

## CHAPTER 3 INVOLVING THE UNITED NATIONS

### (A.) THE UNITED NATIONS OPTIONS

Britain had not been able to fulfill its responsibilities over Palestine, let alone satisfy the various positions of the Jews and Arabs in the country. It had not been able to do it with the aid of the Arab states in the late thirties. Britain could not achieve the goals of the Mandate in partnership with the U.S.A. immediately following the war.

Partition had died in 1937, was reborn during the war, died again in 1944,<sup>2</sup> was revived by the Colonial Office in January of 1946, then vetoed by the Foreign Office, and, following the A A C report, was revived again as a joint proposal of the Foreign Office and Colonial Office. Bevin came up with his own idiosyncratic idea of partitioning Palestine and giving the Arab parts to Transjordan and Lebanon,<sup>3</sup> but the Cabinet preferred a Provincial Autonomy model to which Ambassador Grady of the U.S. consented. Truman vetoed the Provincial Autonomy Plan proposal by Grady and Morrison.<sup>4</sup> Of the options presented to Bevin when he took office in 1945,<sup>5</sup> reference of the problem to the U.N. seemed the only realistic choice. Was the only realistic option for the U.N. acceding to a British request?

When the United Nations was formed after World War II, it did not have any authority over Palestine or responsibility for dealing with the outcome of the emerging conflict. However, since Palestine was a mandate territory, the potential was there for the U.N. to assume that authority and responsibility. Since Britain wanted to get out of its responsibility, the situation was ripe for the U.N. to take Britain's place.

The problem was that the U.N. assumed a kind of responsibility without any clear authority. What responsibility did the U.N. assume? What authority did the U.N. have? The U.N. took on an extremely difficult problem with questionable authority to deal with it. The results would not only have a grave impact on how it dealt with the conflict between Arabs and Jews, but how it would deal with the refugees that were the inevitable product of such a conflict.

The United Nations did not have an automatic responsibility for territories assigned as Mandates

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<sup>2</sup>After the ----- of a partition proposal to the----- cabinet following the assassination of Lord Moyne, who was a minister of state resident in the Middle East, Sir Edward Gugg, who succeeded Moyne, in April 1945 proposed an international trusteeship over Palestine. F.O. June 29, 1945, E 4775/15/31.

<sup>3</sup>cf. A. Bullock (1983), p. 295.

<sup>4</sup>The plan was first put forth by Sir Douglas Harris, treasurer of the Palestine administration, and put before the Labour Cabinet in Britain in September of 1945. Henry F. Grady was a lawyer who had served as a special envoy for President Roosevelt. Herbert Morrison was Chairman of the British Cabinet.

<sup>5</sup>When Bevin asked the AAC to make a recommendation, he had envisioned that they would push an interim solution "until such time as a permanent solution can be submitted to the appropriate organ of the United Nations". (Parliamentary Debates, House of Commons, vol. 415, col. 1930) A Trusteeship was then envisioned as succeeding the existing Mandate. (op. cit., col. 1931-2) As Bullock makes clear reference to, the U.N. was to be delayed as long as possible and was the least desired option because it would seriously impair Britain's strategic position and political standing in the Middle East." (p. 332)

by the League of Nations, and hence, had no automatic authority over Palestine or responsibility for dealing with the conflict between Arabs and Jews within Palestine. The United Nations did have a responsibility for Palestine if the conflict threatened international peace and security. Many states interpreted this to mean that, unless the conflict in Palestine escalated into an international conflict involving other states in a war, no threat to peace and security existed. If a threat to peace and security was determined to exist, then the Security Council had a clear right, and most would have added at the time, a responsibility to intervene.<sup>6</sup> That perceived responsibility was perhaps one of the first casualties of the Cold War though the right continued to exist in theory, and, in practice in the fall of 1990 following the end of the Cold War and the Iraqi invasion of Kuwait.

Further, though the United Nations was not the automatic heir of the powers and functions of the League of Nations, in particular its legal authority over mandates, the United Nations was set up with a system of trusteeships which were applicable to three types of territories:

- (a) Territories detached from enemy states as a result of war which were under the temporary governance of the allies;
- (b) Territories voluntarily placed under the trusteeship system by the state responsible for their administration; and
- (c) Former mandate territories where the mandatory authority entered a contractual agreement to transfer the mandate territory to the United Nations trusteeship system.

In accordance with the last term, it was up to the mandatory power, the United Kingdom, to initiate any action. But whatever the United Kingdom did, it had to do so with dispatch since Article 80 of the Charter required no "delay or postponement of the negotiation and conclusion of agreements for placing mandated and other territories under the trusteeship system...".

Britain could transfer the Mandate to a trusteeship by agreement with the United Nations. As Professor Lauterpacht phrased it,

Although, according to its wording, the Charter imposes  
no clear obligation upon states which were mandatories by  
virtue of Article 22 of the Covenant to place the territories  
in question under the system of trusteeship, it is clear  
that an obligation to this effect closely approaching a  
legal duty follows from the principles of the Charter.<sup>7</sup>

Britain could also conclude the Mandate by granting sovereign authority over the territory (or, some

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<sup>6</sup>Chapter VII of the U.N. Charter provided both the right and the responsibility to act if a serious threat to the maintenance of international peace was determined to exist. Under Article 25, member states were obliged to comply with a unanimous resolution of the Security Council. This legal right and responsibility quickly became moot once the Cold War began in earnest, but it was a consideration in 1947. "Theoretically there was, at least at the time of the U.N.'s creation, the possibility that the Council would consider the lack of settlement of the substantive issues of a conflict or serious threat to the maintenance of international peace and hence invoke Chapter VII." (David P. Forsythe, United Nations Peacekeeping; The Conciliation Commission for Palestine, Baltimore, 1972, p. 7.

<sup>7</sup>Oppenheim-Lauterpacht, International Law: A Treatise, 6th edition, p. 208.

argued, parts of the territory) in accordance with the terms of the Mandate.<sup>8</sup>

With the dissolution of the League of Nations there were

only two legal alternatives for dealing with territories  
formerly held under Mandate: either to grant them true  
independence or to transform them into trust territories.<sup>9</sup>

## **(B.) THE CONFLICT OVER THE U.N. ROLE**

Just as the fight between the Jews and Arabs over the territory of Palestine had been fought as a surrogate battle over the rights of Jewish refugees from Europe and the responsibilities of the IRO towards them, an alternate battle sight emerged in the conflict over the obligations of the United Nations towards the Palestine Mandate itself.

