1947-8, and argue that that resolution remains now as "law" created by the General Assembly, still binding more than three

decades later. Third, they seek to show that repeated recitals in General Assembly resolutions, from resolution 194 (III) to resolution 3236 (XXIX), establish in international law a "right of return" for the benefit of Palestinian Arab refugees. Fourth, the authors likewise seek to show that repeated references in General Assembly resolutions since 1970 constitute a legal determination of the right of self-determination of Palestinian Arabs and that the General Assembly is empowered to redraw the boundaries of Israel in order to satisfy that right.

4. The legal merit of this single-minded argument depends not only on its internal coherence but also on the soundness of the premises on which it is based. I shall examine it in both those aspects, beginning immediately with the fundamental premise from which all the conclusions flow: the status and force in international law of General Assembly resolutions.

5. While I originally set out to examine the consistency with international law of the assertions and assumptions of the "studies", I soon found it necessary to transcend this ad hoc design. I realized that the outcomes of the legal analysis were likely to have critical effects, not only on the Arab-Israel conflict, but on some basic doctrines of international law. Thus, this memorandum analyses legal aspects of many complex problems directly relating to the Middle East, and in so doing clarifies central issues of current international law. In addition to the legal status of General Assembly resolutions, this memorandum will discuss the effect of coercion of the Assembly membership by, for example, the oil weapon, the legal status of the supposed right of self-determination of peoples, the content and limits of that right and its relation to the limits on the use of force set by international law, the application of the fundamental international law principle ex injuria non oritur jus, and other international law issues of similar gravity.

I. LEGAL EFFECTS OF GENERAL ASSEMBLY RESOLUTIONS

6. The basic general rule on the legal effect of General Assembly resolutions was stated by Judge Sir Hersch Lauterpacht in his opinion in the South West Africa - Voting Procedure case. He observed that save where otherwise provided for in the United Nations Charter (as for example with regard to the budget under Art. 17, or the admission of new members under Art. 4, para. 2), "decisions of the General Assembly ... are not legally binding upon the Members of the United Nations". Apart from such Charter exceptions, "resolutions" of this body, even if framed as declarations or decisions, "refer to recommendations ... whose legal effect although not altogether absent ... appears to be no more than a moral obligation". The binding legal quality of such resolutions must be established by conformity with the recognized requirements for creation of customary law or treaty law. 1/

7. A generation later, in an equally considered pronouncement, another distinguished former judge of the International Court of Justice, Sir Gerald Fitzmaurice, was no less unequivocal in rejecting the "illusion" that a General Assembly resolution could have "legislative effect". He pointed out, inter alia, that a Philippines proposal to expressly permit such a legislative effect was overwhelmingly rejected at the San Francisco Conference; that the general structure of the Charter limits the General Assembly (as distinct from the Security Council) to merely recommendatory functions; that it was precisely this limitation which explains why United Nations Members are so often prepared to acquiesce in allowing so many resolutions to be adopted by abstaining or not casting a negative vote; and that such relevance as General Assembly resolutions might have to international law is, at most, that the content of a particular resolution may come to be considered for adoption by States in "a separate treaty or convention", binding by virtue of its adoption. 2/

8. These scholarly observations were confirmed the following year, at the 1492nd meeting of the General Assembly's Sixth (Legal) Committee, by a remarkable manifestation of concurrent views by Members of the United Nations. The Committee had before it a draft resolution on the role of the International Court of Justice. Its preamble referred to the possibility that in deciding disputes the Court might take into consideration declarations and resolutions of the General Assembly. A wide spectrum of States from all parts of the world rejected even this rather mild reference. The proposal was, some said, an attempt at "indirect amendment" of Article 38 of the Statute of the International Court, and a "subversion of the international structure of the United Nations". It was capable of meaning "that General Assembly resolutions could themselves develop international law". The proposal attributed to the General Assembly "powers which were not within its competence". It was an attempt to "issue directives regarding sources of law", departing from the view that resolutions and declarations of the General Assembly are "essentially recommendations and not legally binding". Declarations and resolutions of the General Assembly could not

be considered a source of international law, "particularly in view of their increasing political content which was often at variance with international law". 3/

9. Therefore, before their massive reliance on General Assembly resolutions as creating legal obligations, the authors of the "studies" owe their readers a full, careful and candid consideration of the requirements involved in justifying this reliance under Article 38 of the Statute of the International Court of Justice. The authors' inability to establish the propriety of grounding the legal basis of their theses in recent General Assembly resolutions is especially manifest in the whole structure of the Resolutions "study". It opens with a section devoted to "The Juridical Competence of the Political Organs of the United Nations", obviously intended to maximize the legal effect of those General Assembly resolutions favourable to their theses.

10. Despite the contentiousness of the issue and the vast literature on it, Resolutions purports to dispose of the matter by two carefully selected quotations. One is from Professor Rosalyn Higgins' general statement 4/ that votes and views of States in international organizations have "come to have legal significance", and that "collective acts of States repeated by and acquiesced in by sufficient numbers /of States/ with sufficient frequency, eventually attain the status of law" (emphasis supplied). The other is Judge Tanaka's dissenting opinion in the South West Africa cases. 5/ But Judge Tanaka there only pointed out that the traditional requirements for the creation of a new rule of customary law (practice, repetition, and opinio juris sive necessitatis) remain unchanged. However, they may mature at a quicker pace under modern techniques of communication and international organization.

11. From these carefully qualified generalities the "study" proceeds immediately (p. 5) to its own statement of its sponsors' desired law, namely, that "the State practice requirement for customary law-making /is to be found/ in the collective acts of States (as in voting in favour of a particular General Assembly resolution) as well as in their individual acts". For this summary to represent correctly the opinions of the learned authorities whom they quote, the authors should then have proceeded, with the same care as Professor Higgins and Judge Tanaka, to consider additional requirements. These include the acquiescence of States, the demonstration of opinio juris sive necessitatis, the sufficiency of the number of States involved (judged by the nature of their interest, self-serving or adverse, in the subject-matter), as well as the sufficiency of the number of instances when these requirements are met. Thus, the quotations relied on by the authors proceeded by analogy with these requirements of customary law. By neglecting the relevant specifications for customary law, the authors distort the analogy into a vague notion of "consensus".

12. The Mallisons' wish for a simplistic rule translating General Assembly resolutions into international law, and their failure to establish this proposition, are understandable. What is difficult to understand is why, as international lawyers, they show so little awareness of the range and depth of

the controversies among their colleagues, which forbid such simplification. Half a dozen hypotheses - each with its own consequential criteria and limits - are current in the literature and divide the authorities. They include the treatment of voting behaviour (1) as an extension of treaty-making; (2) as authoritative interpretation of existing treaties; (3) as expression of "general principles of law"; (4) as declaratory of the existence of rules of international law; (5) as a new source of international law supplementing the inadequacies of the sources laid down in Article 38 of the Statute of the International Court of Justice; and (6) as a means of creating informal expectations among States. According to the sixth hypothesis, expectations can mature into binding rules depending on whether the votes of States (a) represent the interests of all affected sides in controversial matters; (b) avoid extreme and intransigent positions; (c) are free of vague and indeterminate language; (d) are free of politically motivated double standards; (e) are not used to champion ex parte positions in political quarrels; and (f) proceed from an international organ which maintains on the particular matter impartial methods of deliberation and resolution.

13. Hypotheses (1)-(5), as well as that which proceeds on the analogy of customary law, all remain inchoate, with applicable criteria surrounded by doubt and dispute. As to hypothesis (6), it will be apparent, as this examination proceeds, that much recent General Assembly action on the Middle East, especially since the deploying of the oil weapon in 1973, is a veritable paradigm of that kind of United Nations action which will not mature into law. 6/

14. But the authors do not trouble to explore these vital questions. Instead, they fill the lacuna with a superficial summary of the subject matters on which the Security Council and General Assembly are authorized to adopt resolutions under Articles 12 to 14 and 33 to 38 of the Charter. It is surprising that in doing so, they make no reference to the point, relevant to their thesis, that only as to certain decisions of the Security Council can Article 25 of the Charter create legally binding obligations for Members. No legal force is attributed by the Charter to resolutions of the General Assembly.

15. Ignoring or side-stepping all of these issues, the authors invite the reader (p. 8) to accept the proposition that all assertions of law repeated in General Assembly resolutions become ipso facto international law by "consensus". Indeed, by a singular begging of the question, the only real guidance offered in Resolutions for selecting those General Assembly resolutions which qualify as customary law, is to say (pp. 3-4) that "this practice /i.e. of expressing consensus on legal issues through the General Assembly/ is particularly evident in General Assembly resolutions concerning Palestine, Israel and the Middle East". Thus, after setting out to establish, as a basis for their claim that certain resolutions on the Palestinian Arabs are law, the limits within which General Assembly resolutions may be offered to establish the existence of new international law by direct action of the participating States, the authors then simply tender those very resolutions as examples of how such new customary law is created in the General Assembly. This failure of the authors to lay a firm

legal foundation for their interpretation of General Assembly resolutions negates all the main submissions in the "study". Their submissions that a formidable series of legal obligations, arising outside traditional international law and the Charter, have been imposed on Israel by General Assembly resolutions, do not bear scrutiny and so must be rejected.

* * *

16. Professor Schreuer wisely observed in his survey of the state of international law in 1977:

> A recommendation's significance will not least depend on the moral authority of the adopting organ. Only the maintenance of high and impartial standards of decision-making in the international organ will endow its recommendations with persuasive force for all sectors of the international community. The application of politically motivated double standards or the use of general resolutions to champion positions in political quarrels are liable to undermine the credibility of the international organ even in areas of relative agreement. 7/

There are several reasons for suspecting that this rather self-evident prerequisite for attributing binding force to resolutions of the General Assembly has often not been fulfilled in recent years.

17. One obvious reason is that some pronouncements of that body, even when they purport to "declare" or "interpret" law, smack of short-term power politics rather than of a deliberative legislative process. In a General Assembly of over 150 Members, operating on the basis of one State - one vote, major Powers like the Soviet Union, or alliances controlling a major resource like oil, together with large blocs of third world States, are in a position to convert that body into one more instrument of their own political warfare. In a General Assembly with the limited powers envisioned by the Charter this parliamentary situation would afford a tolerable (perhaps even desirable) arena for international politics. It becomes unacceptable and dangerous when the majority of groupings made up of temporary and shifting alliances attempts to attribute legally binding force to the resolutions it forces through this body. Such usurped power is at present being targeted against much of the western world, and even more particularly against Israel.

18. A second reason for denying General Assembly resolutions law-making effect is to be found in the duress or political pressures regularly brought to bear on States voting in the General Assembly. For example, the coercive oil embargo power wielded by a few States, diminutive in population but formidable in the importance of the resource they control, constantly inhibits Members who might wish to vote no, or even to abstain, on a range of matters notably but not exclusively affecting the Middle East. Under adequate duress, enough Members can be "obliged" to support, or at least abstain from opposing, such resolutions,

so as to secure a majority for them. But to be "obliged" in this manner certainly does not satisfy the time-honoured requirement of opinio juris sive necessitatis in the international law-making process. In the jurisprudential commonplace, to be "obliged" to yield to an armed bandit is not to have a legal obligation to do so. No process of this kind, whether on issues affecting the Middle East or on other matters, can create international legal obligations.

19. General Assembly resolution 34/65 B of 29 November 1979, purporting to declare the Camp David Accords and other agreements, including the Peace Treaty between Israel and Egypt to "have no validity" poses, at a new height of visibility, the threat to international legal order from automatic attribution of legal (or even moral) force to resolutions of the General Assembly. That extraordinary pronunciamento on the legal validity of agreements freely negotiated and arrived at between sovereign States blatantly expresses the policy of the Arab "rejectionist" States, and the Soviet determination to secure its super-Power role in the Middle East. But these political statements cannot be transformed into "law" by means of a vote in the General Assembly. The 38 States which voted against that resolution and the 32 which abstained included the United States, the nine members of the European Economic Community, and nearly 60 other Members. When this voting pattern is analysed more closely, it emerges that many of the abstentions would have been negative votes but for fear of the use of the oil weapon against them. The majority includes more than a score of Members who are either oil producers or Arab or Moslem in affiliation, and no less than that number of Communist or Communist-aligned States.

20. That this is now a regular voting pattern in the General Assembly is clear from a comparison with the notorious resolution 3379 (XXX) of 1975, which solemnly pretended to "determine" that "Zionism" is a form of "racism". There too almost half the Members of the United Nations voted against or abstained, and the majority consisted of only 72 out of the 142 Members of the United Nations. The coercion by oil-producing States, in alliance with Communist States, was only too apparent in that vote. It is obviously not possible to prevent such resolutions from being adopted. But that is not the pertinent issue. That issue is whether, as the manipulators demand, there should be added to these extravagant expressions an attribution of binding force in international law.

21. It would indeed be extraordinary if a legal order which holds void treaties procured by the threat or use of force (see article 52 of the Vienna Convention on the Law of Treaties), would simultaneously attribute binding legal force to resolutions of the General Assembly for which States vote under extreme duress. No doubt the use of bargaining power, whether deriving from oil resources or from military force, cannot be prevented altogether from influencing the outcomes of negotiations between States. Yet, just as the Vienna Convention on the Law of Treaties sets limits to the lawful role of military power in inducing a party to accede to a demand, there must be corresponding limits to other means of coercion, including threats of economic strangulation by deprivation of essential oil supplies. 8/

22. There are a number of specific provisions of the Charter governing the employment of extreme economic duress. First, Article 53 expressly lays down that "no enforcement action shall be taken under regional arrangements, or by regional agencies without the authorization of the Security Council". Yet in fact this is what the 1973 Arab States' oil embargo against the United States, the Netherlands, Japan and other States amounted to. Such unilateral measures would not be in conformity with the Charter even if the political demands of the Arab States against Israel had conformed (which they did not) to the relevant Security Council resolutions. Second, the extreme coercion of the concerted oil measures probably constituted a threat or use of force, forbidden by Article 2, paragraph 4, of the United Nations Charter. There is a great difference between this degree of economic coercion based on monopoly power over oil supplies, and mere legal embargoes by one State against another when the fact of monopolistic control is absent. If this is so, the Vienna Convention on the Law of Treaties renders void any consensual obligation which States are thereby induced to accept. Third, many United Nations Members have taken the view in connexion with the Definition of Aggression that it includes "economic aggression", and that its victims may lawfully take appropriate measures of self-defence. Fourth, a conspiratorial design of this kind by a group of Members to cripple the economies of other Members for collateral political ends obviously flouts the "Purposes" and "Principles" of Articles 1 and 2 of the Charter, as well as the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations, adopted by the General Assembly in resolution 2625 (XXV). Fifth, as a number of States urged in the Special Committee on the Definition of Aggression, the "sovereignty" of States protected by Article 2 of the Charter, as well as by the Definition of Aggression, may embrace economic attributes in addition to "territorial integrity" and "political independence". Hence, the extreme coerciveness and dubious legality of the Arab oil boycott under Article 53 of the Charter would seem to constitute "a threat or use of force in violation of the principles of the Charter".

23. If the exercise of modes and degrees of duress against individual States or regional groups are thus unlawful, it would be strange to think that they could remain lawful when exercised against the collectivity of Member States of the United Nations in the General Assembly. And it would become correspondingly grotesque to argue, as do all these "studies", that once assertions in resolutions of that body are sufficiently repeated they are transformed into international law, regardless of any duress by way of oil or other pressures which induced many Members to vote or abstain so as to allow them to be adopted. The grotesqueness arises not merely from ignoring the unlawful pressure by which the mere appearance of consensus is produced, and which, in principle, should of itself taint the resolution qua resolution. The grotesqueness is raised to breath-taking proportions by the claim that such resolutions are transmuted into precepts of international law binding on all States.

24. A third reason for rejecting claims that General Assembly resolutions as such create binding law is the rather indiscriminate fashion current today in the General Assembly of endorsing assertions made in the name of "international law", merely because they seem "progressive" in the sense of constricting the legal rights of States not belonging to the so-called Non-Aligned Group. Such positions are sometimes taken by publicists of some sincerity; yet they often represent a naive view not only of international law, but also of both morality and international politics. These publicists can be found to take stern restrictive views of the range of lawful resort to force by States, while insisting, with no sense of the incongruity, that States are also free to initiate or support "wars of liberation" of their own choice, provided that they can control by any means sufficient protective votes in the General Assembly. Such doctrines are a veritable forcing-bed for the double standards which Dr. Schreuer, as seen, correctly stigmatizes as fatal to any attribution of law-making to the General Assembly.

25. This "softening" of the doctrine which has been a mainstay of statecraft since before the Peace of Westphalia (1648), is due in part to changing power-constellations, cultural styles and ideological commitments, and sometimes to post-colonial guilt feelings. But it is also due in part to the skill, imagination and persistence with which Soviet, Arab and other diplomats and publicists have co-ordinated, disguised and pressed the accumulation of their demands against the existing legal order. It is not the present thesis that in this new situation the give and take in the conflict of claims and the power that backs them may not yield new principles for a viable legal order. Yet to qualify as international law <u>any</u> assertion for which a majority can be marshalled in the General Assembly is to undermine both the United Nations and the international legal order as hitherto understood. The effect may be to block or vaporize that law, so as to foreclose any chance of adjusting it to changing conditions, as well as to invite political and military disasters.

26. Professor Gaetano Arangio-Ruiz's work, <u>The Normative Role of the General Assembly of the United Nations and the Declaration of Principles and Friendly Relations</u>, 9/ is perhaps the most comprehensive and up-to-date examination of this matter. That learned author and experienced diplomat has diligently assembled, scrupulously commented upon, patiently organized and critically analysed the practice and growing literature which seeks to establish, explain or support pretensions to law-making authority by the General Assembly. It is a work which commands attention from all who value juristic and intellectual integrity above fashion and ideology. Professor Arangio-Ruiz ranges over numerous theories which purport to attribute law-making authority to the General Assembly. These include the supposed legitimation by the Charter or other contractual rule; a supposedly authorizing rule of customary law, the supposed "will" of the "Organised International Community", and the supposed binding force of particular resolutions seen as the practice of States maturing into custom or as "treaty" obligations based on "consensus".

27. On every such ground he is led to conclude that the General Assembly lacks authority either to "enact" or "declare" or "determine" or "interpret" international law in a way legally binding on any State, whether or not a Member of the United Nations and regardless of how that State voted on the particular resolution. His demonstration is relevant both for attempts at abstract "declaration" of law made by the General Assembly and for usurpation of the power to "determine" matters on which States are at variance, despite the lack of authority from the Charter to so "determine". He calls upon international lawyers to resist and reject what he calls the "soft-law method" associated with loose attribution of independent law-making power to the General Assembly. In response to arguments like those made in these "studies", that sufficiently frequent repetition of a statement in the General Assembly can in itself transmogrify that statement into a rule of customary law, Professor Arangio-Ruiz offers a fitting answer:

> It would be too easy if the "shouting out" of rules through General Assembly resolutions were to be law-making simply as a matter of "times" shouted and size of the choir. By all means, we would urge that one let the General Assembly shout as often and as loud as it is able and willing to shout. However, for the shouted rule to be customary law there still remains to consider the conduct and the attitudes of States with regard to the actual behaviour, positive or negative, contemplated as due by the rule (p. 476).

* * *

28. Among the more dramatic examples of the dangers to the international legal order from loose attempts to turn General Assembly resolutions into international law is that body's resolution 3236 (XXIX) of 22 November 1974 on the rights of the Palestinian people. Since that resolution is also a centre-piece of all four "studies" it is instructive to examine it in terms of the preceding general analysis.

29. The basic issues and principles for the settlement of the Middle East situation were set forth in Security Council resolution 242 (1967), reaffirmed in resolution 338 (1973), which required the parties to proceed forthwith to negotiations for a just and durable peace. During the period from 1967 to 1973, various cease-fires ordered by the Security Council and consented to by the parties were beyond any doubt in full legal force. Under those circumstances, the hostilities initiated by Egypt and Syria in 1969-1970 and 1973, and the Arab States' harbouring and support of terrorist operations against Israel under the auspices of the PLO and its military wings, should have incurred the censure of the United Nations. However, the geo-political drives of Soviet policy, the multiplication of United Nations Members aligned in voting blocs with Communist and Arab Members, the political use of the Soviet veto and the coercive use of the oil weapon, rendered the Security Council impotent through most of the Yom Kippur War of 1973.

30. Then, on 22 November 1974, the General Assembly adopted resolution 3236 (XXIX) which made explicit this travesty of the applicable principles of international and Charter law. No one can second-guess the voting fate of that resolution had not the damoclean sword of an oil boycott hung over the proceedings. Even under such coercion, one third of the Members of the General Assembly either voted against or abstained. Resolutions adopted in such circumstances are not likely to reflect or promote international law, much less justice or morality.

31. In resolution 3236 (XXIX), the General Assembly purported to reaffirm "the inalienable rights of the Palestinian people in Palestine". It also recognized the PLO as the appropriate claimant in respect of such rights. In so doing, the General Assembly endorsed by implication prior PLO actions, including terrorist activities deliberately aimed at men, women and children, as well as the citizens, airports and aircraft of numerous States not involved in the Middle East dispute. By the same token, and by a later express provision, it also offered dispensation for the continuance of such activities.

32. Second, the resolution violated various legal principles and rights guaranteed under international law and under other authoritative long-standing United Nations resolutions. By its endorsement of the PLO's aspirations, which (under art. 6 of the Palestinian National Covenant) call for the destruction of the State of Israel, the measure violated the sovereign equality of Israel, guaranteed by Article 2, paragraph 1, of the Charter. It also violated Israel's right to be free from the threat or use of force under Article 2, paragraph 4, and to be free from armed attack under Article 51.

33. Third, the resolution contradicted the assurance embodied in Security Council resolution 242 (1967) of Israel's right "to live in peace within secure and recognized boundaries free from threats or acts of force".

34. Fourth, by reaffirming what it called "the inalienable rights of the Palestinian people in Palestine", with no geographical limitation placed on those last two words, the resolution contradicted the General Assembly's 1947 Partition resolution. Although Arab aggression prevented that resolution from ever coming into legal operation, the General Assembly was certainly committed to recognizing the entitlement of the Jewish people, and later of Israel, to <u>some part</u> of Palestine. Historic and geographic "Palestine" includes not only Judea and Samaria and Gaza, but also the whole of pre-1967 Israel and the Kingdom of Jordan. This notwithstanding, the representative of Jordan in the debate on the 1974 resolution made clear his country's view that Israel <u>was</u> included in the "Palestine" claimed for the Palestinians, whereas Jordan was not!

35. Fifth, while the General Assembly in 1947 had requested the Security Council to treat the use of force by Arab States as "a threat to the peace, breach of the peace or act of aggression", the General Assembly in 1974 placed itself in the role of a virtual accomplice by encouraging the resumption of the very kind of aggression which it formerly singled out for peremptory condemnation. This

lamentable volte-face is underscored by the express approval in paragraph 5 of the resolution of the use by the PLO of "all means" to achieve its ends, and its appeal to all States and international organizations to assist with such means! 10/

36. The representative of the United States spoke for many Members when he referred to the dangers to the authority of the United Nations posed by such one-sided resolutions. He cited the handling of the global economic crisis and the Middle East conflict as examples of what he viewed as arbitrary disrespect for the Charter. He warned that if the United Nations continued to proceed on the basis of arithmetical majorities, a "sterile form of international activity" would result and the United Nations would no longer be regarded as a responsible forum of world opinion. 11/ Yet this resolution typifies the resolutions of the recent period on which these "studies" base their untenable conclusions.

