משרד החוץ

ירושלים, ט' באייר תשט"ז
20 באפריל 1956

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אל : ראש הממשלה ושר הבטחון
הרמטכ"ל
✓ אלוף/מ י. הרכבי

מאת: י. תקוע, מנהל עניני שחיתות הנשק.

נדון: תזכיר על בטר בנות יעקב

...ר"ב תזכיר על בטר בנות יעקב שהוכן
על ידי.

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י. תקוע

# THE B'NOT YAAKOV PROJECT

## 1. Description of the Project

The B'not Yaakov project provides for the cutting of a canal from the River Jordan to Lake Tiberias. The point of origin of this canal, south of the B'not Yaacov Bridge in Northern Galilee, is 40 meters above sea level, while Lake Tiberias is 200 meters below. It is proposed to utilise this difference in height to generate electric power at a hydro-electric station to be erected near the Lake. Approximately 150 Million cubic meters of water required for the generation of electricity will be diverted from the Jordan into the canal and, after passing through the power station, will be returned to Lake Tiberias.

Thus, even after the construction of the canal, the River Jordan will continue to flow in its present bed without alteration of its general course and with little appreciable diminution in volume. All the water which now flows into Lake Tiberias will continue to flow into it with the addition of 100,000,000 cubic meters of water which are being added to the course of the Upper Jordan by the drainage of the Huleh marshes.

The project is being carried out under a concession granted on 2 March 1926 to the Palestine Electric Corporation for the utilisation of the waters of the Rivers Jordan and Yarmuk for generating and supplying electric energy. The concession constitutes a legally established private right, deriving from the period before the establishment of the State of Israel, and is safeguarded by the provisions of the Armistice Agreement ensuring the "restoration of normal civilian life" in the Demilitarized Zone. General Bennike, the former Chief of Staff of the U.N.T.S.O., made clear in his report to the Security Council of 23 October 1953, that the rights of the Palestine Electric Corporation "are not in question" (s/3122, Annex III, p.4).

The electricity to be generated in the new plant near Lake Tiberias will be used for industrial and civilian purposes. The entire project including the canal can be integrated into and form

an organic part of any regional or national water arrangement. In fact it was incorporated in the regional water scheme which has been under negotiation by Mr. Eric Johnston.

The power station near Lake Tiberias will produce some 170,000,000 kilowatt hours per year at an annual saving of 70,000 tons of imported fuel. This saving of fuel is particularly important to Israel, since Israel's only source of hydro-electric power, at Naharayim on the River Jordan, was lost to it as a result of Arab aggression in May 1948. Furthermore, Egyptian interference with shipping in the Suez Canal, in contravention of the Security Council's resolution of 1 September 195 , deprives Israel of oil shipped by tanker through the canal.

Syrian objections to the project are based on the fact that the B'not Yaakov canal originates in , and for 2.4 kilometers of its total length of 14 kilometers, continues within the Demilitarised Zone established under the Israel-Syrian General Armistice Agreement. It will be recalled that in in May 1951 a similar Syrian complaint against the drainage of the Huleh marshes was adjudicated in Israel's favour by the United Nations' Security Council.

2. <u>The Initial Discussions with the U.N. Chief of Staff</u>

Work on the project had been in progress without challenge for three weeks (beginning 2 September, 1953, ) when, on 23 September 1953, the Chief of Staff of the U.N.T.S.O. requested its suspension on certain specific grounds. Discussions on many complex and intricate technical details followed between the Israel Government and General Bennike. At a meeting on 28 September, the Israel Minister for Foreign Affairs made an offer, later confirmed in writing, that the work be temporarily suspended for a reasonable length of time to enable the investigation to proceed of certain points which had arisen in the course of the discussions. The Chief of Staff was not disposed to accept this offer.

3. The Chief of Staff's Attitude

In his letter of 23 September 1953, General Bennike requested the Israel Government "to ensure that the authority which started work in the Demilitarised Zone on 2 September 1953 is instructed to cease working in the Zone so long as an agreement is not arranged" (s/3122, Annex I, p.4).

The Chief of Staff explained (S/3122, Annex III, p.5) that his request was based on the consideration of three issues:

(a) whether the work so far performed has interfered with normal civilian life in the Demilitarised Zone;

(b) whether the construction of the projected canal within the Demilitarised Zone will interfere with such life; and

(c) whether the first object mentioned in Article V, para 2 of the General Armistice Agreement, concerning the separation of the armed forces of the two parties, would be affected by the work in question. *

General Bennike explained that he is concerned only with the implementation of Article V of the General Armistice Agreement and that he considered the specific issues raised by the project within the context of Article V only (S/3122, Annex III, pp.3-4).

The three issues in the question were thus:

(a) land rights

(b) existing irrigation usages; and

(c) the military aspect.

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* Art. V Para 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".

General Bennike's letter of 20 October 1953 indicated that the problem of land rights was confined to the ownership of four plots of land, approximately 20 dunams (5 acres) in extent (S/3122, Annex III, p.6), which had been used as a passage to the work site.

The irrigation issue concerns the supply of water for the operation of a water mill (S/3122, Annex III, p.7) and for the irrigation of the Buteiha lands further to the south in the Jordan course (S/3122, Annex, I, p.5).

The military aspect is whether the construction of the canal violated Article V, para. 2 of the Armistice Agreement. General Bennike's view was that the canal would affect the separation of the armed forces of the two Parties. He made it clear, however, that he did not invoke Article II of the Agreement which concerns the principle of military advantage "under the truce order by the Security Council" (S/3122 , Annex III, p. 8).

Regarding land and water rights General Bennike indicated that prejudice to local interests will arise "unless definite obligations are entered into" (S/3122, Annex III, pp.4.8).

With respect to the military aspect of the project, the Chief of Staff's report indicated that his appreciation was of a technical nature and expressed a "purely military point of view".

4. <u>The Attitude of Israel</u>

It was clear from the Chief of Staff's report that there were certain valid interests, which should be satisfied as a condition for the resumption of the work.

The Government of Israel affirmed its readiness to enter into the necessary obligations to safeguard the interests involved. This applied equally to land and water rights.

The execution of the project did not necessitate any encroachment on Arab-owned land and the Israel Government undertook to avoid encroachment

in the future. The four Arab plots affected by passage to the work site were actually fenced off.

Similarly the Government of Israel undertook to provide water for all existing irrigation requirements.

With regard to the military issue, it is the Israel Government's view that the character of the Demilitarized Zone will be fully safeguarded if the two Parties respect its only military attribute which they are pledged to observe, namely its demilitarisation, by excluding from it their armed forces in accordance with Article V of the Armistice Agreement.

At the first meeting of the Security Council, on 27 October 1953, the Government of Israel expressed its readiness to suspend work on the project pending urgent examination of the question by the Security Council. The Council noted this action with satisfaction in its resolution adopted on the same day. It is to be observed that the resolution did not endorse Gen. Bennike's request to suspend work .

5. <u>The Syrian Complaint Before the Security Council</u>

There was a fundamental difference between the Syrian approach and that reflected in the report of the Chief of Staff. While the Chief of Staff found that certain valid interests should be satisfied to permit the resumption of the work, the Syrian approach was to apply a total and permanent veto on the project by arguing that it represented an intrinsic violation of the Armistice Agreement. The Syrian complaint submitted on 16 October summed up Syria's claim as follows ( S/3108, p.2):

> "Thus the Israel authorities have violated the provisions of the Syria-Israel General Armistice Agreement by:
>
> 1. infringing the rights of the inhabitants of the Demilitarized Zone;
>
> 2. preventing the Syrian riparian population from irrigating their land with water from the Jordan;
>
> 3. militarily occupying a sector of the Demilitarized Zone."

