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Israel / Egypt

" Belligerency 1957 "

Bell

Secretary-General

21 June 1957

Dear General,

.....

Enclosed please find copies of studies relating to the Gulf of Aqaba prepared by the Office of Legal Affairs and sent in response to your messages (UNEF 1328 and 1337). They are, of course, strictly for internal and confidential use.

Sincerely yours,

Ralph J. Bunche
Under-Secretary

Major General E.L.M. Burns
Commander UNEF
Gaza

This paper, from Stavropoulos, is for your
information and background use only

RJB

21 June 1957

Reference cable UNEF 1328 it has always been the view of the Legal Office that Article II, paragraph 2, of the General Armistice Agreement prohibits Israeli warships from passing within three miles of the Egyptian coast in the Gulf of Aqaba and the Strait of Tiran as well as in other coastal waters. Paragraph 32 of the legal opinion given to the Secretary-General on 17 January 1957 states,

"However, the situation in the Gulf of Aqaba insofar as Egypt and Israel are concerned is governed not only by general principles of international law but by the provisions of the Egyptian-Israeli General Armistice Agreement. Article II, paragraph 2 of the Armistice Agreement specifically prohibits the military or para-military forces of one party from entering into or passing through 'the waters within three miles of the coastline of the other party'. Under this provision Egyptian warships could not approach within three miles of the Israeli coast in the vicinity of Elath and Israeli warships could not come within three miles of the Egyptian coast. Israeli warships are therefore prohibited by the General Armistice Agreement from passing through the strait lying between the Egyptian coast and the island of Tiran which is only three miles wide."

The same view has been expressed informally by Mr. Vigier.

It is to be noted that Article II does not refer to territorial

waters as such but to "waters within three miles of the coastline of the other party".

There is no inconsistency with Part IV of Secretary-General's report A/3512. The question of whether armed vessels are prohibited in these waters by the Armistice Agreement is not a question of the exercise of belligerent rights in the context of this discussion. Section IV of the Report was oriented primarily to merchant vessels and the reference to the Security Council resolution of 1 September 1951 specifically refers to "passage of international commercial shipping and goods". Moreover, Report states, "a legal controversy exists as to the extent of innocent passage through these waters".

An authoritative interpretation of the Armistice provisions can only be given by the Mixed Armistice Commission, the Special Committee and the Security Council or by the International Court of Justice, should the parties agree. With respect to issues of international law not directly connected with the Armistice Agreement, authoritative rulings can also be obtained by agreement of the parties from the International Court of Justice.

12 August 1957

Sir,

The Government of Israel addressed, on 22 July 1957, a request to the Chairman of the Mixed Armistice Commission regarding the implementation of Article I of the Syria-Israel General Armistice Agreement. The Chairman of the Commission did not consider it competent to consider the point raised.

The Government of Israel has now, through its Permanent Representative to the United Nations, while maintaining its stand as to the competence of the Mixed Armistice Commission, addressed themselves to the Secretary-General, requesting him to transmit to the Government of Syria certain questions set out in a letter to him.

.....
Within the terms of the Charter of the United Nations, and having regard to the responsibilities of the Organisation in relation to the implementation of the Armistice Agreement, as reflected also in the special mandate of the Secretary-General from the Security Council, I have the honour to transmit to the Government of Syria copy of the letter received from the Government of Israel. I would appreciate it if, at your early convenience, you would put me in a position to transmit to the Government of Israel the reply your Government may wish to give to their approach.

Please accept the assurances of my highest consideration.

Dag Hammarskjöld,
Secretary-General.

His Excellency,
Mr. Rafik Asha,
Permanent Representative to the
United Nations,
Permanent Mission of Syria to the
United Nations,
515 Park Avenue, Apt. 6,
New York 22, N.Y.

From [unclear]

2. In course our talk of more than hour I told Fawzi I had reason to believe that you are now even more seriously concerned than when you were here about Egyptian position on inter-related questions of passage of Israeli ships through Canal and belligerency, adding that I fully shared that concern. Fawzi replied that he well understood your concern in view of threats, possibility that war might recur etc. and asked me to convey to you the following views. He observed that belligerency and the passage of Israeli ships are practically one and same question now, since Fedayeen raids are no longer an issue. Fawzi emphasized that Egypt is "telling everyone" these days that Egypt considers the question of Israeli ships passing through either Suez or Aqaba to be but one aspect of the Palestine question. There are, he protested, so many other aspects of that question about which there is no doubt at all, but they are unresolved and andxno presses for their immediate settlement, and he mentioned as "a few" examples, presence of Israelis in Galilee, non-internationalization of Jerusalem, denial of rights to one million refugees, military presence of Israelis in the DZ, Negev and Elath. Such questions, he argued, are "left aside" and only the one doubtful issue of passage is selected, on which there is no agreement even among jurists. Said problem must also be appraised in terms of "realities of political life". Warned that no statesman letting Israeli ships through Canal could live, but tried to retract this later. Most forcefully, for Fawzi, insisted that if so soon after the aggression, Government tried to allow Israeli flag to pass through Egyptian waters, "the people would sink the ships and we would have to call Wheeler back". I agreed that this might be so but only

if Egypt would not make a serious effort to prevent it. Fawzi concluded by saying that Egypt is "using restraint at Aqaba by shutting its eyes and by somehow switching that responsibility to Saudi Arabia". I greatly fear they are firmly set on this dangerous course, for time being.

DH:dg

OUTGOING CABLE

TO: BUNCHE, Cairo
FROM: SECRETARY-GENERAL
DATE: 2 April 1957
NUMBER:

In view of further consideration of the whole political situation, I have arrived at conviction that I should send to Fawzi a letter, the text of which follows below.

It is, of course, a most unusual demarche and it would be unthinkable to carry ^{it} through if it were not so much in line with the whole tone struck in Cairo and if the situation was not so serious. You will observe that what I state in the letter is entirely within the framework of oral statements in Cairo and thus does not introduce any new accent which should cause suspicion. However, I want you to check the letter in the light of our talks. If that checking confirms my own feeling ^{of} the consistency of my approach and if you have no other serious objections in the light of your later experiences in Cairo, I would ask you to transmit the letter to Fawzi with my added oral greetings and renewed expression of thanks for the spirit in which he approached our problems.

Text of letter:

Quote:

2 April 1957

Dear Mahmoud,

I wish to send you my very cordial thanks for the time in Cairo and for the arrangements you made in order to give my visit the greatest possible value. Especially I appreciate the considerable time which President Nasser and you yourself devoted to our talks and the openmindedness with which you listened to my "robust" presentation of my views and reactions.

In the past few days, after my return from Cairo, I have thought over what was said and I feel that I should revert to two related issues the significance of which I stressed frequently and frankly, but which, in this way, I would like to put in writing in the hope that you will be patient and continue to give my views your friendly consideration. I would appreciate it if you would bring these comments of mine to the attention of the President.

You will remember the key significance which I attached to the question of the blockade of Israeli shipping through the Suez Canal. I restated the view I expressed on the legal issue already when we first discussed this question a year ago, but you will remember that this time I stressed especially that it is my conviction that, even disregarding the legal objections, you have strong reasons to revise the previous policy. Israeli shipping has become a test-case for the will of Egypt to contribute to a stabilisation of the political conditions in the world and to cooperate with the world community. I remember that I said ~~that~~ the interference with the shipping ~~that~~ cannot be a means to any reasonable end. If you want to see progress for the cause of the refugees, you ^{that}

His Excellency
Dr. Mahmoud Fawzi
Minister for Foreign Affairs
Cairo, Egypt

are much more likely to achieve it by dropping the blockade, than by maintaining it as some kind of a bargaining or pressure point. In fact, the blockade now blocks progress without any tangible effect in such directions as in your eyes might justify it.

