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THE PARTITION OF PALESTINE

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THE PARTITION OF PALESTINE

29 November, 1947

An Analysis

Published on the occasion of the 20th anniversary
of the Partition Resolution of the U.N.
General Assembly

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INTRODUCTION

On 18th February 1947 the British Government referred the Palestine Problem to the U.N. which decided on 15th May 1947 to appoint a UN Special Committee on Palestine (U N S C O P). The Committee did not agree on a specific solution to the problem though several conclusions (e.g. that Palestine could not by itself solve the Jewish problem) were unanimously recommended. Seven of the eleven members of UNSCOP (the representatives of Canada, Czechoslovakia, Guatemala, Netherlands, Peru, Sweden, Uruguay) decided in favour of the partition of Palestine, three members (the representatives of India, Iran and Yugoslavia) favoured a solution along federal lines, while the representative of Australia abstained from voting in favour of either plan.

The two plans of U N S C O P were included in a single report submitted to the General Assembly on 31st August 1947. The Assembly meeting as an Ad Hoc Committee on Palestine decided on 22 October 1947 to appoint two sub-committees: Sub-Committee 1 which was to draw up a detailed plan along the lines of the partitionist solution suggested by some of the U N S C O P members and Sub-Committee 2 which was not bound by its terms of reference to a partitionist solution.

Sub-Committee 2 was composed of the representatives of Afghanistan, Egypt, Iraq, Lebanon, Pakistan, Saudi Arabia, Syria and Yemen under the chairmanship of Sir Muhammad Zafrullah Khan of Pakistan. The Report of Sub-Committee 2 (Document A/AC. 14/32 and Add. 1) was completed by 11 November 1947. It was substantially the work of Zafrullah Khan and of Fares Bey al-Khoury of Syria. It remains to this day the most rigorous and authoritative critique both of the principle of partition and of the U N S C O P partition plan, which was subsequently adopted, with few modifications on 29 November 1947, by the General Assembly, after its endorsement by Sub-Committee 1. By adopting the partition "solution" the General Assembly flew in the face of all the cogent arguments adduced by Zafrullah Khan and his colleagues. It also ignored the positive and equitable principles agreed to at the time

by all the Arab States and the Arabs of Palestine for a democratic solution of the Palestine Problem which Sub-Committee 2 incorporated at the end of its report. It was this partition resolution by the General Assembly, the result of great power presume politics, which permanently shattered the peace of the Holy Land. What follows in this booklet is in fact the full text of the report of Sub-Committee 2 minus the preamble. This remarkable work is being republished on the occasion of the twentieth anniversary of the UN partition resolution.

Beirut, 29 November, 1967

CHAPTER I

Legal Issues Connected with the Palestine Problem

1. The problem of Palestine involves certain legal issues which it is essential to decide authoritatively before any solution consistent with international law and justice can be reached. The problem of Palestine necessitates a proper interpretation of the claims of Arabs and Jews to Palestine. The solution of the problem also raises various legal points as to the legality of any proposal for the future of Palestine, as well as the competence of the General Assembly to make and enforce recommendations in this regard.

Failure of the Special Committee to consider certain legal issues

2. The claims of Arabs and Jews to Palestine are examined in paragraphs 125 to 180 of chapter II of the report of the Special Committee[1]. That Committee, however, failed to consider and determine some issues and juridical aspects of the Palestine question, and came to wrong and unjustified conclusions in relation to other matters which it did consider. The Special Committee did not consider the validity of the Balfour Declaration, nor the meaning of the term "Jewish National Home", nor the validity and scope of the provisions of the Mandate for Palestine relating thereto. It also evaded the issue of the pledges made to the Arabs. It is apparent from the report of the Special Committee that the basic premise underlying the partition plan proposed by the majority of the Committee, and set forth in chapter VI of its report, is that the claims to Palestine of the Arabs and the Jews both possess validity. This pronouncement is not supported by any cogent reasons and is demonstrably against the weight of all available evidence. These facts take away a good deal from the reliability and authoritativeness of the Special Committee's report, and vitiate some of its most important findings.

[1] See *Official Records of the second session of the General Assembly*, Supplement No. 11.

3. A number of speakers who took part in the general debate in the *Ad Hoc* Committee laid stress on the legal and constitutional issues connected with the problem of Palestine and on the powers and competence of the General Assembly to deal with the problem and to recommend and enforce any specific solution. Proposals were also submitted by three delegations suggesting that the advisory opinion of the International Court of Justice should be sought regarding some of the legal issues connected with the problem of Palestine. The Sub-Committee has therefore considered it necessary to review the main legal issues involved, and to state the points on which the opinion of the International Court of Justice should be obtained before a solution just to all parties can be evolved.

Pledges made to the Arabs during the First World War

4. The claim of the Arabs to Palestine rests upon their centuries' old possession and occupation of the country and their natural right to determine their own future. This claim is further supported by the pledges given to the Arabs by the British Government during the First World War. These pledges were set out in the correspondence between Sir Henry McMahon and Sherif Hussein of Mecca, followed and explained by the Hogarth Message, the Bassett Letter, the Declaration to the Seven, General Allenby's communication to Prince Feisal and the Anglo-French Declaration of 1918.

Palestine was included within the territories which Sherif Hussein claimed should become independent at the end of the war. It has subsequently been alleged, however, on behalf of the British Government, that the Government intended that Palestine should be excluded from those territories and that that intention was made known to Sherif Hussein. But that contention is negatived both by the wording of the McMahon-Hussein correspondence and by the subsequent communications and assurances communicated to Sherif Hussein on behalf of the British Government. There is a passing reference to this question in the report of the Special Committee, but the Committee failed to examine it in detail or to record its considered views on it. This Sub-Committee feels that the controversy regarding the interpretation of the McMahon-Hussein correspondence and the subsequent declarations can be satisfactorily settled only by obtaining the opinion of an authoritative and impartial judicial tribunal such as the International Court of Justice.

Validity and scope of the Balfour Declaration and the Mandate

5. The Jews, on the other hand, rest their claims regarding Palestine on the Balfour Declaration, which was subsequently embodied in the Mandate for Palestine. The Balfour Declaration has been attacked by the Arabs as being invalid on several grounds, *inter alia*, that it was made without their consent or knowledge, that it was contrary to the principles of national self-determination and democracy and that it was inconsistent with the pledges given to the Arabs before and after the date it was made. Although the question at issue regarding the legality, validity and ethics of the Balfour Declaration was specifically raised by the Arab Higher Committee at the special session of the General Assembly as the first issue to be inquired into, the Special Committee neither inquired into it nor expressed any opinion on it. It did not even mention it as being part of the Arab case. It is therefore essential that the question of the validity of the Balfour Declaration should be referred to the International Court of Justice for an opinion.

6. The next question that arises is the proper connotation of the term "Jewish National Home", as used in the Balfour Declaration and subsequently in the Mandate. No definition of that term was contained in either of those documents. It is, however, clear that the Mandatory Power has never interpreted this expression as meaning the setting up of a Jewish State. If the term "Jewish National Home" means no more than a cultural centre which does not affect or diminish the rights and position of the indigenous population of Palestine, then no insurmountable difficulties arise regarding the interpretation of the Mandate. On the other hand, if the term "Jewish National Home" is to receive a retrospective interpretation which would derogate from the rights and position of the indigenous population, or result in the establishment of a Jewish State in Palestine, various questions regarding the validity and legal interpretation of the Mandate would have to be resolved. These issues may be summarized as follows:

(*a*) The incompatibility of the two main objectives of the Mandate as expressed in article 2, as well as the inconsistency between the provisions of the Mandate regarding the establishment of a Jewish National Home in Palestine and those of the Covenant of the League of Nations regarding the preservation of the rights and the advancement of the indigenous population of the country;

(*b*) The effect of the dissolution of the League of Nations on the Mandate;

(*c*) The extent to which the undertaking regarding the establishment of a Jewish National Home in Palestine may be said to have been carried out;

(*d*) The legal consequences arising from the declared intention of the Mandatory Power to withdraw from Palestine at an early date.

Views of the Sub-Committee on the legal issues

7. The Sub-Committee carefully considered the issues enumerated above and its conclusions are set out below.

(*a*) Article 2 of the Mandate required the Mandatory Power to ensure the establishment of a Jewish National Home in Palestine and at the same time to safeguard the civil and religious rights of all the inhabitants and to develop self-governing institutions in that country. Article 6 required the Mandatory to facilitate Jewish immigration unter suitable conditions and to encourage Jewish settlement on the land while ensuring that the rights and position of the other sections of the population were not prejudiced. The experience of the working of the Mandate for twenty-five years has shown that these objectives are incompatible, and the Mandatory Power has reached the conclusion that it is not possible to give effect to the conflicting obligations imposed by the Mandate. That was made clear by the representative of the United Kingdom at the 15th meeting of the *Ad Hoc* Committee held on 16 October 1947.

Moreover, the Mandate must be considered inthe light of and subject to the provisions of the Covenant of the League of Nations. According to Article 22 of the Covenant, the people of Palestine were one of the communities formerly belonging to the Turkish Empire whose existence as an independent nation was provisionally recognized by the League of Nations, subject only to the rendering of administrative advice and assistance by the Mandatory Power until such time as it was able to stand alone. The Covenant emphasized that the well-being and the development of the indigenous population of the country formed a sacred trust of civilization and the primary responsibility of the Mandatory Power. *In other words, the only limitation upon the sovereignty of the people of Palestine was the imposition of a temporary tutelage under the Mandatory Power.* It cannot be suggested that the entry of an unlimited number of Jewish immigrants into Palestine, or the creation of a Jewish State against the wishes of the majority of the people of that country, was in accordance with the aims and objectives of the

Mandate and the principles embodied in Article 22 of the Covenant.

(*b*) In accordance with the preamble of the Mandate. Great Britain undertook "to exercise it on behalf of the League of Nations". The provision was also in accordance with the principles embodied in paragraph 2 of Article 22 of the Covenant. The operation of the Mandate was further made subject to a periodical review by the Permanent Mandates Commission. With the dissolution of the League, the principal party of the transaction has ceased to exist, and with it has disappeared the legal basis for the Mandate. The fate of Palestine must therefore be settled by the people of Palestine.

(*c*) The possible interpretations of the term "Jewish National Home" have already been mentioned in a preceding paragraph. In the view of this Sub-Committee, the only interpretation consistent with the objectives of the Mandate and the principles of the Covenant is that the Jewish National Home is a cultural home for a limited number of Jews and that it cannot imply any grant of sovereignty to them over any part of Palestine, or a derogation from the civil, economic, political and religious rights of the indigenous population of the country. This is borne out by several statements of the Mandatory Power, which itself issued the Balfour Declaration. In this connexion, reference should be made to paragraph 15 of the statement of policy issued by the British Government in 1939, in which it declared:

"His Majesty's Government are satisfied that, when the immigration over five years which is now contemplated has taken place, they will not be justified in facilitating, nor will they be under any obligation to facilitate, the further development of the JewishNational Home by immigration regardless of the wishes of the Arab population".

The *Ad Hoc* Committee will also recall the statement made by Mr. Creech-Jones, the representative of the United Kingdom, at its 15th meeting on 16 October 1947, in which he declared that, in spite of various difficulties, a National Home for the Jews had been established in Palestine.

(*d*) It has already been pointed out above that, with the dissolution of the League of Nations, the legal basis for the Mandate has disappeared, and that the United Kingdom is exercising *only a de facto authority in Palestine*. With the recent declaration of the Mandatory Power, re-afirmed by its representative at the meetings of the *Ad Hoc* Committee, that it intends, in the very near future, to withdraw from Palestine and relinquish the Mandate, there is no further obstacle to

the conversion of Palestine into an independent State. In effect, this would be the logical culmination of the objectives of the Mandate and the scheme for the development of non-self-governing territories embodied in Article 22 of the Covenant.

8. In the preceding paragraphs, an indication has been given the views of the Sub-Committee on the principal legal issues connected with the interpretation of the Mandate and the Covenant of the League of Nations but, having regard to the fundamental importance of this question and to the fact that the Sub-Committee has already recommended that the advisory opinion of the International Court of Justice should be obtained regarding the pledges made to the Arabs during the First World War and the validity and scope of the Balfour Declaration, it is suggested that the International Court of Justice should also be requested to advise on the interpretation, the scope and the validity of the Mandate.

Mode of termination of the Mandate

9. The next question which arises is the constitutional method for the termination of the Mandate. This might be viewed from three angles:

(*a*) The termination of the Mandate in accordance with its own provision as read with the principles of the Covenant, assuming that the League of Nations had continued to exist;

(*b*) The termination of the Mandate having regard to the dissolution of the League of Nations; and

(*c*) The termination of the Mandate in the light of the provisions of the Charter of the United Nations.

10. The Sub-Committee considered all three aspects of this important question and its views are given below.

(*a*) It will be recalled that the object of the establishment of Class A Mandates, such as that for Palestine, under Article 22 of the Covenant, was to provide for a temporary tutelage under the Mandatory Power, and one of the primary responsibilities of the Mandatory was to assist the peoples of the mandated territories to achieve full self-government and independence at the earliest opportunity. It is generally agreed that that stage has now been reached in Palestine, and not only the United Nations Special Committee on Palestine but the Mandatory Power itself agree that the Mandate should be terminated and the independence of Palestine recognized. The only

proviso deserving mention is that, under article 28 of the Mandate, the League of Nations was empowerd to make such arrangements as might be deemed necessary for safeguarding the rights secured by articles 13 and 14 regarding the Holy Places in Palestine, and for using its influence to ensure that the government of Palestine would fully honour the financial obligations legitimately incurred by the administration of Palestine during the period of the Mandate.

The Mandate for Iraq was terminated in 1932 when the League of Nations was still in existence. The procedure followed was for the Mandatory Power to negotiate a treaty with a government representing the people of Iraq, and to secure the formal confirmation of the Council of the League of Nations, and the subsequent admission of Iraq as a Member of the League. This precedent, however, is not applicable to the case of Palestine, as the League of Nations and its Council are no longer in existence, and there is no international body which has inherited its powers and functions.

