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REPORT DATED 23 OCTOBER 1953 BY THE CHIEF OF STAFF OF THE TRUCE
SUPERVISION ORGANIZATION SUBMITTED TO THE SECRETARY-GENERAL
FOR THE SECURITY COUNCIL

I have the honour to forward herewith for the information of the Security Council a copy of a decision taken by me on 23 September 1953 as Chairman of the Israeli-Syrian Mixed Armistice Commission. That decision concerns the work started on 2 September in the Demilitarized Zone in connexion with the Israeli project of digging a canal between the Jordan river and Lake Tiberias. My decision was to the effect that "the authority which started work in the Demilitarized Zone on 2 September 1953 is instructed to cease working in the Zone so long as an agreement is not arranged".

Together with my decision (Annex I), I am forwarding a copy of a letter dated 24 September, in which His Excellency the Israel Minister for Foreign Affairs expressed the disagreement of the Government of Israel with the conclusion that the work "in progress within the Demilitarized Zone should now be interrupted" (Annex II).

The Israel Foreign Minister had requested me to send him my comments on the considerations set forth in his letter. These comments were forwarded to him on 20 October (Annex III).

Accept, etc.

(Signed) Vagn Bennike

Chief of Staff of the
United Nations Truce Supervision
Organization

ANNEX I

TRUCE SUPERVISION ORGANIZATION

23 September 1953

Decision by Major General Vagn Bennike, Chief of Staff of the United Nations Truce Supervision Organization, and Chairman of the Israel - Syrian Mixed Armistice Commission

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1. Article V, paragraph 5 (c), of the Israel-Syrian General Armistice Agreement confers upon the Chairman of the Mixed Armistice Commission and United Nations observers attached to the Commission the responsibility for ensuring the full implementation of that article, which contains the arrangements agreed to by the two Parties for the Demilitarized Zone.
2. As Chairman of the Mixed Armistice Commission, I have been called upon to consider and decide whether, as alleged by the Syrian Government, the work started by Israelis on 2 September, on the West bank and in the bed of the Jordan at MR 2089-2677, is contrary to the provisions of the General Armistice Agreement relating to the Demilitarized Zone.
3. It has been explained on the Israeli side that the work in question, begun in the Central Sector of the Demilitarized Zone, is preliminary to the digging of a canal between the Jordan river and Lake Tiberias. By far the greater part of the canal would be to the West of the Demilitarized Zone. A reservoir would be constructed at approximately MR 2040-2568 at a height of 40 meters above sea level. A power station would be erected about 2 kilometers West of the mouth of the Jordan, at a height of 200 meters below sea level. The water drop of 240 meters from the reservoir to the power station would generate electric power of "24,000 kilowatts per hour". The project is sponsored by the Israeli Government Water Planning Authority. I was told that the project was being carried out within the framework of the concession granted on 5 March 1926 to the Palestine Electric Corporation for the utilization of the waters of the Jordan and the Yarmuk for generating and supplying electrical energy.
4. According to Article V, paragraph 2, of the General Armistice Agreement, "the Armistice Demarcation Line and the Demilitarized Zone have been defined with a view

toward separating the armed forces of the two Parties in such manner as to minimize the possibility of friction and incident, while providing for the gradual restoration of normal civilian life in the area of the Demilitarized Zone..."

5. In considering the work undertaken in the Demilitarized Zone with a view to the construction of the projected canal, I have endeavoured to determine:

- (a) whether the work so far performed in the Demilitarization Zone has interfered with the normal civilian life referred to in Article V, paragraph 2, of the General Armistice Agreement, and in the Acting Mediator's statement agreed to by the Parties as an authoritative comment on Article V;
- (b) whether the construction of the projected canal was likely to interfere with normal civilian life in the Demilitarized Zone;
- (c) whether the first object of the definition of the Demilitarized Zone according to Article V, paragraph 2, of the General Armistice Agreement, viz., "separating the armed forces of the two Parties in such manner as to minimize the possibility of friction and incident", would be affected by work aiming at diverting a considerable quantity of water from the river-bed in the Demilitarized Zone.

6. Before making my decision, I have visited both banks of the Jordan, viz., the site of the present Israeli work on the West bank on 12 September, and the East bank on 14 September. I have also carefully considered the views of the two Parties to the General Armistice Agreement.

7. The following is the result of my inquiry:

- (a) Work has been started on the West bank of the Jordan allegedly on no lands other than Israeli lands, but this is now being disputed. If the investigation by United Nations observers of land titles in the possession of Arabs or in the Land Office at Safad in Israel proves Arab ownership, work started on Arab lands without the consent of the owners would be contrary to the provision relating to normal civilian life. Moreover, work in the bed of the river has resulted in flooding partially the small island at MR 2088-2675. In this case also the question of ownership is in dispute.
- (b) On 14 September, I was shown on the East bank two Arab watermills which had ceased to work owing to lack of water, and an Arab land which had ceased to be irrigated. Though I was not present when the mills ceased to work and

the land to be irrigated, the explanation given, that lack of water resulted from Israeli work in the bed of the river, appeared to me, after a rapid investigation, plausible

(c) As regards the likelihood of interference with normal civilian life in the Demilitarized Zone resulting from the construction of the projected canal, the lowering of the waters of the Jordan will affect the life of the Arab villagers depending on the river. It will in particular interfere with the working of the water-mills (nine at present) which they use.

