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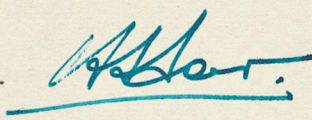
- Possible bases for U. N. Administration in Gaza
- General principles for UNEF during takeover period
- Possible transfer of Israeli currency from Gaza to Jerusalem.

UNITED NATIONS  NATIONS UNIES

INTEROFFICE MEMORANDUM

TO: The Secretary-General

Date: 5 March 1957

FROM: The Legal Counsel 

FILE NO.: CONFIDENTIAL

SENDER'S TELEPHONE EXTENSION: \_\_\_\_\_

SUBJECT: Possible bases for a United Nations Administration in Gaza

1. In exploring the possible bases for any United Nations administration in the Gaza Strip, extending beyond a reasonable period of transition, there are three possible sources which may be examined.

(A) The Consent of Egypt

2. The Secretary-General in his Report of 24 January 1957 (A/3512) stated:

"Although the armistice line thus does not create any new rights for the parties on either side, it resulted in a de facto situation by leaving the 'control' (see article VII) of the territory in the hands of the Government, the military forces of which were there in accordance with the stipulations of the Armistice. Control in this case obviously must be considered as including administration and security."

3. Egypt having the right of administration could agree to ask the United Nations to exercise all or part of its administrative functions in the area. Thus the consent of Egypt could give an adequate basis for United Nations administration in the Gaza Strip. Such delegation by Egypt of certain powers of administration to the United Nations (or to UNEF) should not be looked upon as in anyway impairing the ultimate right of Egypt to the control of the area under the Armistice Agreement.

(B) Delegation from Israel

4. The difficulty of finding a basis for a United Nations administration will arise if Egypt does not give its consent. A possible theory for examination would be that Israel which is in present military occupation might delegate its functions as an occupying power to the United Nations. In the statement of the Minister of Foreign Affairs of Israel to the General Assembly on 1 March 1957 (A/PV.666), the announcement that Israel was making a complete withdrawal from the Gaza Strip, was made on the assumption that "the take-over of Gaza from the military and civilian control of Israel will be exclusively by the United Nations Emergency Force".

... / ...

5. However, Israel can give no better title than she has. In the present case, the General Assembly has repeatedly called upon Israel to withdraw behind the armistice demarcation line. It has been generally recognized that this withdrawal should be unconditional. It would therefore seem impossible for the United Nations, consistent with the position taken in the Resolutions of the General Assembly, to base an administration on rights derived from Israel. Moreover, it is a recognized principle of international law that "Occupation comes to an end when an occupant withdraws from a territory or is driven out of it." (Oppenheim, International Law, Vol. II - Lauterpacht's 7th edition - 1952 - section 168, page 436.) Egypt's right of control, on the other hand, is in a different position since it does not rest merely on occupation but on an Armistice Agreement.

(C) Interest of the United Nations

6. It must also be considered whether the United Nations has itself a legal interest in the area upon which an administration may be based.

7. It will be recalled that the Gaza Strip was a part of the British Mandated Territory of Palestine. The International Court of Justice in its first advisory opinion on South West Africa (ICJ Reports 1950, pages 94-95) held that the United Nations had succeeded to the rights of the League of Nations with respect to mandated territories and that the competence to determine and modify the international status of mandated territory rested with the mandatory power acting with the consent of the United Nations.

8. The United Nations agreed to the termination of the Palestine Mandate as part of the Partition Plan of 29 November 1947 (General Assembly Resolution 181 (II)). Under this plan the Gaza Strip, with some surrounding territory, would have been part of the Arab State to be established in Palestine. The Arab State, in fact, never came into existence and at the conclusion of the Armistice Agreement between Egypt and Israel on 24 February 1949, the Gaza Strip was under the control of Egypt. The Armistice Agreement, according to article XII, remains in force until a peaceful settlement between the parties is achieved. Egypt, it is understood, has not claimed the Gaza Strip as part of Egypt but has administered it for the "Arab State of Palestine". The United Nations as the successor to the League of Nations with respect to mandated territories has an interest in the final disposition of the Gaza Strip.

9. However, this interest is not a sufficient basis for establishing a United Nations administration of the area without the consent of Egypt which has the right to control under the Armistice Agreement, an Agreement which itself provides the method for change (article XII). The theory that the United Nations because of its interest in the area as the successor of the League of Nations might internationalize the area, if valid, would seem equally applicable to other areas of Palestine such as Western Galilee or the Jordanian West Bank which were also to be part of the Arab State in Palestine.