(*b*) It has been explained that, with the dissolution of the League of Nations, the legal basis for the Palestine Mandate has also disappeared, and that the Mandate must be considered to have come *ipso facto* to an end. But even if it is assumed that the Mandate is still technically in force, the appropriate manner of its formal termination would be by way of transfer of power from the Mandatory Power to a government representing the people of Palestine. The Mandatory Power would thus be following the recent precendents of Syria, Lebanon and Transjordan.

(*c*) Before considering the effect of the provisions of the United Nations Charter on the Mandate, it should be pointed out that the United Nations Organization has not inherited the constitutional and political powers and functions of the League of Nations, that it cannot be treated in any way as the successor of the League of Nations in so far the administration of mandates is concerned, and that such powers as the United Nations may exercise with respect to mandated territories are strictly limited and defined by the specific provisions of the Charter in this regard.

Competence of the United Nations

11. A study of Chapter XII of the United Nations Charter leaves no room for doubt that unless and until the Mandatory Power ne-

gotiates a trusteeship agreement in accordance with Article 79 and presents it to the General Assembly for approval, neither the General Assembly nor any other organ of the United Nations is competent to entertain, still less to recommend or enforce, any solution with regard to a mandated territory. Paragraph 1 of Article 80 is quite clear on this point, and runs as follows:

"Except as may be agreed upon in individual trusteeship agreements, made under Articles 77, 79, and 81, placing each territory under the trusteeship system, and until such agreements have been concluded, nothing in this Chapter shall be construed in or of itself to alter in any manner the rights whatsoever of any States or any peoples or the terms of existing international instruments to which Members of the United Nations may respectively be parties".

12. This view is further confirmed by resolution 9 (1), adopted by the General Assembly on 9 February 1946, and by the fact that the General Assembly is not able to take any action or to give any directions with regard to the Mandate for South West Africa unless and until the Government of the Union of South Africa submits a trusteeship agreement for that territory.

13. In the case of Palestine, the Mandatory Power has not negotiated or presented a trusteeship agreement for the approval of the General Assembly. The question, therefore, of replacing the Mandate by trusteeship does not arise, quite apart from the obvious fact alluded to above that the people of Palestine are ripe for self-government and that it has been agreed on all hand that they should be made independent at the earliest possible date. It also follows, from what has been said above, that the General Assembly is not competent to recommend, still less to enforce, any solution other than the recognition of the independence of Palestine, and that the settlement of the future government of Palestine is a matter solely for the people of Palestine.

14. The Palestine question was brought on the agenda of the General Assembly as a result of a reference from the Mandatory Power asking the Assembly to make recommendations, under Article 10 of the Charter, concerning the future government of Palestine. Article 10 provides as follows: "The General Assembly may discuss any questions or any matters within the scope of the present Charter... and, except as provided in Article 12, may make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters". Mandated territories are within the scope of the Charter but, as explained above, the United

Nations can assume jurisdiction with regard to them only when the provisions of Chapter XII of the Charter are applicable and the formalities laid down therein have been observed. These limitations apply to the powers of the Security Council as well as to those of the General Assembly.

15. The position with respect to the consideration of the Palestine question by the General Assembly has changed radically since the receipt of the original request of the United Kingdom. The representative of the United Kingdom informed the *Ad Hoc* Committee, at its second meeting held on 26 September 1947, that in the absence of a settlement between the Arabs and Jews of Palestine, the Mandatory Power had decided to terminate the British administration in Palestine and to withdraw its officials and forces from that country. Mr. Creech-Jones also emphasized, and this was re-affirmed in his statement to the *Ad Hoc* Committee at its 15th meeting on 16 October 1947, that the British Government was not prepared to assume responsibility or even to take a major part in the enforcement of any solution for Palestine which had not been accepted by the Arabs and Jews and which required the use of force for its implementation. In these circumstances, this Sub-Committee is of the opinion that no further action is required of the General Assembly on the original request of the United Kingdom.

To sum up, the disolution of the League of Nations, and the consequent removal of the legal basis for the Mandate, and the more recent declarations by the Mandatory of its intention to withdraw from Pales tine, open the way for the establishment of an independent government in Palestine by the people of the country, without the intervention either of the United Nations or of any other party.

16. In view of the opinion expressed above, no further discuxssion of the Palestine problem seems to be necessary or appropriate, and this item should be struck off the agenda of the General Assembly. In case, however, the *Ad Hoc* Committee or the General Assembly take a different view of the matter, and in view of the serious doubts entertained by this Sub-Committee regarding the legal competence of the General Assembly to make any recommendations or to enforce any scheme in Palestine not acceptable to the majority of its population, it would be essential to obtain the advisory opinion of the International Court of Justice on this issue. The opinion of that Court would also have to be sought as to the powers which may be exercised under the Charter by the General Assembly, or by any other organ of the United

Nations with respect to the future government and administration of Palestine, with particular reference to some of the recommendations of the majority of the Special Committee.

Legal implications of the plan recommended by the majority of the Special Committee

17. During the general debate in the *Ad Hoc* Committee, grave doubts were expressed by several representatives regarding the legality of a number of the steps recommended by the majority of the Special Committee and the competence of the General Assembly to recomment or enforce them. Those steps include, *inter alia:*

(a) The partition of Palestine;

(b) The creation of an Arab and a Jewish State;

(c) The establishment of a permanent international trusteeship for the City of Jerusalem;

(d) The establishment of an international economic trusteeship for a period of ten years, in the first instance, for the whole of Palestine, in the guise of an economic union.

18. The Sub-Committee considered the legal implications of the plan recommended by the majority of the Special Committee as enumerated above, and its views are summarized below.

The question of the partition of Palestine has to be considered in the light both of the provisions of the Mandate for Palestine, as read with the general principles embodied in the Covenant of the League of Nations, and of the provisions of the Charter. The United Kingdom took over Palestine as a single unit. Under article 5 of the Mandate, the Mandatory Power was reponsible "for seeing that no Palestine territory shall be ceded or leased to, or in any way placed under the control of the government of any foreign Power". Article 28 of the Mandate further contemplated that at the termination of the Mandate, the territory of Palestine would pass to the control of "the Government of Palestine". So also by virtue of Article 22 of the Covenant, the people of Palestine were to emerge as a fully independent nation as soon as the temporary limitation on their sovereignty imposed by the Mandate had ended.

The above conclusion is by no means vitiated by the provisions for the establishment of a Jewish National Home in Palestine. It was not, and could not have been, the intention of the framers of the Mandate that the Jewish immigration to Palestine should result in breaking

up the political, geographic and administrative economy of the country. Any other interpretation would amount to a violation of the principles of the Covenant and would nullify one of the main objectives of the Mandate.

19. Consequently the proposal of the majority of the Special Committee that Palestine should be partitioned is, apart from other weighty political, economic and moral objections, contrary to the specific provisions of the Mandate and in direct violation of the principles and objectives of the Covenant. The proposal is also contrary to the principles of the Charter, and the United Nations has no power to give effect to it. The United Nations is bound by Article 1 of the Charter to act "in conformity with the principles of justice and international law" and to respect "the principle of equal rights and self-determination of peoples". Under Article 73, concerning non-self-governing territories and mandated areas, the United Nations undertakes to "promote to the utmost... the well-being of the inhabitants of these territories" and to "take due account of the political aspirations of the peoples". The imposition of partition on Palestine against the express wishes of the majority of its population can in no way be considered as respect for or compliance with any of the above-mentioned principles of the Charter.

Moreover, partition involves the alienation of territory and the destruction of the integrity of the State of Palestine. The United Nations cannot make a disposition or alienation of territory, nor can it deprive the majority of the people of Palestine of their territory and transfer it to the exclusive use of a minority in the country.

20. The proposal of the majority of the Special Committee that separate Arab and Jewish States should be created is as invalid as its proposal for partition. The United Nations Organization has no power to create a new State. Such a decision can be taken only by the free will of the people of the territories in question. That condition is not fulfilled in the case of the majority proposal, as it involves the establishment of a Jewish State in complete disregard of the wishes and interests of the Arabs of Palestine.

21. The proposal for the establishment of a permanent international trusteeship for the City of Jerusalem cannot be justified under any provision of the Charter. The trusteeship contemplated under Chapter XII of the Charter is, by its very nature, temporary in character, and is intended to assist the people of non-self-governing areas to develop progressively towards self-government or independence as

speedily as possible. There is no justification for departing from the original intention of the Mandate for Palestine and of the Covenant, that the whole of Palestine, including the City of Jerusalem, should in the course of time become fully self-governing. The only qualification imposed by the Mandate was that under article 28, the independent government of Palestine was required to agree to certain arrangements providing for the protection and maintenance of the Holy Places in Palestine, but it was never intended that that proviso should be used to limit or impair in any way the authority of the government of Palestine over the capital of its country.

22. The same objection attaches to the proposal for an economic union between the Arab and Jewish States and the City of Jerusalem, to be administered by a joint economic board consisting of three representatives of each of the two States and three foreign members appointed by the Economic and Social Council of the United Nations. The net effect of this proposal is not only to give the Jewish State a considerable say in the affairs of the Arab State against the wishes of the people of that State, but also to authorize the United Nations to take a direct part in the administration of the economic life of the country. In the absence of any trusteeship agreement duly negotiated, there is no provision in the Charter enabling or empowering the United Nations to exercise such authority in any territory.

23. The plan of the majority also provides that the Arab and the Jewish States shall be granted independence only after they have adopted the constitution proposed by the majority, in particular only after they have signed the treaty of economic union. Apart from the intrinsic defects and impracticability of the constitutional proposals of the majority, which have been mentioned in the preceding paragraphs, the Special Committee did not possess nor does the General Assembly possess the power to grant to or to withhold from the people of Palestine their right to complete independence, or to subject such independence to any conditions or limitations. Even the Mandate and the Covenant of the League of Nations contained no such reservations or permanent limitations on the ultimate sovereignty of the people of Palestine. The object of the Mandate, as read with Article 22 of the Covenant, was to render administrative advice and assistance to the people of Palestine until they were able to stand alone. There was no question of imposing any conditions on them when they were able to stand alone or to take away from them any part of their territory.

Views of the Sub-Committee on the enforcement of the plan recommended by the Special Committee

24. The Special Committee assumed that its proposals for the future government of Palestine would be put into effect by the Mandatory Power. It is quite clear, from the statements issued by the leaders of the Arabs of Palestine, as well as by the representatives of the Arab States at the meetings of the *Ad Hoc* Committee, that the Arabs of Palestine will not be a willing party to this scheme and will oppose its introduction with all the means at their disposal. It follows, therefore, that the proposals can be put into effect only by using force on a large scale and for a considerable period of time. The Mandatory Power declared as far back as 1939 that it could not contemplate a policy such as that of further expansion of the Jewish National Home by Jewish immigration against the strongly expressed will of the Arabs of Palestine, since such policy meant nothing less than rule by force. It was further pointed out in paragraph 13 of the White Paper of 1939 that such a policy seemed to the British Government to be contrary to the whole spirit of Article 22 of the Covenant of the League of Nations, as well as to the specific obligations to the Arabs in the Mandate for Palestine. That view was reiterated by the United Kingdom delegation before the Special Committee as well as before the *Ad Hoc* Committee.

25. If the Mandatory Power found it illegal and impractical to use force to give effect to a policy contrary to the rights and against the wishes of the great majority of the people of Palestine, still less is there any justification for the United Nations to embark on such a programme. It must not be forgotten that the primary purposes of the United Nations, under Article 1 of the Charter, are "to maintain international peace and security", to "develop friendly relations among nations" and "to be a centre for harmonizing the actions of nations in the attainment of these common ends".

Having regard to the publicly declared views of the various interested parties, the enforcement of the proposals of the majority of the Special Committee can have no other result than to embitter relations between the Arabs and the Jews and to give rise to serious conflict in Palestine. Far from solving the Palestine problem, the solution proposed by the majority would merely tend to create another problem of greater gravity and dimensions.

26. There is another aspect of this case which needs to be em-

phasized. The forcible creation of a Jewish State within the heart of of the Arab world, would not only constitute a serious factor of disturbance within the boundaries of Palestine, but would also jeopardize peace and international security throughout the Middle East. The Jewish State would come into being against the bitter opposition of the Arabs of Palestine and of the inhabitants of the adjoining countries, and would thus create and give rise to an outbreak of hostilities which it may become extremely difficult to check and bring under control. The United Nations would not be promoting the interests of peace and international security by assisting in the creation of a Jewish State, however small.

27. Even were it permissible under the Mandate and the Covenant, or under the Charter, to enforce any particular solution on the people of Palestine, there is no provision in the Charter which could enable the United Nations Organization itself, or some of its Members, to assume power to maintain law and order within Palestine. There is therefore no legal basis for the proposal of some representatives that a voluntary constabulary or police force should be established for the avowed object of maintaining peace and order within Palestine during the transitional period pending the formal establishment of the Arab and Jewish States. Presumably this force would also be utilized for putting down the opposition that is bound to arise to the imposition of the scheme proposed by the majority of the Special Committee. Neither the General Assembly nor even the Security Council can raise a police force of this type for the purpose of enforcing a constitutional settlement, or for maintaining internal law and order, and any such arrangement, by whomsoever it might be sponsored or administered, would be a usurpation of authority and would have no validity in international law.

28. The same remarks apply to the use of regular forces of Members of the United Nations. The General Assembly is not competent to make any recommendations as to the use of such forces, and cannot embark on a programme which would lead inevitably to the use of military force.

As regards the Security Council, while it possesses certain powers for the use of force to maintain international peace or to settle disputes between sovereign States, there is no provision in the Charter to enable it to use its own forces or those of Members of the United Nations with a view to enforcing a particular policy of the United Nations, or to intervene in the internal affairs of any country, whether

on the plea of maintaining internal law and order or for any other reason.

