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NOTE BY THE SECRETARY-GENERAL UNDER SECURITY COUNCIL
RESOLUTION 237 (1967) AND GENERAL ASSEMBLY RESOLUTION
2252 (ES-V)

1. In my note to the Security Council of 19 April 1968 (A/7085, S/8553), I informed the Council of my suggestion to all the parties concerned to send a representative to the Middle East, in particular for the purpose of meeting my reporting obligations under Security Council resolution 237 (1967) of 14 June 1967 and General Assembly resolution 2252 (ES-V) of 4 July 1967 concerning humanitarian questions. In that note I also made available to the Security Council the texts of notes verbales exchanged between the parties concerned and myself on this matter up to and including 19 April 1968.
2. On 2 May 1968, I received the following letter from the Permanent Representative of Syria:

"Excellency,

Acting upon instructions of my Government, and with reference to document S/8553 dated 19 April 1968, entitled NOTE BY THE SECRETARY-GENERAL UNDER SECURITY COUNCIL RESOLUTION 237 (1967) AND GENERAL ASSEMBLY RESOLUTION 2252 (ES-V), I have the honour to bring to your kind attention the following:

The reply of the Israeli representative dated 18 April to your note of 26 February 1968 (p. 7, para. 3) states:

'The Government of Israel has taken note of the Secretary-General's assurance that his Representative will, inter alia, look into and report to the Secretary-General on the situation of the Jewish communities in the Arab countries situated in the area of conflict, who were affected in the wake of the June 1967 hostilities.'

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In this connexion the Government of the Syrian Arab Republic wishes to emphasize that they consider such an interpretation to be a deliberate distortion of the two humanitarian resolutions (S/RES/237 (1967), 14 June 1967 and A/RES/2252 (ES-V), 4 July 1967) for the following reasons:

1. Operative paragraph (1) of Security Council resolution 237 (1967) of 14 June 1967, confirmed by General Assembly resolution 2252 (ES-V) states:

'Calls upon the Government of Israel to ensure the safety, welfare and security of the inhabitants of the areas where military operations have taken place and to facilitate the return of those inhabitants who have fled the areas since the outbreak of hostilities.' (My italics.)

The reference is crystal clear: it is to 'the inhabitants of the areas where military operations have taken place'. It cannot be interpreted in any way to include, as claimed by the Israeli representative, 'the Jewish communities in the Arab countries situated in the area of conflict'.

2. The members of the Jewish community in Syria are Syrian citizens with full equal rights and duties and have never been considered otherwise except by Zionism. In fact, Zionism, predicated on the concept of a 'Jewish people', and Israel, have arrogated to themselves the right to speak in the name of all citizens of Jewish faith wherever they are: a concept that has been totally rejected on adequate legal and political considerations. To stretch, therefore, the terms of reference of the special representative to include Jewish communities in Syria or other Arab countries, victims of the Israeli war of aggression of 5 June 1967, would be tantamount to interfering in the internal affairs by the United Nations which is precluded by the Charter. No discrimination on the basis of religion exists or has ever existed in Syria.

3. Our interpretation is borne by Your Excellency's reply to the Israeli representative wherein it is stated:

In this regard, the Secretary-General wishes to make it clear that the terms of reference of his representative will be exactly as stated in the second paragraph of the Secretary-General's note of 26 February, namely: "Within the context of the above-mentioned resolutions, allegations have been made and concerns have been expressed in various forms and at various times about the treatment being accorded civilians. The Security Council resolution in question specifically calls upon the Government of Israel 'to ensure the safety, welfare and security of the inhabitants of the areas where military operations have taken place and to facilitate the return of those inhabitants who have fled the areas since the outbreak of hostilities'".'

4. To avoid any interpretation such as the one brought by the Israeli representative, I wish to repeat the emphasis I brought in my reply to Your Excellency's note of 18 March 1968, agreeing on the appointment of the Special Representative in these terms:

'The Syrian Government agrees to the dispatch of a special representative appointed by the Secretary-General in order to implement those resolutions which specifically call upon Israel "to ensure the safety, welfare and security of the inhabitants of the areas where military operations have taken place and to facilitate the return of those inhabitants who have fled the areas since the outbreak of hostilities". This agreement by the Syrian Government is only and exclusively limited to the carrying out by this Special Representative of the mission within the scope of resolutions 237 (1967) and 2252 (ES-V). The Syrian Government wishes to make it clear that this mission shall not under any circumstances go beyond these terms of reference and that no other purposes could be pursued.'

5. Your Excellency's reply to me of 27 March 1968 contained the following:

'The Secretary-General further wishes to assure the Syrian Government that the terms of reference of the representative to be designated by him and of the mission will not in any sense go beyond the scope of the above-mentioned two resolutions and that the Secretary-General has no other purposes in mind for this mission.'

6. The solid fact, borne by Mr. Gussing's report, A/6797, dated 15 September 1967 and the Commissioner-General's report of UNRWA (Supp. No. 13 'A/6713') dated 1 July 1966-30 June 1967, is that there are 450,000 Arab refugees, inhabitants of the Arab areas occupied by Israel who were not permitted by Israel to return to their lands. These and the tragic conditions of the civilian Arab population in the Arab occupied territories by Israel, are the subject of the humanitarian resolutions.

In view of the above, I wish to state that it does not belong to the Special Representative to report on the so-called 'Jewish Communities in the Arab Countries' and that such an interpretation is totally unacceptable to my Government.

(Signed) George J. TOMEH
Ambassador
Permanent Representative"

3. On 16 May, I took up with the Permanent Representative of Syria the questions raised in his letter mentioned in the preceding paragraph. Subsequently, I received from him a further letter dated 20 May 1968, which reads as follows:

"Excellency,

Acting on instructions from my Government and in confirmation of my note to Your Excellency, No. S35 dated 2 May 1968, and with reference to our meeting in the afternoon of 16 May in your office relating to the scope of the activities of your representative, subject of your note S/8553 of 19 April 1968, I have the honour to state the following:

1. It is the understanding of my Government that the activities of the Special Representative shall only and exclusively be limited to the carrying out of his mission within the scope of resolutions 237 (1967) and 2252 (ES-V) as stated in my first reply to you of 18 March 1968.

2. It is the understanding of my Government that Your Excellency shall not give instructions to the Special Representative to look into the situation of the so-called Jewish communities in the Arab countries.

3. My Government shall not accept any questions if posed by the Special Representative about the situation of Syrian citizens of the Jewish faith in Syria.

Having thus confirmed the above-mentioned three points in order to avoid any misunderstanding about the terms of reference of your representative, I seize this opportunity to express to Your Excellency my highest consideration.

(Signed) George J. TOMEH
Ambassador
Permanent Representative"

4. On 23 May, the Permanent Representative of Israel expressed to me orally the desire of his Government that the scope of the mission of the Representative should include the treatment of Jewish communities in Iraq and Lebanon. I expressed to the Permanent Representative of Israel my surprise that this aspect of the matter should be raised at this late stage, noting particularly that it had not been

raised in connexion with the previous humanitarian mission, nor had it been specified in the original Israel note verbale accepting my suggestion. I asked the Permanent Representative to communicate this request and the reasons for it to me in writing. I also pointed out to the Permanent Representative of Israel that I was not favourably inclined towards this request for the following reasons:

(a) No such request had been made at the time of the previous humanitarian (Gussing) mission;

(b) For some time the Secretary-General had been dealing directly with the question of the treatment of the Jewish community in Iraq through the Permanent Representative of Iraq and intended to continue to do so;

(c) The Secretary-General had never before heard from any source any suggestion of a problem of this nature existing in Lebanon;

(d) It was very doubtful in the Secretary-General's view that the Security Council resolution could properly be interpreted as extending to Iraq in this regard.