The Jews wanted an explicit undertaking by the United Nations to recognize and preserve the old rights and obligations of the Palestine Mandate, particularly those of Article 6 calling for Jewish immigration and settlement. The Arabs wanted the Mandate territories transferred automatically to the people of the territory. With the creation of the U.N. following World War II, they increasingly attempted to achieve this goal without the initiative or agreement of Britain. To this end, they made a series of unsuccessful amendments to the United Nations rules governing the assumption of mandates. In one effort, they proposed deleting the requirement of a specific agreement between the mandatory power and the U.N. for a mandate to become a trusteeship. This ran counter to their goal of direct and automatic transfer of political sovereignty to the people. But the intent was to eliminate the requirement of British cooperation and concurrence, which they saw as the major impediment to self-determination. The U.N. would be left in control and, as they saw it, would not stand in the way of self-determination.

The attempt was rebuffed. Mandatory powers retained the right to transfer or not transfer a mandate to a trusteeship.

Other efforts were more direct. The Arabs tried to replace the phrase in Clause 5 with respect to protecting the rights of "peoples" of any territory with "people of any territory", (emphasis mine) so that only the rights of the people in the majority inhabiting the territory would be protected. The rights of the Jews, as provided for in the League Mandate over Palestine, would not fall under U.N. protection according to their amendment.

Article 80 of the United Nations Charter<sup>10</sup> reconfirmed the terms and conditions of mandatory responsibilities for both the mandatory authority and the peoples (my italics) to the agreement.

Except as may be agreed upon in individual trusteeship  
arrangements, made under paragraph 3, 4 and 6, placing

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<sup>8</sup>The U.S.S.R. supported this mode of dealing with mandates and objected to the Anglo-American Committee of Inquiry. The U.S.S.R. contended that Britain's negotiating the fate of Palestine with the U.S.A., outside the jurisdiction of the United Nations, to determine the fate of the territory was illegal. The United Kingdom, of course, could argue that it was not negotiating the fate of the territory, merely getting some advice and support which Britain was quite free to do.

<sup>9</sup>A/C.4/54, p. 35-40.

<sup>10</sup>Article 80 reflected paragraph B5 of the Working Paper of the Charter on Dependent Territories and Arrangements for International Trusteeship, with minor changes of a technical nature.

each territory under the trusteeship system, and until such agreements have been concluded, nothing in this Chapter shall be construed in or of itself to alter in any manner the rights whatsoever of any states or any peoples of the terms of existing international instruments to which member states may respectively be parties.

The final wording represented a compromise between the Arab and mandatory powers positions, the former having pressed for preserving the rights of the inhabitants, the latter for preserving the rights of the mandatory powers.<sup>11</sup> But in preserving both the rights of the Mandatory authority and the rights of the populations of the territory, the latter right referred to peoples and not inhabitants. If the U.N. assumed responsibility for the mandated territory, the specific obligations of the League of Nations for mandate territories were to be retained by the United Nations unless specifically changed by the assumption agreement. Further, it was to be retained for both the peoples of the territory as well as the mandatory interests.

Unlike the constitution of the IRO, to which the Arab states were not required, and did not, adhere,<sup>12</sup> the Arab states as U.N. members were required to adhere to the United Nations Charter. According to the U.N. Charter, if the U.N. assumed authority over Palestine the Arab states would have been obliged as members of the U.N. to comply with U.N. jurisdiction.<sup>13</sup>

Perhaps, because of this obligation, the Arabs later on took an ever stronger line against transferring the Mandate to a Trusteeship of the U.N.. In the interim, the arguments were over the terms of trusteeship. Did the mandatory authority have to initiate action? Did the U.N. have to enter into a contractual agreement with the mandatory authority? Were the people (or peoples) of the territories the rightful and automatic heirs of the mandate? Were the original terms of the mandate still in force? All these debates rested on two assumptions: mandatory authority continued to exist and the U.N. was at least a potential intermediary in the transfer of the mandatory authority.

The Arab line argued that, since the Mandate was an agreement of the League of Nations and the League of Nations had ceased to exist, the Mandate itself was null and void. Therefore, there was no mandate to transfer to the United Nations.

With the dissolution of the League, the principle party of the transaction had ceased to exist, and

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<sup>11</sup>Murray, p. 39.

<sup>12</sup>U.N. Press Release, IRO/17 (cf. Robinson (1947), p. 21.)

<sup>13</sup>There is a difference between an obligation to comply and actual compliance. Membership may oblige all members to follow the directives of a ruling body, but not all members comply with their obligations. Actual compliance varies with the member and the resolution. "The optimal situation, from the point of view of encouraging compliance, is for the decision to be taken by the Security Council, by an impressive majority, on unimpeachable legal grounds, for purposes clearly specified by the Charter, and running counter to no major interests of the addressee." Rosalyn Higgins, "Compliance with United Nations Decisions on Peace and Security and Human Rights Questions" in The Effectiveness of International Decisions, New York, 1971, p. 41.

with it had disappeared the legal basis for the mandate. The fate of Palestine must therefore be settled by the people of Palestine.<sup>14</sup>

Secondly, according to the Arab view, even if there was something to inherit, the United Nations was not the heir.

The United Nations Organization has not inherited the constitutional and political powers and functions of the League of Nations, that it cannot be treated in any way as the successor of the League of Nations in so far as the administration of mandates is concerned, and that such powers as the United Nations may exercise with respect to mandated territories are strictly limited in this regard.<sup>15</sup>

The Arabs were right. The U.N. was not an heir to the Mandate. But the provisions of the Trusteeship Council stated that it could become an heir. The real issue with respect to the latter was not whether the U.N. was the actual heir, but whether the U.N., as the potential heir, could and should actualize that inheritance and under what conditions. It was true that the United Nations was not the automatic heir of the powers and functions of the League of Nations, specifically its power over mandates. However, the United Nations by its Charter was empowered to assume a trusteeship for mandates under certain conditions.

Thus, there were a number of issues at stake. Did the obligations which mandatory authorities entered into under the League of Nations continue to prevail? The British had already reneged on the terms of the Balfour Declaration as encompassed by the Mandate, but Britain had not relinquished its authority under the Mandate. The Arabs questioned not only the terms, but the existence of any legal mandatory authority at all. Further, if the mandatory authority existed, were the people (rather than peoples) of the territory its rightful and automatic heirs and not the U.N.?

The U.N. rulings in the trusteeship debate favoured the Jewish position on the terms of the Mandate. While compromising with the Arabs somewhat on the wording of the terms of transfer of Mandates to the U.N., the decisions reinforced the U.N. potential role. At the same time, the initiative was given to the mandatory power and a contract was required before any mandatory authority was transferred.

### **(C.) THE BRITISH POSITION**

Though Britain was obligated to deal with the Mandate as quickly as possible, there was a question of whether Britain was actually interested in surrendering control. It had seemed, following the creation of the Anglo-American Committee of Inquiry in November of 1945, effectively on Truman's terms, that the United Kingdom was anxious to resolve the problem of Palestine, hopefully in partnership with the United States while retaining effective control. Handing the Mandate over to a U.N. trusteeship council would have transferred ultimate authority, while perhaps retaining the responsibility for administration and military control.