(d) In this connection the question of the irrigation of lands belonging to Syrian landowners is of particular importance. The Israeli Government is aware of this problem. The rich lands of Buteiha Farm, with their three annual crops, depend on an elaborate irrigation system. In October 1951, during a two-day test by the Israelis of checking gates south of Lake Huleh, that irrigation system lost 70 per cent of its water. In April 1952, after emergency repairs to Banat Yacoub Bridge, during which the checking gates had been operated with the agreement of the parties, the Chairman of the Mixed Armistice Commission, in view of representations from the owners of Buteiha Farm, withdrew his consent to further use of the checking gates until another agreement was reached by the two Parties. The Government of Israel has stated that the full volume of Jordan water now being used by Arab landowners for irrigation purposes would be assured. The Syrians object to the irrigation of their lands depending in the future on Israeli good will. Irrespective of that Syrian point of view, it may be said that the waters in the bed of the river are already very low during the dry season, and it is likely that, unless special arrangements are made, the projected canal and power station would sometimes leave the Jordan with very little, if any, water.

(e) As regards the military aspect of the question, the Jordan, in its deep valley, is a serious obstacle for any troops, particularly motorized troops, which would attempt to cross it. A Party to the General Armistice Agreement which, by means of a canal, could control the flow of the Jordan in the Demilitarized Zone, changing it or possibly even drying it up at will, could alter at will the value to the other Party of the Demilitarized Zone, which has been "defined with a view toward separating the armed forces of

the two Parties in such manner as to minimize the possibility of friction and incident..."

8. In view of the above, both on the basis of the protection of normal civilian life in the area of the Demilitarized Zone and of the value of the Zone to both Parties for the separation of their armed forces, I do not consider that a Party should, in the absence of an agreement, carry out in the Demilitarized Zone work prejudicing the objects of the Demilitarized Zone, as stated in Article V, paragraph 2, of the General Armistice Agreement.

9. Acting under the provisions of Article V of the General Armistice Agreement, the only provisions which, as Chairman of the Mixed Armistice Commission, I am called upon to consider in this case, I request the Israeli Government to ensure that the authority which started work in the Demilitarized Zone on 2 September 1953 is instructed to cease working in the Zone so long as an agreement is not arranged.

ANNEX II

Jerusalem,
24 September 1953

Sir,

I have the honour to acknowledge receipt of your letter of 23 September 1953 and of the attached memorandum setting forth your views concerning the work which is being carried on south of B'not Yaacov Bridge.

2. I must point out at the very outset that the substance of your views and their underlying assumptions appear to be at marked variance with the position so far maintained by the competent organs of the United Nations as regards works of this nature in the Demilitarized Zone. As early as 1949, during the armistice negotiations, the United Nations adopted an unequivocal attitude concerning the future development of the Zone. In his covering letter to the statement which you yourself mention as an authoritative comment on Article V of the Israel-Syria General Armistice Agreement, written on 26 June 1949, the Acting Mediator, Dr. Ralph Bunche, stated: "I may also assure both parties that the United Nations, through the Chairman of the Israel-Syria Mixed Armistice Commission, will also ensure that the Demilitarized Zone will not be a vacuum or wasteland." Since that statement was made, "the gradual restoration of normal civilian life", provided for by Article V of the Armistice Agreement, has indeed comprised the resumption and continuation of development and settlement activities. New agricultural settlements have been established in the Zone, roads have been constructed, wastelands brought under cultivation, the Jordan river-bed has been deepened and straightened, and at certain points its very channel has been altered - all these changes having taken place with the full concurrence of United Nations authorities.

3. Syria's consistent opposition to such peaceful development work, voiced in pursuance of its established policy of economic warfare against Israel, has at no time been endorsed by the United Nations. Under the Charter, the United Nations stands to promote conditions of economic progress and development. Under the

Major General Vagn Bennike,
Chief of Staff,
United Nations Truce Supervision Organization,
Jerusalem.

Israel-Syria General Armistice Agreement, the sole concern of United Nations representatives throughout has been to ensure that in the course of the execution of development projects, established private rights in the Zone should be adequately protected.

4. Certain questions regarding private rights did indeed arise in connection with the Huleh drainage scheme, work on which commenced three years ago. The points at issue were at the time fully examined by the then Chief of Staff, General W. E. Riley, as well as by the Security Council. The conclusions reached as a result of that examination have been accepted as basis for all development projects in the Demilitarized Zone. The drainage work has ever since proceeded with the full concurrence of the United Nations and without interference from outside. It is important to define the exact scope of United Nations concern in the matter. Such definition was offered by General Riley himself when, at a session of the Security Council on 2 May 1951, in reply to a question asked by the Netherlands delegate as to whether the question of the rights involved in the concession of the Palestine Land Development Company for the drainage of the Huleh is one which might fall within the jurisdiction of the Mixed Armistice Commission, he stated: "Only where it involves land within the Demilitarized Zone which is the property of Arab refugees. That is the only part of the concession with which we have anything to do..... I feel that the United Nations should never impede progressive work. However, I am involved here with the Armistice Agreement in which the United Nations is charged with the normal restoration of civilian life..... I have no quarrel with the project itself. I feel that this is not a matter which affects either Syria or the United Nations. I am only involved in the normal restoration of life within the Demilitarized Zone which affects the thirty, forty or fifty Arabs that own the approximately seven or eight acres of land within the Demilitarized Zone."