You will also remember that I said, perhaps somewhat flippantly, that I very much regretted that you did not revise this part of your policy on 26 July last year, with all the consequences that would have had. I feel that this would be the right moment for a revision. The responsible Arab statesmen should see that such a move serves the interests of the Arab world. That being so, I am convinced that you would be able to manoeuvre public opinion.

You know that I would not revert to the question with a robustness matching the one I showed orally, if it were not for the deep conviction that in this very question you hold the key to the present situation and, thereby, to a change of the direction of future developments so badly needed by all, but especially by the Middle East and Egypt itself.

The related problem to which I referred is the one of "belligerency". You will remember that at Le Barge I said that although I might appreciate the fine legal point involved, looking at the problem from Cairo's viewpoint, I, on the other hand and speaking for myself, reacted strongly against the whole notion. If you were to abandon the previous stand on Israeli shipping, nothing in substance would remain of what may be covered by the term in its "technical" sense which would justify its use.

Following from what I have said above, I would hope that you could now do away with the idea and that, therefore, you would find it possible to reply to my letter concerning Article I, not only by a reaffirmation of that article, but also by an acceptance of the broader interpretation which I indicated in the first part of my second question. This would mean that "belligerency" would no longer mean anything more than the simple legal fact that there is so far no settlement, and if so, why insist on this ^{fact} and so ~~to~~ maintain the present dangerous state of confusion and the present basis for repeated attacks on Arab policy and on Egypt in particular. Frankly, what would be lost if you gave an affirmative reply as indicated - and on that very basis gave a positive reply also to the set of questions which were formulated by Israel?

I remember that I said to the President that my view on these two issues to him might sound subversive. I said so ironically because of my strong feeling that the views I expressed, were in the very best interest of the cause he and you and Egypt want to serve. Looking over the Cairo experience, I repeat the advice with all the seriousness at my command. I trust that neither the President nor you for a moment would believe that in doing so I act under any kind of pressure or inspired by any other interest than the one to make us all avoid missing one of those rare chances, perhaps a unique chance, to get out of the ditch and up on a stable road again.

Do not believe that I underestimate the political complications as you see them. It is, however, my conviction that those difficulties can be overcome and are much less serious than those which threaten if your previous policy on Israeli shipping, in spite of all, were to be maintained, and if, for that reason, you would adhere to the line of principle reflected in your thesis on belligerency - which else would just be a source of conflict and confusion without any positive justification.

Please, would you transmit my personal thanks to the President.

Kind regards,

STRICTLY CONFIDENTIAL

Note on the Origin and Development of Fedayeen Activities

It is difficult to establish the precise date when fedayeen activities, as distinguished from infiltration, were initiated. Either they did not exist before the Gaza incident of 28 February 1955, or were conducted on such an "unprofessional" scale as to be undistinguishable from infiltration. In his report on the Gaza incident, the Chief of Staff attributed tension to three principal factors: (1) the mining of the roads followed by Israeli patrols; (2) firing by Egyptian outposts on Israeli patrols; and (3) infiltration.

With regard to the last point, he cited a series of attacks by "armed infiltrators" from 21 January 1955 to 25 February, and referred to statements by Israeli Army spokesmen accusing the Egyptian military authorities in the Gaza Strip of conducting spying and sabotage operations in Israeli territory. Some of the Israeli press traced such activities back to January 1954. A map circulated by the Israeli Representative in connection with the Security Council's consideration of the Gaza incident showed the scenes of incidents from August 1954 to February 1955, and linked them to Gaza as the alleged headquarters of the culprits.

As of 30 March 1955 the Security Council did not recognize the existence of fedayeen activities as such. In the resolution of that date, the Council called upon both Governments to cooperate

V

with the Chief of Staff, "bearing in mind that, in the opinion of the Chief of Staff, infiltration can be reduced to an occasional nuisance if an agreement were effected between the parties on the lines he has proposed."

After the Israeli attack on Gaza, the incidents in Israel assumed a different character. In his report on the Israeli attack on Khan Yunis on 31 August - 1 September 1955, the Chief of Staff stated that "the number and nature of these acts of sabotage perpetrated well within Israel territory are such as to suggest that they are the work of organized and well trained groups. Investigations so far completed by United Nations military observers tend to support this view. The sudden resumption of this type of incident after they had practically ceased for three months is significant." These attacks were now characterized by the use of more professional methods and of materials not normally available to ordinary infiltrators.

II

An analysis of the development of fedayeen activities and of the role they played in the political situation would require more extensive documentation than is now available. All that can usefully be done is to list in chronological order a number of the more important points relevant to this question.

From the chronology which follows, it would appear that infiltrations of a more or less systematic character began to be organized as early as August 1954. After the Israeli attack on

Gaza on 28 February, they became much more systematically and efficiently organized. Except for a three-month lull from 1 June to 22 August 1955, they continued to increase in intensity and expertise until they were stopped following the Secretary-General's interview with Colonel Nasser in early April 1956.

The name "Fedayeen" first appears in our records in the letter of 30 August 1955 from the Israeli Representative to the President of the Security Council (S/3425), page 4, paragraph 13, where a captured soldier is described as wearing the uniform of the "Fedayeen el-Islam unit".

Since a chronological listing of events tends to suggest a chain of cause and effect, which may not necessarily be valid, it should be recalled, again with ^{out} necessarily defining the relationship between these facts and the developments that followed, that in 1953 Israeli forces entered the El Auja demilitarized zone, attacked its Bedouin inhabitants and established a kibbutz. On 3 February 1954, Egypt requested that its complaint against Israel's violation of the zone be placed on the agenda of the Security Council. On 15 March 1954 (S/3186), the Egyptian Representative circulated a series of documents recalling several Israeli attacks on Arab refugees in the Gaza Strip.

III

Following is a chronological list of events relating to the development of fedayeen activities:

- (1) On 17 March 1955, the Israeli press reported the movement

of Egyptian infantry and armoured reinforcements into the Gaza Strip, and the wide publicity given to this in the Egyptian press. "Egypt has obviously chosen another way of retaliation, that of stepped up nuisance war with deep penetrations into Israel." The name of the officer allegedly in charge of training commandos also appeared in the Israeli press. (UNTSO 118, 25 March 1955.)

(2) The correspondent of an Israeli newspaper reported on 17 March that a Commando Regiment was brought to the Gaza Strip consisting for the most part of Sudanese, and allegedly organized by Egypt to fight the British in the Suez Canal Zone. (UNTSO 118)

(3) Commandant Giacomaggi, Chairman of the Egyptian-Israeli Mixed Armistice Commission, reported orally some time in April or May 1955 that he had learned confidentially that some of the "professionals" who had operated along the Suez Canal against the British had been transferred to the Gaza Strip.

(4) On 22 May 1955 an aide mémoire of the Israeli Foreign Office to General Burns referred to the presence of a so-called "suicide squad" of the Egyptian National Guard in the Gaza area.

(5) On 1 June 1955 General Burns had a meeting with Colonel Nasser in which General Burns drew attention to the "mounting Israeli excitement and indignation" over the incidents. Colonel Nasser replied that his views as expressed to General Burns last December "had been drastically altered by the experience of the Gaza incident of 28 February. Troops had been surprised and killed

following assurances he had given (sic) that situation was improving. He cannot risk this again and puts no trust in Israeli promises. Troops have orders to protect themselves and he would be unable to put in effect more drastic orders to remain on the defensive as this would be destructive of Army morale. He considers that tension since Gaza incident was root of trouble." (UNTSO 214, 2 June 1955)

(6) A three-month lull occurred after the above interview, while discussions regarding a high level meeting were proceeding more or less hopefully. The lull was broken by a series of incidents on 22 August which rapidly increased in number and intensity and led to the Israeli attack on Khan Yunis on 31 August - 1 September. It will be recalled that the Israelis attempted to justify the attack and destruction of the police station in Khan Yunis on the grounds that it was the centre for sabotage activities in the Gaza Strip.