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<sup>14</sup>Institute for Palestine Studies, 1967, op. cit., p. 5.

<sup>15</sup>Institute for Palestine Studies, 1967, op. cit., p. 7.

The situation apparently changed when the Labour government precipitously decided to withdraw British military units from the Suez Canal Zone. To secure bases in Palestine, the U.K. had to retain ultimate authority. At that point, as Churchill noted in a speech on August 1, 1946, the British were:

...forced to look for a strong place of arms, for  
a jumping-off ground in Palestine in order to protect  
the Canal from outside Egypt. By this un-wisdom they  
have vitiated disinterestedness and we can now be  
accused of having a national strategic motive for  
retaining our hold on Palestine.<sup>16</sup>

The United Kingdom was moving in two opposite directions at the same time. On the one hand, it wanted to retain a military presence in Palestine at least as long as the cost of retention of such bases did not become prohibitive (and before more secure alternatives, such as Cyrenaica [the eastern province of Libya] appeared as a superior choice).<sup>17</sup> On the other hand, it wanted to dispose of the obligations of the Mandate. The United Kingdom was fed up with shouldering both the military and economic costs of suppressing the Jewish revolt and the political costs of incurring the wrath of the Arab states. The problem was how and whether to secure its military position in Palestine and still rid itself of the burden of that troubled area.

To try to achieve both goals, the British had two obvious choices. They could move quickly and directly towards independence for Palestine, provided they could ensure a secure military presence in one of the successor states. Thus, Bevin's plan of partition, in which Transjordan would become the successor authority for most of the Arab sector, was not only prescient of the subsequent British strategy, but solved the problem of securing a safe military base in territory controlled by a reliable ally, particularly since Lydda (Lod), with its airport, would be in Arab hands, and Britain would retain control over the Haifa port. Alternatively, the British could propose transferring the Mandate to a trusteeship under the United Nations and negotiate terms whereby Britain would be allowed, indeed, even required, to maintain their military presence. In fact, when Bevin met with Weizmann, Kaplan and

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<sup>16</sup>Parliamentary Debates, Commons, Vol. 426, cols. 1255-6. In fact, the United Kingdom began building a large military camp in the Negev in the spring of 1946 [source].

<sup>17</sup>"This was an alternative that the British military mind contemplated with greatest reluctance. Until the spring of 1946 the Canal Zone and Palestine together were usually regarded as the heart of a vast British military preserve...British military strength would continue to predominate in the eastern Mediterranean, according to one school of thought, as long as Palestine remained under British sway as a fallback position for the Canal Zone." (Wm. Roger Louis (1984), p. 10) "Far from wishing to relinquish Palestine for mere reasons of political discontent, the Chiefs of Staff wished to retain it as a permanent possession." (op. cit., p. 457) As we shall see, this view of the Ministry of Defense was the weight that tipped the balance away from the Colonial Office and the views of Douglas Jones, as well as the High Commissioner Cunningham and the new minister, Creech-Jones, favouring partition, towards the Foreign Office view of Harold Beeley and his Minister E. Bevin. The latter ended up opting for a version of a unitary state. There is some question whether the towering megalomania of Bevin needed any extra weight to offset the slight and retiring figure of Creech-Jones, both as a physical specimen and as a leader.

Fisher in October of 1946, he (either in sincerity and/or as a threat) stated that if no settlement was reached at the London conference, the only alternative for the British was to hand the problem back to the U.N.<sup>18</sup>

They began by proceeding with the first option.

When Truman vetoed the Morrison-Grady plan, Bevin still hoped to salvage it by putting the proposal to both the Zionists and the Arabs at a London conference. The Zionists, sought, in accordance with the Biltmore program to get a British commitment to partition in advance of the conference, (no longer claiming the whole of Palestine) as well as the release of the members of the Jewish agency in detention. Their demands were not accepted. The Zionists did not attend. Most Arabs boycotted the conference because the British refused to receive the Mufti who had allied himself with Hitler during the war. Three Arab states did send delegates. When the conference opened on September 9, 1946, the Provincial Autonomy Plan was rejected by them as well. They reiterated their long held commitment to a Palestinian state with a permanent Arab majority with an absolute halt to both Jewish immigration and land sales to Jews.

When Truman gave his famous Yom Kippur eve speech and stated that the gap between the British and Jewish Agency was bridgeable, everyone interpreted this speech as support for partition. The Zionists, reinforced by Truman's speech, rejected Goldmann's tact and insisted on Bevin's private commitment for partition. The talks were still-born.

Nachman Goldmann, who led the Zionist delegation since there was a warrant out for the arrest of Ben Gurion, went beyond his mandate (or his political support) and assured Bevin the Morrison-Grady plan could be accepted provided the emergence of two separate states was not prohibited as an eventuality.<sup>19</sup>

In February of 1947,<sup>20</sup> Britain submitted a final plan to the Jews and Arabs providing for a five-year British trusteeship in preparation for independence. Ninety-six thousand refugees would be admitted over two years. Under the British plan, there could be substantial local autonomy. The British High Commissioner would protect minorities. After four years, a constituent assembly would be elected. If representatives of both sides in the Assembly agreed, an independent state would be established. Failing agreement, the matter would be referred to the Trusteeship Council for advice.

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<sup>18</sup>FO (Oct. 1, 1946) FO 371/52560/E 10030/4/31 Also Zionist Central Archives Cited in Bullock (1983) p. 304.

<sup>19</sup>cf. Michael J. Cohen, Palestine to Israel: From Mandate to Independence, 1988, p. 222.

<sup>20</sup>On January 14, 1947, after the military had persuaded the Cabinet not to abandon the Mandate because of the need for a military base in Palestine, Bevin put three alternatives before the Cabinet: (i) Partition; (ii) Provincial Autonomy a la Morrison-Grady; (iii) a Unitary State along the lines of the Arab proposal but amended to allow some additional Jewish immigration.

Geech-Jones, the new Colonial Minister, along with the High Commissioner, Cunningham, favoured partition, but, after further negotiations with the Zionists, was persuaded by Bevin to back the Bevin February final offer of a Unitary State under British trusteeship. The February 14, 1947 cabinet meeting, at which the decision was taken to refer the issue to the U.N. without a recommendation and for a recommendation was still opposed by Lord Tedden who warned about consequences that would befall Britain if their strategic and military rights in Palestine were lost. CP(47) 59, Feb. 14, in Cab. 128/9 PRO.

The latest proposal was not a serious one. It was designed to keep Britain on side with the Arabs<sup>21</sup> given the absence of a solution. The plan was clearly in breach of the mandatory terms since it provided no national recognition for the Jews. For the Arabs, the protection granted to minorities was a potential time bomb for them, particularly granting a minority veto rights over independence. Further, the delay and tentativeness of the transfer were totally unacceptable, as was the prospect of 96,000 Jewish entrees over two years. The Arab Higher Committee had by then joined the conference, but that only meant the Arab position had become more intransigent. On the Zionist side, Ben Gurion was back in control; Weizmann had been humiliated at the December Zionist congress and Goldmann was seen as having overstepped his mandate. Intransigence was again the order of the day.