5. In the present case the work of digging a canal, in execution of a project of power development, is conducted on the basis of existing rights, including the concession held by the Palestine Electric Corporation. These constitute important private rights within the Demilitarized Zone, which the United Nations Truce Supervision Organization, as authoritatively laid down, is called upon to safeguard. Full care has been taken to ensure that the work should in no way impinge upon any private Arab land in the area, nor curtail the use of water for irrigation by land owners and cultivators within the Demilitarized Zone. In these

circumstances it was but natural that the Chairman of the Israel-Syrian Mixed Armistice Commission, when informed of the commencement of the project on 2 September 1953, should have expressed his concurrence with it. In so far as you yourself and your deputies raised any points for clarification - none of which questioned the legitimacy of the project itself - they were satisfactorily settled.

This situation of understanding and cooperation continued until the Syrian Government, in accordance with its established practice, proceeded to raise baseless objection to the project, accompanying its protests by public threats of violence. In the face of these tactics of intimidation from the Syrian side, which manifestly conflict not only with the Armistice Agreement but with the fundamental principles and purposes of the Charter of the United Nations, it is regrettable and disturbing that an attempt should now be made to reopen issues previously disposed of and to modify the established position of the United Nations by raising questions extraneous to the Armistice Agreement.

6. You base your conclusions on the examination of the following three points:

- (a) whether the work so far performed has interfered with normal civilian life in the Demilitarized Zone;
- (b) whether the construction of the projected canal within the Demilitarized Zone will interfere with such life; and
- (c) whether the first object mentioned in Article V. Par. 2 of the General Armistice Agreement concerning the separation of the armed forces of the two parties, will be affected by the work in question.

7. On these points and on the facts adduced in their examination the following observations are offered:

- (a) Israel representatives have repeatedly given you and your deputies categorical assurances, summarized in Sgan-Aloof A. Shalev's letter to you of 22 September 1953, that the project has not so far involved, nor will it involve in the future, the use of Arab-owned land in the Demilitarized Zone, and that it has not otherwise affected, nor will it in the future affect, such land. In no conversation which has taken place during the past weeks, including my own conversation with you on 22 September, was any reference made to the possibility that the ownership of any of the land involved might be under dispute. It is evident, therefore, that such a possibility, conjured upon the part of

Syria, is purely hypothetical, not to say imaginary; that Syria, which under the Armistice Agreement has no status in the matter, has raised the question merely to obstruct the work; and that consequently this provides no valid reason for discontinuing a vital development scheme. At the same time there is, of course, no objection at all to your representatives examining the files of the relevant Land Registry Office, in which examination they will receive the full cooperation of the Israel authorities.

- (b) What is called in your letter "the small island" is actually a speck of land, the size of which never exceeds 400 square metres. It is submerged every winter and rises above the water in varying sizes and shapes in the summer. It is entirely uncultivated and has never been cultivated, inhabited or otherwise used by man within living memory. It is not owned by any Arab. In these circumstances, the question whether this insignificant ait is or is not partly flooded as a result of the construction of the dyke is purely irrelevant, but the fact is that it is not, and care is being taken that it should not be.
- (c) As for the water mills, neither in past discussions between United Nations representatives and ourselves on the utilisation of the Jordan waters, nor in direct contacts between us and the Syrians, have any claims ever been advanced that water from the Jordan River is required for the operation of mills on the east bank. The falseness of the contention made to you on this score is proved by the fact that the two mills shown to you on 14 September as having "ceased to work owing to lack of water" have actually not been in operation for years and that, moreover, the canal leading to these mills branches off from the Jordan north of the point from which the contested new canal is being dug, so that the digging of the canal and the diversion of water into it could have no possible effect upon these two mills.
- (d) The point concerning the likelihood of interference with normal civilian life in the Demilitarized Zone as a result of the construction of the projected canal is fully met by our definite assurances that the volume of Jordan water now used by Arab landowners or cultivators for irrigation purposes will remain available in the future. The claim in your letter that the projected canal would "leave the Jordan with very little, if any,

"water" is entirely unsubstantiated, whereas the explicit assurances given to you by Israel representatives orally and confirmed in writing by Sgan-Aloof Shalev, are based on thorough topographical and hydrological investigations.

- (e) The provision you quote from Article V of the Armistice Agreement, which defines the object of the Demilitarized Zone as that of "separating the armed forces of the two Parties in such manner as to minimize the possibility of friction and incident" is, needless to say, fully valid. It is axiomatic that, whether a canal is dug or not, such separation would remain effective as long as the Zone continues demilitarized and the parties adhere to the Armistice Agreement. As for the possible effect which the digging of a canal running parallel to the Jordan river-bed can have upon the achievement of that objective, so far from hampering, the canal can only facilitate it, since a party bent upon aggression will find yet another obstacle to overcome. For its part, the Government of Israel has consistently abjured aggression. Were it nursing aggressive designs, it would be thwarting its own purpose by digging the canal. On the other hand, the fact that the objection to the canal comes from Syria - the party guilty of aggression in the past - acquires an ominous significance.
- (f) Moreover, Syria's title to raise the question of military advantage must be challenged in principle. As clearly indicated in Article II. Par. 1, of the Armistice Agreement, the principle that no military advantage must accrue to either party was valid only during the truce period which preceded the conclusion of the armistice. The parties to the Armistice Agreement are not entitled to invoke that principle, either under the above-mentioned Article or by reference to any other provision of the Armistice Agreement. Had the right to do so been conferred by the Armistice Agreement, Syria might raise objections to any measure or project, anywhere in Israel, which strengthened this country's potential.

