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# REPORT BY THE CHIEF OF STAFF OF THE TRUCE SUPERVISION ORGANIZATION TO THE SECRETARY-GENERAL CONCERNING COMPLAINTS AS TO THE OBSERVANCE OF THE GENERAL ARMISTICE AGREEMENT BETWEEN ISRAEL AND SYRIA

## Letter dated 28 March 1955 from the Chief of Staff of the Truce Supervision Organization addressed to the Secretary-General

At the request of the Syrian Minister for Foreign Affairs, I have the honour to forward to you his observations on my report dated 6 January 1955 (S/3343) concerning complaints as to the observance of the General Armistice Agreement between Israel and Syria.

The Syrian Minister for Foreign Affairs has requested that his observations be circulated to the members of the Security Council as an annex to my report.

Accept, Sir, etc.

(Signed) E.L.M. Burns

Major-General
Chief of Staff
United Nations Truce
Supervision Organizations

# SYRIAN OBSERVATIONS ON THE REPORT SUBMITTED TO THE SECURITY COUNCIL BY THE CHIEF OF STAFF OF THE UNITED NATIONS TRUCE SUPERVISION ORGANIZATION (S/3343)

These observations follow the order of the relevant pages of the report and adhere closely to the plan according to which the various problems dealt with in the report are described and discussed.

Page 3, paragraph 5

The two following passages call for comment:

1. "...it has not been possible for the Chairman of the Mixed Armistice Commission to have settled the first three of these questions, with the co-operation of the parties.
2. "The fourth question concerns an area which is outside the Demilitarized Zone."

So far as the first passage from paragraph 5 is concerned, I do not think it is correct to say that lack of co-operation on the part of Syria has prevented the settlement of the first three questions, namely, the situation of the Arab inhabitants of the villages of BAQQARA and GHANNAMA (in the central sector of the Demilitarized Zone), the delay in the reconstruction of the Arab village of NUQEIB (in the southern sector of the Demilitarized Zone), which was destroyed by the Israelis during the 1948 fighting and subsequent events, and, lastly, the conflict over the rights to cultivate land in the TAWAFIQ area (in the southern sector of the Demilitarized Zone).

On the contrary, the Syrian authorities have always, to my knowledge, urged that the three above-mentioned problems should be settled as promptly as possible, in accordance with the General Armistice Agreement. The only obstacles to a solution have been obstruction on the part of Israel and the imposition by that country of exorbitant conditions incompatible with the General Armistice Agreement.

Obviously, the Syrian authorities cannot be charged with a lack of co-operation for refusing to accept such conditions and rejecting any solution that is contrary to the General Armistice Agreement and the relevant Security Council resolutions.

This point will be considered later, in connexion with the relevant passages of the report.

With regard to the second passage from paragraph 5, it is equally incorrect to state that the fourth question, namely, the denial of watering and fishing rights to the Syrian population in the area bordering the east shore of Lake TIBERIAS, concerns an area which is outside the Demilitarized Zone, since a not inconsiderable portion of that population lives in the Arab villages of NUQEIB and SHAMALNE, both of which are situated inside the Demilitarized Zone.

Pages 3 and 4, paragraph 6

The two following passages call for comment:

Sub-paragraph (2): "with the exception of certain sections which, according to the Israeli memorandum, 'have for all practical purposes been subjected to Syrian domination'".

Sub-paragraph (3): "owing to the conflicting interpretations of its authority by the two parties".

The first passage calls for the following explanations:

The fact is that, far from using the means of domination employed by the Israel authorities to exercise sovereignty over the Demilitarized Zone, the Syrian authorities have in that Zone neither military forces nor regular police forces, no heavy weapons and no settlements organized on a military basis. The Syrian authorities have on occasion been obliged to reinforce the local civil police forces in certain Arab sectors of the Demilitarized Zone, such as EL-HAMMA and TAWAFIQ, for example, but their only purpose in so doing was to enable the inhabitants of those sectors to defend themselves against the much more massive and insidious means of pressure and domination employed against them by the Israel authorities. To illustrate this irrefutable truth, it will be sufficient to quote the example of EL-HAMMA, to which the Israel authorities give prominence:

On 4 April 1951, while the Mixed Armistice Commission was holding an official meeting, a detachment of Israel police, twenty-four strong, approached EL-HAMMA for the purpose of occupying it in accordance with a plan prepared by the Israel authorities for the progressive and systematic occupation of the Demilitarized Zone. Despite their being warned by the Chief of the local civil police not to enter EL-HAMMA, the detachment opened fire on the local police

station and on the Syrian advance post, which were forced, in self-defence, to return the fire (subject of Syrian complaint No. 231/DS of 10 April 1951).

On 5 April 1951, four Israel heavy bombers and four fighters bombed and machine-gunned the village of EL-HAMMA and the Syrian advance post of BAB-EL-HADID (2120.2326). The bombing and machine-gunning lasted from 16.35 to 17.35 hours (local time), i.e., one whole hour (subject of Syrian complaint of 5 April 1951).

Thus it was owing to the action of the local civil police that the military occupation of EL-HAMMA by Israel forces was prevented and that the special status and integrity of the sector were preserved.

With regard to the passage from sub-paragraph (3) of paragraph 6, it is not fair to say that the failure of the Mixed Armistice Commission to meet since June 1951 is due to the conflicting interpretations of the Chairman's authority by the two parties, for this makes Syria and Israel equally responsible. On the contrary, the Syrian party has always regularly attended the Commission's meetings, thus demonstrating its respect for the General Armistice Agreement and the Security Council resolution of 18 May 1951. The reason the Commission has been unable to meet whenever its agenda concerned an item relating to the Demilitarized Zone is, firstly, that Israel has always denied the Mixed Armistice Commission the right to examine and deal with complaints relating to the Demilitarized Zone and thus to supervise, in accordance with article VII, paragraph 1, of the General Armistice Agreement, the action taken on such complaints and, secondly, that the Chairman of the Mixed Armistice Commission did not assert his authority to secure observance of the provisions of the General Armistice Agreement by allowing the Commission to meet in the absence of the recusant Israel party.

The fact is that the Mixed Armistice Commission has been able to meet and make decisions on questions relating to the Demilitarized Zone whenever its Chairman was aware of the need to use such authority and was prepared to do so. Ample proof of this is the meeting the Mixed Armistice Commission held on 12 December 1954 and the very important decision taken at that meeting by a majority of votes, in the Israel delegation's absence.

Thus the Israel party and, to a lesser extent, the Chairman of the Mixed Armistice Commission are alone responsible for the Commission's failure to meet for the purpose of examining and dealing with complaints relating to the Demilitarized Zone.

With regard to the other meetings of the Mixed Armistice Commission, to consider matters not relating to the Demilitarized Zone, the main reason for their almost complete discontinuance seems to be partly the little interest and importance the Chairman of the Mixed Armistice Commission attaches to the complaints on the agenda of such meetings and partly the large number of complaints which the Commission would have to consider and settle at such meetings.

Pages 4 and 5, paragraphs 11 and 12

The Syrian authorities would quite reasonably have preferred the Chief of Staff of the United Nations Truce Supervision Organization to draw his own conclusions from the statement of the relevant provisions of the Israel views on sovereignty over the Demilitarized Zone, instead of merely making such a statement and not deciding between the opinions of the two parties to the General Armistice Agreement.

I myself am of the opinion that a report of this importance would gain in value and significance if the authoritative and objective opinion of the Chief of Staff of the United Nations Truce Supervision Organization, who is well qualified to give such opinions, were included at the end of the survey of each problem and of the arguments advanced.