Both the Arabs and the Jews rejected the proposal. The British were left with the second option. Proposing an agreement with the United Nations. This would prove to be no less difficult than dealing with the parties directly.

#### **(D.) REFERRING PALESTINE TO THE U.N.**

The Jews and Arabs had contrary demands. Their conflict would necessarily continue in a fight over the terms of any contract to transfer the Mandatory authority. However, the U.K. had no intention of entering into such a contract. Britain had its own interest in maintaining a military presence in Palestine, to which the U.N. might not be sympathetic. Britain devised a third option. Instead of transferring authority to the U.N. or giving independence directly to Palestine, it asked the U.N. to recommend the terms of a settlement without binding itself to follow the recommendation or transferring the authority over the territory to the U.N. to implement those recommendations.

As Bevin said on February 18, 1947, when he announced that the matter was being referred to the United Nations,

H.M. Government have of themselves no power, under the terms of the Mandate, to award the country either to the Arabs or to the Jews, or even to partition it between them. It is in these circumstances that we have decided that we are unable to accept the scheme put forward either by the Arabs or by the Jews, or to impose ourselves a solution of our own. We have, therefore, reached the conclusion that the only course now open to us is to submit the problem to the judgement of the United Nations ... We shall then ask the United Nations ... to recommend a settlement of the problem. We do not intend ourselves to recommend any

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<sup>21</sup> "The scheme was a last ditch effort to appease the Arabs." (Michael J. Cohen (1988), p. 226) cf. Louis (1984), pp. 451-459. "Atlee and Bevin independently arrived at the same conclusion. They did not want to be held responsible in Arab eyes for a policy of partition." (p. 459) Bullock draws a different conclusion. "Bevin consistently pursued the objective of a settlement with American participation which would be as fair as circumstances allowed to both Jews and Arabs." (1983, p. 306) Circumstances simply didn't allow Bevin to be fair to the Jews or to overturn the impetus of the 1939 White Paper.

particular solution.<sup>22</sup>

In a speech to the House of Commons on February 25, 1947, Arthur Creech-Jones explicitly stated,

We are not going to the United Nations to surrender the Mandate. We are going to the United Nations setting out the problem and asking their advice as to how the Mandate can be administered. If the Mandate cannot be administered in its present form we are asking how it can be amended.<sup>23</sup>

The two choices - the U.N. to recommending a settlement of the problem or recommending how the Mandate could be continued, were not as opposite as they might first appear. As the British cabinet envisaged, reinforced by the detailed analysis of a likely U.N. vote by Harold Beeley of the Foreign Office, the U.N. would have to come to the same conclusions as Britain -- a Jewish independent state in Palestine was not viable. A proposed settlement would have to include the continued authority of Britain and move toward a unitary state solution with Jewish minority rights. As Harold Beeley had explained to the Americans, the intention of the parliamentary debate on February 25th was to bury once and for all any British support for continuing the Mandate based on Zionism. As Wm. Roger Louis put it, "Bevin attempted once and for all to repudiate Zionism as a basis for a Palestinian settlement."<sup>24</sup> Thus, Bevin did not say the only course left open to Britain was to transfer the authority over Palestine to the U.N.. In fact, Britain completely ruled out that possibility without any explanation. The problem was submitted to the U.N. for a recommendation only.

But if Britain did not have the authority to accept either the Arab or Jewish proposals or to impose its own, where would the authority come from to impose a solution recommended by the international community? The U.N. had no means to give that authority to Britain unless the Mandate were first transferred to a Trusteeship.

Britain confessed its authority was inadequate, but insisted on retaining that authority. The United Kingdom only asked the United Nations to recommend a settlement. But without a transfer of authority to the U.N., the terms of the Mandate could not be altered under a Trusteeship. The paradox was fundamental. Britain had not delegated the decision to the United Nations, though it was generally perceived that the United Kingdom had turned the issue over to the United Nations.<sup>25</sup> Did this widespread misinterpretation mislead the U.N. in counting on U.K. cooperation in implementing whatever settlement they recommended?

Quite aside from the contents of any recommendation, it became increasingly clear that Britain was in no position to continue its role at all as long as even one side opposed the solution. Britain was

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<sup>22</sup>Parliamentary Debates, Commons, Vol. 433, cols. 992-3.

<sup>23</sup>Parliamentary Debates, House of Commons, col. 2013.

<sup>24</sup>Louis (1984), p. 462.

<sup>25</sup>This decision was welcomed by the British public and parliament. The measure of acceptance that the Government's decision achieved among all critics can be judged by the fact that objections were raised only against the timing and method of presentation. (Zasloff, op. cit., p. 48.)

going through its worst financial crisis. It was deeply involved in Greece. It was faced with the resolution of the Indian crisis. It no longer had the financial wherewithal without American backing to support the large military contingents required to put down a rebellion from either side. And Zionist terrorism had grown exponentially and proved to be much more costly to the British than the Arab uprising had been. As well, with the internment of the Jewish refugees, particularly the refoulement of the Exodus to Hamburg, Britain had lost the public relations battle for world opinion. Palestine had become a losing cause.

#### **(E.) THE U.N. POSITION**

If the role of the United Nations was dubious, the timing was even worse. The United Nations was handed a problem that had reached a dead end while the United Nations itself was still a novitiate. Further, the Great Powers were not in a cooperative spirit. The world was about to give birth to the Cold War. Cooperation of the Great Powers was required if the United Nations was to fulfill the lofty mission assigned to it. In general terms, this cooperation was totally lacking. The world was entering a period in which the last few bridges spanning the chasm between the West and the U.S.S.R. were about to fall. The putsch in Czechoslovakia and the dissolution of the four-power administration in Germany<sup>26</sup> the following year would eliminate any lingering hopes of Great Power cooperation. Further, Great Britain and the United States were at odds over Palestine, as the fallout from the Anglo-American Committee of Inquiry report indicated.

If the United Nations was poorly poised to take on the problem, the terms of its involvement were totally unclear. Britain had asked the United Nations to recommend a solution -- not to take responsibility for implementing it. But Britain quickly came to the conclusion that it no longer had the power to implement a solution.

The United Nations had not been given the legal authority to deal with Palestine as it could have been if the Mandate had been transferred to the U.N. as a trusteeship. The United Nations lacked any independent power, or the clear authority to use any power, to implement any authority if it had assumed responsibility for the Mandate. And Britain no longer had the power to impose a solution even if one of the parties was opposed.