(7) In reporting the negotiations immediately preceding the Khan Yunis incident, in which an effort was made to obtain a cease-fire, General Burns is on record as stating that the "Egyptians had agreed to stop all raiding and sabotage as well as firing." However, the Israelis delayed their acceptance of the cease-fire until after the attack on Khan Yunis and accepted it only on 4 September. During the same negotiations General Burns cautioned the Israeli Foreign Office that "if sabotage groups should be still at large in Israel territory, it

might not be possible for Egyptian authorities to contact them immediately."

(8) On 21 September 1955 the Israelis entered the demilitarized zone of El Auja. This was followed by an intensification of fedayeen attacks which now appeared to originate in both Jordan and Syria. On 10 October General Burns, commenting on a press release of the Israeli Ministry of Foreign Affairs, (see 9 below) stated: "Attribution of responsibility to Egypt in all cases rests on secret Israeli intelligence, but UNTSO has heard from other sources reports which similarly allege Egyptian and Syrian responsibility. I call your attention to Israeli threat to denounce the cease-fire of 4 September if these attacks continue. I feel that only one more incident like that of Meron is required to set off further hostilities more serious than Khan Yunis and which will probably result in reactions it is impossible to foresee. Therefore I feel strongest representations should be made to Egypt to put an immediate stop to all such activities which she can in any way control and also cease glorification of the exploits of these terrorists in press and radio." (UNTSO 414)

(9) A press release of 7 October by the Israeli Foreign Ministry accused Egypt of having decided to continue operations from the Gaza Strip of sabotage and murder gangs "known as fedayeen" and to organize guerrilla attacks also from territories

of other Arab States. The press release named Syria, Jordan and Lebanon as States on whose territories the fedayeen were being maintained by Syria and Egypt with some financial support from Saudi Arabia. (UNTSO 413, 10 October 1955)

(10) There exists no accurate tabulation of incidents attributed to the fedayeen. From the professionalism with which certain attacks have been carried out United Nations observers have assumed that they must have been the work of fedayeen. Neither Israeli accusations nor the boasts of the Cairo radio could be relied on. Many incidents reported in the press have never been investigated by United Nations observers. However, the absence of statistical data about the incidents does not invalidate the knowledge that fedayeen activities existed and were a serious factor in the situation between Israel and the Arab States.

EL AUJA DEMILITARIZED ZONE

Background Note

I

1. The Egyptian-Israeli General Armistice Agreement of 24 February 1949 provided, in Articles VII and VIII, for a reduction of military forces to defensive forces only (as defined in Annex III of the Agreement) in certain clearly defined areas on both sides of the Armistice Demarcation Line. The area of the village of El Auja and vicinity was to be demilitarized and both Egyptian and Israeli armed forces were to be "totally excluded therefrom". The Chairman of the Mixed Armistice Commission and United Nations Observers attached to the Commission were to be responsible "for ensuring the full implementation of this provision" (Article VIII, paragraph 1). Egyptian defensive positions were excluded from a corresponding area in Egyptian territory west of the El Auja Demilitarized Zone, an area over twice the size of the Demilitarized Zone (Article VIII, paragraph 3). Situated at an important road junction some 140 miles from Ismailia and 35 to 40 miles from Beersheba, the village of El Auja formed a focal point for the set of mutually balancing and complementary provisions of the General Armistice Agreement, Articles VII and VIII, which were intended to safeguard each of the parties against invasion by the other.

2. In conformity with the strategic importance of the El Auja Demilitarized Zone, the Armistice Agreement provided that "the Mixed Armistice Commission shall maintain its headquarters at El Auja ...", although the Commission was also empowered to hold its meetings "at such places and at such times as it may deem necessary for the effective conduct of its work" (Article X, paragraph 2).

3. During the first year of the Armistice regime, the situation in the Demilitarized Zone and vicinity was relatively calm. Egypt and Israel alternated every two weeks in providing civilian guards for the headquarters of the Mixed Armistice Commission at El Auja. Relations between the representatives of the two parties were co-operative. The records of the Mixed Armistice Commission

contain references only to minor incidents of "infiltration", i.e. illegal crossings of the Armistice Demarcation Line by nomadic Bedouins from the Sinai and the Negev regions.

II

Expulsion of the Bedouins

4. Beginning in May 1950, the Israeli authorities adopted the policy of forcibly expelling groups of Arabs, mostly Bedouins, from Israeli territory into the Gaza Strip and into Jordan. This policy culminated in the large-scale expulsions of August-September 1950. On 2 September 1950 the Israeli armed forces rounded up about four thousand Bedouins living in the Negev in and around the El Auja Demilitarized Zone and drove them into Egypt. Investigation by the Chairman of the Mixed Armistice Commission showed that these Bedouins, comprising members of five Bedouin tribes, had lived in the Beersheba area under the British mandate, but had moved to El Auja under Israeli pressure; that since 20 August 1950, the Israelis had conducted operations to clear the Bedouins, employing army troops with armored cars and guided by reconnaissance aircraft; that after driving the Bedouins across the border, the Israelis burnt tents, crops and possessions; and that thirteen Bedouins were killed during these operations (Report by the Chief of Staff, 18 September 1950, S/1797). The Israelis claimed that the Bedouins had fought against them in the Negev; that some had fled to the Sinai at the beginning of the war and illegally returned to Israel; that a large proportion of them were originally from Sinai; and that they were responsible for border trespassing, smuggling, shooting at vehicles and mine laying.

5. The Security Council considered the Egyptian complaint regarding these expulsions. In its resolution of 17 November (S/1907), the Council inter alia requested the Israeli-Egyptian Mixed Armistice Commission "to give urgent attention to the Egyptian complaint of expulsion of thousands of Palestine Arabs"; called upon both parties "to give effect to any finding of the Israeli-Egyptian Mixed Armistice Commission regarding the repatriation of any such Arabs who in the Commission's opinion are entitled to return"; authorized the Chief of Staff of the Truce Supervision Organization "to recommend to Israel, Egypt and to such other Arab States as may be appropriate such steps

as he may consider necessary to control the movement of such nomadic Arabs across international frontiers or armistice lines by mutual agreement"; and called upon the Governments concerned "to take in the future no action involving the transfer of persons across international frontiers or armistice lines without prior consultation through the Mixed Armistice Commission".

6. By June 1951 the efforts of the Chairman of the Mixed Armistice Commission to resolve the problem of the Bedouins had failed^{1/}. By a resolution adopted on 30 May 1951, the Mixed Armistice Commission decided that the "Bedouins estimated at between 6,000 and 7,000 ... be repatriated to the Israeli-controlled area". Israel immediately appealed against this decision to the Special Committee.

General situation along the Armistice Demarcation Line: 1951-1953

7. In the meantime the situation along the Armistice Demarcation Line was deteriorating, especially in the area of the Gaza Strip. The Israelis complained of armed robberies and attacks on Israeli settlements and Israeli patrols by Arab bands from the Gaza Strip. The Egyptians complained of retaliatory raids by Israelis and of violations of the waters and territory under Egyptian control (Report by Chief of Staff dated 8 November 1951, S/2388). From 3 October 1951 to July 1952, no meetings of the Mixed Armistice Commission were held.