Page 6, paragraph 14

To make the text clearer and more comprehensible, the Syrian authorities would have liked the reports of Generals RILEY and BENNIKE, former Chiefs of Staff of the United Nations Truce Supervision Organization, to be annexed to the report or at least to be the subject of some brief comment in paragraph 14, which refers to them.

Pages 6 and 7, paragraphs 15, 16, 17, 18 and 19

Paragraphs 15, 16 and 17 of the report are devoted to an obscure agreement, which was never published, between General RILEY and the Israel authorities on the subject of local police in the Demilitarized Zone, though no reference is made to the complete plan for the organization of a local civil police force in the Zone, prepared by Colonel TAXIS, former Chairman of the Mixed Armistice Commission, on 25 June 1951, in accordance with the General Armistice Agreement. This plainly and undeniably objective plan had been accepted by the Syrian party to the Mixed Armistice Commission and refused by the Israel party.

Furthermore, paragraph 18 states that "The Chairman of the Mixed Armistice Commission has been unable to implement the provision of the General Armistice Agreement requiring the employment of 'locally recruited civilian police' in the Zone", and that "Repeated requests by the Chairman of the Mixed Armistice Commission to remove the non-local police from the Demilitarized Zone have been rejected". The paragraph fails to point out, however, that the inability of the Chairman of the Mixed Armistice Commission is due to Israel opposition and that his repeated requests have been rejected by the Israel authorities.

Furthermore, paragraph 19 of the report gives unnecessary prominence to two passages from the Israel memorandum which, far from adding to the clarity of the text, are more likely to obscure the provisions of the General Armistice Agreement concerning the local civil police forces.

Lastly, nowhere in the seven paragraphs of the report devoted to the presence of regular Israel police forces in the Demilitarized Zone is there the slightest reference to the provisions of the decision adopted by the Mixed Armistice Commission on 12 December 1954, which states that the presence of regular Israel police forces in the Demilitarized Zone is a flagrant violation of article V of the General Armistice Agreement, requests that the Israel authorities should take promptly the necessary steps for the definite withdrawal of the said forces from the Demilitarized Zone, and, lastly, recommends the renewal of negotiations relative to a locally recruited civilian police force provided for in article V, paragraph 5, of the General Armistice Agreement. Instead of being relegated to the background in the form of an annex, those provisions would have found their

natural place in the actual text of the report, like certain passages from the Israel memorandum, which are quoted verbatim, and the decision of 15 March 1954, which was adopted by the Mixed Armistice Commission in the face of Syrian opposition and is reproduced in extenso on page 15.

Although it is defined in the Syrian aide-mémoire, which is annexed to the report, the Syrian position with regard to the respective competence of the Mixed Armistice Commission and its Chairman is, in my opinion, inadequately expressed in paragraph 21 of the report. Thus, article VII, paragraph 7, of the General Armistice Agreement and the resolution of the Security Council of 18 May 1951, which are cited by the Syrian party to justify and support its position, are not even referred to in paragraph 21, although four long paragraphs from the Israel memorandum are reproduced verbatim in paragraph 20 of the report, on the same question.

These four long Israel paragraphs give the uninformed reader the impression that, in referring to the texts determining the respective competence of the Mixed Armistice Commission and its Chairman with regard to the Demilitarized Zone, Syria is trying to arrogate to itself rights which, under the General Armistice Agreement, it does not possess, whereas the truth is that Syria makes no claim whatever to be "responsible for ensuring the ...implementation of article V" of the General Armistice Agreement, for such a claim would be an encroachment upon the prerogatives of the Chairman of the Mixed Armistice Commission and the United Nations observers. What it does claim is the right of "supervising that implementation", as a member of the Mixed Armistice Commission entitled to have a say in the matter and under article VII, paragraph 1, of the General Armistice Agreement.

Page 9, paragraph 23

It is incorrect to say that the situation has remained as described in paragraph 4 of the report of 6 November 1951 transmitted by the Chief of Staff of the United Nations Truce Supervision Organization in accordance with the Security Council resolution of 18 May 1951.

The report affirms that neither of the two parties to the General Armistice Agreement has requested an interpretation by the Mixed Armistice Commission of various provisions of the General Armistice Agreement, in the manner established by article VII of the Agreement; whereas the truth is that, since the above-mentioned report was transmitted to the Security Council, Syria has on several occasions officially requested that the Mixed Armistice Commission should hold a special official meeting devoted to the interpretation of certain provisions of the General Armistice Agreement, including articles IV and V of the Agreement.

To mention only a few recent examples, such a request was made by the Syrian delegation at the meeting of the Mixed Armistice Commission held on 15 March 1954 and at the following meetings. The same request was made during the official interview at Damascus between General BENNIKE, former Chief of Staff of the United Nations Truce Supervision Organization, and the Syrian authorities.

Every time such an interpretation was requested by the Syrian party, however, the Israel party evaded the issue by denying the Mixed Armistice Commission the right to interpret the provisions of the General Armistice Agreement. The former Chairman of the Mixed Armistice Commission seems to have encouraged the Israel attitude by advocating unofficial meetings at which, contrary to the provisions of the General Armistice Agreement, any problem could be discussed, according to the Israel delegation's whim of the moment.

At the time, the Syrian delegation rejected such a suggestion, which obviously goes beyond the terms of the General Armistice Agreement, and it urged that there should be a special official meeting of the Mixed Armistice Commission, with a prepared agenda, to interpret, in accordance with article VII, paragraph 8, certain provisions of the General Armistice Agreement, excluding of course the preamble and articles I and II.

Pages 10 and 11, paragraphs 27, 29 and 30

Paragraph 27 states that the original dwellings of the Arab inhabitants of BAQQARA and GHANNAMA (in the central sector of the Demilitarized Zone) were destroyed in March 1951, when the inhabitants were removed from the area, but the paragraph delicately omits to mention who caused the destruction.

The paragraph also affirms that the Arab inhabitants of the two above-mentioned villages are not permitted to enter Syria. It would appear that the United Nations Truce Supervision Organization blames the Syrian authorities for not admitting into their own territory Arab inhabitants of the Demilitarized Zone, who are fully entitled, whatever anyone may say, to live normally and peacefully in their homes. Since these homes have been destroyed, the thing to do is to rebuild them, and not to choose the fundamentally unjust solution of indefinitely swelling the mass of Arab refugees.

Paragraph 29 asserts that attempts have been made by the Israelis, in co-operation with the Chairman of the Commission, to organize a school, medical services and a store, but that, for one reason or another, these proposals were never acceptable to the Arab villagers, who have not always, it seems, been reasonable in their attitude.

In my opinion, this presentation of that particular aspect of the problem of the Arab villagers of BAQQARA and GHANNAMA is not strictly in accordance with the truth. The reason why the villagers have hitherto rejected such proposals is that the proposals provided for the appointment of Israel teachers and doctors. Hence it would seem that the villagers were not so unreasonable in rejecting offers the obvious purpose of which is to make the Arab villagers of the Demilitarized Zone dependent on the Israelis and thus to bring them under the control of the Israel authorities. Furthermore, under the Security Council resolution of 18 May 1951, which provided that Arab civilians expelled from their homes by the Israel authorities should be permitted to return to the Demilitarized Zone, the arrangements for their return and rehabilitation were to be decided upon by the Mixed Armistice Commission and were not to be simply the subject of negotiations between the Chairman of the Commission and the Israel party. In other words, Syria, as a member of the Mixed Armistice Commission, was to have a say in the matter. If Syria had been consulted, it would certainly have opposed the "progressive Israelization" of the Arab inhabitants of the Demilitarized Zone by education and medical care lavished upon them with malicious intent.

UNRWA was the obvious body to undertake this work without giving rise to such objections, and it could have been asked to do so. But that was not done.