5. The Permanent Representative of Israel undertook to communicate to me in writing the new position of the Government of Israel on this matter and the reasons for it. The written statement in the form of an aide-mémoire was finally handed to me on 12 June and reads as follows:

"AIDE-MEMOIRE

The Secretary-General's Special Representative
concerning Humanitarian Questions in the Middle
East Area (S/8553 of 19 April 1968)

1. It is clear from the text of the relevant Security Council and General Assembly humanitarian resolutions that they relate to the conditions of the civilian population throughout the Middle East area of conflict, and not only in Israel-held territories. Thus, the scope of Mr. Nils Gussing's mission in July-August 1967 included the condition of the Jewish minorities in Arab States in the area. Mr. Gussing himself requested clarification on this point from the Secretary-General, and stated in his report afterwards that:

'The Secretary-General informed him that the provisions of Security Council resolution 237 (1967) might properly be interpreted as having application to the treatment, at the time of the recent war and as a result of that war, of both Arab and Jewish persons in the States which are directly concerned because of their participation in that war.'

Mr. Gussing's unsuccessful attempts to discharge this aspect of his mission are referred to in section 5 of his report.

In the reply of the Permanent Representative of Israel, dated 18 April 1968, to the Secretary-General's note of 26 February 1968, it is stated that:

'the Government of Israel has taken note of the Secretary-General's assurance that his Representative will, inter alia, look into and report to the Secretary-General on the situation of the Jewish communities in the Arab countries situated in the area of conflict, who were affected in the wake of the June 1967 hostilities.'

It is regretted that the further note by the Secretary-General, dated 19 April 1968, refers to this passage in a non-committal manner.

2. In the opinion of the Israel Government, the aspect of the Special Representative's proposed mission relating to the condition of these Jewish communities, has not been satisfactorily confirmed or adequately clarified. In this regard, the Permanent Representative wishes to draw attention to the following circumstances:

(a) United Arab Republic. In paragraph 218 of his report (A/6797), Mr. Gussing stated that 'the United Arab Republic Government expressed the firm opinion that the Security Council resolution did not apply to the Jewish minority in the United Arab Republic...'. It was further maintained that Jews of Egyptian nationality were solely the responsibility of the United Arab Republic Government. It is stated that the Secretary-General also took up this question with the Permanent Representative of the United Arab Republic in New York, 'and received essentially the same response'. The Government of Israel wishes to be informed whether the United Arab Republic Government continues to maintain this negative position, or whether it is willing to give the Secretary-General's Special Representative full facilities to ascertain the facts about the treatment of Jews in Egypt during and since the hostilities.

(b) Syria. From Mr. Gussing's report (paras. 221-222) it appears that he was given no proper opportunity of finding out for himself the real situation of the Jewish community in Syria.

On 9 May 1968 the Permanent Representative of Israel was informed by the Secretary-General that a letter had been received by him from the Permanent Representative of Syria, maintaining that an inquiry into the situation of the Jews in the Arab countries would be outside the scope of the two United Nations resolutions, and outside the competence of the Secretary-General's Special Representative.

Here again, the Government of Israel requests a definite assurance that the Syrian Government will accept the competence of the Special Representative to deal with this question, and will give him all the facilities required to do so effectively.

(c) Iraq. The Secretary-General's note of 28 February 1968 to the Governments of Jordan, Syria and the United Arab Republic, was not addressed to the Government of Iraq as well. There can be no question about Iraq being one of 'the States which are directly concerned because of their participation in the war'.

On 4 June 1967, Iraq signed a military pact with the United Arab Republic and undertook to provide armed forces for the Jordanian and Egyptian fronts in the impending war with Israel. An Iraqi expeditionary force of more than divisional strength, including two armoured brigades, advanced into Jordan. Its objective was to invade and occupy part of the Israel coastal plain, thereby cutting the State in two. The hostilities terminated before this force was able to be deployed on the West Bank, but units from it were involved in the Jordan Valley fighting on 7 June. Iraq air force units also took part in the fighting on the Jordan front. On 6 June, an Iraqi Topolev 16 plane bombed the Israel coastal town of Natanya and was shot down on its way back.

In response to the Security Council's cease-fire resolutions, the Permanent Representative of Iraq to the United Nations informed the Secretary-General on 15 June 1967 that '... the position of the Iraqi Government with regard to the cease-fire is that the Iraqi forces are under the joint command in Jordan which has already declared its position...' (S/7990). Iraqi forces to this day remain stationed east of the Jordan River, ostensibly under Jordanian command. From that position they openly provide assistance in various forms to terrorist groups infiltrating across the cease-fire lines. It is evident, therefore, that Iraq is one of the Middle East Arab States that has participated actively in the war. As regards United Nations concern for the conditions of the civilian population in the area of conflict, there is no difference in principle between Iraq and any other Arab State concerned. It would be unjustified and inequitable to exclude the Jewish community of Iraq from the scope of such concern.

This is not just a matter of principle or of legal interpretation, but of violation of human rights. The relevant facts appear from the letter from the Permanent Representative to the Secretary-General of 31 May 1968 (S/8607, A/7102).

(d) Lebanon. Although Lebanon did not fully participate in the fighting serious concern is felt at present about the situation of the Jewish community there. There is no logical reason why Lebanon should be excluded from the scope of the Special Representative's mission.

(e) The Teheran Resolution. The proposed mission has been complicated by the resolution concerning Israel-occupied territories, adopted at the International Conference on Human Rights at Teheran. This resolution has been circulated as a United Nations document, and reference to it has been incorporated in a resolution adopted at the current ECOSOC session in New York.

As was pointed out at the Teheran Conference by the Chairman of the Israel delegation, the resolution adopted there was incompatible with the General Assembly and Security Council 'humanitarian' resolutions, and with the proposed fact-finding by a Special Representative of the Secretary-General. The Teheran resolution constituted a prejudgement of the results of the fact-finding mission; it limited the area of concern to Israel-held territories only; and it encroached upon the responsibility placed upon the Secretary-General, by requesting an enquiry committee to be appointed by the General Assembly, as well as requesting the Human Rights Commission to keep the matter under its constant review. In the opinion of the Israel Government, the Teheran resolution and its exploitation in other United Nations organs, has gravely prejudiced and undermined the proposed fact-finding mission, and brought into question the exercise by the Secretary-General of the responsibility devolving upon him under the United Nations resolutions.

3. The Government of Israel suggests that before a final decision is taken on the dispatch of the Special Representative, the questions raised in this aide-mémoire be clarified in an appropriate manner, since they have a direct bearing on the scope and conduct of his mission."

6. On 18 June, I replied to the aide-mémoire in the following letter:

"Dear Mr. Ambassador,

I refer to your aide-mémoire on 'The Secretary-General's Special Representative concerning Humanitarian Questions in the Middle East Area (doc. S/8553 of 19 April 1968)' which you handed to me on 12 June 1968.

Your aide-mémoire, I observe, covers essentially the same points and views which you expressed to me orally at our meeting on 23 May 1968, at which time I requested that your Government's position be presented to me in writing. The questions which have been raised and the clarifications sought in your aide-mémoire have been carefully noted by me. Although I can well understand your Government's desire that matters with which it is particularly concerned will be fully covered by the mission of my representative, I feel obliged to say that the points you set forth have been, in my view, dealt with adequately for the purpose involved in my two notes to your Government of 26 February and 19 April 1968 and in my several discussions with you on the proposed mission. In the course of these talks, I have sought to make it clear to you that the projected second humanitarian mission will have the same scope and terms of reference as did the first such mission, which was headed by Mr. Nils Gussing. I have invited only a general approval of the Governments directly concerned with this new mission and deliberately have not undertaken to negotiate a formal agreement which would spell out in considerable detail every aspect of the mission. In this connexion, may I point out to you that with regard to the first mission, there was no written exchange at all between the parties and the Secretary-General.

