

Document:-
A/CN.4/260

**Letter dated 30 March 1972 from Mr. Abdullah El-Erian to the Chairman of the
International Law Commission**

Topic:
Succession of States in respect of matters other than treaties

Extract from the Yearbook of the International Law Commission:-
1972, Not in Ybk

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UNITED NATIONS

GENERAL
ASSEMBLY



Distr.
GENERAL

A/CN.4/260
2 May 1972

Original: ENGLISH

INTERNATIONAL LAW COMMISSION
Twenty-fourth session
2 May - 7 July 1972

Dual distribution

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to the Chairman of the International Law Commission

I have the honour to enclose herewith a memorandum which I have written in my capacity as a member of the International Law Commission. I respectfully request the circulation of this memorandum in the same manner and to the same extent as document A/CN.4/251 to which it refers.

Memorandum by Mr. Abdullah El-Erian

1. In his letter to the Chairman of the International Law Commission^{1/}, Mr. Shabtai Rosenne encloses in his capacity as a member of the International Law Commission a memorandum in which he comments on paragraphs 33 to 36 of the fourth report on succession of States in respect of matters other than treaties^{2/}, submitted by Mr. Mohammed Bedjaoui in his capacity as the Commission's Special Rapporteur on that subject. I very much regret that Mr. Rosenne has seen fit to include in the above-mentioned memorandum a number of factual misrepresentations and erroneous legal interpretations. I trust that the members of the International Law Commission attach great importance to the accuracy of statements of facts and interpretations of law contained in the Commission's publications. It is with this objective in view that I deem it my duty to place on record the following observations.

^{1/} A/CN.4/251

^{2/} A/CN.4/247 and Add.1

I

2. Mr. Rosenne's comments on the illegal occupation of Umm Reshresh by Israeli forces^{3/} contain a number of selective misleading quotations, self-contradicting and inaccurate statements and unfounded legal allegations.

3. The lengthy quotation contained in sub-paragraph (b) of paragraph 3 of Mr. Rosenne's memorandum has already been fully replied to and refuted by the Special Rapporteur^{4/}. Suffice it to mention here that Mr. Rosenne has passed over in silence the cablegram dated 13 March 1949 from the United Nations Acting Mediator on Palestine to the President of the Security Council. This document states that a United Nations observer reported that "... Israeli forces occupied Umm Reshresh within the borders of Palestine on the Gulf of Aqaba in the afternoon of 10 March ..." ^{5/} and that "The occupation of Umm Reshresh is officially verified by competent Israeli sources".^{6/} It is further reported by the United Nations Acting Mediator that he had formally requested the Israeli delegation to inform its government that "... military activity of this kind, regardless of whether actual fighting eventuates, must be regarded as contrary to the conditions of the truce imposed by the Security Council".^{7/}

4. After his partial presentation of the consideration of the Israeli occupation of Umm Reshresh by the Mixed Armistice Commission and the Special Committee established by Article X of the Egyptian-Israeli General Armistice Agreement,^{8/} Mr. Rosenne states that "Egypt did not pursue the question of Aqaba and Umm Reshresh any further ...".^{9/} This assertion is not in conformity with the facts. Mr. Rosenne is, no doubt, aware of the inclusion of "territorial questions" and "territorial adjustments" in the

^{3/} See A/CN.4/247, para. 34.

^{4/} A/CN.4/255.

^{5/} Official Records of the Security Council, Fourth Year, Supplement for March 1949, document S/1286, p. 43.

^{6/} Ibid.

^{7/} Ibid., pp. 43-44.

^{8/} Official Records of the Security Council, Fourth Year, Special Supplement No. 3 document S/1264/Rev.1 (See also United Nations, Treaty Series, vol. 42, p. 251).

^{9/} A/CN.4/251, para. 3(e).

Lausanne Protocols signed on 12 May 1949 between four Arab States, including Egypt, and the United Nations Conciliation Commission and between Israel and the Conciliation Commission. The latter Protocol reads as follows:

"The United Nations Conciliation Commission for Palestine, anxious to achieve as quickly as possible the objectives of the General Assembly resolution 11 December 1948, regarding refugees, the respect for their rights and the preservation of their property, as well as territorial and other questions, has proposed to the delegation of Israel and to the delegations of the Arab States that the working document attached hereto [the partition plan recommended in General Assembly resolution 181 (II) of 29 November 1947] be taken as a basis for discussions with the Commission.