29. Before the Sub-Committee concludes the consideration of the legal issues connected with the solution of the Palestine problem, it is necessary to examine, in somewhat greater detail than has been done hitherto, the draft resolutions submitted by the delegations of Iraq, Syria and Egypt providing that some of the legal issues should be referred to the International Court of Justice for an advisory opinion. The draft resolution submitted by the delegation of Iraq (A/AC. 14/21) asks for the advisory opinion of the International Court of Justice as to whether or not Palestine was included in the Arab territories which were to become independent at the end of the First World War, and were to be recognized as such by Great Britain. This question has been put in the forefront of the Arab case all through the Palestinian controversy, and was prominently raised in the discussions of the *Ad Hoc* Committee. It is imperative that before that Committee proceeds to record any recommendations on the Palestine question, it should arrive at a satisfactory reply with regard to this claim. If the British pledges did include Palestine — and on the available evidence there appears little doubt that they did — the United Nations must respect the pledges, more particularly as the British pledges were repeated in the Anglo-French declaration after the fall of Damascus and Aleppo.

This is a question which involves investigation, both of fact and of law. So far, it has not been pronounced upon by any impartial tribunal. The Iraq draft resolution is eminently fair. During the general debate in the *Ad Hoc* Committee, no cogent reasons were given to contest the Arab interpretation of these pledges, though it is possible that some members of the Committee might feel some doubt concerning it. The only way of resolving this doubt authoritatively would be to obtain upon this question the opinion of the International Court of Justice. If the *Ad Hoc* Committee and the General Assembly were to proceed to make recommendations on the merits of the Palestine question, disregarding or brushing aside the Arab claim regarding the pledges, it would give the impression that the United Nations was anxious to record recommendations in accordance with the preconceived notions of a majority of the representatives, and was not anxious to arrive at a just and fair decision.

30. The Sub-Committee, while lending its support to the draft resolution of the delegation of Iraq, would further recommend that

the advisory opinion of the International Court of Justice should also be obtained on the validity, the interpretation and the precise scope of the Balfour Declaration.

31. The draft resolution submitted by the delegation of Syria (A/AC.14/25) raises four distinct issues which may be summarized as follows:

(a) Whether the provision in the Mandate for Palestine for the creation of a Jewish National Home by means of admission of immigrants into Palestine against the wishes of the indigenous population is or is not consistent with the Covenant of the League of Nations, particularly with paragraph 4 of Article 22 of the Covenant, and with the fundamental right of the people of Palestine to self-determination;

(b) Whether the majority plan for the partition of Palestine is consistent with the objectives and provisions of the Mandate;

(c) Whether that plan is consistent with the principles of the Charter;

(d) Whether the adoption and forcible execution of the plan is within the competence and jurisdiction of the United Nations.

32. The draft resolution submitted by the delegation of Egypt (A/AC. 14/24(deals with more or less the same issues and provides that the opinion of the International Court of Justice should be sought on the question whether the General Assembly is competent to recommend either of the solutions proposed by the majority and by the minority respectively of the Special Committee, and whether it lies within the power of any Member or group of Members of the United Nations to implement any of the proposed solutions without the consent of the people of Palestine.

33. The Sub-Committee examined in detail the legal issues raised by the delegations of Syria and Egypt, and its considered views are recorded in this report. There is, however, no doubt that it would be advantageous and more satisfactory from all points of view if an advisory opinion on these difficult and complex legal and constitutional issues were obtained from the highest international judicial tribunal.

34. In amplification of the issues mentioned by the delegations of Syria and Egypt, the General Assembly might, with advantage, seek the advisory opinion of the International Court of Justice on whether the United Nations is competent to partition Palestine with the object of setting up two States; to impose certain conditions in connexion with the attainment of the independence of the proposed Arab and

Jewish States ; to set up a permanent international trusteeship for the City of Jerusalem; and to administer an international economic trusteeship for the whole of Palestine by means of the proposed joint economic board.

35. It is a well known dictum that justice must not only be done, but must also appear to be done. One of the surest means of securing acceptance of a decision on the part of the parties to a controversy is to create confidence in the minds of both sides that the decision has been arrived at impartially after full investigation of all relevant matters. That the legal issues summarized in the preceding paragraphs are very relevant to the settlement of the Palestine problem will not be denied. An impartial and authoritative decision upon this matter is therefore a necessary and essential preliminary before the *Ad Hoc* Committee and the General Assembly proceed to make any recommendations on the merits of the Palestine problem. A refusal to submit this question for the opinion of the International Court of Justice would amount to a confession that the General Assembly is determined to make recommendations in a certain direction, not because those recommendations are in accord with the principles of international justice and fairness, but because the majority of the representatives desire to settle the problem in a certain manner, irrespective of what the merits of the question or the legal obligations of the parties might be. Such an attitude will not serve to enhance the prestige of the United Nations, and this Sub-Committee earnestly hopes that the *Ad Hoc* Committee, as well as the General Assembly, will agree to refer all the legal and constitutional issues connected with the problem of Palestine to the International Court of Justice for an advisory opinion.

CHAPTER II

Relief of Jewish Refugees and Displaced Persons

36. The question of the relief of Jewish refugees and displaced persons is not strictly relevant to the Palestine problem, but the Sub-Committee has found it desirable to refer to it in view of the misconceptions which are entertained in certain quarters about this matter, and also in view of the fact that it has unnecessarily complicated the Palestine issue and rendered more difficult the reaching of a a just and satisfactory sttlement.

The recommendations of the majority of the Special Committee envisage the admission into that country of 150,000 Jewish refugees. In the course of the general debate in the *Ad Hoc* Committee, certain delegations based their support for those recommendations on the persecution which the Jews had undergone in Europe and on the presence in the European displaced persons centres of a large number of Jews.

In these circumstances the problem of refugees and displaced persons, its alleged connexion with the Palestinian question and its possible solution must be studied in the light of the documents available and the decisions taken by the General Assembly or the various other organs of the United Nations.

Facts concerning refugees

37. From the documents placed at the Sub-Committee's disposal by the Secretariat, a number of facts can be ascertained.

In the first place, according to statistics published by the Preparatory Commission for the International Refugee Organization, 656,831 refugees and displaced persons were in September receiving care and maintenance from the Preparatory Commission.

Secondly, the number of Jewish refugees and displaced persons in assembly centres is about 200,000.

Thirdly, the national origin of the above-mentioned Jewish refugees is as follows:

(a) About 75 per cent are of Polish nationality; a large number entered Italy and the western zones of Germany and Austria during the summer of 1946;

(b) About 8 per cent are of Romanian nationality;

(c) About 6 per cent are of Hungarian nationality;

(d) About 11 per cent are of Czech, German, Lithuanian and Yugoslav nationality.

Fourthly, the Jewish refugees and displaced persons are distributed among the centres in the following proportions:

Germany	
United States zone	118,000
British zone	14,900
French zone	1,500
Austria	31,500
Italy	11,000
Total:	176,900

To this total should be added the Jewish refugees living in Shanghai and Cyprus, in the following numbers:

Shanghai	10,000
Cyprus	18,900
Total:	28,900

Fifthly, a resettlement programme has been prepared by the Preparatory Commission for the International Refugee Organization through agreements concluded with a certain number of governments. These agreements envisage resettlement of some 135,000 refugees and displaced persons. In addition, individual resettlements processed by the organization are anticipated to amount to a monthly average of about 1,000 persons.

Sixthly, other countries are carrying out resettlement plans of their own without having concluded formal agreements with the Preparatory Commission. These plans envisage a total resettlement of some 165,000 refugees and displaced persons. Furthermore, voluntary agencies are expected to process individual immigrants at the rate of about 1,200 per month.

38. The study of the problem of refugees and displaced persons was begun in 1946 by the Committee on Refugees and Displaced Persons set up under resolution 3 (I) of the Economic and Social Council, and the Committee's report was considered by the Council

Council at its second and third sessions. The outcome was the adoption by the General Assembly, on 15 December 1946, of its resolution 62 (I) providing approval of the Constitution of the International Refugee Organization and of various annexes thereto.

The following guiding principles emerge from the discussion of the refugee problem as a whole and from the decisions adopted by the United Nations:

(a) Genuine refugees and displaced persons constitute a problem which is international in scope and character (see first paragraph of preamble to the Constitution of the IRO);

(b) Refugees and displaced persons should return to their countries of origin (see second and third paragraphs of preamble and article 2, paragraph 1 *(a)*:

(c) Only in case where refugees cannot be repatriated should steps be taken to resettle them elsewhere than in their countries of origin (see article 2, paragraph 1 *(b)*;

(d) In the performance of its functions, the IRO should act in accordance with the purposes and the principles of the United Nations, in particular as regards the resettlement of refugees and displaced persons in countries able and willing to receive them (see article 2, paragraph (1);

(e) In addition, the IRO should carry out the functions set forth in its Constitution in such a way as to avoid disturbing friendly relations between nations (see annex I to the Constitution, paragraph 1 *(g)* ;

(f) The IRO should exercise special care in resettling refugees or displaced persons either in countries contiguous to their respective countries of origin, or in non-self-governing territories, and should also give due weight to any evidence of genuine apprehension and concern felt in regard to such plans, in the former case by the country or origin of the persons involved, in the latter case by the indigenous population of the non-self-governing territory in question (see annex I, paragraph 1 (*g*)).

Comparative figures of Jews admitted to Palestine and other countries

39. In considering the connexion of the Palestine problem with the question of refugees and displaced persons, it must be remembered that Palestine, though a small country and possessing very limited

resources, has made a contribution to the relief of Jewish refugees far beyond its capacity, falling little short of the total contribution of practically all other countries taken together. The following figures, supplied by the secretariat, give the number of Jewish immigrants admitted during the years 1933 to 1946 by the principal countries which have accepted them:

United States	188, 048
United Kingdom	65, 000
Argentina	26, 000
Brazil	23, 500
Chile	14, 000
Bolivia	12, 000
Canada	12, 000
Australia	8, 500
Union of South Africa	8, 000
Uruguay	7, 000
Total:	364, 648
Palestine	287, 063

The figure for Palestine does not include the 118,378 Jews admitted to Palestine during the years 1920 to 1932.

These figures speak for themselves and are sufficient comment upon the genuineness of the concern felt by many states for Jewish refugees, and upon the patent unfairness of the demand that Palestine should absorb more Jewish immigrants.

International responsibility in the matter of refugees

40. In its comment on recommendation VI, contained in chapter V of its report, the special Committee emphasizes two important aspects of the problem of refugees and displaced persons in relation to Palestine. The first is that the problem of regugees and displaced persons is a "recognized international responsibility"; and the special Committee recommends that the General Assembly should undertake immediately the initiation and execution of an international arrangement whereby the problem of the distressed European Jews would be dealt with as a matter of extreme urgency. The second is that a programme of international action for the relief of Jewish displaced dersons is "a vital prerequisite to the settlement of the difficult conditions in Palestine".

41. Apart from the fact that the specific problem of Jewish refugees and displaced persons is an international responsibility, Palestine cannot provide the solution for it. On the contrary, a persual of the reports of the debates in the Economic and social Council and in the Third Committee of the General Assembly would show that no proposal presenting Palestine as a solution for the problem of Jewish re ugees was taken into consideration by those organs. Moreover, recommendation VI, which was unanimously adopted by the special Committee, confirms this view implicitly but nonetheless clearly.

42. In addition, there exist legal, political and economic obstacles and objections to any attempt to solve the problem of Jewish refugees and displaced persons by further immigration into Palestine. The main political ground is that Jewish immigration into Palestine is opposed by the large majority of the population. There can be no justification for recommending any immigration into any country against the wishes of the majority of its inhabitants.

Legal objections to further Jewish immigration into Palestine

43. The legal objections to any further Jewish immigration into Palestine rest on the considerations enumerated below.

(a) Article 6 of the Mandate for Palestine laid down that Jewish immigration into Palestine was to be subject to a number of safeguards and restrictions.

In the first place, the administration must ensure that "the rights and position" of other sections of the population were not prejudiced.

The word "rights" must be interpreted as covering the civil, economic and political rights of the Arabs of Palestine. Again, the word "position" must necessarily cover their economic, social and political position. The position of the Arabs at the time of the institution of the Mandate was that of a majority of 93 per cent of the total population. The reduction of that majority from 93 to 90 or 85 per cent as a result of immigration might not have seriously prejudiced the position of the Arabs, but its reduction to 66 per cent, as it stands at present, certainly amounts to prejudicing that position.

Secondly, Jewish immigration was to be allowed only "under suitable conditions".

Thirdly, such immigration was to be controlled by the adminitration of Palestine. It was the duty of the Mandatory Power to set

up such an administration which, under article 2 of the Mandate, was to become self-governing. In fact, the Mandate contemplated two constitutional governing bodies in respect of Palestine, namely, the Mandatory and the administration of Palestine. The basic idea of Article 22 of the Covenant of the League of Nations, as well as of the Mandate, was that there should be a government of Palestine to which the Mandatory Power would render "administrative advice and assistance". The terms of the Mandate distinguished between those two bodies and assigned different functions to them. Thus it appears from article 6 that the question of immigration was to be within the competence of the administration of Palestine, as distinct from the Mandatory, and that the said administration, developed on self-governing lines and representative of the country, would receive "administrative advice and assistance" within the meaning and according to the objects of Article 22 of the Covenant. This view is in accord with the general principle that no immigration should be allowed into the territory of any nation against the wishes of its inhabitants or without their consent.

(b) The following observation appears in paragraph 150 of chapter II of the special Committee s report:

"To contend, therefore, that there is an international obligation to the effect that Jewish immigration should continue with a view to establishing a Jewish majority in the whole of Palestine, would mean ignoring the wishes of the Arab population and their views as to their own well being. This would involve an apparent violation of what was the governing principle of Article 22 of the Covenant".

