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## UNITED STATES POLICY ON JERUSALEM, 1948

SHLOMO SLONIM\*

Jerusalem was a focal point of dispute in the 1947-1948 conflict between Jews and Arabs over the destiny of Palestine, and American policy on Jerusalem oscillated between seeking a Solomonic solution and escaping responsibility for the implementation of that solution. Thus, by the end of 1948, the United States moved from its initial support for territorial internationalization to a position in which it was willing to settle for practically anything agreeable to the parties, so long as the security of, and freedom of access to, the Holy Places could be assured.

In January 1947, Great Britain, despairing to bring Jews and Arabs to a mutual settlement, conveyed the Palestine problem to the United Nations for resolution. In spring 1947, the United Nations established the Special Committee on Palestine (UNSCOP) to investigate the problem and present its recommendations for consideration at the regular General Assembly session in September.<sup>1</sup> By an overwhelming majority, UNSCOP recommended the partition of Palestine into Arab and Jewish states and the internationalization of Jerusalem as a *corpus separatum*, to be administered by the United Nations Trusteeship Council.<sup>2</sup> In the ensuing General Assembly debate, the United States endorsed the Partition Plan, including the scheme for an internationalized Jerusalem.<sup>3</sup> The proposal for a City to be administered under international auspices was fraught with considerable difficulty with regard to such problems as internal security, citizenship, financial support, and economic development. The area to be placed under United Nations control, as UNSCOP proposed, was extensive—stretching far beyond the municipal boundaries of Jerusalem as defined by the British Mandate. It embraced Motza and Ein Kerem to the west, Bethlehem to the south, Abu Dis to the east, and

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1. See G.A. Res. 106 (S-1), U.N. Doc. A/310, at 6 (1947).

2. See G.A. Res. 181 (II), U.N. Doc. A/64, at 131 (1947) (acknowledging receipt of the Special Committee's recommendation).

3. The United States, along with Sweden, took the initiative in proposing that the General Assembly accept the basic principles of the UNSCOP majority plan. See *The Question of Palestine, 1947-48* U.N.Y.B. 236, U.N. Sales No. 1949.1.13 (citing U.N. Doc. A/AC.14/16).

Shu'fat to the north. Ostensibly, the proposal was designed to incorporate other Holy Places, especially those in Bethlehem and Ein Kerem, within the City's boundaries. According to Jewish Agency officials, however, the extension of the City's borders was designed to balance and counterweigh the Jewish population in the City. Jews had constituted the majority population in Jerusalem for over a century, and it was considered unwise to subject the Legislative Council to Jewish domination. With the proposed expansion of the boundaries, the Moslem and Jewish populations would be more or less equal.<sup>4</sup>

During the course of the United Nations deliberations, it became clear that there was considerable sentiment for limiting internationalization to the Old City.<sup>5</sup> This was due primarily to an appreciation of the extraordinary administrative and financial burdens that the United Nations would face in organizing and running an international metropolis. Limiting the scope of internationalization to the Old Walled City was one means of circumscribing the scope of responsibility. The United States was not averse to this suggestion, no doubt realizing that the ultimate burden—especially the financial one—likely would fall on its shoulders. However, the UN committee decided to adhere to the original proposal of an expanded City.<sup>6</sup> On November 29, 1947, the General Assembly voted, by the required two-thirds majority, to adopt the Partition Plan, including the scheme for the internationalization of Jerusalem.<sup>7</sup> The United States, having played a leading role in formulating the provisions of the partition resolution, voted with the majority.

At this point, State Department officials began working in two contradictory directions simultaneously. On the one hand, the United States participated actively in Trusteeship Council discussions in early 1949 to draft a Jerusalem Statute to administer the City as a *corpus separatum*. The task was not a simple one, and the fact that each of the Arab states vehemently rejected internationalization complicated the matter further. Indeed, only the Jewish Agency agreed to accept internationalization. Such details as the appointment of a United Nations Governor and the formulation of provisions relating to the self-governing institutions, the judiciary, the organization of the police, and citizenship requirements, were all matters of considerable sensitivity and entailed extensive debate

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4. See MENAHEM KAUFMAN, *AMERICA'S JERUSALEM POLICY: 1947-1948*, at 8-9 (1982) (discussing the Arab and Jewish population proportions in the international zone).

