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**Letter dated 10 May 1971 from Mr. Shabtai Rosenne to the Chairman of the
International Law Commission**

Topic:
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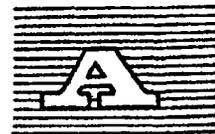
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Letter dated 10 May 1971 from Mr. Shabtai Rosenne to
the Chairman of the International Law Commission.

It is with the greatest reluctance that I send to you the enclosed memorandum, which I have written in my capacity as a member of the International Law Commission, requesting you to be so good as to arrange for its circulation, together with this letter, as a Commission document to the same extent as the document (A/CN.4/247) to which it refers, and ultimate inclusion in the appropriate volume of the Commission's Yearbook alongside that report.

Memorandum by Mr. Shabtai Rosenne

1. Although members of the International Law Commission are elected by the General Assembly to serve in their individual capacities, they do not thereby cease to be nationals of their own States, entitled and even obliged to ensure that the Commission is when necessary furnished with accurate statements of facts concerning their own countries, especially when actions of their own countries have been impugned on the basis of inaccurate or incomplete facts. Paragraphs 33 to 36 of Mr. Bedjaoui's Fourth Report on Succession of States in respect of matters other than treaties (A/CN.4/247) contain inaccurate factual statements about my country and these, I regret, cannot be allowed to remain on the record of the International Law Commission uncorrected. In order to limit the area of disagreeable and inappropriate controversy, I wish only to deal with a few of the more tendentious statements, while placing on record my view that those which I have passed over in silence are similarly tainted.

2. The statement (para.35) that a map on the pediment of the Knesseth shows Eretz Israel (the Hebrew name for the Biblical Palestine) as extending from the Nile to the Euphrates is untrue, as any tourist in Israel can see for himself - and several members of the Commission have visited Israel as tourists. No such map exists.

3. Since Algeria was not a party to the General Armistice Agreement between Israel and Egypt of 24 February 1949,^{1/} the Special Rapporteur has no first hand knowledge of it. The question of Eilat and Umm Reshresh (para. 34)^{2/} in the armistice context of 1949 is fully discussed in the records of the Security Council. It may be resumed as follows:

^{1/}United Nations, Treaty Series, vol. 42, p. 251.

^{2/}On the Gulf of Aqaba and the Strait of Tiran, see Kennedy, A Brief Geographical and Hydrographical Study of Bays and Estuaries the Coasts of which Belong to Different States, Official Records of the United Nations Conference on the Law of the Sea, vol. I, doc. A/CONF.13/15, p. 198 at p. 208.

(a) Shortly after the signing of the Israel-Egyptian agreement, early in March 1949, Israeli forces advanced south to the littoral into the area allocated to the Jewish State in General Assembly resolution 181 (II) of 29 November 1947. Jordan complained to the Acting Mediator that this advance was a breach of the truce of 15 July 1948. There was no breach of the Israel-Egyptian Armistice Agreement, and no complaints of any kind were made by Egypt.

(b) In the Acting Mediator's report of 23 March 1949,^{3/} after investigation by United Nations observers, the following appears:

"1. Since 8 March 1949 Israeli military forces at considerably more than normal patrol strength have moved into the area between the Dead Sea and the Gulf of Aqaba in Palestine, and have taken up positions at several points which they had not previously occupied.

"2. There has never been anything in the nature of a military line in this area. It appears that Arab forces in small strength have recently patrolled in parts of the area, as have small Israeli patrols, in violation of the truce in both cases.

"3. The main movement of Israeli troops has been down the road in the Wadi Araba, which road runs for its whole length inside Palestine but close to the Palestine-Transjordan frontier.

"4. The complaint that Israeli troops crossed the Transjordan border could not be verified. On 18 March, the senior United Nations observer at Amman reported that no Israeli post existed at that time on the Transjordan side of Wadi Araba.

"5. The report that one body of Israeli troops entered Umm Reshresh (MR 145 385) by a road from the Egyptian side of the frontier could not be verified. No complaint of such movement has been received from Egyptian authorities though it has been established by the observers that an Israeli force reached Umm Reshresh by way of Ras En Negeb on the Egyptian frontier. The Egyptian-Israeli General Armistice Agreement defines the western half of this area, i.e. west of a line running midway between the Egyptian and Transjordan frontiers, as the western front, in which only Israeli defensive forces, based on the settlements, may be maintained. The eastern half of this area, or the eastern front, pending the conclusion of an armistice agreement with Transjordan, remains fully subject to the existing truce."

^{3/} Official Records of the Security Council, Fourth Year, Supplement for March 1949, doc. S/1295 and Corr. 1, pp. 44, 46-48.

And:

"It is clear on the evidence available to me as a result of the investigation by United Nations observers since 7 March that Israeli forces have effectively occupied this area since that date.