The special Committee thus conceded that the creation of a Jewish majority by immigration in the whole of Palestine would amount to ignoring the wishes and well being of the Arab population and would involve a violation of Article 22 of the Covenant. Yet the majority of the Committee, in formulating its recommendations, did not pause to consider that the creation of a Jewish majority in a part of Palestine would also disregard the wishes and well being of more than half a million Arabs. An injustice would not cease to be an injustice merely because, instead of affecting 1,300.000 Arabs, it affected only half a million.

(c) In 1939 the British Government officially declared in its statement of policy that its obligation under the Mandate to encourage and develop the establishment of a Jewish National Home by immigration had been fulfilled and that further immigration could not be

allowed to continue if it was desired not to affect or prejudice the rights of the non-Jewish communities, the rights and position of which the Mandatory was required to protect.

(d) The imposition of any Jewish immigration into Palestine would further constitute a breach of the guiding principles adopted in General Assembly resolution 62 (I) to which a brief reference has been made in paragraph 43 above.

Objections on economic grounds to further Jewish immigration to Palestine

44. Palestine is a small country, having limited resources, practically no raw materials and no unoccupied cultivable land available for settlement. This is amply borne out by the report of the Special Committee, from which extracts are quoted below.

Palestine is already over-populated. Excluding the desert area of Beersheba, it has a density of 324 persons per square mile (see chapter II, paragraph 20). The natural rate of increase of population is very high and leaves no scope for artificial increase by means of immigration.

Palestine is poor in economic resources and far from self-sufficient (see chapter II, paragraphs 27 and 54). Most of the land capable of cultivation by present methods is under crops (see chapter II, paragraph 27), and the prospect of further development of the semi-desert area of the Negeb is problematic (see chapter II, paragraph 38). In chapter II, paragraph 9, it is observed that "in the physical resources which are typically the basis of modern industrial development, Palestine is exceedingly poor, having neither coal, iron nor any other important mineral deposit", and in chapter V, paragraph 3, Palestine is described as "a country that is arid, limited in area and poor in all essential resources". With regard to industry, it is stated in chapter II, paragraph 43, that "Palestine is not very favourably endowed for industrial production" and that "it has no raw materials of any consequence apart from the Dead Sea minerals". Industry is on a small scale, and the labour costs are relatively high. Although, during the war, industry received a great stimulus owing to abnormal demands and the closing of outside sources of supply, it would find it dificult to survive post-war competition from the highly industrialized countries of the West.

The report of the Special Committee also draws attention to the

adverse balance of trade existing in Palestine, the excess of imports over exports in 1946 being over 45 million pounds.[1] It points out that a remarkably large proportion of the balance of imports over exports is financed by import of capital consisting mainly of funds — or gift capital— coming from world Jewry (see chapter II, paragraph 54). It is obvious that this situation is unhealthy and uneconomic. In regard to future prospects, it is stated in chapter II, paragraphs 55 and 56, that "the further economic development of Palestine depends to a considerable degree on increasing its trade with other Middle East countries", and that the boycott of Jewish products in Arab countries "could seriously hamper industrial development in Palestine if it were indefinitely maintained". It is further mentioned that should there be a fall in military expenditure "a period of economic depression and unemployment would be the natural consequence" and that therefore "the Palestine economy may be expected in the near future to have to adjust itself to the double effect of increased industrial competition and a fall in income as a result of reduction of military expenditure" (see chapter II, paragraph 66).

In view of the facts observed and recorded by the Special Committee itself regarding the economic resources and absorptive capacity of Palestine, and its bleak future economic prospects, it is astonishing that the special Committee, in disregard of all these facts, should have recommended the admission into Palestine of 150,000 Jewish immigrants. It is obvious that there is no room for more immigrants in Palestine, and that it is necessary to look elsewhere for the resettlement of such Jewish refugees and displaced persons as cannot be repatriated to their countries of origin.

Solution for the problem of refugees

45. The resettlement plans envisaged by the Preparatory Commission for the International Refugee Organization in agreement with a certain number of governments, together with individual resettlement plans carried out by other countries, would, by absorbing about 300,000 persons, be calculated to simplify the task of the United Nations very considerably, if they were carried out in full. This sub-Committee deplores the fact that very few Jewish refugees seem to be included in this substantial quota.

46. In this Sub-Committee's opinion, the question of refugees and displaced persons is indivisible in character as regards its possible

[1] All references to pounds in this report are to Palestine pounds.

solution, and there can be no question of discrimination in favour of any particular category of refugees or displaced persons.

Whatever the category of refugees concerned, the solution found must, in this Sub-Committee s opinion, be based on the following two principles:

(a) It is the duty of the governments concerned to make provision for the return of genuine refugees and displaced persons to the countries of which they are nationals;

(b) Where such repatriation proves impossible, the solution should be sought by way of resettlement in the territories of the Members of the United Nations which are in a position to absorb a proportion of the persons concerned.

47. With regard to persons who are not repatriated to their countries of origin, a special committee of the General Assembly should be set up to recommend for the acceptance of the Members of the United Nations a scheme of quotas of refugees and displaced persons to be resettled in their respective territories. The special committee should, as far as practicable, work in consultation with the International Refugee Organization or its Preparatory Commission. In drawing up this scheme, the committee should be guided by the principles of the Unite Nations enumerated in paragraph 43 above. of the United Nations enumerated in paragraph 43 above. It should, in addition, take into account the national income of each country as indicated by the state of its industry, trade and developed resources, the *per capita* income of its population, and the area and possibilities of future development, subject to the consideration that the surplus territory of each State must in the first place serve the interests of the normal and natural increase of its own population.

In allocating quotas of refugees and displaced persons for resettlement, account must also be taken of the legitimate apprehensions of some countries with regard to their national unity or their social and economic equilibrium. This is an important consideration not only for the populations of the countries in question but also for the refugees themselves, who have a vital interest in not incurring the resentment or hostility of local populations.

48. In this Sub-Committee's opinion, a solution on these lines, making each country responsible for a moderate number of refugees, should prove acceptable to the great majority of the Members of the United Nations and will go far towards carrying out recommendation VI of the United Nations Special Committee on Palestine.

CHAPTER III

Proposals for the Constitution and Future Government of Palestine

49. The Sub-Committee was requested to draw up a detailed plan for the future government of Palestine in accordance with the basic principles expressed in the proposals submitted to the General Assembly by the delegations of Saudi Arabia (A/317) and Iraq (A/328), and the draft resolution submitted to the *Ad hoc* Committee by the delegation of Syria (A/AC. 14/22). The Sub-Committee, however, considers that it would also be necessary to review some aspects to the plan recommended by the majority of the Special Committee and to take into consideration some of the salient points brought out in the general debate in the *Ad Hoc* Committee relating to the basic principles applicable to the constitution and future government of Palestine.

Analysis of the proposal of Saudi Arabia and Iraq and of the Syrian draft resolution

50. The proposals submitted by the Governments of Saudi Arabia and Iraq to the General Assembly on 9 and 16 July 1947 respectively are couched in identical terms and read as follows:

"Termination of the Mandate over Palestine and recognition of its independence as one State".

The proposal of Saudi Arabia and Iraq raise three distinct issues:

(a) The termination of the Mandate;

(b) The recognition of the independence of Palestine, and

(c) The preservation of Palestine as one State.

The sub-Committee considered all three issues and its conclusions thereon are set forth below.

In the first place, in chapter I of this report, concerning the legal issues connected with the Mandate, it is pointed out that the Mandate was invalid *ab initio*, that on the dissolution of the League of Nations

the Mandate lost its legal basis, that, with the declaration of the British Government of its intention to withdraw, the *de facto* basis of the British administration in Palestine is also on the point of disappearing, and that the only action now outstanding is the manner of the transfer of power to the government of the people of Palestine. The last matter will be considered in a later part of the Sub-Committee's report together with the Sub-Committee's proposals regarding the constitution and future government of Palestine. All that need be said at this stage is that even on the assumption that the Mandate continues to have some legal basis or validity, it has been agreed by all concerned, including the Mandatory Power, that the Mandate should be terminated as early as possible.

Secondly, there is also general agreement as to the recognition of the independence of Palestine. The Sub-Committee would recommend further that for the reasons adduced in chapter I of this report, the recognition of the independence of Palestine should not be qualified or retarded by the imposition of any conditions.

Thirdly, the Sub-Committee is in entire agreement with the proposal of Saudi Arabia and Iraq that Palestine should continue as a single, undivided State. This is in accord with the wishes and aspirations of the over-whelming majority of the people of Palestine, the objectives of the Covenant and the provisions of the Mandate, and is essential for the orderly political evolution of the country and maintenance of its economic life and prosperity.

51. The draft resolution submitted to the *Ad Hoc* Committee by the delegation of Syria was also considered by the Sub-Committee. It is unnecessary, however, to examine it in detail here, as on the one hand some of its aspects are dealt with in chapter I of this report, and on the other hand its remaining aspects are taken into account in the formulation by the Sub-Committee of its own recommendations regarding the future constitution and government of Palestine.

Examination of the partition plan recommended by the majority of the Special Committee

52. Before indicating the basic principles underlying the constitution of a unitary State in Palestine and formulating proposals regarding the future government, the Sub-Committee considers it necessary to examine critically the recommendations of the majority of the Special Committee for the partition of Palestine and the estab-

lishment of an Arab and a Jewish SState and of a special administration for the City of Jerusalem.

During the general debate in the *Ad Hoc* Committee, conflicting views were expressed regarding the plan of the majority of the Special Committee. Its legal implications are pointed out in chapter I of this report, and it has been mentioned that the Mandate, as well as the Covenant, definitely contemplated the retention of Palestine as a single unit under one government. It has been stressed that the United Nations has no authority under the Charter to partition Palestine or in any way to impair its integrity against the wishes of the majority of its people. It might also be pointed out that the proposal for the partition of Palestine is contrary to the repeated assurances given to the Arabs during the last thirty years by the Mandatory Power. As late as May 1939 the British Goverment stated in paragraph 4 of its White Paper on Palestine that:

"His Majesty's Government therefore now declare unequivocally that it is not part of their policy that Palestine should become a Jewish State. They would indeed regard it as contrary to their obligations to the Arabs under the Mandate, as well as to the assurances which have been given to the Arab people in the past, that the Arab population of Palestine should be made the subjects of a Jewish State against their will".

Political objections to partition

53. The political objections to the partition of Palestine are no less important than the legal and constitutional objections referred to in the preceding paragraph. Palestine has been administered during the last thirty years as one political, administrative and economic unit. All the measures taken by the Mandatory Power for the government and administration of the country and for the provision of essential services have proceeded on the basis of that unity. The partition of the country would, in the opinion of the Sub-Committee, render the establishment of an efficient administrative machinery in either of the two States impossible.

54. The partition scheme proposed by the majority of the Special Committee must also be rejected on grounds of security, since it divides each of the two States into three separate parts connected by points of intersection, and makes it impossible for either State to defend its frontiers or to develop a workable defence plan.

55. This question must also be considered from the wider angle of the peace and security of the Middle East as a whole. Palestine is the centre of communications of the Arab world and it has common frontiers with four Arab States. There is no doubt that the forcible creation of a Jewish State in the heart of the Arab world would introduce a new, highly disturbing threat to peace and security in the Middle East. The proposed Jewish State, if it were set up at all, would come into being against the unyielding opposition, not only of its own considerable Arab population and of the proposed Arab State of Palestine, but also of the inhabitants of the surrounding Arab countries.

Objections to partition on grounds of distribution of population

56. The next important consideration relating to the partition scheme is the distribution of the population in Palestine as a whole and in the two proposed States. According to the report of the Special Committee, the total population of Palestine on 31 December 1946 was 1,845,559, consisting of 1,237,332 Arabs and 608,225 Jews (see chapter II, paragraph 19). These figures are not based on census returns, as no census was held in 1946,. The last census took place in 1931. The population figures quoted by the Special Committee are in fact based on estimates made by the Palestine administration, and do not necessarily represent the exact position with regard to the Arab and Jewish population of Palestine.

57. A more serious omission relates to the total exclusion from these figures of Arab Bedouin. According to the footnote to paragraph 12 of chapter II of the Special Committee's report, the estimated number of Bedouin in Palestine is 90,000 and, under the majority the plan, most of these would be included in the proposed Jewish State (see chapter VI, part II, section 5). That estimate of the Bedouin population is, however, inaccurate and it will be seen from the note submitted to the Sub-Committee by the representative of the United Kingdom on 1 November 1947 (see appendix III to this report) that, on the basis of the latest investigation carried out in the Beersheba sub-district by the Palestine administration, the Bedouin population of Palestine is now estimated at approximately 127,000.

58. In formulating its proposals, the majority of the Special Committee left out the Bedouin population on the assumption that the Bedouin were nomads and should not be counted among the settled population. This assumption is unwarranted. It is generally

true to say that the Bedouin of Palestine are settled on the land, some of them living in houses and others in tents. The bulk of them live in the northern and north-western parts of the Beersheba sub-district, where they are responsible for the cultivation of the greater part of the 2 million dunums of cereal land. Aerial photographs of this area taken recently by the Royal Air Force show the existence of 3,389 houses and 8,722 tents (see appendix III, paragraph 4). A certain proportion of the Bedouin tribes, consisting mostly of shepherds, do move with their flocks to adjacent districts in order to obtain better grazing for their sheep, but this practice is not different from that of shepherds in other parts of the world, and does not justify their exclusion from the settled population of Palestine. These Bedouin have lived in Palestine for centuries and have as much right to be taken into account as any of the other original inhabitants of the country. While they still maintain some of their special customs and usages, they are settled on the land and derive their livelihood from agriculture and grazing. This view is confirmed by the concluding paragraph of the note presented to the Sub-Committee by the representative of the United Kingdom which reads as follows:

"It should be noted that the term 'Beersheba Bedouin' has a meaning more definite than one would expect in the case of a nomad population. These tribes, wherever they are found in Palestine, will always describe themselves as Beersheba tribes. Their attachment to the area arises from their land rights there and their historic association with it."