In this connection it is pertinent to point out that Syria's previous complaints concerning military advantages to Israel which were supposed to result from the execution of the Huleh drainage project, were rejected by the United Nations Chief of Staff as lacking validity.

8. The question of the Buteiha Farm raised in your memorandum calls for special treatment. The arguments advanced by the Syrians to the effect that they cannot be expected to depend in the future on Israel's good will as to the irrigation of their lands, must emphatically be rejected as irrelevant in the context of the Armistice Agreement. A converse contention on the part of Israel that she cannot possibly be made to depend on Syria's good will where the execution of development projects of crucial importance for her economic future is at stake, would be, on both legal and practical grounds, of infinitely greater cogency. The decisive consideration here is that the Armistice Agreement provides for the restoration of civilian life - and by implication for the protection of private rights - only within the Demilitarized Zone, and not outside it, either in Syria or in Israel. The undertaking given repeatedly to United Nations representatives and to the Syrians direct, that the volume of Jordan water now used by the Buteiha Farm for irrigation purposes would be assured for the future, was an ex-gratia act motivated by considerations of equity and future good neighbourliness, and not by any obligation arising from the Armistice Agreement. This undertaking is reaffirmed in Sgan-Aloof Shalev's letter, where the assurance concerning the provision of customary amounts of water to Arab cultivators is to be read as applying also to the Buteiha Farm. As for the operation of the checking gates in April 1952, this again was a matter of the internal administration of the Demilitarized Zone and not one of concern to Syria; it was not subject to agreement between Israel and Syria, but was carried out solely with the concurrence of the Chairman of the Mixed Armistice Commission.

9. In the light of the foregoing, the Government of Israel fails to see any justification for the conclusion that the peaceful work of an eminently constructive and beneficial character, which is in progress within the Demilitarized Zone, should now be interrupted. It takes a particularly serious view of the fact that this conclusion was preceded by the open threats of the Syrian Government. It regards the freedom of development work within the Demilitarized Zone as an integral and essential part of the restoration of normal civilian life provided for in the Armistice Agreement, and has hitherto always been sustained in this contention by the competent United Nations authorities. It is ready and has indeed formally undertaken to respect to the full whatever private rights as to ownership of land or use of water may be involved. It upholds at the same time the private rights possessed by Israel interests in the area and cannot agree

that they have a lesser priority than the individual rights of others. In actual fact there has been no infringement of any such right possessed by Arabs as a result of the work already carried out and none is to be foreseen in its continuation. The Government of Israel is always ready to clear up any moot point with you and your representatives, and, if necessary, submit the issue for examination to the Security Council. In its interpretation of the Armistice Agreement, borne out by former United Nations practice and pronouncement, the only question of agreement that can arise is with local inhabitants of the Demilitarized Zone, bearing on their private rights. In the specific circumstances of the present case no issues exist which call for such agreement, and, consequently, the continuation of the work cannot be made conditional thereon.

10. It remains the firm policy of the Government of Israel to adhere strictly to its obligations under the Armistice Agreement.

In stating its views on the issue which has arisen, the Government of Israel does not depart from its conception of the powers and functions of the Chairman of the Mixed Armistice Commission under the terms of the Israel-Syria General Armistice Agreement. The Government's understanding in this regard was formulated by its representative, Ambassador A. Eban, at the 547th meeting of the Security Council on 18 May 1951 in the following terms:

"... the Chairman of the Mixed Armistice Commission is not an authority appointed by the United Nations and imposed over the signatories of the Agreement. He is an organ established as a result of their agreement and his functions are precisely those which they have defined. If either party had not wished the Chairman to have certain functions, then he would not have had them. This fact, together with the specific provision that he may not exercise administrative responsibilities anywhere, rules out any idea that he should operate by mandatory requests directed to the very Governments which have defined his functions and which are presumably, therefore, in a position to know what powers they have conceded to him."

11. I am confident that you will give the considerations set forth in this letter your very serious attention and shall be glad to receive your comments on them.

Yours faithfully,

Moshe Sharett
Minister for Foreign Affairs

ANNEX III

TRUCE SUPERVISION ORGANIZATION

Jerusalem, 20 October 1953.

Sir,

I have the honour, as requested by Your Excellency in the last paragraph of your letter dated 24 September 1953, to forward my comments on the considerations you have set forth in relation with my decision of 23 September. In our meeting, on 28 September, you had suggested that these comments should be delayed while we would continue to look together for a solution. At the end of our meeting, on 15 October, we agreed that the matter might be pursued in the Security Council after I had submitted my report. I am accordingly forwarding my comments today. I intend to annex them to my report to the Security Council, together with my decision and your letter of 24 September.

Each of the following paragraphs contains my comments on the corresponding paragraph of your letter of 24 September.