II. GENERAL ASSEMBLY RESOLUTION 181 (II) of 29 NOVEMBER 1947

37. Two distinct and basic legal questions are wholly overlooked in the Mallisons' analysis of the Partition resolution. One: What would have been its effects on sovereign title in the territories concerned had the Arab States not rejected it? Two: What residual binding effect (if any) survived the destruction of the resolution by Arab aggression? Both these questions are certainly part of what the authors call (p. v) "the context of international law" in which they claim to be examining the United Nations resolutions concerned. Legal relations of States cannot be frozen at a point in time over a quarter of a century ago, even at the behest of these authors.

38. The first issue is the potential legal effect of the Partition resolution had it come into legal operation. On this issue the authors involve themselves a somewhat tortuous struggle. On the one hand, they do not dissociate themselves from Arab claims that the resolution was invalid ab initio, violating (in their view) the Mandate for Palestine, as interpreted by Arab protagonists (pp. 22-23). 12/ Acceptance of these claims would obviously tend to justify the Arab States' forcible rejection of the resolution. On the other hand, after failure of that Arab aggression to destroy Israel, the authors, writing over three decades later, wish for rather obvious reasons to attach great value to certain provisions of the 1947 resolution which would, on their interpretation, be legally embarrassing to Israel (pp. 24-25). In this schizophrenic posture, their analysis suggests that the General Assembly was in 1947 both a legitimate United Nations successor to the League of Nations Mandates System, and a usurping authority acting ultra vires. The tension of simultaneous validity and invalidity which they suggest for the 1947 resolution infects and cripples the whole of their account of the role of the General Assembly at that time.

39. If we address ourselves directly to the potential effects on sovereign title had the Partition resolution not been aborted by Arab aggression, the answer is not complicated. On 2 April 1947, the United Kingdom, as the Mandatory Power, gave formal notice to the United Nations and authorized the General Assembly to attempt a settlement on the question. 13/ Since the Charter refers to the Mandate System, the United Kingdom's request was properly a "question or ... matter within the scope" of the Charter, for purposes of General Assembly discussion under Article 10.

40. It is no less certain, however, that the powers of the General Assembly acting on a matter within Article 10 are limited to the non-binding mode of "recommendations" (paras. 6-36, supra). Moreover, the language of the 1947 resolution was scarcely such as to convey titles instanter. Nor was it clear that the General Assembly had any territorial title in Palestine to convey. Elihu Lauterpacht correctly concludes that the Partition resolution had no legislative character as is necessary to vest territorial rights in either Jews or Arabs. Any binding force would have had to arise from the principle pacta sunt servanda, that is, from the agreement of the parties concerned to the proposed plan. Such agreement was frustrated ab initio by the Arab rejection, 14/ a

rejection underscored by the armed invasion of Palestine by the forces of Egypt, Lebanon, Transjordan, Syria, Iraq and Saudi Arabia launched hard on the heels of the British withdrawal on 14 May 1948, and aimed at destroying Israel.

41. Israel thus does not derive its legal existence from the Partition plan. 15/ Rather, its independence rests (as does that of most other States in the world) on its own assertion of independence, on the vindication of that independence against assault by other States, and on the establishment of an orderly government within the territory under its control. At most, as Israel's Declaration of Independence expressed it, the General Assembly resolution was a "recognition" of the "natural and historic right" of the Jewish people in Palestine. The immediate recognition of Israel by the United States and other States, and its admission in 1949 into the United Nations, were in no way predicated on its creation by the Partition resolution.

42. Israel's Declaration of Independence of 14 May 1948, made under the immediate shadow of armed attack from the Arab States, predicated independence on the following grounds: (1) Eretz Israel (the Land of Israel, the Hebrew name for "Palestine") was the birthplace of the Jewish people where "their spiritual, religious and national identity was shaped", where they first attained statehood, created cultural values of national and universal significance, and gave the Bible to the world; (2) Jews in exile had never ceased to pray and hope for their return to political freedom in the Land of Israel; (3) efforts to return to Eretz Israel had continued throughout successive generations, and in recent decades had become a mass movement, bringing a revival of the Land of the Hebrew language, and progress for all inhabitants; (4) the historic connexions between the Jewish people and Eretz Israel and the right of the Jewish people to rebuild its National Home there were internationally recognized in the League of Nations Mandate; and (5) the contribution of the Jewish people to the victory of the freedom-loving nations over the nazi tyranny had gained for them the right to be reckoned among the peoples who founded the United Nations. These elements are summed up in a concluding affirmation that "it is the natural right of the Jewish people to be master of their own fate, like all other nations, in their own sovereign state".

43. All these elements of Israel's entitlement to sovereignty were independent of the United Nations. They refer to facts existing before the United Nations was established. However, the Declaration did also refer to the General Assembly's Partition resolution. It recited that on 29 November 1947 the General Assembly had adopted a resolution "calling for" the establishment of a Jewish state in "Eretz-Israel", and that "this recognition by the United Nations of the right of the Jewish people to establish their state is irrevocable" (emphasis supplied). 16/

44. I have emphasized certain of the words used in the official translation of the Declaration because the Mallisons' version in Resolutions (p. 26) alters them in ways tending to support the otherwise untenable assertion that "Israel has placed heavy reliance upon the Partition resolution as providing legal authority" and that it "is the pre-eminent juridical basis for the State of Israel". The authors interpret (without adducing any support) the expression "calling for" in the

Declaration of Independence as though it was authorizing. They also take liberties with the phrase that the United Nations' "recognition" is "irrevocable". In context, this means that the preceding five elements of Jewish peoplehood and entitlement to national independence, as elucidated earlier in the Declaration, justify "this recognition" by the United Nations. The authors substitute for the word "recognition" the word "resolution", thus rewriting Israel's Declaration of Independence as if it read, "This resolution by the United Nations ... is irrevocable". This distortion is obviously essential to their argument that Israel remained and still remains bound by the 1947 resolution despite its rejection by the Arab States and other authorities concerned. It is, however, pure fabrication.

45. Returning to the question: What would have been the legal binding effect of the Partition resolution had its coming into operation not been aborted by the Arab States? The answer is that the "Plan of Partition with Economic Union" set out in the annex to that resolution, would, if accepted, have been binding on Israel and on the Arab States, including the new Palestinian Arab State once it was established, on the basis of the rule pacta sunt servanda. The effect of the agreement would have been to allocate sovereign titles, inter alia, to Israel, the proposed new Arab State, and the proposed corpus separatum comprising Jerusalem and its environs. Israel stood ready to enter into this agreement. On the other hand, as even the authors have to admit (pp. 25-27), the Arab States rejected it, and used armed aggression to destroy the Plan. 17/ There was in fact no such agreement, no such effect in vesting and delimiting titles, and no such entities as the proposed Arab State and corpus separatum ever came into being, in fact or in law.

46. The chronology of events is essential in assessing whether the Partition resolution could affect sovereign titles in Mandated Palestine. The resolution recommended to the Mandatory Power the adoption and implementation of the revised majority plan of the United Nations Special Committee on Palestine (UNSCOP); it requested the Security Council to "take measures" to implement the Plan; it called upon the inhabitants of Palestine to take steps necessary to put the Plan into effect; and it appealed to all Governments and peoples to refrain from any action which might hamper or delay the Plan's coming into effect. The Plan envisaged the termination of the Mandate and the withdrawal of British forces no later than 1 August 1948. It provided that the Arab and Jewish States and the international régime in the City of Jerusalem should come into existence not later than 1 October 1948. The Plan also described their future boundaries and included chapters on the Holy Places, religious buildings and sites, religious and minority rights and citizenship, international conventions and financial obligations.

47. The Jewish Agency for Palestine reluctantly accepted this resolution, in the belief that it contained the elements upon which the parties could together construct a peaceful future. 18/ The Jewish Agency did so on the understanding that, despite the negative attitudes of the Arab States in the General Assembly, they would accept the appeal of that body not to oppose its implementation by violence. This understanding was implicit in the principle of reciprocity in

international relations founded on mutual consent. The Arab States, however, rejected the resolution as infringing Arab rights, and ultra vires of the General Assembly. They proceeded in May 1948 to attempt to seize the whole of Palestine by armed force. Consequently, all basis for bringing the plan into legal operation was finally destroyed by the Arab States in May, months before the termination of the Mandate. 19/

48. The authors of Resolutions pay virtually no regard to these dates and events, despite their crucial importance for vesting titles in international law. After their opening vacillation as to whether or not the resolution was "invalid" ab initio, they confuse matters further by vigorously asserting that the resolution is certainly of continuing validity today (pp. 25-27), over 30 years later.

49. The miracle to be wrought by the Arab States, and by the Mallisons in their wake, is almost as impressive as the revival of something dead. It is no less than the resuscitation of a resolution which they had guaranteed would be still-born and which they had buried by their own aggression over three decades ago. 20/ Since, as shown, none of the resolution's potential legal effects ever came into being in the first place, they cannot have any "continuing validity" today.

50. The opposite view pressed by the authors of Resolutions is grossly repugnant to elementary considerations of justice and equity and good faith common to most legal systems, including international law. There are additional grounds, rooted in basic notions of justice and equity, on which the Arab States and the Palestinian Arabs should not, in any case, be permitted after so lawless a resort to violence against the resolution, to claim legal entitlements under it. Several of "the general principles of law" mentioned in Article 38, paragraph 1, of the Statute of the International Court of Justice preclude it. These Arab claimants do not come with clean hands seeking equity; their case is mired by the illegal bid to destroy by aggression the very resolution from which they now seek equity. They may also be thought by their representations concerning these documents to have led others to act to their own detriment, and thus are now debarred by their conduct from espousing, in pursuit of present expendiencies, positions they formerly denounced. Their position also resembles that of a party to a transaction who has unlawfully repudiated the transaction, and then comes to court years later claiming that selected provisions of it should be meticulously enforced against the wronged party. Similarly, it resembles that of a party who has by unlawful violence wilfully destroyed the subject-matter which is "the fundamental basis" on which consent was to rest, and now clamours to have the original terms enforced against the other party.

51. The authors of Resolutions seek to salvage some continuing binding effect for the Partition resolution by suggesting (p. 27) that the gist of some later General Assembly resolutions, especially those concerning Palestinian peoplehood, somehow retroactively instilled new life into the still-born resolution of 1947. They argue that these later resolutions now "constitute a world-wide consensus of support". I have already submitted that these authors have not adequately examined

the limits within which votes in international bodies can be the equivalent of statements of rules of international law. This deficiency also undermines this final basis of their claim that the provisions of the abortive 1947 Partition resolution constitute binding norms of international law in 1979. General Assembly resolutions having no law-making authority on their own, certainly cannot revive a resolution which never had any legal effect to begin with.

/...

III. THE RIGHT OF RETURN

52. An examination of the General Assembly resolutions on the right of return or compensation of Palestinian refugees shows that the heavy reliance on them displayed by the authors of Resolutions (pp. 31-37) is misplaced. The authors themselves observe (pp. 31-32) that paragraph 11 of General Assembly resolution 194 (III), which they properly recognize as the starting point and basis of their argument, did not even purport to be in mandatory terms. It was simply part of the terms of reference of the Palestine Conciliation Commission. A recital in resolution 273 (III), on the admission of Israel into the United Nations, "recalled" that resolution 194 (III) provided an option for refugees to return to their homes or to receive compensation, but it immediately "noted" the declarations and explanations made by Israel with respect to implementation of that resolution. Since Israel's declarations and explanations did not unqualifiedly accept the resolution, it can in no way be regarded as creating a legal obligation. As Elihu Lauterpacht observes the General Assembly "could not by its resolution give the Jews and Arabs in Palestine rights which they did not otherwise possess; nor, correspondingly, could it take away such rights as they did possess". 21/

53. It is clear that the next resolution, General Assembly resolution 513 (VI), was designed to facilitate the resettlement of the refugees in order to end their virtual confinement in concentration camps on Arab territory. Resettlement was the effective solution for the far larger and more complex refugee problems in Europe after the Second World War. With regard to the Arab refugees, it is a melancholy fact that this more humane and effective course has been followed to so small an extent, for so long, that some observers have concluded that, for the Arab States concerned, the refugee problem was more useful than its solution. Resolutions 2452 (XXIII), 2535 (XXIV), 2963 (XXVII), 3089 (XXVIII) and 3236 (XXIX), concerned with refugees fleeing in the aftermath of the Arab aggression of both 1947-1948 and 1967, aim at supporting the activities of the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). Although they contain various calls upon Israel and expressions of regret in the matter of repatriation and compensation, the peremptory assertions vital for the "studies" only finally mature in resolution 3236 (XXIX) of 22 November 1974. In the era of the oil weapon which then ensued, General Assembly resolutions indeed began regularly to insert the adjective "inalienable" before the words "right to return".

* * *

54. Even if those resolutions are taken as declaratory of international law, the question still arises why the authors of these "studies" have ignored the fact that Israel has absorbed and rehabilitated even larger numbers of Jewish refugees uprooted from Arab lands since 1948. In their doggedly meticulous analysis of General Assembly resolutions, the authors nowhere refer to Jewish refugees, nor do they even seek to explain why the general judicial principles on this matter

which they so eloquently invoke (pp. 28-30), running from Magna Carta (1215) to the International Covenant on Civil and Political Rights (1966), should apply only to Arab refugees and not to Jewish refugees.

55. The members of each of these groups suffered similar wrongs. The duty of providing homes for the 700,000 Jewish refugees involved was assumed by Israel in its fundamental Law of Return of 1950, as a first responsibility of the new State. This great burden of rehabilitation assumed by Israel should, both in law and justice, be brought into account in assessing contributions to be made by the Arab States and Israel to what Security Council resolution 242 (1967) called a "just" solution to the refugee problem. The point is even more pertinent because the misfortunes of both peoples arose from unsuccessful ventures in aggressive use of armed force in defiance of the United Nations Charter and resolutions by Arab States, and not by Israel.

* * *

56. In this connexion, the authors of Resolutions exhibit a curious astigmatism. Most remarkable is their failure to look carefully at relevant Security Council resolutions, especially resolutions 242 (1967) and 338 (1973). After all, the title of their "study" is Major United Nations Resolutions, not Major General Assembly Resolutions. In their tangled doctrine about "the right of return" of Palestinian refugees, they pay no regard whatsoever to the fact that the Security Council in 1967 did not feel that it could invoke any such hard-and-fast rule of international law as the authors assert. Nor do the authors deign to notice the fact that the formula of resolution 242 calling for "a just settlement of the refugee question", does not suffer from their own one-sidedness in ignoring Jewish refugees from Arab lands, while insisting on redress to Arab refugees from Palestine. They fail to notice that, as late as 1973, the Security Council reaffirmed in resolution 338 (1973) all the provisions of resolution 242 (1967), and called for urgent negotiation on their basis. This means that even in 1973 the resolutions of the Security Council, also a principal organ of the United Nations, did not conform to the reconstructed version of international law offered in Resolutions.

IV. SELF-DETERMINATION AND THE ARAB-ISRAEL CONFLICT

57. Is self-determination, whatever its specific content, the subject-matter of a precept of international law itself, or is it only a consideration of policy or of justice, to be weighed as one among other facts and values in the interpretation and application of legal rules? The authors of the Self-Determination "study" ask (p. 1) whether the doctrine is "a principle" or "a right". To this rather abstruse question, they give an even more abstruse answer. Conceding that the complexities of the issue are not within their ambit, they nevertheless announce that they will proceed "on the axiom" that "the right of self-determination exists as a crucial element in contemporary international life and is recognized as such by the political world community". Note that this supposed axiom studiously avoids any juridical reference, and might be better suited to a textbook on the sociology of the international community. A careful lawyer knows that a notion of "right" may or may not refer to a "legal right". I propose to analyse the evidence and process by which the authors of Self-Determination and of Resolutions seek to demonstrate the transmogrification of this sociological observation into a precept of international law currently in force.

58. The demonstration proceeds (pp. 2-13) by culling the views of publicists who have asserted that "self-determination has developed into an international legal right". Some of these are experts whose distinction is certainly not in the field of international law; 22/ but as a token of objectivity the "study" also mentions (though scarcely exhaustively) one or two publicists who hold the opposing view. The anonymous writers have perforce to admit (p. 12) that, even today, there is a "variety of opinions on the issue of the juridical position in international law of the right of self-determination". Yet this in no way inhibits them from assuming that the right of self-determination is "an established principle of international law", because this is "the consistent stand of the General Assembly". Moreover, this stand "reflects the will of the international community". This is nothing more than a reassertion of their opening axiom, of no legal significance unless the General Assembly "stand", as reflected in its resolutions, can be said to have a legislative character. But, as has been shown, although Resolutions opens with a laborious effort to demonstrate that the "stand" of the General Assembly on a matter becomes international law, its efforts were unsuccessful. Hence, proceeding from faith (or prejudice) rather than any juristic demonstration, the anonymous authors of Self-Determination perform the extraordinary feat of elevating the self-determination principle to the level of jus cogens. 23/

59. In both the "studies" on Self-Determination and Resolutions, therefore, the standing in law of the right of self-determination in general is asserted in conclusional terms, but nowhere is any demonstration proffered. Within this hazardous frame the authors produce a collage of documents critical of the League of Nations Mandate and of Zionism, the national liberation movement of the Jewish people. With similar selectivity, they rehearse (pp. 22-28) the history of the British administration in Palestine and the first phase of United Nations

involvement up to the abortion of the Partition resolution by what the authors delicately call the "sending" by "the Arab States" of "forces" into Palestine (p. 31). Nowhere in this presentation do they give any reason why self-determination, as the legal right they claim it to be, does not spread its blessings over the Jewish people as well as the Palestinian Arab people. Equally irrelevant for them is the unlawful occupation and annexation by Jordan of the West Bank and its failure, from 1948 to 1967, to accord the slightest degree of autonomy to the Palestinian Arabs living there.

* * *

60. Up to 1970, General Assembly resolutions dealt only with the claims of Arab refugees to return to their homes and "their repatriation, resettlement and economic and social rehabilitation and payment of adequate compensation for the property of those choosing not to return". 24/ It is only with General Assembly resolution 2672 C (XXV) of 8 December 1970 that "the General Assembly moved towards acknowledging the correlation between the right of self-determination and other inalienable rights" (Resolutions, p. 44). From this resolution and from a phrase in resolution 2649 (XXV) of 30 November 1979, the authors of Resolutions make so bold as to argue that all earlier resolutions on the self-determination of peoples in general, have later and retroactively become "specifically applicable to the Palestinian people" (id.). They are thus accepting as an historical fact that, so far as the General Assembly is concerned, no rights of the Palestinian Arabs under the Charter were recognized until 1970.

61. Even resolution 2672 C (XXV) of 8 December 1970, claimed as an epoch-making recognition of Palestinian self-determination, was hesitant at that late stage. No less than 72 States out of a total of the 139 Members of the United Nations at the time either opposed it or abstained in the vote, and only 47 States voted for it. This scarcely signals a whole-hearted flash of recognition, even a belated one, by the international community of an age-old self-evident truth!

62. Moreover, unprecedented coercion was exercised in the General Assembly by the Arab States' oil boycott in support of the Syrian-Egyptian attack on Israel in 1973 in order to induce a majority to vote for resolutions asserting the existence of the fact of a separate Palestinian Arab national identity. Even under such threats and duress, in 1973, the pertinent resolution 3089 D (XXVIII) marshalled only 87 affirmative votes (with 39 States voting against or abstaining). It is noteworthy that when, a year later, resolution 3236 (XXIX) attempted to strengthen the self-determination claim by "reaffirmation", there were increases in both the number of Members who opposed, and the number who abstained. 25/

63. The "study" on Self-Determination concludes (pp. 33-37) with a section entitled "The Affirmation by the United Nations of the Right of Self-Dtermination of the Palestinian People". While the Resolutions "study" blurs the precise time of full recognition by the General Assembly of the claim of the Palestinian Arabs, Self-Determination is crystal clear and accurate on the point. The anonymous authors of Self-Determination point out that the General Assembly's repeated

assertions of Palestinian qualification as a nation do not begin until resolution 2672 (XXV) of 8 December 1970. They even stress (p. 33), with perspicacity, but without mentioning the oil weapon, that it was with the Arab war of aggression of October 1973 that the cause of self-determination for the Palestinian people "began a rapid advance". They also stress the close relation between the affirmations by Arab Heads of State at the Rabat Summit in 1974 of the right of self-determination for the Palestinian Arabs and the status of the PLO, and the General Assembly's adoption of the PLO resolution 3236 (XXIX) of 22 November 1974. All this leads inexorably to the admission that the General Assembly's action was taken under pressure of the Arab States, including those now flexing their muscles through OAPEC.

64. The authors of Self-Determination admirably summarize (p. 37) the main point as to national claims of the Palestinian Arabs in this striking way:

> Thus it will be seen that the right of self-determination of the Palestinian people, denied for three decades during the Mandate, ignored for two decades in the United Nations, have over almost the last decade received consistent recognition and strong assertion by a preponderant majority of Member States of the United Nations ...

It is ironic that this eloquence, applied to the Palestinian Arabs, admits, indeed insists, that the proper date for the application of the self-determination principle is placed about 1970, and certainly not half a century before, in 1917. The implications of this admission are examined below (paras. 66-82).

65. It is also curious that in a 10-page section on "The National Rights of the People of Palestine" (Resolutions, pp. 39-48), the authors continue avoiding reference to the most important and influential of recent resolutions on the Middle East, Security Council resolutions 242 (1967) and 338 (1973). As international lawyers, the authors must be aware of the importance of resolution 242 as the only authoritative and unanimously accepted formulation by the Security Council of the issues between Israel and the Arab States. They ignore its implications for the self-determination issue in that Security Council resolution 242 (1967) significantly excludes all reference to any national claims of Palestinian Arabs against Israel. This was simply not an issue in the Middle East conflict in 1967, nor was it in 1973 when resolution 338 (1973) reaffirmed resolution 242 (1967).

* * *

66. A basic assumption underlying this whole series of "studies" is that the peoples whose competing claims to self-determination are to be reconciled are the Jewish people on the one hand, and the Palestinian Arab people on the other. A corollary to this assumption is that the relevant date for applying the self-determination principle in the Middle East is 1947, the date of the Partition resolution. Alternatively, it may be 1974, when the General Assembly first

pronounced, in resolution 3236 (XXIX), that "the Palestinian people is entitled to self-determination in accordance with the Charter of the United Nations".

67. Such assumptions fly in the face of the history of the struggle over Palestine by ignoring the critical importance of the decades before 1947. The main conclusion of Self-Determination (p. 37) is that no such right of Palestinian Arabs as a separate people was recognized "during three decades" of the League Mandate, or "the first two decades" of the United Nations. This admission confirms what is in any case clear from the post-First World War settlement: the rival claimants to the former Ottoman territories concerned were limited to the Jewish and Arab national movements, and given the historical context, properly so.

68. For centuries preceding 1917, the name "Palestine" never referred to a defined political, demographic, cultural or territorial entity. In the immediately preceding centuries, the area formed part of the Ottoman Empire, and for much of that time its provincial capital was in Damascus. In 1917, its larger part, north of a line from Jaffa to the River Jordan, was part of the Vilayet of Beirut and the whole of it was considered part of Sham (a broad area comprising what is today Syria and beyond). The Arabs living there were not regarded by themselves or by others as "Palestinians", nor did they in any major respect differ from their brethren in Syria and Lebanon. This "Syrian" rather than "Palestinian" identification of Arabs living in Palestine underlay the request of the Syrian General Congress on 2 July 1919, "that there should be no separation of the southern part of Syria known as Palestine, nor of the littoral Western Zone which includes Lebanon, from the Syrian country". 26/

69. Indeed, the main argument made by Arabs in the post-First World War negotiations was not that "Palestinians" would resent the loss of Palestinian identity by the establishment of the Jewish National Home, but that the inhabitants would resent the severance of their connexion with their fellow Syrians. In the light of these facts, the notion that the Arabs living in Palestine regarded themselves in 1917 as a Palestinian people in the sense required by President Wilson's self-determination principle (for brevity "the liberation principle") is thus a figment of an unhistorical imagination. To respect these historical facts is not to impugn the liberation principle; it is merely to point out that the principle must be applied at the appropriate time to group life as they truly exist.