5. See Shlomo Slonim, *The United States and the Status of Jerusalem 1947-1984*, 19 *ISR. L. REV.* 179, 182 (1984).

6. *Id.*

7. G.A. Res. 181 (II), U.N. Doc. A/64, at 131 (1947); 5 *FOREIGN RELATIONS OF THE UNITED STATES* 1709-30 (1976).

and negotiation. The United States assumed a major role in drafting these provisions, and its representative, Benjamin Gerig, served as Chairman of the drafting committee. The draft Jerusalem Statute was completed and ready for submission to the General Assembly in April, 1949.<sup>8</sup>

On the other hand, there was a strong movement within the State Department to abandon partition completely as an unrealizable proposition.<sup>9</sup> On the morrow of the General Assembly vote, fighting broke out in Palestine between Jews and Arabs; the Yishuv, the Jewish Community, was under siege. The Haganah, the Jewish defense force, was unable to retaliate effectively against Arab attacks for two reasons. First, it lacked weapons, both light and heavy, to mount a major offensive. Second, because the British, who still were in control of the area, sided with the Arabs and intervened to disarm members of the Haganah, it was impossible to counter the Palestinian Arab attacks significantly. Thus, by January/February 1949, State Department officials were convinced that partition could not be implemented without intervention from abroad. The United States was unwilling to contemplate dispatching its own forces to Palestine to implement partition, because this would arouse fierce antagonism in the Arab world. Nor was it prepared to countenance the entry of Soviet bloc forces—something which the continued fighting in Palestine might readily entail. With the Cold War becoming increasingly menacing—particularly with the crises in Czechoslovakia and Berlin—Washington was deeply concerned to control the Palestine situation and deny the Soviets a grand opportunity for expansionism in the Middle East.<sup>10</sup> In the view of State Department officials, the only alternative to partition was an international trusteeship for Palestine which, they believed, would abate the fighting and help extricate the United States from

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8. For a review of the formulation of the draft Statute for Jerusalem, see *Questions Specifically Referred to the Trusteeship Council by the General Assembly, 1947-48* U.N. Y.B. 778, U.N. Sales No. 1949.1.13; H. EUGENE BOVIS, *THE JERUSALEM QUESTION, 1917-1968*, at 48-52 (1971).

9. For further discussion of State Department deviation from the pro-partition line which President Truman endorsed, see CLARK CLIFFORD, *COUNSEL TO THE PRESIDENT: A MEMOIR* ch. 1 (1991); ROBERT J. DONOVAN, *CONFLICT AND CRISIS: THE PRESIDENCY OF HARRY S. TRUMAN, 1945-1948*, at 372-79 (1st ed. 1977). *But cf.* DEAN RUSK, *AS I SAW IT* 147 (Daniel S. Papp ed., 1st ed. 1990) (discussing President Truman's approval of the State Department's plan).

10. In a conversation with British Foreign Secretary Ernest Bevin on December 5, 1947, Secretary of State George Marshall said that "the greatest fear of the US military authorities in regard to the question [of implementation of partition] was the presence of a Russian force in Palestine." See Letter from George Marshall, Secretary of State, to Lovett, Acting Secretary of State (Dec. 6, 1947), in BUREAU OF PUBLIC AFFAIRS, U.S. DEPARTMENT OF STATE, PUB. NO. 8592, *5 FOREIGN RELATIONS OF THE UNITED STATES* 1301-02 (1971).

supporting a highly controversial plan. At an earlier stage, in December 1947, these same State Department officials had succeeded in arranging the imposition of an arms embargo on the Middle East, thereby hampering the Jewish defense forces seriously in their attempts to counter the Arab assault.<sup>11</sup> Arab states continued to receive arms from the British in accordance with "standing orders," while the Haganah had no outside sources from which to obtain arms supplies. The imposition of an arms embargo was at cross purposes with the provision in the partition resolution which called for the creation of armed militias in the two proposed states to ensure minimal domestic security. As a prime mover of the partition resolution and a permanent member of the Security Council (whose function it was to preserve international peace and security), the United States might have been expected to help furnish the necessary arms to equip the militias. However, the new trusteeship proposal coincided perfectly with that line of policy which envisaged that only disaster for the United States could emerge from involvement in the Palestine question and, therefore, recommended disengagement from the whole issue.