"Previous to 7 March Transjordan forces had lightly patrolled at least parts of the area, and it is contended by Transjordan sources that they had maintained fixed positions at Charandal, Bir Qattar (MR 137 890), Ain el Weinba and Meliah (MR 162 968). It has not been possible to verify on the basis of a check by United Nations observers when such positions were established by Transjordan forces, but it is established that no Transjordan forces are now on the Palestine side of the frontier in this area. No fighting ever having taken place in that area before and no significant forces of either side having been concentrated there, it had not been necessary to place it under close observation or to define any truce lines.

"I am quite convinced that, other than those at Aqaba, any positions established in this area either by Transjordan or by Israeli forces have all been established since the existing truce came into effect on 18 July 1948, with the possible exception of Transjordan positions at Ain Habd and Kurnub, and have, therefore, been established contrary to the terms of that truce. Similarly, patrolling activity and reinforcement of pre-truce forces on either side of the frontier in this sector are in conflict with truce conditions which have been accepted by both sides."

(c) This position was consolidated by the General Armistice Agreement between Israel and Jordan, signed on 3 April 1949.^{4/} This appears clearly from Article V and the annexed map. See also the report by the Acting Mediator, after the conclusion on 11 March 1949 of a cease-fire agreement between Israel and Jordan.^{5/}

(d) On 23 May 1949, Egypt submitted a complaint to the Israel-Egypt Mixed Armistice Commission on the occupation of Umm Reshrah and Bir Qattar. On 8 February 1950 the Commission, by a majority vote, decided that "the advance of Israeli Forces of 10 March 1949 to the Gulf of Aqaba area and the occupation of Bir Qattar is a violation of the Egyptian-Israeli General Armistice Agreement." However, the contention that the advance

^{4/} United Nations, Treaty Series, vol. 42, p. 303.

^{5/} Doc. S/1284 and Corr.1 (mimeographed only).

of Israeli Forces on 10 March 1949 and the occupation of Umm Reshresh were another violation of the agreement, was rejected by a majority vote of the Commission. Both sides appealed against parts of the decision to the Special Committee established by Article X of the agreement. On 20 March 1950 the Special Committee, by a majority vote, confirmed the decision of the Mixed Armistice Commission. Under the provisions of the agreement, this decision was final, but the Israeli Government found the decision about Bir Qattar unacceptable mainly on the ground that it was based upon a misinterpretation of Article VII of the agreement. This interpretation placed Bir Qattar in the area of the Western Front, covered by Article VII, paragraph 4, from which all Israeli Forces were excluded, apart from defensive forces based on the settlements. The views of the Government of Israel on this subject were formulated officially in a letter from the Minister for Foreign Affairs to the Chief of Staff of UNTSO of 23 June 1950. In spite of the fact that this issue was not mentioned in the original Egyptian complaint to the Security Council^{6/} it was, nevertheless, discussed in the meetings of the Council. In the course of the 522nd meeting of the Council, the representative of Israel explained that following the "assurances and clarifications" which emerged from conversations with the Chief of Staff securing Israel's interests, Israel was able to modify its attitude as regards Bir Qattar. Consequently, the Security Council, in its resolution 89 of 17 November 1950, inter alia took note of the Government of Israel's statement that "Israeli forces will evacuate Bir Qattar pursuant to the 20 March 1950 decision of the Special Committee ... and that the Israeli Armed Forces will withdraw to positions authorized by the Armistice Agreement". In his letter dated 12 March 1951 to the President of the Security Council, the Chief of Staff informed the Security Council that "a United Nations observer visited Bir Qattar on 3 January 1951 and found no evidence of military positions there, and former defence works had been filled in."^{7/}

^{6/}Official Records of the Security Council, Fifth Year, Supplement for September-December 1950, doc. S/1790, p. 23.

^{7/}Official Records of the Security Council, Sixth Year, Supplement for April-June 1951, doc. S/2049, p.11; and see discussion at the 511th, 514th, 517th, 518th, 522nd and 524th meetings of the Security Council.

(e) Egypt did not pursue the question of Aqaba and Umm Reshresh any further and thus left the status of the area, including that of Umm Reshresh, outside the scope of the Israel-Egyptian armistice agreement, recognizing it to be within the area covered by the Israel-Jordan agreement, i.e., on the Israel side.

4. In connection with other remarks contained in document S/CR.4/247 about events occurring since the Six Days' War (paras. 34 and 35), it should be mentioned that, as the Secretary-General has twice reported to the Security Council, Algeria is not one of the Arab States which accepted the cease-fire of 1967.^{8/}

^{8/}Official Records of the Security Council, Twenty-Second Year, Supplement for April-June 1967, doc. S/7985, p. 250 and Supplement for October-December 1967, doc. S/8279, p. 261.