The Syrian contention that the project was being carried out on land almost exclusively in Arab ownership, is in contradiction to the findings of the Chief of Staff based on an examination of pertinent land titles. General Bennike's report limited the question to four small plots totalling about 5 acres.

Similarly, the water problem is largely confined to the irrigation of the Buteiha lands. The area involved is comparatively small (General Bennike quotes a figure of 18,000 dunams (4,500 acres) (S/3122, Annex III, p. 10); S/PV.645, p.6). In any event, according to the investigations carried out by the Chairman of the Mixed Armistice Commission in 1951, the irrigation requirements of these lands involve no more than $1\frac{1}{2}$ - 2% of the present total volume of Jordan waters.

In the latter stages of the debate the Syrian complaint that the B'not Yaakov canal project was a violation of the Armistice Agreement because of its effect upon land and water rights was completely dissipated by the weight of contrary evidence. Thus the representative of Pakistan declared on 18 December:

> "the rights of the Arab landowners you can try to safeguard by agreements. You can put upon General Bennike's shoulders the responsibility for seeing that no one's land is being used without his consent, without compensation or without regard for whatever method may be employed for seeing that the just thing is done. In connection with the use of the water you can put upon General Bennike's shoulders the responsibility for seeing that no one who is using two drops of water from the Jordan today shall be forced to use only one drop" (S/PV.650,p.17).

The Syrian representative made a similar admission:

> "The partition of the water is not a matter for the Security Council to decide upon. Of course it can be realised, at least theoretically, for some solution can be found by an agreement between those legitimately concerned." (S/PV.650, pp.18-20).

As for the third point in the original Syrian complaint - that Israel had introduced troops into the Demilitarized Zone - no evidence was ever placed before the Security Council to substantiate this accusation. A letter from the Chairman of the Mixed Armistice Commission to the Senior Israel Delegate dated 8 October 1953 in fact confirmed that there were no military units or equipment in the Zone.

Additional Syrian Arguments

In the course of the deliberations in the Security Council, two additional arguments were introduced by Syria:

1. That the canal gave Israel a military advantage contrary to the provisions of the Armistice Agreement;

2. That the consent of Syria was necessary for the prosecution of the work.

(i) The question of military advantage

The Syrian case was based in particular on Article II, para 1 of the Armistice Agreement, which General Bennike specifically excluded from his examination of the military issue.

Article II, para 1 of the Armistice Agreement states:

"The principle that no military or political advantage should be gained under the truce ordered by the Security Council is recognized."

Syria, however, cannot invoke Article II, para I at this time. This provision bound the parties to consider the question of military advantage only "under the truce" ordered by the Security Council in May and July 1948. This truce, however, with all its special military restrictions, was superseded by the Security Council resolution of 11 August 1949. The resolution (S/1367) declared :

" The Security Council ...

" Having noted with satisfaction the several armistice agreements concluded by means of negotiations between the parties involved in the conflict in Palestine ...

" Finds that the Armistice Agreements constitute an important step towards the establishment of permanent peace in Palestine and considers that these Armistice Agreements supersede the truce provided for in the resolutions of the Security Council of 29 May and 15 July 1948 ...."

The adoption of the Resolution was preceded by a discussion in which it was made clear by Dr. Bunche, on behalf of the United Nations, and by the representatives of the United Kingdom, the United States, France and Egypt that the Armistice Agreements signalled the end of the military phase of the Palestine situation; and that the truce and its heritage of restrictions, such as those on the importation of armaments and on immigration, had ended. (See S.C.O.R. 4th year, No. 36, pp. 3,5,6,8,9,34).

It is thus clear that the relations between Israel and its neighbours are no longer based on purely military considerations, and that therefore, neither party may invoke such considerations where they do not apply. Hence it is inadmissible for Syria to intrude into Israel's power development policy by invoking the principle that this policy would increase its military potential.

This was in fact the position taken by General Riley, Chief of Staff of the UNTSO in 1951, when, after having been asked by the two Parties to the Armistice Agreement whether the drainage of the Huleh marshes conferred a military advantage on Israel, he ruled that no military advantage would accrue to Israel which did not at the same time accrue to Syria, but also declared that invocation of military advantage was in itself contrary to the Armistice Agreement (S/2049; S/PV.544, p.22).

Syria also alleged that the construction of the canal would violate Article V by affecting the separation of the armed forces of Israel and Syria (quoted in the Chief of Staff's letter of 23 September 1953).

Article V, para. 2 states that "... the Armistice Demarcation Line <u>and</u> the Demilitarised Zone have been defined with a view toward separating the Armed Forces of the two Parties ..."

Thus the letter of Article V of the Armistice Agreement shows that the Demilitarised Zone has no function in separating the armed forces which the Armistice Demarcation Line does not equally and jointly possess.

If, therefore, one ascribes any restriction to the Demilitarised Zone under this heading of separating the armed forces, one must ascribe it also to the Armistice Demarcation Line. The Armistice Demarcation Line fulfils the function of separating armed forces simply by the commitment of the parties not to cross that line with their armed forces. Similarly, the Demilitarised Zone fulfils its share of the same function by prohibiting the crossing of the Zone by the armed forces of both parties. There is no room under this text for any suggestion - and, indeed, no such suggestion had ever been previously made - that the Demilitarised Zone possesses any topographical attributes, which must be maintained intact, beyond those which apply to the territory on either side of the Armistice Demarcation Line. If a canal cannot be built in the Demilitarised Zone out of some consideration for separating armed forces, then a canal cannot be built anywhere in relation to the Armistice Demarcation Line. The Demilitarised Zone and the Armistice Demarcation Line cannot be separated in this context unless violence is done to the texts of the Armistice Agreements.

This legal interpretation is supported by the history of the Demilitarised Zone. The Syrian forces, in their war against Israel, burst out of their frontier into an area well to the west of the Jordan. The Israel Government declined to sign an Armistice Agreement unless Syria unconditionally withdrew behind its own frontier. The United Nations Mediator asserted that he could achieve this result if Israel would agree that, in the area previously occupied by Syrian forces, Israel troops would not enter. Israel made this concession, and a Demilitarised Zone was established on these historical and political grounds, without any reference whatever to topography.

### (ii) Syrian Consent

In the course of the debate Syria introduced an argument which appeared neither in General Bennike's report, nor in the original Syrian letter of complaint, nor in the first statement by the Syrian representative in the

Security Council debate on 30 October 1953. (S/PV.633,pp.5-27). The argument was that Israel's economic development projects in the Demilitarised Zone, like the B'not Yaakov Canal, are subject to indispensable Syrian consent. This contention is contrary to the provisions of the Armistice Agreement, to Dr. Bunche's Explanatory Note of 26 June 1949, to the jurisprudence of the Security Council in the Huleh debate of 1951 and to the rulings of the Chief of Staff. It was an attempt to claim for Syria a status in the Demilitarised Zone which it had never possessed.