2. You have stated that the substance of my views and their underlying assumptions appeared to be "at marked variance with the position so far maintained by the competent organs of the United Nations as regards works of this nature in the Demilitarized Zone". I have studied the relevant decisions and statements by the competent organs of the United Nations since 1949, when the General Armistice Agreement between Israel and Syria was negotiated, and I think that my position with regard to the present Israeli canal project is consistent with them. As you have mentioned, I have referred in my decision to a document which both Parties to the General Armistice Agreement have agreed to consider as authoritative, viz: the Acting Mediator's comment on Article V, the text of which was incorporated in the Security Council resolution of 18 May 1951 (S/2157). You yourself have referred to another text, viz., a paragraph in the Acting Mediator's letter of 26 June 1949, addressed to the Government of Israel, in which Dr. Ralph Bunche stated: "I may also assure both Parties that the United Nations, through the Chairman of the proposed Israeli-Syrian Mixed Armistice Commission, will also ensure that the demilitarized zone will not be a vacuum or wasteland, and that normal civilian life under normal local civilian administration and policing will

be operative in the zone". The same paragraph is contained in the Acting Mediator's letter, also dated 26 June 1949, addressed to the Syrian Government. The assurance thus given by the Acting Mediator to both Parties with regard to normal civilian life confirms the provisions of the General Armistice Agreement and his authoritative comment on Article V.

After visiting the area and studying the present Israeli project in the light of the explanations given to me, I have found not only that there has already been some interference with normal civilian life, but also that the completion of the project, by deriving from the flow of the Jordan in the Demilitarized Zone the water necessary to generate electric power of 24,000 kilowatts, was likely to bring about greater disturbances unless definite obligations were entered into with a view to avoiding them. In the absence of such obligations, some Arab lands, which for many years have depended on the water of the Jordan for irrigation, might become, in the Acting Mediator's words, "a vacuum or wasteland".

3. I have noted your statement that "under the Israel-Syrian General Armistice Agreement, the sole concern of United Nations representatives throughout has been to ensure that in the course of the execution of development projects, established private rights in the Zone should be adequately protected". As indicated in the previous paragraph of this letter, I have taken into account the obligation to ensure such protection. I do not, however, agree that under the General Armistice Agreement, protection of established private rights in the Zone has been "the sole concern of United Nations representatives throughout". A study of the decisions taken in connection with the Huleh drainage scheme, to which you have referred in paragraph 4 of your letter, will, I think, support my opinion.

4. I shall recall in this connection that at a meeting of the Israel-Syrian Mixed Armistice Commission held on 21 February 1951, one month after the execution of the Huleh drainage scheme had started, the two Parties agreed to seek the opinion of my predecessor, General W.E. Riley, on the question whether the execution of the scheme would give Israel a military advantage. After studying the terrain along the demarcation line and east of the international border between Syria and

Palestine in the vicinity of the Huleh marshes, General Riley concluded that in draining Lake Huleh, the Israelis would not enjoy any military advantages not equally applicable to the Syrians (Document S/2049, Part IV, paragraph 3). The question of the military advantages which the execution of the scheme might give to Israel was thus settled in the negative, following an agreed procedure between the Parties (request addressed to the Chief of Staff). The absence of an agreed procedure in the case of the present Israeli project, which would considerably alter the flow of the Jordan in the Demilitarized Zone, does not, in my view, relieve the Chairman of the Mixed Armistice Commission of the responsibility of considering the military consequences of such a project in the light of the provisions of the General Armistice Agreement.

As regards protection of established private rights, Your Excellency has quoted excerpts from a reply made by my predecessor to one of the questions put to him during the meeting of the Security Council held on 2 May 1951. The question was: "Would you consider the question of the rights involved in the concession of the Palestine Land Development Company to be a question which might fall within the jurisdiction of the Mixed Armistice Commission?" General W.E. Riley's answer was: "Only where it involves land within the demilitarized zone which is the property of Arab refugees. That is the only part of the concession with which we have anything to do... etc." That answer concerning work already begun or projected by the Palestine Land Development Company in the Demilitarized Zone should, it seems, be considered in its context: at that time, the question of a possible military advantage had already been disposed of, and as regards the protection of normal civilian life, it appeared that only some seven or eight acres of land owned by Arabs in the Demilitarized Zone would be affected. Similarly, I can state today that the question of the rights involved in the concession granted by the High Commissioner for Palestine to the Palestine Electric Corporation Limited on 5 March 1926 does not fall within the jurisdiction of the Mixed Armistice Commission or its Chairman, but that I am only concerned with the implementation of Article V of the General Armistice Agreement. The provisions of Article V include the protection of the rights of Arab owners whose lands should not be worked upon, flooded or deprived of water without their consent, and also the protection of acquired rights to the water of the river Jordan which flows

in the Demilitarized Zone and which has been used up to now for irrigating lands, watering cattle, or operating mills.

As regards this question of the waters of the Jordan, there is between the Huleh drainage scheme and the present canal project a considerable difference. The execution of the Huleh drainage scheme has not diminished the quantity of water flowing in the bed of the Jordan in the Demilitarized Zone, nor caused damage to irrigated lands - except temporarily. (I have referred in paragraph 8 (d) of my decision of 23 September 1953 to the temporary damage caused in October 1951 and April 1952 by the operation of checking gates.) The construction of the projected canal would, on the other hand, alter the flow of the Jordan permanently and, unless definite obligations were entered into, it would, in all likelihood, adversely affect, particularly during the dry season, the life of the people depending on the waters of the river. In the case of the Huleh, my predecessor stated, at the end of the passage you have quoted: "I am only involved in the normal restoration of life within the Demilitarized Zone which affects the thirty, forty or fifty Arabs that own the approximately seven or eight acres of land within the Demilitarized Zone." The present canal project, the execution of which would result in considerably lowering the waters of the Jordan, affects many more Arabs and many more acres of land.