Paragraph 30 of the report states that the mukhtars and notables of BAQQARA and GHANNAMA declared, during an interview between them and the Chief of Staff of the United Nations Truce Supervision Organization, that they despaired of their situation in the Demilitarized Zone, from which the Israelis wanted to oust them and in which they got no effective help from Syria or the United Nations Truce Supervision Organization, and that they intended to go over into Syria and become refugees.

It should be emphasized, in the first place, that these declarations were not taken viva voce in a language which the Chief of Staff of the United Nations Truce Supervision Organization understood, but that they were translated for him from Arabic by an Israel police officer from KAWASH (Mishmar Hayarden).

Statements reported in that way are consequently to be accepted with caution.

It should also be pointed out that up to the present Syria has received a vast number of Arab refugees expelled from their homes by the Israel authorities and is not prepared to receive more and thus to sanction, by a misplaced gesture of chivalry, a solution which is contrary to the provisions of the General Armistice Agreement and the Security Council resolution of 18 May 1951.

Page 12, paragraphs 31, 32 and 33

The representations referred to in paragraph 31, which the Chief of Staff of the UNTSO made to secure admittance of the Arab inhabitants of the Demilitarized Zone into Syria, are incompatible with article V of the General Armistice Agreement and the aforementioned Security Council resolution.

This explains the Syrian refusal referred to in paragraphs 32 and 33 of the report.

Pages 12, 13 and 14, paragraphs 35, 36, 37, 38, 41 and 42

Paragraph 35 of the report states that on 24 December 1954 the Chief of Staff, Israel Defence Forces, accepted the proposals set forth in paragraph 34, with the exception of the first proposal, namely, that UNRWA should supply immediate necessities (mainly grocery items), which was rejected on the pretext that such supplies were unnecessary and tended to encourage undesirable dependency on the part of the Arab villagers of the Demilitarized Zone.

This pretext advanced by the Israel officer is very clever, but does not constitute the real reason for the refusal. In actual fact, if the Arab inhabitants of the Demilitarized Zone were to become dependent on UNRWA, they would no longer be dependent on the Israel authorities and consequently would cease to be controlled by them. Apparently, the intention is to make it impossible, by all sorts of means, for these Arab inhabitants to become independent of the Israel authorities. Examples of this policy abound. I have mentioned some of them in connexion with schools and medical care and others can easily be found. For instance, in paragraph 36 of the report, the reader will note that the mukhtars of the Arab villages of BAQQARA and GHANNAMA were still dissatisfied on a number of points, which for reasons unknown to me are not mentioned but which are no secret to anybody who knows that these mukhtars do not wish to become Israel subjects or to live under Israel control. These two conditions have always been presented by the Israel authorities as the counterpart to the so-called advantages listed in paragraph 34. These conditions are obviously flagrantly incompatible with the provisions of article V and the Security Council resolutions and are therefore unacceptable.

Another eloquent example illustrating the real intention of the Israel authorities to oppose any attempt on the part of the Arab inhabitants of the Demilitarized Zone to secure a measure of economic independence is given in paragraphs 37 and 38 of the report, concerning the reconstruction of the Arab village of NUQEIB. These two paragraphs relate the vicissitudes which have beset its reconstruction but do not mention the fact that the new Israel settlements, which did not exist before the 1948 operations, were set up in the Demilitarized Zone with the full knowledge of the United Nations observers and the Truce Supervision Organization. It is enough to refer to El-Katzir in the southern Demilitarized Zone. Most of these new settlements were established at points specially selected for their strategic value. This fact has already been referred to in the Syrian aide-mémoire reproduced in an appendix to the report. The settlements not only threaten the security of the Arab inhabitants of the Demilitarized Zone, but encroach on their land and so deprive them of their only hope of living independently of Israel control and UNRWA assistance. This is confirmed in paragraphs 39 et seq., relating to conflict over rights to cultivate land in the Tewafiq area, in the southern Demilitarized Zone.

The Israel authorities have consistently advanced considerations of military security as a cover for their expansionist policy and their encroachment on Arab lands in the Demilitarized Zone. These considerations have not been and cannot be properly regarded as valid and compatible with the spirit and letter of the General Armistice Agreement and the provisions of the Security Council resolution.

Paragraph 41 of the report and the resolution adopted by the Mixed Armistice Commission on 12 December 1954, in accordance with its rules of procedure and with the General Armistice Agreement, define the position of the Chairman of the Commission and of the Syrian delegation with regard to the considerations referred to above.

I consider, furthermore, that it would have been more equitable and wiser not to stress unduly the absence of the Israel delegation from the meeting at which the resolution of 12 December 1954 was adopted, as this absence has no substantive bearing on the validity and propriety of the resolutions adopted by the Mixed Armistice Commission, in accordance with its rules of procedure and with the General Armistice Agreement.

The objection to a special reference to the absence of the Israel delegation obviously becomes inapplicable if the purpose of the reference is to stress the Israel authorities' violations of the General Armistice Agreement and of the Security Council resolution of 18 May 1951 in the form of the deliberate absence of the Israel delegation from the Mixed Armistice Commission's meetings.

I also consider that it would have been better if the resolution of the Mixed Armistice Commission of 12 December 1954 had been reproduced in the body of the report, instead of the resolution of 15 March 1954 which appears on page 15 (paragraph 44), and had not been relegated to the background in the form of appendix C to the report.

Pages 14 and 15, paragraphs 44 and 45

The definition of the international boundary between Syria and Palestine in paragraph 44 is based on concepts which do not appear anywhere in the

General Armistice Agreement, but which are derived from the Agreement of 7 March 1925 between Great Britain and France respecting the Boundary Line between Syria and Palestine.

In adopting this course, the Truce Supervision Organization is, perhaps unwittingly, following the example set by the Israel authorities, who are trying, by a cunning manoeuvre, to make the Mixed Armistice Commission admit, sooner or later, Israel's sovereignty over the so-called ten-metre strip on the eastern shore of Lake Tiberias.

The gross error which the Mixed Armistice Commission committed in precipitately adopting the resolution of 15 March 1954 will be seen from the following analogies deliberately introduced by the Israel authorities into their draft resolution.

Paragraph 1 of this resolution contains the following expressions:

Syria Israel territory

Syrian territory Israel

Paragraph 2 of the resolution, also contains the following expressions:

Syria 10-metre strip on the eastern shore of Lake Tiberias

Syrian territory Israel

It therefore seems that, by adopting the Israel draft, the Mixed Armistice Commission has implicitly admitted that the ten-metre strip is part of Israel territory and that Israel has consequently inherited the Palestinian territory delineated by the international boundary as defined in the said Franco-British Agreement. It should be noted, in this connexion, that this is the first time in its existence that the Mixed Armistice Commission has made such a gross error with regard to the territorial questions. In the past, the Mixed Armistice Commission, in dealing with these important questions, had scrupulously made reservations such as that which appears in the following resolution, adopted on 20 July 1950:

"The Syrian delegation is entrusted with the initiating of necessary orders to prevent any Syrian subject to enter the ten-metre strip parallel to the water line of Lake Tiberias, and to recommend strict adherence to orders to all Syrian army forces not to take any action

against Israelis on the above ten-metre strip or on the lake, pending final settlement of the ten-metre question."

Moreover, paragraph 44 of the report nowhere mentions the strenuous objections voiced by the Syrian delegation at the meeting of 15 March 1954 and at the subsequent meetings of the Mixed Armistice Commission nor does it mention the important and reiterated reservations which that delegation expressly made concerning the propriety and legitimacy of the resolution of 15 March 1954, which was so hastily and lightly adopted by the Mixed Armistice Commission at the instigation of Israel.

