

Secret

(401)

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OBSERVATIONS ON ZEINEDDINE'S SPEECH AT THE
633RD MEETING OF THE SECURITY COUNCIL (S/PV 633)

(30 OCTOBER 1953)

Generally speaking, Zeineddine's argument found quick and effective response in Mr. Eban's speech at the same meeting of the Security Council. I would like to make some comments on several points of particular interest.

1) As expected, Zeineddine bases Syria's case on the contention that the work on the Bnot Yaakov Canal Project is a contravention of the Israel-Syrian General Armistice Agreement, and that General Bennike has ruled to that effect. For a refutation of this claim, please see my note of 28 October 1953 on Zafrullah Khan's similar allegations.

2) In fact, Zeineddine launches an attack not only upon the Bnot Yaakov Canal Project, but upon Israel's policy in the Demilitarized Zone as a whole. To him the work undertaken on 2 September 1953 is merely a symptom of a policy Syria has opposed since the very moment when the Chairman of the Mixed Armistice Commission gave effect to the provisions of Article V regarding restoration of normal civilian life.

"The issue under consideration", states Zeineddine, "is undoubtedly the most important one that the Security Council has had to deal with since the activity of the United Nations mediator, Count Bernadotte, in 1948. Yet, important as it is, the issue is distinct from other issues of the Palestine problem and it is a clear one. It consists of the activity of the Israelite authorities in the Demilitarized Zone, as General Bennike described it to be - nothing more, nothing less."

in the past

Zeineddine even uses the same arguments Syria has employed in her concerted policy of opposing the restoration of Israeli normal civilian life in the Demilitarized Zone. In addition to the question of the exercise of sovereignty in the Demilitarized Zone¹, the most significant of these arguments is probably the one contained in the following sentence of the speech: "The present works, by their nature and scope, are not a restoration but a sheer innovation, detrimental to civilian life in the Demilitarized Zone itself and serving the interests of Israel..." Syria has consistently objected to all development

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- 1) For an analysis of the differences between the respective positions of Israel and Syria in the Demilitarized Zone, please refer to my note of 25 October 1953 in "Agreement with Syria", and in particular to the following paragraph:

"Dr. Ralph Bunche's letter of 26 June 1949 to Mr. Sharrett is of importance in determining Israel's status within the zone:

"I call attention to the fact that in the Israeli-Transjordan Armistice Agreement, in Article V, paragraph c. and in Article VI paragraph 2, the armistice demarcation lines agreed upon involved changes in the then existing truce lines, and that this was done in both cases without any question being raised as to sovereignty over or the final disposition of the territory involved. It was taken for granted by all concerned that this was a matter for final peace settlement. The same applies to the provision for the El Auja zone in the Egyptian-Israeli Agreement. From the beginning of those negotiations our greatest difficulty has been to meet Israel's unqualified demand that Syrian forces be withdrawn from Palestine. We have now, with every great effort, persuaded the Syrians to agree to this. I trust that this will not be undone by legislative demands about broad principles of sovereignty and administration which in any case would be worked out satisfactorily in the practical operation of the scheme."

in the Demilitarized Zone on the grounds that development, constituting what Zeineddine defines as "innovation", is not ^{only} foreign to the restoration of normal civilian life but actually contrary to it. Syria tried to classify as violations of the Armistice Agreement the establishment of new settlements, the construction of highways, the straightening, deepening, and altering of the Jordan river-bed in connection with the Huleh drainage work. However, all these objections have been unequivocally rejected by the Mixed Armistice Commission, the Chairman, and the Security Council.

What Syria is thus seeking today in the Security Council is a vindication of her objections to civilian life in the Demilitarized Zone following its normal course of progress and development, objections that have been granted extensive hearing in all appropriate organs and found groundless. The Enot Yaakov Canal Project is but another opportunity to seek support for this negative stand. To accept Syria's views on the matter would in fact signify the cancellation of the legitimacy of peaceful civilian development that has taken place in the Demilitarized Zone since the signing of the Armistice Agreement.

