

(401)

Final

PERMANENT DELEGATION OF ISRAEL
TO THE UNITED NATIONS
11 EAST 70th ST.,
NEW YORK 21, N.Y.

GAB-4

25 September 1953

LETTER FROM MR. MOSHE SHARETT TO MAJOR-
GENERAL VAGN BENNIKE OF 24 SEPTEMBER 1953.

Herewith is the full text of the letter sent by the Foreign Minister of Israel, Mr. Moshe Sharett, to Major-General Vagn Bennike, Chief of Staff of the United Nations Truce Supervision Organisation, dealing with the work being carried out in the North of Israel.

I have the honour to acknowledge receipt of your letter of 23 September 1953 and of the attached memorandum setting forth your views concerning work which is being carried on South of the Bnei Yaacov Bridge.

2. I must point out at the very outset that the substance of your views and their underlying assumptions appear to be at marked variance with the position so far maintained by the competent organs of the United Nations as regards works of this nature in the Demilitarized Zone. As early as in 1949, during armistice negotiations, the United Nations adopted an unequivocal attitude concerning the future development of the Zone. In his covering letter to a statement, which you yourself mention as an authoritative comment on Article V of the Israel-Syria General Armistice Agreement, written on 26 June 1949, the Acting Mediator, Dr. Ralph Bunche, stated: "I may also assure both parties that the United Nations, through the Chairman of the Israel-Syrian Mixed Armistice Commission, will also ensure that the Demilitarized Zone will not be a vacuum or wasteland". Since that statement was made, the gradual restoration of normal civilian life, provided for by Article V of the Armistice Agreement, has indeed comprised the resumption and continuation of development and settlement activities. New agricultural settlements have been established in the Zone; roads have been constructed; wastelands were brought under cultivation; the Jordan river-bed has been deepened and at certain points its very channel has been altered. All these changes have taken place with the full concurrence of the United Nations authorities.

3. Syria's consistent opposition to such peaceful development work, voiced in pursuance of its established policy of economic warfare against Israel, has at no time been endorsed by the United Nations. Under the Charter, the United Nations stands to promote the conditions for economic progress and development. Under the Israel-Syria General Armistice Agreement, the sole concern of the United Nations representatives throughout has been to ensure that in the course of the execution of development projects the established private rights in the Zone should be adequately protected.

4. Certain questions regarding private rights did indeed arise in connection with the Huleh Drainage scheme, the work on which commenced three years ago. The points at issue were at the time fully examined by the then Chief of Staff, General William E. Riley, as well as by the Security Council. The conclusions, reached as a result of that examination, have been accepted as a basis for all development projects in the Demilitarized Zone. The drainage work has ever since proceeded with the full concurrence of the United Nations and without interference from outside. It is important to define the exact scope of the United Nations' concern in the matter. Such a definition was offered by General Riley himself when at a session of the Security Council on 2 May 1951, in reply to a question asked by the Netherlands Delegate as to whether the question of rights involved in the concession of the Palestine Land Development Company for the drainage of the Huleh is one which might fall within the jurisdiction of the Mixed Arbitral Tribunal. In his statement before the Mixed Arbitral Tribunal, he stated that the United Nations was only involved with that land within the Demilitarized Zone which is the property of Arab refugees. "That is the only part of the concession with which we had anything to do. I feel that the United Nations should never impede progressive work. However, I am involved here with the Armistice Agreement in which the United Nations is charged with the normal restoration of civilian life. I have no quarrel with the project itself. I feel that that is not a matter which affects either Syria or the United Nations. It is only involved in the normal restoration of life within the Demilitarized Zone which affects the 30, 40 or 50 Arabs that own the approximately seven or eight acres of land within the Demilitarized Zone".