5. As indicated in the preceding paragraph, the rights of the Palestine Electric Corporation or the other private rights within the Demilitarized Zone to which you have referred are not in question. What is in question is the right to start work in the Demilitarized Zone in connection with the present canal project, when the present provisions of the General Armistice Agreement are in force. As stated in the first paragraph of the Acting Mediator's authoritative comment: "Civil administration, including policing, will be on a local basis; without raising general questions of administration, jurisdiction, citizenship and sovereignty".

You state that "full care has been taken to ensure that the work should in no way impinge upon any private Arab land in the area, nor curtail the use of water for irrigation by landowners and cultivators within the Demilitarized Zone"

and that "in these circumstances it was but natural that the Chairman of the Israel-Syrian Mixed Armistice Commission, when informed of the commencement of the project on 2 September 1953, should have expressed his concurrence with it". The Acting Chairman (there was at that time no Chairman designated by me in conformity with Article VII, paragraph 1, of the Armistice Agreement, and I had not yet returned from New York) was informed of the commencement of the project on 2 September, when the work had already started. After another conversation, on 3 September, he received a letter from the Senior Israeli Delegate, dated 4 September, which reads: "Following our meetings on 2 and 3 September 1953, I would like to confirm in writing the following: Chairman concurs with the Northern Irrigation Project which started on 2 September 1953, as outlined to him during the above meetings, it being understood that no digging will be effected on Arab-owned land, unless an arrangement is reached between the Project Authority and the landowners." The Acting Chairman asked for more data about the project and was shown on 7 September the proposed route of the canal. On 9 September he sent to the Senior Israeli Delegate the following note: "In answer to your letter dated 4 September 1953, I wish to inform you that due to the importance of this so-called 'Northern Irrigation Project' and to the fact that I am only Acting Chairman, I put the whole matter in the hands of the Chief of Staff..." It does not result from the above that the necessary concurrence was expressed with regard to the canal project. The letter from the Senior Israeli Delegate dated 4 September, following the conversations on 2 and 3 September, when the "Northern Irrigation Project" was outlined to the Acting Chairman, cannot replace formal concurrence expressed after a study of the plan and its consequences. As Chairman of the Mixed Armistice Commission, I have had to undertake such a study and, in connection with it, I have, as you indicate, raised points for clarification, while reserving my conclusions as to the legitimacy or illegitimacy of the project until I had examined the matter under its various aspects.

6. I agree with your statement that my conclusions are based on the examination of the three points you have summarized in your paragraph 6. I should like to add in this connection that they are based on no other consideration. There are in your letter two passages (last sub-paragraph of paragraph 5, and second sentence

of paragraph 9) which seem to imply that my conclusions may have been influenced by "open threats of the Syrian Government". I should like to repeat here the assurance already given to you that no kind of threats have influenced or will influence my decisions as Chief of Staff or as Chairman of a Mixed ... Justice Commission. You have accepted my assurance "without reserve" and it is no longer necessary for me to deal with the matter.

7. I shall now submit my comments on the observations contained in subparagraphs 7 (a) to 7 (f) of your letter.

(a) and (b): I had indicated in paragraph 7 (a) and my decision that the main point whether work in connection with the canal project had been started on Arab-owned lands on the West bank of the Jordan would have to be investigated and that United Nations observers would study land titles in the possession of Arabs and in the Land Office in Safad. United Nations observers would also investigate the question of the ownership of the island which, near the site of the work, divides the river Jordan into a right and a left branch. United Nations observers had reported that, as a result of the construction of a dyke across the right branch the island had been partially flooded. In paragraph 7 (a) of your letter you have recalled Israeli representatives' assurances that "the project has not so far involved, nor will it involve in the future, the use of Arab-owned land in the Demilitarized Zone, and that it has not otherwise affected, nor will it in the future affect, such land." You have also stated that my representatives would receive the full co-operation of the Israeli authorities in their examination of the files of the relevant Land Registry Office. The results of the examination may be summarized as follows: the island, whose shape and size are variable (it was, when I saw it, approximately twenty times the size mentioned by Your Excellency) does not appear on the Safad land map or land books and the Arab refugees who claim ownership have produced no titles. It has, on the other hand, been proved that they own four plots of land (nearly 20 dunams altogether) which are located on the right bank of the Jordan, where it bends and flows in an East-West direction (around MR. 208.950 - 267.600). It is between that part of the right bank and the island that the Israeli engineers have constructed the dyke necessary to start the canal project. According to the assurances by Israeli representatives, to which you have referred, such Arab land should have been

neither "used" nor "otherwise affected" and it should in the future neither be used nor affected. It has however been used: Israeli workmen have crossed it to build the dyke in the western branch of the river, their power shovels, placed in the river bed and also on Arab land, have piled up boulders and soil on it (these have been to date removed to a large extent); heavy machinery has overturned the ground; trees have been felled; Israeli police guarding the site have used an old Arab mill as a bivouac.

