

UNITED NATIONS
SECURITY
COUNCIL



GENERAL

S/2089
16 April 1951

ORIGINAL: ENGLISH

LETTER DATED 16 APRIL 1951 FROM THE PERMANENT REPRESENTATIVE
OF ISRAEL TO THE UNITED NATIONS ADDRESSED TO THE
PRESIDENT OF THE SECURITY COUNCIL

Sir,

I have the honour to request that the enclosed Memorandum, setting out my Government's observations on Section IV of the United Nations' Chief of Staff Report (S/2049; Section IV, Para. 2 of 21 March 1951), be circulated to Members of the Security Council in advance of its meeting on this question.

The Report of the United Nations' Chief of Staff in Section IV contains a reference to the Israel Project for the drainage of the Huleh marshes, and offers some comments on the legal aspects of that project.

The Government of Israel does not accept certain of the United Nations' Chief of Staff's conclusions, especially on the legal questions which lie outside his functions and jurisdiction as defined in the Armistice Agreement.

Please accept, Sir, the renewed assurance of my high consideration,

Yours faithfully,

Abba EBAN
Permanent Representative of
Israel to the United Nations

MEMORANDUM CONCERNING SECTION IV OF THE UNITED NATIONS
CHIEF OF STAFF'S REPORT ON THE STATUS OF THE
OPERATIONS OF THE MIXED
ARMISTICE COMMISSION

(During the period 17 November 1950 - 17 February 1951 S/2049)

1. The Israel project for the drainage of the marshes at Lake Huleh is part of a major drainage and irrigation scheme initiated a number of years ago by Jewish public bodies under a concession granted in 1934 by the British Mandatory Government to the Palestine Land Development Company. In execution of this project, works have been in progress in the Huleh area, with the full knowledge of the Syrian and United Nations authorities, since October 1950. Not until 14 February 1951, did the Syrian Government lodge any complaint with the Israel-Syrian Mixed Armistice Commission. Thereupon, on 21 February 1951 it was mutually agreed by both delegations that an opinion be sought of the United Nations' Chief of Staff whether or not the drainage activities undertaken by the Israel authorities constituted a contravention of Article II (Military Advantage) of the General Armistice Agreement (S/2049, Section IV, 2).
2. It will be noted from the final sentence of the above paragraph that:
 - (a) The request for the opinion of the United Nations' Chief of Staff was based not on any provision of the General Armistice Agreement, but on the voluntary consent of the two parties.
 - (b) The delegations did not commit themselves to acceptance of the opinion of the United Nations' Chief of Staff.
 - (c) The terms of reference for this opinion were clearly defined and were limited exclusively to the problem of conformity or non-conformity with Article II, paragraph 2 of the Israel-Syrian General Armistice Agreement.
3. The reply of the United Nations' Chief of Staff, within his terms of reference, is clear and unequivocal, namely:

"It is concluded that

 - (1) In draining Lake Huleh, the Israelis will not enjoy any military advantage not equally applicable to the Syrians..."

The Government of Israel is glad to state that it concurs with this conclusion, and notes that this finding fully vindicates the legality of its activities within the Huleh area.

The United Nations' Chief of Staff did not, however, limit his opinion to the mutually agreed terms of reference, but also embarked on matters ultra vires those terms, namely, the discussion of certain other aspects of the Huleh undertaking. Thus, he proceeded to establish a distinction between "control" and "sovereignty;" to rule on the legal force of the Huleh Concession (Boundaries) Ordinance of 17 March 1938 (Supplement No. 1 to the Palestine Gazette No. 770 of 24 March 1938); and to declare "null and void," (later corrected to read "held in abeyance") the legislation concerning the Huleh Concession.

As a result of this diversion into intricate problems of international law affecting so vital an issue as the continuing validity of concessions, it was implied by the United Nations' Chief of Staff that Syria commanded a right to decide whether Israel might or might not continue with the work of drainage.

5. It is here emphasized that these views, not falling within the scope of the United Nations' Chief of Staff's authority under the Armistice Agreement are ultra vires, and therefore without validity. As they have, however, been placed on the record, the Government of Israel deems it desirable to indicate some of the considerations which render these supplementary conclusions of the United Nations' Chief of Staff invalid.