70. Even some PLO leaders have disavowed a distinct Palestinian identity. On 31 March 1977, for example, the head of the PLO Military Operations Department, Zuhair Muhsin, told the Netherlands newspaper Trouw that:

> There are no differences between Jordanians, Palestinians, Syrians and Lebanese ... We are one people. Only for political reasons do we carefully underline our Palestinian identity. For it is of national interest for the Arabs to encourage the existence of the Palestinians against Zionism. Yes, the existence of a separate Palestinian identity is there only for tactical reasons. The establishment of a Palestinian state is a new expedient to continue the fight against Zionism and for Arab unity.

71. Thus, the facts relevant to a correct application of the self-determination doctrine in the present case go back to 1917. For whether this doctrine is already part of international law stricto sensu, or (as many international lawyers think) a precept of politics or policy or justice, to be considered where appropriate, it is clear that its applications must be predicated on facts. One such fact is when in time the claimant group lacking a territorial home first constituted a people or nation, with the requisite common endowment of distinctive language, ethnic origin, history, tradition and the like.

72. The point in time at which it can be confidently said that a distinctively Palestinian Arab claim for self-determination emerged on the Middle East scene was around the adoption of the Palestinian National Charter in 1964 (revised as a "Covenant" in 1968). 27/. The Covenant itself testifies with striking clarity that the belatedness of this self-recognition as Palestinian Arabs undermined the demands for territorial sovereignty. It was, after all, nearly half a century after the non-Turkish territories of the Ottoman Empire had already been allocated between the Jewish and Arab liberation claimants (the latter including the Palestinian Arabs, but not as a distinctive part). The Covenant sought to side-step these historical facts by two devices. It claimed that the Palestinian Arabs were part of "the Arab nation" to which the post-First World War allocation was made, and which by 1964 had come to control a dozen new independent States in the Middle East (arts. 14-15). But it also insisted that Palestinians were a separate people entitled to the whole of Palestine as an indivisible territorial unit for its homeland (arts. 1-5).

73. This design still left the problem of how, conceding the emergence of a distinctive Palestinian people only in the 1960s, such subsequent events could affect the prior correct application of the "self-determination" or "liberation" principle in 1919. To meet that problem the Covenant adopted the ingenious fiction of declaring Palestinian nationhood retrospectively to have existed in 1917. To this end it provided that only Jews who had "normally resided" in Palestine before the "Zionist invasion" (presumably around 1917) could qualify for membership in the Palestinian state, and, by clear implication, that all others would be expelled (arts. 6, 20-23).

74. In order to examine the assumptions on which the "studies" on Self-Determination and Resolutions proceed, the year 1917 must be utilized for testing the application of the self-determination principle to the Jewish and Arab peoples. At that time none of the present Arab States in the former provinces of the Ottoman Empire in the Middle East had come into existence, so "the Arab Nation", on whose behalf wide-ranging claims were made, was certainly an eligible claimant under that principle. By the same token, however, the Jewish people was also a proper claimant under it. Indeed, historically the Jewish claims began earlier than did the Arab claims. The Emir Feisal, in his well-known letter of March 1919 to Felix Frankfurter, recognized the concurrence of the Jewish and Arab liberation movements. He thanked Chaim Weizmann and other Zionist leaders for being "a great helper of our /the Arab/ cause", and expressed the hope that "the Arabs may soon be in a position to make the Jews some return for their kindness". And as a

signal reminder that, among Arabs too in 1919, there was no distinguisable Palestinian Arab nationhood, he added: "There is room in Syria for us both" (emphasis added). 28/

75. This historical context was clearly set out in the Agreement of Understanding and Co-operation of 3 January 1919 signed by the Emir Feisal, representing Arab national aspirations at the Paris Peace Conference, and Dr. Weizmann, representing the Zionist movement. Its preamble envisaged the closest possible collaboration in the development of "the Arab State and Palestine" as the surest means of "the consummation of their national aspirations". It is obvious from article 1 of that Agreement, providing for the exchange of "Arab and Jewish accredited agents" between "the Arab State" and "Palestine" that what was envisaged was the allocation of "Palestine" for self-determination of the Jewish nation, and of the rest of the region for that of "the Arab nation". 29/ The Ottoman Empire was so vast that a dozen independent Arab States came later to be established on it alone. In fact, the Arab claim for territory in which to exercise their right of self-determination extends beyond these dozen Middle East States. Several other States in Asia and North Africa also realize the Arab nation's claim to self-determination. Together these make up the Arab League, which comprises over 20 members today.

76. Thus, no liberty is being taken with history when it is recalled that representatives of the Jewish and Arab national movements presented themselves simultaneously after the First World War as claimants for liberation. Each people, Jewish and Arab, shared within itself cultural and religious traditions and experiences deeply rooted in the Middle East region. The Jewish people claimed one part, Palestine, with which it had nearly four millenia of unbroken connexion, as its historic home. The Arabs claimed virtually the whole of the territories detached after the First World War from the Ottoman Empire. These were the two claimant peoples, the Jews and the Arabs, between whom the Principal Allied and Associated Powers made the territorial allocations which began the modern history of Palestine.

77. The myth propagated in the Palestinian National Covenant that the "Palestinian people" was unjustly displaced by "Jewish invasion" of Palestine is widely disseminated, and is unquestioningly and dogmatically espoused in the United Nations "studies" under consideration. It is therefore necessary to recall not only the Kingdom of David and the succession of Jewish politics in Palestine down to the Roman conquest and Dispersion, but also the continuous Jewish presence in Palestine even after that conquest. In 1914 the Jews in Palestine were a closely-knit population of almost 100,000.

78. The connexion of the Jews with Palestine is eloquently stressed by the Report of the Royal Commission (headed by the late Lord Peel) in 1937. The zeal with which the "studies" cite passages from that Report fails to include the following:

> While the Jews had thus been dispersed over the world, they had never forgotten Palestine. If Christians have become familiar through the Bible with the physiognomy of the country and its place-names and events that

happened more than two thousand years ago, the link which binds the Jews to Palestine and its past history is to them far closer and more intimate. Judaism and its ritual are rooted in those memories. Among countless illustrations it is enough to cite the fact that Jews, wherever they may be, still pray for rain at the season it is needed in Palestine. And the same devotion to the Land of Israel, Eretz Israel, the same sense of exile from it, permeates Jewish secular thought. Some of the finest Hebrew poetry written in the Diaspora has been inspired, like the Psalms of the Captivity, by the longing to return to Zion. Nor has the link been merely spiritual or intellectual. Always or almost always since the fall of the Jewish State, some Jews have been living in Palestine. Under Arab rule there were substantial Jewish communities in the chief towns. 30/

79. In terms of modern ideas concerning the liberation of peoples, it is critical to identify the two peoples whose competing claims were adjusted when the future of the former Ottoman territories in the Middle East was being negotiated. For it is fatal to any judgement of justice to misidentify the claimants among whom a territorial distribution is to be made. The facile assertion that Israel came into existence on the basis of an injustice to a Palestinian nation proceeds on a gross error of this very kind. In historical fact the Arab claimants after the First World War embraced Arabs of the whole Middle East area, including Arabs in Palestine, who were then in no sense a distinctive national group. The consequence is that now in 1980, to recognize a "Palestinian nation", and to endow it retroactively with an 80-year history as a rival claimant for Palestine, is to play impermissible games with both history and justice.

80. Arab national aspirations were certainly realized in the territorial distribution between Arabs and Jews after the First World War. Arab claims to sovereignty also received extensive fulfilment in the settlements following the Second World War, not only in the Middle East but in other parts of Asia and in Africa as well. Altogether this historical process included the following features:

(a) Despite all the extraneous Great Power manoeuvrings, Jewish and Arab claims in the vast area of the former Ottoman Empire came to the forum of liberation together, and not (as is usually implied) by way of Jewish encroachment on an already vested and exclusive Arab domain.

(b) The territorial allocation made to the Arabs after the First World War was more than 60 times greater in area, and hudreds of times richer in resources, than the "Palestine" designated in 1917 for the Jewish National Home. Indeed, the area of the territories ultimately made available to satisfy the claims of the Arab nation to self-determination is 500 times greater than the area of Israel.

(c) By successive steps after 1917, further encroachments were made upon this already tiny allocation to Jewish claims. As early as 1922, a major part of it (namely 35,468 out of 46,339 square miles, over three quarters) was cut away to establish what was to become the independent Hashemite Kingdom of Transjordan.

81. The liberation principle was thus applied to the rival claims of the Jewish people and the "Arab Nation" in the period following the First World War. Moreover, the principle was applied correctly to the facts of peoplehood then existing, by allocating the overwhelming share of territory and resources of the whole of the Middle East to the Arab nation (including the Palestinian Arabs). This share was ample enough to form in later decades the territorial basis for a dozen independent Arab States. The principle was also applied by allocating to the Jewish people, as part of the same settlement, a minute fraction of the area, embracing both Cisjordan and Transjordan. That tiny fraction was then reduced by four fifths in 1922, leaving the share allotted to the Jewish people under the liberation principle as 10,871 square miles, poor in resources, about one two hundredth of the entire territory distributed. This distribution in no way impaired any right of self-determination of any other nation. As has been seen, neither at the time of distribution, nor until decades later, did any distinct grouping of Palestinian Arabs come to be recognized as a separate nation either by themselves, or by other Arabs.

82. This presentation of the historical context belies the attempt in the Palestinian National Covenant, now emulated by the named and anonymous authors of the "studies", to present the Palestinian issue as a struggle which began in 1917 between the Jews of the world on the one hand, and "Palestinian Arab Nation" on the other, in which the Jews seized the major share. The underlying error here is the failure to recognize that the liberation principle has to be applied at particular points in time to the facts as they exist at the particular time. The self-determination claim on behalf of Palestinian Arabs was first pressed in United Nations resolutions at the end of the 1960s. If indeed they were wronged by not having been given an appropriate share of the vast territorial allocation made in 1919 to the "Arab Nation", of which they were then and now remain a part, such wrongs must be laid at the door of the dozen sovereign Arab States which arose from the lion's share of the distribution of the territory of the former Ottoman Empire.

* * *

83. The detaching in 1922 of four fifths of the territory within which the Jewish National Home was to be established in order to create first the Emirate of Transjordan and subsequently the present Kingdom of Jordan is of double significance in the context of applying the principle of self-determination. On the one hand, as already indicated, it drastically reduced the already tiny allocation for the exercise of the Jewish people's right to self-determination. But, conversely, in addition to satisfying the claims of Hashemite leadership, it provided a reserve of land for Arabs across the River Jordan in Palestine. Both Cisjordan and Transjordan made up historic Palestine. Hence the erroneous premise of these "studies" as to the identity of the claimants to self-determination in 1917 immediately gives rise to another dramatic error. That is their assumption that the Palestinian Arabs as a people do not already have a homeland and a base for statehood, and that these prerogatives must be wrested from the State of Israel. The fact is that after the First World War Transjordan arose as an encroachment on the small area properly allocated to the Jewish Nation, and subsequently the

/...

Jewish National Home provisions of the Mandate were made non-applicable there. 31/ Yet these "studies" do not, as far as can be observed, refer to any duty on the part of the Kingdom of Jordan to accommodate the claims of the Palestinian Arabs.

84. The relevant consideration for the application of the self-determination principle in 1980, however, is that the origins and present position of the Arab Kingdom of Jordan in Palestine give the lie to the very claim that the Palestinian people lacks a homeland. Not only did the Kingdom of Jordan arise in Palestine over Jewish protests at the expense of territory allocated for the Jewish nation; it also inexorably became, by the same course of history, a Palestinian Arab State.

85. Therefore, in terms of any meaningful application of the self-determination principle, Jordan was certainly a Palestinian Arab State before 1948. Whether the King and his Palestinian subjects chose to conduct their affairs as a unitary or a federated State, the Palestinian Arabs already had a homeland in the State of Jordan. This reality may be concealed from time to time by the difficult relations between the King and his Palestinian subjects. Yet for much of the period 1948 to 1967, and perhaps until the bloody hostilities with the PLO in 1970, the Palestinian Arabs in the Kingdom of Jordan regarded Jordan as their State. Indeed it seems that in 1970 most Palestinian Arabs sided with the King and his Government against the PLO. That underlying reality continues to this day.

86. The assumption of these "studies" that the existence of Israel deprives the Palestinian Arabs of a national home is thus erroneous. It is understandable that the rejectionist Arab States and the PLO should refuse to entertain any mention of these errors. Only by propagating them can they twist the liberation claims of Palestinian Arabs into a demand against Israel, and move towards their avowed goal of destroying that State. 32/ But it is strange that the authors of these "studies" ostensibly engaged in the exposition of international law, should indulge these unjustified positions so unquestioningly.

V. - APPEASEMENT OF SELF-DETERMINATION CLAIMS BY REDRAWING THE BOUNDARIES OF SOVEREIGN STATES

87. With apparent pain, the authors of the Resolutions study conclude (p. 27) that the Partition resolution was not necessarily void ab initio merely because it recognized the "national rights" of the Jewish people as well as those of the Arabs of Palestine:

> The self-determination issue may have been resolved in an unusual manner, but it is not possible to conclude as a matter of law that the particular method of self-determination in two States was invalid per se.

Given these writers' premises this does indeed have the air of a major concession. They head the title of their relevant section (p. 39) "The National Rights of the People of Palestine", which implies that there is only one "people of Palestine" entitled to self-determination. It is clear from all they have written, and from all the output of the "Committee on the Exercise of the Inalienable Rights of the Palestinian People" that if there is only one people of Palestine, the Arabs are the one. This logical inference conforms openly to the claims of article 6 of the Palestinian National Covenant (1968) that all Jews who had not normally resided in Palestine before 1917 should be barred from citizenship in the projected Palestinian Arab state and presumably expelled. There is consequently an air of magnanimity in the admission that the Jewish people, as well as the Arabs in Palestine, might be entitled to self-determination. Yet as these authors expatiate on this apparent concession it becomes clear that there is little substance to it.

88. Proceeding throughout as if any resolution of the General Assembly is law (despite their failure, as noted, to provide any foundation for this), the authors review the assertions of Palestinian national identity in General Assembly resolutions since 1970. They then attempt (pp. 46, ff.) to delineate the precise geographical area, presumably within Palestine, "to which Palestinian self-determination applies". Next they struggle to show how two States in Palestine may be warranted by the self-determination principle, despite the fact that the self-determination these authors are vindicating is only that of "the people of Palestine".

89. Their solution is regrettably of little comfort either to international law as hitherto understood, or to the State of Israel. What they seriously assert is that the General Assembly now has a new power deriving its legal authority from resolution 2625 (XXV), commonly known as the "Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations" (herein "Declaration on Principles"). Whenever any group hitherto connected with a State asserts a right to self-determination against it, the General Assembly is now purportedly empowered to redraw the frontiers of that State in accordance with that same body's view of the extent to which the Government of the target State "represents" the whole of the people in its territory.

90. In a remarkable tour de force, the authors infer this extraordinary power of the General Assembly from the following proviso in the Declaration on Principles:

> Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour.
>
> Every State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State or country (emphasis supplied).

I do not propose to canvass the question of whether that passage supports any proposition that the General Assembly can by resolution usurp the drastic power of cutting up and even dismantling Member States of the United Nations. Any such assumption transcends the bounds of credulity of both international lawyers and national political leaders.

91. The threat posed to the territorial integrity and political unity and independence of all States by a General Assembly with such omnipotence scarcely needs elaboration. The self-determination principle is now increasingly invoked not merely against Western ex-colonial Powers, but also within and between the populations of new States which have attained independence since the Second World War. Consequently, those States too would become subject to these asserted powers of the General Assembly to make and unmake States by redefining their boundaries.

92. The authors do display some awareness of the dangers to which all States would be exposed by their extraordinary proposal. They try to minimize these dangers by arguing that the case of Israel is sui generis. The boundaries of Israel, they contend (p. 47), are merely de facto because they exist "at a particular time as a result of military conquest and of illegal annexation". But this egregiously false assertion of both fact and law, lifted almost literally from the first report of the "Committee on the Exercise of the Inalienable Rights of the Palestinian People", 33/ ignores the considered opinions to the contrary of many reputable international lawyers, as well as the necessary contrary implications of repeated actions by the General Assembly and the Security Council.

93. If the case of Israel cannot be so cavalierly singled out, then no less a threat is posed to all other States in the international community. Any State with neighbours entertaining predatory designs against it, which are able to find, promote or manipulate any specious "self-determination" claims, will be vulnerable to similar machinations. The sinister game in which the Committee sponsoring these pseudo-scientific "researches" into international law is engaged, is a deep and wide-ranging threat to the whole international legal order and to the United Nations itself.

94. In a pamphlet issued late in 1979, following the Resolutions study, the "Committee on the Exercise of the Inalienable Rights of the Palestinian People" made this threat even more explicit. It asks, somewhat disingenuously: "If a series of General Assembly resolutions on the right of self-determination in general has the effect of creating a principle of international law, then do not a series of resolutions on the specific right of self-determination of a particular people create obligations on the part of the international community?" 34/ The Committee here frankly reveals its intent to invest General Assembly majorities with binding power to disrupt, dismember, and even destroy the life of sovereign independent States, Members of the United Nations, under the pretext of satisfying self-determination claims of one dissident group or another.

95. The fact that the States which are the intended victims of this draconian power would be picked off one by one in no way alleviates the threat to them all.

96. The Resolutions "study" finally and grudgingly admits (p. 47) that Israel's pre-1967 boundaries "may have received some international assent". This is the undeniable implication of Security Council resolution 242 (1967) which clearly contemplates withdrawal of Israel's armed forces only from "territories occupied in the recent conflict", and also affirms the principle of "the sovereignty, territorial integrity and political independence of every State in the area". These provisions of resolution 242 (1967) are set out as bases for the negotiations to be promoted between the States concerned, and they are in full accord with principles of international law. Any other approach, especially one suggesting that the General Assembly has any power under international law to determine the boundaries of Israel, is not merely naive, but is demonstrably unfounded and dangerous.

VI. THE USE OF FORCE AND ALLEGED LIBERATION STRUGGLES

97. Among the more outrageous assertions in these "studies" is the proposal that any asserted legal right of self-determination gives rise under international law to the legal licence for any people claiming self-determination, and for third States supporting it, to use armed force against a sovereign State in its vindication.

98. At the same time when this supposed legal liberty to use force in liberation struggles was being asserted in the General Assembly against the State of Israel in 1974, the Special Committee on the Question of Defining Aggression was concluding its seven years of labour. No question was more hotly debated than the question whether the use of force in liberation struggles was lawful, notwithstanding the prohibitions of the Charter. That Special Committee was composed of 35 Member States, and it was never suggested that they were not a fair representation of the entire membership of the United Nations. For scholars genuinely concerned about the extent to which the voting behaviour of States in the General Assembly manifests either the opinio juris sive necessitatis necessary for the formation of a rule of customary law, or the kind of assent which can be treated as equivalent to consent to be bound by a treaty, these debates are an indispensable and decisive body of research material. The significance of these materials is enhanced by the fact that the General Assembly accepted and endorsed the outcome of the Committee's work.

99. Yet among the material which they invoke against Israel, there is no sign that the authors of the "studies" have evinced the slightest interest in these proceedings which touch so closely their ostensible intellectual concerns. Had they studied the records of the Special Committee and those of the Sixth Committee, or even only resolution 3314 (XXIX), they would certainly have been more guarded before leaping to their simplistic conclusions. They would have found that the practice of States is in stark contrast to the thesis pressed by these researchers, namely, that the "consensus" of States as manifested in repeated General Assembly resolutions makes the contents of those resolutions binding international law. State practice demolishes a point crucial to these "studies", which is that international law today permits the use of armed force in liberation struggles and by third States supporting them.

100. In the seven years during which the General Assembly and the Special Committee debated the question of the use of armed force by peoples struggling for independence and by third States supporting them, various arguments advanced to legitimize the use of force in liberation struggles were considered and rejected. Those arguments asserted, inter alia, that Article 51 of the Charter accords "a right of self-defence of peoples and nations against colonial domination", and that the use of force is authorized by an accumulation of recent General Assembly pronouncements, including resolution 1514 (XV) on the Granting of Independence to Colonial Countries, resolution 2131 (XX) on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their

Independence, resolution 2625 (XXV) (the "Declaration on Principles" already mentioned), resolution 2734 (XXV) on the Strengthening of International Security and, finally, resolution 3314 (XXIX) itself on the Definition of Aggression.

101. The crucial provisions of the Definition of Aggression for our purposes are article 3 (g) and article 7. Article 3 (g) of the Definition stigmatizes as an act of aggression:

> The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above /i.e. acts constituting "aggression"/, or its substantial involvement therein.

In apparent contradiction is article 7:

> Nothing in this Definition, and in particular article 3, could in any way prejudice the right to self-determination, freedom and independence, as derived from the Charter, of peoples forcibly deprived of that right and referred to in the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in accordance with the Charter of the United Nations, particularly peoples under colonial and racist régimes or other forms of alien domination; nor the right of these peoples to struggle to that end and to seek and receive support, in accordance with the principles of the Charter and in conformity with the above-mentioned Declaration.

102. The full antithesis between the drafts of the self-determination saving clause finally embodied in article 7 and the indirect aggression armed bands provision (art. 3 (g)) emerged late in the course of the deliberations. There were three main earlier drafts of that saving clause. The Soviet draft did not only propose to save the "struggle" for self-determination; it unambiguously went on to make licit "the use of armed force in accordance with the Charter", including its use in order to exercise the inherent right of self-determination. 35/ The 13-Power (non-aligned) draft, on the other hand, protected the provisions of the Charter as to "the right of peoples to self-determination, sovereignty and territorial integrity", but was not express in stating whether armed force could be used in seeking this right. 36/ The six-Power (Western) draft, on the other hand, carefully provided that a non-recognized "political entity" could be considered a victim of aggression only if (a) it was delimited by international boundaries or internationally agreed lines of demarcation, and (b) the "political entity" concerned is not "subject to the authority" of the State alleged to be committing aggression against it. 37/ This, of course, includes the most characteristic class of self-determination struggles. Some Members resisted even that limited concession towards non-State political entities, and thought that victims of aggression should be limited by definition to States.

103. It was in the context of the failure of the 13-Power draft to free the use of armed bands and other modes of indirect aggression from the stigma of aggression that the provision which ultimately became article 7 of the Definition first appeared. In its original form (as art. 5) the bid to legitimize the use of force by non-State groups and by States assisting them was (as in the above Soviet draft) quite explicit. There was nothing in the proposed definition to prevent peoples "from using force and seeking or receiving support and assistance" in exercise of "their inherent right to self-determination in accordance with the principles of the Charter". 38/ If those words had survived to the final text of article 7, they would have compensated the proponents of "wars of liberation" for the failure of their bid to free the sending, etc. of armed bands from the stigma of aggression. But the quoted words did not survive.