The non-Syrian character of the zone was clearly established in the Armistice Agreement and other authoritative instruments. In Dr. Bunche's words, Syria's withdrawal from the Demilitarised Zone was "unconditional". The administration and policing in the Demilitarised Zone was defined as Israel and local Arab, but never as Syrian. Indeed, under the Armistice Agreement, problems concerning the Demilitarised Zone have been expressly excluded from the authority of the Mixed Armistice Commission on which Syria is represented, and placed under the supervision of the Chief of Staff.

The jurisprudence of the Security Council and the rulings of the Chief of Staff in the Huleh question unequivocally reject the claim of a Syrian veto right over Israel's economic development projects in the Demilitarised Zone. There exists an impressive accumulation of evidence that in the case of such projects the agreement to be sought is that of the Chief of Staff, acting as the protector of the private interests affected, and not that of Syria.

On 18 May 1951, the representative of the United Kingdom, speaking for the sponsors of the resolution on the Huleh drainage project (the United Kingdom, the United States, Turkey and France) stated : (S/PV.547,pp.34-35).

> "The sponsors of this joint draft resolution are all agreed that the Lake Huleh drainage project would undoubtedly promote the general welfare of the area, and on general grounds, therefore, they would like, as at present advised, to see it put into effect as soon as possible. On the other hand, we are conscious of the duty of the Truce Supervision Organisation

to safeguard the legitimate rights and interests of the Arab landowners..."

"If I may summarise the intention which the sponsors of this draft resolution had in mind in drafting the third, fourth and fifth paragraphs I should like to say that they hope that a negotiated settlement between the Palestine Land Development Company and the landowners might be quickly achieved, but that if in spite of the clearly expressed views of the Council to this effect no such negotiated settlement proved possible, then the procedures and the machinery provided by the General Armistice Agreement should be used in order to make a final settlement possible. I believe I may say on behalf of the sponsors of this draft resolution that if the Government of Israel did apply to the Council for relief, in accordance with the General Armistice Agreement, to enable it to acquire the land on suitable terms and to proceed with the drainage operations, we should not - I speak for the sponsors - be unsympathetic to this approach; and it might well be that, as it could, the Security Council would then bestow upon General Riley the necessary authority to this end, provided, in his judgment, such action was desirable in the interest of the maintenance of international peace and security".

Further, on the same occasion, in interpreting the word "Agreement", the Chief of Staff stated in a similar sense: (S/PV.544, pp.18-19).

"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 never found fault with the concession and I never will ... I feel that that is not a matter which affects either Syria or the United Nations. I am only

involved in the normal restoration of life within the demilitarised Zone which affects the thirty, forty or fifty Arabs that own the approximately seven or eight acres of land within the demilitarised zone... I do not believe that you will find anything in the Armistice Agreement in this respect. I have never questioned the right of the Huleh concession as a whole. I have always maintained that if it can be done without expropriating Arab land within the demilitarised zone, it is not a problem for the Mixed Armistice Commission or for the Chairman."

Finally, in authorising the renewal of the work on the drainage project, the Chief of Staff informed the Israel-Syrian Mixed Armistice Commission that he had achieved the agreement required by the resolution. He said:

"At no time in my capacity as Chief of Staff, in statements made before the Security Council, did I ever deal with the Huleh drainage project as a project. The project itself, in my mind, is outside the competence of either the Mixed Armistice Commission or the Chairman of the Commission. Therefore the Security Council's resolution as adopted does call for the stoppage of work within the demilitarised zone until the Chairman can make arrangements that are satisfactory to the Arab Landowners and to the Palestine Land Development Company."

(Record of the 62nd Israeli-Syrian M.A.C. Meeting on 28.5.1951. p.6).

Syria attempted to show that the Huleh problem is not a precedent for the present case. However, all the characteristics ascribed by the Syrian representative to the Huleh drainage scheme (S/PV.636, p.16 )

apply also to the B'not Yaacov canal project. Both projects involved work in the Demilitarised Zone of which the major effects and consequences lie outside the Demilitarised Zone. Both projects are the subject of concessions resting on valid legislation. Both projects recognise Israel's needs and rights to utilise the Jordan waters for power and irrigation. Both projects have precisely the same international background and implications. Both projects have been challenged by Syria on precisely the same grounds; yet on one of these projects the United Nations has given its clear endorsement and specifically rejected the very Syrian assertions invoked against the other, in the same area under the same agreement. In 1951 it was held lawful for a concessionaire holding statutory and legal property rights in the Demilitarised Zone to alter the Jordan bed for drainage, provided that private land interests were respected. It is then equally lawful for a legitimate concessionaire to construct a canal for electric power in the same area, under an equally valid title, provided that other private rights are not prejudiced.

## 6. Attitudes of the Sponsors of the Draft Resolution (S/3151) submitted to the Security Council on 16 December 1953

At the 648th meeting of the Security Council , The representatives of France, the United Kingdom and the United States made statements regarding the conclusions they had reached in the debate on the Canal Project and submitted a draft resolution (S/3151).

On the general question of economic development projects in the Demilitarised Zone, the representatives of the Three Powers emphasised that "development projects which are consistent with the undertakings of the parties under the Armistice Agreement and which are in the general interest and do not infringe upon established rights and obligations should be encouraged". (Ambassador Lodge on behalf of the United States in S/PV. 648, p.2; see also Sir Gladwyn Jebb on behalf of the United Kingdom on pp. 13-15 and M. Hoppenot on behalf of France on pp. 17-18.

With reference to the alleged indispensibility of Syrian consent, the representative of the United States declared (S/PV.648 p.3-5):

"...no Government should, in our opinion, exercise a veto power over legitimate projects in the Demilitarised Zone."

The representative of the United Kingdom said: (S/PV 648,p.12)

"I have listened with the greatest attention to the arguments which sought to show that the work could not proceed without the consent of the Government of Syria. But I must confess that I and my delegation have not been convinced by them. It is admitted that an alteration of the armistice terms could only be allowed by an agreement between the signatories. But here as it seems to us, the question is not whether the armistice terms should be amended to admit of a certain work, which certainly could only be done by an agreement between the parties, but whether that work is admissible under the armistice terms as they stand. Under the clauses of the Armistice Agreement, that is a question for General Bennike to interpret ... I would certainly agree that neither party to the Armistice Agreement could carry out any work, however beneficial they thought it to be which was contrary to the terms of the armistice. But it seems to me that although this is undeniable, a determined effort should be made to reconcile conflicting interests whenever this can be done without infringing the terms of the armistice. Indeed, as a general proposition, I would be prepared to say that the longer the temporary armistice arrangements continue, the more desirable it is that some way be found which would allow constructive projects in the area to be undertaken, provided it can be demonstrated that no interests would suffer thereby".

With reference to the question of military advantage the representative of France stated: (S/PV.648, pp.19-20)

"We well know and appreciate all the difficulties involved in work such as that which the Council asks General Bennike to do. But, after all, there are few difficulties that cannot be overcome, and few sacrifices that will not produce results if approached in a spirit of genuine understanding and cooperation. The same applies - if I may cite an example - to the military argument so frequently adduced here. Doubtless if there were less water in the Jordan it would constitute a less serious military obstacle. But, after all, the experience of the last war has shown how easily a trained army can cross water lines very much wider than the Jordan. In our opinion it would be unjust and contrary to the spirit of the United Nations if a region's future and economic development were to be decided by theoretical military exercises carried out on maps. Surely Israel, by planning the construction close to its frontier of hydro-electric installations essential to its economy, is demonstrating its faith and confidence in the peaceable spirit of its neighbours".