Would a U.N. recommendation strengthen the hand of Britain in dealing with both the Jews and the Arabs? Even if it did, would Britain utilize its power to impose a U.N. recommended solution, particularly if it disagreed with the solution? What if the U.N. itself recommended that Palestine become a trusteeship? Wouldn't Britain agree, even as a means of saving face and getting out of its responsibilities for the Mandate? But by the spring of 1947, the British goal was clearly minimizing Arab hostility. Securing its bases in Palestine was becoming more questionable given its own precarious state and the increasing Zionist terrorism supported in the American press by such illustrious writers as Ben Hecht. Any transfer to a trusteeship would in itself threaten the security of British bases as Britain would no longer be the ultimate authority.

From the U.N.'s perspective, someone could question whether moral influence could make up for a lack of legal authority or military power.

But whatever the consideration or lack of consideration, it was clear that the only card that the United Nations was left with was its moral influence.

Was the U.N. forced into the position of simply accepting the problem on the terms and

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<sup>26</sup>cf. Council on Foreign Relations, 1947-48, p. 1.

conditions by Britain? Could the U.N. have set certain conditions for accepting the problem or simply assumed the problem under its own terms and conditions?

#### (F.) THE U.N. OPTIONS

It would appear that six theoretical options were open to the United Nations:

(1) the Security Council could have acted under Chapter VII and assumed military responsibility for the Palestine Mandate in the face of the declining British position and a presumed threat to international peace;

(2) the United Nations General Assembly could have assumed interim administrative responsibility for the Palestine Mandate;

(3) the United Nations could have insisted that, if Britain was not able to set the conditions for independence for Palestine, Britain was required to enter into a contract with the U.N. to transfer legal Mandatory Authority to the U.N. Trusteeship Council;

(4) the United Nations could have unilaterally set conditions for debating the issue of Palestine and offering its recommendations to Britain, requiring Britain to retain the responsibility for their implementation;

(5) the United Nations could have negotiated conditions for debating the issue of Palestine and offering its recommendations to Britain;

(6) the United Nations could accept the responsibility for making a recommendation on the disposition of the Mandate on whatever conditions and terms Britain presented.

It is clear that the U.N. adopted the last option. Did it consider the others? Were any of them realistic alternatives?

Some argue that the United Nations was not authorized to command and enforce compliance with any solution it might propose. The first Secretary-General, Trygve Lie, implied as much in reducing the U.N. authority to the sum of the wishes of its members at any one time with no supranational authority whatsoever. "The United Nations is a voluntary association of nations committed to common goals. The United Nations is not a supranational authority."<sup>27</sup>

In this interpretation, the United Nations lacks formal jurisdictional authority over its members. (It also implies the U.N. lacks any independent physical force to impose its will, but we will soon deal with this separate issue.)

When the Assembly or Councils of the United Nations come to a vote and reach "decisions", they have not passed laws binding on the governments in the ordinary legislative sense. They have adopted "recommendations". ... they have great moral weight, but no government is compelled to follow that course.<sup>28</sup>

But, as stated earlier, there is a difference between the legal authority to require compliance and the ability to exact such compliance. Clearly, the U.N. was very limited in the latter. How and on what issues it issued its directives would significantly determine the degree to which it could expect

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<sup>27</sup>Lie, op. cit., p. 422.

<sup>28</sup>Lie, op. cit., p. 422.

compliance. Certainly, the U.N. had the legal authority to create, direct or regulate subordinate organs.

This is a supranational authority. It is also true that resolutions by the Assembly addressed to member states concerning substantive matters would only have recommendatory force.<sup>29</sup> An Assembly resolution could not bind Britain. But if Palestine had become a trusteeship, the Trusteeship Council as a subordinate body would be bound by an Assembly resolution although, as stated, a number of factors would influence whether sovereign states actually complied, though there would be a legal obligation to comply. States would, of course, justify non-compliance by asserting that the recommendation infringed on a substantive issue effecting their sovereign rights.

There is one exception, however. If the "Security Council orders action against armed aggression, or against threats to or breaches of the peace". This was applicable to both member states and non-member belligerents. That exception was exercised once in the first decade of the United Nations, when the Security Council ordered the belligerents in Palestine to cease fire.<sup>30</sup> In such circumstances, if the Security Council, not the General Assembly, chose to act, it had the legal authority. The U.N. Charter provided that the Security Council could oblige its members to act to preserve the peace.

But, as one commentator wrote decades later, under Chapter VII of the Charter, the Security Council is empowered, for the purpose of maintaining or restoring international peace and security, to enact general rules of conduct obligatory for all members. This power to legislate for members of the U.N. has not as yet been resorted to and is for the present of only theoretical interest.<sup>31</sup>

The point is, in 1947, the legal authority of the U.N. Security Council to obligate its member states and impose its will under certain special conditions was not just theoretical.

The General Legal Division of the Legal Department prepared ... a paper on the rights of the Security Council relative to the Palestine dispute ... the Council recognized the principle that it has sufficient power, under the terms of Article 24 of the Charter, to assume new responsibilities, on condition that they related directly or even indirectly to the maintenance of international peace and security, and that in discharging these duties, the Security Council acts in accordance with the purposes and principles of the United

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<sup>29</sup>cf. Edward Yemin, Legislative Power in the United Nations and Specialized Assemblies, Leyden (1969), p. 15.

<sup>30</sup>Lie, op. cit., p. 422. In Korea, the United Nations only recommended that member governments assist the Republic of Korea to resist aggression. The United Nations itself did not undertake the action in Korea.

<sup>31</sup>Yemin, p. 23.

Nations.<sup>32</sup>

This did not mean the Council was authorized to implement partition; it could only act to maintain international peace and security.

But the theoretical possibility quickly became a practical impossibility given the emergence of the Cold War.

Tension between East and West has effectively wrecked the United Nations as a collective security system. In all but exceptional circumstances the sanctioning provisions of Chapter VII of the Charter are therefore a dead letter.<sup>33</sup>

In 1947, however, the Cold War had not yet been launched. The Security Council was authorized to act. But it did not. In 1947, the evidence for threat to a breach of the peace of an international order were weak. Further, Great Britain was a permanent member of the Security Council and could have vetoed such intervention. In 1948, when five Arab armies invaded Palestine and a full scale war between Israel and the surrounding states had broken out, the evidence was clear, but the Cold War quickly made such interventions moot. The United States did not want the Soviet Union involved in the Middle East. The U.S.S.R. would have become involved if the problem of Palestine itself -- not just a cease fire -- had been assumed by the Security Council.

Even if it was politically impossible for the Security Council to assume responsibility for Palestine, even if the grounds for the assumption of such responsibility were questionable at the time, there was the further question of what action the U.N. Security Council could have taken had it assumed authority.