"The interested delegations have accepted this proposal with the understanding that the exchanges of views which will be carried on by the Commission with the two parties will bear upon the territorial adjustments necessary to the above indicated objectives".^{10/}

This Protocol was repudiated by Israel. The United Nations Conciliation Commission, whose work was obstructed by Israel in order to free itself from any commitment which would create obstacles to its plan of territorial expansion, reported to the General Assembly that the Israeli delegation "... could not accept a certain proportionate distribution of territory agreed upon in 1947 [the partition plan recommended by the General Assembly in resolution 181 (II) of 29 November 1947] as a criterion for a territorial settlement in present circumstances."^{11/}

5. Mr. Rosenne seeks legal justification for the illegal Israeli occupation of Umm Reshresh by qualifying it as an advancement "... into the area allocated to the Jewish State in General Assembly resolution 181 (II) of 29 November 1947."^{12/} Mr. Rosenne is, no doubt, aware of the fact that by means of their aggression against the people of Palestine in 1948, the Israeli military forces occupied a much larger territory than "the area allocated to the Jewish State ...". What legal justification does Mr. Rosenne seek for the occupation by Israeli forces of the large portion of territory which is not included in the area allocated to the Jewish State?

^{10/} Official Records of the General Assembly, Fourth Session, Ad Hoc Political Committee, Annex, vol. II, document A/927, annex B, p.9.

^{11/} Ibid., para. 33, p.8.

^{12/} A/CN.4/251, para. 3 (a).

Mr. Rosenne appears to advocate that Israel can occupy by military force territory outside the area allocated to the Jewish State and at the same time occupy, in violation of the truce imposed by the Security Council of the United Nations, territory not within the area allocated to the Jewish State. Furthermore, on what moral grounds can one invoke General Assembly resolution 181 (II) of 29 November 1947 in support of a claim by the very government which repudiated it as a basis for the settlement of the territorial questions as provided for in the Lausanne Protocol? Israel accepted and signed that Protocol in order to gain admission to the United Nations and repudiated it a few weeks later when that purpose was obtained.

6. Mr. Rosenne contends that the occupation of Umm Reshresh "... was consolidated by the General Armistice Agreement between Israel and Jordan signed on 3 April 1949".^{13/} This contention is inconsistent with the legal nature of the Armistice Agreement as explicitly recognized in a number of its provisions. Thus Article II, paragraph 2, provides that "It is also recognized that no provision of this Agreement shall in any way prejudice the rights, claims and positions of either Party hereto in the ultimate peaceful settlement of the Palestine question, the provisions of this agreement being dictated exclusively by military considerations".^{14/} Article VI, paragraph 9, reads:

"The Armistice Demarcation Lines defined in articles V and VI of this Agreement are agreed upon by the Parties without prejudice to future territorial settlements or boundary lines or to claims of either Party relating thereto".^{15/}

Furthermore, it is to be noted that the Armistice Agreement upon which Mr. Rosenne bases his contention has been persistently violated and subsequently abrogated by Israel notwithstanding the fact that, as rightly pointed out by the Secretary-General of the United Nations in his reports to the General Assembly and the Security Council, the armistice agreements concluded between Israel and the Arab States do not provide for their unilateral abrogation.

The doctrine of estoppel is a well-established and generally recognized doctrine in different legal systems. Israel cannot abrogate the Armistice Agreement to escape its obligations thereunder, and at the same time invoke the Armistice Agreement in support of its unfounded claims.

^{13/} Ibid., para. 3 (c)

^{14/} Official Records of the Security Council, Fourth Year, Special Supplement No.1 document S/1302/Rev.1, p. 2 (See also United Nations Treaty Series, vol. 42, p. 303)

^{15/} Ibid., p. 5.

II

7. As regards Israel's aggression in 1967 against three Arab States, members of the United Nations, and the continuous occupation with the declared intention of annexation of Arab territories (which Mr. Rosenne conveniently refers to as "events occurring since the Six Days War"^{16/}), Mr. Rosenne chooses to pass over in silence these grave violations of the basic norms of the United Nations Charter and contemporary international law.

8. Mr. Rosenne merely contents himself with questioning the locus standi of the Special Rapporteur when the latter cites the Israeli violations as illustrations of illegal acts of conquest devoid of any legal effects. The Israeli violations in Arab-occupied territories cover a wide range of forcible and unlawful acts prohibited by international law. They include measures of annexation as well as the creation of factual conditions with the intention of annexation. These Israeli violations, which undermine the foundations of contemporary international order, constitute a breach of the basic norms of international law which have the character of jus cogens. Such basic norms are the legitimate concern of the whole community of nations and all peoples may invoke them and have an interest in safeguarding and upholding them.

9. Mr. Rosenne may arrogate to himself the right to question the locus standi of the Special Rapporteur. This will not, however, detract from the imperative character, as a norm of jus cogens of the principle of the inadmissibility of the acquisition of territory by force.

The prohibition of war as an instrument of national policy has resulted in the outlawing of conquest as a means of acquiring territorial sovereignty. The principle of the prohibition of the use of force has as its corollary and primordial legal consequence the principle of the inadmissibility of the acquisition of territory by force. This principle represents one of the great achievements of mankind, attained as a result of great sacrifices and centuries-old struggle.

10. The principle of the inadmissibility of the acquisition of territory by war has been codified in a number of instruments as may be seen from the following quotations:

- Article 17 of the Charter of the Organization of American States^{17/} signed in 1948 reads:

^{16/} A/CN.4/251, para. 4.