Regarding the end of the truce and its conditions, Mr. Lodge, speaking on behalf of the United States, said: (S/PV.648, p.2)

"...the primary responsibility of the Security Council in this matter is to uphold that Armistice Agreement which it endorsed in its resolution of 11 August 1949 as superseding the Truce and facilitating the transition to peace".

The rights and interests involved in this problem were defined by the representative of France as follows: (S/PV,648,p.18)

"It is of course necessary that the rights of each should be respected. And those rights are intermingled in a very

complex manner. Syria and Israel alike are entitled to have the Armistice Agreement strictly applied. Private persons are entitled to respect for their property; riparian owners are entitled to use the water for irrigation; and in this connection I refer particularly to the rights of the agricultural area called Buteiha Farm".

This definition was reaffirmed by the representative of France at the 655th meeting of the Security Council (S/PV 655, p. 10)

7. The Draft Resolution

In its final form the draft resolution read:

1. Recalling its previous resolutions on the Palestine question;

2. Taking into consideration the statements of the Representatives of Syria and Israel and the reports of the Chief of Staff of the Truce Supervision Organisation on the Syrian complaint (S/3108/Rev.1);

3. Notes that the Chief of Staff requested the Government of Israel on 23 September 1953 "to ensure that the authority which started work in the Demilitarized Zone on 2 September 1953 is instructed to cease working in the Zone so long as an agreement is not arranged";

4. Endorses this action of the Chief of Staff;

5. Recalls its resolution of 27 October 1953, taking note of the statement by the Representative of the Government of Israel that the work started by Israel in the Demilitarized Zone would be suspended pending urgent examination of the question by the Council;

6. Declares that, in order to promote the return of permanent peace in Palestine, it is essential that the General Armistice Agreement of 20 July 1949 between Syria and Israel be strictly and faithfully observed by the Parties;

7. Reminds the Parties that, under Article 7, paragraph 8 of the Armistice Agreement, where the interpretation of the meaning of a particular provision of the Agreement other than the preamble and Articles 1 and 2 is at issue,

the Mixed Armistice Commission's interpretation shall prevail;

8. Notes that Article 5 of the General Armistice Agreement between Syria and Israel gives to the Chief of Staff, as Chairman of the Syrian-Israeli Mixed Armistice Commission, responsibility for the general supervision of the Demilitarized Zone;

9. Calls upon the Parties to comply with all his decisions and requests, in the exercise of his authority under the Armistice Agreement;

10. Requests and authorizes the Chief of Staff to explore possibilities of reconciling the Israeli and Syrian interests involved in the dispute over the diversion of Jordan waters at Banat Ya'qub, including full satisfaction of existing irrigation rights at all seasons, while safeguarding the rights of individuals in the Demilitarized Zone, and to take such steps in accordance with the Armistice Agreement as he may deem appropriate to effect a reconciliation;

11. Calls upon the Governments of Israel and Syria to cooperate with the Chief of Staff to this end and to refrain from any unilateral action which would prejudice it;

12. Requests the Secretary-General to place at the disposal of the Chief of Staff a sufficient number of experts, in particular hydraulic engineers, to supply him on the technical level with the necessary data for a complete appreciation of the project in question and of its effect upon the Demilitarized Zone;

13. Affirms that nothing in this resolution shall be deemed to supersede the Armistice Agreement or to change the legal status of the Demilitarized Zone thereunder;

14. Directs the Chief of Staff to report to the Security Council within 90 days on the measures taken to give effect to this resolution.

The draft resolution clarified, whether explicitly or implicitly, the points which stood in the way of a constructive solution of the problem. Thus it is evident from para 10 of the resolution that the theory of Syrian consent was rejected in accordance with past jurisprudence of a Security

Council. Para 13 of the resolution overcame the difficulties which have arisen with respect to the military aspect of the question. The draft defined the interests to be satisfied in the execution of the project and indicated the Security Council's intention that the matter should be resolved in a constructive spirit and with an emphasis on the principles of progressive civilian enterprise.

At the 656th meeting of the Security Council on 22 January 1954, a majority of 7 members voted in favour of the resolution, 2 against and 2 abstained. The draft resolution was not adopted because one of the negative votes was that of a permanent member of the Council - the Soviet Union.

The concensus of opinion of the Security Council's members was nevertheless unequivocal in its support for the continuation of the development project if all valid interest could be satisfied.

This attitude of the Security Council's was soon translated into concrete terms by the mission of two water experts sent by the Secretary-General of the United Nations to examine the means for ensuring private rights that might be affected by the canal project.

8. Israel's position after the Security Council debate

On 24 January 1954 the Government of Israel issued the following statement of policy:

"At its meeting today, after hearing the Foreign Minister's report on the final stages and the conclusion of the Security Council's debate on the subject of the Jordan Canal Project, the Cabinet adopted the following resolution.

1. The Cabinet notes that the conclusion of the Security Council's consideration of the subject without any decision having been arrived at, signifies the failure of Syria's complaint against Israel which had caused the Security Council to be seized of the problem.

2. The Government recalls that on 23rd October, 1953, it undertook temporarily to suspend the work on the Project pending an urgent examination of the question by the Council, and notes that this examination has now terminated.

3. The Government states, that in accordance with its declared policy and the initiative taken by its prior to the discussion of the matter in the Security Council, it is prepared to discuss with the Chief of Staff of the U.N. Truce Supervision Organisation suitable guarantees which it would be ready to offer for the preservation of such private rights as may be affected by the project. The Foreign Ministry has been instructed to take steps in this direction.

9. The Eysvoogel - Dixon Mission

The mission sent by the Secretary-General to examine the possibilities of ensuring private rights that might be affected by the project consisted of the consultants W.F. Eysvoogel and J.W. Dixon who visited the project area in March 1954. They made field inspections and held a number of conferences with Israel and Syrian experts. In the summary of their findings the experts concluded that "it is quite possible to provide a physical means of assuring that the Buteiha Farm water supply will have a first priority by by-passing the Israeli headworks . . . In these ways the Buteiha Farm would have an assured supply of water." They added that "so long as the proposed Taghba project is operated solely for power generation it will not have any adverse effect upon the salinity or the amounts of water available for use in or down stream from Lake Tiberias." The consultants also made estimates of the effect that diversion of a maximum of 157 million $m^3$ per year for irrigation purposes would have. They found that the diversion of this quantity of water from the Upper Jordan will increase the salinity of Lake Tiberias and the Lower Jordan, but that "the salinity of the Lower Jordan River at the Allenby Bridge in future, even with the proposed Israeli power diversion project will not exceed 387 p.p.m. of salt, which is within the tolerable limits for irrigation use."

On 26 March 1954 Israel agreed to implement the recommendations of Messrs Y.W. Dixon and W.F. Eysvoogel. The Israel Minister for Foreign Affairs wrote to General Bennike as follows:

"With reference to the conversations between yourself, the water experts Messrs Y.W. Dixon and W.F. Eysvoogel and Israel representatives concerning the B'not Yaakov canal project, I write

to reaffirm that the Government of Israel is prepared to undertake the maintenance, both during the construction and after the completion of the canal project, of an adequate supply of water at all seasons for the satisfaction of existing water users. Such an undertaking would be unaffected by any modification or extension of the existing project. In addition, the Government is prepared to furnish within reasonable limits the necessary means to enable such an undertaking to be implemented."