I can only again express my regret that the request for an expansion of the scope and terms of reference of the new mission to cover the treatment of the Jewish communities in Iraq and Lebanon should be raised at all in the context of this mission, and particularly at such a late stage. As you are already aware, I do not find acceptable the proposed extension of the scope of the mission for the following reasons:

(a) no such request was made at the time of the establishment of previous humanitarian (Gussing) mission;

(b) as you know, I, as Secretary-General, for quite some time have been dealing directly with the question of the treatment of the Jewish community in Iraq through the Permanent Representative of Iraq and intend to continue to do so;

(c) it is my view that the provisions of the Security Council resolution in question cannot properly be regarded as extending to the treatment of the Jewish community in Iraq for reasons of legal interpretation which I do not think it necessary to expound at length in this letter;

(d) the same legal consideration put forward in sub-paragraph (c) above applies to Lebanon;

(e) moreover, I have not heard from any source that a problem exists concerning the treatment of the Jewish community in Lebanon and I therefore see no reasonable basis for including Lebanon in the scope of the mission and thereby instructing it to concern itself with a problem for the existence of which I have no evidence.

You may be sure of my continuing concern about the treatment of Jewish people in some parts of the area, for you have seen evidence of it, as well as for the treatment of Arab people in the occupied areas, who are, of course, far more numerous.

I am convinced that there is a satisfactory basis on which this mission could proceed, if the parties are willing to extend to it their acceptance and co-operation. It is certainly in the interests of the people with which the mission will be concerned and of the United Nations that it be permitted to operate without further delay. I trust, therefore, that your Government will now confirm that the mission should begin its work at a very early date.

(Signed) U THANT
Secretary-General"

7. On 26 June, the Permanent Representative of Israel handed to me the following reply to my letter of 18 June:

"Dear Mr. Secretary-General,

Thank you for your letter of 18 June 1968 regarding the Secretary-General's Special Representative concerning Humanitarian Questions in the Middle East Area.

I take note of the statement that 'the projected second humanitarian mission will have the same scope and terms of reference as did the first such mission which was headed by Mr. Nils Gussing.' However, as will be recalled, the attitude of the Arab Governments prevented Mr. Gussing from successfully discharging his mission in respect of the situation of the Jewish communities in the Arab countries in the area of conflict.

In view of this, the Government of Israel deems it necessary to clarify this aspect of the proposed mission and ascertain that the Arab Governments will this time enable the Special Representative to look into and report on the treatment of the Jewish communities as fully as he will look into and report on the situation of Arab inhabitants in the area.

The fact that the Jewish communities concerned happen to be less numerous than the Arab, does not, of course, affect their human rights nor the international duty to preserve these rights. This is particularly true at present when Jews in Arab States, unlike Arab inhabitants in areas under Israel control, are forcibly denied freedom of movement, many of them remain detained in concentration camps or ghettos, or are subjected to discriminatory legislation.

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With regard to the inclusion of Lebanon and Iraq in the scope of the mission, both are clearly 'States which are directly concerned because of their participation in the war'. The deterioration of the situation of the Jewish communities in these countries has been brought to your attention in our conversations, in the aide-mémoire submitted by me on 12 June 1968 and, as far as Iraq is concerned, in my letters to you of 31 May 1968 (S/8607, A/7102) and 25 June 1968 (S/8653, A/7114). Moreover, the situation of Jews in all the Arab States including Iraq and Lebanon was raised in our conversations with Mr. Gussing. This was done by me during Mr. Gussing's first conversation in Israel on 23 July 1967. A background paper referring inter alia to the treatment of Jews in Iraq and Lebanon was submitted to Mr. Gussing on 24 July 1967.

Your own efforts to deal directly with the question of the treatment of the Jewish community in Iraq through the Permanent Representative of Iraq are appreciated. However, there has been no change of policy in this matter on the part of the Iraqi Government. On the contrary, the letter addressed to you on 3 June 1968 by the Permanent Representative of Iraq (S/8610, A/7104) indicates that no such change is envisaged. In any event, the grave situation of the Jewish community in Iraq justifies and necessitates an on-the-spot fact-finding investigation.

It is regrettable that, as stated in the Secretary-General's report of 15 September 1967 (A/6797, S/8158), with reference to the situation of Jewish minorities in Arab States, 'Since this particular aspect of the protection of civilian persons in time of war could be taken up only towards the end of his stay in the area of conflict, the Special Representative had very little time for discussion or investigation of the actual situation of minorities.'

The Government of Israel considers it essential that the proposed mission be organized in a manner that would avoid such difficulties in the 'investigation of the actual situation of minorities'.

I should like to reiterate also my Government's desire to clarify in an appropriate manner the complication of the proposed mission by the resolution concerning human rights in Israel-controlled territories, adopted at the International Conference on Human Rights at Teheran.

(Signed) Yosef TEKOAH
Permanent Representative of Israel
to the United Nations"

8. On 27 June, I addressed another letter to the Permanent Representative of Israel, as follows:

"Dear Mr. Ambassador,

I acknowledge receipt of your letter of 26 June 1968. The points set forth therein have been carefully noted by me.

It had been my hope that in the light of my letter to you of 18 June, having in mind particularly the serious humanitarian considerations involved, your Government would find it possible to acquiesce in my view that the mission should start its work without further delay. In view of all the circumstances involved, there would seem to be nothing really helpful that I can add to what was stated in my last letter to you, beyond assuring you and your Government that I will do all that I can to ensure that the new mission would be guided by and would carry out faithfully the purposes set forth in Security Council resolution 237 (1967) of 14 June 1967 and General Assembly resolution 2252 (ES-V) of 4 July 1967. I can do no more than this. It is manifestly impossible to give firm assurances to the parties concerned that all of their wishes with regard to a mission of the kind envisaged will be carried out to their full satisfaction. In any case, the ultimate effectiveness and success of the mission, clearly, will depend upon the measure of co-operation it will enjoy in its relations with the Governments directly concerned.

Many enquiries are being made of me about the status of the projected mission and I cannot much longer delay a further report to the Security Council about it and its prospects. I now find it necessary, therefore, to ascertain whether the questions raised in your letter to me of 26 June are to be taken as setting conditions in the sense that answers to them which would be considered satisfactory by your Government, must be forthcoming from me before the new mission can start on its work with the indispensable assurance that it will have access to the territories now occupied by Israel military forces. I would very much appreciate a prompt clarification from you on this basic point.

Permit me to observe in passing that the projected mission, which would operate under the resolutions cited above would not, broadly speaking, be concerned with minority groups in the area. Indeed, the Arab people in the area constitute not a minority but virtually the total population of the territories under military occupation. The Jewish communities in the Arab States are, of course, minority groups on a religious basis but it is a factor of importance that the members of these communities for the most part are, in fact, citizens of the Arab States in which they reside.

As to your reference to the resolution adopted at the International Conference on Human Rights at Teheran, I need say only that I see no immediate relevance to the proposed humanitarian mission and no complication arising from it in view of the fact that the General Assembly has not yet considered the request of the Teheran Conference in this matter.

(Signed) U THANT
Secretary-General"

9. The following reply to my letter of 27 June was received from the Permanent Representative of Israel under date of 8 July:

"Dear Mr. Secretary-General,

Thank you for your letter of 27 June 1968.

I fully understand that enquiries are being made of you about the status of the mission and its prospects. Indeed many such enquiries have also been made of the Government of Israel. My Government is constantly and urgently asked in Parliament and elsewhere whether the mission will be permitted by the Arab Governments to look into the tragic plight of the Jewish communities against whom cruel measures have been taken as a result of the hostilities.