104. In the version of article 7 ultimately adopted, the range of conduct saved from inculpation was narrowed in several significant respects. The reference to "peoples under military occupation" disappeared (a matter especially relevant to the problem of the Middle East). Not "foreign domination" as such, but only "forcible deprivation" of the Charter right of self-determination could justify the right to "struggle". Above all, article 7 was stripped of any express reference to a right to use force in the "struggle", and of any right of third States to use force to assist. What remains is the radically reduced formula of "the right of these peoples to struggle to that end". 39/ In other words, the States which rejected the view that international law permitted the use of armed bands by non-State political entities, or of force by States assisting them under the banner of "self-determination" or "liberation", won the day, while those States which tried to claim that international law had legalized such uses of force were simply outnumbered and failed.

105. The Definition of Aggression, therefore, was established against the background of those very General Assembly resolutions which the researchers of the "Committee on the Exercise of the Inalienable Rights of the Palestinian People" assert have established rules of international law legalizing the use of force in self-determination struggles. The attitudes of the States participating in the Special Committee, whose work was subsequently endorsed by the General Assembly, clearly show that this claim is wrong. In three critical respects, the text finally adopted absolutely denies any such claim. First, the Definition deliberately omits mention of any right to use force in self-determination struggles. Second, no right to receive assistance by way of force from third States is expressed or implied. Third, all reference to "peoples under military occupation" was removed. On all these counts spurious claims such as those asserted in the "studies" were decisively rejected by a preponderance of States clearly not limited to Western States.

VII. ISRAEL'S RIGHTS UNDER INTERNATIONAL LAW ARISING FROM LAWFUL SELF-DEFENCE AGAINST ARAB AGGRESSION

106. Any legal import of any of the United Nations resolutions discussed so far cannot operate in a vacuum. Its effects must be determined by reference to the context of the rights and duties of the States concerned under general international law, including the provisions of the Charter and any pertinent binding determinations of the Security Council.

107. Although some may wish it otherwise, it is an axiom of international law, even under the Charter, that States live within an international legal order in which force is not the monopoly of the organized community, but rather is under the control of individual nations. In the absence of predominant community force there has been a constant accumulation of force (notably military potential) in the control of individual States. The most that can be done in support of legal order and community is to marshal, on occasion, some private forces against others for public ends. Unfortunately, the fact is that such forces are from time to time marshalled against the international legal order. It is for these reasons that international law has always given legal effect ex post facto to the outcomes of its collision with the overwhelming power of individual States. By allowing the military victor through an imposed treaty of peace to incorporate his terms into the body of international law, international law at least preserved the rest of its rules and ensured its own continued existence.

108. In international law until recently, these legal positions held for the relations between States, whether the victor was himself an aggressor or whether the victor was an innocent victim of aggression, responding by way of legitimate self-defence. The recent modification of this position, especially under the Covenant of the League of Nations and Charter of the United Nations, arises from the application of the principle ex injuria non oritur jus. Whether applied to treaties procured through duress, or the acquisition of territory, this modification seeks to strip of legal effect, not the use of force as such, but the unlawful use of force.

109. From its inception, Israel has maintained an unusually strong record of compliance with international law despite ceaseless provocations by its neighbours. It was armed aggression by Arab States (denounced as such in the Security Council) which aborted the Partition Plan accepted by the Jewish people in 1947. From that point onward, to President Sadat's journey to Jerusalem in 1977 in response to Prime Minister Begin's invitation, Egypt as well as other Arab States persisted in maintaining a state of belligerency against Israel. For three decades they flouted their basic obligations as Members of the United Nations to refrain from the threat or use of force and armed attack against Israel's independence and territorial integrity. They did so not merely by wars and threats of wars; they also gave shelter to and promoted attacks by armed bands against Israel from Syria, Egyptian-controlled Gaza, Jordan and Lebanon. Those terrorist attacks massacred and maimed hundreds of innocent men, women and

children. From Jordan first and subsequently from Lebanon, the PLO and its associated terror organizations have operated for years since 1967 aided and abetted by their Arab hosts and other Arab States. This situation was re-endorsed by the Members of the Arab League at their Tunis Conference as recently as 22 November 1979.

110. Israel's repeated requests, directly or to the United Nations, that these unlawful attacks be stopped have been left unanswered. Its own military actions in southern Lebanon were accordingly designed to abate them. Its actions conform to international law, as set out, for example, in such an authoritative work as Oppenheim's International Law edited by Sir Hersch Lauterpacht. That work states that on failure of the host State to prevent or, on notice, to abate these attacks, "a case of necessity arises and the threatened State is justified in invading the neighbouring country and disarming the intending raiders". 40/ This rule of international law makes clear that this is a case of necessity, of self-defence, authorizing a State to enter another and destroy or remove the weaponry and bases being used against it. Majorities in the United Nations organs which, from time to time, have purported to condemn such responses by Israel, have no competence to alter such fundamental precepts of international law. This is especially so when the actual conduct of States observed in the international community bears no relation to the norms of conduct proscribed in those resolutions. No State has yet abandoned its inherent right of self-defence, preserved in Article 51 of the Charter.

111. After cease-fires were accepted by the Arab States concerned in the 1967 and 1973 wars, the illegality of continued hostilities by them became (if possible) even more heinous. Their continued hostilities flouted not only the Charter, but the very cease-fire agreements for which they had supplicated and which they had solemnly accepted. Here again, the fact that Soviet and other pro-Arab interests in the United Nations were able to marshal majorities to shield those illegalities from censure in no way sanctioned them or impugned the legality of Israel's responses.

112. All the States concerned (including Israel) are Members of the United Nations, bound by the Charter. Refusal by a Member to acknowledge the statehood and Membership of a State duly admitted is incompatible with the Charter, and in particular with Article 2, paragraph 1, enshrining the principle of the sovereign equality of all Members. This is surely a fortiori so when the refusal, as in the case of several Arab States denying Israel's right to exist, carries with it the claim to be at liberty to destroy that State by force, despite Article 2, paragraph 4, of the Charter. However one interprets that difficult text, the openly articulated claims of Arab States since 1948 to destroy Israel or, as their jargon has it today, "to liquidate the Zionist entity", violate Charter prohibitions against the threat or use of force, and the positive duties implied in Article 2, paragraph 1, and elsewhere concerning the assurance to Israel of the benefits of membership, and the peaceful settlement of disputes. 41/

* * *

113. The basic precept of international law concerning the rights of a State which has been the victim of aggression, and which is lawfully administering territory of the attacking State, is also clear. The precept ex injuria non oritur jus holds that a lawful occupant such as Israel is entitled to remain in control of the territory involved pending conclusion of a treaty of peace. Security Council resolutions 242 (1967) and 338 (1973), adopted after the respective wars of those years, expressed this requirement for settlement by negotiations between the parties, the latter resolution using those very words. Through the decade 1967-1977, the Arab States and the Arab League compounded the illegality of their continued hostilities by proclaiming at their Khartoum Summit in September 1967, the notorious three "No's": no recognition of, no peace and no negotiation with Israel. 42/ This effectively blocked the regular processes for post-war pacification and settlement.

114. In the meanwhile, oil pressure upon countries throughout the globe, and the propaganda machines of the Arab-Soviet blocs, set out to blur and if possible expunge all record of these gross illegalities. Though the general law (as well as resolutions 242 and 338) required the Arab States to negotiate with Israel among other things the extent of Israel's withdrawal from territories, those States demanded withdrawal from all the territories before negotiation. There is no historical instance in which aggressor States have been granted that kind of prerogative after the defeat of their aggression.

115. Israel's territorial rights after 1967 are best seen by contrasting them with Jordan's lack of rights in Jerusalem and Judea and Samaria (the West Bank) after the Arab invasion of Palestine in 1948. The presence of Jordan in Jerusalem and elsewhere in Cisjordan from 1948 to 1967 was only by virtue of its illegal entry and occupation in 1948. Under the international law principle ex injuria non oritur jus Jordan acquired no legal title. Egypt itself denied Jordanian sovereignty and never tried to claim Gaza as Egyptian territory.

116. By contrast, Israel's presence in all those areas pending the conclusion of negotiations for the establishment of secure and recognized boundaries is entirely lawful, since Israel entered those areas legally in exercise of its inherent right of self-defence. International law forbids acquisition of territory by unlawful force, but not where, as in this case, the entry into the territory was lawful. In particular, it does not forbid it when force is used to stop an aggressor, for the effect of such prohibition would be to guarantee to all potential aggressors that, even if their aggression failed, all territory lost in the attempt would be automatically returned to them. Such a rule would, of course, be utterly absurd.

117. International law, therefore, supports on three counts Israel's claim that it is under no obligation to hand the territories back automatically to Jordan or any other State. First, those lands never legally belonged to Jordan. Second, even if they had, Israel's present control is lawful, and it is entitled to negotiate the extent and the terms of its withdrawal. Third, international law would not in such circumstances require the automatic handing back of territory

even to an aggressor who was the former lawful sovereign, which Jordan certainly was not. It requires the extent and conditions of the handing back to be negotiated between the parties.

* * *

118. As many have shown, all attempts to amend the draft of Security Council resolution 242 of 1967 so as explicitly to call for Israel to withdraw to the 1967 frontiers, failed. 43/ That resolution did not call for withdrawal from all territories occupied in the 1967 War, but only withdrawal to lines to be negotiated, which were then to become "secure and recognised boundaries". Indeed, any other provision would have been at odds with the plain fact that, immediately after the War, at the 1,360th meeting of the Security Council on 14 June 1967, the Soviet resolution seeking to brand Israel as the aggressor was rejected by 11 votes to four. Also, the General Assembly at its 1,548th meeting of 4 July 1967, long before the entry of the oil weapon into that voting arena, also repeatedly refused to endorse such a proposition. 44/

119. Because the operative parts of resolution 242 are so explicit, Arab arguments began to focus on the preamble which refers to "the inadmissibility of the acquisition of territory by war", in the hope of weakening through that delphic phrase the clear international legal basis of Israel's territorial standing in the territories. They have had to argue that this phrase must be taken literally in its widest sense. Having stretched it in this way, they extract from it a meaning which other States have not been willing to accept. That meaning indeed yields such absurd results that while they press it against Israel, they implicitly deny its application to themselves.

120. The international lawyer, faced with this recital in the preamble to resolution 242 juxtaposed with its operative provisions, will recognize no less than three logically possible interpretations. He must ask which of them makes sense in its immediate context, bearing in mind the existing principles of international law, and what many call the "world order" policies underlying those principles.

121. The Arab States' interpretation is one logical possibility, and it does yield their desired result, that Israel must automatically and fully withdraw from all the territories, however perfectly lawful its presence there. A second interpretation is that the recital merely recalls, with the eloquent flourish common in preambles, the established ex injuria principle of international law as this applies to unlawful war. In this reading, "acquisition ... by war" would refer to the initiation of war for the purpose of acquiring territory; such initiation, being unlawful, would bring the ex injuria principle into play. Israel's action being in self-defence, this principle would in no way affect its rights under international law as set out above. Third, no less plausibly, the recital could be a restatement of the rather commonplace technical principle of international law that mere occupation of territory does not itself vest in the occupant sovereign title over it. Transfer of title requires some further act,

such as formal annexation or cession by a treaty of peace or other accepted instrument. That third meaning would fit particularly well the operative provisions calling for negotiations on such matters as "secure and recognised boundaries", the fixing of "demilitarised zones", and the like, and again would not affect Israel's rights as set out herein.

122. As indicated, the first interpretation, favoured by the Arab States, would be at odds with the operative provisions of resolution 242. Moreover, it would conflict with existing international law. It could scarcely be regarded as an amendment of the law, offered by the Security Council de lege ferenda for the future. For, in that eventuality, the recital would mean that an occupant must withdraw even before peace terms are agreed, even if he entered lawfully in self-defence against an aggressor. A rule presented de lege ferenda must by definition be a rule the consequences of which would be regarded as desirable for all members of the community generally. But it is apparent that this proposed rule would be disastrous and undesirable. It would assure every prospective aggressor that, if he fails, he will be entitled to the restoration of every inch of any territory he may have lost. This proposed rule would yield this result even if the defeated aggressor still openly reserves the liberty to renew his aggressive design, and even if the territories concerned had been seized unlawfully by the claimants, who have consistently used them since as a base for aggressive activity against the present occupant. In short, that interpretation would unconditionally underwrite the risks of loss from any contemplated aggression. Such a rule would turn ex injuria principle on its head: rather than discourage aggressors, it would positively encourage them. To put forward such a rule de lege ferenda is to sanction a new and cynical legal maxim which might run: "If you cannot stop the aggressor, help him!" The interpretation yielding such a result cannot, therefore, be accepted when two others, each more consonant with both international law and common sense are, as shown above, readily available.

123. In this connexion, it must be added regarding both Egypt in Gaza and Jordan in Judea and Samaria, that even if their entry had not been unlawful or in defiance of the Security Council's cease-fire and truce resolutions of April and May 1948, the proposed rule would bar any right of theirs to remain in those territories. For in those circumstances their continued presence would fall within the meaning they seek to give to "the inadmissibility of the acquistion of territory by war". The consequence is that even were the rule now newly adopted with retrospective effect, it could not improve their present legal position vis-à-vis Israel except by an entirely unprincipled discriminatory application of the new rule in favour of - or rather against - one side only. 45/

124. Finally, it should be noted that this kind of Arab activity, designed to "amend" international law for ad hoc use against Israel, has become persistent since 1967 in all organs and contexts of international activity. The work of the 1967 Special Committee on the Question of Defining Aggression has already been discussed at length in another context (paras. 97-105). But of relevance here is the fact that its work was also characterized by efforts on the part of

the Arab States to include a provision that territorial acquisition even by lawful force would be invalid. Those efforts failed abjectly. 46/

125. The only operative provision concerning acquisition of territory by force (art. 5, para. 3) strictly limits any invalidity by imposing no less than three requirements: (1) It is not acquisition by mere threat or use of force, but only acquisition by "aggression", which is invalid, so entry in the course of self-defence as in the case of Israel in 1967 would not be proscribed. (2) The acts of force there enumerated (in arts. 2 and 3) are stated to be aggression only if first committed by the occupant, thus doubly excluding acts in self-defence from the taint. (3) Even such acts, to be tainted, must be "in contravention of the Charter", thus triply excluding acts of self-defence.

126. Through all the meetings of the Special Committee and of the Sixth Committee of the General Assembly between 1967 and 1974, a version of the rule concerning acquisition of territory by force based on the principle ex injuria non oritur jus maintained itself against all Arab efforts to mutate it into a tool for condemning Israel. The attempt to twist this principle of international law for ad hoc use against one particular State thus wholly failed. This must be attributed not simply to the legal skills and learning of most State representatives but also to a keen awareness by many of them of the dangers to their own security likely to ensue from a change in international law of which the operative implications are, as shown, quite absurd. 47/

Julius Stone
Sydney, New South Wales

10 June 1980

Notes

1. I. C. J. Reports, 1955, 155 ff. His further explanation that repeated flouting of such recommendations may overstep the "line between impropriety and illegality" (p. 120), has reference to the special case of exercise of supervisory competence over the trusteeship system under the Charter. It is not of general application.

2. Institute of International Law, Livre du Centenaire (1973) 268 ff. For the discussion of the San Francisco Conference, see 9 UNCIO Documents 70.

3. Official Records of the General Assembly, Twenty-ninth Session, Sixth Committee, at 166 ff.

4. The Development of International Law Through the Political Organs of the United Nations (1963) 2.

5. Second Phase, I. C. J. Reports, 1966, 6 at 248.

6. See generally for a recent and most valuable survey of the literature manifesting these doubts and disputes, Christoph Schreuer, "Recommendations and the Traditional Sources of International Law" (1977) 20 German Yearbook of International Law 103-118.

7. Ibid., at 117.

8. See on the history and scope of article 52, Stone, Of Law and Nations (1974), 231-251.

9. 137 Académie de Droit International, Recueil des Cours (1972), 419.

10. Resolution 3236 (XXIX), para. 6. The succeeding words - "in accordance with the Purposes and Principles of the Charter" - are ambivalent as to whether any limits are to be read into that extraordinary appeal.

11. Press Release US-UN 191 (74), 6 December 1974.

12. See, e.g. H. Cattan, Palestine and International Law (London, 2nd ed., 1964), on which the authors rely heavily.

13. See Official Records of the General Assembly, First Special Session, Plenary Meeting (A/286), 183.

14. E. Lauterpacht, Jerusalem and the Holy Places (London, 1968), 39.

15. Certainly, in so far as all the parties concerned allowed it to become operative, it would become binding on them and on all concerned. It was on that assumption that Moshe Shertok, speaking for the Jewish Agency, distinguished at the time between the Partition resolution and other resolutions of the General

/...

Assembly, and stated on 27 April 1948 that the Partition resolution would (that is, if it became operative) have a (emphasis supplied) binding force. Official Records of the General Assembly, Second Special Session, vol. II, at 108. Mr. Shertok was dealing with the particular problem which arose in 1948, namely, whether the General Assembly could revoke the 1947 resolution and impose a United Nations trusteeship on Palestine. The Mallisons quote a part of that section of his statement (Resolutions, pp. 25-26), without due reference to the context in which it was made, and to the assumption underlying it, namely that the 1947 resolution was to become operative.

16. Official translation in 1 Laws of the State of Israel (5708-1948) 4. Reproduced in J. N. Moore (editor), The Arab-Israel Conflict, III, Documents, (Princeton, 1974) 349.

17. In fact, the Arab States were on this account subject, under the resolution, to Security Council action against them as aggressors. The Mallisons, as already observed, blow hot and cold as to whether, at its moment of proposed implementation, the resolution was or was not "valid", let alone binding on the States concerned (Resolutions, pp. 23-25).

18. Cf. Israel and the United Nations in the Carnegie Endowment Series of National Studies on International Organization (New York, 1956), 67.

19. As early as 20 February 1948, the Security Council received a report from the Palestine Commission that "powerful Arab interests, both inside and outside Palestine, are defying the resolution of the General Assembly /181 (II) of 29 November 1947/ and are engaged in a deliberate effort to alter by force the settlement envisaged therein" (S/676, 16 February 1948). Official Records of the Security Council, Third Year, Special Supplement No. 2 at 11.

20. For the quite explicit objectives of the attack see the official statements of Arab Governments and their representatives, assembled in the letter dated 12 December 1978 of the Permanent Representative of Israel to the United Nations (A/33/488-S/12966).

21. E. Lauterpacht, supra, note 14, at 27 ff.

22. For instance, here and elsewhere the references in the "studies" to W. E. Hocking, The Spirit of World Politics (1932), 354, 372-74.

23. At 12-13. Their main authority on jus cogens is a somewhat complicated ipse dixit of M. Gros Espiel in his study prepared for the Subcommittee on the Prevention of Discrimination and the Protection of Minorities, entitled Implementation of United Nations Resolutions Relating to the Right of Peoples under Colonial and Alien Domination to Self-Determination (E/CN.4/Sub.2/405), especially at 33-35. Contra, see study for the same Subcommittee by A. Critescu entitled The Historical and Current Development of the Right to Self-Determination on the Basis of the Charter of the United Nations and Other Instruments Adopted

by United Nations Organs, with Particular Reference to the Promotion and Protection of Human Rights and Fundamental Freedoms (E/CN.4/Sub.2/404), para. 154, who squarely states: "No United Nations instrument confers such a peremptory character on the right of peoples to self-determination." The anonymous authors also cite a dictum of Professor Georg Schwarzenberger to the effect that since international law has always been a system of nation-States, it has always in that sense been based on the self-determination of these nations. See G. Schwarzenberger, International Law and Order (1971), 27-28. How much Professor Schwarzenberger's position is here misunderstood is indicated by the fact that in his important Frontiers of International Law (London, 1962) neither the notion of jus cogens nor the self-determination principle receive any discussion even under the head of "fundamental rights and freedoms". Loc. cit., 308 ff. And see his essay "International Jus Cogens", 43 Texas Law Review 455 (1965). It is to be recalled that no treaty and no serious scholar has yet given jus cogens any function other than the negative one of making void an inconsistent treaty.

24. Count Folke Bernadotte, Progress Report of 16 September 1948, 3 UN Official Records of the General Assembly, Supplement No. 11, 1-19, at 18, United Nations Document A/648.

25. See the voting figures in Resolutions, pp. 57 ff. In this connexion, it is recalled that the United Nations Conference on the Law of Treaties adopted its well-known Declaration on the Prohibition of Military, Political or Economic Coercion in the Conclusion of Treaties, solemnly condemning the threat or use of pressure "in any form", by any State in order to coerce another State "to perform any act", in violation of the "principles of the sovereign equality of States and freedom of consent" (emphasis supplied). United Nations Conference on the Law of Treaties, Official Records, Documents of the Conference, at 285 (A/CONF.39/26).

26. Cf. Foreign Relations of the United States, Paris Peace Conference, 1919, vol. 12, 781 (Report of the King-Crane Commission). This historical fact continues to reverberate today in Arab circles. President Assad of Syria in 1974 stated that "Palestine is a basic part of Southern Syria" (New York Times, 9 March 1974). On 17 November 1978, Yasser Arafat commented that Palestine is southern Syria and Syria is northern Palestine (Voice of Palestine, 18 November 1978).

27. For English translation, see Moore, op. cit. note 16, at 698, 705.

28. Ib., 43.

29. Ib., 40. The significance of this document receives little attention in the "studies". Cf. Origins, Part I, p. 82, n. 7.

30. Report of the Palestine Royal Commission, Great Britain, Parliamentary Papers, Cmd. 5479 (1937), 8-9. Contrast Origins, Part I, pp. 55-57.

31. It is to be noted that Origins, although containing several maps, significantly omits one crucial map, namely the map of Palestine to which the Mandate for Palestine applied; and this, until 1946, included the area now called Jordan, covering almost four fifths of the territory of Mandated Palestine.

32. Thus it was stated in the political programme approved by the Fourth Congress of Al-Fatah (the largest single component within the PLO, headed by Yasser Arafat) held in Damascus at the end of May 1980, that its purpose is "to liberate Palestine completely and to liquidate the Zionist entity politically, economically, militarily, culturally and ideologically" (published by "al-Liwa" of Beirut on 2 June 1980).

33. A/31/35, para. 33.

34. The International Status of the Palestinian People (1979) 27.

35. A/AC.134/L.12, reproduced in the 1971 Report of the Special Committee on the Question of Defining Aggression, Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 19 (A/8419), 23.

36. A/AC.134/L.16, ib., 24.

37. A/AC.134/L.17, ib., 26. The texts of this and the other earlier drafts are reprinted in Official Records of the General Assembly, Twenty-eighth Session, Supplement No. 19 (A/9019), 7-12, from Annex 1 to the 1967 Committee's 1970 Report, Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 19 (A/5019), 55-60.

38. See the Committee's 1973 Report, Official Records of the General Assembly, Twenty-eighth Session, Supplement No. 19 (A/9019), 16, 17.

39. Grammatically, it is not clear what "to that end" refers to - presumably "the right of self-determination, etc."

40. Oppenheim-Lauterpacht, International Law, vol. 1, para. 130.

41. Cf. Q. Wright, "Legal Impacts of the Middle East Situation" (1968) 33 Law and Contemporary Problems 5, 17.

42. Moore, op. cit. in note 16, at 788.

43. Stone, No Peace-No War in the Middle East (1969), 34-35. Also A. Lall, The United Nations and the Middle East Crisis (1967), passim.

44. See Official Records of the Security Council, Twenty-second Year, 1360th meeting at 18. In the General Assembly the majorities rejecting (including abstentions in each case) were of the order of 88 against 32, 98 against 22, 81 against 36, and 80 against 36. Official Records of the General Assembly,

/...

Fifth Emergency Special Session, 1548th plenary meeting, 14-16. And see Stone, The Middle East under Cease-Fire (1967), Sections II-IX, at 2-40.