59. According to the plan of the majority of the Special Committee, the distribution of the settled population in the proposed Jewish and Arab States and in the City of Jerusalem would be approximately as follows (see chapter VI, part II, section 5 of the report):

	Jews	*Arab and others*	*Total*
Jewish State	498,000	407,000	905,000
Arab State	10,000	725,000	735,000
City of Jerusalem	100,000	105,000	205,000

These estimates must, however, be corrected in the light of the information furnished in the note submitted to the Sub-Committee by the representative of the United Kingdom regarding the Bedouin population. According to paragraph 5 of that note, 22,000 Bedouin "may be taken as normally resident in the areas allocated to the Arab

State under the plan proposed by the majority of the Special Committee", and the balance of 105,000 as resident in the proposed Jewish State.

It will thus be seen that the proposed Jewish State will contain a total population of 1,008,800, consisting of 509,780 Arabs and 499,020 Jews. In other words, at the outset, the Arabs will have a majority in the proposed Jewish State.

60. It is even more instructive to consider the relative proportion of Arabs and Jews in the three regions comprising the area of the proposed Jewish State. In its southern section — the Beersheba area — there are, 1,020 Jews as against an Arab population of 103,820. In order words, the Jewish population is less than 1 per cent of the total. It is surprising that the majority of an international committee such as the Special Committee should have recommended the transfer of a completely Arab territory and population to the control of the Jews, who form less than 1 per cent of the population, against the wishes and interests of the Arabs, who form 99 per cent of the population. Similarly in the northern section of the proposed Jewish State — eastern Galilee — the Arab population is three times as great as the Jewish population (86,200 as against 28,750). Only in the central section of the proposed Jewish State — the plains of Sharon and Esdraelon — have the Jews a majority, the respective population figures being 469,259 Jews and 306,760 Arabs (these figures do not include Bedouins, as separate estimates are not available for this area). Even in this region, the majority is more apparent than real because almost half the Jewish population is located in the Jewish towns of Tel Aviv and Petah Tiqva. (For further details, see appendix 1 to this report).

61. It is also interesting to examine the distribution of Arab and Jewish populations in the proposed Jewish State according to the administrative sub-divisions shown in appendix 2. Ten sub-districts, in whole or in part, are incorporated in the proposed Jewish State. In nine of these sub-districts, the Arabs have a clear majority over the Jews. Only in one sub-district, namely, Jaffa, have the Jews a majority over the Arabs. This is due to the heavy concentration of Jews in the urban area of Tel Aviv.

This is further reinforced by statistics furnished to the Sub-Committee by the United Kingdom representative, showing the percentage of Arabs and Jews in the population of the various sub-districts of Palestine. The statistics are reproduced below:

Sub-district	*Percentage of total population*	
	Arabs and others	*Jews*
Safad	87	13
Acre	96	4
Tiberias	67	33
Beisan	70	30
Nazareth	84	16
Haifa	53	47
Jenin	100	—
Nablus	100	—
Tulkarm	83	17
Ramallah	100	—
Jerusalem	62	38
Hebron	99	Less than 1
Jaffa	29	71
Ramle	78	22
Gaza	98	2
Beersheba	99	Less than 1

Distribution of land

62. Closely connected with the distribution of population is the factor of land ownership in the proposed Jewish State. The bulk of the land in the Arab State, as well as in the proposed Jewish State, is owned and possessed by Arabs. This is clear from the following statistics furnished to the Sub-Committee by the United Kingdom representative, showing the respective percentage of Arab and Jewish ownership of land in the various sub-districts of Palestine.

Sub-district	*Percentage of ownership*	
	Arabs and others	*Jews*
Safad	68	18
Acre	87	3
Tiberias	51	38
Beisan	44	34
Nazareth	52	28
Haifa	42	35
Jening	84	Less than 1
Nablus	76	Less than 1
Tulkarm	78	17
Ramallah	99	Less than 1

Jerusalem	84	2
Hebron	96	Less than 1
Jaffa	47	39
Ramle	77	14
Gaza	75	4
Beersheba	14	Less than 1

Note: The balance represents waste land and lands under public ownership, consisting mainly of grazing lands attached to villages.

It will be seen that there is not a single sub-district in which the percentage of Jewish land ownership exceeds 39 per cent, and that in nine of the sixteen sub-districts the percentage of Jewish ownership is less than 5 per cent.

63. The village statistics for 1945 prepared by the Palestine administration and showing the position as at 1 April 1945 furnish interesting data regarding land ownership in Palestine (see appendix VI to this report). The total Arab land ownership is given in dunums (4 dunums equal approximately 1 acre), as being 12,574,774, as against a total Jewish ownership of 1,491,699. This statement also gives details of the land ownership of Arabs and Jews according to the various categories. The following figures are of particular interest:

Category of crops	*Ownership by dunums*	
	Arabs	*Jews*
Citrus	135,368	139,728
Bananas	1,843	1,079
Plantations	1,052,222	94,167
Taxable cereals (categories 9-13)	5,653,346	869,109
Taxable cereals (categories 14-15)	823,046	67,839

64. The above statistics of population and of land ownership prove conclusively that the Arabs constitute a majority of the population of the proposed Jewish State, and own the bulk of the land.

Expedients for reducing or disguising the injustice of partition

65. It might be suggested that the injustice to the Arabs might be reduced and the proposal for partition rendered less open to objection by excluding from the Jewish State the predominantly Arab populated areas; or that such injustice might be disguised by increasing the Jewish population of that State by means of fresh immigration.

With regard to the latter expedient, it has already been explained

that Palestine has taken more than its due share of immigrants and that it cannot take in any more without serious detriment to the interests and position of the existing population. In any case, it would be unfair to the Arabs of Palestine if, in an area in which they have a clear majority and in which they own the major portion of the land, they were to be artificially reduced to a minority and subjected to the rule of the Jews by means of the introduction of a large number of fresh immigrants. Such a proposal would be utterly undemocratic and would amount to a complete denial of the rights of the Arab majority. The United Nations cannot, without doing violence to the principles of the Charter, and without serious damage to its prestige, be a party to such manipulation and juggling with the fate of a whole people. This artificial "processing" must be condemned as arbitrary and unjust.

66. The other expedient suggested, namely, the revision of the boundaries of the proposed Jewish State so as to exclude predominantly Arab populated areas, is entirely impracticable. As has been explained, in nine of the ten sub-districts, or parts thereof, proposed for inclusion in the Jewish State, the Arabs have a clear majority, and it is only in the tenth sub-district, which includes the town of Tel Aviv, that the Jews have a majority.

Inextricable intermingling of population

67. There is an aditional difficulty, arising from the fact that throughout Palestine the Arab and Jewish population is inextricably interwoven. There are no territorial frontiers between Arabs and Jews. The bulk of the Jewish population in Palestine is located in towns and only a small proportion, about one-fifth, is settled in rural areas. Apart from Tel Aviv, which is a totally Jewish town, in practically all the other towns such as Haifa, Tiberias and Safad, the Jewish population is completely intermixed with the Arab population and it would be impossible to draw boundaries separating them from each other. The unity of the country and of its population cannot be broken up by any scheme of partition without entailing grave and disastrous consequences. Partition, in the case of Palestine, would amount not to the setting up of two self-contained entities, but to the dismemberment and mutilation of a living body.

Partition no solution for minority problem

68. It has been argued that the establishment of a Jewish State would solve the problem of the Jewish minority now existing in Palestine. In the whole of Palestine, the Jews are less than 31 per cent of the total population, whereas in the proposed Jewish State the Arab population will, at the outset, be in excess of the Jewish population. The proposal of the majority of the Special Committee would therefore solve the problem of the Jewish minority only by creating in its place the graver problem of the proportionately larger Arab population in the Jewish State. If minority status is an evil, it would not be fair to cure one evil by the creation of another, and a greater, evil.

Result of detailed study of partition scheme by the Mandatory

69. The intermingling of the population in Palestine is such that it would be impossible to devise a partition scheme which would overcome the objections mentioned in the preceding paragraphs. This is fully confirmed by the detailed inquiries carried out on the spot by the Woodhead Commission in 1938. The Commission was charged with the duty of making concrete recommendations for the implementation of the proposal of the Royal Commission of 1937 for the partition of Palestine. The Woodhead Commission, after detailed investigation, arrived at the conclusion that no partition scheme could be evolved which did not leave a very substantial Arab minority in the territory to be allotted to any possible Jewish State. The British Government upheld the findings of the Commission, and the proposal for partition was abandoned as impracticable. There is nothing in the report of the Special Committee to invalidate this conclusion, and the proposal of the majority of the Special Committee is more impracticable and unjust to the Arabs than any of the various partition schemes considered by the Woodhead Commission.

Minority status of Jews does not justify partition

70. The existence of a Jewish minority does not invalidate the establishment of a unitary State in Palestine. There have been, and there still are, minorities in many countries. Some minorities existed originally as part of the indigenous population, while other minorities were created by immigration. The United Nations cannot subscribe

to the principle that a racial or religious minority, whether arising from natural development or created as a result of immigration, can insist upon the breaking up of a homeland or shatter the political, geographical and economic unity of a country without the consent and against the wishes of the majority. The acceptance of such a principle would constitute a dangerous precedent which might be adopted by dissident elements in many States and thus become a source beoth of internal conflict and international disorder.

71. The Jews who have migrated into Palestine have done so with the knowledge that they were going to live in one country, where they would intermingle with the existing population. At no time were they led to believe by the Mandatory or by the Arabs that a part of Palestine would be set aside for their exclusive occupation. On the contrary, all Jewish immigration was made on the basis of the Mandate which provided in very clear terms for its termination and replacement by a single government of Palestine. The most that the Jewish minority in Palestine can ask for is to be safeguarded against discrimination and unfair treatment. The Arabs of Palestine have repeatedly expressed their willingness to co-operate in devising a practicable scheme for the safeguarding of the legitimate rights and interests of all minorities, and to respect human rights and fundamental freedoms. Any other demand by the Jewish minority would be undemocratic and untenable.

Main reason underlying partition proposal

72. It would appear from the plan of the majority of the Special Committee that the main reason for recommending partition and th creation of a Jewish State was to facilitate Jewish immigration into Palestine. Paragraph 8 of chapter VI, part I, of the Special Committee's report reads as follows:

"Jewish immigration is the central issue in Palestine today and is the one factor, above all others, that rules out the necessary co-operation between the Arab and Jewish communities in a single State. The creation of a Jewish State under a partition scheme is the only hope of removing this issue from the arena of conflict".

No argument could be more fallacious. It is quite true that the Arabs are firmly opposed to further Jewish immigration into Palestine, but there is nothing to show that the opposition would diminish with the establishment of a Jewish State. On the contrary, the removal of the restrictions on immigration hitherto imposed by the Mandatory

Power in the interest of the indigenous population and the economic and political welfare of the country would tend to intensify such opposition. It is a matter for regret that the Special Committee, instead of finding ways and means to ensure greater co-operation between Arabs and Jews in a single State, should have evolved a scheme which would, in fact, destroy whatever prospects still exist of friendly co-operation between the two communities and lead to most tragic consequences.

Economic objections to partition: indivisibility of Palestinian economy

73. It has been shown that partition is neither legally justificable nor politically defendable or expedient. Consideration of the economic aspects of the scheme of partition shows that it is even less worthy of acceptance. There are two vital points involved in the economic aspect of partition that establish its basic impossibility.

As has been observed, Palestine has hitherto been administered as one political and administrative unit. Economic factors also make it one indissoluble unit. The economy of all parts of Palestine is interdependent. Roads, railways and communications and public services have been provided on the basis of a unitary Palestine. Large funds have been spent on the development of the port of Haifa to serve the commercial needs of the whole of Palestine. An example of the common and indivisible services is the fact that the source of the water supply of the City of Jerusalem is located in the proposed Jewish State and the water will have to pass through the Arab State before it reaches the City. Similarly,the electric supply of almost all the main towns of the proposed Arab State will have to be obtained from electric installations situated within the proposed Jewish State.

74. The Special Committee fully realized the interdependence of the economy of Palestine and observed that under the Mandate there had been internal freedom of trade, a common transport system and a single currency. Its report lays great stress on the economic unity of the country and its unanimous recommendation IX reads:

"In appraising the various proposals for the solution of the Palestine question, it shall be accepted as a cardinal principle that the preservation of the economic unity of Palestine as a whole is indispensable to the life and development of the country and its peoples."

The plan of the majority of the Special Committee accordingly recommends establishment of an economic union and its operation through a joint economic board. The majority failed,however, to realize that it is impossible to combine economic union with political division. Economic unity implies consent and cannot be imposed; in fact, it necessitates a treaty and involves a joint administration. In view of the unwavering opposition of the Arabs, that arrangement would be impossible.

The emphasis laid by the Special Committee on the economic unity and interdependence of all sections of the population in Palestine leads inevitably to the conclusion that economic unity must necessarily be preserved. This can be achieved only by maintaining political unity.

Viability of the proposed States

75. The next economic consideration which equally rules out partition is the essential requisite of viability. The proposed Jewish State is to be allotted the best part of the country and might therefore be viable. The Arab State, however, would be so lacking in resources as to be definitely not viable. The facts set forth below establish these contentions:

(a) It is recognized that citriculture is the most important industry in Palestine and that citrus constitutes the main item of export. According to chapter II, paragraph 28 of the Special Committee's report, "citrus is the main export crop; before the trade was interrupted during the war, it accounted for 80 per cent of the total value of exports". Again, paragraph 27 of chapter II contains the following statement: "Palestine is still mainly an agricultural country since about 65 per cent of the population gain a living directly from agriculture. Nevertheless, the country is not self-sufficient in food and is especially deficient in cereal production, about 50 per cent of its cereal being supplied by imports." In paragraph 29 of chapter II it is stated that citrus production "is approximately equally shared between Jewish and Arab cultivators". Paragraph 53 of chapter II contains the following statement: "During the war, the virtual cessation of citrus exports had a great effect on the structure of exports. This, however, was a purely temporary phenomenon, and it is evident that citrus exports will again become a dominant element in total exports."