5. In the present case the work of digging a canal in execution of a project of power development is conducted on the basis of existing rights including the concession held by the Palestine Electric Corporation. These constitute important private rights within the Demilitarized Zone which the United Nations Truce Supervision Organisation, as authoritatively laid down, is called upon to safeguard. Full care has been taken to ensure that the work should in no way impinge upon any private Arab land in the area nor curtail the use of water for irrigation by land owners and cultivators within the Demilitarized Zone. In these circumstances it was but natural that the Chairman of the Israel-Syrian Mixed Armistice Commission, when informed of the commencement of the project on the 2nd of September 1953, should have expressed his concurrence with it. In so far as you yourself and your deputies raised any points for clarification, none of which question the legitimacy of the project itself, they were satisfactorily settled. This situation of understanding and co-operation continued until the Syrian Government, in accordance with its established practice, proceeded to raise baseless objection to the project accompanying its protests by public threats of violence. In the face of these tactics of intimidation from the Syrian side which manifestly conflict, not only with the Armistice Agreement but with the fundamental principles and purposes of the Charter of the United Nations, it is regrettable and disturbing that an attempt should now be made to reopen issues previously disposed of and to modify the established position of the United Nations by raising questions extraneous to the Armistice Agreement.

6. You base your conclusions on an examination of the following three points:

- a) Whether the work so far performed has interfered with civilian life in the Demilitarized Zone.
- b) Whether construction of the projected canal within the Demilitarized Zone will interfere with such life, and
- c) Whether the first object mentioned in Article V Para 2 of the General Armistice Agreement concerning separation of the armed forces of the two parties will be affected by the work in question.

7. On these points and on the facts adduced in their examination the following observations are offered:

A. Israel representatives have repeatedly given you and your deputies categorical assurances summarised in Sgan Aloof A. Shalev's letter to you of 22 September 1953, that the project has not so far involved, nor will it involve in future, the use of Arab owned land in the Demilitarized Zone and that it has not otherwise affected, nor will it in future affect, such land. In no conversation which had taken place during past weeks, including my own conversation with you on the 22nd of September, was any reference made to the possibility that the ownership of any land involved might be under dispute. It is evident, therefore, that such possibility, conjured up on the part of Syria, is purely hypothetical not to say imaginary, that Syria, which under the Armistice Agreement has no status in the matter, has raised the question merely to obstruct the work, and that consequently this provides no valid reason for discontinuing a vital development scheme. At the same time, there is of course no objection at all to your representatives examining the files of the relevant Land Registry Office, in which examination they will receive the full co-operation of the Israel authorities.

B. What is called in your letter "the small island" is actually a speck of land the size of which never exceeds 400 sq. meters. It is submerged every winter and rises above the water in varying sizes and shapes in summer. It is entirely uncultivated and has never been cultivated, inhabited, or otherwise used by men within living memory. It is not owned by any Arabs. In these circumstances the question whether this insignificant site is or is not partly flooded as a result of the construction of the dyke, is purely irrelevant; but the fact is that it is not, and care is being taken that it should not be.

C. As for the Water Mills, neither in past discussions between United Nations representatives and ourselves on the utilization of the Jordan waters, nor in direct context between us and the Syrians have any claims ever been advanced that water from the Jordan river is required for operation of mills on the East bank. The falseness of the contention made to you on this score is proved by the fact that the two mills shown to you on the 14th of September as having ceased to work owing to the lack

the canal leading to these mills branches off from the Jordan North of the point from which the contested canal is being dug; so that digging of the canal and diversion of water into it could have no possible effect upon these two mills.

D. The point concerning the likelihood of interference with normal civilian life in the Demilitarized Zone as a result of the construction of the projected canal is fully met by our definite assurances that the volume of Jordan water now used by Arab land owners or cultivators for irrigation purposes will remain available in future. The claim in your letter that the projected canal would leave the Jordan with very little, if any, water is entirely unsubstantiated, whereas explicit assurances given to you by Israel representatives orally and confirmed in writing by Sgan Aloof Shalev are based on thorough topographical and hydrological investigation.

E. The provision you quote from Article V of the Armistice Agreement, which defines the object of the Demilitarized Zone as that of separating the armed forces of the two parties in such manner as to minimize the possibility of friction and incident is, needless to say, fully valid. It is axiomatic that whether a canal is dug or not, such separation would remain effective as long as the Zone continuous demilitarized and the parties adhere to the Armistice Agreement. As for the possible effect that the digging of a canal can have upon the achievement of that objective -- so far from hampering the canal can only facilitate it, since a party bent upon aggression will find yet another obstacle to overcome. For its part the Government of Israel has consistently abjured aggression. Were it nursing aggressive designs it would be thwarting its own purpose by digging the canal. On the other hand the fact that objection to the canal comes from Syria has ominous significance.