45. Cf. A. Lall, op. cit., in note 43, citing Abba Eban in the Security Council, Official Records of the Security Council, Twenty-second Year, 1375th meeting (13 November 1967), para. 49.

46. See the analysis of the drafting in Stone, Conflict Through Consensus (1977) 55-56. The Thirteen-Power draft ("Third World" draft) (A/AC.134/L.16 and Add.1 and 2), para. 8, had proposed a text harmonious with the Arab position. It was not followed.

47. After the above failure of their main efforts, the Arab States then sought the inclusion in paragraph 20 of the Special Committee's Report of an enigmatic Note 4: "With reference to the third paragraph of article 5 ... this paragraph should not be construed so as to prejudice the established principle of international law relating to the inadmissibility of territorial acquisition resulting from the threat or use of force." Official Records of the General Assembly, Twenty-Ninth Session, Supplement No. 19 (A/9619 and Corr.1). Since, as indicated, international law is precisely what article 5 affirmed, the purport of the note seems to be to keep alive the precise words of the relevant recital of resolution 242, in the hope presumably that its superficial ambiguity could continue to be exploited by the Arab side in the Middle East conflict. See Stone, op. cit., note 46, at 63-64.

APPENDIX

Political bias in legal argument: the Mallison study

1. The foregoing memorandum establishes the international law context, including the prevailing rules as to the territorial entitlements of States, in situations emerging from the lawful and unlawful use of force. In the same context it examines the assumptions of the Mallisons in their Resolutions "study" concerning the legal effects of General Assembly resolutions. A conscientious inquiry in the context of international law is also what those authors claim to pursue in their "study". It is thus dismaying to find that major questions and principles which have been shown to be part of the essential international legal context of the matters they discuss receive virtually no consideration or even mention from these authors. Moreover, where, as with the question of the legal value to be attributed to General Assembly resolutions, they do consider this context, their consideration is slim, if not perfunctory, and ignores most of the authorities. In the end they patently beg the question. In this, the Mallison "study" is no different than the three anonymous "studies" which preceded it. The following exposition highlights some of their more egregious errors in fact and law. It is meant to be illustrative, and is by no means exhaustive.

2. The authors presumably are not aware of some of their inadequacies. But other inadequacies are highlighted by them in their introduction. One of these is their declaration (p. v) that "consistent with the consulting arrangements with the United Nations, no direct use has been made of the formal negotiation history of the resolutions or of the informal unrecorded consultation which led to the adoption of particular wording". 1/ Consultation of the travaux préparatoires is an essential part of international techniques of interpretation. The reader is entitled to wonder why either any United Nations officials of the "Committee on the Exercise of the Inalienable Rights of the Palestinian People", or these authors, should wish to renounce it. This is especially so since such preparatory materials are sometimes critical to the issues on which the authors engage. As Lord Caradon himself testified, for example, the legislative history is essential background for understanding the effect of the references to withdrawal of Israel's armed forces in Security Council resolution 242. 2/ They are equally essential to ascertaining the meaning of references to acquisition of territory by force in contravention of the Charter in the General Assembly's Definition of Aggression.

3. The Mallisons' renunciation of the travaux was not necessarily inspired by a sense that foreshortened inquiries would yield better results for their particular theses. However, no such neutral explanation is plausible for another statement in their introduction, namely:

> The terms "Jew" and "Jewish" are used to refer to adherents of a particular monotheistic religion of universal moral values. The terms "Zionism" and "Zionist" refer to a particular national movement, with its political programme of first "a national home" and then a national state located in Palestine.

/...

The authors innocently declare that this is a "basic distinction" which it is necessary to make "because this is a juridical study" (p. v). But it is no more "basic" from a juridical point of view than an analagous distinction between "Irishmen as adherents to a particular form of Christian Catholicism", and some other term for those "who are adherents to a political programme of securing (formerly) the independence of Ireland, or now of Northern Ireland". The authors are certainly aware that the designations "Zionism" and "Zionist" have been falsely and arbitrarily translated into "racist" by one of the most lamentable resolutions of the General Assembly (3379 (XXX)). It is just such resolutions which they are attempting to extricate from the morass of international politics to the more sheltered level of international law. No reputable international lawyer has accepted that meretricious pronouncement as other than an adventure in expedient pejoration. The authors should, as international lawyers, have avoided demeaning their brief in this way, especially since it is difficult to find any important legal argument of theirs which would not be equally strong (or equally weak) without this so-called "basic distinction". 3/

4. On the other hand, there is another distinction which would indeed have been "basic", not only for the Mallisons' juridical "study" but also for their exposition of what they claim (pp. 9-17) to be "the background of the Partition Resolution". That is the distinction in time, demonstrated earlier, between what they in 1979 identify as "the Palestinian Nation", on the one hand, and the "Arab Nation" of 1917, on the other. That distinction is no invention of the present writer, for as seen the "Palestinian National Covenant" insists precisely on it. The Mallisons may or may not agree with my conclusion that the burden of redress due to the Palestinian Arabs, like the redress due to Jews displaced by this distribution, should be shared equitably between the Arab States of the Middle East and Israel. But it is difficult to see how they could fail to address themselves at all to a distinction so relevant and central, and at the same time so damaging by its omission to both the structure of their argument and its main conclusions.

5. A further observation is called for particularly in the light of the Mallisons' dogged efforts (sometimes even to the point of misquoting important documents) to show that the General Assembly's Partition Resolution is "the pre-eminent juridical basis for the State of Israel", and that Israel is bound by that resolution even though the Arab States rejected it and, by blatant acts of armed aggression, wholly aborted its operation. The Mallisons have, as shown, an exalted if somewhat undiscriminating view of the legal effects of General Assembly resolutions. They are particularly enthusiastic about the Partition Resolution. But there is one central provision of that resolution, reference to which they asiduously avoid. That is the General Assembly's request that: "The Security Council determine as a threat to the peace, breach of the peace or act of aggression, in accordance with Article 39 of the Charter, any attempt to alter by force the settlement envisaged by this resolution." By this omission, they are able to ignore the consequences of the Arab side's rejection of the resolution, and their armed aggression against it and against Israel, which prevented it ever coming into legal operation. Such consideration, had it been given, would, as demonstrated in the memorandum have proved fatal for the main legal conclusions to which the Mallisons seek to lead their readers.

/...

6. Perhaps these unfortunate lapses in purportedly objective "studies" are explained in part by the need of the "Committee on the Exercise of the Inalienable Rights of the Palestinian People" to find lawyers whose known opinions on the issues would produce the conclusions desired by the Committee. One dramatic instance of reliance on very questionable sources appears in Origins, Part I, pp. 35 ff., in relation to the "validity" of the Palestine Mandate. The Committee there can apparently only marshall two writers to support the desired conclusion. One is Mr. Henry Cattan, a former member of the Arab Higher Committee in Palestine. The other is our familiar Professor W. T. Mallison, who has written introductions to works by H. Cattan. The reader can assess for himself the scholarly and dispassionate objectivity of such manoeuvring.

Appendix notes

1. A curiosity within a curiosity. That remark presumably refers to travaux préparatoires available other than in official United Nations records. Sed quaere? It is positively startling later to find the authors deliberately invoking the negotiating history of the Palestine Mandate to make a point which they believe favourable to Arab claims (p. 26).

2. See Stone, No Peace-No War in the Middle East (1969), pp. 33-35.

3. The only real use the authors seek to make of this supposedly "basic juridical distinction" is for ventilating some criticisms of the early Jewish liberation movement, or of Israel by isolated Jewish individuals and a few extreme Jewish religious sects. See Resolutions, pp. 9-14, passim. Whatever else is to be said about this, it is in no sense "juridically basic" to the Mallisons' terms of reference.

STRANGE RESOLUTIONS OF THE UN

Translated from

La Prensa, Buenos Aires, 5 December 1979

At the end of November, the General Assembly of the United Nations passed three resolutions on the Middle East: One demanding that the Palestine Liberation Organization (PLO) be included in the peace negotiations; another favouring the creation of a Palestinian state; and the third condemning the Egyptian-Israeli agreements of Camp David, which resulted in peace between the two countries after thirty years of war. Of course Israel rejected the UN condemnation, and its Minister of Interior, Yosef Burg, stated that: *"The fact that the UN condemns a peace treaty between Egypt and our country is a macabre joke."*

The attitude of the UN is hard to understand. An organization created to preserve world peace now rejects the agreements which are putting an end to thirty years of bloodshed in the Middle East. For a long time the UN participated in the peace negotiations, encouraged a spirit of agreement and contributed formulae to bridge the differences - even though these were always disregarded. Moreover, the Camp David agreements were signed on the basis of Security Council Resolutions 242 (of November 1967) and 338, which determines that peace negotiations in the Middle East must take into account the terms of 242.

Resolution 242 was endorsed by the Soviet Union, by the countries involved in the conflict and by the majority of countries in the Arab bloc of the Organization. Thus the recent UN resolutions are an astonishing retraction, perhaps intended to support recent attempts in the Security Council to change Resolution 242, although the US - which has the right of veto - indicated, from the beginning, that it would oppose such an initiative.

The inconsistency of the UN's behaviour in these matters is evident By demanding that the PLO be included in the peace negotiations, it grants recognition to an organization

which not only fails to recognize the State of Israel, but has openly declared its determination to destroy it. *"Armed struggle,"* states the 9th Article of the Palestinian National Covenant, *"is the only way to liberate Palestine." "We will continue to fight,"* said Yasser Arafat on a "Voice of Palestine" broadcast on 21 August 1979. *"The revolution shall prevail through torrents of blood. It will be a long and cruel way."*

The recent General Assembly resolutions are all the more serious in that the member states are not unaware of the terrorist activities of the PLO, especially the assaults on embassies and the abduction of diplomatic staff of the countries which belong to the Organization. The demand that the PLO be included in the peace negotiations comes at the same time that the Security Council has condemned Iran for the occupation of the American Embassy and the holding of fifty staff members as hostages - an act which was carried out with the full support and shared responsibility of the PLO.

The Algerian newspaper *Al Shaab*, in its issue of 19 November, published an interview with Yasser Arafat in which he stated: *"We have not and will not make any effort to mediate in the Iranian revolution. We and the Iranian revolution are in the same boat."*

[start]

Original documents faded and/or illegible

A NEW UNITED STATES POLICY TOWARD THE UNITED NATIONS

The policy of the United States in the United Nations is in a state of disarray. Spurred by policy reverses at the last General Assembly session, Congressional hearings were initiated to re-evaluate U.S. participation in the UN. The appointment of a new U.S. Ambassador to the UN -- our eighth in eight years -- provides an opportunity to redefine the U.S. relationship to the world organization.

The members of the Ad Hoc Group who cooperated in preparing this report are united by a conviction that we wish to record at the outset: that a central task of U.S. foreign policy in the crucial last quarter of the twentieth century is the building of effective world institutions to help solve critical world problems of vital importance to the American people and to all peoples and nations. These problems include the danger of the spread of local conflicts, the proliferation of nuclear and conventional weapons, the increasing financial burden of the arms race, the population explosion, the deterioration of the environment, food and energy shortages, underdevelopment, unemployment and mass poverty.

Despite our country's differences with the developing nations, we believe that if the U.S. seeks sincerely to accommodate their genuine concerns, many will find it in their interest to cooperate with us in dealing constructively with these world problems through the UN system.

We are deeply concerned that international performance in these areas is inadequate when measured against need. This is not the fault primarily of the U.S. In the main, our country has played a role of constructive leadership in the history of the UN and its overall record compares favorably to that of most other countries, many of which have used the UN for political warfare while demonstrating little concern for pressing global problems. Nevertheless, we find inescapable the conclusion that U.S. participation in the UN system has followed a declining path of effectiveness under both Republican and Democratic administrations during the last decade.

This trend can and must be reversed. American prestige can be restored because our power and influence remains real. If we regain our sense of purpose and direction, we will again be in a position to use both in international affairs in a constructive manner. The survival of the U.S. as a free, secure and prosperous country demands that the vital business of managing international interdependence be somehow performed. There is no more important challenge to U.S. foreign policy than to determine which items of interdependence business can still be effectively performed by the UN and which cannot. Where the UN can be effective, the U.S. must energetically work to reform and streng-

then the UN system; where the prospects for constructive work are poor, we will have to set about building alternative structures in cooperation with like-minded nations.

This report is not intended to provide detailed answers to all the specific questions that must be addressed as part of a thoroughgoing review of U.S. participation in the UN system. However, we trust that it may offer a useful conceptual framework as well as a stimulus for the re-examination of policy which now must be undertaken by the Executive Branch, the Congress and the American people.

Rethinking the Problem

Recent disquieting events at the UN -- the extremist rhetoric about economic issues, the campaign to delegitimize Israel by branding Zionism as racism and by calling on states to desist from economic aid to Israel, the failure to deal with international terrorism, the votes against Guam bases and for Puerto Rican independence, the use of the General Assembly as a forum for villifying certain countries, including the U.S. (e.g., General Amin's speech), the tolerance by the membership of such practices, the failure to act on Lebanon and Angola -- have intensified American disenchantment with the UN and its agencies. They have produced widespread doubts about its value and have led to a Congressional call for a reassessment of our multilateral diplomacy.

Partly the problem is immediate and tactical -- how to stem the tide of accelerating political abuse and misuse of the UN's deliberative bodies. This is not solely a task of ensuring due process and procedural fairness. To be sure, it remains necessary to protest against such acts as the twisting of the rules by the Security Council to seat the PLO with all the privileges of a member state. But procedural abuse is not the crux of the problem. Rather the problems in the Assembly, and indeed throughout the UN system, have been caused by politicized behavior which has undermined the institutional capacity of the system to deal in an impartial and effective manner with questions of world concern. The question we face is whether it is possible to turn around political behavior so that the institution will become again an environment for useful dialogue and constructive action?

Beyond this, events have illuminated a basic and chronic impairment in the UN system: during the past decade, while the involvement of the UN in pressing global problems has increased, in many important respects it has become less responsive to the objective requirements of international cooperation. It has become less efficient in coping with world order problems such as: peacekeeping, economic development, promotion of human rights, protecting the environment, eradicating epidemic diseases, regulating the airways, and managing ocean resources -- problems which are too global and too complex to be solved by one nation or even by all the Western nations together.

It has become increasingly difficult for the U.S. and other nations to conduct constructive multilateral diplomacy in the UN. Accelerated political abuse of UN bodies, the assertiveness of majorities that dictate not only the agenda but one-sided solutions, and their insensitivity to legitimate national interests, including those of the U.S., have put strains on the effectiveness and credibility of multilateral institutions. Many Americans are so outraged by these developments that they have lost sight of the functional value to be found in UN agencies and UN activities. Congressional and popular support has been eroded to the point where any program that bears the UN label is suspect.

Inconsistencies in American multilateral diplomacy have complicated the problems. Sometimes the U.S. has spoken with several voices (e.g., on economic and African issues) and has been insufficiently vigilant. For example, it failed to communicate at a high level in the capitals of UN members the reason for American concern about the Zionism resolution and the damage it might do to the prospects for Middle East peace, the authentic fight against racism and American support for multilateral cooperation.

A Possible Approach

Whatever weight one attributes to the various causes of our predicament, clearly a corrective strategy is imperative. Its aim should be not punitive but remedial. The U.S. must act and be perceived as acting out of a genuine concern for the restoration of the UN as an effective institution for dealing with the world's vital interests. This means synchronizing tough diplomacy -- speaking forthrightly to set the record straight, defending our interests vigorously and delineating the limits beyond which the U.S. will not be pushed -- with a readiness to accommodate honest grievances and to bargain about the real economic and other interests of the developing world.

Some have criticized the policy of standing up to the majority as incompatible with "accommodation," but this sets up false alternatives. A viable strategy recognizes that these are two sides of the same coin. Philosophically and in terms of practical politics, Congress and the American people will not make sacrifices or agree to favorable economic arrangements in an institutional context where America's legitimate concerns are ignored or brushed aside and the negotiating atmosphere is poisoned by venomous political debates. There can be no fundamental improvement in the UN or room for accommodation save by dealing with the Third World -- and the Communists for that matter -- in a spirit of realism and candor. The developing nations must know that the U.S. cannot respond to their economic concerns if they are insensitive to vital political and economic interests about which the U.S. feels strongly.

This understood, our strategy should be to appeal to those elements in the developing world that are more interested in solving economic and political problems than in scoring ideological points. Accommodating such elements

proved successful at the Seventh Special Session on economic issues in September 1975. Our purpose should be to identify and pursue interests we share with the moderates and pragmatists, to explore opportunities for working with leaders of developing nations who are ready to engage in collective bargaining. We must take into account the possibility of bargains in which we try to satisfy the priority concerns of the less developed countries (LDCs) in their economic development and in eliminating the remnants of colonialism in exchange for their cooperation in peace-keeping, enlarging respect for the entire range of human rights and cooperating in solving world order problems. This strategy is credible only if the developing world is seen not as an ideological monolith but as an aggregation of nations with varying interests, many of which are in harmony with ours. Our approach should be positive, not only because there are limits to the power of negative thinking, but also because we can succeed in the long run only by enlisting allies and mobilizing the non-doctrinaire pro-UN constituency, including those in the Third World.

Next Steps for U.S. Policy

Given this conception of the problem, what steps can be taken to fashion a constructive diplomacy for both the short term and the long haul -- to stem the erosion of American influence and to serve long-term U.S. interests in effective international institutions?

Total withdrawal from the UN or total non-participation are not really sensible options, though it may be necessary to consider selective participation. The purpose is not to weaken the UN but to improve it. Nor is there profit in absenting ourselves totally from the Assembly, which can often serve as a useful platform and negotiating forum. Even the most skeptical see value in UN peacekeeping operations and in the UN's public service activities. (Even Israel, despite understandable frustrations, has chosen to stay in the UN which provides a certificate of legitimacy and an arena of communication in a cold diplomatic world.)

We believe that the national interest in a stronger and more responsible UN would be best served by new U.S. policies in the following areas:

1. Making Multilateral Affairs Part of Overall Diplomacy

The key to successful action in the UN is to perceive and conduct multilateral diplomacy as an organic part of total diplomacy. Issues and interests do not divide neatly into bilateral and UN boxes. In recent years, the U.S. has come to perceive that a weak position in the UN can have a negative influence on its bilateral diplomacy. Just as poorly conceived bilateral diplomacy, particularly in the Third World, undermines U.S. influence in the UN, so do setbacks to the U.S. in the UN complicate U.S. bilateral objectives. We need to pay more attention to what goes on in UN and other multi-

lateral forums, using American diplomatic leverage as needed to accomplish our purposes. Our concern about events at the 1975 General Assembly was twofold: that it impeded our foreign policy objectives, notably by making a Middle East settlement more difficult and that it impaired the integrity of the UN. Unless the threat to the integrity of the institutions of the UN is overcome or contained we may be compelled to fashion new international arrangements to cope with world order tasks.

We must, then convey the message that we take very seriously policies and votes in the UN. A clear-cut measurement of "responsible" UN behavior is hard to define; but it is possible to discern consistent patterns of constructive as against destructive conduct in utterances and votes. The overall pattern of a country's UN behavior, and whether such behavior supports or undercuts our major foreign policy aims, should be taken into account in our overall relationship with them. Its UN behavior is an aspect of the national politics and diplomacy of each country and necessarily affects the bilateral relationship. The Department of State has recently recognized this fact by appointing an official in the Bureau of International Organization Affairs to monitor patterns of multilateral behavior, discern where vital American interests are at stake and draw policy implications. The Department is expected to alert foreign nations in advance about issues and votes the U.S. considers of major importance. This can be a constructive development provided that countries are not penalized for defending legitimate national interests (e.g., supporting a resolution on commodity agreements opposed by the U.S.), but rather for pursuing a consistent course of negative behavior that serves no genuine national interest and weakens international institutional structures.

In implementing this diplomacy certain steps are indicated:

Diplomatic representations. Diplomatic approaches should be initiated with key nations (including missions by the regional Assistant Secretary of State) for a candid review of UN events and their implications. The purpose should be to define and register the American interest, and these nations should be informed that American cooperation on matters of interest to them cannot be unrelated to their behavior in UN forums and agencies on matters of interest to us. The U.S. must be concerned when countries with no active interest in such issues as the Middle East, Korea, Guam, Puerto Rico, the Panama Canal, etc. pursue certain policies and cast their votes for reasons of propaganda, bloc solidarity or log-rolling.

Such diplomatic approaches are especially imperative where nations have played an egregiously damaging role. On the diplomatic front, also, the U.S. should not leave the USSR in doubt about its displeasure over the major role played by Soviet representatives behind the scenes in launching the anti-Zionism offensive. This is a grave compromise of detente rules of the game and calls into question Soviet cooperation in fostering a peaceful settlement of the Middle East dispute.

In general, the most effective way to influence policies is for our Ambassadors and their staffs to communicate more frequently and at a higher level with host governments on U.S. policies in multilateral institutions. This is particularly important since many of the 144 UN delegates act without instructions on the vast majority of UN agenda items. To be effective, our diplomacy must be consistent. Thus, courting a country whose behavior in international matters -- e.g., early recognition of the MPLA in Angola, voting for the anti-Zionism resolution, unhelpful statements by the foreign minister -- has been damaging, is hardly effective diplomacy.

Diplomacy toward the Third World. The success of such a diplomatic approach toward the Third World hinges on a specially-designed effort to persuade moderate leaders that their true interests lie not in confrontationist demands of "have-nots" on the "haves," but in cooperating in seeking solutions to common world problems. On many real issues, such as providing help in capital formation and technology, aiding agricultural development and stabilizing export earnings, responsible leadership can be induced to seek negotiated solutions rather than confrontation. Moreover, we share with them real interests in promoting peaceful settlement of conflict, combatting terrorism, enlarging the area of respect for human rights. (Specific proposals for pursuing such shared interests are explored later). Approaches to the moderates need to be undertaken on a selective basis by analyzing the record. Many Third World countries are likely to be receptive to such an approach and would join in cooperative and constructive efforts at the UN.

Aid and Trade. As a guideline in aid-trade policy a rule should be adopted that a consistent pattern of responsible or irresponsible behavior on important multilateral issues will be taken into account in bilateral aid and trade relationships. For example, granting access to Eximbank credits and pricing arrangements on commodities involves hard choices in allocating limited resources which should take into consideration the entire spectrum of relationships, including the multilateral record. We believe Congress will properly want to consider the multilateral dimension of other nations' policies, even where the Administration does not.

In aid-giving the principle needs to be established that responsible UN behavior is an important consideration in allocating development assistance. Under a new provision in the International Development and Food Assistance Act of 1975, assistance may be withheld from any country with a "consistent pattern of gross violations of internationally recognized human rights." A comparable approach should be taken by the U.S. where there is a consistent pattern of irresponsible behavior in multilateral bodies. This would not be an absolute criterion but a factor to be given due weight and balanced against other national interest considerations. (Humanitarian considerations should continue to be overriding, so that emergency relief in famine and other types of disaster would be dispensed on humanitarian grounds irrespective of the balance sheet of "responsible" behavior in UN forums.) To be effective, such a policy

requires rebuilding our foreign aid program as a major tool of U.S. foreign policy, including a commitment to an increase in official development assistance and appropriation in full of our authorized contribution to the International Development Association (IDA). Otherwise our leverage is weak and it is unrealistic to speak of orchestrating aid policy according to a pattern of behavior in multilateral bodies.