8. When the Mixed Armistice Commission resumed its meetings in August and September 1952, the outstanding complaints totalling 324 were filed. Mixed patrols along the Armistice Demarcation Line were reinstated. An informal agreement was also concluded that no further complaints would be brought before the Mixed Armistice Commission by either party and that direct and frequent contact between representatives of both sides would be established. By 28 November 1952 the former practice of lodging complaints was resumed. Allegations by

^{1/} The Chief of Staff's report dated 12 March 1951 (S/2049) describes in detail the various proposals advanced by the Chairman for the solution of this problem.

the Israelis of thefts and infiltration alternated with Egyptian complaints of firing across the Demarcation Line, thefts and some minor retaliatory activity. Most of these were in the vicinity of the Gaza Strip.

9. During 1952 only one incident appears to have occurred in the Demilitarized Zone when a mine exploded killing an Israeli soldier and wounding three others. The incident was attributed to Bedouin activity.

10. On 3 February 1953 a meeting of the Mixed Armistice Commission considered an Egyptian complaint about the presence of Israelis in the Demilitarized Zone. They were alleged to be driving up in cars to the western boundary of the Zone. The Israelis claimed that the cars were in the Demilitarized Zone to protect the Israeli camp maintained in the Zone in conjunction with the headquarters of the Mixed Armistice Commission, from marauding Bedouins.

III

Establishment of an Israeli settlement in the Zone

11. Until September 1953, except for the incidents mentioned in paragraphs 9 and 10 above, the El Auja Demilitarized Zone was reasonably quiet. The reactions of the Bedouin expulsion were not felt in the Zone itself but rather in the Negev generally and in the vicinity of the Gaza Strip to the extent that the Bedouins were in fact responsible for attacks upon Israeli settlements, the placing of mines, shooting at vehicles and other illegal acts. These, in turn, produced retaliatory actions by the Israelis, such as the attack on the El Bureij refugee camp on 28 August 1953.

12. On 28 September 1953 an Israeli Armed Force entered several times into the Demilitarized Zone, attacked Bedouins in the area, killing them and their livestock and established a new kibbutz or settlement in the Zone near the road junction in the area of El Auja village. This settlement had the special character of many Israeli settlements in border areas. Its personnel was made up exclusively of youths of military age who, after one year of service with the active forces, were allowed to become reservists provided they joined

such settlements. The Egyptians considered such a settlement to constitute, in effect, a military position. The Mixed Armistice Commission on 2 October 1953 considered the Egyptian complaint but did not condemn the establishment of the kibbutz. The Chairman abstained from voting on the grounds that, unlike the Syrian-Israeli General Armistice Agreement, the Egyptian-Israeli Agreement contained no specific mention of civilians in the Demilitarized Zone. In another resolution, however, the Mixed Armistice Commission found that the existence of an Israeli police in the new kibbutz was a violation of both Article VIII, which provides for total withdrawal of armed forces from the Demilitarized Zone, and of Article IV, paragraph 1, which affirms the principle that no military or political advantage should be gained under the truce ordered by the Security Council. The resolution also condemned the attack on the Bedouins and called upon the Chairman to take measures to avoid future violations of the Zone. The Israelis promptly appealed against this decision to the Special Committee. Because of that Committee's failure to meet, the Israeli representatives in the Security Council claimed that the decision of the Mixed Armistice Commission was "not final" and that the matter was sub-judice.

13. On 4 February 1954 the Security Council decided to place the Egyptian complaint on the agenda and to keep the discussion of this item entirely separate from that on the Israeli complaint regarding navigation through the Suez Canal. However, the Egyptian delegation never requested the Council to discuss the complaint, nor did it submit the explanatory memorandum requested by the United Kingdom representative on the question of whether the matter was, in fact, sub-judice.

14. During most of 1954 the situation in the El Auja Demilitarized Zone was again largely quiescent. In the beginning of that year, the Mixed Armistice Commission was heavily involved in efforts to agree on a definition of "non-regular" and "paramilitary" forces and to determine whether violations by a unit belonging to such a category would be a violation^s of Article II, paragraph 2, or of the Article regarding illegal crossing of the Line by civilians (Article V, paragraph 4).

On 21-22 May 1954 "a group of armed Arab civilians" attacked some Israeli Bedouins in the El Auja Demilitarized Zone. On 21 May an emergency meeting of the Mixed Armistice Commission condemned Israel for the crossing of the Egyptian-Israel International Frontier by armed Israelis proceeding from the Demilitarized Zone in two command cars and for firing against an Egyptian checkpost with small arms fire. The Commission regarded this as a violation of Article II, paragraph 2. Most of the tension, however, was developing around the Gaza Strip.

15. In the meantime the personnel of the kibbutz established in the Demilitarized Zone were constantly moving about the whole area and patrolling it up to its western boundary. In the opinion of the Chief of Staff, they were responsible for many incidents, including some interference with the Egyptian personnel assigned to the headquarters of the Mixed Armistice Commission at El Auja. Partly as a result of these activities, the Egyptians established three checkposts on the Egyptian side of the western boundary of the Zone, in the area in which, under Article VIII, paragraph 3, of the Armistice Agreement, Egyptian defensive positions were prohibited. This action was authorized by the Chairman of the Mixed Armistice Commission on the grounds that the checkposts were necessary to control smuggling and illegal movement into Egyptian territory. At a meeting of the Mixed Armistice Commission on 22 June 1955, the Chairman laid down the specifications of the checkposts which would distinguish them from "defensive positions" prohibited in that area by the Agreement: the complement of each was not to be over approximately ten men; the armament was not to exceed the normal equipment of an infantry squad; and there were to be no permanent fortifications.

16. On 24 and 29 December 1954, two incidents took place in the El Auja Demilitarized Zone. In the first, an Egyptian military unit crossed the Israel frontier and took up position within the Zone. The Mixed Armistice Commission condemned Egypt for this violation, and the unit, which did not exceed the strength of a platoon, was withdrawn. Although both parties had agreed at the time to call upon the Subcommittee of the Mixed Armistice Commission to mark the frontier on the ground, the Egyptian authorities subsequently decided to mark the

frontier themselves. In the second incident, the Egyptian delegation alleged that armed Israelis and vehicles coming from the Demilitarized Zone had approached the Israel frontier and shot at an Egyptian check-post. The Israel delegation alleged that an Egyptian military unit had crossed into the Demilitarized Zone and opened fire inside the Zone. The Chairman abstained on both complaints.

17. In January 1955 the trial took place in Cairo of several Jews charged with espionage. Two of the defendants were executed. Considerable tension followed the Cairo trial. The Israel delegation stated that it would henceforth agree to meet the Egyptian delegation only in emergency meetings of the Mixed Armistice Commission, i.e. not at the regular headquarters of the Mixed Armistice Commission at El Auja, but in a hut near the Armistice Demarcation Line in the Gaza Strip.

A total of 37 complaints relating to incidents in the El Auja Demilitarized Zone were lodged with the Mixed Armistice Commission from March to 21 September 1955. 14 of these were Egyptian complaints, 23 Israeli. The more serious of the Egyptian complaints related to firing from Israeli command cars at Egyptian positions and shepherds on the Egyptian side of the boundary and interference by settlers from the Israeli kibbutz with the movements of the Egyptian representatives to the Mixed Armistice Commission. The more serious of the Israeli complaints concerned firing from Egyptian positions, the movement of Egyptian checkpoints into the Demilitarized Zone and interference by Egyptians with the border pillars erected by Israelis marking the international boundary.