Furthermore, paragraph 44 also does not refer to some of the evidence produced by the Syrian authorities in support of the watering and fishing rights of the riparian Arab population. This evidence is clearly stated in the Syrian aide-mémoire attached to the report, and is elaborated further in the supporting document which the Syrian delegation to the Mixed Armistice Commission prepared in anticipation of a discussion of the question in the Commission.

The Syrian delegation cited extracts from that document at a meeting of the Mixed Armistice Commission during which the problem of the rights of the riparian population was touched upon incidentally. The document is reproduced in full in the annex to these observations, for suitable action.

The report not only omits any reference to the Syrian evidence, objections and reservations, but actually adopts a position with respect to an important question, the legal aspects of which have not been adequately examined or discussed. For example, in paragraph 45 the Chief of Staff of the UNTSO is reported as taking the view that the Mixed Armistice Commission is not in a position to satisfy the Syrian claim in that respect.

By declaring, at this juncture, that the Mixed Armistice Commission is not competent to examine and settle the Syrian claims, the Chief of Staff denies the Commission's power and obligation to carry out one of its essential tasks under the General Armistice Agreement, namely, that of interpreting certain provisions of that Agreement. By taking this view, the Chief of Staff also deprives Syria of its right to defend its views on a vital and most

important question in the Mixed Armistice Commission. Moreover, he is encouraging Israel's manoeuvre of requesting an unofficial meeting at which the Israel Party to the General Armistice Agreement could raise all kinds of problems at will and would stipulate the recognition of rights of the civil riparian population as a condition for the solution of the other political questions which are pending.

The Syrian authorities have invariably asked for official meetings of the Mixed Armistice Commission for the purpose of the interpretation of certain provisions of the General Armistice Agreement, each party to be given every opportunity of stating its case and producing its evidence.

The Syrian authorities are still firmly resolved not to discuss such questions outside the Mixed Armistice Commission and will continue to press for an early official meeting for the purposes of interpretation.

Page 16, paragraph 46

This paragraph merely sets forth verbatim Israel's views of the state of affairs in the Demilitarized Zone, which are also given in the Israel memorandum contained in an appendix to the report. These views, which are reproduced without any comment, therefore call for certain observations.

The first paragraph of the Israel text refers to the clarification of questions relating to the Demilitarized Zone by the Security Council and the Chief of Staff of the UNTSO.

I consider that the only text which can legitimately be used as a basis for settling such questions are article V of the General Armistice Agreement and Dr. BUNCHE's explanatory note, which was agreed upon by the two parties to the armistice negotiations and was incorporated in the Security Council resolution of 18 May 1951. Any other text or clarification is valid only to the extent to which it is compatible with those two texts.

Appropriate comments have already been made on the second paragraph of the Israel text.

The third paragraph refers to the existence of a military roadblock installed by the Syrian authorities on the road to EL-HAMMA. I feel bound

to add that, according to information received from an authoritative source, this roadblock is in Syrian territory.

It is also stated in the same paragraph that the (Israel) inhabitants of TEL-KATZIR have been cultivating their lands for five years. Yet, the UNTSO itself has ascertained that some of the land which they cultivate was usurped from Arabs who have not renounced their claim to their property. This was proved by conversations between those inhabitants and the Chairman of the Mixed Armistice Commission. It therefore follows that Israel encroachments on Arab territory in the southern Demilitarized Zone have continued for five years, or since the establishment of the new Israel settlement at TEL-KATZIR, which did not exist before the 1948 operations.

The allegations in the fourth paragraph of the Israel text are utterly without foundation. Syrian armed forces on the eastern bank of the Jordan River have never crossed the boundaries of Syrian territory in that area or taken the initiative of opening fire without provocation on anyone in that area.

Furthermore, the incidents referred to in that paragraph were all occasioned by the Israelis themselves, who can apparently hardly contain themselves within the strict limits of the Genral Armistice Agreement.

It is therefore obvious that the conclusions in the last paragraph of the Israel text are gratuitous fabrications and are not supported by any tangible facts.

Pages 17 and 18, paragraphs 48, 49, 50, 51, 52, 53, 54, 55 and 56 (conclusions)

It is stressed in paragraph 48 that the complaints of both Parties in regard to the state of affairs in the Demilitarized Zone have been set forth and commented upon. I consider, however, that these complaints have not been sufficiently commented upon and that it would have been much better for the Chief of Staff to take a far more specific and definite position in that connexion.

Moreover, the thesis on which the conclusions of the report seem to be based - the recommended revision of certain provisions of the General Armistice Agreement which relate to the Demilitarized Zone - is likewise inconsistent and vague.

Paragraph 49, for example, seems to legalize the solution proposed by the Chief of Staff, by stating that it is impossible at this late date to bring the conditions in the Demilitarized Zone into line with the principles set forth in the "authoritative comment" on article V of the General Armistice Agreement.

It would therefore seem that the following thesis was adopted:

The encroachments of the Israel authorities on the Demilitarized Zone are now so far-reaching that it is impossible to remedy them by imposing on these authorities respect for the provisions of the General Armistice Agreement which concern the Zone. Then what is to be done? The easiest though not the most equitable solution would obviously be to bring the text into line with the new situation. This extremely dangerous policy is not new; indeed, there is a danger that it may be perpetuated indefinitely without any consideration for legality and justice.

On the contrary, according to paragraph 50 of the report the provisions of article V of the General Armistice Agreement suffer from so grave a flaw that they are allegedly inapplicable. This, of course, is an entirely novel assertion, which has never been made before and which therefore deprives the conclusions to the report of any unity or precision.

Although I do not want to give my views now on the solution proposed in the conclusions to the report, I should like to make a few comments which may at least provide food for thought.

It is stated in paragraph 50 that there must be traffic and intercourse between the villages within the Zone, and trade and intercourse outside the Zone if there is to be a "normal civil life" in the area. Proceeding from that premise, paragraph 54 seems to provide for a special system of trade and intercourse between the Arab and Israel villages of the Demilitarized Zone.

I consider, however, that it is by no means necessary to contemplate such a system in order to enable the Arab villages of the Demilitarized Zone to flourish and prosper. The intercourse which might be arranged, without the interference and intervention of Israel, between the Arab villages and the adjacent Syrian region would in itself suffice to breathe new life and health into these villages.

Moreover, it would seem that the recommended solution, which takes the form of provisionally dividing the Demilitarized Zone into administrative regions and, subsequently, of revising certain provisions of article V of the General Armistice Agreement, could be considered more profitably if the following procedure of three stages were to be followed:

(1) A stage during which studies and the necessary detailed maps relating to the Demilitarized Zone would be prepared by the UNTSO.

(2) A stage at which preliminary negotiations would be begun in the Mixed Armistice Commission, under conditions and in accordance with principles to be laid down at a later date.

(3) The final stage, at which the revision of article V of the General Armistice Agreement might be considered, if the preliminary negotiations in the Mixed Armistice Commission were to prove successful.

ANNEX

STATEMENT CONCERNING THE TEN-METRE COASTAL STRIP AND THE CUSTOMARY RIGHTS OF THE RIPARIAN POPULATION

I. Introduction

At the emergency meeting of the Mixed Armistice Commission held on 15 March 1954 Colonel Shalev, head of the Israel delegation, had stated inter alia that he had no objection to the Syrian delegation's stating its views on the troubled situation prevailing along the eastern shore of Lake Tiberias; that, on the contrary, the principal duty of the Mixed Armistice Commission was not to condemn a particular party but to take, and to recommend to the parties, measures for safeguarding the peace; that article VII of the General Armistice Agreement concerning the duties of that Commission said that: "The execution of the provisions of this Agreement shall be supervised by a Mixed Armistice Commission..."; and lastly that if the incidents which had occurred on the eastern shore of Lake Tiberias were to be discussed, then all the aspects of the problem should be taken into consideration. That is precisely the approach which the Syrian delegation intends to follow at today's meeting.

