

Revisiting the Partition Plan (UNGA 181): Lessons Learned or Mistakes Repeated? The United Nations and Palestine

This Bulletin aims to provide a brief overview of issues related to Palestinian Refugee Rights

In December 1977, more than a year after the UN General Assembly had endorsed a new framework for a resolution of the question of Palestine that called for the return to Palestinian refugees and the withdrawal of Israeli forces from the 1967 occupied territories, the General Assembly declared November 29, the day of the Partition Plan, to be the International Day of Solidarity with the Palestinian People. Resolution 32/40 B, 2 December 1977, also established a special unit on Palestinian Rights to raise awareness about the inalienable rights of the Palestinian people, including the right to self-determination and the right of return (UNGA Resolution 3236 XXIX, 22 November 1974), through studies, report, and conferences.

On the 22nd anniversary of the International Day of Solidarity with the Palestinian People, and more than five decades after the United Nations first addressed the issue of Palestinian rights, it is appropriate to revisit the discussions, debates, and proposals of 1947 and 1948 that led up to the adoption of UNGA Resolution 181(II) to see what kinds of lessons can be drawn from the UN's first attempt to deal with the so-called question of Palestine. This is particularly relevant at the current time with renewed, albeit limited, involvement of the United Nations after the collapse of the Madrid/Oslo process and Israel's brutal policy to destroy legitimate Palestinian resistance to the occupation and the denial of Palestinian rights.

There are at least two primary lessons to be drawn from the UN experience of dealing with Palestine in 1947 and 1948 that remain relevant today. First, a peaceful and just resolution of any international conflict must be consistent with the principles the UN Charter and international law. This message was repeated once again by the UN High Commissioner for Human Rights in the context of the recent uprising. "[A] peaceful and stable coexistence," stated Mary Robinson in a report to the General Assembly on 27 November, "could only be achieved on the basis of a framework conforming to the requirements of international human rights and humanitarian law." Secondly, the international community must be fully engaged in the implementation of any solution, including the deployment of international forces to monitor and facilitate the period of transition and implementation to ensure respect for international law.

International Law and the UN Partition Plan

The relationship between international law and the future of Palestine entered into the discussions and debates at the United Nations as early as February 1947 when the British government requested the UN to assume responsibility for the so-called question of Palestine. On the one hand, the General Assembly sub-committees responsible for drafting specific recommendations on the future status of Palestine, either as a unitary state or as partitioned into Arab and Jewish states, was careful to make sure that the constitution and domestic legislation of the proposed states would be consistent with principles of international law.

Draft Resolution III of the sub-committee concerning a unitary state provided for freedom of religion, respect for human rights and fundamental freedoms, equal political representation, non-discrimination, and guarantees for the rights of minorities. Under the partition plan, the constitutions of the two states were to guarantee to all persons equal and non-discriminatory rights in civil, political, economic and religious matters and the enjoyment of human rights and fundamental freedoms along with specific provisions for minority as well as property rights.

Arbitrary expropriation of land moreover, was prohibited. In cases where land expropriation was deemed necessary for public purpose, full compensation as fixed by the Supreme Court was to be paid upon dispossession. The plan made further provisions for unsettled disputes to be heard by the International Court of Justice.

For other members of the General Assembly, however, a much broader set of legal issues was at stake in relation to Palestine and the role of the UN. Already in the first meeting of the Assembly on the future of Palestine in April 1947, several Arab states, including Egypt, Iraq, Saudi Arabia, and Syria - two of whom had emerged as independent states after a period as non-self-governing territories under Article 22 of the League of Nations - recommended that the General Assembly submit a request, under Article 96 of the UN Charter, to the International Court of Justice for an advisory opinion. In the view of these states, any decision adopted by the United Nations on the issue of Palestine should be consistent with international law, under which they believed Palestine should be accorded independence at the end of the mandatory period. This proposal was rejected by the General Assembly, which proceeded to send a special investigative committee to the region in the summer of 1947 without a clear understanding of its legal authority to make and enforce recommendations about the status of Palestine.

The legal issue resurfaced in the fall of 1947 during discussions in the General Assembly regarding the two proposals of the special committee consisting of a majority proposal to partition Palestine and a minority proposal recommending a unitary state. The majority proposal completely disregarded the international legal implications of partitioning Palestine into two states. The minority proposal, on the other hand, revisited the earlier legal proposals and submitted a resolution detailing eight legal questions to be submitted to the International Court of Justice for guidance. The questions addressed issues related to the rights of the indigenous inhabitants of Palestine, the legal status of the Balfour Declaration and its inclusion as a frame of reference in the Mandate for Palestine, as well as the legal authority of the United Nations to recommend and enforce future arrangements in Palestine pending the end of the British mandate without the consent of the majority of the inhabitants of the country.

Once again the recommendation to obtain an advisory opinion from the International Court of Justice to help guide the General Assembly in its deliberations was rejected. The Chair of the Ad-Hoc Committee of the General Assembly held the view that raising matters of principle would not assist in the process of bringing the parties together to reach a solution to the Palestine question. As the situation in Palestine deteriorated in the spring of 1948, however, even the United States which had strongly lobbied for the adoption of the partition plan began to argue that the General Assembly did not have the legal authority to implement Resolution 181.

Implementation and the UN Partition Plan

Regardless of the question of whether or not the General Assembly had the legal authority to recommend and enforce the partition of Palestine, the practical aspects of implementation surfaced throughout the deliberations in the United Nations from September 1947 through to the very last days of the British Mandate in mid-May 1948. The United States, in fact, was one of the first member states to notify the UN of its reluctance to participate in any peacekeeping operation in Palestine. This reluctance had led the US delegation to refrain from endorsing the majority proposal of the UN Special Committee to partition Palestine until it was clear that such an endorsement did not imply American willingness to send its troops to the Middle East. British officials meanwhile had made it clear that the UK would not assist in the implementation of any resolution that did not have the support of both the Arab and Jewish communities in Palestine.