The first step in the abandonment of partition, as engineered by the State Department, was the presentation of a legal thesis defining and limiting the scope of the Security Council's powers. On February 24, 1948, Warren Austin, United States Ambassador to the United Nations, addressed the Security Council and argued that the Council was precluded from intervening in the Palestine question to enforce partition, even though the General Assembly had requested such intervention under the partition resolution.<sup>12</sup> The Council's powers under the United Nations Charter, he contended, limited the Security Council to the maintenance of international peace and security. It was powerless to intervene in a domestic situation to enforce a plan the General Assembly devised, or even one devised by the Security Council itself. This legal analysis, although imperfect, contained a measure of validity. In the particular circumstances of Palestine in 1948, however, it was quite irrelevant, because, by then, fighting that constituted a threat to international peace and security clearly existed. Consequently, even if the Security Council could not intervene in the conflict to implement partition, it was at liberty, even obliged, to take steps to extinguish the fighting. This would have enabled implementation of partition regardless of any legal doctrine restricting

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11. See Shlomo Slonim, *The 1948 American Embargo on Arms to Palestine*, 94 POL. SCI. Q. 495 (1979) (discussing the effects of the 1948 arms embargo and its impact on the resolution of the Palestine question).

12. U.N. SCOR, 3d Sess., 253d mtg. at 31, 48, U.N. Doc. S/P.V.253 (1948).

the powers of the Security Council. But Austin's thesis was merely preliminary to the next demarche: United States' advocacy of complete withdrawal from the partition scheme.

On March 19, 1948, in an address to the Security Council, Ambassador Austin announced to a stunned world that the United States was abandoning the policy of partition, which it had endorsed barely four months earlier, in favor of a temporary trusteeship for Palestine.<sup>13</sup> The Partition Plan, he explained, "was an integral plan which would not succeed unless each of its parts could be carried out. There seems to be general agreement that the plan cannot now be implemented by peaceful means."<sup>14</sup> Consequently, the United States saw no alternative to withdrawal from the plan. At the same time, Ambassador Austin also emphasized that after the departure of the British on May 15, the United Nations would not be responsible for the former Palestine Mandate and would bear no responsibility for the administration of Jerusalem.<sup>15</sup> Thus, in burying partition, the State Department also interred the scheme for the internationalization of Jerusalem.

Naturally, Ambassador Austin did not allude to the State Department's determination to scuttle the plan from the beginning. The imposition of the arms embargo had seriously compromised any prospect of the Jewish state surviving the concerted attack launched against it. A *New York Times* editorial, dated March 21, 1948, labelled the decision to abandon partition as "a climax to a series of moves which has seldom been matched for ineptness in the handling of any international issue by an American administration."<sup>16</sup> It was "a plain and unmistakable surrender to the threat of force," and held "little promise of being able to avoid the very hazards which it is intended to circumvent."<sup>17</sup>

But neither the *New York Times* editor, nor the American people generally, were aware that President Truman was as surprised as everyone else by the Austin announcement. Just a day earlier he had met with Chaim Weismann, former head of the Jewish Agency, and had assured him that the United States remained committed to the Partition Plan. The entry in Truman's diary for March 19 reveals the depth of his conster-

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13. U.N. SCOR, 3d Sess., 271st mtg., at 11, 32-33, U.N. Doc. S/P.V.271 (1948).

14. *Id.* at 31.

15. *See id.* (stating "[t]he limited functions which the General Assembly offered to undertake in connection with its Palestine recommendation stand or fall with that resolution").