UN context. It is more complicated to apply this approach to U.S. contributions to UN budgets without hurting institutions and programs we favor. (Chart A) Withholding money from assessed UN budgets as a sign of displeasure with certain programs presents difficulties. The financial management rules of the UN prevent the earmarking of contributions. Moreover, not paying dues to which we are committed by treaty (though the Soviets and others have occasionally followed this course), raises serious legal questions. If we delay payment it should be made clear that this is not a vindictive act but a principled move in line with the "Goldberg reservation" of 1965, which declared that we reserved the right to withhold funds from "certain" activities for "strong and compelling" reasons. Cutting off or reducing donations to voluntary programs presents no legal problems, but such programs generally support humanitarian and public service activities we favor, as the appended table makes clear. (Chart B) Besides, such broadside cuts could hurt responsible and friendly UN members as well as others.

We believe the following specific actions deserve consideration:

While continuing vigilant participation, the U.S. should continue its policy of delaying payment of dues to UNESCO and other agencies that persist in discriminatory or other improper actions.

The U.S. should disengage selectively from "tainted" programs, such as the action program in support of the decade to eliminate racism, which was re-defined last November to include Zionism. This would implement the policy declared by the U.S. representative in the Fifth (Administrative and Financial) Committee, December 1975, that the U.S. could "no longer support this program."

The principle here is that any human rights or other meritorious program that is politically distorted ceases to be desirable. Credibility and principle now demand that we deduct from the U.S. contribution our share (25%) of the cost for any such program. Though the gesture would be mainly symbolic, it would help establish the principle. To drive home the point that we oppose not the commendable purposes of the program for the decade but its perversion, we should add an equivalent amount to voluntary UN programs we favor.

2. Selective Participation in UN Agencies and Programs

The U.S. should concentrate its energies on those agencies and programs where possibilities for constructive diplomacy are most promising. For political and security issues this means the Security Council, for despite the capacity of Third World coalitions to exercise a passive veto, U.S. and allied interests can still be protected there and constructive peace-keeping action undertaken. On economic matters, action responsibility should be vested, to the largest extent possible, in the World Bank, the International Monetary Fund (IMF) and a reformed and strengthened General Agreement on Tariffs and Trade (GATT) and other agencies where American interests can be adequately safe-guarded.

The U.S. should continue to participate actively, and indeed continue to assert leadership, in such endeavors as the negotiations on the Law of the Sea, designed to produce agreement for the orderly use and management of the oceans and their resources -- a major objective of U.S. foreign policy. Contrariwise, the U.S. should disengage from conferences and activities which reflect a perversion of technical agendas by "politicization" or discriminatory practices. Walk-outs of U.S. and like-minded delegations -- as occurred at the UNESCO world-media conference over its incorporation of the Zionism-equals-racism resolution in the official declaration -- should be encouraged. Moreover, the U.S should refuse to pay its share of the costs of such conferences and programs and, where it has reason to expect moves to politicize, announce this intention to advance.

Within the Assembly the U.S. should focus efforts where consensus is possible and practical matters, such as food, law of the sea, drug abuse control and protection of the environment, are being advanced. Though the Assembly clearly has a useful role in launching such programs, every effort should be made to ensure that it does not interfere in operational functions.

Selective involvement in Assembly proceedings means participating where constructive discussion is possible: articulating a strongly held minority view where necessary on matters such as disarmament, satellite broadcasting and rules governing expropriation of foreign property; supporting worthwhile programs such as peacekeeping, drug abuse control and law of the sea; and explaining and protecting our policies and negotiating positions. We should, of course, retain a watching brief over all Assembly-related activities, but on marginal issues or those designed strictly for propaganda, we should downgrade our participation. (France and China have often followed a policy of the empty seat and the U.S. left the anti-colonialism committee when it became a forum for vilifying America and one-sided espousal of "national liberation" movements. Our departure did not end the abuse but the committee lost its audience.) We should make it clear that our absence is not simply a symbolic "protest," but a judgment of where serious business is being conducted and

where it is not.

The U.S. should vote less to affect the outcome than to make a point: to affirm convictions and underline the diplomatic as against the "legislative" uses of the Assembly. There is nothing wrong with splendid isolation on a vote: it helps make the point. In general, the voting process as a way of making decisions should be devalued and we should work for increased use of consensus procedure in the Assembly's decision-making process, especially on economic issues.

3. Coalition of the Like-Minded

To improve its parliamentary position and enhance opportunities for positive action in UN bodies, the U.S. should concert with like-minded states. Consultation should be conducted in advance on all key issues, as well as through normal diplomatic exchanges during sessions. We should take the lead in forming an informal "world order coalition" -- maintaining rapid communication among foreign ministries on crucial multilateral issues and engaging in advance planning. The core of the coalition would be our European allies, Japan and like-minded developing nations. Diplomatic action of this nature should of course be complemented by maintaining diplomatic liaison with other sympathetic countries. We should make clear that such a coalition is not intended to split the Third World.

In addition, opinion leaders and non-governmental organizations could be mobilized to help stimulate constructive policies in UN agencies.

4. Structural Reforms

We should work much harder at reforming and strengthening the work of UN agencies, even while recognizing that the prospects may not be too promising in the short run because of the overheated atmosphere at the UN and because only limited benefits can be expected from improved mechanisms unless they are accompanied by political will. Most promising is the approach of the Group of Experts on the Structure of the UN System, which designed a new structure for economic cooperation. The Group has proposed that contentious items before the General Assembly and ECOSOC be referred to negotiating groups for consultation and conciliation. These groups would include countries "principally interested in the subject matter," who would function in private under a full-time chairman (who may travel to capitals to attempt to conciliate positions), and may take a year or two to reach agreement. Pending agreement the plenary body would normally refrain from pressing issues to a vote and give conciliation a chance to succeed.

5. Reassessing the Utility of UN Agencies

The U.S. should take a hard look at international institutions to which it belongs to determine whether they are still workable and still promote major American and world order interests. Where the machinery is no longer serving the purpose for which it was established, or is working inefficiently

because of political taint or bureaucratic petrifaction, the U.S. should take the lead in organizing new and more manageable groupings which reflect our interests and are better able to deal with emerging world problems. An example of such a new mechanism is the Conference on International Economic Cooperation which brings together 27 industrialized, OPEC and non-oil producing developing nations. The eventual linking of such agencies to the UN would be desirable, if and when the General Assembly and other UN bodies reform themselves and evolve into more responsible institutions.

More controversial but inescapable if the reassessment of U.S. policy toward the UN is to be comprehensive, is to take another look at our membership and extent of participation in UN specialized agencies. Some have become politicized and debased; some may no longer serve the national interest of the U.S. or even the broader world objectives of standard-setting, delivery of technical aid and transnational communication for which they were created. The purpose of such an appraisal is not to kill the agency -- others may find value in them -- but to calculate whether we still have a net interest in belonging ourselves. The presumption should be for staying in, but U.S. policy should not exclude the option of renouncing membership in certain agencies when a careful appraisal indicates that our interest in a cooperative world order would be better served by getting out.

6. Pursuing Shared Interests with the Third World

Ultimately, effective multilateral diplomacy rests on the assumption that the West shares a common interest with much of the developing world in negotiated solutions to common economic and political problems. It is tied to a shared perception about the need to cooperate through international institutions and to fashion improved international arrangements to cope with world order problems. While the attitudes of the developing nations may differ from those of the West on many of these world order issues, we believe accommodations in the mutual interest are still possible.

Colonialism. A more positive American stance on southern African and human rights problems could help defuse the colonialist issue. In the UN, particularly because of the Byrd Amendment, we are seen as lacking concern about colonialism and racism. Secretary of State Kissinger's recent African policy speech in Lusaka was a major step forward. The Administration must urgently follow through. Repeal of the Byrd Amendment (which puts us in default of Security Council sanctions), joining the Council on Namibia, a more accommodating stance on commissions of inquiry for southern Africa, paying more attention to Africa in our diplomacy - are other measures that will give the U.S. moral leverage.

Human Rights. Accommodation on colonialism should be linked to a more active posture on humanitarian and human rights considerations in foreign policy. A fitting bicentennial action would be U.S. adherence to the Conventions on Genocide, Racial Discrimination, Forced Labor and the two Covenants on Human

Rights. Of 22 treaties drafted by UN bodies the U.S. is a party to only three : the Supplementary Convention on Slavery, the Protocol Relating to the Status of Refugees and the Convention on the Political Rights of Women.)

Even more important, we should call attention to human rights violations anywhere in the world on an objective basis and underscore our concern over the disturbing trend in the Human Rights Commission and other forums of deviation from their proper role as expert bodies examining issues on their merits. We should stress that we cannot accept the lack of balance in the human rights activities of these bodies -- the disproportionate concentration on unsustained and exaggerated charges against one country as against the lack of interest in more serious violations elsewhere, the singling out of oppression in one country while turning a blind eye to political repression, torture and mass murder in many other countries. And we should call attention to inhumane practices wherever they occur. We should intensify efforts to persuade Africans and Asians that our concern and theirs ought to extend not only to institutionalized racial/ethnic discrimination (Article 7 of the Universal Declaration to Human Rights) but also to mass murder (Article 3), torture (Article 5), arbitrary and unfair detention and trial (Articles 9,10,11) and denial of the right to emigration (Article 13).

We should seek common ground with countries which are beginning to share our perception about the importance of upgrading civil and political rights and combatting the grosser forms of oppression. Specifically, an effort should be made to get their support for unblocking the implementation procedure under ECOSOC resolution 1503 and ending the selective morality applied in the operation of this and other implementation efforts of the Human Rights Commission and Sub-Commission on Prevention of Discrimination and Protection of Minorities.

A Juster Economic Deal.

The paramount issue for the developing countries is the economic relationship. The U.S. should regain the momentum of the initiative at the special session in September 1975 convened to foster a constructive dialogue on development and economic cooperation. The final document (Resolution 3363) incorporated much of the American plan, notably these recommendations : a facility to stabilize export earnings through the International Monetary Fund, replenishment of the International Development Association, increased capitalization of the International Finance Corporation, an international energy institute, a center for the exchange of technological information, a world grain reserve and an International Fund for Agricultural Development. While the U.S. had reservations about some aspects of the final document, a satisfactory accord was achieved on specific provisions and larger objectives. Now we should move in concert with Western allies and cooperative Third World nations to implement the promises and build the institutions.

The special session showed that with good will in negotiation a very substantial measure of agreement on real concerns can be reached. The main message to the developing world is that more is to be gained from working with us than against us. A related message: since much of the program depends on Congressional action or concurrence (e.g. participation in the tin, coffee and other commodity agreements, increased capitalization of the IFC, replenishment of the International Development Association, enlargement of quotas in the International Monetary Fund), responsible behavior in the UN may become a practical prerequisite to success. America, in turn, must commit itself to the goals of the Second Development Decade, including the aid target, and pursue vigorous efforts to provide the developing world with access to our markets under conditions which protect American workers either through generous adjustment assistance or scheduled import entry. We must give clear and convincing evidence that we care about the issue of world poverty. Only then is there hope of success for the strategy of tough diplomacy and accommodation of the real concerns of the Third World.

Conclusion

The cardinal feature of American strategy, then, should not be a test of strength with the Third World but a test of whether pragmatic interests will override ideological fixations. We should make a sustained effort to reestablish American influence through the "synchronized diplomacy" described above. This will enable us to determine whether present trends can be overcome by American leadership and honest bargaining or whether the trends are irreversible. If grievances are real and aspirations concrete, there is room for collective bargaining, provided political leaders on all sides substitute statesmanship for showmanship, focusing on practical programs rather than abstract doctrines and showing a decent respect for one another's political and economic concerns. In such bargaining we can be sympathetic and friendly. If the response is nonetheless to debase the institutions, to rely on steamroller majorities, to avoid consensus, and to try to "legislate" rather than negotiate farreaching changes in the world order, our recourse is clear -- to downgrade politicized UN institutions, to participate selectively and to fashion new institutions and new groupings around real interests.

AD HOC GROUP ON UNITED STATES POLICY
TOWARD THE UNITED NATIONS

April 1976

[end]

Original documents
faded and/or illegible

CHART A

Assessed CONTRIBUTIONS TO INTERNATIONAL ORGANIZATIONS

[In thousands of dollars; fiscal years]

	1976	1977 request
A. United Nations and specialized agencies:		
1. United Nations	$77,335	$87,185
2. United Nations Educational, Scientific and Cultural Organization	6,292	5,790
3. International Civil Aviation Organization	29,319	32,155
4. World Health Organization	13,570	20,798
5. Food and Agriculture Organization	6,729	20,260
6. International Labor Organization	3,308	1,470
7. International Telecommunication Union	1,683	2,295
8. World Meteorological Organization	143	259
9. Intergovernmental Maritime Consultative Organization	188	316
10. Universal Postal Union	105	136
11. World Intellectual Property Organization		113
12. World Tourism Organization	7,629	11,343
13. International Atomic Energy Agency		
B. Inter-American organizations:		
1. Inter-American Indian Institute	82	88
2. Inter-American Institute of Agricultural Sciences	4,406	4,758
3. Pan American Institute of Geography and History	195	195
4. Pan American Railway Congress Association	15	15
5. Pan American Health Organization	15,862	19,029
6. Organization of American States	25,601	27,005
C. Regional organizations:		
1. South Pacific Commission	457	713
2. North Atlantic Treaty Organization	11,523	13,175
3. North Atlantic Assembly	171	215
4. Southeast Asia Treaty Organization	587	467
5. Colombo Plan Council for Technical Cooperation	12	13
6. Organization for Economic Cooperation and Development	11,237	15,850
D. Other international organizations:		
1. Interparliamentary Union	105	128
2. International Bureau of the Permanent Court of Arbitration	2	3
3. International Bureau for the Publication of Customs Tariffs	28	28
4. International Bureau of Weights and Measures	165	209
5. International Hydrographic Organization	25	25
6. International Wheat Council	91	
7. International Coffee Organization	400	
8. International Institute for the Unification of Private Law	22	24
9. Hague Conference on Private International Law	23	27
10. Maintenance of Certain Lights in the Red Sea	6	6
11. International Bureau of Exhibitions	11	17
12. Customs Cooperation Council	796	896
13. International Center for the Study of the Preservation and Restoration of Cultural Property	115	156
14. International Organization for Legal Metrology	18	19
15. International Agency for Research on Cancer	430	626
16. General Agreement on Tariffs and Trade	1,969	2,186
17. International Office of Epizootics	19	27
Total	217,853	274,000

CHART B

VOLUNTARY CONTRIBUTIONS TO INTERNATIONAL ORGANIZATIONS AND PROGRAMS UNDER THE FOREIGN ASSISTANCE ACT

[In thousands of dollars]

	Fiscal year—			
	1975 actual	1976 proposed	Transition quarter proposed	1976 estimate (percent)
United Nations programs:				
U.N. Development Program	$77,897	$120,000	.....	25.9
U.N. Children's Fund	17,000	15,000	.....	19.4
International Atomic Energy Agency Operational Fund	2,500	3,500	.....	27.6
World Meteorological Organization, Voluntary Assistance Program	1,500	1,500	.....	24.0
U.N. Food and Agriculture Organization, World Food Program	1,500	1,500	.....	29.7
U.N. Institute for Training and Research	400	400	.....	26.7
International Secretarist for Voluntary Service	60	.....	.....	.....
U.N. Relief and Works Agency	23,200	26,700	13,400	21.0
U.N. Funds for Southern Africans	50	50	.....	.04
World Heritage Fund	143	50	.....	87.0
U.N. Disaster Relief Organization	[2] 750	.....	.....	.....
Organization of American States [3]	.....	20,800	5,800	66.0
Special multilateral fund for education, science and culture	.....	7,590	2,080	66.0
Special multilateral fund, special projects	.....	6,000	1,740	66.0
Special development assistance fund	.....	6,410	1,760	66.0
Inter-American Export Promotion Center	.....	800	220	66.0
Total, United Nations and OAS programs	125,000	189,500	19,200	.....
U.N. Environment Program Fund [4]	5,000	7,500	.....	31.0
Indus Basin: [5]				
Loans	200	10,000	.....	28.0
Grants	9,000	22,500	4,500	78.0
Total, international organizations and programs	139,200	229,500	23,700	.....
Other appropriations:				
Population planning and health: [6] U.N. Fund for Population Activities	20,000	21,000	4,600	28.0
Public Law 93-570 (UNRWA)	10,000	.....	.....	.....
Middle East Special Requirements Fund (UNRWA)	6,000	.....	.....	.....
International Narcotics Control [7]	4,000	4,000	.....	80.0
International Disaster Assistance	(?)	[2] 200	.....	[8] 18.0
Security Supporting Assistance; U.N. Force in Cyprus	9,600	9,600	4,800	45.0
Grand total	184,000	264,300	33,100	.....

[1] Funds will not be used due to prohibitory language of Section 9 of Public Law 93-559.
[2] U.S. contribution of $750,000 to the U.N. Disaster Relief Office for fiscal year 1975 from international organizations account. For fiscal year 1976 $200,000 is proposed as a grant from the International Disaster Assistance Fund.
[3] Fiscal year 1974 and fiscal year 1975 funding from "Selected Countries and Organizations."
[4] Authorized by the U.N. Environment Program Participation Act of 1973.
[5] Program discussed in Near East South Asia volume.
[6] Program discussed in Interregional volume.
[7] Funds requested and programs discussed in the Department of State presentation.
[8] Represents average pledges from all donors for calendar years 1975-77, excludes donations from other donors to UNDRO for specific disasters.

COMMITTEE FOR U.N. INTEGRITY

9 East 40th Street
New York, N.Y. 10016
(212) 532-5009

INTERNATIONAL CONVOCATION

Sunday, December 7, 1980
at the
Graduate Center of the
City University of New York
33 West 42 Street
New York City

11:00 A.M. - Morning Session

Chairman:	Seymour Martin Lipset Hoover Institution
Greetings	Harold M. Proshansky, President The Graduate School and University Center, CUNY
Remarks	Arno A. Penzias, Bell Laboratories Susan A. Gitelson, International Consultants, Inc.
Keynote Address	Raymond Tanter University of Michigan

12:15 P.M. Luncheon - Speaker: Senator Daniel Patrick Moynihan

1:00 P.M. Afternoon Session

Chairman:	Alan M. Dershowitz Harvard University School of Law
Statement	Eugene Ionesco
Call to Conscience	Elie Wiesel
Roll of Honor	
Keynote Address	Morris Abram Former U.S. Representative, U.N. Commission on Human Rights

2:30 P.M. Convocation Closes

Wash Express
BBC - European Parliament

CALL TO CONSCIENCE

We are representatives of the international academic, arts and science communities who have assembled in New York City on this seventh day of December, 1980 to voice our alarm at the growing danger to world peace resulting from the erosion of the United Nations.

The United Nations was established 35 years ago in the wake of the devastation of World War II to promote peace among the nations and the well-being of all their peoples. It came into being with a mandate to oppose violence and to prevent war, to fight hunger and disease, to explore and advance the human condition.

But the United Nations is no longer the guardian of social justice, human rights and equality among nations. Indeed, perverted by irrelevant political machinations, it is in danger of becoming a force against peace itself.

Nowhere is the failure of the United Nations more tragic than in the Middle East. The Soviet invasion of Afghanistan, the war between Iran and Iraq, the prolonged incarceration of American hostages in Teheran, grave crises in Indochina and elsewhere go virtually unchallenged while the United Nations pursues a course of action destined to undermine the principles on which the organization was founded.

This convocation must bear witness to the assaults orchestrated by the Soviet and Arab blocs in their campaign to isolate and discredit Israel. The United Nations condemns the historic Egyptian-Israeli peace treaty and exalts PLO terrorists. Those who vow to eliminate the State of Israel and refuse to make peace are permitted to sit in the councils of the peacemakers, while Israel, a member state created in fidelity to

the principles of the United Nations, is slandered and faced with the threat of delegitimization.

The United Nations resolution which branded Zionism - the national liberation movement of the Jewish people - with the false label of racism must bear some responsibility for the scourge of anti-Semitism now reappearing in many parts of the world.

In its preoccupation with Palestinian rights, the United Nations neglects the plight of millions of men, women and children in other parts of the world who are in immediate danger of death from famine, disease and war.

The manipulation of the world forum has reached beyond the halls of the General Assembly and has politicized, and thereby crippled many of the United Nations specialized agencies. The campaign to ostracize Israel has obstructed the efforts of the International Labor Organization, the World Health Organization, the United Nations Educational, Scientific and Cultural Organization, among others, all dedicated to promoting higher standards of living, social and economic progress, international cultural and educational cooperation. It has made an international charade of their labors to extend freedom of speech and press, to help the working man and woman, to meet the needs of children, to achieve equality for women.

In devotion to the fulfillment of the United Nations' humanitarian and peaceful goals, we cannot remain silent while forces which incite hatred and foment war betray our hopes for world peace and progress. We call upon the United Nations - and each member nation - to embrace once again the ideals of the United Nations Charter and to restore the promise that the United Nations can achieve a better world for all humanity.

COMMITTEE FOR U.N. INTEGRITY

Contact: Richard Cohen
(212) 988-8042

9 East 40th Street
New York, N.Y. 10016
(212) 532-5009

FOR IMMEDIATE RELEASE
At 1:00 PM Sunday, 12/7

100 LEADING SCIENTISTS AND SCHOLARS VOICE ALARM AT 'EROSION' OF THE UN; 'GROWING DANGER TO WORLD PEACE' SEEN

NEW YORK, Dec. 7 -- More than 100 scholars, scientists and artists in the United States and abroad -- including 30 Nobel laureates -- joined today in a "statement of conscience" voicing "alarm at the growing danger to world peace resulting from the erosion of the United Nations."

The statement -- signed by Simone de Beauvoir, French author; Sir Isaiah Berlin of Oxford University; Nobel Prize physicist Hans Bethe and historian Barbara Tuchman, among others -- said that the world body was being "perverted by irrelevant political machinations" that have "crippled" UN specialized agencies such as the International Labor Organization, World Health Organization and UNESCO.

Citing the "assaults orchestrated by the Soviet and Arab blocs in their campaign to isolate and discredit Israel," the signers said:

"The United Nations condemns the historic Egyptian-Israeli peace treaty and exalts PLO terrorists. Those who vow to eliminate the State of Israel and refuse to make peace are permitted to sit in the councils of the peacemakers, while Israel, a member state created in fidelity to the principles of the U.N., is slandered and faced with the threat of deligitimization."

(more)

The convocation was issued at a day-long conference sponsored by the ~~Committee~~ on U. N. Integrity at the ~~City University~~ Graduate Center, 33 West 42nd St. The Committee is composed of Nobel laureates Kenneth Arrow (economics), Hans A. Bethe (physics) Felix Bloch (physics) and Andre Lwoff (medicine); Sir Isaiah Berlin of Oxford University; Robert J. Kibbee, chancellor of the City University of New York; and Elie Wiesel, chairman of the U.S. Holocaust Council.

Mr. Wiesel read the declaration following a luncheon session at which Senator Daniel Patrick Moynihan (Dem., N. Y.) assailed the 1975 General Assembly resolution, passed while he was serving as the United States Permanent Representative to the United Nations, calling Zionism a form of racism. He noted that the "statement of conscience" read by Mr. Wiesel had charged that the U.N. Resolution "must bear some responsibility for the scourage of anti-Semitism now reappearing in many parts of the world."

The statement adopted by the 100 scientists and intellectuals had been circulated by the Committee on U.N. Integrity earlier. It was particularly critical of the U.N.'s "tragic failure" in the Mideast:

"In its preoccupation with Palestinian rights, the United Nations neglects the plight of millions of men, women and children in other parts of the world who are in immediate danger of death from famine, disease and war." The statement added:

"The campaign to ostracize Israel has...made an international charade of efforts to extend freedom of speech and press, to help the working man and woman, to meet the needs of children, to achieve equality of women."