10. Present position.

Work on the B'not Yaakov project has continued ever since outside the Demilitarized Zone. The Government of Israel has postponed the completion of the canal inside the D.Z. at the request of the U.S. Government with a view to facilitating Mr. Eric Johnston's negotiations for agreement on a regional water scheme of which the B'not Yaakov project would be part.

# THE B'NOT YAAKOV PROJECT

## 1. Description of the Project

The B'not Yaakov project provides for the cutting of a canal from the River Jordan to Lake Tiberias. The point of origin of this canal, south of the B'not Yaacov Bridge in Northern Galilee, is 40 meters above sea level, while Lake Tiberias is 200 meters below. It is proposed to utilise this difference in height to generate electric power at a hydro-electric station to be erected near the Lake. Approximately 150 Million cubic meters of water required for the generation of electricity will be diverted from the Jordan into the canal and, after passing through the power station, will be returned to Lake Tiberias.

Thus, even after the construction of the canal, the River Jordan will continue to flow in its present bed without alteration of its general course and with little appreciable diminution in volume. All the water which now flows into Lake Tiberias will continue to flow into it with the addition of 100,000,000 cubic meters of water which are being added to the course of the Upper Jordan by the drainage of the Huleh marshes.

The project is being carried out under a concession granted on 2 March 1926 to the Palestine Electric Corporation for the utilisation of the waters of the Rivers Jordan and Yarmuk for generating and supplying electric energy. The concession constitutes a legally established private right, deriving from the period before the establishment of the State of Israel, and is safeguarded by the provisions of the Armistice Agreement ensuring the "restoration of normal civilian life" in the Demilitarized Zone. General Bennike, the former Chief of Staff of the U.N.T.S.O., made clear in his report to the Security Council of 23 October 1953, that the rights of the Palestine Electric Corporation "are not in question" (s/3122, Annex III, p.4).

The electricity to be generated in the new plant near Lake Tiberias will be used for industrial and civilian purposes. The entire project including the canal can be integrated into and form

an organic part of any regional or national water arrangement. In fact it was incorporated in the regional water scheme which has been under negotiation by Mr. Eric Johnston.

The power station near Lake Tiberias will produce some 170,000,000 kilowatt hours per year at an annual saving of 70,000 tons of imported fuel. This saving of fuel is particularly important to Israel, since Israel's only source of hydro-electric power, at Naharayim on the River Jordan, was lost to it as a result of Arab aggression in May 1948. Furthermore, Egyptian interference with shipping in the Suez Canal, in contravention of the Security Council's resolution of 1 September 195 , deprives Israel of oil shipped by tanker through the canal.

Syrian objections to the project are based on the fact that the B'not Yaakov Canal originates in , and for 2.4 kilometers of its total length of 14 kilometers, continues within the Demilitarised Zone established under the Israel-Syrian General Armistice Agreement. It will be recalled that in in May 1951 a similar Syrian complaint against the drainage of the Huleh marshes was adjudicated in Israel's favour by the United Nations' Security Council.

2. <u>The Initial Discussions with the U.N. Chief of Staff</u>

Work on the project had been in progress without challenge for three weeks (beginning 2 September, 1953, ) when, on 23 September 1953, the Chief of Staff of the U.N.T.S.O. requested its suspension on certain specific grounds. Discussions on many complex and intricate technical details followed between the Israel Government and General Bennike. At a meeting on 28 September, the Israel Minister for Foreign Affairs made an offer, later confirmed in writing, that the work be temporarily suspended for a reasonable length of time to enable the investigation to proceed of certain points which had arisen in the course of the discussions. The Chief of Staff was not disposed to accept this offer.

3. The Chief of Staff's Attitude

In his letter of 23 September 1953, General Bennike requested the Israel Government "to ensure that the authority which started work in the Demilitarised Zone on 2 September 1953 is instructed to cease working in the Zone so long as an agreement is not arranged" (s/3122, Annex I, p.4).

The Chief of Staff explained (S/3122, Annex III, p.5) that his request was based on the consideration of three issues:

(a) whether the work so far performed has interfered with normal civilian life in the Demilitarised Zone;

(b) whether the construction of the projected canal within the Demilitarised Zone will interfere with such life; and

(c) whether the first object mentioned in Article V, para 2 * of the General Armistice Agreement, concerning the separation of the armed forces of the two parties, would be affected by the work in question.

General Bennike explained that he is concerned only with the implementation of Article V of the General Armistice Agreement and that he considered the specific issues raised by the project within the context of Article V only (S/3122, Annex III, pp.3-4).

The three issues in the question were thus:

(a) land rights

(b) existing irrigation usages; and

(c) the military aspect.

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* Art. V Para 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".

General Bennike's letter of 20 October 1953 indicated that the problem of land rights was confined to the ownership of four plots of land, approximately 20 dunams (5 acres) in extent (S/3122, Annex III, p.6), which had been used as a passage to the work site.

The irrigation issue concerns the supply of water for the operation of a water mill (S/3122, Annex III, p.7) and for the irrigation of the Buteiha lands further to the south in the Jordan course (S/3122, Annex, I, p.5).

The military aspect is whether the construction of the canal violated Article V, para. 2 of the Armistice Agreement. General Bennike's view was that the canal would affect the separation of the armed forces of the two Parties. He made it clear, however, that he did not invoke Article II of the Agreement which concerns the principle of military advantage "under the truce order by the Security Council" (S/3122 , Annex III, p. 8).

Regarding land and water rights General Bennike indicated that prejudice to local interests will arise "unless definite obligations are entered into" (S/3122, Annex III, pp.4.8).

With respect to the military aspect of the project, the Chief of Staff's report indicated that his appreciation was of a technical nature and expressed a "purely military point of view".

4. <u>The Attitude of Israel</u>

It was clear from the Chief of Staff's report that there were certain valid interests, which should be satisfied as a condition for the resumption of the work.

The Government of Israel affirmed its readiness to enter into the necessary obligations to safeguard the interests involved. This applied equally to land and water rights.

The execution of the project did not necessitate any encroachment on Arab-owned land and the Israel Government undertook to avoid encroachment

in the future. The four Arab plots affected by passage to the work site were actually fenced off.

Similarly the Government of Israel undertook to provide water for all existing irrigation requirements.

With regard to the military issue, it is the Israel Government's view that the character of the Demilitarized Zone will be fully safeguarded if the two Parties respect its only military attribute which they are pledged to observe, namely its demilitarisation, by excluding from it their armed forces in accordance with Article V of the Armistice Agreement.

At the first meeting of the Security Council, on 27 October 1953, the Government of Israel expressed its readiness to suspend work on the project pending urgent examination of the question by the Security Council. The Council noted this action with satisfaction in its resolution adopted on the same day. It is to be observed that the resolution did not endorse Gen. Bennike's request to suspend work .

5. The Syrian Complaint Before the Security Council

There was a fundamental difference between the Syrian approach and that reflected in the report of the Chief of Staff. While the Chief of Staff found that certain valid interests should be satisfied to permit the resumption of the work, the Syrian approach was to apply a total and permanent veto on the project by arguing that it represented an intrinsic violation of the Armistice Agreement. The Syrian complaint submitted on 16 October summed up Syria's claim as follows ( S/3108, p.2):

> "Thus the Israel authorities have violated the provisions of the Syria-Israel General Armistice Agreement by:
>
> 1. infringing the rights of the inhabitants of the Demilitarized Zone;
>
> 2. preventing the Syrian riparian population from irrigating their land with water from the Jordan;
>
> 3. militarily occupying a sector of the Demilitarized Zone."