In part I, paragraph 13 of the plan of partition, set forth in chap-

ter VI of the Special Committee's report, it is stated that "the Jews will have the more economically developed part of the country, embracing practically the whole of the citrus producing area, which includes a large number of Arab producers."

It is thus an undisputed fact that the basic industry in Palestine, which largely pays for imports of food, especially wheat, meat and cattle fodder (see chapter II, paragraph 54 of the Special Committee's report), and of which the Arabs own approximately 50 per cent, would be almost entirely included in the proposed Jewish State.

(b) In addition to the citrus industry, the proposed Jewish State is allotted under the partition plan the best agricultural lands in Palestine, while the Arab State is left certain mountainous regions, largely uncultivable (see column 7 of appendix VI to this report). The maritime plain running from Gaza to Acre, the plain of Esdraelon and the valley of Jezreel, which together comprise the best agricultural areas, are all included within the proposed Jewish State. To quote again from the Special Committee's report (see chapter II, paragraph 3): "Apart from these inland plains in the north and portions of the desert area in the south, the interior of the country is very mountainous, with the hills of Judea and Samaria in the centre and the hills of Galilee in the north."

Thus in addition to citrus, the plan of the majority of the Special Committee would endow the Jewish State with the most substantial agricultural resources of the country.

(c) Under the partition plan, the two ports of Palestine, Haifa and Jaffa, which are both predominantly Arab, are included in the Jewish State. The Haifa port was developed with public funds at considerable cost. The partition plan includes it, with all its possibilities of future development, within the Jewish State, despite the fact that the port serves as the terminal of the Iraq oil pipe line and is the point of entry of international trade into Palestine, Transjordan and other parts of the Arab world.

76. Attention may now be drawn to some other aspects of the future economy of the proposed Arab State as disclosed in the plan of the majority of the Special Committee.

In the first place, in chapter VI, part I, paragraph 12, it is observed "that, at any rate during the early years of its existence, a partitioned Arab State in Palestine would have some difficulty in raising sufficient revenue to keep up its present standards of public services".

Secondly, the Arab State would, in effect, have to subsist on international charity. Thus paragraph 14 of part I of chapter VI reads:

"As the Arab State will not be in a position to undertake considerable development expenditure, sympathetic consideration should be given to its claim for assistance from international institutions in the way of loans for expansion of education, public health and other vital social services of a non-self-supporting nature."

77. The majority of the Special Committee recognized that viability is an essential prerequisite to any scheme of partition, but made no attempt to consider it or study it. This important matter was apparently left to the Secretariat, and the note prepared by the Secretariat was incorporated in the report.[1] This note shows that the Arab State can be made viable only on the basis of a subsidy from the Jewish State.

To sum up, it is certain that the proposed Arab State cannot be viable. It would have no cultivable lands of any importance. Such cultivable lands as it would have would not supply a small fraction of the cereal requirements of its population. It would have no other economic resources, no raw materials, no industries, no trade, and would have to subsist, on subsidies or loans.

78. It would thus appear that the partition proposal is legally objectionable, politically unjust, and economically disastrous; in short, it is utterly unworkable. The Sub-Committee is therefore compelled to reject partition as a solution of the Palestine problem, problem, and considers that the constitution and future government of Palestine must be based on the fundamental principle of a unitary State.

Principles underlying the constitution of a unitary State in Palestine

79. The Sub-Committee examined the proposals of the Arab States regarding the future constitution of Palestine made in the British Government in 1946 and early in 1947, and took into account the statements made during the general debate in the *Ad Hoc* Committee. The basic idea underlying those proposals, and which is in accord with the principles of the United Nations Charter, is that the future constitution and government of Palestine must be based on the

[1] See *Official Records of the second session of the General Assembly*, Supplement No. 11, Volume I, pages 55 and 56.

free consent of the people of that country and must be shaped along democratic lines. In other words, the constitution of Palestine should be framed by a representative body, namely, an elected consituent assembly. The basis and conditions of franchise, the qualifications of electors and numerous other complex questions connected with th setting up and working of the constituent assembly would have to be decided before the constituent assembly could be convened.

80. While the task of framing a constitution must naturally be left to the constituent assembly, the Sub-Committee feels that it should indicate in general terms the main principles on which the future constitution should be based. These are summarized below.

(a) Palestine shall be a unitary and sovereign State.

(b) It shall have a democratic constitution with an elected legislature and an executive responsible to the legislature.

(c) The constitution shall provide guarantees for the sanctity of the Holy Places covering inviolability, maintenance, freedom of access and freedom of worship in accordance with the *status quo*.

(d) The constitution shall guarantee respect for human rights and fundamental freedoms without distinction as to race, sex, language or religion, and freedom of religious belief and practice in accordance with the *status quo* (including the maintenance of separate religious courts to deal with matters of personal status).

(e) The constitution shall guarantee the right of religious bodies or other societies and individuals to maintain, in addition to educational establishments administered by public authority, educational institutions of their own, subject to normal government supervision and inspection.

(f) The constitution shall recognize the right of Jews to employ Hebrew as a second official language in areas in which they are in a majority.

(g) The law of naturalization and citizenship shall provide, among other conditions, that the applicant should be a legal resident of Palestine for a continuous period to be determined by the constituent assembly.

(h) The constitution shall ensure adequate representation in the legislature for all important sections of the citizenry in proportion to their numerical strength.

(i) The constitution shall also provide for adequate reflection in the executive and the administration of the distribution of representation in the legislature.

(j) The constitution shall authorize the legislature to invest local authorities with wide discretion in matters connected with education, health and other social services.

(k) The constitution shall provide for the setting up of a supreme court, the jurisdiction of which shall include, *inter alia*, the power to pronounce upon the constitutional validity of all legislation, and it shall be open to any aggrieved party to have recourse to that tribunal.

(l) The guarantees contained in the constitution concerning the rights and safeguards of the minorities shall not be subject to amendment or modification without the consent of the minority concerned expressed through a majority of its representatives in the legislature.

Establishment of a provisional government and mode of transfer of power

81. The next matter that calls for consideration is the setting up of a provisional government and the manner of transfer of power from the Mandatory to the provisional government. The Sub-Committee recommends that a provisional government shall be set up without further delay and that it shall be representative of all important sections of the citizenry in Palestine in proportion to their numerical strength. The representation of Arabs and Jews in the provisional government shall be without prejudice to their representation in the future government of Palestine.

82. The legislative, executive and administrative powers and functions of the present administration of Palestine shall be vested in the provisional government as soon as the latter is constituted. and thereupon the Mandatory Power shall begin the withdrawal of its forces and services from Palestine. The plan of withdrawal shall be settled by the Mandatory Power in consultation with the provisional government, and the withdrawal shall be completed within one year. This would ensure an orderly transfer of power, and would at the same time enable the provisional government to organize its police and security forces and to build up a sound administrative system on national lines.

83. The provisional government shall as soon as practicable enact an electoral law for the setting up of the constituent assembly, and take steps to complete without delay an electoral register on the basis of that law. The electoral law shall provide for the adequate

representation in the constituent assembly of all the important sections of the citizenry in accordance with their numerical strength. This shall be without prejudice to their representation in the future legislature.

84. As soon as the electoral register is completed, elections shall be held for the constituent assembly. The constituent assembly shall then be convened and shall proceed to draw up the constitution of the independent unitary State of Palestine in the light of the basic provisions outlined in the preceding paragraphs. The constituent assembly shall also act as a legislature until the first elections under the new constitution have been held, and during the interval the provisional government shall be responsible to the constituent assembly.

85. It is essential to add that until the independent State of Palestine legislates otherwise, immigration into Palestine shall be suspended, and the existing land transfer restrictions shall remain in force.

86. The Sub-Committee is persuaded that a constitution evolved on the lines mentioned above is the only practicable solution of a difficult and complex problem, consistent with the principles of justice and democracy and in accord with the best interests of all communities in Palestine.

CHAPTER IV

Conclusions

87. The conclusions of the Sub-Committee are embodied in the following three draft resolutions, which the Sub-Committee recommends for the acceptance of the General Assembly.

I

DRAFT RESOLUTION REFERRING CERTAIN LEGAL QUESTIONS TO THE INTERNATIONAL COURT OF JUSTICE

The General Assembly

Considering that the Palestine question raises certain legal issues connected, *inter alia*, with the inherent right of the indigenous population of Palestine to their country and to determine its future, the pledges and assurances given to the Arabs in the First World War regarding the independence of Arab countries, including Palestine, the validity and scope of the Balfour Declaration and the Mandate, the effect on the Mandate of the dissolution of the League of Nations and of the declaration by the Mandatory Power of its intention to withdraw from Palestine,

Considering that the Palestine question also raises other legal issues connected with the competence of the United Nations to recommend any solution contrary to the Covenant of the League of Nations or the Charter of the United Nations, or to the wishes of the majority of the people of Palestine,

Considering that doubts have been expressed by several Member States concerning the legality under the Charter of any action by the United Nations, or by any Member State or group of Member States, to enforce any proposal which is contrary to the wishes, or is made without the consent, of the majority of the inhabitants of Palestine.

Considering that these questions involve legal issues which so far have not been pronounced upon by any impartial or competent tribunal, and that it is essential that such questions be authoritatively determined before the United Nations can recommend a solution of

the Palestine question in conformity with the principles of justice and international law,

Resolves to request the International Court of Justice to give an advisory opinion under Article 96 of the Charter and Chapter IV of the Statute of the Court on the following questions:

(a) Whether the indigenous population of Palestine has not an inherent right to Palestine and to determine its future constitution and government;

(b) Whether the pledges and assurances given by Great Britain to the Arab during the First World War (including the Anglo-French Declaration of 1918) concerning the independence and future of Arab countries at the end of the war did not include Palestine;

(c) Whether the Balfour Declaration, which was made without the knowledge or consent of the indigenous population of Palestine, was valid and binding on the people of Palestine, or consistent with the earlier and subsequent pledges and assurances given to the Arabs;

(d) Whether the provisions of the Mandate for Palestine regarding the establishment of a Jewish National Home in Palestine are in conformity or consistent with the objectives and provisions of the Covenant of the League of Nations (in particular Article 22), or are compatible with the provisions of the Mandate relating to the development of self-government and the preservation of the rights and position of the Arabs of Palestine;

(e) Whether the legal basis for the Mandate for Palestine has not disppeared with the dissolution of the League of Nations, and whether it is not the duty of the Mandatory Power to hand over power and administration to a government of Palestine representing the rightful people of Palestine;

(f) Whether a plan to partition Palestine without the consent of the majority of its people is consistent with the objectives of the Covenant of the League of Nations, and with the provisions of the Mandate for Palestine;

(*g*) Whether the United Nations is competent to recommend either of the two plans and recommendations of the majority or minority of the United Nations Special Committee on Palestine, or any other solution involving partition of the territory of Palestine, or a permanent trusteeship over any city or part of Palestine, without the consent of the majority of the people of Palestine;

(h) Whether the United Nations, or any of its Member States,

is competent to enforce or recommend the enforcement of any proposal concerning the constitution and future government of Palestine, in particular, any plan of partition which is contrary to the wishes, or adopted without the consent of, the inhabitants of Palestine,

Instructs the Secretary-General to transmit this resolution to the International Court of Justice, accompanied by all documents likely to throw light upon the questions under reference.

II
DRAFT RESOLUTION ON JEWISH REFUGEES AND DISPLACED PERSONS

The General Assembly,

Having regard to the unanimous recommendations of the United Nations Special Committee on Palestine, that the General Assembly undertake immediately the initiation and execution of an international arrangement whereby the problem of the distressed European Jews will be dealt with as a matter of extreme urgency for the alleviation of their plight and of the Palestine problem.

Bearing in mind that genuine refugees and displaced persons constitute a problem which is international in scope and character,

Considering that the question of refugees and displaced persons is indivisible in character as regards its possible solution,

Considering that it is the duty of the Governments concerned to make provision for the return of refugees and displaced persons to the countries of which they are nationals,

Being further of the opinion that where repatriation proves impossible, solution should be sought by way of resettlement in the territories of the Members of the United Nations which are willing and in a position to absorb these refugees and displaced persons,

Considering that Palestine, despite its very small area and limited resources, has absorbed a disproportionately large number of Jewish immigrants and cannot take any more without serious injury to the economy of the country and the rights and position of the indigenous population,

Considering that many other countries with much greater area and larger resources have not taken their due share of Jewish refugees and displaced persons,

Having adopted its resolution 62 (I) of 15 December 1946 calling for the creation of an International Refugee Organization with a view

to the solution of the refugee problem through the combined efforts of the United Nations, and

Taking note of the assumption on 1 July 1947 by the Preparatory Commission of the International Refugee Organization of operational responsibility for displaced persons and refugees,

Recommends

1. The countries of origin should be requested to take back the Jewish refugees and displaced persons belonging to them, and to render them all possible assistance to resettle in life;

2. That those Jewish refugees and displaced persons who cannot be repatriated should be absorbed in the territories of Members of the United Nations in proportion to their area, economic resources, *per capita* income population and other relevant factors;

3. That a special committee of the General Assembly should be set up to recommend for acceptance of the Members of the United Nations a scheme of quotas of Jewish refugees and displaced persons to be resettled in their respective territories, and that the special committee should as far as possible, work in consultation with the International Refugee Organization or its Preparatory Commission.

III

DRAFT RESOLUTION ON THE CONSTITUTION AND FUTURE GOVERNMENT OF PALESTINE

The General Assembly,

Taking note of the declaration by the Mandatory Power of its intention to withdraw from Palestine,

Considering that Palestine is a mandated territory whose independence was provisionally recognized by virtue of paragraph 4 of Article 22 of the Covenant of the League of Nations.