18. During 1954-1955 there were recurrent proposals for the marking of the boundary along the western side of the Demilitarized Zone, and in January 1955 agreement was reached that the boundary should be marked jointly by the Egyptians and Israelis in the presence of a United Nations Observer. Subsequently the Egyptians stated that they would undertake the marking alone. The Egyptian survey was interrupted by the Gaza incident of 28 February. In May 1955 the Israelis again expressed readiness to continue with a joint survey and marking of the frontier. The Egyptians refused but stated that "the Israelis can mark the Egyptian-Palestinian frontier". In June 1955 the Egyptians requested a joint marking of the line around the whole of the Demilitarized

Zone. The Israelis replied that they preferred to continue their own survey of the western boundary only. In July the Israelis completed the topographic work and began the physical demarcation of the border by the erection of concrete pillars. The tense situation following the incident of 22 August 1955 in the Gaza area led the Egyptians to request that the marking of the international frontier be suspended. The Chairman agreed to this request. Subsequently, it was established that some 21 Israeli pillars marking the boundary had been pulled down and destroyed.

Mounting tension near the Gaza Strip: 1954-1955

19. In his first Report to the Security Council since taking over the post of Chief of Staff on 11 November 1954 (S/3319), General Burns reported on the gravity of the situation prevailing around the Gaza Strip. To reduce tension, General Burns recommended four agreed measures: the establishment of joint patrols, the conclusion of a local commanders' agreement, the erection of a double-apron barbed-wire fence along certain portions of the Demarcation Line and the manning of outposts on both sides by regular troops.

20. Throughout 1954 the Israeli press had been alleging that Egyptian intelligence patrols were being sent into Israel to perform espionage and sabotage activities, although in only two complaints during 1954 was any reference made to alleged Egyptian intelligence activities. In the first of these, submitted on 3 May 1954, it was alleged that an intelligence report was found on one of two spies killed by an Israeli patrol. In the second complaint, dated 22 November 1954, a member of an armed group of four men had been captured, and upon being questioned by a United Nations Observer, stated that he was an Egyptian agent. At the same time, according to the Egyptian authorities, armed Israeli groups were alleged to have been carrying out repeated reconnaissances deep into the Gaza Strip in September and November 1954.

21. The sabotage activities inside Israel of a group of three armed men from the Gaza Strip, which were connected by an Israel Army spokesman with previous activities of the Egyptian intelligence service, were used as justification by Israeli armed forces for their

attack on Gaza in the night of 28 February 1955. An Israeli force estimated at two platoons' strength, using mortars, anti-tank projectiles, hand grenades, Bangalore torpedoes and heavy explosive charges, attacked an Egyptian military camp, the Gaza station master's house and a water pump house more than 3 kilometers inside Egyptian-controlled territory, inflicting heavy casualties. This action was condemned by the Security Council in its resolution of 29 March 1955.

22. Between 28 February and 1 June 1955, there were frequent incidents along the Gaza Strip arising from the combination of Israeli motor patrols along one side of the Demarcation Line and Egyptian outposts on the other side and close to it. A lull of about three months was interrupted by a serious incident on 22 August, in which an Egyptian camp near the Demarcation Line in the Gaza Strip was occupied by Israeli forces. One Egyptian officer and two soldiers were killed and three others were wounded. This episode was soon after followed by an organized series of acts of sabotage perpetrated well inside Israel territory. Their number and nature was such as to suggest to the Chief of Staff (S/3430) that they were the work of an organized and well-trained group. Efforts of the Chief of Staff to stabilize the situation by an appeal for a cease-fire were met by a demand of the Israel authorities that he obtain "the assurances of the Egyptian Government that it accepts responsibility for these acts and that it is ready to give guarantees for an immediate, complete and definitive cessation of all further hostile acts". General Burns pointed out that acceptance by the Egyptians of responsibility for previous incidents was an unreasonable and unacceptable condition for a cease-fire. Moreover, the Egyptians had accepted a cease-fire appeal which covered all future hostile acts.

23. On 31 August 1955 six United Nations Military Observers and three other United Nations personnel were detained by the Israelis in Beersheba. This action immediately preceded an organized Israeli attack on the town of Khan Yunis on 31 August - 1 September. The casualties were estimated at 36 Egyptians killed and 13 wounded. On 4 September Israel accepted the Chief of Staff's renewed appeal for a cease-fire.

IV

Military occupation of the Demilitarized Zone

24. On 21 September 1955 an Israeli military force entered the Demilitarized Zone at El Auja. They occupied the camp which was the headquarters of the Mixed Armistice Commission and detained the Egyptian personnel who were in the camp in accordance with agreed arrangements. A United Nations Military Observer at El Auja was prevented from moving during the operation. The Israelis dug trenches, planted minefields and set up obstacles on a hill nearby. The operation was carried out with the active assistance of the Israeli "settlers" from the kibbutz. To the request of the Chief of Staff for an immediate withdrawal, a spokesman of the Israeli Ministry of Foreign Affairs replied that Israeli forces would be withdrawn when two Egyptian checkpoints allegedly inside the Demilitarized Zone had been withdrawn. The Israeli action was attributed to the illegal establishment of these checkpoints in the Zone and to the interference of Egyptian authorities with the markers erected by the Israelis on the international frontier along the western boundary of the Demilitarized Zone.

25. The Government of Egypt accepted the request of General Burns for the withdrawal of military forces substantially without conditions. Acceptance by the Government of Israel was subject to a number of conditions, clarifications and reservations. The Israelis demanded assurances that Egypt would withdraw all Egyptian military positions east of the El Qouseima-Abou Rougeila line, would undertake to cease interfering with the marking of the border and would reaffirm "her resolve to abide by the cease-fire both in Gaza and Nitzana areas".

26. General Burns explained that the Egyptian checkpoints conformed to the specifications laid down by the Chairman of the Mixed Armistice Commission at the meeting of 22 June 1955 (see paragraph 15 above). The rights of the Mixed Armistice Commission and the Special Committee to interpret the term "defensive position" were specifically reserved. Israel noted the specifications of the checkpoints enumerated by the Chairman but reserved its position on the maintenance of such

checkposts. If Egypt violated any of these specifications, Israel would regard herself free to take all necessary defensive measures "on her side of the frontier". At the same time Israel "understood" that the Chief of Staff's request for the withdrawal of military forces from the Demilitarized Zone did not apply to any civil police forces.

27. General Burns agreed to the retention of the civilian police necessary to ensure the protection of the civilian population in the Demilitarized Zone, provided such police were strictly limited in numbers (he later suggested 30, which would be roughly equivalent to the strength of the three Egyptian checkposts) and provided that their armament should not be heavier than those normal for civil police, i.e. rifles and sub-machine guns. This understanding was subject to the interpretation of the term "armed forces" by the Mixed Armistice Commission or the Special Committee and was without prejudice to any action by the Security Council with respect to the complaint by Egypt on its agenda concerning the establishment of an Israeli kibbutz in the Demilitarized Zone. General Burns added that it would be understood that the withdrawal of Israeli Defence Forces would include the removal of all obstacles and minefields in the area.

28. The withdrawal which took place on 2 October 1955 was not fully completed. On the Egyptian side barbed wire had not been removed in the Demilitarized Zone from around two checkposts; on the Israeli side a number of armed personnel were observed near two checkposts and one position within the Demilitarized Zone. Moreover, the Israeli minefield near the kibbutz had not been removed. In fact, three additional minefields were established. The Israeli explanation was that the agreement to remove minefields was understood by them to apply to those established by the Israeli Defence Forces and not to those established by the kibbutz as "routine security precautions". The members of the kibbutz and the civilian police were reported as being frequently in forward positions far away from their settlement. To the Chief of Staff's suggestion that the Israeli civil police approach no nearer the border than 500 metres, the Israelis stated that they would comply, provided the Egyptians on their side stayed 500 metres away from the boundary of the Demilitarized Zone.