10. In addition to this theoretical legal interest, the United Nations has other very tangible interests in the area. One of these is its present

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responsibility for the welfare and subsistence of the 200,000 refugees in the area—over two-thirds of the present inhabitants. It also has an interest in securing strict compliance with the Armistice Agreements including the prevention of raids across the armistice demarcation line by either party. Moreover, under the Charter, the United Nations has a general interest in maintaining international peace and security, and this general interest makes the Gaza Strip of particular concern. The Representative of the United States at the 666th Meeting of the General Assembly on 1 March 1957 emphasized the necessity "to bring about the conditions of security and tranquility which may . . . make a peace settlement practicable". But again none of these interests are such as to furnish a legal basis for a United Nations administration of the area.

(D) Theory of transition

11. The foregoing discussion has been directed toward finding a basis for a more or less permanent United Nations administration covering all or a part of the functions of government in the area. Since the transfer of administration from Israel must in the first instance be to the United Nations there will be a necessary period of transition in which the United Nations will exercise some administrative functions. Such a transitional period is not necessarily of any defined length of time, but theoretically could be for only a few moments or for many days.

12. It may be considered whether it could furnish the basis for a United Nations administration for an indefinite period pending "satisfactory" arrangements with Egypt concerning the future administration of the area. The discussions of arrangements to be made in the Gaza Strip might be coupled with arrangements to strengthen and render effective the armistice along the entire front, i.e., El Auja, defensive areas or a buffer zone along the Armistice Demarcation Line. So long as Egypt is willing to negotiate and so long as the negotiations are genuinely directed toward the securing of legitimate United Nations objectives it would seem that the transitional administration could continue.

13. However, since the right to control of the area rests with Egypt, it would not seem possible from a legal point of view to extend the transitional administration in the face of a firm request from Egypt for the handover of the Administration. To use this theory of transition as a device for procrastination and indefinite extension of United Nations administration might involve the United Nations in a very difficult situation in which its legal and moral position would not be unassailable.

Conclusion

14. It therefore seems necessary to conclude that whatever United Nations administration may be established in the Gaza Strip, extending beyond a reasonable period of transition, must have the consent of Egypt. This is the conclusion which has already been stated by the Secretary-General in his Report of 24 January 1957 (A/3512, para. 14). The Secretary-General said:

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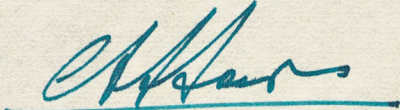
"Deployment of UNEF in Gaza, under the resolutions of the General Assembly, would have to be on the same basis as its deployment along the armistice line in the Sinai Peninsula. Any broader function for it in that area, in view of the terms of the Armistice Agreement and a recognized principle of international law, would require the consent of Egypt. A widening of the United Nations Administrative responsibilities in the area, beyond its responsibilities for the refugees, would likewise have to be based on agreement with Egypt. It follows, therefore, that although the United Nations General Assembly would be entitled to recommend the establishment of a United Nations administration and to request negotiations in order to implement such an arrangement, it would lack authority in that recommendation, unilaterally, to require compliance."

UNITED NATIONS  NATIONS UNIES

INTEROFFICE MEMORANDUM

TO: The Secretary-General

Date: 7 March 1957

FROM: The Legal Counsel 

FILE NO.: \_\_\_\_\_

SENDER'S TELEPHONE EXTENSION: \_\_\_\_\_

SUBJECT: General principles for UNEF civil affairs functions in the Gaza Strip during the initial takeover period

1. The constantly maintained position of the Secretary-General has been that under the Armistice Agreement Egypt has the right to control the Gaza Strip. Egypt, however, has consented to the initial takeover of the area by UNEF from the withdrawing Israeli forces and has further expressed to the Secretary-General, as he declared in his statement of 22 February 1957 to the General Assembly, its desire that the takeover should be orderly and safe. Furthermore, in the same statement the Secretary-General envisaged arrangements with the United Nations to safeguard "life and property in the area by providing efficient and effective police protection"; to "guarantee good civilian administration"; to "assure maximum assistance to the United Nations refugee programme"; and to "protect and foster the economic development of the territory and its people".

2. The initial takeover by UNEF has, therefore, the consent of the parties and is in accordance with the understanding of the General Assembly. Necessity requires that during the period of the initial takeover, UNEF should institute control of civilian affairs in the Gaza area in order to achieve the foregoing purposes. As de facto control during the period has passed to UNEF, it must exercise supreme authority subject only to international law and to the principles and spirit of international conventions which by analogy are applicable to the situation. In this connexion it is relevant to recall article 44 of the UNEF Regulations, which provides that

"The Force shall observe the principles and spirit of the general international conventions applicable to the conduct of military personnel."

3. One of these general international conventions, which also embodies rules of international law, is the Hague Regulations of 1907. Article 43 of these Regulations provides:

"The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and insure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country."