16. Editorial, *The Switch on Palestine*, N.Y. TIMES, Mar. 21, 1948, at D6.

17. *Id.*

nation at the trick that the State Department had played upon him.<sup>18</sup> Although he had seen an advance copy of the Austin speech, the President had given explicit instructions that nothing should be done to modify the clear American commitment to partition.<sup>19</sup> In his recently published memoirs, Clark Clifford, President Truman's closest adviser at the time, charges State Department officials with having done "everything in their power to prevent, thwart, or delay the President's Palestine policy in 1947 and 1948."<sup>20</sup>

May 15, 1948, the date set for the British departure from Palestine, ushered in a new state of legal and military affairs. The state of Israel proclaimed its independence and on the same day five Arab states launched an invasion to destroy the Jewish state. Partition, as a plan comprising three parts—an Arab state, a Jewish state, and an internationalized Jerusalem—became defunct. The whole plan had disintegrated. All thought of an internationalized City was abandoned, and the United Nations took no steps to institute international authority in the City or to claim a right of administration there. Jerusalem, like the rest of former Palestine, was one vast battlefield, and a contest of arms would determine control of the City. In effect, Jerusalem, no less than the whole area of the former Mandate, was in legal terms a *terra nullius*, with each combatant gaining control of whatever territory it could seize. The United States, in line with the legal analysis that its Ambassador presented in the Security Council, rejected unequivocally the notion that the United Nations had become heir to the League of Nations mandate system. Washington operated on the assumption that the United Nations technically was not responsible for either Palestine or Jerusalem in any administrative sense, and it did not seek to promote any United Nations administration in the area. Furthermore, the United States did not assert that the United Nations possessed any such administrative authority. On the crucial date of May 15 and the weeks that followed, there was no support for institution of an international regime in Jerusalem under United Nations auspices. The City, in fact, became divided between two states, Jordan

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18. See Shlomo Slonim, *President Truman, the State Department and the Palestine Question*, 34 WEINER LIBR. BULL. 15, 23 (1981) (citing MARGARET TRUMAN, HARRY S. TRUMAN 424-25 (1972) as reprinting President Truman's diary entry) (quoting President Truman as writing "[t]he State Department pulled the rug from under me today").

19. *Id.* at 15-24.

20. CLIFFORD, *supra* note 11, at 4. *But cf.* RUSK, *supra* note 11, at 147 (noting President Truman's approval of the trusteeship plan). For a discussion of State Department handling of the Palestine question, see H.W. BRANDS, *INSIDE THE COLD WAR: LOY HENDERSON AND THE RISE OF THE AMERICAN EMPIRE 1918-1961*, at ch. 12 (1991) (discussing the "Palestine Labyrinth").

and Israel. United States involvement in the Jerusalem question was sidetracked.

Meanwhile, the United Nations Mediator for Palestine, Count Folke Bernadotte, presented various ideas for resolving the question of Jerusalem, as part of suggested schemes for settling the Arab-Israeli dispute.<sup>21</sup> His first plan, presented on June 28, 1948,<sup>22</sup> called for the creation of a union between Jordan and Israel, with the former incorporating the rump of Palestine into its own territory and also gaining control of the Negeb, which had been assigned to the Jewish state under the Partition Plan.<sup>23</sup> He recommended that Jerusalem also come under Jordanian control and that the 100,000 Jews in the City be accorded "municipal autonomy."<sup>24</sup> Bernadotte's suggestions horrified Israel, and it rejected them immediately.<sup>25</sup> An official reply labelled his Jerusalem proposal "disastrous." Recognizing that Bernadotte's ideas were unrealistic, the United States studiously avoided any indication of assent. Bernadotte's first plan withered on the vine, not only because of its ineptness, but because it proved unacceptable to all the Arab states except Jordan.