(more)

Among the signers of the declaration were Eugene Ionesco, French playwright; French philosopher Bernard-Henri Levy; Benjamin Hooks, executive director of the National Association for the Advancement of Colored People; AFL-CIO President Lane Kirkland; Leonard Bernstein; Rev. Donald Harrington; Father Edward H. Flannery of the Secretariat for Catholic-Jewish Relations of the U.S. Conference of Bishops; Sister Margaret Ellen Traxler of the National Coalition of American Nuns; Henry Steele Commager, Professor of History at Amherst College; and Prof. Richard Pipes, a member of the Reagan transition team.

Speakers at today's convocation included Morris Abram, a former U.S. Representative to the United Nations Human Rights Commission; Allen Dershowitz, Professor of Law at Harvard University; Seymour Martin Lipset, Professor of Political Science at Stanford University; Dr. Arno Penzias, Nobel laureate in physics, 1978; and Raymond Tanter, Professor of Political Science at the University of Michigan and a foreign policy adviser to President-elect Ronald Reagan.

The statement concluded: "In devotion to the fulfillment of the United Nations' humanitarian and peaceful goals, we cannot remain silent while forces which incite hatred and foment war betray our hopes for world peace and progress.

"We call upon the United Nations and each member nation to embrace once again the ideals of the U.N. charter and to restore the promise that the U.N. can achieve a better world for all humanity."

12/7/80 X X X

Morris Abram

Christian B. Anfinsen
Nobel Laureate

Kenneth Arrow
Nobel Laureate
Stanford University

Julius Axelrod
Nobel Laureate

Katherine Balfour

Jose Leon Barandiaran
Peru

John Bardeen
Nobel Laureate
Univ. of Illinois, Urbana

Salo W. Baron
Columbua University

Simon Bauer
Cornell University

Daniel Bell
Harvard University

Paul Berg
Nobel Laureate
Stanford University

Sir Isaiah Berlin
All Souls College, Oxford

Leonard Bernstein

Marver Bernstein
President
Brandeis University

Hans A. Bethe
Nobel Laureate
Cornell University

Bruno Bettelheim
Stanford University

David A. Bickimer
Pace University

Max Bill
Switzerland

William Birenbaum
President
Antioch College

Felix Bloch
Nobel Laureate
Stanford University

Walter H. Brattain
Nobel Laureate
Whitman College

Herbert C. Brown
Nobel Laureate
Purdue University

Robert F. Byrnes
Indiana University

Herbert Callen
University of Pennsylvania

Arthur Cantor

Sol C. Chaikin

Paddy Chayefsky

Gerson Cohen
Chancellor
Jewish Theological Seminary

Saul B. Cohen
President
Queens College

Wilbur Cohen
University of Texas, Austin

Sy Coleman

Henry Steele Commager

US
Lat Amer
Engl
Scots
Canada
France
Belgium
Sweden

Leon N. Cooper
Nobel Laureate
Brown University

Irwin Cotler
McGill University

Andre F. Cournand
Nobel Laureate
Columbia University

Robert Merle D'Aubigne
Paris

SIMONE DE BEAUVOIR
Midge Decter

Alan M. Dershowitz
Harvard University

Ralph Mason Dreger
Louisiana State University

Father Robert F. Drinan

Sir John Eccles
Nobel Laureate
Great Britain

A. Roy Eckardt
Lehigh University

Don Elliot

Benjamin K. Epstein

Jose Figueres
Costa Rica

Hamilton Fish, Jr.

Father Edward H. Flannery
Providence, R.I.

Paul J. Flory
Nobel Laureate, Stanford Univ.

Gerold Frank

Milton Friedman
Nobel Laureate
Hoover Institution
Stanford University

Frank Gervasi

Bernard Gifford
Russell Sage Foundation

Eli Ginzberg
Columbia University

Donald A. Glaser
Nobel Laureate
University of California, Berkeley

Nathan Glazer
Harvard University

Sheldon Glashow
Nobel Laureate
Harvard University

Marshall Goldman
Wellesley College

Leo A. Goodman
University of Chicago

Fred Gottheil
University of Illinois, Urbana

Alfred Gottschalk
President
Hebrew Union College

Pierre Grosjean
Belgium

Chaim Gross

Ben Halpern
Brandeis University

Milton Handler
Columbia University

Rev. Dr. Donald S. Harrington
Community Church of New York

Celia Heller
Hunter College

Bernard Henri-Levy
France

Arthur Herzberg
Columbia University

Gerhard Herzberg
Nobel Laureate
Canada

Robert Hofstadter
Nobel Laureate
Stanford University

Robert W. Holley
Nobel Laureate
Salk Institute

Gerald Holton
Harvard University

Sidney Hook
New York University
Hoover Institution, Stanford Univ.

Benjamin L. Hooks
National Association for the
Advancement of Colored People

Irving Louis Horowitz
Rutgers University

Irving Howe
City College of New York

Eugene Ionesco

Suzanne Keller
Princeton University

Peter B. Kenen
Princeton University

Robert Kibbee
Chancellor
City University of New York

Georges Klein
Nobel Laureate
Sweden

Lawrence R. Klein
Nobel Laureate
University of Pennsylvania

Lane Kirkland
President
AFL-CIO

Milton R. Konvitz
Cornell University

Arthur Kornberg
Nobel Laureate
Stanford University

Boris Kozolchyk
University of Arizona

Polykarp Kusch
Nobel Laureate
University of Texas, Richardson

Simon Kuznets
Nobel Laureate
Harvard University

Seymour P. Lachman
City University of New York

Norman Lamm
President
Yeshiva University

Gerald Leinwand
President
Oregon College of Education

Louis Lerner

Robert Levenberger
Switzerland

William N. Lipscomb, Jr.
Nobel Laureate
Harvard University

Seymour Martin Lipset
Hoover Institution
Stanford University

Rev. Franklin H. Littell
Temple University

Mario Vargas Llosa
Peru

Stanley Lowell

Andre Lwoff
Nobel Laureate
Institut Pasteur-Paris

Donal E.J. MacNamara
John Jay College of Criminal Justice

Theodore Mann

Frank E. Manuel
Brandeis University

Edwin M. McMillan
Nobel Laureate
University of California, Berkeley

Anne Meara

Reuben Merenfeld
Venezuela

Robert K. Merton
Columbia University

Stanford Moore
Nobel Laureate
Rockefeller University

Daniel Patrick Moynihan

Robert S. Mulliken
Nobel Laureate
University of Chicago

Ernest Nagel
Columbia University

Daniel Nathans
Nobel Laureate
Johns Hopkins University

Msgr. John M. Oesterreicher
Seton Hall University

Sir Marc Oliphant
Great Britain

Claude Olivenstein
France

George E. Palade
Nobel Laureate
Yale University

Jan Peerce

Arno A. Penzias
Nobel Laureate
Bell Laboratories

Richard E. Pipes
Harvard University

Norman Podhoretz

Irwin Polishook
President
Professional Staff Congress

Harold Proshansky
City University Graduate School

Theodore K. Rabb
Princeton University

Dorothy Rabinowitz

Isaiah E. Robinson, Chairman
N.Y.C. Commission on Human Rights

Robert Rosenzweig
Stanford University

Henry Rosovsky
Harvard University

Eugene V. Rostow
Yale University

Bayard Rustin
A. Philip Randolph Institute

Abram L. Sachar
Chancellor
Brandeis University

Harold A. Scheraga
Cornell University

William R. Sears
University of Arizona

Emilio G. Segre
Nobel Laureate
University of California, Berkeley

Donna Shalala
President
Hunter College

Albert Shanker
President
American Federation of Teachers
(AFL-CIO)

Sargent R. Shriver

Benjamin M. Siegel
Cornell University

John Silber
President
Boston University

Beverly Sills

George Sluizer
Netherlands

Jerry Stiller

Herbert Stroup
Brooklyn College

Rabbi Marc H. Tanenbaum
American Jewish Committee

Raymond Tanter
University of Michigan

Edward Teller
University of California, Berkeley

Sister Rose Thering
Seton Hall University

Barbara Tuchman

Michael Walzer
Institute for Advanced Studies

Ben Wattenberg
American Enterprise Institute

Wilse B. Webb
University of Florida

Steven Weinberg
Nobel Laureate
Harvard University

Leo Weitz
Pace University

Elie Wiesel
Boston University

Shelley Winters

Herman Wouk

Rosalyn S. Yalow
Nobel Laureate
U.S.A. Veterans Administration Hospital

Vladimir Yankelevich
France

Oscar Zeichner
City College of New York

DANIEL P. MOYNIHAN
NEW YORK

United States Senate

WASHINGTON, D.C. 20510

March 2, 1981

Dear Rabbi Tannenbaum:

On December 7, I addressed members of the Committee for U.N. Integrity who had convened to exchange their views about American policy at the United Nations. I have worked the ideas of that talk into an article in the February issue of Commentary, which I enclose.

The arguments I set forth are only a small part of those that have been put forward by our committee. This debate, however, is neither complete nor over, and it will be the responsibility of people like yourself to reshape America's role. Indeed, we must work together for a United Nations that can at last meet the expectations of its founders.

Sincerely,

Daniel Patrick Moynihan

Rabbi Marc Tannenbaum
American Jewish Committee
165 East 65th Street
New York, NY 10022

Commentary

Volume Seventy-one, Number Two, February 1981

"Joining the Jackals": The U.S. at the UN 1977-1980

Daniel P. Moynihan

Pity the Poor Russians?
Walter Laqueur

Deformations of the Holocaust
Robert Alter

Why Madame Bovary Couldn't Make Love in the Concrete
Joseph Epstein

John Lennon's Mourners
Dorothy Rabinowitz

Toward an Immigration Policy
Samuel Rabinove

MOVIES:
The Aging of the New Wave
Richard Grenier

FICTION:
Games Writers Play
Pearl K. Bell

BOOKS:
Kenneth S. Lynn
Michael Novak
Jack N. Rakove
Steven Plaut
Stephen Miller
Jeffrey Meyers

Published by the American Jewish Committee $2.75

"Joining the Jackals"

The U.S. at the UN 1977-1980

Daniel P. Moynihan

A DEFEAT so overwhelming as that which Governor Reagan inflicted on President Carter soon takes on the air of the inevitable. Before it does it may be useful to record that those who were defeated in no way looked upon the outcome as fated. To the contrary, the view in the White House was that things were going well until March 1, when Ambassador Donald F. McHenry voted in favor of a particularly vicious anti-Israel resolution in the Security Council of the United Nations, followed three weeks later by the appearance of Secretary of State Cyrus R. Vance before the Senate Foreign Relations Committee in which he refused to disavow the vote. Thereafter, in this view, everything spun out of control. The Carter administration left Washington convinced—and proclaiming—that defeat was brought on by malevolent incompetence at the U.S. Mission to the United Nations and the inability of the Secretary of State to control the Mission. What they did not proclaim and only dimly understood was that they themselves had put in place the ideas which helped bring them down; that indeed in that sense the outcome *was* fated.

Set forth by President Carter and others, the sequence of events was as follows. Senator Edward M. Kennedy's challenge to the President began poorly. On March 18 the two met in Illinois, the first industrial state to hold a primary. The President won handily. If Kennedy could be beaten a week later, in New York, his candidacy would collapse. A private poll conducted by Dresner, Morris & Tortorello Research in late January and early February showed the President leading the Senator 54 percent to 28 percent among probable Democratic primary voters in New York, with only 13 percent undecided. Yet in the end, Kennedy won, 59 percent to 41 percent.

In a gracious gesture, after the results were in, Lieutenant Governor Mario M. Cuomo, who headed Mr. Carter's campaign in New York, called the President to apologize. "No," said Mr. Carter as reported in the New York *Times*, "it was the United Nations vote." In an interview with Meg Greenfield of the Washington *Post* on March 27, Mr. Carter, speaking of an incumbent's problems in running for reelection, repeated the point:

> . . . Then to make a mistake like we did on the UN vote and have the Secretary of State testify a few days before the election. . . .

The same theme was sounded, finally, in a postmortem by Steven R. Weisman and Terence Smith of the *Times* after the national election:

> This blunder, in which the administration first voted in favor of a March 1 resolution rebuking Israel on settlements in Arab-claimed territory and then disavowed it, cost the President dearly among Jewish voters in the March 18 [*sic*] New York primary. Senator Kennedy carried the state and attracted new contributions to his campaign, which carried on through the last batch of primaries on June 3.
>
> "New York was our chance to knock Kennedy out of the box early," said Mr. [Robert S.] Strauss, the campaign chairman. "We blew it with that vote."

Jody Powell told the *Times* reporters that in consequence, "We sure as hell spent a lot of time and money fighting him that would have been better spent against Reagan."

Now it will be clear that there are many reasons President Carter lost the election, of which the UN vote was only one and scarcely the most important. What is important, however, is that the administration had looked upon its United Nations record as a huge success. Other policies had failed, and that proved costly. But this had succeeded, and proved costly. When the fall of a President is involved, and possibly also the fall of a party, some notice should be taken. For I do not conceal my judgment that so long as the ideas underlying the Carter administration's UN policy are dominant within the Democratic party, we Democrats will be out of power.

DANIEL P. MOYNIHAN, United States Senator (D.) from New York, has also served as Ambassador both in India and at the United Nations. His many previous contributions to COMMENTARY include "The Politics of Human Rights" (August 1977), "Party and International Politics" (February 1977), and the widely discussed "The United States in Opposition" (March 1975). He is the author of, among other books, *Coping: On the Practice of Government*, *Maximum Feasible Misunderstanding*, and *Counting Our Blessings*.

on November 10, 1975, the same day Zionism was declared to be a form of "racism and racial discrimination."

The first of the resolutions was breathtaking:

> Security Council Resolution 242 of 22 November 1967 does not provide an adequate basis for a just solution for the question of Palestine.

One of the more dishonest (and debilitating because profoundly misleading) assertions of the U.S. Mission during the Carter years was that the 1975 Zionism resolution was somehow brought about by the United States. Having resisted, America was judged to have provoked. That resolution passed 67 to 55 with 15 abstentions. This resolution, potentially far more destructive, was adopted 98 to 16 with 32 abstentions.

The United States said nothing. *No American delegate went to the podium to offer the smallest demur.* Next, a resolution denounced the Camp David accords, declaring that the General Assembly

> Expresses its strong opposition to all partial agreements and separate treaties which constitute a flagrant violation of the rights of the Palestinian people, the principles of the Charter, . . . [*etc*].

The United States said nothing. The last of the resolutions reasserted Israeli violation of the Fourth Geneva Convention. This time the United States, by abstaining, said all there was to say.

There was something of note in the sponsors of the resolutions. The familiar Soviet-leaning or Soviet-dominated nations were present: Afghanistan, Cuba, Lao People's Democratic Republic. But present also were Nicaragua and Zimbabwe, two Third World nations with which the Carter administration had presumably established relations of friendship and respect.

As for North-South relations, on Wednesday of that week Ambassador McHenry acknowledged that the General Assembly's Special Session on economic development which had convened in September had come to nothing. Finally, on Friday, December 19, the United States voted for a Security Council resolution condemning Israel for the expulsion of two Arab mayors (an expulsion which followed upon parliamentary debate, trials before an independent judiciary, and the usual processes of a possibly wrongheaded but stubbornly democratic society). Ambassador McHenry explained that the Fourth Geneva Convention "prohibits deportations, whatever the motive of the occupying power."

In an editorial entitled, "Joining the Jackals," the Washington *Post*, which had supported the President for reelection, described this American vote against Israel in the Security Council on that Friday as representative of "the essential Carter." Now the President himself was being held to account.

American failure was total. And it was squalid. These men, in New York and Washington, helped to destroy the President who appointed them, deeply injured the President's party, hurt the United States, and hurt nations that have stood with the United States in seeking something like peace in the Middle East. They came to office full of themselves and empty of any steady understanding of the world. The world was a more dangerous place when at last they went away.

THOSE who now take office must deal with the aftermath of this massive failure of policy. The Security Council resolutions are time bombs. Ticking. The case has all but been made that Israel is an outlaw state, and indeed the General Assembly has now called on the Security Council to consider imposing sanctions against it. It will take the toughest-minded diplomacy to dismantle the indictment now in place—thanks to the Carter administration; thanks to those who brought the Democratic party to such confusions. The new administration will have to deal also with the whole question of the Third World. It should be clearer now that hostility toward the West, toward the United States, is abiding and, it may be, burgeoning.

Yet it remains for the United States to evolve a mode of dealing with the UN majority, and this in some measure turns on what kind of countries we think them to be. Irving Kristol has put the matter at its bleakest:

> The radical-nationalist ideologies of these nations, so far from being a prelude to the liberal-constitutionalism we revere, are a kind of epilogue. They—or at least their ruling elites—have seen our present and reject it as their future. So long as we refuse to confront this reality, we do not have a clear vision of the world the U.S. inhabits. And so long as there is no such clear vision, there can be no coherent foreign policy.

My own view is more sanguine: consider India, Sri Lanka, Trinidad and Tobago, Jamaica. There are others—many others. Still, with the experience of these four years, we should at least have learned that foreign policy cannot be conducted under the pretense that we have no enemies in the world—or at any rate none whose enmity we have not merited by our own conduct. For it was this idea more than anything else, perhaps, that led the Carter administration into disaster abroad and overwhelming defeat at home.

the very existence of the administration. And to protect itself from having to face this failure, the administration had begun to undermine Camp David itself—its one great success.

THE March 1 vote, then, was a disaster and should have stimulated a reappraisal of the route by which the administration had traveled to it. Israel had been permanently damaged, and (unless their perceptions are perilously dulled) other allies of the United States permanently warned. Yet no more was said than that it was a mistake, and only a partial mistake at that. The administration never thought its way through the matter. Those publicly most identified with these policies had already begun to leave —first Ambassador Young, then Assistant Secretary Maynes, and finally Secretary Vance himself. But the policies persisted. By the end of the Carter administration the pattern had become all but impossible to overcome. One can measure it this way: on nine substantive votes on the Middle East taken in the Security Council between January 1979 and August 1980 the United States abstained seven times.

Just once we cast a veto—striking down a Tunisian resolution of last April 30 which called for the creation of a Palestinian state. *This* resolution, one might note, unlike the one we voted for on March 1, did refer to "secure and recognized boundaries"—the language of Resolution 242—but only for the Palestinian state. *Not* for Israel.

To be sure, we occasionally made our unhappiness known. In August 1980, for example, Secretary of State Edmund S. Muskie went to New York and defended the American approach to a Middle East peace settlement based on the Camp David accords:

> Let me . . . repeat our belief that this constant recourse to debates and resolutions that are not germane to the peace process—and even harmful to it—should stop.

A salutary sentiment, but what must the other members have thought? For Secretary Muskie was asking on behalf of the United States for the end of a process that *it was perfectly within our power to end.* If we believed such resolutions to be harmful to the peace process, we were free to veto them. We were free to deny them the force of law they acquire when they pass. The same point could be made of such American statements on the March 1 resolution as this one by President Carter:

> While our opposition to the establishment of the Israeli settlements is long-standing and well known, we made strenuous efforts to eliminate the language with reference to the dismantling of settlements in the resolution.

Yet when the strenuous efforts failed, the U.S. Permanent Representative had only to raise his hand, to vote No, and the resolution would have failed.

Having committed itself, however, to solidarity with the majority at the UN, the Carter administration could not bring itself to exercise the veto. Thus in our flight from "confrontation" did we end not by understanding the perspectives of others, but by adopting them.

In so doing, we have acquiesced in a very great deal.

After March 1 the application of the Fourth Geneva Convention became a routine of Security Council resolutions. It was invoked in Resolutions 460 (May 8, 1980), 469 (May 20, 1980), and 471 (June 5, 1980), all three of which dealt with Israel's expulsion of two Palestinian mayors in the wake of terrorist attacks on Israeli civilian settlers. Where once there was the routine affirmation of Resolution 242, we now have routine indictments of Israel for Hitlerian crimes.

The U.S. abstained even when Israel's sovereignty itself was at issue. The last Security Council resolutions in this cycle of attacks on Israel were adopted in the summer of 1980 and dealt specifically with Jerusalem. Resolution 476 of June 30, 1980 warned Israel about its pending legislation on the annexation of East Jerusalem. One might well question the prudence of this Israeli law—and many have done so—but it was something else again to find that in Resolution 476 (as in its successor Resolution 477 of August 20) Israel had become the "occupying power" of its own capital. Both resolutions, in fact, seemed to include the *entire* city of Jerusalem within this charge. And Resolution 477 went still further: it declared the Basic Law on Jerusalem, by then passed, to be null and void. It declared in effect that Israel was not entitled to fix the location of its own capital city, and called—in a wholly unprecedented step—on member states to withdraw their embassies from this capital (which all did).

AN epilogue of sorts took place in the third week of December 1980, as the Carter administration and the 35th General Assembly began winding down. On Monday, December 15, the General Assembly adopted five resolutions on the Middle East more virulent and anti-Semitic than perhaps anything the UN had yet seen. The debate was obscene. Thus the Ambassador of Jordan speaking of the Ambassador of Israel:

> The representative of the Zionist entity is evidently incapable of concealing his deep-seated hatred toward the Arab world for having broken loose from the notorious exploitation of its natural resources, long held in bondage and plundered by his own people's cabal, which controls and manipulates and exploits the rest of humanity by controlling the money and wealth of the world.

The occasion was the receipt of the most recent Report of the Committee on the Exercise of the Inalienable Rights of the Palestinian People, a body established by General Assembly resolution

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. . . .

In a word, according to Resolution 465, Israel is an outlaw state, guilty of war crimes. (Not the Vietnamese invaders of Cambodia, or the Soviets in Afghanistan. Israel!) Its alleged capital is not its capital at all—"Jerusalem or any part thereof"—and it is in illegal occupation of territory now for the first time designated "Palestinian."

Here, then, was the triumph of everything the Soviets and the "Rejectionists" had stood for: the repudiation of everything Sadat, and for that matter Begin and Carter, had sought. Yet the United States voted in favor of this resolution. Shortly thereafter the administration stated that this had been a "mistake." It was no mistake at all. Resolution 465 reflected the view of the majority of members of the United Nations, and the U.S. Mission there had simply come to accept that view. Their conception of the world, by now shared in Washington, gave them no alternative.

Once the vote was cast there came the shock of recognition, in Washington at least, that *this* was what that conception led to. But still they clung to it. The White House, sensing the disaster and the dilemma, did not want any testimony given before Congress. The State Department insisted, and so on March 20 the New York *Times* reported:

VANCE REBUFFS CALL FOR FULL DISAVOWAL OF UN's ISRAEL MOVE

Yet it was more than that. Vance would neither disavow the episode nor acknowledge it. He could not bring himself to admit consequences he could not desire of a policy he could not repudiate.

THE operative paragraphs of Resolution 465 began by stating that the Security Council:

1. *Commends* the work done by the Commission in preparing the report. . . .;

2. *Accepts* the conclusions and recommendations contained in the above-mentioned report of the Commission;

Yet Vance in his testimony on March 20 suggested that nothing, really, had happened, that voting for the resolution did not imply support for the commission report which had occasioned it.

Senator Paul S. Sarbanes of Maryland went directly to this point:

SENATOR SARBANES. Mr. Secretary, the resolution that was passed and for which we voted, accepts the conclusions and recommendations contained in the report of the commission established by Security Council Resolution 446.

Do I take your assertion to be that the word "accepts" there means nothing more than "receives"?

SECRETARY VANCE. You do correctly understand.

SENATOR SARBANES. Why wasn't the word "receives" used? I would understand the word "accepts" to carry with it some element of subscribing to the conclusions in the recommendation.

SECRETARY VANCE. No; it was merely intended to connote receives. Accepts—they hand them to me, they are accepted.