^{17/} United Nations, Treaty Series, vol. 119, p. 3.

"The territory of a State is inviolable; it may not be the object, even temporarily, of military occupation or of other measures of force taken by another State, directly or indirectly, on any grounds whatever. No territorial acquisition or special advantages obtained either by force or by other means of coercion shall be recognized".

- Articles 9 and 11 of the Draft Declaration on Rights and Duties of States, adopted by the International Law Commission at its first session in 1949^{18/} read:

Article 9: "Every State has the duty to refrain from resorting to war as an instrument of national policy, and to refrain from the threat or use of force against the territorial integrity or political independence of another State, or in any other manner inconsistent with international law and order";

Article 11: "Every State has the duty to refrain from recognizing any territorial acquisition by another State acting in violation of article 9".

- The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations approved by General Assembly resolution 2625 (XXV) of 24 October 1970 provides, inter alia, that:

"The territory of a State shall not be the object of military occupation resulting from the use of force in contravention of the provisions of the Charter. The territory of a State shall not be the subject of acquisition by another State resulting from the threat or use of force. No territorial acquisition resulting from the threat or use of force shall be recognized as legal".

- Paragraph 5 of General Assembly resolution 2734 (XXV) of 16 December 1970 entitled "Declaration on the Strengthening of International Security" reads, in part:

["The General Assembly,]

"Solemnly reaffirms that every State has the duty to refrain from the threat or use of force against the territorial integrity and political independence of any other State, and that the territory of a State shall not be the object of military occupation resulting from the use of force in contravention of the provisions of the Charter, that the territory of a State shall not be the object of acquisition by another State resulting from the threat or use of force, that no territorial acquisition resulting from the threat or use of force shall be recognized as legal ...".

^{18/} Yearbook of the International Law Commission, 1949, p. 286.

11. Israel's continued occupation of Arab territories in pursuance of its policy of conquest and expansion constitutes a persistent violation of the Charter of the United Nations, disregard of the resolutions of the world organization and defiance of the will of the community of nations. The evidence of Israeli policy of territorial expansion is not confined to a map on the pediment of the Knesset to the specific place of which Mr. Rosenne takes issue in paragraph 2 of his memorandum. Maps outlining Israel's policy of expansion have figured in authentic works by leaders of Zionism such as the Israel of Theodore Herzl in 1904 and of Rabbi Fichmann in 1947. A list of those maps was distributed by the delegation of the Arab Republic of Egypt at the meeting of the General Assembly on 3 December 1971 following the statement of the Chairman of the Egyptian delegation in which the pattern of Israeli expansion was traced and exposed. Nor is the evidence confined to maps and schemes. The plans have been translated into official policy and concrete actions. The records are clear on official Israeli declarations on the intention of annexing Arab territories coupled with the daily implementation of the policy of "the creation of conditions of fact" to consolidate the expansionist plans of Israel.

12. Mr. Rosenne may choose to pass in silence the grave implications of Israeli violations of the principle of the inadmissibility of the acquisition of territory by war. The international community has pronounced itself in a number of resolutions adopted by several organs of the United Nations which affirm the basic norms of the Charter and international law, enjoin Israel to withdraw its forces from Arab occupied territories and declare Israel's measures of annexation and related measures as having no legal effects. Among these resolutions are the following:

- Security Council resolution 242 of 22 November 1967 which emphasizes the inadmissibility of the acquisition of territory by war. It further includes the withdrawal of Israeli armed forces from occupied Arab territories as being among the principal elements of the just and lasting peace provided for in the resolution.
- General Assembly resolution 2253 (ES-V) of 4 July 1967 and Security Council resolution 252 of 21 May 1968 which consider that the measures taken by Israel to change the status of Jerusalem are invalid and urgently call upon Israel to rescind all measures already taken and to desist forthwith from taking any action which would alter the status of Jerusalem.

- Resolutions 9 (XXVII) of 15 March 1971^{19/} and 3 (XXVIII) of 22 March 1972^{20/} of the Commission on Human Rights which deplore the persistent defiance and disregard by Israel of United Nations resolutions on the protection of human rights of the inhabitants of the occupied territories and on the preservation of the demographic composition and geographic character thereof. They refer in particular to the establishment of Israeli settlements in the occupied territories, the transfer of parts of its civilian population into those territories and the expulsion of the inhabitants of those territories. These resolutions further reaffirm that all measures taken by Israel to annex or settle the occupied territories are null and void.
- General Assembly resolutions 2628 (XXV) of 4 November 1970 and 2799 (XXVI) of 13 December 1971 relating to the situation in the Middle East which reaffirm that "... the acquisition of territories by force is inadmissible and that, consequently, territories thus occupied must be restored;".

^{19/} Official Records of the Economic and Social Council, Fiftieth session, Supplement No. 4, pp. 79-82.

^{20/} E/CN.4/L.1195, adopted at the 1161st meeting of the Commission on Human Rights on 22 March 1972.