As you point out in your letter, 'the ultimate effectiveness and success of the mission, clearly, will depend upon the measure of co-operation it will enjoy in its relations with the Governments directly concerned'. You have informed me that the new representative will have the same terms of reference as Mr. Gussing had last year. It is not disputed that this aspect of Mr. Gussing's mission was frustrated. He sought unsuccessfully to look into the situation of the Jewish communities in certain Arab countries that had been involved in the hostilities. To the best of our knowledge, you have not received assurances from any Arab Government that it will now co-operate in this respect. On the contrary, both Syria and Iraq have already indicated their refusal to do so.

The situation of these Jewish minorities in the wake of the hostilities is grave. It would be wrong for any ambiguity to prevail about whether the proposed mission will be allowed to deal with their plight at all. We are convinced that in these circumstances a sustained and purposeful effort to obtain assurances on this matter from the Arab States is essential. It is dictated by elementary international principles as well as by the specific terms of the mission as correctly interpreted by you when Ambassador Gussing carried out his task. I would again recall that you then defined the mission as applying to 'The treatment, at the time of the recent war and as a result of that war of both Arab and Jewish persons in the States which are directly concerned because of their participation in that war.'

In recording Mr. Gussing's unsuccessful attempt to investigate the situation of the Jewish communities in Arab States, your report of 15 September 1967 (S/8158, A/6797), refers to them as minorities. Surely it cannot be suggested that because they are only minorities, less concern

should be felt for them. Whatever the numbers, ethnic origin, religion and citizenship of these groups, their human rights deserve precisely the same respect and international concern as the human rights of any other group affected by the hostilities.

Because they are Jews, they are being punished for the failure of the Arab States to bring about Israel's downfall last summer. The Government and people of Israel cannot be indifferent to the treatment meted out to the helpless Jews in the surrounding Arab countries. Indeed their situation is particularly acute. The essential difference between their situation and that of the Arab inhabitants of Israel-held areas is that these areas have a decent and human regime, open to public scrutiny, while the Jews of Arab lands suffer their torment in darkness. The Arab inhabitants concerned are able to express themselves freely, and to criticize the Israel authorities if they wish. Many diplomatic representatives of states, officials of international organizations, press correspondents and visitors of all sorts, come and go in the Israel-held areas all the time. They are able to talk to whom they choose and form their own impressions. Israel has nothing to conceal regarding its record in administering these territories. It has readily agreed to receive and co-operate with the fact-finding mission proposed by the Secretary-General, as it did with Mr. Gussing's mission.

If the Arab Governments in the area of conflict have nothing to conceal regarding the treatment of their Jewish minorities, one would expect them also to permit free and open access and enquiry, and in particular a willingness to co-operate with the Secretary-General's fact-finding mission. It is quite apparent that that is not the case. The sensitivity of these Governments on the subject, the secrecy with which they surround it, and their refusal to submit it to independent scrutiny, confirm the need to insist on such scrutiny. It would be morally unjustified to acquiesce in the humanitarian objective of relevant United Nations resolutions being fulfilled on the Israel side of the cease-fire lines, and frustrated elsewhere in the area.

For reasons of historic solidarity and in the light of tragic memory, the Government of Israel cannot reasonably be asked to proclaim virtual indifference to the plight of these people. Nor in our view can the United Nations be compelled to endorse the discriminatory doctrine that a humanitarian mission can only be fulfilled in favour of those who are not Jews.

We shall await with much expectation the results of your continuing efforts on these questions with all the Arab States in the area of conflict in

which Jews have been subjected since last June to measures of discrimination and oppression. Israel-administered areas are and will remain open to the scrutiny and comment of world public opinion.

(Signed) Yosef TEKOAH
Permanent Representative of Israel
to the United Nations"

10. I responded to the letter of 8 July by my letter to the Permanent Representative of Israel of 15 July 1968 and on the same date addressed new notes on the matter of the second mission to the Permanent Representatives of Jordan, Syria and the United Arab Republic. The letter to Israel was as follows:

"Dear Mr. Ambassador,

I acknowledge receipt of your letter of 8 July, which I have noted carefully.

You will recall that in my letter to you of 27 June I found it necessary 'to ascertain whether the questions raised in your letter to me of 2 June are to be taken as setting conditions in the sense that answers to them which would be considered satisfactory by your Government, must be forthcoming from me before the new mission can start on its work with the indispensable assurance that it will have access to the territories now occupied by Israel military forces'.

It is noted that in this latest letter, as in your note of 18 April, your Government has 'readily agreed to receive and cooperate with the fact-finding mission proposed by the Secretary-General, as it did with Mr. Gussing's mission'. In view of the two paragraphs immediately following the above quoted sentence, however, there would seem to be no basis at this time on which I could instruct the mission to undertake its work. In other words, in the light of the reply itself and your oral discussion of it, I see no alternative but to conclude that the answer to my query of 27 June is affirmative, that is to say that the points which had been raised by you are to be taken as conditions which must be met if the proposed mission is to be able to proceed and to have the necessary access to the areas with which it is concerned. Should this be an incorrect conclusion, I am sure that you will promptly advise me to that effect in order that the mission may be quickly dispatched.

There is apparently nothing more that I can do at this time to bring this mission into being. This, in my view, is most regrettable, for I believe that there has been a reasonable enough basis for the mission to be activated, and certainly this mission could meet a vital need. In this regard, I can only reiterate my conviction that the projected mission, even with terms of reference that may be considered by some to be imprecise and inadequate, could function effectively, do much good, and serve all interests.

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I have communicated the substance of your Government's position to the Governments of Jordan, Syria and the United Arab Republic, through their Permanent Representatives to the United Nations. I should also advise you that it is my intention to submit in the near future a report to the Security Council and the General Assembly which would cover the developments with regard to the projected mission subsequent to the submission of my last report (S/8553, A/7085).

At this stage, I wish to assure your Government once again of my deep concern about the situation of the Jewish communities in the Arab States as well as of the situation of the Arab inhabitants in the areas now under Israel military occupation. It is necessary to emphasize, however, that the extent to which the proposed humanitarian mission can become involved with the question of Jewish communities is controlled by the relevant resolutions. In fact, in defining the scope and mandate of the first (Gussing) mission I went as far as the resolutions of the Security Council and the General Assembly would permit. Indeed, as indicated in my report on the Gussing mission (S/8158, A/6797, p. 59) it was only by a broad humanitarian interpretation that it was possible to stretch the terms of the resolutions to include 'humanitarian enquiries' concerning Jewish persons in Syria and the United Arab Republic as ancillary to the investigation of the condition and treatment of inhabitants in occupied territories. In my correspondence with you on the question of the second mission, I have sought to avoid legal analysis and interpretation and I consider it inappropriate to include any extended discussion of such aspects in the body of this letter. For your

information, however, I attach a brief legal analysis of the application of the relevant resolutions, which I believe to be entirely sound.

In closing, may I say that I do not regard the Gussing mission as having been 'unsuccessful' or as having failed with respect to any aspect of its proper concern within the resolutions, although I readily concede that it did not, and realistically could not have been expected to, give full satisfaction to the desires of any of the parties concerned.

(Signed) U THANT
Secretary-General"

"(Enclosure)

Brief legal analysis

1. Under a strictly legal interpretation of Security Council resolution 237 (1967) of 14 June 1967 and General Assembly resolution 2252 (ES-V) of 4 July 1967 it is clear that they do not apply to minorities in the territories of even those States most directly concerned. Operative paragraph 1 of Security Council resolution 237 (1967) calls upon Israel to ensure the safety, welfare and security of the inhabitants of the areas where military operations have taken place. This paragraph applies without question

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to the area occupied by Israel since June 1967. Strictly interpreted it would not, however, apply to Arabs in, for example, Nazareth or Haifa, and of course could not apply to Jewish persons in Arab States since paragraph 1 is addressed solely to Israel.