II. The two conflicting positions

Obviously, if we are to study every aspect of the problem with which this Commission has been concerned for so long and if we are to draw the necessary conclusions and recommend the most suitable action, we must first consider and compare the two conflicting positions and then weigh the respective merits of the evidence produced in support of these positions on either side.

(a) The Israel position

Let us therefore consider first the Israel position. As set forth in the many statements by General Shalev, this position may be summed up as follows: "All the incidents which have occurred in Lake Tiberias are due to two main causes:

1. Syrian penetration of the ten-metre coastal strip and further penetration of the lake by civilians, fishermen and at times by military forces;

2. Syrian intervention, principally military, in Israel activities on the lake."

This is the essence of the Israel position; its only merit, as we shall see later, is its simplicity.

Let us now examine the evidence offered by the Israel delegation in support of this position.

(b) The evidence

1. Article IV, paragraph 3, of the General Armistice Agreement

The Israel delegation relies first and foremost on article IV, paragraph 3 of the General Armistice Agreement which reads as follows:

> "Rules and regulations of the armed forces of the Parties, which prohibit civilians from crossing the fighting lines or entering the area between the lines, shall remain in effect after the signing of this Agreement, with application to the Armistice Demarcation Line defined in article V, subject to the provisions of paragraph 5 of that article."

First of all, we would stress the words: "the Armistice Demarcation Line defined" and "subject to the provisions of paragraph 5 of that article". We shall inquire into the full scope of these words later.

The conclusions which the Israel delegation draws from article IV, paragraph 3 are:

(1) That the paragraph in question prohibits the Syrian civilian population living on the shore of Lake Tiberias from crossing the Armistice demarcation line in that area for any purpose whatsoever; in other words, that these people are prohibited from crossing the line even to exercise their legitimate and acquired rights to fish in the lake and to use the water of this lake for their household needs;

(2) That the ten-metre coastal strip forms an integral part of Israel territory.

Can such conclusions be drawn from this paragraph which contains several qualifying phrases? The answer is, obviously, no, and for the following reasons:

(1) Firstly, because the paragraph in question makes no mention whatsoever of the ten-metre strip. Moreover, no provision of the General Armistice Agreement refers to any such strip. It is only necessary to read and scrutinize the Agreement from beginning to end to discover this fact. The only reference to be found in the Agreement concerns the international frontier. It follows, therefore, that the Israel delegation bases its claim to this ten-metre strip not on the General Armistice Agreement but on the Franco-British Agreement of 7 March 1923 respecting the boundary line between Syria and Palestine, the only text containing an express reference to the ten-metre strip. This disposes of the first point.

(2) Not only does article IV, paragraph 3, contain an express proviso relating to the demilitarized zones situated between the demarcation line and the international frontier - a proviso which contemplates the final territorial settlement - but it is also based, as indeed are all provisions of the General Armistice Agreement, on the following purposes and principles contained in article II, the cornerstone of the entire Agreement:

(a) the principle that no political advantage should be gained under the truce ordered by the Security Council;

(b) the principle that no provision of the General Armistice Agreement shall in any way prejudice the rights, claims and positions of either Party thereto in the ultimate peaceful settlement of the Palestine question, the provisions of the General Armistice Agreement being dictated exclusively by military, and not by political, considerations.

(3) Article IV, paragraph 3, is also based on the provisions of article V, paragraphs 1 and 2, which define the demarcation line. The two paragraphs read as follows:

"1. It is emphasized that the following arrangements for the Armistice Demarcation Line between Israeli and Syrian armed forces and for the Demilitarized Zone are not to be interpreted as having any relation whatsoever to ultimate territorial arrangements affecting the two Parties to this Agreement.

"2. In pursuance of the spirit of the Security Council resolution of 16 November 1948, the Armistice Demarcation Line and the Demilitarized Zone have been defined with a view towards separating the armed forces of the two Parties in such a manner as to minimize the possibility of friction and incident, while providing for the gradual restoration of normal civilian life in the area of the Demilitarized Zone, without prejudice to the ultimate settlement."

The foregoing extracts make it clear that the Israel delegation in drawing itw own fanciful conclusions from article IV, paragraph 3, has misinterpreted the paragraph and read into it a meaning and implications which the text does not support. It has falsified the meaning of the paragraph by cleverly gliding over both the proviso contained in the paragraph itself, the fundamental purposes and principles on which it is based in virtue of article II, and the purpose which, according to article V, paragraphs 1 and 2, the demarcation line was intended to serve.

Why, then, has the Israel delegation deliberately drawn from article IV, paragraph 3, conclusions diametrically opposed to those which should necessarily flow from a faithful and honest interpretation of the text? The answer is quite simple: In order to induce the Commission, one day or another, to concede that in prohibiting Syrian civilians from crossing the demarcation line on the eastern shore of Lake Tiberias, the General Armistice Agreement had definitively conferred sovereignty over the ten-metre strip upon Israel authorities. The truth of this assertion and the true scope of the Israel manoeuvre become evident if one re-reads and weighs carefully the many statements made by the Israel delegation to the Commission on this subject.

Whenever the Israel delegation has referred to the ten-metre strip either in its statements or in its draft resolutions, it seems to have been speaking of Israel territory. By way of example I shall merely cite the following Israel statement appearing on page 25 of the record of the meeting of 15 March 1954:

"One must not forget that the ten-metre strip parallel to Lake Tiberias is Israel territory."

That is actually the mainspring of the Israel manoeuvre: the act of prohibiting the riparian Syrian population from fishing and drawing water in Lake Tiberias is only a means of exerting pressure.

This stratagem is actually very adroit and may even prove fruitful. It cannot, however, continue without undermining the very foundations of the General Armistice Agreement and the true purposes and principles upon which it is based.

Of course, this tactic begins to be dangerous when the Chairman of the Commission allows himself to be taken in. This fact is clearly shown by the parallel I am now going to draw between two resolutions adopted by this Commission at an interval of four years:

The first resolution, adopted unanimously at the forty-first regular meeting on 20 July 1950, read as follows:

> "The Syrian delegation is entrusted with the initiating of necessary orders to prevent any Syrian subject to enter the ten-metre strip parallel to the water line of Lake Tiberias, and to recommend strict adherence to orders to all Syrian army forces not to take any action against Israelis on the above ten-metre strip or on the lake, pending final settlement on the ten-metre question."

Let us now look at the second resolution adopted by a majority vote (the Syrian delegation abstaining) at the emergency meeting of 15 March 1954 and, as we read it, let us carefully note all the fanciful but very dangerous innovations that it contains.

First we find here the words "any crossing" at the beginning of paragraph 2. We also find the expression "crossing whatsoever" at the end of paragraph 6. But we do not find any reservation of the kind contained in the resolution of 20 July 1950 (see above) for which the Syrian delegation voted at the time.

The record of the emergency meeting held on 15 March 1954 shows that the Chairman of the Commission voted for the latter resolution together with all its fanciful and dangerous innovations.

The record also shows that not only did the Chairman vote in favour of the resolution but that, in explaining his vote, he said he had done so because the terms of the resolution merely reproduced those contained in the General Armistice Agreement. The Chairman of the Commission even told Colonel Chatila,

then the head of the Syrian delegation, that even if no vote had been taken on the Israel draft, nothing would have been changed inasmuch as the provisions of the draft had been in existence previously and were already in effect.

But fortunately the Chairman of the Commission corrected his attitude in time and agreed that, in his view, Colonel Chatila had been right in reserving his delegation's position on the texts which might lead to a revision of the various agreements that had been reached.