F. Moreover Syria's title to raise the question of military advantage must be challenged in principle as clearly indicated in Article II Para 1 of the Armistice Agreement. The principle that no military advantage must accrue to either party was valid only during the Truce periods which preceded the conclusion of the Armistice. The parties to the Armistice Agreement are not entitled to invoke that principle, either under the above mentioned article or by reference to any other provision of the Armistice Agreement. Had the right to do so been conferred by the

In this connection, complaints concerning military advantages to Israel which were supposed to result from the execution of the Huleh Drainage Project were rejected by the United Nations Chief of Staff as lacking validity.

8. The question of the Buteiha farm, raised in your memorandum, calls for special treatment. The arguments advanced by the Syrians on Israel's good will in regard to the irrigation of their lands must be emphatically rejected as irrelevant in the context of the Armistice Agreement. A converse contention on the part of Israel that she cannot possibly be made to depend on Syrian good will where the execution of development projects of crucial importance for her economic future is at stake would be, on both legal and practical grounds, of infinitely greater cogency. The decisive consideration here is that the Armistice Agreement provides for the restoration of civilian life, and by implication for the protection of private rights, only within the Demilitarized Zone and not outside it either in Syria or in Israel. The undertaking given repeatedly to the United Nations representatives and to the Syrians direct, that the volume of Jordan water now used by Buteiha farm for irrigation purposes would be assured for the future, was an ex gratia act motivated by considerations of equity and future good neighbourliness and not by any obligation arising from the Armistice Agreement. This undertaking is reaffirmed in Sgan Alcof Shalev's letter, where assurance concerning provision of the customary amounts of water to Arab cultivators is to be read as applying also to Buteiha farm. As for the operation of the checking gates in April 1952, this again was a matter of internal administration of the Demilitarized Zone and not one of concern to Syria. It was not subject to agreement between Israel and Syria but was carried out solely with the concurrence of the Chairman of the Mixed Armistice Commission.

9. In the light of the foregoing the Government of Israel fails to see any justification for the conclusion that peaceful work of an eminently constructive and beneficial character which is in progress within the Demilitarized Zone should now be interrupted. It takes a particularly serious view of the fact that this conclusion was preceded by open threats on the part of the Syrian Government. It regards the freedom of development work within the Demilitarized Zone as an integral and essential part of the restoration of normal civilian life provided by the Armistice Agreements and has always been sustained

ready and has indeed formally undertaken to respect to the full whatever private rights as to ownership of land or use of water may be involved. It upholds at the same time private rights possessed by Israel interests in the area and cannot agree that they have a lesser priority than individual rights of others. In actual fact there has been no infringement of any such rights possessed by Arabs as a result of work already carried out and none is to be foreseen in its continuation. The Government of Israel is always ready to clear up any point with you and your representatives and if necessary to submit the issue for examination to the Security Council in its interpretation of the Armistice Agreement as borne out by former United Nations practices and pronouncements. The only question of agreement that can arise is with the local inhabitants of the Demilitarized Zone bearing on their private rights. In the specific circumstances of the present case no issues exist which call for such agreement and consequently continuation of the work cannot be made conditional thereon.

10. It remains the firm policy of the Government of Israel to adhere strictly to its obligations under the Armistice Agreement. In stating its views on the issues which have arisen the Government of Israel does not depart from its conception of the powers and functions of the Chairman of the Mixed Armistice Commission under the terms of the Israel-Syria General Armistice Agreement. The Government's understanding in this regard was formulated by its representative, Ambassador Eban, at the 547th Meeting of the Security Council of 18 May 1951, in the following terms: "the Chairman of the Mixed Armistice Commission is not an authority appointed by the United Nations and imposed over the signatories to the Agreement. He is an organ established as a result of an Agreement and his functions are precisely those which they have defined. If either party had not wished the Chairman to have certain functions than he would not have had them. This fact, together with the specific provision, that he may not exercise administrative responsibilities anywhere rules out any idea that he should operate by mandatory requests directed to the very governments which had defined his functions and which are presumably, therefore, in a position to know what powers they have conceded to him".

11. I am confident that you will give the considerations set forth in this letter your very serious attention and shall be glad to receive your comments on them.