Recognizing that the only solution in consonance with the objectives of the Covenant of the League of Nations and the principles of the Charter of the United Nations is one that is acceptable to the majority of the people of Palestine,

Being satisfied that the partition of Palestine is unjust, illegal and impracticable and that the only just and workable solution is the immediate establishment of a unitary, democratic, and independent State, with adequate safeguards for minorities.

Believing that peaceful and orderly transfer of power from the

Mandatory to the government of the people of Palestine is necessary in the interest of all concerned,

Recommends

1. That a provisional government, representative of all important sections of the citizenry in proportion to their numerical strength, should be set up as early as possible in Palestine;

2. That the powers and functions of the present administration of Palestine should be vested in the provisional government as soon as the latter is constituted;

3. That the Mandatory Power should begin the withdrawal of its forces and services from Palestine as soon as the provisional government is installed, and should complete the withdrawal within one year;

4. That the provisional government should, as soon as practicable, enact an electoral law for the setting up of a constituent assembly, prepare an electoral register, and hold elections for the constituent assembly;

5. That the constituent assembly should also function as a legislature and that the provisional government should be responsible to it until elections for a legislature are held under the new constitution;

6. That while the task of framing a constitution for Palestine must be left to the constituent assembly, the following basic principles shall be strictly adhered to:

(a) Palestine shall be a unitary and sovereign State;

(b) It shall have a democratic constitution, with an elected legislature and an executive responsible to the legislature;

(c) The constitution shall provide guarantees for the sanctity of the Holy Places covering inviolability, maintenance, freedom of access and freedom of worship in accordance with the *status quo;*

(d) The constitution shall guarantee respect for human rights and fundamental freedoms without distinction as to race, sex, language or religion, and freedom of religious belief and practice in accordance with the *status quo* (including the maintenance of separate religious courts to deal with matters of personal status);

(e) The constitution shall guarantee the rights of religious bodies or other societies and individuals to maintain, in addition to educational establishments administered by public authority, educational institutions of their own, subject to normal government supervision and inspection;

(f) The constitution shall recognize the right of Jews to employ Hebrew as a second official language in areas in which they are in a majority;

(g) The law of naturalization and citizenship shall provide, amongst other conditions, that the applicant should be a legal resident of Palestine for a continuous period to be determined by the constituent assembly;

(h) The constitution shall ensure adequate representation in the legislature or all important sections of the citizenry in proportion to their numerical strength;

(i) The constitution shall also provide for adequate reflection in the executive and the administration of the distribution of representation in the legislature;

(j) The constitution shall authorize the legislature to invest local authorities with wide discretion in matters connected with education, health and other social services;

(k) The constitution shall provide for the setting up of a supreme court, the jurisdiction of which shall include, *inter alia*, the power to pronounce upon the constitutional validity of all legislation, and it shall be open to any aggrieved party to have recourse to that tribunal;

(l) The guarantees contained in the constitution concerning the rights and safeguards of the minorities shall not be subject to amendment or modification without the consent of the minority concerned expressed through a majority of its representatives in the legislature.

APPENDIX I

ESTIMATED POPULATION OF PALESTINE AS AT 31 DECEMBER 1946

	Moslems	*Christians*	*Druses and others*	*Bedouin*	*Total number of Arabs and others*	*Jews*	*Total*
Arab State							
Western Galilee	88,150	26,390	9,260		123,800	3,040	126,840
Samaria and Judea	466,390	18,660	300		485,350	5,020	490,370
Gaza	166,570	1,290			117,860	1,460	119,320
TOTAL	671,110	46,340	9,560	22,000	749,010	9,520	758,530
Jewish State							
Eastern Galilee	81,060	3,700	1,440	13,000	86,200	28,750	114,950
Plains of Sharon and Esdraelon	252,450	49,960	4,350		306,760	469,250	776,010
Beersheba	11,600	210	10	92,000	103,820	1,020	104,840
TOTAL	345,110	53,870	5,800	105,000	509,780	499,020	1,008,800
City of Jerusalem	60,560	44,850	130		105,540	99,690	205,230
SUMMARY							
Arab State	671,110	46,340	9,560	22,000	749,010	9,520	758,530
Jewish State	345,110	53,870	5,800	105,000	509,780	499,020	1,008,800
City of Jerusalem	60,560	44,850	130		105,540	99,690	205,230
TOTAL	1,076,780	145,060	15,490	127,000	1,364,330	608,230	1,972,560

APPENDIX II

ESTIMATED POPULATION OF PROPOSED JEWISH STATE AS AT 31 DECEMBER 1946

Sub-district	*Moslems*	*Christians*	*Others*	*Total number of Arabs*	*Jews*	*Total*
Eastern Galilee						
Safad	39,910	550		40,460	7,170	47,630
Tiberias	23,950	2,470	1,420	27,830	13,640	41,470
Beîsan	16,660	680	20	17,360	7,590	24,950
Nazareth	550			550	350	900
TOTAL	81,060	3,700	1,440	86,200	28,750	114,950
Plains of Sharon and Esdraelon						
Nazareth	3,040	980		4,020	7,630	11,650
Haifa	90,380	30,990	3,990	125,360	119,010	244,370

Haifa	90,380	30,990	3,990	125,360	119,010	244,370
Tulkarm	33,750	30		33,780	16,180	49,960
Jaffa	95,980	17,790	360	114,130	295,160	409,290
Ramleh	26,500	170		26,670	29,970	56,640
Gaza	2,800			2,800	1,300	4,100
TOTAL	252,450	49,960	4,350	306,760	469,250	776,010
Beersheba						
Gaza	5,330			5,330	510	5,840
Beersheba	6,270	210	10	6,490	510	7,000
TOTAL	11,600	210	10	11,820	1,020	12,840
TOTALS	345,110	53,870	5,800	404,780*	499,020	903,800*

* These figures do not include Arab Bedouin. The number of Bedouin in Palestine in 1946 has been estimated by the Palestine administration at 127,000, of whom 105,000 reside in the area of the proposed Jewish State and 22,000 in the area of the proposed Arab State.

APPENDIX III

NOTE DATED 1 NOVEMBER 1947 ON THE BEDOUIN POPULATION OF PALESTINE PRESENTED BY THE REPRESENTATIVE OF THE UNITED KINGDOM

1. The nomad population of Palestine has been enumerated completely on two occasions (1922 and 1931) and partially on one occasion (1946). The figures resulting from these enumerations were as follows:

Year	*Number*
1922	103,000
1931	67,000
1946 (Beersheba area only)	92,000

2. The 1922 enumeration was not a direct one, certain indirect methods having been used. It was not possible for the census authority to state the degree of accuracy of the figures. The 1931 enumeration was more direct but was stated by the officer who carried out the work to be incomplete approximately by as much as 20 per cent. The author of the 1931 census report for all Palestine stated, however, on the basis of certain checks, that the degree of incompleteness was less than 20 per cent. The Government statistician has examined the checks made and does not consider that the conclusion of the author of the census report was justified. If we accept the estimate of the officer who took the 1931 census, the figure for the Bedouin of all Palestine would have been not 67,000 but 84,000.

3. The latest census of Bedouin resident in the Beersheba area was undertaken by the Government statistician in May 1946 as a preliminary operation of the census of Palestine scheduled for November 1946 but later postponed. The count was a direct one carried out by officers of the Department of Statistics working with enumerators recruited from among the literate members of the tribes. Each tribal chief was asked for particulars of the subtribes of his tribe, viz..., name of sub-tribal chief and present location. The sub-tribal chiefs were then visited and asked to give particulars of the name and location of each *hamuleh* (clan). The clan chiefs were then called upon to proceed with the enumerator to each head of household where particulars were taken, *in situ*, of the name, age, sex, literacy and relationship of each member of the household. That method of enumeration, being based on the tribal structure of relationships and not on any geographical basis (other than that of restriction to the Beersheba area) was

calculated to give a greater degree of accuracy than either of the earlier enumerations.

4. In a addition to the census method, some idea has been obtained of the size of the Bedouin population from a plotting of the tents and houses that could be spotted from aerial photographs taken by the Royal Air Force over northern Beersheba about the same period of the year. The results obtained from the aerial photographs indicate that the figure of 48,000 (which was the only estimate available of the Beersheba Bedouin up to 1946) is greatly understated if applied to the population of 1946. The number of houses shown was 3,389 and of tents 8,722. The bulk of the population lives in the northern and northwestern parts of the Beersheba sub-district where the average rainfall is from 200 to 300 millimetres a year and where the greater part of the 2 million dunums of cereal land cultivated by the Bedouin is situated.

5. As regards the rest of the country, it is not possible to give any close estimate of the present bedouin population. In 1931, the Beersheba tribes amounted to approximately 72 per cent of the total Bedouin population. If this relationship between Beersheba and the rest of Palestine still holds good, the total Bedouin population would be in the region of 127.000. The division of these figures as between the various sub-districts of normal residence is as follows:

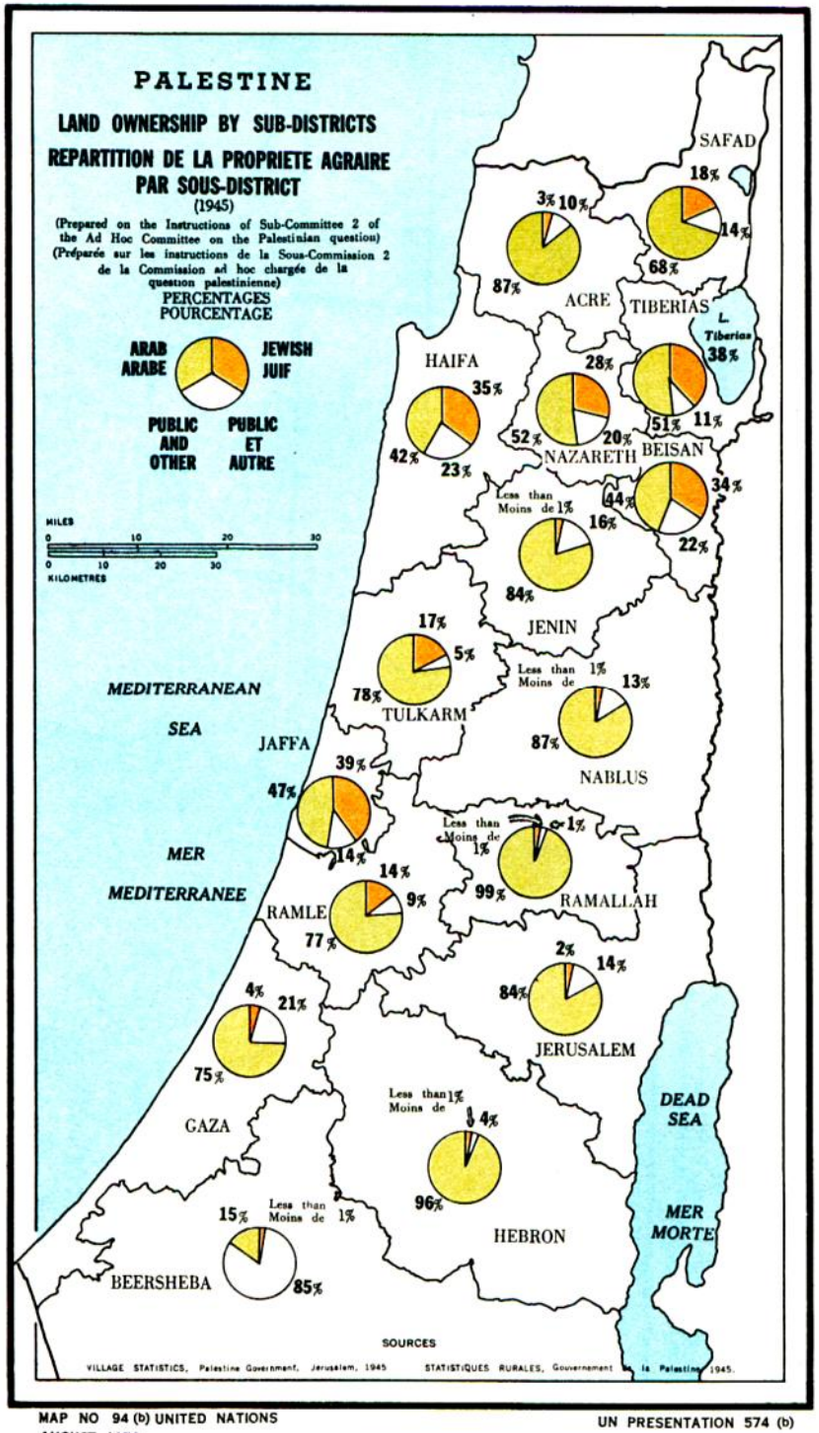
Sub-district	1931 *Census*	1946 *Estimate*
Beersheba	48,000	92,000
Nablus	220	400
Hebron	2,000	3,800
Jerusalem	7,070	13,400
Gaza	530	1,000
Ramleh	3,780	7,200
Jaffa and Tulkarm	5,000	9,500
Total:	66,000	127,300

Of these 127,000, approximately 22,000 may be taken as normally resident in the areas allocated to the Arab State under the plan proposed by the majority of the Special Committee.

6. It should be noted that the term "Beersheba Bedouin" has a meaning more definite than one would expect in the case of a nomad population. These tribes, wherever they are found in Palestine, will always describe themselves as Beersheba tribes. Their attachment to the area arises from their land rights there and their historic association with it.