(c): When, on 14 September, I visited the east bank of the Jordan, I was shown two Arab mills which had ceased working and an Arab land which had ceased being irrigated. I mentioned in paragraph 7 (b) of my decision that the explanation given, viz. "that lack of water resulted from Israeli work in the bed of the river, appeared to me, after a rapid investigation, plausible". In paragraph 7 (c) of your letter you state that the two mills shown to me on 14 September as having ceased to work owing to lack of water "have actually not been in operation for years and that, moreover, the canal leading to these mills branches off from the Jordan north of the point from which the contested new canal is being dug, so that the digging of the canal and the diversion of water into it could have no possible effect upon these two mills". As I had indicated, my investigation on 14 September had been "rapid" and I had accepted the explanation given to me as merely "plausible". I am now in a position to comment both on my statement and on your observations concerning it. Your observations are correct with regard to one of the two mills, viz. the one which I did not enter on 14 September but saw from a short distance. (It is moreover quite possible that I misunderstood what was said to me about this mill.) On the other hand, the other mill, Tahunat Najmat es Subh, has been in operation this season. When I visited it, I found that the canal leading to it did not contain enough water for its operation. United Nations observers have confirmed that the water level had fallen to 1/3 of its former level, following the destruction of the dyke which had been built in the river bed to divert water into the canal. In digging out the bed of the river and constructing the new dyke across its western branch, Israeli workmen destroyed the dyke constructed by the owner of the mill. They have at the same time deprived of water the irrigated plot of land to which I have referred.

(d): The question of definite assurances by the Israel Government "that the volume of Jordan water now used by Arab landowners or cultivators for irrigation purposes will remain available in the future" is one of the questions which, in my view, should have been discussed before starting work on the new project. After the explanations given by Israeli officers and engineers, I am convinced that unless definite obligations are entered into to protect existing water rights, the project to derive from the Jordan enough water to generate electric power of 24,000 kilowatts, would leave the present river bed with very little, if any water, during the dry season, when the lands would be most in need of irrigation. This can be substantiated by the following figures supplied by Israeli engineers: in the rainy season the flow of the Jordan in this area is 36 cubic meters per second; it falls to 8 cubic meters per second in September and 7 cubic meters in October.

(e): I agree that respect for the demilitarization provisions relating to the Zone is essential so long as they exist. However, the value of the Demilitarized Zone as a buffer zone would be different if one Party controlled the flow of the Jordan in the Zone by means of a canal. I have only considered the question of the altered military value of the flow of the Jordan in the Demilitarized Zone, resulting from the construction of such a canal. You have considered another question, that of the military value of the canal in which the water derived from the river would flow. The canal, in your opinion, would only constitute an obstacle for a party bent upon aggression. You add that "for its part, the Government of Israel has consistently abjured aggression. Were it nursing aggressive designs, it would be thwarting its own purpose" by digging the canal. From a purely technical point of view, it is not quite clear to me how the Government of Israel "were it nursing aggressive designs, would be thwarting its own purpose" by digging, in an area not affected by the demilitarization provisions of Article V, a canal running parallel to the Jordan river bed. From a purely military point of view, the existence of such a canal would permit the Party controlling it to economize its forces in the area and increase them elsewhere.

(f): I have noted your interpretation of Article II, paragraph 1, of the Armistice Agreement which reads as follows: "The principle that no military or political advantage should be gained under the truce ordered by the Security Council

is recognized." Another interpretation seems to have been accepted in February 1951, when, as reported to the Security Council by General W.E. Riley (S/2049, Part IV, paragraph 2), "both delegations agreed mutually to seek the opinion of the United Nations Chief of Staff on the question as to whether the work undertaken by the Israeli authorities (the drainage of the Huleh marshes) constituted a contravention of Article II (military advantage) of the General Armistice Agreement". However, I have not in my decision referred to Article II, paragraph 1, and such reference was not, in my opinion, necessary. Lake Huleh and the Huleh marshes are outside the Demilitarized Zone, while the Jordan, between Lake Huleh and Lake Tiberias, flows in the Zone. As Chairman of the Mixed Armistice Commission, entrusted with special responsibilities in the Demilitarized Zone under Article V, 5 (c), of the General Armistice Agreement, I have considered the military aspect of the diversion of a considerable quantity of water from the present river bed with reference to the provisions of Article V.

8. With regard to the question of Buteiha Farm, you state that "the decisive consideration here is that the Armistice Agreement provides for the restoration of civilian life - and by implication for the protection of private rights - only within the Demilitarized Zone, and not outside it, either in Syria or in Israel". I agree with this statement. It implies that Arab private rights, including Syrian property in the Demilitarized Zone and existing water rights for such property, shall be protected. This settles the question of the water rights of the owners of Buteiha Farm in so far as their property in the Demilitarized Zone is concerned. There remains the question of the irrigation of the lands of Buteiha Farm in Syria. The following provision in the Franco-British Agreement respecting the boundary line between Syria and Palestine (7 March 1923) refers to Syrian water rights as follows: "Any existing rights over the use of the waters of the Jordan by the inhabitants of Syria shall be maintained unimpaired." This is the basis of the Syrian contention that they have water rights outside the Demilitarized Zone not depending on what, in your opinion, "was an ex-gratia act" on the part of Israel.