At the behest of Trygve Lie, United Nations legal experts determined that the Security Council had the legal authority to partition Palestine by force. Further, the Palestine Commission sent to take over the Mandate from Britain would be the legally constituted government when the Mandate was terminated.<sup>34</sup>

The Soviet Union knew that it was hopeless to insist that the Security Council take up the issue of Palestine. But, the U.S.S.R. took the position, supported by a number of other delegates, that the United Kingdom, by referring the problem to the United Nations, in effect gave the United Nations General Assembly the legal authority to deal with the problem.

Having decided to consider the Palestine problem,

the United Nations Organization has thereby assumed responsibility for the future fate of this country...

It has assumed responsibility for any decision which will be taken on the Palestine problem.<sup>35</sup>

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<sup>32</sup>Schwebel, p. 96-7. This statement was, of course, written prior to 1990 and the Iraq crisis.

<sup>33</sup>Merrills, p. 159. The sanctionary provisions of Chapter VII arose as a Phoenix out of the ashes of the Cold War in 1990.

<sup>34</sup>FRUS 1948, p. 701.

<sup>35</sup>Robinson, p. 54.

The Soviet delegate argued that,

The doubts [about the General Assembly's powers in solving the Palestine problem] expressed by certain states were based not on legal, but on political grounds.<sup>36</sup>

Whether the Security Council chose to exercise its legal authority, whether the General Assembly had any legal authority, did the U.N. have the power to maintain law and order within a territorial jurisdiction? Some members of the United Nations debating this critical question argued that the U.N. lacked this power. The subcommittee report on alternatives to partition, for example, would argue,

There is no provision in the Charter which could enable the United Nations Organization itself, or some of its Members, to assume power to maintain law and order within Palestine. There is therefore no legal basis for the proposal of some representatives that a voluntary constabulary or police force should be established for the avowed object of maintaining peace and order within Palestine during the transitional period pending the formal establishment of the Arab and Jewish States.<sup>37</sup>

But the U.S., when it did reverse its stand on partition to support trusteeship, talked about a police force (to use against the Jews) presumably on the ground that legal authority for any territory necessarily entailed the power to enforce that authority and ensure the peace and security of the inhabitants.

If the United Nations had assumed the mantle of the Mandate, and possibly even had the power, and might have used that power to preserve law and order within the territory, did the United Nations have the authority to partition the territory? Here again the authors of the report on alternatives to partition would argue,

The United Nations Organization has no power to create a new State. Such a decision can be taken only by the free will of the people in the territories in question. That condition is not fulfilled in the case of the majority proposal, as it involves the establishment of a Jewish State in complete disregard of the wishes and interests of the Arabs of Palestine.<sup>38</sup>

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<sup>36</sup>Ad Hoc, p. 184.

<sup>37</sup>Institute for Palestine Studies, 1967, op. cit., p. 14.

<sup>38</sup>Institute of Palestine Studies, 1967, op. cit., p. 11.

That is, the United Nations authority to partition a mandated territory, even if the Mandate had been legally transferred to the United Nations, was in question, since that decision went against the will of the majority of the population of the territory.

The United Nations lacked the force or an unambiguous authorization to use force within a territory. The United Nations lacked any clear authority to implement a solution if one of the parties to the dispute disagreed. Further, the United Nations was ill-equipped in any case to assume the responsibilities for even administering the territory. It lacked the political coherence and the administrative expertise to assume governmental functions. The fiasco of the Palestine Commission made this clear when an advanced guard was sent to Jerusalem.

The presence in Palestine of the Commission as it was actually composed, with the peculiar characteristics of its members, its internal quarrels and its arbitrary and unjustifiable hostility towards anything that could be considered of British origin or initiative, would have been really catastrophic for the prestige and moral authority of the United Nations in the Middle East.<sup>39</sup>

The legal jurisdiction of the United Nations over the Palestine Mandate was itself questionable, since the United Kingdom had not transferred that authority by an agreement when it had referred the problem to the United Nations, but had only asked the United Nations to recommend a solution.

#### **(G.) U.N. STRATEGY**

Why didn't the U.N. insist that Britain enter into an agreement to transfer legal authority? Perhaps the U.N. understood its limitations. From reading the records, it does not seem to have occurred to anyone to take this tack. After all, Great Britain might then withdraw the request for the U.N. to make a recommendation even if the U.N. rejected taking on the responsibility for the problem without the authority to implement a solution. Though the U.N. might be on high legal grounds in insisting on a legal transfer, it might be accused of neglecting its responsibilities. Further, it was quite clear that the U.N. wanted to get involved on the issue on whatever basis without carefully considering the consequences of its mode of involvement or the terms and conditions under which it was asked to help. The problem was that Trygve Lie had already initiated U.N. action even prior to the March 1947 informal request of Britain to place the Palestine problem on the action agenda of the General Assembly, subsequently confirmed by a formal request on April 2.

I was sensitive to the urgency of the matter, and, in fact, had already asked Ralph J. Bunche as Director of the Department of Trusteeship and Information for Non-Self-Governing Territories to keep me informed.<sup>40</sup>

In fact, Lie thought the matter was so urgent that he initially opposed the British proposal to convene a special advanced session to organize the preparatory work. He wanted the Big Five in the Security Council, along with the other Members, to constitute a special preparatory committee, but he

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<sup>39</sup>de Azcarate, p. 9.

<sup>40</sup>In the Course of Peace, p. 160.

was not supported by the Five Permanent Members in this motion. Lie thought that, "Time enough would be lost by this procedure."<sup>41</sup> He cabled the members to approve a special session which began on April 28th.

The justification for urgency and lack of careful thought on the terms and conditions of assessing the issue was a product of confusion over what Britain was asking the U.N. to do<sup>42</sup> and the situation of both terrorism in Palestine and the plight of the refugees striving to enter. The terrorist campaign against the British was quickly becoming a war of national liberation even while the Jewish Agency continued to give lip service to condemning terrorist actions. British civilians and dependents were ordered to be evacuated at the end of January. In response to terrorist threats to 'give an eye for an eye', British personnel were confined behind armed encampments. The Barclay's Bank in Haifa was bombed, killing two and injuring another four. The next day, on March 1st, the British officers' club in Jerusalem was bombed destroying one wing and killing a dozen officers. The Shell Oil storage tanks in Haifa were sabotaged, destroying ten of them. Four British soldiers were kidnapped and flogged in response to a flogging sentence on an Irgun member. Civilians were kidnapped. The Cairo-Haifa train was mined with five soldiers dead and twenty-three others wounded.

Once Britain asked the U.N. to make a recommendation, it would not have been untoward for the U.N. to unilaterally state its understanding about the conditions for making a recommendation or asking the U.K. to enter into negotiations about its conditions for considering the problem and offering its advice. Palestine was the major test of the moral authority of the United Nations in its early years. The critical factor, when the United Kingdom referred the problem to the United Nations, was moral authority. Even if the United Nations was not given full legal authority over the Mandate, the United Nations could possibly have acted to garner a degree of formal authority by agreeing to use its moral authority only if certain conditions with respect to the U.N. role were clarified.