3) Though Zeineddine does not develop Syria's views on a solution desirable to it, the indications he does give of these views (on p. 23) are not necessarily in accordance with General Bennike's position. General Bennike has indicated a path to a solution permitting the continuation of the work on the project. In his communications to the Sar, he spoke of "an agreement" and later on of "definite obligations" that could resolve the questions at issue. Zeineddine does not refer at all to these possible objectives. He does suggest the strengthening

of the "international machinery to help supervise and implement the General Armistice Agreement." On page 23 he states:

"Israel should be told by the Council to behave in a way which does not factually or legally influence the rights, claims or positions of the other side, safeguarded by the Armistice Agreements. Needless to say, these rights are not to be disposed of the Council itself. The situation in the Demilitarized Zone in general, and in particular with regard to the unwarranted works under consideration, may be brought back to its original status and condition."

To him the solution is simply a negation of all development. The situation in the demilitarized zone in general should be brought back to its original condition and status.

4) In his reaction to Mr. Eban's speech, Zeinaddine declared:

"Mr. Eban also referred to the fact that no agreement need be made between Syria and any other side on this question. He also wanted to say that Israel does not abide by previous international agreements."

"There might not be any need of an agreement between Syria and the Israelite authorities - that is a different matter - but the fact that there are international agreements concerning that area and concerning the River Jordan is something which is exceedingly hazardous for any authority to pronounce in the Security Council. International agreements should be kept and the rights, claims and positions concerning them should be totally safeguarded, as provided for by the Armistice Agreement itself."

I do not believe that we can attribute much significance to the sentence which ~~leaves~~^{raises} doubts about the necessity for Syrian Agreement. However, the passage as a whole probably does reflect again Syria's particular attitude on the problem, an attitude somewhat different from Benmike's. The Armistice Agreement may not really provide for agreement between Syria and Israel in a case like the one under consideration, when for instance a division of the Jordan waters is undertaken by Israel. The division is a breach of the Agreement. It is also contrary to other treaties regarding use of Jordan waters by Syrians. Consequently, Syria either acquiescesⁱⁿ or vetoes such a breach.

In any case, it may be that we would ^{still} find an opportunity to make use of the above passage in Zeineddine's speech.

Now let us examine several misrepresentations that appear in the speech.

A-2 THE DEMILITARIZED ZONE - AN "INTERNATIONALLY CONTROLLED AREA."

/// Zeineddine refers several times to the Demilitarized Zone as an "internationally controlled zone". He does not clarify this definition nor does he justify it. At one point (p. 19) he describes the international machinery functioning in the area, and mentions the Mixed Armistice Commission, the MAC Chairman, the UNTSO and the Security Council. Without entering into a detailed analysis of the respective powers of these organs in the Demilitarized Zone, it is to be observed that these international organs exercise certain responsibilities with regard to the General Armistice Agreement as a whole, and this fact does not imply by any means that Syria or Israel

are internationally controlled. The particular powers of the Chairman in the Demilitarized Zone are like those of the Mixed Armistice Commission elsewhere - of a supervisory nature. Article VII, para 2, states that "the execution of the provisions of this Agreement shall be supervised by a Mixed Armistice Commission..." Article V, 5c, declares that "the Chairman of the Mixed Armistice Commission established in Article VII of this Agreement and United Nations observers shall be responsible for ensuring the full implementation of this Article." This has been ^{elaborated} ~~continued~~ in Dr. Bunche's explanatory note which emphasizes that while administration will take shape on a local basis under the general supervision of the Chairman, "he will not assume responsibility for direct administration of the zone."

Despite Zeineddine's bold assertion that the Demilitarized Zone is internationally controlled, Syria's duplicity is illustrated by her attitude toward that part of the Demilitarized Zone which is situated east of her international boundary and which it considers as an integral part of Syrian territory.