The Syrian contention that the project was being carried out on land "almost exclusively in Arab ownership," is in contradiction to the findings of the Chief of Staff based on an examination of pertinent land titles. General Bennike's report limited the question to four small plots totalling about 5 acres.

Similarly, the water problem is largely confined to the irrigation of the Buteiha lands. The area involved is comparatively small (General Bennike quotes a figure of 18,000 dunams (4,500 acres) (S/3122, Annex III, p. 1a); S/PV.645, p.6). In any event, according to the investigations carried out by the Chairman of the Mixed Armistice Commission in 1951, the irrigation requirements of these lands involve no more than 1½ - 2% of the present total volume of Jordan waters.

In the latter stages of the debate the Syrian complaint that the B'not Yaakov canal project was a violation of the Armistice Agreement because of its effect upon land and water rights was completely dissipated by the weight of contrary evidence. Thus the representative of Pakistan declared on 18 December:

> "the rights of the Arab landowners you can try to safeguard by agreements. You can put upon General Bennike's shoulders the responsibility for seeing that no one's land is being used without his consent, without compensation or without regard for whatever method may be employed for seeing that the just thing is done. In connection with the use of the water you can put upon General Bennike's shoulders the responsibility for seeing that no one who is using two drops of water from the Jordan today shall be forced to use only one drop" (S/PV.650,p.17).

The Syrian representative made a similar admission:

> "The partition of the water is not a matter for the Security Council to decide upon. Of course it can be realised, at least theoretically, for some solution can be found by an agreement between those legitimately concerned." (S/PV.650, pp.18-20).

As for the third point in the original Syrian complaint - that Israel had introduced troops into the Demilitarized Zone - no evidence was ever placed before the Security Council to substantiate this accusation. A letter from the Chairman of the Mixed Armistice Commission to the Senior Israel Delegate dated 8 October 1953 in fact confirmed that there were no military units or equipment in the Zone.

Additional Syrian Arguments

In the course of the deliberations in the Security Council, two additional arguments were introduced by Syria:

1. That the canal gave Israel a military advantage contrary to the provisions of the Armistice Agreement;

2. That the consent of Syria was necessary for the prosecution of the work.

(i) The question of military advantage

The Syrian case was based in particular on Article II, para 1 of the Armistice Agreement, which General Bernike specifically excluded from his examination of the military issue.

Article II, para 1 of the Armistice Agreement states:

"The principle that no military or political advantage should be gained under the truce ordered by the Security Council is recognized."

Syria, however, cannot invoke Article II, para I at this time. This provision bound the parties to consider the question of military advantage only "under the truce" ordered by the Security Council in May and July 1948. This truce, however, with all its special military restrictions, was superseded by the Security Council resolution of 11 August 1949. The resolution (S/1367) declared :

" The Security Council ...

" Having noted with satisfaction the several armistice agreements concluded by means of negotiations between the parties involved in the conflict in Palestine ...

" Finds that the Armistice Agreements constitute an important step towards the establishment of permanent peace in Palestine and considers that these Armistice Agreements supersede the truce provided for in the resolutions of the Security Council of 29 May and 15 July 1948 ...."

The adoption of the Resolution was preceded by a discussion in which it was made clear by Dr. Bunche, on behalf of the United Nations, and by the representatives of the United Kingdom, the United States, France and Egypt that the Armistice Agreements signalled the end of the military phase of the Palestine situation; and that the truce and its heritage of restrictions, such as those on the importation of armaments and on immigration, had ended. (See S.C.O.R. 4th year, No. 36, pp. 3,5,6,8,9,34).

It is thus clear that the relations between Israel and its neighbours are no longer based on purely military considerations, and that therefore, neither party may invoke such considerations where they do not apply. Hence it is inadmissible for Syria to intrude into Israel's power development policy by invoking the principle that this policy would increase its military potential.

This was in fact the position taken by General Riley, Chief of Staff of the UNTSO in 1951, when, after having been asked by the two Parties to the Armistice Agreement whether the drainage of the Huleh marshes conferred a military advantage on Israel, he ruled that no military advantage would accrue to Israel which did not at the same time accrue to Syria, but also declared that invocation of military advantage was in itself contrary to the Armistice Agreement (S/2049; S/PV.544, p.22).

Syria also alleged that the construction of the canal would violate Article V by affecting the separation of the armed forces of Israel and Syria (quoted in the Chief of Staff's letter of 23 September 1953).

Article V, para. 2 states that "... the Armistice Demarcation Line and the Demilitarised Zone have been defined with a view toward separating the Armed Forces of the two Parties ..."

Thus the letter of Article V of the Armistice Agreement shows that the Demilitarised Zone has no function in separating the armed forces which the Armistice Demarcation Line does not equally and jointly possess.

If, therefore, one ascribes any restriction to the Demilitarised Zone under this heading of separating the armed forces, one must ascribe it also to the Armistice Demarcation Line. The Armistice Demarcation Line fulfils the function of separating armed forces simply by the commitment of the parties not to cross that line with their armed forces. Similarly, the Demilitarised Zone fulfils its share of the same function by prohibiting the crossing of the Zone by the armed forces of both parties. There is no room under this text for any suggestion - and, indeed, no such suggestion had ever been previously made - that the Demilitarised Zone possesses any topographical attributes, which must be maintained intact, beyond those which apply to the territory on either side of the Armistice Demarcation Line. If a canal cannot be built in the Demilitarised Zone out of some consideration for separating armed forces, then a canal cannot be built anywhere in relation to the Armistice Demarcation Line. The Demilitarised Zone and the Armistice Demarcation Line cannot be separated in this context unless violence is done to the texts of the Armistice Agreements.

This legal interpretation is supported by the history of the Demilitarised Zone. The Syrian forces, in their war against Israel, burst out of their frontier into an area well to the west of the Jordan. The Israel Government declined to sign an Armistice Agreement unless Syria unconditionally withdrew behind its own frontier. The United Nations Mediator asserted that he could achieve this result if Israel would agree that, in the area previously occupied by Syrian forces, Israel troops would not enter. Israel made this concession, and a Demilitarised Zone was established on these historical and political grounds, without any reference whatever to topography.

### (ii) Syrian Consent

In the course of the debate Syria introduced an argument which appeared neither in General Bennike's report, nor in the original Syrian letter of complaint, nor in the first statement by the Syrian representative in the

Security Council debate on 30 October 1953. (S/PV.633,pp.5-27). The argument was that Israel's economic development projects in the Demilitarised Zone, like the B'not Yaakov Canal, are subject to indispensable Syrian consent. This contention is contrary to the provisions of the Armistice Agreement, to Dr. Bunche's Explanatory Note of 26 June 1949, to the jurisprudence of the Security Council in the Huleh debate of 1951 and to the rulings of the Chief of Staff. It was an attempt to claim for Syria a status in the Demilitarised Zone which it had never possessed.

The non-Syrian character of the zone was clearly established in the Armistice Agreement and other authoritative instruments. In Dr. Bunche's words, Syria's withdrawal from the Demilitarised Zone was "unconditional". The administration and policing in the Demilitarised Zone was defined as Israel and local Arab, but never as Syrian. Indeed, under the Armistice Agreement, problems concerning the Demilitarised Zone have been expressly excluded from the authority of the Mixed Armistice Commission on which Syria is represented, and placed under the supervision of the Chief of Staff.