For example, the status of its recommendations could have been raised to a quasi legal authority if Britain had agreed, in advance, to support whatever recommendations were made or, at the very least, to co-operate in their implementation. Even these would have been rather weak conditions. The U.N. could have required Britain to attempt to implement, by force if need be, whatever recommendations were made. The question of whether the United Nations could have negotiated advance compliance to some degree from the British, let alone active implementation, and whether the British would have agreed are moot since no attempt was made along these lines by the United Nations. The United Nations simply assumed a moral responsibility without any clear legal authority or terms of reference or conditions.<sup>43</sup>

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<sup>41</sup>Lie, (1954), p. 161.

<sup>42</sup>Even excellent historians such as David Bercuson (Canada and the Birth of Israel, Toronto, 1985) perpetuate this confusion and state that, "The British were anxious to get recommendations out of the U.N. as quickly as possible...interpreting Bevin's Commons speech in February as promising the matter would be settled in September of 1947.

<sup>43</sup>Philip C. Jessup, in his book The Birth of Nations, is slightly misleading when he states "Britain gave up the effort to solve the Palestinian problem and threw it into the lap of the United Nations." (p. 259) The implication is that the United Nations now had the responsibility when in fact it had the problem, but no authority to deal with it.

## (H.) EXPLAINING U.N. PASSIVITY

Why didn't the U.N. set some conditions -- any conditions -- for taking up the issue? Clearly it was within the powers of the Secretary-General to initiate discussions along such lines, for the Charter gave great scope to the political initiatives available to the U.N. chief officer. Leadership, initiative, creativity were all possible in an office that was not merely administrative. This does not mean the Secretary-General could rule over governments but that (s)he was charged under Article 97 with heavy political responsibilities and vested, at least at the beginning, with setting the agenda for the most important security body in the world.

The most influential of the Powers sponsoring the creation of the United Nations had agreed that a permanent officer of the position international security organization should be endowed with specific political prerogatives.<sup>44</sup>

The Charter had made provision for leadership by an international statesman, who would be both the chief political officer as well as the senior administrator. The Secretary-General was not, however, to deal with domestic issues within the jurisdiction of states, though a proposal to give the Secretary-General such powers was only defeated by three votes at Dumbarton Oaks.

The Secretary-General had the power to set agendas, report on matters, initiate enquiries and investigations, influence the means of implementation and possibly draft declarations, proposals and even resolutions. The Secretary-General could certainly use his public office to publicize issues and set rules of procedure, particularly in areas involving political discretion.

Clearly, Trygve Lie had the legal authority to initiate discussions with Great Britain on how the U.N. would handle the reference of the issue of Palestine to the General Assembly. He also had the political authority. Though not the first choice of any state, he was the second choice of the U.S., behind Lester Pearson and the third choice on the list of the U.S.S.R. When finally nominated by the Security Council, the General Assembly appointed him to office in an overwhelming 46 to 3 vote in February of 1946. The reference of the issue of Palestine by the U.K. was his first major task.

That, in part, explains why no initiative was taken to set conditions or even clarify the terms of reference of the issue of Palestine to the U.N. General Assembly. Not only was the U.N. inexperienced on such issues, but the Secretary-General had just begun his term of office. Lie might have done more, as indicated in the greater assertiveness of his annual reports as time went on; which initially they simply dwelled on worried assessments. Only later did they develop into instruments of critical analysis and positive innovation.<sup>45</sup>

Other factors influenced the stance the U.N. adopted. In addition to the inexperience in such a high profile office of the former Minister of Justice, Minister of Trade and Foreign Minister of Norway, Trygve Lie brought to the position his own background and personality. Competent and politically astute, Lie had spent thirteen of his early professional years as a legal adviser to the Norwegian Trade Union Federation on conciliation and mediation. It would henceforth influence his and the world's appraisal of the Palestine issue. At the time, however, it merely meant, given his own freshness in office and the lack of contenders with the British initiative, that he had little to mediate. But he immediately

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<sup>44</sup> Stephen M. Schweke, The Secretary-General of the United Nations: His Political Powers and Practices (Cambridge, U.S.A., 1952) p. 17.

<sup>45</sup> cf. Schwebert, ibid., p. 64.

perceived that the issue should not go to the General Assembly in the autumn without undertaking an independent investigation and analysis of the issue. This focus perhaps led Lie to overlook the political context and terms of reference of referring the issue to the General Assembly.

Inexperience and a background disposition directed towards information and analysis were compounded by the sense of urgency about the issue. Britain's reference of the issue to the U.N. General Assembly was seen as an important opportunity which wasn't to be delayed by legal wrangling or diplomatic discussions and clarifications. It is not accidental that Trygve Lie entitled the chapter in his autobiography dealing with the issue as, "The Palestine Challenge".

Ralph Bunche clearly shared this view. In a memorandum to both Dr. Victor Hoo, Assistant Secretary-General for Trusteeship Affairs, and to Arkady Sobolev, Assistant Secretary-General for the Security Council Office, dated February 26, 1947 and sent the following day, Bunch noted in the opening paragraph that the reference of the Palestine issue to the General Assembly, "affords the Secretariat an unparalleled opportunity to take useful and constructive initiative".<sup>46</sup>

Another factor was the widespread confusion over Britain's reference of the issue to the U.N., a widespread misunderstanding that continues to this day even among professional historians. "In March 1947 Britain announced her decision to surrender the Palestine Mandate to the United Nations."<sup>47</sup>

There were two other extenuating factors that quickly revealed themselves, propelling the issue before the U.N. without further hesitation. The Arabs, for one, wanted to use the reference of the issue to the U.N. to greatly broaden the terms of debate. On April 28, 1947 when the First Special Session of the General Assembly opened at Lake Success, the Arab states immediately proposed inclusion of an additional item to the agenda -- "the termination of the Mandate and the declaration of its independence".<sup>48</sup> The proposal was defeated. The Arab attempt, in effect, to derail U.N. consideration had itself been derailed. But any attempt to broaden or strengthen the U.N. involvement would produce further delays. The debates over representation by non-states, the Jewish Agency and the Arab Higher Committee, had itself required lengthy debates dealing not only with the parties themselves but with precedents for other non government organizations.

Finally, and most importantly, there was the attitude of Britain itself. The British position was perhaps the most crucial factor. It became clear over the next twelve months. Britain not only refused to enter into a transfer agreement, Britain not only did not propose or consider any conditions for the U.N. taking on the responsibility for making a recommendation, the U.K. refused to commit itself to cooperate with the United Nations. "Britain insisted on 'undivided' authority until the Mandate ended,"<sup>49</sup> and would not and did not grant any degree of authority whatsoever to the U.N. over the Palestine Mandate.