2. Likewise operative paragraph 2 strictly interpreted could not apply either to Arab persons in Israel or to Jewish persons in the Arab States. The provisions of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949 at present have application only to civilians in the occupied territories. Article 4 of the Convention provides, inter alia, that 'Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or occupying Power of which they are not nationals.' Part II of the Convention (articles 13-26) is excepted from this rule and its provisions 'cover the whole of the populations of the countries in conflict, without any adverse distinction based, in particular, on race, nationality, religion or political opinion.' However, these articles relate to such matters as hospital, safety and neutralized zones, protection for the wounded and sick, the infirm, the aged and the very young, and assistance to families dispersed by the war. They are designed to alleviate suffering caused by the actual fighting and do not appear to be substantively relevant to the present question.

3. Moreover, article 6 of the Convention provides that 'In the territory of Parties to the conflict, the application of the present Convention shall cease on the general close of military operations. In the case of occupied territory, the application of the present Convention shall cease one year after the general close of military operations; however, the occupying Power shall be bound, for the duration of the occupation, to the extent that such Power exercises the functions of government in such territory, by the provisions of the following articles of the present Convention: 1 to 12, 27, 29 to 34, 47, 49, 51, 52, 53, 59, 61 to 77, 143.' These articles which continue to apply contain in fact all the important provisions applicable to inhabitants of occupied territories after the general close of military operations. Thus, paragraph 2, continues to be applicable in occupied areas, but strictly interpreted has no application outside of such areas.

4. It was only on a broad and humanitarian interpretation, which admittedly was tenuous, that the Gussing Mission was enabled to inquire into the question of the Jewish minorities in Syria and the United Arab Republic. There is no legal basis on which this precedent could be extended to Iraq and Lebanon or any other Arab State whose territories lie outside the areas where military operations have taken place and with respect to which the Special Representative would have no primary mission under the terms of operative paragraph 1 and 2 of Security Council resolution 237 (1967).

5. Unquestionably, however, both operative paragraph 1 and operative paragraph 2 of Security Council resolution 237 (1967), as well as General Assembly resolution 2252 (ES-V), apply to the areas occupied by Israel since June 1967, and the Secretary-General is under an obligation to follow their effective implementation and to report thereon to the Security Council and the General Assembly."

11. The notes to the three Arab representatives were identical and were as follows:

"The Secretary-General of the United Nations presents his compliments to the Permanent Representative of _____ to the United Nations and has the honour to refer to his previous correspondence with the Permanent Representative concerning a proposed second mission to the Middle East on humanitarian questions (reference the Secretary-General's notes to the Permanent Representative of 28 February and 27 March 1968) and to his report to the Security Council and to the General Assembly on this subject (S/8553, A/7085).

Since the circulation of the above-mentioned report, the Secretary-General has had further correspondence on the subject with the Government of Israel through its Permanent Representative to the United Nations. These communications from Israel have given consistent emphasis to the position of that Government that the scope and terms of reference of the proposed second humanitarian mission should specifically make it possible for it 'to look into the situation of the Jewish communities in certain Arab countries that had been involved in the hostilities'.

The Secretary-General has pointed out that, necessarily, the scope and terms of reference of the mission are controlled by the provisions and intent of the resolutions on which it is based. He has also stated that his intention is to give to the proposed second humanitarian mission the same scope and mandate as was applied to the first (Gussing) mission.

In a letter to the Secretary-General of 26 June 1968, the Permanent Representative of Israel stated that his Government wished 'to ascertain that the Arab Governments will this time enable the Special Representative to look into and report on the treatment of the Jewish communities as fully as he will look into and report on the situation of Arab inhabitants in the area'. In responding to the foregoing, in his letter of 27 June 1968 to the Permanent Representative of Israel, the Secretary-General stated that he found it necessary to be advised by the Government of Israel whether the position being taken on the matter of the Jewish communities in the Arab States, including Lebanon and Iraq, was in fact a condition to be met before the proposed mission could have access to the Arab inhabitants in areas now under Israel military occupation.

A reply to his query, which the Secretary-General interprets as confirming that this is in effect a condition, was received in the Permanent Representative of Israel's letter of 8 July 1968. That letter includes inter alia the following passages:

'... [Israel] has readily agreed to receive and co-operate with the fact-finding mission proposed by the Secretary-General, as it did with Mr. Gussing's mission.

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If the Arab Governments in the area of conflict have nothing to conceal regarding the treatment of their Jewish minorities, one would expect them also to permit free and open access and enquiry, and in particular a willingness to co-operate with the Secretary-General's fact-finding mission. It is quite apparent that that is not the case. The sensitivity of these Governments on the subject, the secrecy with which they surround it, and their refusal to submit it to independent scrutiny, confirm the need to insist on such scrutiny. It would be morally unjustified to acquiesce in the humanitarian objective of relevant United Nations resolutions being fulfilled on the Israel side of the cease-fire lines, and frustrated elsewhere in the area.

For reasons of historic solidarity and in the light of tragic memory, the Government of Israel cannot reasonably be asked to proclaim virtual indifference to the plight of these people. Nor in our view can the United Nations be compelled to endorse the discriminatory doctrine that a humanitarian mission can only be fulfilled in favour of those who are not Jews.¹

In view of the clear implications for the projected second humanitarian mission of the position taken by the Government of Israel as described above, the Secretary-General feels obliged to call this position to the attention of the Government of _____. The Secretary-General will, of course, take careful note of any views and comments which the Government of _____ may see fit to communicate to him on this matter.

The Secretary-General advises that it is his intention to circulate shortly a further report to the Security Council and the General Assembly concerning the second humanitarian mission, covering all developments relating to it since the issuance of the previous report.

Similar notes have been addressed to the Permanent Representatives of _____ and _____.²

12. It will be noted that a brief legal analysis concerning the application and scope of the relevant General Assembly and Security Council resolutions was attached to my letter of 15 July 1968 to the Permanent Representative of Israel. This was done reluctantly and only when it became necessary to do so. For, throughout my consultations with the interested parties concerning both the first and the projected second humanitarian missions, I have sought to avoid legal interpretations and their entanglements, in the interest of expediting the humanitarian work of the mission. However, the legal position, as set forth in the memorandum referred to, was known to me from the beginning of the discussions since, as a matter of routine, in discharging any responsibilities given to me in the implementation of any

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resolution adopted by an organ of the United Nations I seek legal interpretation and guidance. It will be noted that in this correspondence, I have consistently emphasized that the second humanitarian mission would have the same terms of reference and general scope as the first (Gussing) mission.

13. Notes from the Permanent Representative of Syria and the Chargé d'affaires of Jordan in response to my note of 15 July were received on 23 July. A note from the Deputy Permanent Representative of the United Arab Republic was received on 25 July 1968. The texts of these three notes were as follows:

"The Permanent Representative of Syria to the United Nations presents his compliments to the Secretary-General and has the honour to refer to the Secretary-General's note dated July 15, 1968 concerning the proposed second mission to 'the areas where military operations have taken place', in implementation of the humanitarian resolutions 237 (1967) adopted by the Security Council on June 14, 1967 and to the General Assembly resolution 2252 (ES-V) adopted on July 4, 1967, both of which request the Secretary-General to follow the effective implementation of the two resolutions and to report thereon to the Security Council and the General Assembly.

Upon instructions from his government, the Permanent Representative of Syria has the honour to confirm the stand taken by the Government of the Syrian Arab Republic on this issue, namely, to welcome the special representative of the Secretary-General whose terms of reference have been clearly indicated in the two above mentioned resolutions. The Security Council resolution in question as well as the General Assembly, specifically call 'upon the Government of Israel "to ensure the safety, welfare and security of the inhabitants of the areas where military operations have taken place and to facilitate the return of those inhabitants who have fled the areas since the outbreak of hostilities"'. .