Bernadotte's second plan, issued on September 16, 1948, revived the original concept of an internationalized Jerusalem.<sup>26</sup> It omitted, however, any reference to a *corpus separatum* and, in fact, endorsed "maximum feasible local autonomy for its Arab and Jewish communities."<sup>27</sup> In this second plan, Bernadotte likewise eschewed assigning the Trusteeship Council any role in the administration of the City. While the plan highlighted the need for safeguards for the Holy Places, it accorded the two states actually in control of the City full authority to administer their respective sectors. Given the realities of the situation, a more modest role for the United Nations was in order, and therefore, the secular affairs of the City were consigned to the two concerned states. Two days after pub-

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21. The General Assembly created the post of United Nations Mediator in Palestine in 1948. G.A. Res. 186, U.N. GAOR, 2d Sess., Supp. No. 2, at 5, U.N. Doc. A/555 (1948).

22. For the text of Bernadotte's suggestions, see U.N. SCOR, 3d Sess., Supp. 1, July 1948, at 18-21, U.N. Doc. S/863 (1948). Although Bernadotte presented his plan to the two parties on June 28, 1948, the Secretary-General of the Security Council did not release its text until July 4, 1948. *Id.* at 18.

23. *Id.* at 21.

24. *Id.*

25. In his memoirs, Abba Eban, then serving as Israel's Ambassador to the United Nations at the time of Bernadotte's proposal, stated: "Since Jerusalem was the only city in the Middle East, and indeed in the world, in which Jews had been a majority for three quarters of a century, the effrontery of this proposal left us breathless." ABBA EBAN, AN AUTOBIOGRAPHY 124 (1977).

26. *Progress Report of the United Nations Mediator on Palestine*, U.N. GAOR, 3d Sess., Supp. No. 11, at 17, U.N. Doc. A/648 (1948).

27. *Id.* at 18.

lication of his plan, Bernadotte was assassinated, and the plan became a legacy which the British and American governments sought to promote in the General Assembly. The overall plan, however, was rejected in the face of Soviet and Arab opposition. The former contended that the Bernadotte plan (even the second one) violated the original partition scheme, while the latter objected to any plan entailing recognition of the existence of a Jewish state. Only the Jerusalem clause in the second Bernadotte plan proved acceptable to the General Assembly.<sup>28</sup> But this clause reflected the line favored by the United States—that the United Nations, in exercising control of the City, should be concerned primarily with the Holy Places, while leaving the day-to-day administration of the City to Jordan and Israel. The Assembly resolution postponed final determination of the Jerusalem question to the next General Assembly session in 1949, by which time the three-man Palestine Conciliation Commission, which the same resolution established, was to submit “detailed proposals” for the Assembly’s consideration. The United States was appointed a member of the Commission, together with France and Turkey.

By the end of 1948 the United States was going along with the motions of internationalization while it recognized that the form of territorial internationalization the original Partition Plan proposed was no longer suitable, for two reasons. First, the two states exercising authority in the divided City were not prepared to surrender control of their sectors; and second, the United Nations was not an appropriate body to administer an international ward. The United Nations lacked both the financial and administrative resources to operate an international enclave, and that burden inevitably would fall upon the United States. Thus, a more realistic form of internationalization as required. This arrangement, subsequently known as “functional internationalization,” restricted international interest to the protection of the Holy Places, while delegating secular administration to the states actually exercising control there. For American policymakers, there was nothing sacred about internationalization; rather, internationalization was but a tool to serve what was sacred.

Israel strongly favored a solution to the Jerusalem problem based upon the principle of functional internationalization, but was never able, even with the encouragement of the United States, to persuade Jordan to endorse such a regime. Throughout this entire period, it might be noted no representative of the United States posed the question which, undoubtedly, was fundamental to the whole search for an international Jerusalem

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28. G.A. Res. 194 (III), U.N. Doc. A/810, at 21 (1948).

under United Nations auspices: After May 15, did the United Nations retain any legal right to intervene in the affairs of Jerusalem and assert authority there? Legal advisers to the British Foreign Ministry reached the conclusion that the United Nations after May 15, 1948, in fact, had become *functus officio*, i.e., lacking any further authority.<sup>29</sup> American policymakers demonstrated no awareness that their policy on Jerusalem was open to question. This question, of course, bears on the issue of Jerusalem, even after 1948.

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29. British Foreign Office document, Nov. 4, 1949. FO 371/75366.