Aside from the bad timing, of taking on the responsibility of making a recommendation on the problem, the lack of power or administrative know-how or legal authority to take over the Mandate and

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<sup>46</sup>U.N. Archives

<sup>47</sup>Jacob Abadi, Britain's Withdrawal from the Middle East, 1947-1971: The Economic and Strategic Impetus, Princeton, N.J., 1982, p. 22.

<sup>48</sup>A/287-291, cf. Zasloff (1952), p. 50.

<sup>49</sup>Whether the motive for this was legal or, as Zasloff contends, political (given the desire of Britain to avoid further offending the Arabs --p. 93), is a separate issue. (cf. Zasloff, op. cit., p. 90.)

the questionable legal authority to do so, let alone to do so by implementing a solution unpopular with at least one or the other side, aside from the lack of clear terms of reference and/or the agreement of Britain to cooperate and the explicit refusal to guarantee such cooperation, it is questionable whether the United Nations was equipped ever to facilitate a peaceful transfer of power using its moral authority.

One could question, whether the United Nations is properly capable in the peaceful change field of what is loosely called "international legislation", meaning recommendatory action that is interpreted to represent the insistent will of the community which should, if necessary, be enforced as though it were legally binding.<sup>50</sup>

In other words, not only did the U.N. lack any military force or any clear legal authority or degree of such authority, even its moral authority was questionable when addressed to such an intractable problem.

In Indonesia, the United Nations was able to facilitate peaceful change because the essential basis of self-rule had already been agreed upon by the parties.<sup>51</sup> Given the limitations on its powers and authority, in practical terms the U.N. is only effective when the member states agree among themselves sufficiently to accept a U.N. imprimatur. Perhaps the problem was not in the U.N., but in the state of the world, in the unwillingness of its members to delegate authority to the U.N. and in the difficulty of the particular problem? The United Nations was equipped to legitimize political arrangements arrived at by agreement or by force of arms. As Bloomfield so aptly puts it, "Legislating in the United Nations is not the cause of political acceptability, but rather its consequence."<sup>52</sup>

As Bloomfield continues, In the Palestine case, the practical justification for United Nations actions was the organization actually had little real choice in the matter. The British were going to liquidate their increasingly sanguinary commitment and, as in the case of Greece the same year, someone had to pick up the pieces. If no responsibility had been assumed by the United Nations for a solution, it still would have had to take responsibility under Chapter VI and possibly Chapter VII.<sup>53</sup>

But there is a different view. The U.N. is not simply less than the sum of its members. It is more. It can maneuver on the margins. It can lay down conditions for assuming responsibilities. It

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<sup>50</sup>Bloomfield, p. 125.

<sup>51</sup>"Of course a solution was possible here only because the issue of ultimate sovereignty had already been settled and Indonesia was already prepared to wait." (Merrills, p. 155.)

<sup>52</sup>Bloomfield, p. 125.

<sup>53</sup>Bloomfield, p. 125.

neither has to be seen as nor assume to be simply the passive repository of the world's problems. Even if the U.N. was not given legal authority, it could have set conditions for undertaking the use of its moral authority. Great Britain was in no great shape to bargain with the U.N. over such conditions.

This is an issue about a set of objective conditions for the moral authority of the U.N. to be effective. Clearly the degree of animosity or cooperation of the contending parties was critical. But, perhaps just as critical as the stands of the Arabs and the Jews would be the cooperation offered by Britain to the U.N. recommendation. The U.N. had the moral authority to influence that outcome. To the degree Britain agreed in advance to cooperate, to that degree would that influence be enhanced. Further, to the degree members of the United Nations were concerned with that recommendation, individual member states would apply pressure to affect a specific outcome.

Such a meshing of international authority and national capability can in practice involve the exertion of pressure, and such pressure may reach maximum effectiveness because of the power of the nation-states involved, coupled with the legitimizing framework of U.N. symbols.<sup>54</sup>

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<sup>54</sup>Forsythe, p. 8.

None of these options were used in the crisis over Palestine. When the U.N. agreed to take on the problem without any legal status whatever negotiated in advance, without any agreement of either the Mandatory authority or the belligerents to cooperate, in fact, with the Mandatory authority setting the limitation on the U.N. role. The members were not even committed privately to support a recommendation of the Special Committee and to back that recommendation with all their own influence let alone power. Was there much hope that the U.N.'s recommendation could have any effect?

Further, the United Nations took on the problem of Palestine without the force, administrative apparatus or clear authority to deal with the issue and at the last minute at the least opportune time and under the worst terms and conditions. Why did the U.N. take on the problem on such unpropitious circumstances?

U Thant would later reflect that this situation was not the exception, but the rule. Great problems usually come to the United Nations because governments have been unable to think of anything else to do about them. The United Nations is a last-ditch, last-resort affair, and it is not surprising that the Organization should often be blamed for failing to solve problems that have already been found to be insoluble by governments.<sup>55</sup>

U Thant went further. Not only did he explain why the U.N. inherits problems in such circumstances, but he blamed the ineffectiveness of the U.N. in such situations totally on the members.

It is not generally realized that the failure of the United Nations is the failure of the international community, and the failure to enforce an action is due to the refusal of the party or parties concerned to comply with the Organization's decisions.<sup>56</sup>

There are two very different interpretations of the position in which the United Nations found itself with respect to Palestine. In one interpretation, the United Nations, when faced with an intractable problem, is forced to assume responsibility for dealing with it and can depend only on the degree its members are willing to make its moral authority effective.

But there is a very different interpretation. It is true that the U.N. Security Council had legal and military authority, but was politically incapable of using it. But the U.N. General Assembly had at least potential and possibly actual legal authority in the General Assembly to assume responsibility for the Mandate, but never attempted to insist on that legal authority or negotiate arrangements to have that legal authority transferred to the Trusteeship Council. Nor did the U.N. attempt even to plan for an administrative and police apparatus to implement the responsibility.

The U.N. presumed to base its efforts only on its moral authority, but even here it weakened the influence of that authority in advance. Though it could not hope to get the concurrence of the belligerents to its recommendations, given the respective positions of the Arabs and Jews, it could have negotiated with or at least asked the United Kingdom to agree in advance to cooperate with whatever

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<sup>55</sup>Merrills, *op. cit.*, p. 161-2.

<sup>56</sup>Merrills, *op. cit.*, p. 161-2.

recommendations it decided upon. On failing this, the members could have been asked, in advance, to support the recommendations agreed upon. At the very least, the U.N. Secretary General could have maneuvered and lobbied to make sure that conditions were set up in advance to ensure that the recommendations of the General Assembly would be effective.

None of these options were taken. The U.N. agreed to use its moral authority on the weakest possible grounds with the least degree of commitment and without any administrative preparation to make that influence effective and at the worst possible time and in the worst circumstances -- two intractable foes and an authority in place which would prove itself to be most uncooperative.