The obstacles and arbitrary demands which so far have been placed by the Israeli Government to this second proposed mission which were considered by the Secretary-General in his note of July 15, 1968 as a condition by the Israeli Government, have no other purpose in mind but to perpetuate the tragedy of the almost half million Arab inhabitants expelled by the Israeli occupying authorities and to continue the persecution and inhuman treatment of the civilian population under their rule in Arab occupied territories.

It is the earnest hope of the Syrian Government that the Secretary-General, who has been entrusted by the Security Council and the General Assembly with the implementation of these two humanitarian resolutions, involving the fate and life of these Arab innocent victims of the aggressive Israeli war, would see to it that these two resolutions are effectively and fully implemented."

"The Charge d'Affaires of the Hashemite Kingdom of Jordan to the United Nations presents his compliments to the Secretary-General and has the honour to refer to the Secretary-General's note dated 15 July 1968 concerning the proposed second mission to 'the area where military operations have taken place', in implementation of the humanitarian resolutions 237 (1967) adopted by the Security Council on 14 June 1967 and to the General Assembly resolution 2252 (ES-V) adopted on 4 July 1967, both of which request the Secretary-General to follow the effective implementation of the two resolutions and to report thereon to the Security Council and the General Assembly.

Upon instructions from his Government, the Charge d'Affaires of the Hashemite Kingdom of Jordan has the honour to confirm the stand taken by the Government of Jordan on this issue, namely, to welcome the special representative of the Secretary-General whose terms of reference have been clearly indicated in the two above mentioned resolutions. The Security Council resolution in question as well as the General Assembly, specifically call 'upon the Government of Israel "to ensure the safety, welfare and security of the inhabitants of the areas where military operations have taken place and to facilitate the return of those inhabitants who have fled the areas since the outbreak of hostilities"'. .

The obstacles and arbitrary demands which so far have been placed by the Israeli Government to this second proposed mission which were considered by the Secretary-General in his note of 15 July 1968 as a condition by the Israeli Government have no other purpose but to perpetuate the tragedy of the almost half a million Arab inhabitants expelled by the Israeli occupying authorities and to continue the persecution and inhuman treatment of the civilian population under their rule in Arab occupied territories.

It is the earnest hope of the Jordan Government that the Secretary-General, who has been entrusted by the Security Council and the General Assembly with the implementation of these two humanitarian resolutions, involving the fate and life of those Arab innocent victims of the aggressive Israeli war, would see to it that these two resolutions are effectively and fully implemented."

"The Deputy Permanent Representative, Charge d'Affaires a.i. of the United Arab Republic to the United Nations presents his compliments to the Secretary-General and has the honour to refer to the Secretary-General's note dated July 15, 1968 concerning the proposed second mission to 'the areas where military operations have taken place', in implementation of the humanitarian resolutions 237 (1967) adopted by the Security Council on June 14, 1967 and to the General Assembly resolution 2252 (ES-V) adopted on July 4, 1967, both of which request the Secretary-General to follow the effective implementation of the two resolutions and to report thereon to the Security Council and the General Assembly.

Upon instructions from his government, the Deputy Permanent Representative, Charge d'Affaires a.i., of the United Arab Republic has the

honour to confirm the stand taken by the Government of the United Arab Republic on this issue, namely, to welcome the special representative of the Secretary-General whose terms of reference have been clearly indicated in the two above mentioned resolutions. The Security Council resolution in question as well as the General Assembly, specifically call 'upon the Government of Israel "to ensure the safety, welfare and security of the inhabitants of the areas where military operations have taken place and to facilitate the return of those inhabitants who have fled the areas since the outbreak of hostilities"'. .

The obstacles and arbitrary demands which so far have been placed by the Israeli Government to this second proposed mission which were considered by the Secretary-General in his note of July 15, 1968 as a condition by the Israeli Government, have no other purpose in mind but to perpetuate the tragedy of the almost half million Arab inhabitants expelled by the Israeli occupying authorities and to continue the persecution and inhuman treatment of the civilian population under their rule in Arab occupied territories.

It is the earnest hope of the United Arab Republic Government that the Secretary-General, who has been entrusted by the Security Council and the General Assembly with the implementation of these two humanitarian resolutions, involving the fate and life of these Arab innocent victims of the aggressive Israeli war, would see to it that these two resolutions are effectively and fully implemented."

14. On 30 July, I received from the Permanent Representative of Israel a letter dated 29 July 1968, transmitting a reply to my letter of 15 July, from the Minister for Foreign Affairs of Israel. That reply also was dated 29 July 1968. These two letters are as follows:

"Dear Mr. Secretary-General,

I have the honour to refer to your letter of 15 July 1968 regarding the proposed mission on humanitarian questions in the Middle East area, and to transmit the enclosed reply from the Minister for Foreign Affairs of Israel.

(Signed) Yosef TEKOAH
Permanent Representative of Israel
to the United Nations"

"Excellency,

I have the honour to refer to your letter of 15 July concerning your proposed mission to the Middle East area.

The position of my Government in this matter cannot accurately be taken as imposing 'conditions'. It is the Arab Governments who are imposing conditions. We have never objected to your special representative carrying out his mission in Israel-held territory. We co-operated with Mr. Gussing's mission. We ask only that the mission should have an equal opportunity to investigate the situation of Jewish communities cruelly persecuted in the Arab countries since the recent conflict. This is clearly within the scope of the relevant resolutions, as was confirmed by you in connexion with the Gussing mission. I am at a loss to understand why this should cause any difficulty. In the light of our generation's history the United Nations cannot in all conscience appear to embrace the doctrine that the problems and hardships of communities and individuals are of international concern unless the communities and individuals are Jewish.

It is, therefore, the unwillingness of the Arab Governments to co-operate in this respect that is delaying the mission. They have sought to impose the unjustified restriction that the mission should confine itself entirely to Israel-held territories, and should turn a blind eye to the plight of the Jewish communities which have suffered and are suffering as a result of the conflict. Our position is not only that the Israel Government should not acquiesce in the discrimination, but that the Secretary-General of the United Nations should be obdurate, constant, austere and even indignant in his refusal to acquiesce in it.

If there is no basis at this time on which you could instruct the mission to undertake its work then this is solely because the Arab Governments insist that the mission be based on anti-Jewish discrimination.

You attach to your letter, for our information, a brief legal analysis, presumably prepared in the legal department of the Secretariat. This analysis is open to severe criticism both in its specific arguments and in its basic approach. I would make, inter alia, the following observations on it.

(A) The legal analysis makes disturbingly selective references to paragraphs of Security Council resolution 237 (1967), but surely the resolution must be taken as a whole, and in the light of the broad humanitarian considerations which motivated it. Hostilities in the Middle East had been terminated by a cease-fire only a few days previously. The Security Council, like the General Assembly shortly afterwards, wished to

express its general concern for civilian suffering in the region, without knowing what particular groups should be the objects of their concern. Operative paragraph 1 refers to the areas held by Israel. However, other provisions in the same resolutions, such as the preamble and operative paragraph 2, make plain that international concern extended over the Middle East region as a whole. It is far-fetched to suggest that in adopting resolutions of this kind, the United Nations intended to exclude particular communities from their scope, simply because they are minorities, or nationals of the countries where they are ill-treated or outside occupied areas. Such a narrow, restrictive and legalistic interpretation violates the letter and spirit of the resolutions themselves. It is an untenable interpretation which contradicts the humanitarian impulses of the principal organs concerned.

