

Invalidity of the partition resolution

(Excerpts from Henry Cattán, *The Palestine Question*, pp. 37-40)

The partition resolution is vitiated by several gross irregularities which are summarized below.

(1) Incompetence of the General Assembly of the UN to partition Palestine. The UN possessed no sovereignty over Palestine, nor the power to deprive the people of Palestine of their right of independence in the whole of their homeland or to impair their national rights. Hence, the UN resolution for the partition of Palestine possesses no value, in law or in fact, as acknowledged by a number of leading jurists. P.B. Potter has observed that:

The United Nations has no right to dictate a solution in Palestine unless a basis for such authority can be worked out such as has not been done this far.

Such a basis might be found by holding that sovereignty over Palestine, relinquished by Turkey in the Treaty of Lausanne, passed to the League of Nations, and has been inherited by the United Nations, a proposition which involves two hazardous steps. Or it might be held that the Mandate is still in force and that supervision thereof has passed to the United Nations, which is much more realistic but still somewhat hazardous juridically. The Arabs deny the binding force of the Mandate, now or ever, as they deny the validity of the Balfour Declaration on which it was based, and again they are probably quite correct juridically.¹

Professor Quincy Wright recently expressed the view that 'The legality of the General Assembly's recommendation for partition of Palestine was doubtful'.²

The same view was expressed by Professor I. Brownlie:

It is doubtful if the United Nations 'has a capacity to convey title', inter alia because the Organization cannot assume the rôle of territorial sovereign . . . Thus the resolution of 1947 containing a Partition plan for Palestine was probably ultra vires [outside the competence of the United Nations], and, if it was not, was not binding on member states in any case.³

It follows, therefore, that the partition resolution was not legally effective or binding on the Palestinian people.

(2) Denial of justice in the rejection by the General Assembly of several requests to refer the questions of the incompetence of the General Assembly and of the illegality of the Balfour Declaration and of the mandate for an advisory opinion of the International Court of Justice. P.B. Potter has observed that the rejection of the Arab requests to refer the question of UN jurisdiction over the Palestine situation to the International Court of Justice 'tends to confirm the avoidance of international law' in this regard." Such avoidance of international law constituted a denial of justice which deprived the partition resolution of any juridical value.

(3) Violation of Article 22 of the Covenant of the League of Nations which provisionally recognized the independence of the people of Palestine and envisaged a temporary mandate over Palestine with a view to leading its inhabitants to full independence.

(4) Violation of the Charter of the UN and the principle of self determination of the people of Palestine.

¹ Pitman B. Potter, 'The Palestine Problem Before the United Nations', *American Journal of International Law*, vol. 42, 1948, p. 860

² Quincy Wright, *Principles of International Law* (Clarendon Press, Oxford, 1966), pp. 161-2

³ Pitman B. Potter, *The Palestine Problem, op cit*, pl. 860

(5) Violation of the most elementary democratic principles by the flagrant disregard of the will of the majority of the original inhabitants who opposed partition of their homeland.

(6) Undue influence exercised by the American administration, and personally by the President of the USA, to secure a General Assembly vote in favour of partition.

(7) Iniquity of the plan of partition. The iniquity of the plan of partition adopted by the General Assembly is glaring.

On the one hand, more than half a million Palestinians would be subjected to Jewish rule in the Jewish State by immigrants brought into the country against the will of its original inhabitants. As delineated by the plan of partition, the population of the proposed Jewish State would consist of 509,780 Moslems and Christians and 499,020 Jews.⁴ On the other hand, in accordance with the Palestine Government's Village Statistics the Jews owned at the end of the mandate 1,491,699 dunoms of land (the dunom being equal to one thousand square metres) out of a total of 26,323,023 dunoms representing the area of Palestine. Thus, Jewish land ownership amounted to 5.66 per cent of the total area of Palestine. This was acknowledged by David Ben Gurion, then Chairman of the Jewish Agency, and later the first Prime Minister of Israel, in his testimony before UNSCOP in 1947. He then said: 'The Arabs own 94 per cent of the land, the Jews only 6%.⁵

And yet, despite the insignificant area owned by the Jews in Palestine in 1947, the partition plan attributed to the Jews - who constituted less than one-third of the population, who were largely foreigners and who owned less than 6 per cent of the land - an area almost ten times greater than what they owned, i.e., 57 per cent of Palestine while it left 43 per cent of their homeland to the Palestinians. This was not a partition, but a spoliation.

The Arab States proclaimed their opposition to the partition resolution which they considered to be a violation of the Charter and totally lacking in legal validity.⁶ The Palestinians also rejected the partition of their homeland, but the Jews accepted it 'with reluctance'. The Palestinians and the Arabs generally have been criticized for their rejection of partition as being intransigent, uncompromising and mistaken in their attitude, while the Jews were praised for their conciliatory attitude, in their acceptance, albeit 'reluctant', of partition. This criticism has been convincingly answered by a neutral observer, J. Bowyer Bell, in these terms:

In retrospect it is all too easy to point out the Arab blunders, their missed opportunities, their intransigence. It is only just, however, to note that it is easy to urge compromise of another's principle, to urge someone else to give up half a loaf of his own bread. Surely, the Arab argument had much justice ... Whittled down to basics, the Zionist position was that, given the Palestine dilemma, they would settle for half whereas the Arabs unfairly continued to demand all. It was ingenious, it was evil, and it threw the entire Arab argument into the wrong frame of reference. More devastating still, it proved effective.⁷

⁴ Appendix I to Report of Sub-Committee 2 to the Ad Hoc Commission on the Palestine Question, Official Records of the 2nd Session of the General Assembly, Doc. A/AC 14/32, p. 304

⁵ Jorge Garcia Granados, *The Birth of Israel* (Knopf, New York, 1949), p. 130

⁶ UN Doc. A/PV 128, 29 November 1947, pp. 91-101

⁷ J. Bowyer Bell, *The Long War: Israel and the Arabs since 1946* (Prentice-Hall, Englewood Cliffs, N.J., 1969), p. 67