4. The Geneva Convention of 1949 relative to Civilians (to which, incidentally, both Egypt and Israel are parties) indicates in article 64 some of the circumstances in which an occupant may find itself "absolutely prevented" from respecting the laws in force, and may be entitled to change them. The article provides that the penal laws of the territory remain in force, "with the exception that they may be repealed or suspended by the Occupying Power in cases where they constitute a threat to its security or an obstacle to the application of the present Convention." It also authorizes the Occupying Power to "subject the population of the occupied territory to provisions which are essential to enable the Occupying Power to fulfil its obligations under the present Convention, to maintain the orderly government of the territory, and to ensure the security of the Occupying Power, of the members and property of the occupying forces or administration, and likewise of the establishments and lines of communication used by them."

5. Article 66 of the Geneva Convention of 1949 relative to Civilians entitles an occupant, in case of breach of penal provisions promulgated by it in the conditions described by article 64, to hand over the accused to its own "properly constituted, non-political military courts." Apart from this special exception, however, the Convention provides that the tribunals of the territory shall continue to function in respect of all offences covered by the laws of the territory which have not been repealed or suspended.

6. The principle is the same regarding administration as it is regarding the law, that the only changes which may be made are those which are necessary. In principle, the existing laws and rules of administration must be preserved. An occupant may temporarily appoint officials if those of the territory refuse to serve, and he may also suspend or replace officials, judges and other functionaries.

7. It is recognized that an occupant may be compelled by conditions to issue regulations concerning currency. Israel is understood to have made Israeli pounds legal tender in the Gaza Strip. This step was no doubt effective in private law, so that payments made in that currency during the Israeli occupation would be of full legal effect. But the authority of an occupant to make laws and regulations ends when the territory is evacuated, so that the Israeli regulation would no longer be in force. If Israeli

pounds were to continue for a short interim period to be legal tender, some regulation of UNEF would appear to be necessary. Israeli currency in Gaza is still an obligation of the Government of Israel, and arrangements could be made for its collection for redemption by that Government, for sale and conversion on the international market, or some other solution.

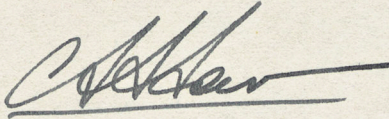
8. While UNEF is in no way an occupying force, it is nevertheless in de facto control of the Gaza area, on the basis of necessity and consent and for an initial takeover period. In determining the scope of its necessary powers, particularly where the interests of the inhabitants are directly concerned, the provisions, principles and spirit of the general humanitarian conventions cited above offer the most useful guide for administration.

UNITED NATIONS  NATIONS UNIES

INTEROFFICE MEMORANDUM

TO: The Secretary-General

Date: 8 March 1957

FROM: The Legal Counsel 

FILE NO.: \_\_\_\_\_

SENDER'S TELEPHONE EXTENSION: \_\_\_\_\_

SUBJECT: Possible transfer of Israeli currency from Gaza to Jerusalem

1. The question has been raised whether Israeli pounds which might come into the possession of the United Nations in Gaza, could be transferred to United Nations accounts in Jerusalem for use in connection with local currency expenses of the United Nations in Israel.

2. The Convention on the Privileges and Immunities of the United Nations to which Israel acceded without reservations on 21 September 1949 presents a clear answer on this point. The Convention provides as follows:

"Section 5. Without being restricted by financial controls, regulations or moratoria of any kind,

"(a) the United Nations may hold funds, gold or currency of any kind and operate accounts in any currency;

"(b) The United Nations shall be free to transfer its funds, gold or currency from one country to another or within any country and to convert any currency held by it into any other currency.

"Section 6. In exercising its rights under Section 5 above, the United Nations shall pay due regard to any representations made by the Government of any Member insofar as it is considered that effect can be given to such representations without detriment to the interests of the United Nations.

3. The foregoing provisions authorize the transfer of Israeli currency acquired in Gaza to our Jerusalem accounts "without being restricted by financial controls, regulations or moratoria of any kind". Under Section 6 the United Nations must listen to any representations which Israel might make and must pay them due regard "insofar as it is considered that effect can be given to such representations without detriment to the interests of the United Nations." The decision with respect to such representations is within the competence of the United Nations.

4. I am informed by the Treasurer's office that it is the policy of the United Nations to acquire currency at the best obtainable rate wherever a free market exists. We, of course, do not deal on the black market. In the case of Israeli pounds, there is only one legal rate and the money required for local currency expenses is obtained by our Mission at that official rate from Banks in Jerusalem through dollar or sterling transfers.

5. There would appear to be nothing in the policy described in the foregoing paragraph which would prevent the transfer of Israeli pounds legitimately acquired as a consequence of the exercise of civil affairs functions in Gaza.

6. The present memorandum does not attempt to deal with the political monetary and financial aspects which are involved and which are necessarily of a highly complicated nature. However, from the practical point of view it should be noted that UNTSO expenditures in Israeli pounds are very small, and that Technical Assistance funds are subject to special arrangements.