B - QUESTION OF MILITARY ADVANTAGE

Zeineddine says: "The new ~~project~~ canal in Israel, which is to replace the present bed of the River, would remain an obstacle, but it would be completely controlled by Israel, outside the Demilitarized Zone. Israel would at will put bridges over the canal for the use of its own forces. No such bridges over the River could be built in the Demilitarized Zone - nor could they be charted and prepared in advance."

Evidently, there is no foundation whatsoever to the contention that bridges could not be built in the Demilitarized Zone to span the Jordan River. None of the provisions of Article V or any of the authoritative interpretations that have been set forth on the Article contain anything that would forbid such construction. On the contrary, the principle of the resècration of normal civilian life would seem to safeguard the right to engage in exactly such activities. Furthermore, the absurdity of the contention is made obvious when one recalls the construction of highways linking the Demilitarized Zone with non-demilitarized territory, in no smaller a degree than a bridge would.

In any event, Seineddine does concede that the new canal would be an additional military obstacle. The objection to it is that Israel would control it. What this amounts to is therefore Syrian objection to Israel's creating an obstacle to military aggression in its own territory. Neither Syria nor anybody else has the right to raise any such grotesque objections.

As for the Jordan river-bed itself, it is to be recalled that it did not constitute any obstacle to Syria's aggressions in 1948 and in 1951.

Cv POLITICAL ADVANTAGE

The fallacy in Syria's argument about military advantage is emphasized by the extension of that argument to political advantage as well. Strictly speaking this extension is inevitable for Art. II, paragraph 1 speaks of both military and political advantage. The

paragraph makes no distinction between demilitarized and non-demilitarized territory. Thus Syria's contentions would logically lead to complete political immobilization of the two states parties to the Agreement in addition to their becoming utterly stagnant from the military point of view.

Zeineddine supplements the reference to Art. II, paragraph 1, by a reference to paragraph 2 of the same Article. He declares "It is clear that neither side under the Armistice Agreement can gain any military or political advantage and that the Agreement did not 'prejudice the rights, claims and positions of either party'". Syria made similar claims in 1951. They were ignored in the solution of the problem that resulted from the debate in the Security Council.

As a matter of law, paragraph 2 of Article II, is based on Article 40 of the Charter, this in pursuance of the Security Council Resolutions which defined the truce and then the Armistice Agreements as provisional measures which do not prejudice the rights, claims and positions of the parties. Provisional measures are not intended to prevent the Party or Parties subject to them from taking all action that could be interpreted as influencing or prejudicing their rights, claims and positions, unless such action is specifically contrary to the provisional measure adopted. The Armistice Agreement did not freeze the situation as it existed at the time of its signing. On the contrary many of its provisions, and particularly those of Art. V made it clear that the very implementation of the Agreement's clauses and later on life within the framework of the Armistice would bring about developments and changes which would quite naturally accrue to the benefit of one or the other of the Parties. Article II, paragraph 2 established only that these changes and

benefits would not prejudice the rights, claims and positions of either Party in the ultimate peaceful settlement. It is clear that the allusion is to rights and claims that could be put forward, and to those positions that could be adopted by either Party at the discussion of an ultimate peaceful settlement.

The following interesting passage from the treatise by Goodrich and Hambro on the "Charter of the United Nations, Commentary and Documents" is instructive.

"In the Indonesian case, various proposals that the troops of both sides be withdrawn to previous positions were made. The United States representative on the Council opposed such proposals on the ground that they would prejudice "the rights, claims, or positions of the parties concerned."

It was pointed out, however, that this provision in Article 40 was not intended to be a limitation on the Council in the taking of provisional measures, but rather that it was meant to prevent any provisional measure taken by the Council from affecting adversely the substantive rights of the parties. The Brazilian representative stated: "It is quite clear that the second sentence (of Article 40) means that no matter what steps should be taken, they shall not pre-judge the future attitude of any commission or body which shall participate in the solution of the problem. The only pre-judging which is to take place is described in the third sentence of Article 40."