The Syrian delegation would also have been grateful if the Chairman had drawn the Commission's attention to the fact that the Israel draft of 15 March 1954 contained dangerous innovations as compared with the General Armistice Agreement, that its terms did not merely reproduce those of the Agreement and that the Syrian delegation had also been right in reserving its position on them.

This recapitulation of the past, for which I crave your indulgence, was a necessary preliminary for a proper understanding of the dangerous road that the Commission has travelled in the past four years. I will not again explain why the absence in the resolution of 15 March 1954 of a reservation concerning the final territorial settlement constitutes an innovation. I think that I have elucidated that point sufficiently in stressing that the fundamental purposes and principles and the definition of the demarcation line, on which the Armistice Agreement is based, were completely and maliciously ignored in the resolution in question.

I shall now explain why the words "any" and "whatsoever" in the resolution of 15 March 1954 are innovations incompatible with the provisions of the Agreement.

Article IV, paragraph 3, on which the objectionable passages of the resolution were based, does not contain these specific terms. Such specific language occurs only in article III, paragraph 2, relating to military and para-military forces, viz.:

> "No element of the land, sea or air, military or para-military, forces of either Party, including non-regular forces, shall commit any warlike or hostile act against the military or para-military forces of the other Party, or against civilians in territory under the control of that Party; or shall advance beyond or pass over for any purpose whatsoever the Armistice Demarcation Line set forth in article V of this Agreement;...".

The essential difference, however, is that the paragraph just cited refers only to elements of the military or para-military forces whereas article IV, paragraph 3, refers only to civilians. Accordingly, if the Parties to the General Armistice Agreement had intended to prohibit riparian civilians from crossing the demarcation line for any purpose whatsoever, as the Israel delegation now claims, the Agreement would have said so clearly and expressly, as it did, in fact, as we have just seen, in article III with reference to military and para-military forces. If we keep the purposes and principles of the General Armistice Agreement constantly in mind this all becomes coherent and logical. I shall revert to the intention of the Parties to the Agreement at a later stage, during my statement on the Syrian position, when I shall consider how article IV, paragraph 3, should really be construed.

From what I have said, it follows clearly that the resolution of 15 March 1954 is not - as was complacently said at the time, in keeping with the argument of Israel - simply a faithful reproduction of the provisions of the Agreement. On the contrary, the resolution constitutes a new step along this dangerous slope down which the Israel delegation is now leading us by subtle and astute oratorical manoeuvres.

I apologize for having expounded the viewpoint of the Syrian delegation on this subject at some length. I merely wished to warn this Commission against the dangers inherent in these manoeuvres.

2. The alleged undertakings of the Syrian delegation

I shall now consider the other evidence produced by the Israel delegation in support of its contention; this additional evidence consists in the main of the alleged undertakings given by the Syrian delegation at previous meetings.

The Israel delegation has on many occasions in this Commission quoted the terms of undertakings said to have been given by Lieutenant-Colonel Jedid, then head of the Syrian delegation, at earlier meetings of the Commission.

I myself do not set much store by quotations, proffered with suspicious alacrity, of the terms of earlier undertakings and resolutions, for the Israel delegation has an unfortunate tendency to omit passages which place it in an unfavourable light and to lay emphasis on those favourable to it, the meaning and scope of the quotations thus obviously being largely distorted. To give

but one example of that tendency, the important proviso "pending final settlement of the ten-metre question" was included in the original text of the resolution unanimously adopted by the Commission at its forty-first meeting held on 20 July 1950, but is replaced by a series of dots in the version provided by the head of the Israel delegation on page 9 of the record of the emergency meeting held on 15 March 1954.

We must therefore be wary, believing as we do that the numerous dots in the Israel quotations appear in the place of conditions, reservations or passages which reflect unfavourably on the Israel delegation.

This suspicion is not caused by any exaggeration of the mind or professionally warped approach. We know, of course, that the statements quoted by the Israel delegation are not the only ones made on the subject before us by the head of the Syrian delegation. We also know that, more often than not, many of the undertakings were subject to express reservations or, in their proper context, constitute important reservations in themselves. It may be of course that at the time when these undertakings were entered into, particularly if before 1952, some of the reservations may, in the absence of relevant documents, not have seemed clear-cut. Nevertheless, the general impression which emerges from all the earlier Syrian undertakings, taken as a whole, is that the head of the Syrian delegation realized even then that to broach the delicate territorial issue was to tread upon dangerous ground. It is, in fact, clear from numerous statements that the question of the ten-metre strip was never settled in the Mixed Armistice Commission. On pages 21 and 22 of the record of the emergency meeting held at Rosh-Pina on 18 March 1953 we find the following:

- Lt. Colonel Jedid: May I know where this ten-metre strip is situated?

- Major Friedlander: As everyone knows that point was settled some time ago. It is not on the agenda. I see no reason why I should reply to the question.

- Lt. Colonel Jedid: At any rate, I must say that the point has never been settled. (end of quotation)

Moreover, we do not find the slightest reference to this ten-metre strip in any of the statements atttributed to Lieutenant-Colonel Jedid by Colonel Shalev at the meeting of 15 March 1954.

I shall not dwell further upon this matter of Syrian undertakings which, in my delegation's view, is too nebulous to constitute valid evidence. I shall return to it later to discuss the customary rights of the riparian population, a specific aspect which should have priority over all others, and to give a reasoned judgment of the validity of these undertakings.

Let us now consider the Syrian case.

(a) The Syrian case

What does it consist of exactly? According to the Syrian delegation the incidents which occur in the eastern part of Lake Tiberias, i.e. in the Israel defensive area, may be attributed primarily to:

1. The presence of armoured and heavily armed Israel launches;

2. Attacks and acts of provocation regularly and deliberately staged by these launches against Syrian outposts in the Syrian defensive area for the obvious purpose of:

   (a) intimidating the riparian civilian population and to prevent it from peacefully corssing the demarcation line as it usually does to exercise its lawful right to fish and to use the waters of Lake Tiberias for its domestic needs;

   (b) performing an act of sovereignty over the ten-metre coastal strip, the final disposal of which has not yet been settled by subjecting the Syrian outposts and the riparian Syrian population to a test of strength.

(b) The evidence

What is the evidence produced by the Syrian delegation in support of its case? Let us first mention the following:

1. Paragraph III of Annex IV of the Armistice Agreement under which naval forces are barred from the Lake Tiberias defensive area and also paragraph I (2) of the same annex under which the presence of armoured units in the defensive area of either party to the General Armistice Agreement is prohibited.

This first point in the evidence was accepted and confirmed by this Commission in the unambiguous, specific resolutions it adopted on the subject at previous meetings.

2. Article II and article V, paragraphs 1 and 2, of the Armistice Agreement which relate to the purposes and principles of the Agreement and to the definition of the demarcation line.

Each of these references is mentioned in paragraph ( ) of the Syrian draft resolution which has just been submitted to you for consideration and adoption. Their purpose is precisely to arrest the Commission's dangerous slipping down the slope knowingly and cleverly prepared by the Israel delegation. Each of them is a demurrer to Israel's pretensions and as such deserves careful consideration.

Lastly, I might mention the following points as constituting equally important evidence:

3. International law, earlier treaties and the assurances given by the Israel delegation during the armistice negotiations. All these points are particularly pertinent for the purpose of guaranteeing to the Syrian and Palestinian riparian population their ancient and customary rights to fish in and draw water from Lake Tiberias.

I shall now consider these last points in the evidence in order to set out those principles and rules which should guide us in an accurate interpretation of article IV, paragraph 3.