29. In the increasingly tense situation in the Demilitarized Zone, several psychological factors appear to have played an important role. The Israelis abandoned the established Arabic name of El Auja and began to call the area by the Hebrew name Nitzana. Increasingly, the Israelis tended to equate the status of the clearly defined Demilitarized Zone with that of the area in Egypt west of the Zone in which defensive positions were prohibited but which was not, under the Armistice Agreement, a totally demilitarized zone. The constant reference by the Israelis to the western boundary of the Demilitarized Zone as the "international frontier"^{1/}, the frequent references by Israelis to the Demilitarized Zone as "the Israel side of the international frontier", and as "Israel territory", did not serve to allay Egyptian apprehensions over the marking of the boundary by the Israelis alone.

30. On 26 October 1955 an incident involving Israeli and Egyptian forces occurred in the Demilitarized Zone. An Israeli checkpost at El Sabha in the Demilitarized Zone was attacked. The evidence showed the presence of Egyptian soldiers some 200 metres inside the Zone and the presence of Israeli settlers armed with heavy and light machine guns in a position close to the western boundary of the Zone and far from their kibbutz. Casualties included one Israeli policeman killed, 4 wounded and 2 taken prisoners. In retaliation for this incident, an Israeli force on 28 October attacked an Egyptian army camp near Kuntilla, a post in Egyptian territory near southern Negev.

31. On 2-3 November 1955 a major Israeli military operation was undertaken to clear the Egyptian forces from the Demilitarized Zone. An official Israeli Army communique claimed that 50 Egyptians were killed, more than 40 taken prisoners, including two officers, and a quantity of military equipment was captured. Israeli losses were said to be 4 dead and 19 wounded. Before and during the action the movement of United Nations Military Observers was severely restricted by the Israelis.

^{1/} It is described in the Armistice Agreement as a line running "along the Egypt-Palestine frontier" (Article VIII, paragraph 2).

32. An official statement of the Israel Foreign Office described the action as "aimed at expulsion of Egyptian forces from Israel territory". The statement referred to urgent appeals to Egypt by the Chief of Staff, to withdraw its forces from the Demilitarized Zone and to the failure of Egypt to comply. The statement concluded: "There is no place in Israel for Egyptian troops. They belong in Egypt and they should go back there. If they do not go of their own free will, they must be pushed back." The action coincided with the presentation to the Israeli Knesset of the new cabinet by Prime Minister Designate, Mr. Ben Gurion, who stated: "Israel has never initiated war and never will. This is our policy, but if Israel territory is invaded, the invader will be thrown back."

V

The Three Points: 3 November 1955

33. At the end of October 1955, General Burns came to New York for consultations with the Secretary-General regarding the explosive situation in the El Auja Demilitarized Zone. The incidents at El Sabha, Kuntilla, and the Israeli action in the Demilitarized Zone on 2-3 November 1955 took place in his absence from Jerusalem and in violation of the pledge given by both sides to the Chief of Staff that they would refrain during his visit to New York from any actions which would tend to aggravate the situation. Following consultations between General Burns and the Secretary-General, a proposal dated 3 November 1955 was submitted to both parties by the Chief of Staff and the Secretary-General. It consisted of the following three points:

(1) Completion of the marking of the old Egyptian-Palestine frontier along the western boundary of the Demilitarized Zone.

(2) Restriction by Egypt of all checkposts and defended posts to positions west of the western boundary of the Demilitarized Zone and the removal of personnel, obstacles and mines from all positions within the Demilitarized Zone.

(3) Simultaneous removal by Israel of all obstacles and mines and the limitation of Israeli personnel in the Demilitarized Zone to the inhabitants of the kibbutz and the 30 civilian police allowed for the protection of civilian activities, subject to the

reservations previously made by General Burns with regard to the definition of "armed forces" and any possible decision by the Security Council concerning the presence of the kibbutz in the Demilitarized Zone.

34. It was proposed that the three points would be put into effect immediately and without prejudice to any of the provisions of the General Armistice Agreement. The marking would be done by the United Nations Truce Supervision Organization alone. The purpose of the marking would be to "define a clear line of separation between the personnel under the control of one party and those under the control of the other". Such marking, or the way in which it was undertaken, would in no way affect the rights of the parties under the General Armistice Agreement. To implement these proposals and to ensure against further breaches of the General Armistice Agreement, both parties were requested to give specific assurances that the United Nations Military Observers would have full freedom of movement and observation.

35. In the interviews between General Burns and top officials of the Egyptian Government on 11 November 1955, the Egyptian Government expressed its preliminary views on the three-point proposal. Egypt reserved its position with respect to the presence of the kibbutz in the Demilitarized Zone which, in the view of the Egyptian Government, constituted a militarily defended position and was subject of a complaint on the agenda of the Security Council. Egypt regarded the Israeli civilian police as, in fact, an armed force, and felt that, in order to restore the status quo ante 21 September 1955, there should be a complete withdrawal of the Israeli civilian police and military forces. If that withdrawal took place, Egypt would reduce its positions near the boundary to checkposts, as defined by the Chairman of the Mixed Armistice Commission on 22 June 1955. Egypt considered that it must maintain defensive positions in the area west of the Demilitarized Zone, prohibited under Article VIII, paragraph 3, so long as Israel maintained other than defensive forces in the area of the western front under Israeli control from which, under Article VII, paragraph 4, all forces other than defensive are prohibited. The

The Egyptian Government considered that the entire boundary of the Zone, as given in Article VIII, paragraph 2, of the Armistice Agreement, should be marked.

36. After these views of the Egyptian Government were communicated to the Israeli Government, a press campaign began in the Israeli press designed to prove that Egypt had rejected the three-point proposal. The proposal for the marking of the entire boundary of the Zone was interpreted as intended to separate the Demilitarized Zone from Israel. The Egyptian position was interpreted to mean that Egyptian forces in the area west of the Demilitarized Zone would remain so long as the kibbutz and the Israeli police remained within the Demilitarized Zone. This was interpreted as a design to undermine the validity of the international frontier in the Nitzana area and as an attempt to prevent Israel's development in that part of the Negev.

37. In order to correct these misinterpretations, the Chief of Staff was compelled to issue a press release on 18 November 1955, stating that there has been no rejection of the proposals by Egypt, that the views of Egypt on the proposals had been communicated to the Israeli Ministry for Foreign Affairs, but that the Israeli Ministry for Foreign Affairs had not, as yet, expressed its position on the three points. In a letter of 21 November 1955, General Burns was informed by the Director of Armistice Affairs of the Israeli Ministry for Foreign Affairs that "Israel accepts the proposals in principle. Egypt does not accept." Israeli press statements, ~~however~~ alleging that Egypt had rejected the three points, continued with the addition, on 22 November 1955, of allegations that Egyptian Fedayeen were now operating from Jordan territory.

38. In order to prevent this intensive press campaign from closing the door to further negotiations, the Chief of Staff issued on 24 November 1955 a further communique defining the final position of the parties as follows:

"The Government of Egypt, while not rejecting the proposals, have suggested certain additional points for consideration in connection with the situation in the demilitarized area.

" The Government of Israel, while stating that they accepted the proposals in principle, have also indicated that there are

points in regard to their implementation on which they intend to clarify their position."

39. At a further meeting of General Burns with the Egyptian Ministers for Foreign Affairs and Defence on 8 December 1955, the Egyptian desire that the boundary of the entire Demilitarized Zone be marked was reaffirmed. As regards the second point, Egypt indicated that it had no checkpoints, defensive positions, personnel, obstacles or minefields in the Demilitarized Zone. If it was true, as reported, that a part of one Egyptian checkpoint encroached on the Demilitarized Zone, it would be removed. With regard to the third point, Egypt maintained that the presence in the Demilitarized Zone of Israeli military forces, civilian police and kibbutz, as well as the presence of other than defensive forces in the areas of Israel from which they were excluded under Article VII, paragraph 4, destroyed the equilibrium established under Articles VII and VIII. Consequently, for her own security Egypt had to maintain defensive positions in the area west of the Demilitarized Zone in which they were prohibited.