I joined in the questioning:

SENATOR MOYNIHAN. Very frankly, . . . Mr. Secretary, I am concerned with our reputation for plain dealing.

Did anyone at the U.S. Mission to the United Nations tell you that in a Security Council resolution, the word "accepts" should be read to mean "receives"?

SECRETARY VANCE. Yes: I have been told that.

SENATOR MOYNIHAN. You have been told that?

SECRETARY VANCE. Yes

SENATOR MOYNIHAN. Sir, I once served as U.S. Permanent Representative there. I can tell you that I could not conceive telling a Secretary of State that the word "accepts" should be read to mean as in a letter, "Dear Sir, I have received your letter of" so and so.

The first paragraph, the preambular paragraph of a Security Council resolution starts out always, "Taking note of." This is the paragraph that says, "We have received."

"Accepts," on the other hand, is a slight variation on the word "endorse." It would be the only way it would have been understood in my time there, sir.

I think you have been misinformed, sir, and I think you have been done a disservice.* . . .

Something quite extraordinary was happening here. It is of course possible that the members of the U.S. Mission had simply not told the truth to the Secretary of State. (They had evidently been less than candid on some other questions concerning the resolutions—informing him, for example, that references to Jerusalem had been excised from the text when they had not.) But how could a lawyer of Cyrus Vance's ability believe such an untruth save that at high and low levels alike the men of our government were deceiving *themselves*? The Carter administration had failed in its objectives at the UN; but to admit that failure was to cast in doubt the view of the world that justified

* A brief review of UN documents will make clear that "accept" has the everyday meaning of "endorse." After the first commission report was submitted in July 1979, it became the subject of Security Council Resolution 452, in which the Council voted to "accept" its recommendations. The members of the commission easily understood what this meant. They wrote in their second report (which in turn became the subject of Resolution 465) that they had taken particular steps "bearing in mind that the Security Council, in Resolution 452 (1979), had *accepted the recommendations* contained in the commission's first report . . ." (emphasis added).

though it might declare that "thugs in Afghanistan" were "tormenting schoolchildren" for the profit of Zionists, had established itself beyond all question as a brutal conqueror of Third World peoples and as an anti-Semitic regime of near demented proportions. The moment to fragment or silence the opposition was at hand.

Faced with this assault on the UN Charter, on peace, on decency—and, not so incidentally, on the President of the United States—what did our people do? *They took the other side.*

To persons whose deepest conviction was that Third World nations were hostile to the United States because of our own neocolonial behavior; whose strong disposition was to believe that the Soviet Union in almost all instances supported the true liberationist forces in the former colonial world while the United States, on the wrong side of history, backed brutal but doomed dictatorships —the events from 1977 to 1980 could make no sense. It became ever more difficult for such people to understand and support their own government's policy. For had not the Camp David framework, its peaceful appearances notwithstanding, called forth a more sustained disagreement between the U.S. and the Third World than even the "confrontationist" policies of the past? To understand this one had to entertain the possibility that the opposition we encountered there was *not* a matter of long-held grievances against our abuses of power. One had to entertain the possibility that there were those whose great fear was that in seeking peace we might succeed.

Confused, and after a point not altogether straightforward, the strategy of our diplomats in New York, backed up in the Department of State, started to undergo a subtle and disastrous transformation. They had begun with the proposition that if the United States put itself on the "right" side of history, we would find the nations of the world, most of which of course were "new," coming over to our side in turn. Unaccountably, however, they were still not on our side. To the contrary, some were actively seeking to undo the greatest diplomatic achievement the administration had to its credit, and *none*—not one—was objecting to or trying to impede such efforts. Evidently, then, we must *still* be on the wrong side. Reasoning thus, our diplomats prepared themselves to vote for the Security Council Resolution of March 1, 1980 and (though this was certainly not their intention) to help bring down the administration they served.

THE chain of resolutions passed in condemnation of Israel by the Security Council in 1979-80 forms a complex story. Yet to follow it only a single point needs to be understood. It is that, as a direct result of American policy, the Security Council was allowed to degenerate to the condition of the General Assembly.

Under the UN Charter the General Assembly reaches decisions by majority vote, but its decisions are purely recommendatory (Article 10). By contrast, the Security Council has power. In situations where it determines that there is a "threat to the peace, breach of the peace, or act of aggression," the Council "shall make recommendations, or decide what measures shall be taken. . . ." These include "such action by air, sea, or land forces as may be necessary. . . ." The Security Council, in a word, may make war. And for that reason the Security Council does not operate by majority vote. Any permanent member may veto any action, simply by voting No. However, in the face of the increasingly vicious Soviet-Arab assaults that followed Camp David, the United States began to abstain. I have represented the United States on the Security Council; I have served as President of the Security Council. *I state as a matter of plain and universally understood fact that for the United States to abstain on a Security Council resolution concerning Israel is the equivalent of acquiescing.*

The first abstention in the sequence we are now tracing occurred on March 22, 1979 when the Council, in a resolution directed against Israel, established a three-member commission "to examine the situation relating to establishments in the Arab territories occupied since 1967, including Jerusalem." The phrasing here was ominous: "Arab territories . . . including Jerusalem." Jerusalem is the capital of Israel. How could its capital be in the territory of others?

Equally ominous, although at this point restrained, was the reaffirmation of earlier Council statements that the Fourth Geneva Convention "is applicable to the Arab territories occupied by Israel since 1967, including Jerusalem" and the strict injunction upon Israel "as the occupying Power, to abide scrupulously by the 1949 Fourth Geneva Convention." Now, the Fourth Geneva Convention on the Protection of Civilian Persons in Time of War is one of a series of treaties designed to codify the behavior of Nazi Germany and make such behavior criminal under international law. This particular convention applied to the Nazi practice of deporting or murdering vast numbers of persons in Western Poland—as at Auschwitz—and plans for settling the territory with Germans. The assertion that the Geneva Convention also applied to the West Bank played, of course, perfectly into the Soviet propaganda position that "Zionism is present-day fascism."

Within a year the new commission had submitted two reports. In response to these, on March 1, 1980, a resolution (465) was submitted to the Council that was as viciously anti-Israel—and as destructive of the Camp David accords—as any that had ever been encountered or could readily be devised. Israel was found to be in "flagrant violation of the Fourth Geneva Convention": the first nation in history to be found guilty of behaving as the government of Nazi Germany had behaved. It was determined

that all measures taken by Israel to change the

new pro-American alignment of Egypt and the step-by-step peace negotiations, which had scored a major success with the second disengagement agreement of May 1975. The Zionism-is-racism resolution in November of the same year was itself one part of this sabotage campaign.

That the UN and its Third World majority could be manipulated for the purposes of an assault on American policy was much more poorly apprehended after Kissinger's departure. In fact, in its desire to dissociate itself from the past, the Carter administration set out *to bring the Soviets back*. The still startling Soviet-American communiqué (issued jointly but plainly Soviet-drafted) of October 1, 1977 proposed to reconvene the Geneva Conference, a meeting under UN auspices at which the two nations would be co-chairmen and to which all interested parties would be invited. To Sadat the meaning of this was clear: a veto in the hands of the radical forces, immediate stalemate, ultimately perhaps his overthrow. And so to avoid going to Geneva, he went to Jerusalem (where, he had every reason to know, a deal was waiting to be struck with the Begin government). This set in motion the events that ended with the Camp David accords of 1978, and the Egyptian-Israeli peace treaty of 1979—Carter's single greatest achievement, albeit purchased only by a reversal of his original "Geneva" approach and by shifting negotiations over the Middle East away from the UN.

Inevitably forces at the UN would resent this. Thus it is not too much to say that the supreme test of the Carter policy at the United Nations was whether that body would leave him alone to make peace between Israel and its neighbors. Had his diplomats, through their new approach, acquired sufficient influence with the far-flung nations of the Third World to persuade them to stay out of disputes with which most of them had in any event only the remotest connection?

The answer was not long in coming. First, the remaining Arab states, with Iraq only momentarily absent, convened a "confrontation summit" in Damascus to fight the Camp David settlement. Iraq soon was brought in, and before the year was out leaders of all Arab states except Egypt had met in Baghdad to form a "rejection front" against Egypt and Israel. Simultaneously the Soviet Union (returning to the tactics it had used in 1975 to counter its expulsion from Egypt) escalated its campaign to delegitimate Israel by identifying it with the Nazis.

Having been sounded in 1971 with a two-part article in *Pravda* entitled "Anti-Sovietism is the Profession of Zionists," this theme was steadily elaborated and diffused. (The original *Pravda* article, for example, asserted that the massacre at Babi Yar had been a collaboration of Nazis and Zionists.) Once the idea had been set, it proceeded to be popularized on television, in novels, and finally in children's publications. Thus the October 10, 1980 issue of *Pionerskaya Pravda*, a tabloid-size weekly for children aged nine to fourteen who belong to the Soviet youth organization, Pioneers:

> Zionists try to penetrate all spheres of public life, as well as ideology, science, and trade. Even Levi jeans contribute to their operations: the revenue obtained from the sale of these pants are used by the firm to help the Zionists.
>
> Most of the largest monopolies in the manufacture of arms are controlled by Jewish bankers. Business made on blood brings them enormous profits. Bombs and missiles explode in Lebanon—the bankers Lazars and Leibs are making money. Thugs in Afghanistan torment schoolchildren with gases—the bundles of dollars are multiplying in the safes of the Lehmans and Guggenheims. It is clear that Zionism's principal enemy— is peace on earth.
>
> . . . The United Nations described Zionism as a form of racism and racial discrimination. More and more people today are beginning to realize that Zionism is present-day fascism.

This propaganda seemed to possess the Soviets internationally as well as at home, and they began to insist that other nations join in the campaign to treat Israel as an outlaw state, indeed a non-state, an entity without the rights of statehood. It began to work. In 1978 Cuba became head of the "nonaligned nations." A summit meeting of these states in Havana between September 3 and 7, 1979 adopted a resolution that declared:

> The heads of state or government reaffirmed that racism, including zionism [*sic*], racial discrimination, and especially *apartheid* constituted crimes against humanity and represented violations of the United Nations Charter and of the Universal Declaration of Human Rights [Paragraph 237, Final Declaration of the Conference].

In June 1980 at the ministerial meeting of the Organization of African Unity, held in Freetown, Sierra Leone, Israel was referred to in official documents merely as the "Zionist entity." And on October 8, 1980 the Soviets signed a Friendship Treaty with Syria of which Article 3 declared:

> The High Contracting Parties, guided by their belief in the equality of all peoples and states, regardless of race and religious beliefs, condemn colonialism, racism and zionism [*sic*] as one of the forms and manifestations of racism, and reaffirm their resolve to wage relentless struggle against them.

This was perhaps the clearest statement to date of the Soviet Union's opposition to the very existence of the state of Israel, but its essential purpose had been evident for at least a decade.

No less evident was what the United States Mission to the United Nations should have done. The Arab nations were split; the United States was, in effect, allied with the largest of them, Egypt, and in the cause of peace in the Middle East. The Soviet Union,

for greater justice, respect, and dignity. All this has changed.

Testifying before a House Subcommittee on March 27, 1980 (two days, mind, after the New York primary), Assistant Secretary Maynes spoke even more glowingly of changes that had come over the UN:

> . . . the UN has become the crossroad of global diplomacy.
>
> . . . [It] now appears to be less unfriendly and dangerous a place than some have led us to believe. It is also possible that we will find there a greater spirit of cooperation than before—not just in condemning the lawless but also in advancing the rule of law. But these promises may come to naught unless we adopt a more mature stance toward the UN itself.
>
> We must remind ourselves that the United States needs the UN at least as much as it needs us.

One might have thought this assessment would be reflected in votes in the General Assembly or the Security Council. But it was not. Worse, the ideas of the new administration stood in the way of seeing opportunities to be seized and understanding problems to be met.

This was perhaps to be expected. The heavy emphasis on North-South relations, after all, was surely a way of coping with, or at least diverting attention from, the difficult realities of the post-Vietnam world. "American imperialism" had been defeated. Our defeat had been caused, to be sure, by overreaching and after a point it could not perhaps have been avoided. But its consequences, all the same, would have to be lived with, and adjusted to; foremost among them would be a major opening for, and stimulus to, *Soviet* imperialism. Susan Sontag has recently acknowledged how little she and others in the anti-war movement had understood this equation:

> It was not so clear to many of us as we talked of American imperialism how few options many of these countries had except for Soviet imperialism, which was maybe worse. When I was in Cuba and North Vietnam, it was not clear to me then that they would become Soviet satellites, but history has been very cruel and the options available to these countries were fewer than we had hoped. It's become a lot more complicated.

But the perception of such complexity was beyond the powers of the U.S. Mission to the UN under the Carter administration. Its members could not see the signs of a new phase of Soviet policy: military support for Ethiopia in 1977, coups in both Afghanistan and South Yemen in April 1978, the invasion of Cambodia in December 1978. Unable to explain all this or to fit it to the purposes they had set themselves, American diplomats at the UN grew increasingly silent.

It also emerged that our representatives had little sense of the UN Charter as *law* that had to be upheld, and to be expounded. A superb opportunity came in the fall of 1977 when the Soviets switched sides in the Horn of Africa. Abandoning Somalia, they actively entered the war in the Ogaden, an ethnically Somali territory, on the side of Ethiopia. Of a sudden the Somalis were pounding on our doors begging for help, pleading for us to understand the "nature of the Soviet threat," Soviet "neocolonialism," the "Soviet plot to encircle the Gulf," the "Soviet contempt for human rights and the rights of small nations."

Now it happens that in 1975 the principal sponsor of the resolution that declared Zionism to be a form of racism was none other than Somalia (acting in its then capacity as an especially fawning satellite of the Soviets). After the resolution was adopted, I rose in the General Assembly and addressed the following words directly to the Somalis:

> Today we have drained the word "racism" of its meaning. Tomorrow terms like "national self-determination" and "national honor" will be perverted in the same way to serve the purposes of conquest and exploitation. And when these claims begin to be made . . . it is the small nations of the world whose integrity will suffer. And how will the small nations of the world defend themselves, on what grounds will others be moved to defend and protect them, when the language of human rights, the only language by which the small can be defended, is no longer believed and no longer has a power of its own?

With the Somalis bleating in terror, pleading for help, did the U.S. Mission to the UN make a single reference to their behavior in 1975, and our response? None. This would have been to engage in "confrontation," a practice of the discredited past.

The United States helped found the UN, mostly wrote the Charter, has largely paid for the place. U.S. representatives have an obligation to insist that there are *standards* written into that Charter. Occasionally we would stand up for them. In 1978 William J. vanden Heuvel, the U.S. representative to the UN in Geneva, actually objected to the appointment of a KGB officer as director of personnel for UN activities in that city. (The appointment was a clear violation of article 100 of the Charter.) But there were few such instances. Not even when UNESCO, that embodiment of a decent liberal optimism, set about developing an international regime for state control of the press under the insolent euphemism of "A New World Information Order" did we engage in "confrontation." No, never. And so it went.

BUT the crucial turning point came with Camp David, which involved an irony worthy to be called tragic. Perhaps the most impressive achievement of Henry Kissinger as Secretary of State had been to cooperate with Anwar Sadat in maneuvering the Soviets out of Egypt. Together Sadat and Kissinger had had to stand against the efforts of Soviet policy to scuttle the

Representative at the UN in 1975-76 as the prime example of American diplomatic aggression.

This was notably the view of C. William Maynes, who left the Carnegie Endowment for International Peace to become President Carter's Assistant Secretary of State for International Organization Affairs. It was the view of the Ambassadors who came and went at the U.S. Mission beginning with Andrew Young and ending with Donald McHenry. In an interview published in September 1980, contrasting his performance with mine, Ambassador McHenry said:

> I don't believe in confrontation politics, I don't believe in name-calling. I do believe in communicating with them [i.e., Third World nations], in stating my views, listening to theirs, respecting their views, expecting them to respect mine.

A few weeks later, on October 1, 1980, taking issue with a New York *Times Magazine* article entitled "How the Third World Runs the UN," he returned to this theme:

> The article was reminiscent of the speeches about the "Tyranny of the Majority" that one of my predecessors used to deliver when he represented our country at what he later called "A Very Dangerous Place."*

Yet there was a fateful avoidance of reality in the new administration's view: a denial that there is genuine hostility toward the United States in the world and true conflicts of interest between this nation and others—an illusion that a surface reasonableness and civility are the same as true cooperation.

To be sure, if there are conflicts of interest among states, there are also truly shared interests, and even genuine friendships. The world, alas, is complex, and although the new men of the Carter administration professed to understand complexity where others had missed it, they were in fact great simplifiers. They trivialized the sources of real conflict between the United States and other nations, and they exaggerated our ability to resolve them to everyone's satisfaction.

Again, one notes a parallel with the approach of the new administration to defense and foreign policy. One of the first (and fateful) decisions of President Carter was to appoint Paul Warnke as negotiator for the strategic-arms-limitations talks with the Soviets. Warnke in his celebrated article "Apes on a Treadmill' had set forth the thesis that the Soviets essentially imitate American behavior in defense matters. Thus just as the United States could turn enmity into friendship merely by avoiding "confrontation politics" in its dealings with the Third World, so the United States could change Soviet behavior simply by changing its own.

But if these ideas had a parallel structure, they did not prove equally durable. Although President Carter had campaigned in 1976 on a pledge to cut the defense budget, his promise did not survive the first encounters with reality—the reality of conflicting interests and genuine danger. Instead, it was buried, and (admittedly modest) increases in defense spending commenced. The same readiness to retreat from unrealistic approaches was evident in the area of human rights (and indeed, here the administration's retreat was almost overeager). But if in these areas reality obliged the administration to think better of the ideas by which it had hoped to guide policy, no such perceptions ever managed to penetrate our approach to the United Nations. We would unilaterally change the whole international atmosphere simply by avoiding "confrontation politics." The United States would make amends for its past failures by a greater responsiveness, by greater openness, by at last understanding the problems of others and their perspectives. Thus the psychological arrogance that lay behind the seeming humility of our new relations with the Third World—it was *we* who still determined how others behaved—remained intact.

At the UN the arrogance of this view was particularly risky, for those convinced of the abuse of American power found themselves representing the United States at a time when our power was in fact much reduced. Whether American interests could, even so, be protected would depend on how well this decline was perceived, on the suppleness of the new tactics that would be brought to bear, and above all on the ability to sense failure when it struck one across the face. The new administration was conducting an experiment of a sort; much would depend on whether it could tell the difference between good results and bad.

BEFORE defeat in the 1980 election forced a different conclusion upon them, the Carter people were of the opinion that the experiment had been a brilliant success. From the 1980 Democratic platform—prepared in cooperation with the staff of the National Security Council—one learned that when the administration came to power in 1977,

> relations with the Third World were at their nadir. The United States appeared hostile and indifferent to the developing world's aspirations

* It would be hard to pack more misinformation into a single sentence. It was President Gerald R. Ford, in an address at the opening of the General Assembly in the fall of 1974, who warned the UN against "the tyranny of the majority"; at the close of that session Ambassador John A. Scali repeated the warning. If I ever used the phrase, which I do not recall doing, it was only to cite them. As for "A Very Dangerous Place," in 1978 I published a memoir about the UN with a passage on the first page: "I had first gone to Washington with John F. Kennedy and then stayed on with Lyndon Johnson. There I learned as an adult what I had known as a child, which is that the world is a dangerous place—and learned also that not everyone knows this." My editor thought *A Dangerous Place* would be a good title; but I was not referring to the UN. As seamen are taught of the sea, the UN is not inherently a dangerous element, but is implacably punishing of carelessness.

IN NORMAL circumstances UN affairs play a marginal role in United States foreign policy, the simple reason being that American foreign policy is normally preoccupied with the Soviet Union, and the UN, with its profusion of small, even mini, states, is the last setting in which two powers would wish to conduct their affairs. But four years ago, to the incoming Carter administration, the main attraction of the UN as a setting in which to conduct foreign policy was precisely the prominent role Third World nations play in UN affairs, and the North-South axis of the place. This was a setting in which the cold war could at last be put behind us. In his first major foreign-policy address, given at Notre Dame on May 22, 1977, President Carter reported that the United States had overcome its "inordinate fear of Communism," and proposed that the two powers now join in a cooperative effort to improve North-South relations, specifically through economic assistance to the developing nations. In the meantime, the name of the UN Ambassador was promoted to second place on the directory of the State Department building, immediately below that of the Secretary.

In his Notre Dame speech, as in his appointments, President Carter brought together two strains in Democratic thinking on foreign affairs. The first was the old tradition of liberal internationalism—the extension of domestic standards of social justice to the world at large—exemplified by President Harry S. Truman's Point Four program or President John F. Kennedy's Alliance for Progress.

But there was another and newer strain of thought, one much at odds with the traditions of Truman and Kennedy. This was the view that had emerged in the course of the Vietnam war to the effect that the United States, by virtue of its enormous power, and in consequence of policies and perhaps even national characteristics that were anything *but* virtuous, had become a principal source of instability and injustice in the world. We were, in short, a status-quo power, and the status quo we were trying to preserve was abominable. By contrast, a more positive future was available to mankind if it could break out of the American dominion. Much has been written of this, and one need not expand. For my part the most evocative and excruciating memory of the onset of this point of view was the day that a group of former Peace Corps volunteers, protesting the war, ran down the American flag at Peace Corps headquarters in Washington and ran up that of the Vietcong.

Through the 1970's this view grew in strength within the Democratic party. It was most often to be encountered when issues of defense were involved. In an article written in November 1980, R. James Woolsey, who served with distinction as Under Secretary of the Navy in the Carter administration, described how

> leaders of many of the interest groups that claim to represent the traditional Democratic constituencies have convinced themselves over the last decade or so that they must be the enemies of increased American military power.

He explained why these constituencies had come to feel this way:

> What you spend on tanks you can't spend on schools or welfare, nor can you keep it. This is, however, an ageless problem of government. . . . Perhaps more important, the agony of Vietnam introduced a new element and led the interest-group spokesmen and many liberal Democratic politicians to attack the *existence* of American military power as a way to curtail its exercise. Throughout much of the 1970's, the halls of the Senate Office Buildings, for example, were jammed with young staff members looking for a weapons system to have their Senator oppose. They, and their friends in the executive branch, are now typing up their resumés in no small measure because the voters understood what many of the elected officials did not—that caution in using military power is wise, but unilateral restraint in obtaining it in the face of a massive build-up by a potential enemy is extremely dangerous.

There was a precise corollary to this doctrine of self-denial in defense, and it flowed from the idea that the political hostility which the United States encountered around the world, and especially in the Third World, was, very simply, evidence of American aggression or at least of American wrongdoing. The aggression could be military, but just as often it would be diagnosed as economic (the role of the multinational corporation) or ecological (plundering the planet to sustain an obscenely gross standard of living). Often it would be presented as nothing more specific than *not* being "on the side of history" or "the side of change." No matter, the prescription was the same. If the United States denied itself the *means* of aggression, it would cease to be aggressive. When it ceased to be aggressive, there would be peace—in the halls of the United Nations no less than in the rice paddies of Southeast Asia.

AS TANKS and missiles were the instrument of military aggression, so ideas were the means of diplomatic aggression—specifically that array of attitudes, judgments, and prejudices which led Americans to suppose they represented on balance a successful society, one model of how developing societies, if fortunate, might turn out, and in the interval a fair standard by which to measure the merits of other societies.

Here, in the interest of what lawyers call full disclosure, let me acknowledge that, from the first, those members of the Carter administration responsible for policy at the UN, and more generally for relations with the developing nations, regarded my own brief tenure as U.S. Permanent