6. As long as the United Nations' Chief of Staff operated within the limits of his terms of reference, his opinion on the question of military advantage was correct and inevitable. The venture, however, beyond military considerations into the fields not merely of political but of civilian legal relationships has produced results which contradict the Armistice Agreement itself.

7. The Government of Israel wishes to draw attention to the singular interpretation given in Document S/2049 to the expression "demilitarised zone". Only two distinctions characterize the demilitarized zone from the rest of Israel territory; first, that no activities of a military character are permitted in the former, while no such restriction affects the latter; second, that in regard to the latter the Chairman of the Israel-Syrian Mixed Armistice Commission possesses the authority explicitly defined in Article V (5e). The interpretation given by the United Nations Chief of Staff to the meaning of "demilitarised zone" and to Article V of the Israel-Syrian Armistice Agreement contradicts the terms of Article V (5e) and the interpretation of that article by Dr. Bunche in the substantially identical letters he addressed to the Israel and Syrian Foreign Ministers and in his explanatory Note dated 26 June 1949, included in the summary

records of the 11th Plenary Meeting of the Armistice Conference held on 3 July 1949. It will be recalled that this Note was, by agreement between the parties, to form an authoritative commentary on Article V of the Armistice Agreement. (See 4. Vigier's statement at the 11th Plenary Meeting, S/11, Page 2), and at the 12th Plenary Meeting on 18 July 1949, S/12, Page 10).

One paragraph of Dr. Bunch's letter may usefully be quoted here:

"I may also assure both parties that the United Nations, through the chairman of the proposed Israel-Syrian Mixed Armistice Commission, will also ensure that the demilitarised zone will not be a vacuum or wasteland, and that normal civilian life under normal local civilian administration and policing will be operative in the zone."

8. It was on this basis that the Government of Israel agreed to sign the General Armistice Agreement. The Government of Israel first satisfied itself by a close scrutiny of the text and the associated documents that the Agreement contained nothing which would give authority to the Syrian Government or to the Chairman of the Mixed Armistice Commission to impede or suspend non-military activities in the area concerned.

9. The Government of Israel does not wish to discuss at length the far-reaching implications of those sections of the opinion of the Chief of Staff which declare "in abeyance" a concession legally granted to the Palestine Land Development Company, following protracted investigations and the settlement of diverse claims, and following the division of the area into a "reserved area" and "unreserved concession area". The terms of that concession are, under Chapter IV, Article II of the Israel Law and Administration Ordinance 5708-1948, still in force.

10. The United Nations' Chief of Staff's observations on the alleged invalidity of the Huleh Concession or legitimacy of its implementation at this time, cannot be reconciled with his statement in the same report to the effect that:

"In draining the Huleh marshes the Israelis are performing works of a civilian nature for the purpose of reclaiming land for cultivation. This work affects land in the territory under Israel control. Therefore Syria cannot on any grounds offer objections to this type of work."
(S/2049, pages 10-11).

The "civilian nature" and non-military character of the work in what is admittedly "territory under Israel control" excludes not only any Syrian right of objection, but also any theory that this work is affected by the jurisdiction of organs or persons charged with the implementation of the Armistice Agreement. The situation would be different only if the Armistice Agreement included within the competence

of the United Nations Chairman of the Mixed Armistice Commission a specific authorization to rule or pronounce on the legality or legitimacy of this work or of other civilian activities. But this is not the case. The Armistice Agreement contains no such provision.

11. According to the opinion of the Chief of Staff "any laws, regulations or ordinances in force prior to the Armistice Agreement which affected any areas included in the demilitarized zone are null and void (are held in abeyance)." This produces the absurdity that the area and its inhabitants would be in a legal vacuum, immune from the incidence of the laws, obligations, rights and restraints of government, which have, incidentally, applied with the full knowledge of all parties for nearly two years. It is inconceivable that the United Nations can desire to uphold the doctrine that this territory, described by General Riley "as territory under Israel control," is instead an island of anarchy dedicated to the maintenance of a swamp. All the legal criteria, separately and together, both those derived from the Palestine Mandate, later confirmed by Israel legislation, and those based on the Armistice Agreement - all establish the full legality of the Huleh concession and of Israel control, limited only by the specific reservations of the Armistice Agreement, which, in its turn, make no reference or implied reference, to any impediment to the carrying out of this work.