40. The Israeli press campaign culminated in an official statement on 27 December 1955. Israel was said to have accepted the three points in principle because Israel reserved the right of clarifying the manner of marking the international frontier. The statement referred to the Prime Minister Ben Gurion's conversation with the Chief of Staff on 5 December 1955, in which the Prime Minister reiterated Israel's agreement "in principle" with the proposals, adding that "if Egypt agreed to ensure an effective cease-fire and to honour fully all the provisions of the General Armistice Agreement, Israel would then agree, in a sincere desire to facilitate the United Nations Chief of Staff's task, and without further clarification, that the international frontier in Mitzana (El Auja area) be marked by the United Nations Truce Supervision Organization alone". The provisions of the General Armistice Agreement specifically referred to were Articles I; II, paragraph 2; IV, paragraph 4; and Article VIII, paragraph 3. Israel's demand for the implementation by Egypt of the Security Council's decision regarding freedom of navigation in the Suez Canal was also stressed. At the same time Mr. Ben Gurion had

announced Israel's intention of proposing the convocation of a conference under Article XII of the General Armistice Agreement. The Israeli statement then referred to Mr. Ben Gurion's conversation with General Burns on 11 December 1955: "To the Israeli Government's regret, it transpired that Egypt did not agree to the Secretary-General's proposals, nor to an unconditional cease-fire. Neither had Egypt given an undertaking to observe, among others, those basic provisions of the General Armistice Agreement to which the Prime Minister had referred specifically on 5 December ... The Egyptian Foreign Minister ... had not even agreed to a cease-fire. Attacks from across the border on Israeli armed forces continued, and Colonel Abdel Nasser had sent a remarkable message to the Secretary-General of the United Nations, serving notice that Egypt intended to use force in dealing with the present situation."

41. On the following day, 28 December 1955, the Chief of Staff issued a press release denying the Israeli assertion that Egypt had rejected the proposals, the third such release since 4 November. The release pointed out that both parties had stipulated conditions for their acceptance. The Israelis replied in a further press communique on 29 December asserting that "Israel's suggestions for promoting border quiet and faithful observance of the General Armistice Agreement were at no time made a condition for the implementation of the Secretary-General's proposals". The statement affirmed Israel's unconditional acceptance of the proposals and described Egypt's attitude as "tantamount to their rejection". During the following week General Burns attempted to secure an official Israeli confirmation that Israel's acceptance of the proposals was in fact unconditional.

42. In a letter dated 4 January 1956, the Director General of the Ministry of Foreign Affairs confirmed "on behalf of the Government of Israel that Israel accepts the proposals ...". In the light of the previous history of this question, General Burns asked the Israelis to reply in detail to a number of practical questions relating to the implementation of the three-point programme. He was told in reply that the Director General's letter was "specific and self-explanatory ... We await a like acceptance on the part of the Government

of Egypt and until that is forthcoming, it does not seem to my Government that any purpose is served by entering into details of implementation as set out in your above-mentioned letter".

43. During the Secretary-General's visit to Egypt and Israel in January 1956, both parties signified their unconditional acceptance of the three points. A statement issued by the United Nations Truce Supervision Organization on 24 January 1956 stated that the Government of Egypt accepted the three proposals. With regard to the first, "the Government of Egypt agrees to the marking on the ground of the lines demarcating the Demilitarized Zone by United Nations Truce Supervision Organization personnel wherever such marking is required". With regard to the second proposal, calling for military withdrawal, it had already been implemented, "but, if survey on the ground by the United Nations Truce Supervision Organization should disclose that any minor encroachments remain, these also will be removed at once". The third point did not require action by Egypt. The portion of the statement of 24 January 1956 referring to the position of Israel was approved by the Israeli Prime Minister and Foreign Minister in a conference with the Secretary-General on that date. With regard to the Israeli position, the statement read:

"The Government of Israel in a letter of 4 January 1956 informed the Chief of Staff of the United Nations Truce Supervision Organization that Israel accepted the proposals in the Secretary-General's letter.

"It is expected that these proposals will be implemented in about a week's time."

VI

Failure to implement the Three Points

44. The Chief of Staff requested that the first step of the implementation, namely withdrawal by Israeli armed forces from the Demilitarized Zone, should begin on 30 January 1956. As indicated, no Egyptian positions or forces were any longer in the Zone. The Israeli reply was deferred from day to day on various grounds, such as, that the Prime Minister was absent, the Cabinet was pre-occupied with budgetary matters, the Prime Minister was personally handling issues

raised by a strike, etc. On 11 February 1956, in an informal conversation, the Israeli Minister for Foreign Affairs told General Burns that the Prime Minister "had not understood that implementation of the proposals did not require prior acceptance by Egypt of Article VIII, paragraph 3, of the Armistice Agreement". (This paragraph, prohibiting Egyptian defensive positions west of the Demilitarized Zone, did not form part of the three proposals.)

45. In a letter dated 21 February 1956, the Director General of the Israeli Foreign Office referred to conversations and correspondence in which "the acceptance by the Government of Israel of the Secretary-General's proposals, as set forth in his letter of 3 December 1955, was made clear". The letter went on to say, "The implementation of those proposals, however, depends on further clarification on a number of important details ..." The linking of Articles VII and VIII and the absence of prior implementation of Article VIII was interpreted "as a condition imposed by Egypt for the implementation of the Secretary-General's proposals". The refusal of the Egyptian authorities to permit United Nations Military Observers to conduct investigations in connection with a complaint of 11 October 1955 and ante-dating the three proposals was also interpreted as such a condition. The letter then requested further clarification with the Egyptian authorities with the object of "removing those conditions". Thus the Israeli demand that Article VIII, paragraph 3, together with certain other matters mentioned in previous conversations, but extraneous to the three points, be implemented by Egypt before Israel agreed to implement the three-point programme was turned into an Egyptian "condition" blocking the implementation of the programme.

46. Withdrawal from the Demilitarized Zone by Egyptian forces had already been completed. However, a certain reluctance was shown on the Egyptian side in giving immediate assurances as to the freedom of movement of United Nations Military Observers. Some inconclusive correspondence was exchanged with regard to a number of subsidiary matters, particularly the use of the Rafa-El Auja road in connection with the marking of the international frontier. These hesitations came out into the open in the letter to the Chief of Staff, dated 18 February 1956, from the Senior Egyptian Delegate to the Egyptian-

Israeli Mixed Armistice Commission. The letter inquired as to the steps taken by Israel to implement the three proposals. The Chief of Staff, in his reply of 20 February, stated that no steps had as yet been taken by Israel. Meanwhile, he again requested from Egypt the assurance previously asked for regarding the free movement of United Nations Military Observers and the use of the Rafa-El Auja road. In turn, the Chief of Staff gave his assurance that implementation of any of the three proposals would not begin before implementation of the proposal for the withdrawal of Israeli military forces and equipment from the Demilitarized Zone had first been cleared, and Egypt had been duly notified, and had signified its readiness to implement the proposal for marking the international frontier.

47. In a confidential letter of 28 February 1956 to the Foreign Minister of Israel, the Secretary-General expressed his disappointment and great concern over the delay in implementing the agreements on El Auja. He suggested that further difficulties raised at this stage would have, in the light of the previous history of this problem, an importance beyond the question of El Auja as such, and would influence the possibility of making other mutually acceptable arrangements between Israel and the neighbouring states. "With what authority", asked the Secretary-General, "could I or Burns discuss these matters (incidents between patrols and outposts along the Armistice Demarcation Line) with the Egyptians, if you in the El Auja case may be said to have backed down from commitments to us which were part of the very background for the Egyptian acceptance of the proposals?"