Surely one cannot ignore the circumstances under which the United Nations itself came into being, and the most fundamental aspect of its Charter: the opening words of the Charter are that the peoples of the United Nations are determined 'to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold suffering to mankind...'. Article 1 includes among the purposes of the United Nations, 'Promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion'. The 1967 Middle East war brought sorrow and suffering to the civilian populations on both sides of the battle lines. In the spirit of the Charter's provisions, the Security Council and the General Assembly sought 'to spare the civilian populations in the Middle East additional sufferings', and to protect their 'essential and inalienable human rights'. How can the term 'civilian populations in the Middle East' possibly be held to refer to one sector of those populations alone? These words are taken from the preamble of the resolutions themselves and are essential to their understanding. Yet the Secretariat's legal analysis makes no mention of them.

Moreover, you instructed Mr. Gussing that 'the provisions of United Nations resolution 237 (1967) might properly be interpreted as having application to the treatment, at the time, of the recent war and as a result of that war, of both Arab and Jewish persons in the States which are directly concerned because of their participation in that war' (document A/6797, para. 212). That interpretation explicitly and correctly expresses the language and purpose of the resolutions. If the Arab States directly concerned, because of their participation in the war, would act in accordance with the authoritative interpretation you gave Mr. Gussing, there would be no further problem about the proposed mission. This instruction by you is the centre and crux of the problem.

Against this background, it is a matter for surprise and regret that the Secretariat's legal analysis should now seek to disengage itself from your own firm and published opinion of last year. In my Government's view

that opinion remains valid, and should form the basis for the fact-finding mission now proposed. There is nothing 'tenuous' about a humanitarian and juridical declaration by the Secretary-General of the United Nations.

(B) The legal analysis maintains that the second operative paragraph of the Security Council resolution, although it is addressed to all the Governments concerned, should not be regarded as applying to either the Jewish minorities in Arab countries or the Arab minority in Israel. This assertion purports to rely on the provisions of the Fourth Geneva Convention. On this question too, the legal analysis is unduly restrictive.

The United Nations resolutions are not here concerned with applying the technical details of the Convention, but with ensuring respect for its 'humanitarian principles'. The obligation to ensure such respect is expressly placed upon all the Governments concerned. On the general grounds already stated, it is hard to believe that the Security Council and the General Assembly meant the Jewish minorities in the area to be denied the benefit of these humanitarian principles. Even on strictly technical grounds, this is a doubtful proposition. For instance:

(I) The legal analysis refers to the definition of 'protected persons' in article 4 of the Convention. However, under that definition stateless persons are 'protected persons', as are citizens of certain foreign countries. Many of the Jews in the Arab countries concerned are stateless (see Gussing Report, para. 218), some of them having been arbitrarily deprived of their nationality. Moreover, the circumstances are abnormal even regarding Jewish nationals of the States concerned. They do not enjoy the protection given to other nationals, but are being treated as persons outside the law, for the sole reason that they are Jews. Their formal nationality does not ensure them aid and protection, and has no relevance to their actual situation.

(II) The legal analysis admits that the provisions of part II of the Convention would cover all inhabitants of the countries in conflict, without distinction of race, nationality, religion, or political opinion. The analysis claims, however, that the topics covered in part II are not 'substantively relevant to the present question'. Those topics include children separated from their families, family news, dispersed families and so forth (article 24 to 26 of part II). Are these provisions irrelevant to the position of Jewish families when they, or the heads of the families, are as a result of the recent conflict confined in concentration camps or jails, and access to them is denied? If there is any doubt in the matter, an instrument designed to alleviate human suffering should be positively and generously interpreted, and not restrictively, as the analysis tries to do.

(III) The legal analysis omits to mention the provisions of section I of part III of the Convention, which is entitled 'Provisions Common to the Territories of the Parties to the Conflict and to Occupied Territories'. Article 27 in this section concerns fundamental rights, humane treatment, treatment of women, especially equality of treatment and non-discrimination. Article 31 prohibits coercion, article 32 prohibits corporal punishment and torture, article 34 concerns hostages. These provisions of part III, section 1, obviously apply in the territories of the Arab parties to the conflict, and cannot be brushed aside as 'substantively irrelevant' to Jews in those territories. Our people is rather tired of being told that Jewish suffering is 'substantively irrelevant'. A number of these Jews are inhumanly treated. They suffer discrimination, they are submitted to physical ill-treatment, and they are in effect held as hostages. If the Arab Governments concerned deny these charges, the honest and straightforward course for them to adopt would be to welcome your mission, and give it full facilities to ascertain the facts. The refusal of these Governments to co-operate speaks for itself.

(IV) The legal analysis suggests that the application of the Convention to the territories of the Arab States ceased with the end of military operations. This view is contradicted by article 6 (4) of the Convention, which provides that protected persons whose release, repatriation or re-establishment may take place after the end of the military operations, shall meanwhile continue to benefit by the Convention. The ICRC (PICTET) commentary points out, in this respect, that 'In the territory of the Parties to the conflict, for example, if internees are not immediately released, the rules laid down by the Convention must obviously continue to apply to them'. (English text of commentary, page 64.) This provision is obviously relevant to Jews who have continued to be interned in the Arab countries. The view taken in the legal analysis is also contradicted by the terms of reference given by the Secretary-General to the Gussing mission. That mission was appointed after the cease-fire resolutions of the Security Council had ended the military operations. In fact, the 'humanitarian resolutions' under which the Secretary-General was acting were themselves adopted only after the cease-fire. On this point too, therefore, the legal analysis cannot be reconciled with the mandate which you gave Mr. Gussing, which you wish to apply to the mission now proposed.

(C) The legal analysis equates the position of the Jewish minorities in the Arab countries with that of the Arab minority in Israel. It should, therefore, be recalled that both the Israel Government and Mr. Gussing regarded the Arab minority in Israel as coming within the scope of his mission. We shall not oppose the mission addressing itself to problems, if any, arising from that community as a result of the conflict. In paragraph 215 of the Secretary-General's Report on the Gussing mission (A/6797), a summary is given of the written information furnished to Mr. Gussing on security measures taken by the Israel authorities at the outbreak of the war, affecting Arab citizens. These measures were confined to the temporary detention of forty-five persons as security risks, and a temporary night curfew in one or two border areas. Except for these security measures, the Arab citizens of Israel had suffered no discrimination. In paragraph 217 of the Report, it is stated that for lack of time, Mr. Gussing 'was not able to look into this particular problem extensively while visiting Israel'.

At that time, there was no suggestion from any quarter that the Arab citizens of Israel lay outside the scope of the Secretary-General's fact-finding mission. On the contrary, it appears from paragraph 217 of the Secretary-General's Report that Mr. Gussing was expected by the Arab Governments to concern himself with the Arab minority in Israel. The legal analysis suggests for the first time, a year later, that this group is not covered by the United Nations resolutions. As has been shown, equating the Jewish minorities in the Arab countries with the Arab minority in Israel proves the converse of what the legal analysis sets out to prove. In other words, the fact-finding mission is required to deal with any community in the Middle East region, Jewish or Arab, if it is alleged that they have suffered during or since the June 1967 war.

My Government feels encouraged by the statements in your letter that you have communicated the substance of its position to the Governments of Jordan, Syria and the United Arab Republic, and that 'I wish to assure your Government once again of my deep concern about the situation of the Jewish communities in the Arab States as well as of the situations of the Arab inhabitants in the areas now under Israeli military occupation'. For the reasons already stated in our previous letters to you on this subject, I now request that you communicate the substance of my Government's position also to the Governments of Iraq and Lebanon, since those countries were also directly involved in the conflict, and enquiry needs to be made into the situation of their Jewish minorities as well.

My Government will await with interest the reactions of these Governments. It is our earnest hope that there will be a positive response from them, and that they will now indicate their willingness to co-operate with your proposed fact-finding mission.