The jurisprudence of the Security Council and the rulings of the Chief of Staff in the Huleh question unequivocally reject the claim of a Syrian veto right over Israel's economic development projects in the Demilitarised Zone. There exists an impressive accumulation of evidence that in the case of such projects the agreement to be sought is that of the Chief of Staff, acting as the protector of the private interests affected, and not that of Syria.

On 18 May 1951, the representative of the United Kingdom, speaking for the sponsors of the resolution on the Huleh drainage project (the United Kingdom, the United States, Turkey and France) stated : (S/PV.547,pp.34-35).

> "The sponsors of this joint draft resolution are all agreed that the Lake Huleh drainage project would undoubtedly promote the general welfare of the area, and on general grounds, therefore, they would like, as at present advised, to see it put into effect as soon as possible. On the other hand, we are conscious of the duty of the Truce Supervision Organisation

to safeguard the legitimate rights and interests of the Arab landowners..."

"If I may summarise the intention which the sponsors of this draft resolution had in mind in drafting the third, fourth and fifth paragraphs I should like to say that they hope that a negotiated settlement between the Palestine Land Development Company and the landowners might be quickly achieved, but that if in spite of the clearly expressed views of the Council to this effect no such negotiated settlement proved possible, then the procedures and the machinery provided by the General Armistice Agreement should be used in order to make a final settlement possible. I believe I may say on behalf of the sponsors of this draft resolution that if the Government of Israel did apply to the Council for relief, in accordance with the General Armistice Agreement, to enable it to acquire the land on suitable terms and to proceed with the drainage operations, we should not - I speak for the sponsors -be unsympathetic to this approach; and it might well be that, as it could, the Security Council would then bestow upon General Riley the necessary authority to this end, provided, in his judgment, such action was desirable in the interest of the maintenance of international peace and security".

Further, on the same occasion, in interpreting the word "Agreement", the Chief of Staff stated in a similar sense: (S/PV.544, pp.18-19).

"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 never found fault with the concession and I never will ... I feel that that is not a matter which affects either Syria or the United Nations. I am only

involved in the normal restoration of life within the demilitarised Zone which affects the thirty, forty or fifty Arabs that own the approximately seven or eight acres of land within the demilitarised zone... I do not believe that you will find anything in the Armistice Agreement in this respect. I have never questioned the right of the Huleh concession as a whole. I have always maintained that if it can be done without expropriating Arab land within the demilitarised zone, it is not a problem for the Mixed Armistice Commission or for the Chairman."

Finally, in authorising the renewal of the work on the drainage project, the Chief of Staff informed the Israel-Syrian Mixed Armistice Commission that he had achieved the agreement required by the resolution. He said:

"At no time in my capacity as Chief of Staff, in statements made before the Security Council, did I ever deal with the Huleh drainage project as a project. The project itself, in my mind, is outside the competence of either the Mixed Armistice Commission or the Chairman of the Commission. Therefore the Security Council's resolution as adopted does call for the stoppage of work within the demilitarised zone until the Chairman can make arrangements that are satisfactory to the Arab Landowners and to the Palestine Land Development Company."

(Record of the 62nd Israeli-Syrian M.A.C. Meeting on 28.5.1951. p.6).

Syria attempted to show that the Huleh problem is not a precedent for the present case. However, all the characteristics ascribed by the Syrian representative to the Huleh drainage scheme (S/PV.636, p.16 )

apply also to the B'not Yaacov canal project. Both projects involved work in the Demilitarised Zone of which the major effects and consequences lie outside the Demilitarised Zone. Both projects are the subject of concessions resting on valid legislation. Both projects recognise Israel's needs and rights to utilise the Jordan waters for power and irrigation. Both projects have precisely the same international background and implications. Both projects have been challenged by Syria on precisely the same grounds; yet on one of these projects the United Nations has given its clear endorsement and specifically rejected the very Syrian assertions invoked against the other, in the same area under the same agreement. In 1951 it was held lawful for a concessionaire holding statutory and legal property rights in the Demilitarised Zone to alter the Jordan bed for drainage, provided that private land interests were respected. It is then equally lawful for a legitimate concessionaire to construct a canal for electric power in the same area, under an equally valid title, provided that other private rights are not prejudiced.

c. Attitudes of the Sponsors of the Draft Resolution (S/3151) submitted to the Security Council on 16 December 1953

At the 648th meeting of the Security Council, The representatives of France, the United Kingdom and the United States made statements regarding the conclusions they had reached in the debate on the Canal Project and submitted a draft resolution (S/3151).

On the general question of economic development projects in the Demilitarised Zone, the representatives of the Three Powers emphasised that "development projects which are consistent with the undertakings of the parties under the Armistice Agreement and which are in the general interest and do not infringe upon established rights and obligations should be encouraged". (Ambassador Lodge on behalf of the United States in S/PV. 648, p.2; see also Sir Gladwyn Jebb on behalf of the United Kingdom on pp. 13-15 and M. Hoppenot on behalf of France on pp. 17-18.

With reference to the alleged indispensibility of Syrian consent, the representative of the United States declared (S/PV.648 p.3-5):

"...no Government should, in our opinion, exercise a veto power over legitimate projects in the Demilitarised Zone."

The representative of the United Kingdom said: (S/PV 648,p.12)

"I have listened with the greatest attention to the arguments which sought to show that the work could not proceed without the consent of the Government of Syria. But I must confess that I and my delegation have not been convinced by them. It is admitted that an alteration of the armistice terms could only be allowed by an agreement between the signatories. But here as it seems to us, the question is not whether the armistice terms should be amended to admit of a certain work, which certainly could only be done by an agreement between the parties, but whether that work is admissible under the armistice terms as they stand. Under the clauses of the Armistice Agreement, that is a question for General Bennike to interpret ... I would certainly agree that neither party to the Armistice Agreement could carry out any work, however beneficial they thought it to be which was contrary to the terms of the armistice. But it seems to me that although this is undeniable, a determined effort should be made to reconcile conflicting interests whenever this can be done without infringing the terms of the armistice. Indeed, as a general proposition, I would be prepared to say that the longer the temporary armistice arrangements continue, the more desirable it is that some way be found which would allow constructive projects in the area to be undertaken, provided it can be demonstrated that no interests would suffer thereby".

With reference to the question of military advantage the representative of France stated: (S/PV.648, pp.19-20)

> "We well know and appreciate all the difficulties involved in work such as that which the Council asks General Bennike to do. But, after all, there are few difficulties that cannot be overcome, and few sacrifices that will not produce results if approached in a spirit of genuine understanding and cooperation. The same applies - if I may cite an example - to the military argument so frequently adduced here. Doubtless if there were less water in the Jordan it would constitute a less serious military obstacle. But, after all, the experience of the last war has shown how easily a trained army can cross water lines very much wider than the Jordan. In our opinion it would be unjust and contrary to the spirit of the United Nations if a region's future and economic development were to be decided by theoretical military exercises carried out on maps. Surely Israel, by planning the construction close to its frontier of hydro-electric installations essential to its economy, is demonstrating its faith and confidence in the peaceable spirit of its neighbours".

Regarding the end of the truce and its conditions, Mr. Lodge, speaking on behalf of the United States, said: (S/PV.648, p.2)

> "...the primary responsibility of the Security Council in this matter is to uphold that Armistice Agreement which it endorsed in its resolution of 11 August 1949 as superseding the Truce and facilitating the transition to peace".