(1949 edition - p. 276)

D. ARAB LAND

On p. 21, Zeineddine declares: "General Bennike, in his report of 23 September and in his note of 20 October, referred to such rights, and I need not take up your time at this stage to go into any details concerning them. He has forgotten, however, to mention a number of them which we may later bring before the Council. Suffice it to say that the property in the demilitarized zone could be affected by the works, which give control of the water to Israel. That property -- more than 99 per cent of it -- is owned by Arabs."

I am expecting from Israel an evaluation of the percentage of Arab owned land in the Demilitarized Zone. However, it is quite clear that the percentage alleged by Zeineddine is greatly exaggerated. In the entire area investigated by U.N. observers, - approximating 2.5 sq. km. -, the only Arab properties found were the four Al Hindi parcels whose total area is about 20 dunam.

On p.22, Zeineddine states: ".....the demilitarized zone, between Lakes Huleh and Tiberias, to the south of Kasr Atra where the works have started, is, as I have said, or more than 99 per cent of it, owned by Arabs. How could the works in that zone be continued without infringing on Arab-owned property? It follows, therefore, that the works cannot be done in the demilitarized zone without the use of Arab-owned land. The owners refuse to cede the land. As to expropriation, that would be an act of sovereignty which Israel cannot perform in the demilitarized area. It would indeed be queer to require the expropriation of Arab land or of Arab rights in the demilitarized zone for the benefit of Israel and to the detriment of the zone itself, its inhabitants, and the civilian

life in it."

Gen. Bennaïke's investigations have proved that the only Arab land involved in the project are the Al Hindi plots of land. The question of expropriation does not arise at all.

E - SUPPLY OF WATER

Zeineddine makes the following statement on p. 23:

"As General Bennaïke said in his report, a good part of that area would be turned into a wasteland."

Gen. Bennaïke's actual words were:

"After visiting the area and studying the present Israeli project in the light of the explanations given to me, I have found not only that there has already been some interference with normal civilian life, but also that the completion of the project, by deriving from the flow of the Jordan in the Demilitarized Zone the water necessary to generate electric power of 24,000 kilowatts, was likely bring about greater disturbances unless definite obligations were entered into with a view to avoiding them. In the absence of such obligations, some Arab lands, which for many years have depended on the water of the Jordan for irrigation, might become, in the Acting Mediator's words, "a vacuum or wasteland"."

F. THREAT TO USE FORCE

Zeineddine carries his misquotations and misinterpretations of authoritative texts to the point of threatening use of force to

stop the B'not Yaakov Canal Project. On p. 15 he declares:

"His (Bennike's) decision concerning the works in question is well known, and the defiance of his decisions by the Tel-Aviv authorities is also well known. We in Syria do not consider his decision concerning the works in question as adequate to meet the situation. In view of the Israelite attitude, something more must be done by the United Nations or else the policy of Israel, based on defiance of the United Nations authority and on the creation of what Israel considers to be accomplished facts, may lead to the use of the full right of legitimate defence in accordance with Article 51 of the charter."

Article 51 speaks of course of self-defence in the case of an armed attack only. It is to be hoped that the Security Council will not be impressed by such illegal menaces.

G - JORDAN IN THE DEMILITARIZED ZONE

"All of the Jordan River between Lake Huleh and Lake Tiberias flows in the demilitarized zone." (p. 19)

South of NR 208.8 - 205.0 on the Jordan River, the Armistice Demarcation Line is described in Annex 1 of the Israel-Syrian Armistice Agreement as running "southward along Jordan River to NR 208.7 - 260.0". It is along the Jordan and not along the bank of the Jordan that the Demarcation Line was established. When the same Annex seeks to describe the line as running along a bank or a shoreline it does that by specific reference to a bank or a shoreline. It thus describes the Demarcation Line as following, for instance, "northwest along western shoreline of Lake Huleh". "Along" appears

to be quite distinct from "along the bank", or "along the side".

Paragraphs 23 and 24 of the Annex state: *

23. From MR 208.3 - 234.2, southward to bend in road at MR 208.3 - 234.5, then southeast along the west bank of the railroad and the west side of the road to the Block House, MR 207.7 - 233.4.