When UN Resolution 181 was finally adopted, endorsing the majority proposal for the partition of Palestine, it did include provisions for United Nations action under Chapter VII of the UN Charter concerning threats to international peace and security, despite unresolved legal questions about the authority of the UN to partition Palestine. In any case, the resolution only

included measures under Article 41 (economic sanctions, severance of diplomatic relations). Reference to armed intervention under Article 42 of the Charter was excluded. The General Assembly resolution was sent to the Security Council for further deliberations regarding Chapter VII measures, but without effect even though the situation on the ground in Palestine had begun to deteriorate further following the adoption of the partition plan.

Reports from the field in early 1948 continued to stress the urgency of deploying international forces in Palestine to help stabilize the situation. The Palestine Commission, for example, strongly recommended in a mid-February special report on the problem of security in Palestine, that a special force should be immediately deployed following the withdrawal of British troops. Without such a stabilizing force, the Commission warned that a period of "uncontrolled, widespread strife and bloodshed" would follow. "This would be a catastrophic conclusion to an era of international concern for that territory." Several weeks later, the Commission once warned the General Assembly that the "calamitous results for the people of Palestine will be intensified" without adequate forces "to restore and maintain law and order."

By this time the US delegation at the United Nations and State Department staff was also beginning to reveal serious reservations about the partition plan. In early March, the US delegation submitted a proposal to the Security Council to enable it to act on the partition resolution. The proposal failed and with the situation increasingly falling apart on the ground including a growing refugee problem, US officials concluded that 181 could not be implemented by peaceful means. The United States thus submitted a working paper for a Temporary Trusteeship in Palestine as provided for under Chapter XII of the UN Charter, a proposal that had been raised a year earlier by Syria. While the proposal was rejected by the Security Council, it found support in the General Assembly. By the time the Assembly had developed a detailed proposal on Trusteeship, however, it was too late and the consequences of inaction by the UN unfolded as had been predicted.

Lessons Learned or Mistakes Repeated?

After more than seven years of the Madrid/Oslo process and a Palestinian uprising that is into its third month with nearly 300 Palestinians killed and more than 10,000 injured, not to mention the massive destruction of private and public property, it would appear that the response of the international community to date is one that still falls largely in the category of mistakes repeated rather than lessons learned. Issues of international legality continue to be set aside based on claims that these issues might interfere with efforts to bring the parties together. In explaining their votes against the 19 October resolution of the UN Commission on Human Rights, for example, the United States and France (speaking on behalf of the European Union) both stated that the resolution, which addressed human rights violations committed during the first several weeks of the uprising, undermined efforts to bring peace back to the region. More than a month later, during which the number of Palestinians killed by Israeli occupation forces has climbed exponentially, and new measures have been adopted to assassinate Palestinian resistance leaders and strangle the Palestinian economy, these same arguments were voiced once again by the same parties in the UN Economic and Social Council.

While the UN High Commissioner for Human Rights reminded the international community this week that a peaceful and just resolution of the conflict is contingent on respect for international law, ongoing Israeli violations of Palestinian rights - documented in annual resolutions of the UN Commission on Human Rights and its treaty bodies - have continued unabated since the beginning of the Madrid-Oslo process. Unlike other recent peace agreements, including regional agreements between Jordan, Egypt and Israel, there is no mention in any of the Oslo agreements to the UN Charter and international law as the basic frame of reference and legitimacy. The absence of international law and the UN Charter is even more alarming given the fact that the 1993 Declaration of Principles and subsequent implementing agreements are carefully crafted legal documents.

By attempting to bring the parties together outside the framework of the UN Charter and international law, the Oslo process itself has at minimum, blurred the lines between

international law and political power, if not facilitated the violation of Palestinian rights. The concept of occupied territory, and the concomitant legal obligations of an occupying power as delineated under international humanitarian law, for example, has been gradually reduced under Oslo into the political notion of "disputed territory" where the rights of the occupied population are less rights than disputed issues. The rights of Palestinian refugees, as delineated under the law of nationality, human rights law, refugee law, and humanitarian law, have faced the same fate. Under the Oslo process, Palestinian rights, as recognized by the United Nations, are really not rights at all, but simply issues for negotiation. In a situation where the balance of power is so obviously skewed in favor of Israel, these rights can hardly even be considered "issues" for negotiation.

In the meantime, powerful member states of the United Nations, and the Secretary General himself, have refused to deploy UN forces in the occupied territories, if only to provide a degree of protection for the Palestinian people and act as a buffer between Israeli occupation forces. The stated reason for this refusal (Israeli consent) itself gives lie to the fact that the West Bank, East Jerusalem, and the Gaza Strip are indeed occupied rather than disputed. Such forces, if eventually deployed, can hardly be given a mandate to implement the Oslo agreements, given the fact that the basic framework is so inconsistent with principles of international law. More than five decades after the United Nations first addressed the issue of Palestine, and some two decades after the first International Day of Solidarity with the Palestinian People, the fundamental rights of the Palestinian people as delineated under international law continue to be violated. The question remains as to how much more education and awareness-raising is required, let alone the loss of human life, before the international community, and its powerful member states in particular, will act to implement the fundamental rights of the Palestinian people, as recognized in more than fifty years of UN resolutions and statements.

This issue of UN resolution 181 will be examined in greater detail in the December 2000 issue of BADIL's quarterly newsletter, al-Majdal.