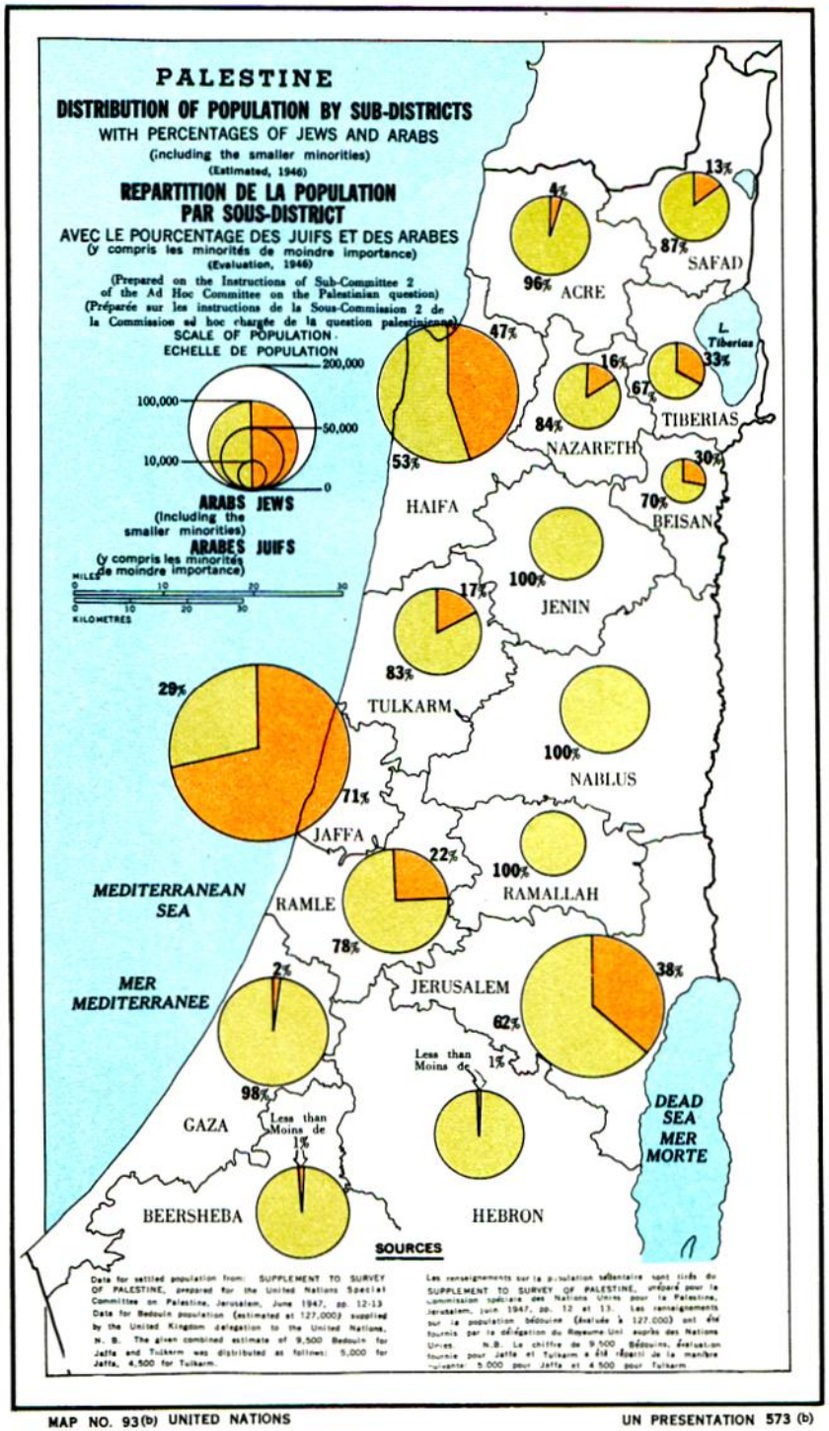
SUMMARY FOR PALESTINE
RECAPITULATION POUR LA PALESTINE

1	2						3						4						7					8					
SUB-DISTRICT SOUS-DISTRICT	CATEGORIES 1-2 CITRUS AGRUMES (in dunums) (en dunums)						CATEGORY 3 BANANAS BANANES (in dunums) (en dunums)						CATEGORIES 5-8 PLANTATIONS PLANTATIONS (in dunums) (en dunums)						CATEGORY 16 UNCULTIVABLE INEXPLOITABLE (in dunums) (en dunums)					GRAND TOTAL TOTAL GENERAL (in dunums) (en dunums)					
	Arabs Arabes	Jews Juifs	Public	Others Autres	Total	Arabs Arabes	Jews Juifs	Public	Others Autres	Total	Arabs Arabes	Jews Juifs	Public	Others Autres	Total	Arabs	Public	Others Autres	Roads, Railways & Lakes Routes, Chemins de fer et lacs	Total	Arabs Arabes	Jews Juifs	Public	Others Autres	Roads, Railways & Lakes Routes, Chemins de fer et lacs	Total
GALILEE DISTRICT DISTRICT DE GALILEE																													
Acre	8,288	197	—	243	8,728	41	12	—	81	134	82,582	1,382	576	100	84,640	207, 73,468		60	2,544	429,161	695,694	24,997	74,705	1,481	2,786	799,663
Beisan	396	1,221	—	—	1,617	307	155	19	—	481	8,296	7,679	4,933	—	20,908	135, 51,717		—	9,191	71,838	159,812	124,755	73,070	184	9,266	367,087
Nazareth	59	430	—	—	489	—	—	—	—	—	19,574	5,008	43	323	24,948	181, 84,833		969	8,088	151,880	258,616	137,382	88,354	4,429	5,752	497,533
Safad	168	66	—	—	234	—	—	—	—	—	64,707	20,504	15,883	—	101,094	135, 68,514		—	7,949	321,231	474,973	121,488	91,500	7	8,163	696,131
Tiberias Tibériade	77	1,243	—	25	1,345	1	615	—	6	622	18,199	6,995	235	107	25,536	134, 29,429		1,845	8,483	129,679	226,441	167,406	33,122	5,085	8,915	440,969
Total	8,988	3,157	—	268	12,413	349	782	19	87	1,237	193,358	41,568	21,670	530	257,126	794, 307,961		2,874	36,255	1,103,789	1,815,536	576,023	360,751	11,186	37,382	2,801,383
HAIFA DISTRICT DISTRICT DE HAIFA																													
Haifa	346	18,475	77	6	18,904	5	71	2	—	78	29,259	29,267	280	617	59,428	274, 160,663		6,454	22,254	352,768	434,666	364,276	179,616	24,766	28,431	1,031,755
SAMARIA DISTRICT DISTRICT DE SAMARIE																													
Jenin	43	—	—	—	43	—	—	—	—	—	86,004	—	55	67	86,126	346, 114,197		—	2,654	345,275	701,965	4,251	126,179	73	2,746	835,214
Nablus Naplouse	25	—	16	—	41	4	—	6	—	10	155,158	—	3,490	617	159,265	250, 111,796		14,796	3,125	874,028	1,383,466	15	184,872	19,691	3,674	1,591,718
Tulkarm	15,968	31,859	4	—	47,831	199	131	—	—	330	93,158	1,991	30	—	95,179	346, 20,548		—	15,720	219,512	650,646	141,361	27,257	15	16,081	835,360
Total	16,036	31,859	20	—	47,915	203	131	6	—	340	334,320	1,991	3,575	684	340,570	944, 246,541		14,796	21,499	1,438,825	2,736,077	145,627	338,308	19,779	22,501	3,262,292
JERUSALEM DISTRICT DISTRICT DE JERUSALEM																													
Hebron	—	—	—	—	—	—	—	—	—	—	65,996	474	325	464	67,259	398, 76,145		340	1,564	1,412,324	1,984,434	6,132	32,571	1,154	1,894	2,076,185
Jerusalem	63	—	296	108	467	1,107	—	507	123	1,737	78,263	2,333	5,715	6,036	92,347	118, 129,207		20,046	5,121	1,197,463	1,326,571	33,401	146,361	55,765	5,687	1,570,785
Ramallah	—	—	—	—	—	—	—	—	—	—	203,718	—	19	300	204,037	90, 2,294		23	1,032	311,737	681,996	146	2,569	489	1,364	686,564
Total	63	—	296	108	467	1,107	—	507	123	1,737	347,977	2,807	6,059	6,800	363,643	606, 207,646		20,409	7,727	2,921,524	3,992,001	39,679	231,501	57,408	11,945	4,333,534
LYDDA DISTRICT DISTRICT DE LYDDA																													
Jaffa	44,434	41,192	794	3,275	89,695	41	37	11	204	293	13,634	5,137	1,219	1,394	21,384	84, 5,105		83	12,844	28,165	158,413	129,429	11,981	16,917	18,616	335,366
Ramle Ramleh	39,071	40,153	241	1,171	80,636	125	57	—	—	182	65,390	8,769	3,783	1,181	79,123	346, 30,398		876	17,233	257,792	670,392	122,159	47,380	11,640	18,621	870,192
Total	83,505	81,345	1,035	4,446	170,331	166	94	11	204	475	79,024	13,906	5,002	2,575	100,507	430, 35,503		959	30,077	285,957	828,805	251,588	59,361	28,557	37,237	1,205,558
GAZA DISTRICT DISTRICT DE GAZA (Excl. Beersheba S/D) (Sauf Bersabée S/D)																													
Gaza	26,430	4,892	9	87	31,418	13	1	—	—	14	68,284	4,628	11,132	22	84,066	667, 123,145		37	23,327	177,113	830,314	49,260	206,196	349	25,382	1,111,501
Grand Total Total général	135,368	139,728	1,437	4,915	281,448	1,843	1,079	545	414	3,881	1,052,222	94,167	47,718	11,228	1,205,335	3,7	1,081,459	45,529	141,139	6,279,976	10,638,299	1,426,468	1,375,733	142,045	163,378	13,746,023
Beersheba Bersabée	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	10,573,110	—	—	10,573,110	1,936,375	65,231	10,574,925	5	464	13,577,000
Grand Total For Palestine Total général pour la Palestine	135,368	139,728	1,437	4,915	281,448	1,843	1,079	545	414	3,881	1,052,222	94,167	47,718	11,228	1,205,335	560	11,654,569	45,529	141,139	16,853,086	12,574,774	1,491,699	11,950,658	142,050	163,842	26,323,023



MAP NO 94 (b) UNITED NATIONS
AUGUST 1950

UN PRESENTATION 574 (b)



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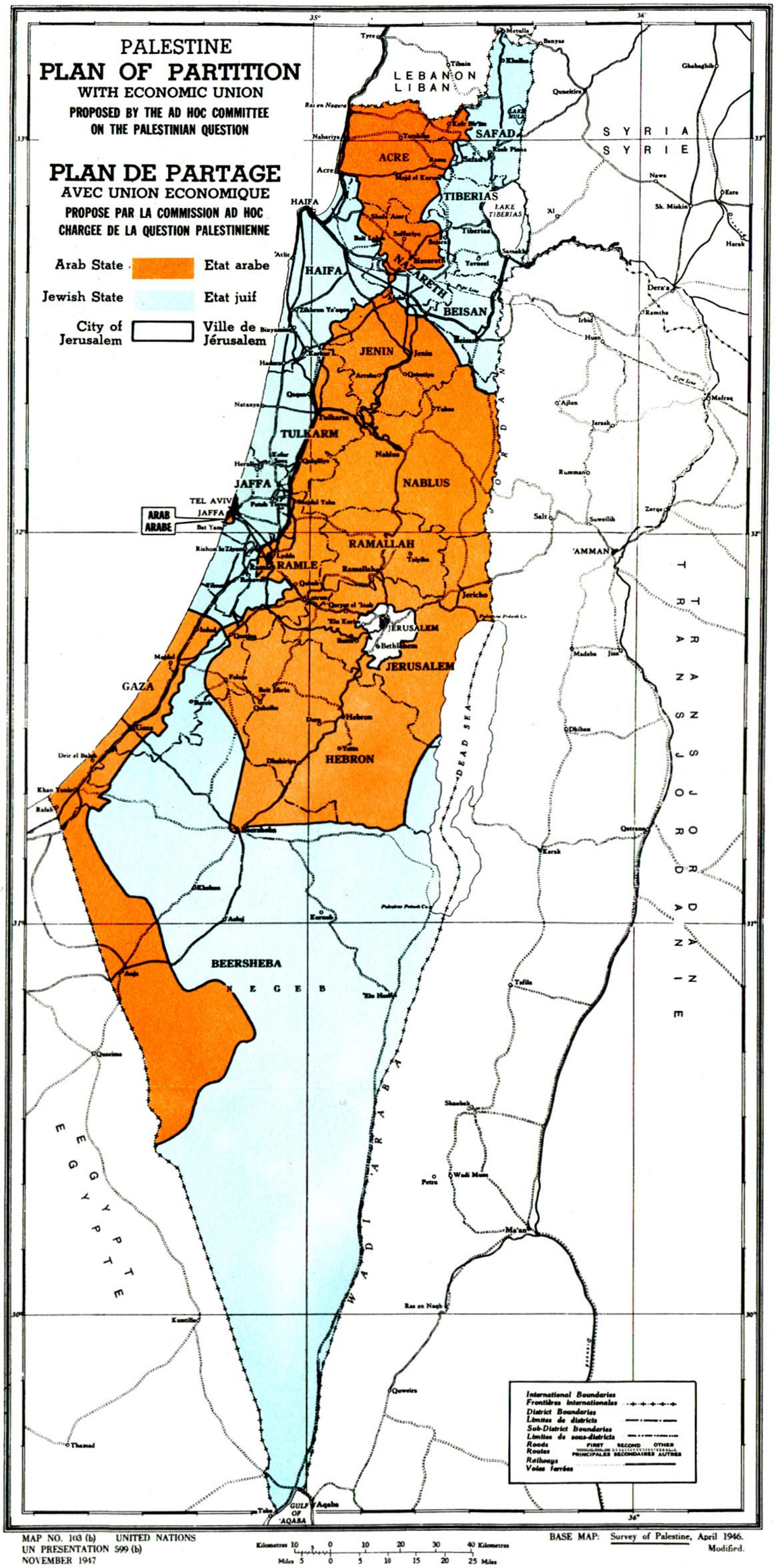
AUGUST 1950

UN PRESENTATION 573 (b)



MAP NO. 103 (b) UNITED NATIONS
UN PRESENTATION 599 (b)
NOVEMBER 1947

BASE MAP: Survey of Palestine, April 1946.
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