I would again assure you that my Government is fully discharging its responsibility for the safety, welfare and security of the inhabitants of all Israel-held territories. Our record in administering these territories has been constructive. There is no basis for the sweeping propaganda allegations that have been made by the representatives of Arab States.

My Government would be glad to furnish you with any information you may require in this regard. The scrutiny of the world is freely accepted in these areas. There is intensive movement in and out of the region and few parts of the world are under closer examination by the world Press. Thousands of official and unofficial persons, from other countries, have free access to them: and inhabitants are at liberty to express and publish their own opinions. Whenever a distinguished guest comes to Israel we willingly help him to make contact with this situation. What we oppose is acquiescence in the negative condition that an official United Nations mission must abstain from addressing itself to the sufferings of Jews. It is the curtain of darkness surrounding the inhuman treatment of Jews in certain Arab countries that needs to be drawn aside. Here no eye is allowed to penetrate, no scrutiny to take place. I am convinced that historic memory demands that the strongest moral influence be brought to bear on Arab Governments to persuade them to cease obstructing and delaying the proposed mission.

(Signed) Abba EBAN"

Summation and comment

15. The conclusion seems to me to be inescapable that, in the light of the circumstances set forth in the foregoing paragraphs of this report, there is no basis at present on which the mission could proceed. It would not be proper to ask a responsible person to undertake a mission of this kind without agreement with the parties on the basic functions of the mission and without being able to offer him reasonable assurance that he would have the co-operation of the parties concerned and the assured access essential to the discharge of his responsibility. I strongly feel that the inability to dispatch the mission is not only regrettable but also that the obstacles to its dispatch could be easily surmounted, given the will to do so. That is why I have urged that the scope and terms of the new mission afford a good enough basis for acceptance of the mission by the parties.

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16. The first humanitarian (Gussing) mission went out without anything approaching the sort of difficulty about its scope and terms of reference which has been encountered in the effort to establish the second mission. I have emphasized time and again, orally and in writing, that the projected second mission is to have the same scope and terms of reference as the first. I find it hard to believe that there can be any doubt or confusion in anyone's mind about this. Thus, if the Gussing mission was acceptable and accepted, and given the necessary access and co-operation, it is not apparent to me why the second mission should not enjoy the same treatment. In this regard, it should be clear from the correspondence set forth in this report that the difficulty arises only from an attempt to broaden the scope and terms of reference of the new mission beyond those which applied to the old.

17. My legal advice is that both the terms of reference and that scope went as far as the resolutions of the Security Council and the General Assembly would permit. I am, necessarily, bound by the provisions of the two resolutions in seeking to give effect to them, however broad my own humanitarian concern might be. It is the fact that my concern about the treatment of the Jewish communities has been expressed in repeated approaches of one kind or another on their behalf to the Governments of the countries concerned and, in some instances, with constructive results. There is no question of one-sided interest or effort as between the Arab and Jewish peoples. The term "discrimination" is too often employed loosely. Differences of view and interpretation can be honest and valid without being in the least discriminatory. There is an unavoidable limitation with regard to the scope of this mission's activities resulting from the (operative) provisions of the two resolutions on which it is based.

18. The question of the inclusion of the treatment of the Jewish minorities in Iraq and Lebanon was not raised during the discussions leading to the activation of the Gussing mission. In fact, no mention of Lebanon in this context had been made until rather late in the discussions concerning the second mission. In the discussions I have expressed my conviction that the resolution could not be stretched to cover these two countries, on the legal level. But on the practical side my continuing concern about the situation in Iraq has been manifested by a series of discussions of the matter with the Permanent Representative of Iraq. This issue, therefore, was being neither neglected nor slighted. As to Lebanon,

it has never been affirmed to me that there is in that country anything to be looked into concerning the treatment of its Jewish community and I know of no such problem.

19. Thus, I have not, in the course of the discussions concerning this mission, approached the Governments of Iraq and Lebanon on the question of accepting the mission and, for the same reasons, I am not complying with the request of the Minister for Foreign Affairs of Israel that the substance of his Government's position on the question of the mission be communicated by me to Iraq and Lebanon.

20. I may observe once again that a mission of the kind contemplated can fare best with general terms of reference. Once in operation, it is better able to do most of what needs to be done without too precise definition of its mandate. The more the issue of specific definition is pressed prior to the establishment of such a mission, the more limited its scope and function will likely be.

21. With regard to the purely legal aspects of the matter, involving particularly the interpretation of the resolutions as they apply to the scope and mandate of the projected second mission, brief comments on a few points will suffice:

(a) The full text of the first preambular paragraph of Security Council resolution 237 (1967) reads:

"Considering the urgent need to spare the civil populations and the prisoners of the war in the area of conflict in the Middle East additional sufferings,".

Obviously, the words "in the area of conflict" cannot be ignored in this context.

(b) Because of humanitarian considerations, and on the basis of sound legal advice, I gave the broadest possible interpretation to the provisions of the resolutions in defining the range and functioning of the Gussing mission. In this connexion, although it is not necessarily conclusive, it is not without significance that the records of the debates in the Security Council and the General Assembly on the two relevant resolutions disclose no reference to the possible inclusion of the Jewish communities in the Arab States as a concern of the resolutions. The records of the discussion preceding the adoption of the Security Council resolution demonstrate that it was concern for the inhabitants of the occupied areas or "of areas where military operations have taken place" that motivated that resolution.

(c) The preambular paragraphs of the resolutions were definitely taken into account in arriving at the broad and humanitarian interpretation given to them in order to enable the Gussing mission to inquire into the question of the Jewish minorities in Syria and the United Arab Republic. It bears emphasis here that this question arose only after Mr. Gussing had reached the area in pursuance of his mission. I advised Mr. Gussing that he might properly interpret his mandate "as having application to the treatment, at the time of the recent war and as a result of that war, of both Arab and Jewish persons in the States which are directly concerned because of their participation in that war". It was made clear to him at the time that this interpretation, which relied on broad humanitarian principles and not on a strictly legal interpretation of the resolution, was tenuous and might be subject to dispute.

(d) Since no military operations had taken place in Iraq and Lebanon and these countries were not encompassed in the area of conflict, I could not stretch my already liberal interpretation of the resolutions to include them.

(e) It is to be noted that the first preambular paragraph of Security Council resolution 237 (1967) does not say "in the territory of States parties to the conflict", but "in the area of conflict", which is a more limited geographic concept. The reference to "areas where military operations have taken place" in operative paragraph 1 of the Security Council resolution is even more explicit and, in the absence of anything in the resolution to the contrary, this phrase must be considered relevant to an interpretation of the term "Governments concerned" in the succeeding operative paragraph 2.

(f) While the Convention relative to the Protection of Civilian Persons in Time of War cannot be legally interpreted as being at present applicable to communities which are composed for the most part of citizens of the State within which they reside, stateless persons might be construed to be protected persons and, to the extent that their "release, repatriation or re-establishment may take place" after the general close of military operations, they would continue to be covered by certain provisions of the Convention. To the extent that such stateless persons were "in the area of conflict", they might be brought within a strictly legal interpretation of operative paragraph 2 of Security Council resolution 237 (1967).

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(g) Concerning Part II of the Convention, it would seem clear, when it is taken as a whole, that its provisions, including articles 24 to 26 in particular, were designed to alleviate suffering caused by the actual fighting.

(h) With reference to the provisions of Section I of Part III of the Convention, which is entitled "Provisions common to the territory of the parties to the conflict and to occupied territories", it is necessary to note that these provisions are only applicable to protected persons.

22. The projected second mission, which has been the subject of this report, would be concerned exclusively with humanitarian matters. It is most unfortunate, in my view, that these considerations involving the well-being of a great many people, cannot be given sufficient priority and be regarded as having sufficient urgency to override obstacles such as those that have been encountered thus far.