24. From Block House, MR 207.7 - 233.4, a line along the road to the Yarmuk River, on the border, MR 209.3 - 232.2. I understand from map experts that the official map annexed to the Agreement does not contradict this view.

Furthermore, south of MR 208.7 - 260.0 the entire Jordan river-bed is situated, through a certain length, outside the Demilitarized Zone.

It is evident that there was no intention on the part of the signatories of the Armistice Agreement to keep the Jordan hermetically closed within the Demilitarized Zone.

(South of Lake Tiberias the Jordan is entirely outside the Demilitarized Zone.)

H - THE JORDAN-AN INTERNATIONAL RIVER

"After all, the Jordan, between the Lakes of Huleh and Tiberias is an international river by any definition we like. It is the subject of international treaties in that area." (p. 22)

Even assuming, for the sake of argument, that the internation-

al treaties which Zeineddine has in mind remain in force at present, the Jordan cannot be regarded^{as} an international river only because of the existence of treaties that refer to it, unless it is such a river by its geographical configuration or by specific definition arrived at through international agreement. Normally, an international river is a river that constitutes the boundary between two states or flows from the territory of one state to another. Jordan is thus an international river as far as Israel and the Hashemite Kingdom of Jordan are concerned. It is not an international river as far as Syria is concerned. On the other hand, the Banias flowing from Syria into the Jordan in Israel territory is indeed an international river. International treaties may grant to a state rights respecting rivers situated deep in the interior of neighbouring states. Such rivers if they flow entirely through the territory of a single state would remain national rivers even if a treaty should create certain international rights and interests in them.

The Franco - British treaties of 1920, 1923 and 1926 do not define the Jordan as an international river with regard to which Syria and Palestine had equal status.

I - HULEH AS PRECEDENT

"Mr. Eban also went ahead to refer to previous discussions in the Council about an altogether different project, one which has hardly any relation to the one that we are now discussing with respect to the points that he has brought forth concerning that previous project. The Huleh project deals with Lake Huleh which

is in the Defensive Zone and not in the Demilitarized Zone, as is the Jordan River. This, from the military point of view, is an altogether different issue." (p. 67 -70)

Faris El - Khouri declared at the 541st meeting of the Security Council on 17 April 1981:

"The project is to be conducted in a demilitarized zone, in a territory not under Israel domination, a territory administered under the provisions of an international convention concluded by Syria and Israel under the auspices of the Security Council. A staff of observers was appointed by the United Nations and charged with the task of controlling the area, where neither Syrian nor Israel sovereignty exists. This shows that neither party could exercise the authority to undertake such large and small enterprises as widening and deepening the bed of the Jordan River between Huleh and Tiberias in the demilitarized zone, using land belonging to others, without having previously obtained the explicit accord of the other signatory to the Armistice Agreement and the authorization of the United Nations representatives supervising the application of the Agreement and administering the demilitarized zone where the drainage operations were to be conducted, and before having obtained the free consent of the owners of the land. The consent of none of these three elements was obtained."

(S/P.V. 541, pp. 11- 12)

In fact, three entirely new sections of the Jordan river-bed, have been constructed in the Demilitarized Zone in connection with the Hule Drainage work. These sections are all between Lake Hule and B'not Ynskov Bridge, one being 200 m. long and the other two - 50 m. each. From a military point of view, the control exercised over the flow of the Jordan waters by changing their

course in the past was undoubtedly as definite as the control that would be exercised by diverting a volume of Jordan waters into a canal.

J - Implementation of 18 May 1951 Resolution

"In fact, Mr. Eban tried to refer to opinions that were expressed in the course of previous deliberations on a different issue. I wish he would have referred to the decision taken then, for that decision was the one which Israel did not abide by and refused in fact to implement." (p. 71)

I shall devote a separate note to the implementation of the Security Council Resolution of 18 May 1951.

Y. Tekoah