In the statement he has just made, the head of the Syrian delegation has already submitted a number of considerations and quotations from the works of eminent jurists of international repute in which emphasis is placed on the importance of customary law in relation to the written law. I shall not refer to them again. I shall merely supplement these considerations and quotations by adding the following eloquent passage from page 577 of Mr. Georges Scelle's Cours de Droit International Public (1948):

> "It must above all be made clear - and we stress this point, that international custom, whether private, governmental or official in origin, does not have to be 'recognized' or 'accepted' by Governments in order to be capable of being invoked against them (underlined in the author's text). In particular, it applies ipso facto (underlined in the text) to every new State and to every new Government, whether a member of the societas of the law of nations or a member of a particular international societas." (end of quotation)

Let us now consider the rules and principles of international law which should be applied for a correct and accurate interpretation of article IV, paragraph 3.

A first set of principles and rules is given on pages 175 et seq. of Mr. Sibert's Cours de Droit International Public (1951-1952).

The first principle, the author says, is that a treaty should be interpreted in the light of the object which the Parties wished it to accomplish. It is a striking fact (he continues) that Vattel himself referred to this precept of reason and equity. In book II, chapter XVII, page 270, he /Vattel/ says: "Since the purpose of a legitimate interpretation of an instrument is merely to discover what was in the mind of its author or authors, consequently, if an obscure point is found, one must endeavour to discern what was the probable intention of the authors of the instrument and to interpret it accordingly." ..... Ever since those early days the learned authors and the case-law of the XIXth and XXth centuries have invariably followed the principle that an instrument should be construed by reference to the will of the Parties and not to the meaning of the text irrespective of that will. (the author gives several examples) ..... In international case-law this truth was readily admitted. The Permanent Court of International Justice on several occasions took account of the general object of a treaty for the purposes of interpretation. (several cases are mentioned by the author) ..... There is no need to emphasize (continues the author) that the will of the contracting State is identified with that of their organs authorized to negotiate and sign (cf. Ehrlich, loc.cit. 1928, Volume IV, page 66).

A second set of principles and rules may be found in the work by André Bello, the eminent international jurist, entitled Règles Relatives à l'Interprétation des Traités. The relevant passage is quoted in Bustamente's treatise on public international law, volume III. The passage states that:

> "One must go beyond the strict wording if, taken literally, it would imply something contrary to natural equity or impose conditions so onerous as to make it unlikely that they ever entered the author's mind."

What conclusion can be drawn from a study of the interpretation of article IV, paragraph 3, of the Armistice Agreement in the light of the principles and rules I have just mentioned? The obvious conclusion is this:

The idea of denying to the riparian civilian population its ancient and customary rights to fish in and to use the water of Lake Tiberias was not and could not have been entertained by the negotiators at the armistice negotiations. Under the previously mentioned rules, we must look to these negotiations for evidence of the true intentions of the Parties to the General Armistice Agreement. It was largely on account of the assurances given at the time by the Israel negotiators with respect to the preservation of these rights that the Syrian negotiator did not give that point much thought. Those assurances were set out in official documents. They may be found on page 3, paragraph 6, of the official record of the meeting of the Military Commission held on 6 July 1949. In order to refresh a few memories I should like to quote verbatim the statement made at that meeting by the Israel delegation:

> "The Israel delegation agrees that the rights of persons who enjoyed fishing rights in Lakes Huleh and Tiberias before the war of May 1948 will be recognized. Similarly, all Arabs who settled on property before the war of May 1948 will be authorized to return to the Demilitarized Zone."

The Israel delegation alleged, at an earlier meeting of this Commission, that the Israel negotiators, when questioned on this point, denied ever having given such assurances or that any such documents exist. As you know, this capricious view was not shared by the Chairman of the Commission. On the contrary, he confirmed that a copy of the document in which these assurances were incorporated exists even if the original document is no longer available. At any rate Mr. Vigier, an authoritative witness to the armistice negotiations, can if necessary easily settle this issue which the Israel delegation has invented in order to shirk its obligations. Whatever that delegation may think, the clear and incontrovertible fact remains that specific assurances were given to us and that these assurances are binding upon those who gave them.

The Israel delegation has also attempted to claim that the armistice negotiations have no value as evidence and no binding force. The Chairman of the Commission, quite correctly, also dissociated himself from that view.

Manifestly, therefore, the Israel delegation's assurances at the armistice negotiations had influenced the Syrian delegation's position. The latter would never have accepted the present, provisional, delineation of the demarcation line along the eastern and northern shores of Lake Tiberias had it not been for the express undertaking given by the Israel delegation to respect the ancient and customary rights of the Syrian population along the shores of the lake. Had these considerations of vital importance to the Syrian negotiators not been taken into account, the demarcation line would have been drawn well beyond the northern and eastern shores of the lake. It would have been within the range of Syrian coastal weapons, as was the case in the southern sector of the central Demilitarized Zone and in some areas of the southern Demilitarized Zone.

Let us now assume that the Syrian delegation subsequently undertook, on behalf of the riparian population, to waive these fundamental rights, and that it did so absolutely and unreservedly. Carrying the case to extremes, how valid would such an undertaking be?

We find a reply to this question in the passage dealing with the essential conditions of treaties, on pages 398-400, Volume III, of Bustamente's treatise on public international law.

The author says that a treaty can only be valid if it is "possible", and distinguishes three kinds of possibilities: material or physical possibility; legal possibility; and ethical or moral possibility. He goes on to say:

> "The material possibility presupposes, as Martens says, that a State can only commit itself in respect of things and rights over which it has authority and, as Pradier Fodéré puts it, that each thing and act under the State's authority can become the subject of international agreements. From this premise, Rivier and Oppenheim infer that stipulations entered into or promises made by a third party are void, and add that the contracting Parties alone may enter into a compact.
>
> "The legal possibility may relate to various matters. Under article 199 of Pessoa's draft Code a treaty is not valid in law if it violates directly the constitution of a contracting Party or contravenes the basic principles of justice and international law. Chailley says that a treaty must not conflict with a principle of law, or with a custom, or with a rule which is binding upon the contracting Parties. Article 693 of Fiore's Code stipulates that a State cannot, by virtue of a treaty, bind itself to do something which is repugnant to positive international

law or renounce its fundamental rights. Both Oppenheim and Pessoa say that the object of a new treaty must not be inconsistent with the rights safeguarded under earlier treaties.

"With respect to ethical or moral possibilities, Rivier says that the object of a treaty must be reconcilable with ethics. Oppenheim, Fiore and Pasquazi say that it must not be immoral." (end of quotation)

The distinguished international jurist Sibert devotes several pages of his Cours de Droit International Public (1951-1952) to international ethics which he describes as the ally and bulwark of the law.

In the light of these quotations, the only conclusions that can be drawn are the following:

I. The Syrian undertakings, without their reservations, would not satisfy the conditions of material, legal and moral possibility and hence would not be valid;

II. If the Israel interpretation of article IV, paragraph 3, is accepted, the object of that paragraph would become materially, legally and morally unrealizable, for the following reasons, which apply just as much to this paragraph as to the Syrian undertakings which, pursuant to the General Armistice Agreement, are treated as though they were provisions of that Agreement:

(a) The riparian rights of the Palestinians who took refuge in Syrian territory cannot validly, without their consent, form the subject of arrangements between the Syrian and Israel delegations, for these refugees are third parties in relation to the Syrian and Israel contracting parties;

(b) The object of article IV, paragraph 3, would be patently immoral, for it would deprive the riparian civilian population of its most fundamental and sacred rights;

(c) The paragraph in question would infringe the fundamental principles of justice and international law, would be contrary to customs and fundamental rights and would be incompatible with rights secured by earlier treaties. This point, relating to earlier treaties, warrants further examination.