48. On 12 March 1956, to clarify the situation, the Chief of Staff presented an Aide-Memoire to the Israeli Government, conveying, on behalf of the Secretary-General, several questions:

(1) The Government of Israel, while maintaining that it unconditionally accepts the 3 November proposals, makes their implementation conditional upon the implementation by Egypt of Article VIII, paragraph 3. Is this, in fact, the Government of Israel's position?

(2) Does the Israeli Government realize that, with equal legal right, Egypt could make the full application of Article VII and VIII a condition for the implementation of the proposals?

(3) Assuming that the answers to the above two questions were in the affirmative, the Israeli condition for the implementation of the proposals must be recognized as forcing the Secretary-General and the Chief of Staff into a position where they would have to negotiate directly the full implementation by both parties of Articles VII and VIII. These Articles go beyond the two points concerning withdrawal of the forces in the 3 November proposals. Therefore, a condition for the implementation robs the previous acceptance of the proposals of all substance. Indeed, conditions forcing an approach directly to the second step in the full implementation of Articles VII and VIII nullify the acceptance of the proposal concerning the first step. The Secretary-General asked whether the Israeli Government concurred in these conclusions.

(4) With regard to an objection advanced by Israel against the use of refugee labour in the demarcation of the international frontier, the Secretary-General asked if this work could be carried out effectively if the Egyptians took the same stand, mutatis mutandis, as the Israelis. Assuming that the answer to this question must be negative, the Secretary-General asked if Israel's attitude on this point did not also nullify in practice her previous acceptance of the proposal.

49. The Israeli Foreign Minister, in a letter dated 20 March 1956, outlined the concern of the Israeli Government over the alleged build-up of Egyptian forces in the Sinai, the anti-Israel campaign carried on by the Egyptian press and radio, and the accumulation of supplies and equipment both within the Defensive Zone and outside it in Egyptian territory. Mr. Sharett stated that "we must insist not only on the removal of the unauthorized Egyptian positions from the area facing Nitzana in accordance with Article VIII(3), but also on the reduction of Egyptian forces in all parts of the Defensive Zone to the maximum laid down in Article VII, both these measures to be carried out simultaneously with the withdrawal of our military forces from Nitzana." As regards the questions in the aide-mémoire of 12 March, Mr. Sharett stated that "the Government of Israel differentiates

between acceptance and implementation. While its acceptance stands, it believes that the implementation of the 3 November proposals should be in conjunction with that of both Article VIII(3) and Article VII." With regard to the second question, the answer was in the affirmative: Egypt's right to make the same stipulation was conceded.

50. With regard to the third question, the Foreign Minister did not accept the negative conclusion. "Our assumption is that the Nitzana issue was definitely and conclusively resolved when both parties accepted the Secretary-General's proposals as formulated on 3 November. Hence in the examination of complaints concerning Articles VII and VIII, the Nitzana issue need not and, in our view, should not be reopened. The examination need not and should not extend over the ground already covered by the Nitzana settlement, but should concern itself with issues relating to other points or aspects of the border situation. In other words, the fact that action upon the 3 November proposals, which have been accepted by both parties, is to be deferred pending an agreement on other outstanding issues, by no means entails the nullification of those proposals. In international and other negotiations it is customary not to conduct the discussion of all the items on the agenda en bloc but to tackle them seriatim, i.e. having reached an agreement on the first, pass to the second and so on, on the understanding that when all items have thus been disposed of, action on all of them will follow simultaneously. While discussion and decision can be successive, implementation can be simultaneous, and there is absolutely no contradiction between the two procedures."



Navigation through the Straits of Tiran and the Gulf of Aqaba

In the United Nations General Assembly on March 4 the Minister of State for Foreign Affairs defined Her Majesty's Government's position in the following terms:

"It is the view of Her Majesty's Government in the United Kingdom that the Straits of Tiran must be regarded as an international waterway, through which the vessels of all nations have a right of passage.

"Her Majesty's Government will assert this right on behalf of all British shipping, and they are prepared to join with others to secure general recognition of this right."

2. On March 1 Mr. Lodge had restated the American position, in the terms of the aide-memoire which had been delivered to the Israel Ambassador in Washington by Mr. Dulles on February 11. This was as follows:

"With respect of the Gulf of Aqaba and access thereto - the United States believes that the Gulf comprehends international waters and that no nation has the right to prevent free and innocent passage in the Gulf and through the Straits giving access thereto. We have in mind not only commercial usage, but the passage of pilgrims on religious missions, which should be fully respected.

"In the absence of some overriding decision to the contrary, as by the International Court of Justice, the United States, on behalf of vessels of United States registry, is prepared to exercise the right of free and innocent passage and to join with others to secure general recognition of this right."

3. The representatives of a number of other maritime countries in the General Assembly also spoke in support of the principle of free and innocent passage through the Straits of Tiran.

4. The considerations on which Her Majesty's Government base their views are as follows.

5. First, some part at least of the Gulf of Aqaba must be considered as high seas. The expression "high seas" means technically waters that are not internal or territorial. The Gulf of Aqaba varies in width from less than 12 miles to approximately 16 miles. On the basis of the 3-mile territorial limit there would therefore be a considerable stretch of water in the middle of the Gulf constituting high seas. Egypt and Saudi Arabia in fact claim a 6-mile territorial limit, as does Israel. But even if such a claim were admitted there would still be a stretch of international water in part at least of the Gulf. On this basis the Straits of Tiran could be considered Straits normally used for international navigation between two parts of the high seas. Under Article 17(4) of the draft Articles concerning the Law of the Sea drawn up by the International Law Commission, there must in peacetime be no suspension, even temporarily, of the innocent passage of foreign ships in such straits. This is not affected by the fact that the Straits of Tiran are within the territorial waters of Egypt on the one side and Saudi Arabia on the other. The "Enterprise Channel" (the usual passage through the Straits) is very close to the Egyptian coast.



6. Secondly, even if there were no high seas in the Gulf of Aqaba, Her Majesty's Government's legal advice is that the existence of the ports of two countries, Israel and Jordan, at the head of the Gulf is sufficient to make the Straits international. In his speech to the General Assembly on March 4 the Minister of State included the following passage:

"I listened the other day with great attention when our distinguished colleague from India, Mr. Krishna Menon, argued that the Straits of Tiran were not an international waterway. Although I admired the ingenuity of his reasoning and the wealth of his examples, I fear that I could not follow him to his conclusions. For he overlooked one fact simple enough in itself but, as I see it, essential to consideration of this problem: the fact that unlike the fjords of Norway or the Hudson Bay in Canada, or the Hudson River here in New York, or any of the other instances which Mr. Menon quoted, the Gulf of Aqaba is not only bounded at its narrow point of entry (that is the Straits of Tiran) by two countries, Egypt and Saudi Arabia, but contains at its head the ports of two further countries: Jordan and Israel. This simple, undeniable fact is in itself enough to put it in a different category from any of the inland waters mentioned by Mr. Menon."

If the issue were to be referred to the International Court Her Majesty's Government consider that the Court would not find that rights of passage through the Straits of Tiran and in the Gulf were less free than those through Straits normally used for international navigation between two parts of the high seas. In other words, and quite independently of the Straits being international as connecting two parts of the high seas, the ships of the States bordering on the Gulf must have a right of access to and from the Red Sea through the Straits and the waters of the Gulf; and the ships of all foreign States have a similar right of access to the ports of the States bordering on the Gulf.