The rights and interests involved in this problem were defined by the representative of France as follows: (S/PV,648,p.18)

> "It is of course necessary that the rights of each should be respected. And those rights are intermingled in a very

complex manner. Syria and Israel alike are entitled to have the Armistice Agreement strictly applied. Private persons are entitled to respect for their property; riparian owners are entitled to use the water for irrigation ; and in this connection I refer particularly to the rights of the agricultural area called Buteiha Farm".

This definition was reaffirmed by the representative of France at the 655th meeting of the Security Council (S/PV 655, p. 10)

7. The Draft Resolution

In its final form the draft resolution read:

1. Recalling its previous resolutions on the Palestine question;

2. Taking into consideration the statements of the Representatives of Syria and Israel and the reports of the Chief of Staff of the Truce Supervision Organisation on the Syrian complaint (S/3108/Rev.1);

3. Notes that the Chief of Staff requested the Government of Israel on 23 September 1953 "to ensure that the authority which started work in the Demilitarized Zone on 2 September 1953 is instructed to cease working in the Zone so long as an agreement is not arranged";

4. Endorses this action of the Chief of Staff;

5. Recalls its resolution of 27 October 1953, taking note of the statement by the Representative of the Government of Israel that the work started by Israel in the Demilitarized Zone would be suspended pending urgent examination of the question by the Council;

6. Declares that, in order to promote the return of permanent peace in Palestine , it is essential that the General Armistice Agreement of 20 July 1949 between Syria and Israel be strictly and faithfully observed by the Parties;

7. Reminds the Parties that, under Article 7, paragraph 8 of the Armistice Agreement, where the interpretation of the meaning of a particular provision of the Agreement other than the preamble and Articles 1 and 2 is at issue,

the Mixed Armistice Commission's interpretation shall prevail;

8. Notes that Article 5 of the General Armistice Agreement between Syria and Israel gives to the Chief of Staff, as Chairman of the Syrian-Israeli Mixed Armistice Commission, responsibility for the general supervision of the Demilitarized Zone;

9. Calls upon the Parties to comply with all his decisions and requests, in the exercise of his authority under the Armistice Agreement;

10. Requests and authorizes the Chief of Staff to explore possibilities of reconciling the Israeli and Syrian interests involved in the dispute over the diversion of Jordan waters at Banat Ya'qub, including full satisfaction of existing irrigation rights at all seasons, while safeguarding the rights of individuals in the Demilitarized Zone, and to take such steps in accordance with the Armistice Agreement as he may deem appropriate to effect a reconciliation;

11. Calls upon the Governments of Israel and Syria to cooperate with the Chief of Staff to this end and to refrain from any unilateral action which would prejudice it;

12. Requests the Secretary-General to place at the disposal of the Chief of Staff a sufficient number of experts, in particular hydraulic engineers, to supply him on the technical level with the necessary data for a complete appreciation of the project in question and of its effect upon the Demilitarized Zone;

13. Affirms that nothing in this resolution shall be deemed to supersede the Armistice Agreement or to change the legal status of the Demilitarized Zone thereunder;

14. Directs the Chief of Staff to report to the Security Council within 90 days on the measures taken to give effect to this resolution.

The draft resolution clarified, whether explicitly or implicitly, the points which stood in the way of a constructive solution of the problem. Thus it is evident from para 10 of the resolution that the theory of Syrian consent was rejected in accordance with past jurisprudence of a Security

Council. Para 13 of the resolution overcame the difficulties which have arisen with respect to the military aspect of the question. The draft defined the interests to be satisfied in the execution of the project and indicated the Security Council's intention that the matter should be resolved in a constructive spirit and with an emphasis on the principles of progressive civilian enterprise.

At the 656th meeting of the Security Council on 22 January 1954, a majority of 7 members voted in favour of the resolution, 2 against and 2 abstained. The draft resolution was not adopted because one of the negative votes was that of a permanent member of the Council - the Soviet Union.

The concensus of opinion of the Security Council's members was nevertheless unequivocal in its support for the continuation of the development project if all valid interest could be satisfied.

This attitude of the Security Council's was soon translated into concrete terms by the mission of two water experts sent by the Secretary-General of the United Nations to examine the means for ensuring private rights that might be affected by the canal project.

8. Israel's position after the Security Council debate

On 24 January 1954 the Government of Israel issued the following statement of policy:

"At its meeting today, after hearing the Foreign Minister's report on the final stages and the conclusion of the Security Council's debate on the subject of the Jordan Canal Project, the Cabinet adopted the following resolution.

1. The Cabinet notes that the conclusion of the Security Council's consideration of the subject without any decision having been arrived at, signifies the failure of Syria's complaint against Israel which had caused the Security Council to be seized of the problem.

2. The Government recalls that on 23rd October, 1953, it undertook temporarily to suspend the work on the Project pending an urgent examination of the question by the Council, and notes that this examination has now terminated.

3. The Government states, that in accordance with its declared policy and the initiative taken by its prior to the discussion of the matter in the Security Council, it is prepared to discuss with the Chief of Staff of the U.N. Truce Supervision Organisation suitable guarantees which it would be ready to offer for the preservation of such private rights as may be affected by the project. The Foreign Ministry has been instructed to take steps in this direction.

9. The Eysvoogel - Dixon Mission

The mission sent by the Secretary-General to examine the possibilities of ensuring private rights that might be affected by the project consisted of the consultants W.F. Eysvoogel and J.W. Dixon who visited the project area in March 1954. They made field inspections and held a number of conferences with Israel and Syrian experts. In the summary of their findings the experts concluded that "it is quite possible to provide a physical means of assuring that the Buteiha Farm water supply will have a first priority by by-passing the Israeli headworks . . . In these ways the Buteiha Farm would have an assured supply of water." They added that "so long as the proposed Taghba project is operated solely for power generation it will not have any adverse effect upon the salinity or the amounts of water available for use in or down stream from Lake Tiberias." The consultants also made estimates of the effect that diversion of a maximum of 157 million $m^3$ per year for irrigation purposes would have. They found that the diversion of this quantity of water from the Upper Jordan will increase the salinity of Lake Tiberias and the Lower Jordan, but that "the salinity of the Lower Jordan River at the Allenby Bridge in future, even with the proposed Israeli power diversion project will not exceed 387 p.p.m. of salt, which is within the tolerable limits for irrigation use."

On 26 March 1954 Israel agreed to implement the recommendations of Messrs Y.W. Dixon and W.F. Eysvoogel. The Israel Minister for Foreign Affairs wrote to General Bennike as follows:

"With reference to the conversations between yourself, the water experts Messrs Y.W. Dixon and W.F. Eysvoogel and Israel representatives concerning the B'not Yaakov canal project, I write

to reaffirm that the Government of Israel is prepared to undertake the maintenance, both during the construction and after the completion of the canal project, of an adequate supply of water at all seasons for the satisfaction of existing water users. Such an undertaking would be unaffected by any modification or extension of the existing project. In addition, the Government is prepared to furnish within reasonable limits the necessary means to enable such an undertaking to be implemented."

10. Present position.

Work on the B'not Yaakov project has continued ever since outside the Demilitarized Zone. The Government of Israel has postponed the completion of the canal inside the D.Z. at the request of the U.S. Government with a view to facilitating Mr. Eric Johnston's negotiations for agreement on a regional water scheme of which the B'not Yaakov project would be part.