Indeed, drawing water and fishing in Lake Tiberias are not only "immemorial and ancestral customs", but above all "positive international servitudes", which should be valid against all. These servitudes were laid down in the Agreement between Great Britain and France respecting the Boundary Line between Syria and Palestine from the Mediterranean to El-Hamma, dated 7 March 1923, and by the Agreement between Palestine and the Lebanon and Syria to facilitate good neighbourly relations in connexion with frontier questions, concluded between the two Powers aforesaid on 2 February 1926. The passages in these two Agreements which refer to the customary rights of the riparian population are so familiar to us that I shall not quote them.

The "positive international servitudes" or, in other words, "the objective situations" created by provisions in these international instruments which relate to the customs in question have never at any moment ceased to exist despite the war and despite article IV, paragraph 3 of the Armistice Agreement.

This categorical assertion is supported by ample irrebuttable evidence. I shall only cite the following texts, which are authoritative on this subject:

Mr. Charles Rousseau, Principes Généraux de Droit International Public, page 570.

"Expiration of treaties:

2. Exception: objective situations created by treaties:

"It also seems that war cannot upset objective situations established by treaties which English authors call 'dispositive treaties'. The essential feature of these treaties is that they bring into being, recognize or regulate a permanent state of affairs, the principal example being international servitudes."

Similarly, Bustamente in volume III of his treatise on public international law draws a very clear distinction between the various situations which may arise in connexion with international servitudes. The writer distinguishes four situations:

1. the instance of an armed conflict between the "servient" State, i.e. the State subject to the servitudes, and the "dominant" State, i.e. the State which enjoys the benefit of the servitudes;

2. between belligerent and neutral;

3. both belligerents against a common enemy;

4. and, lastly, both being neutral and at peace.

Only the first of these four cases could of course apply, with slight modifications, to the present situation. Precisely with reference to this case, Bustamente says:

> "All servitudes remain in suspense, except natural servitudes, which continue automatically quite independently of the armed conflict; but the suspension ceases when peace is restored, regardless whether the decision on their future has been taken in the agreement regulating them. If by that agreement the servitudes (i.e. other than natural servitudes) are abolished, it will be the will of the parties, not the war, that will have put an end to them."

It follows from the two passages cited above that neither war nor the will of the parties can abolish natural servitudes, which accordingly continue to exist and to be valid against all.

This is also confirmed by the "accepted conclusions" cited by Charles Rousseau in his "Cours de Droit International Public", page 276:

> "Territorial treaties, treaties relating to land and international servitudes concluded in the special interest of the territory ceded or affected by transfer are also maintained."

The writer cites several examples:

> "Similarly in 1919", he says, after giving a long list, "several river conventions, fisheries agreements concluded between contiguous States, for instance between France (substituting for Germany) and Switzerland, and Finland (substituting for Russia) and the Scandinavian States, were maintained."

The writer also states on page 247 of his book:

> "Boundary commissions frequently apply compensating principles, one of the commonest being the principle of respect for local working conditions, by virtue of which an agricultural holding, for instance, cannot be divided in such a way as to produce the absurd result of a farm which is cut off from its water supply."

This is further confirmed by Georges Scelle in his Cours de Droit International Public. After discussing the validity and lapse of treaties he formulates (page 645) rules relating to the order of precedence among treaties:

> "To sum up, three criteria govern the order of precedence among treaties, so far as their validity is concerned: the relatively general or particular nature of the instrument; the substantive nature of its provisions; and chronological sequence. General treaties prevail over special or particular treaties; constituent or constitution-making treaties prevail over ordinary treaties; and as between ordinary treaties which conflict, the earlier prevails over the later treaty."

Consequently, whether the Agreements of 1923 and 1926 are regarded as general or as ordinary treaties, and whether the General Armistice Agreement of 1949 is regarded as a special or as an ordinary treaty (i.e. ranking on a par with the instruments of 1923 and 1926), the provisions in the Agreements of 1923 and 1926 which relate to the natural international servitudes I have mentioned should prevail over the conflicting provisions of the Armistice Agreement in all cases in which the latter's terms are interpreted in such a way as to make them inconsistent with the earlier provisions.

If we pursue further the line of reasoning followed by the Israel delegation in construing article IV, paragraph 3, of the Armistice Agreement, we can demonstrate how erroneous it is and how contrary not only to the purposes and principles of the Agreement itself but also to the provisions of the United Nations Charter, to which both the Security Council resolution on the truce and the Armistice Agreement owe their existence. It will suffice to follow attentively the logical and in all respects irrefutable argument set forth below:

1. Indisputably, all the Security Council's decisions on the truce in Palestine were made by virtue of the United Nations Charter, in particular Articles 39 and 40;

2. The General Armistice Agreement was also concluded by virtue of these Articles of the Charter;

3. The Members of the United Nations, in signing or acceding to the Charter, entered into certain commitments including the respect for and protection of human rights and fundamental freedoms;

4. Since there is little or no water in the area, the riparian population's drawing of water from Lake Tiberias is tantamount to the exercise of a right to self-preservation, the pre-eminent human rights, and one protected by the Charter;

5. To construe article IV, paragraph 3 of the Armistice Agreement as preventing the Syrian riparian population from crossing the demarcation line for the purpose of using the lake waters would be to deprive them of the precious liquid and thus of their right to self-preservation;

6. The Israel interpretation of article IV, paragraph 3 of the Armistice Agreement is therefore incompatible with the provisions of the Charter themselves;

7. Article 103 of the Charter states: "In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail". This provision could not be more general or more categorical and the criterion of the subordination of ordinary to constitution-making instruments could not be better illustrated.

Article IV, paragraph 3 cannot, therefore, be construed as capable of depriving the Syrian riparian population of the right of access to the water without sapping the very foundations on which the paragraph rests and so demolishing it completely.

The movements of the riparian civilians can be controlled and, for the purposes I have mentioned, subjected to certain specific conditions and arrangements. A precedent of this type actually exists in the Security Council's records.

This recent precedent is to be found in the Security Council resolution dated 17 November 1950 and relates precisely to the Armistice Agreements between Israel and the Arab States. The relevant paragraph of that resolution reads:

"The Security Council:

Authorizes the Chief of Staff of the Truce Supervision Organization with regard to the movement of the nomadic Arabs 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."

This resolution does not speak of prohibiting the movements of nomadic Arabs but of controlling (i.e. supervising or checking) them. The resolution also shows that the Chief of Staff of the Truce Supervision Organization is authorized to recommend such steps.

Before I conclude this exposition of the reasons on which the Syrian contention rests, I should like briefly to point out that the prohibition against crossing the demarcation line imposed on both Syrian and Israel civilians is basically inequitable, even though in semblance at least the rule of reciprocity has been observed. Whereas the prohibition imposed on the Israel civilians is merely a measure of constraint, since their fundamental rights are not impaired, that imposed on the Syrian and Palestinian riparian civilians is a gross violation of their most sacred natural rights.

General conclusion:

It follows from the foregoing that article IV, paragraph 3, of the General Armistice Agreement cannot be said to support conclusions which no one can or is entitled to authorize or confirm without infringing the essential and most elementary rules of law and equity.

By voting for the Israel draft resolution of 15 March 1954 the Mixed Armistice Commission hastily plunged into a question of law for which it was not adequately prepared.

I hope that the lucid explanation I have given may induce the Commission to vote for paragraph ( ) of the draft resolution submitted by the Syrian delegation[1] and thus to reverse an erroneous position which it had previously taken owing to lack of adequate information

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1/ Text of the draft paragraph:

"In conformity with the principles and purposes laid down in article II and article V, paragraphs 1 and 2, of the Geneva Armistice Agreement, the provisions of article IV, paragraph 3, of the said Agreement should in no case be construed as having any relation whatsoever with the final territorial arrangements affecting the two Parties to the Agreement, nor as impairing the customary rights of the riparian population of the eastern shores of Lakes Huleh and Tiberias, which are guaranteed by earlier treaties and by international law."