In this connection you refer to the operation of the checking gates south of Lake Huleh in April 1952 and you characterize such operation as being "a matter of the internal administration of the Demilitarized Zone and not one of concern to Syria; it was not subject to agreement between Israel and Syria, but was carried out solely with the concurrence of the Chairman of the Mixed Armistice Commission." Allow me to quote in this connection the following passages from General Riley's report to the Security Council, dated 30 October 1952. (S/2833, paragraphs 59 and 60):

"59. The work of the Palestine Land Development Company has continued throughout the period covered. As reported in document S/2389, paragraph 22, a test, in October 1951, of the checking-gates of the Jordan River just south of Lake Huleh showed that a reduction in the flow of the Jordan sufficient to permit the operation of equipment in the river bed would result in a considerable loss of water in the irrigation system of Buteiha Farm which lies in Syrian territory, East of the Jordan River and immediately North-East of Lake Tiberias. On 22 January 1952, the Chairman reached an agreement with both parties whereby the checking-gates could be operated for a period of about three weeks in order to effect emergency repairs to the Banat Yacoub Bridge. On 9 April 1952, emergency repairs to the bridge having been effected, and in view of strong representations on the part of the owners of Buteiha Farm, the Chairman withdrew his concurrence to further use of the checking-gates until another agreement should be reached by the two parties. Use of the checking-gates, except in minor instances and for very short periods, has been discontinued.

"60. In a further effort to arrange for the operation of the checking-gates, a conference was held between representatives of the Palestine Land Development Company and the owners of Buteiha Farm, the delegations to the Mixed Armistice Commission of both parties and the Chairman. At this conference, the farm owners pointed out that the estimated value of the 1952 crop was approximately US \$750,000 and that about 18,000 dunams of land would be under irrigation during the season. Loss of irrigation water in Buteiha Farm would result in a serious financial loss to the farm owners, and indirectly, to the Syrian Government. The owners of Buteiha Farm, with the concurrence of the Senior Syrian Delegate, offered to agree to controlled use of the checking-gates if prompt payment for resulting damage was made by Israel. This offer was not accepted."

9. You have summarized in paragraph 9 of your letter the reasons why you have refused to comply with the request contained in paragraph 9 of my decision, that the Israeli authority which started work in the Demilitarized Zone on 2 September be instructed "to cease working in the Zone so long as an agreement is not arranged". The comments contained in the preceding paragraphs of this letter explain why my request was made.

10. I welcome the statement that "it remains the firm policy of the Government of Israel to adhere strictly to its obligations under the Armistice Agreement". You refer at the same time to your Government's conception of the powers and functions of the Chairman of the Mixed Armistice Commission under the terms of the Armistice Agreement. You quote, in this connection, a passage from the Israel representative's statement at the 547th meeting of the Security Council on 18 May 1951. I quite agree that, as stated by Ambassador A. Eban, "if either party had not wished the Chairman to have certain functions, then he would not have had them". I am sure, however, that this cannot be taken to imply that it remains for either Party to decide whether the Chairman acts in conformity or not with the functions conferred upon him by both Parties. That would mean anarchy in the Demilitarized Zone, in which both Parties have agreed to confer special powers upon the Chairman under the provisions of Article V of the Armistice Agreement. If there is a difference on the interpretation of these provisions, the two Parties have provided a remedy. Article V is not one of the Articles which the Mixed Armistice Commission may not interpret, since Article VII, paragraph 8, reads as follows:

"8. Where interpretation of the meaning of a particular provision of this Agreement, other than the preamble and Articles I and II, is at issue, the Commission's interpretation shall prevail. The Commission, in its discretion and as the need arises, may from time to time recommend to the Parties modifications in the provisions of this Agreement."

With regard to the idea, ruled out by your representative, that the Chairman of the Mixed Armistice Commission should operate by "mandatory requests" directed to the very governments which have defined his functions, I should like to point

out that the Chairman has been operating by "requests" in the past and that, apart from the objection raised by your representative in the passage you have quoted, there has been neither on the Israeli side nor on the Syrian side any objection in principle to such procedure. My predecessor, in his reports to the Security Council, has mentioned that such requests have been made from time to time. I shall give only two instances, which refer to the period following Ambassador A. Eban's statement. On 7 August 1951, General Riley wrote a letter to Your Excellency which is reproduced in his report to the Security Council dated 16 August 1951 (S/2300, paragraph 7). At that time, the Palestine Land Development Company, in the course of the execution of the Huleh drainage scheme, was contemplating to employ a survey team on the East bank of the Jordan, south of Lake Huleh, and to emplace between the two banks a dam which, according to information received, would stop the flow of the river between Lake Huleh and Lake Tiberias about 5 days a week for a considerable period of time. The last paragraph of the letter which my predecessor wrote in this connection to Your Excellency reads as follows:

"Therefore, in view of the responsibility given to the Chairman of the Mixed Armistice Commission by Article V of the General Armistice Agreement and in accordance with instructions contained in the Security Council resolution S/2157 dated 18 May 1951 which authorizes the Chief of Staff 'to take such measures to restore peace in the area and to make such representation to the Governments of Israel and Syria as he may deem necessary' and further in view of the consultations on outstanding problems envisaged in Mr. Eban's letter to me of 4 August 1951, I urge strongly that the Palestine Land Development Company be restrained from dispatching a survey team to the east bank of the Jordan and from proceeding with the proposed emplacing of the dam across the Jordan."

There was, it seems, no objection to his issuing such request. It was apparently complied with, since the following paragraph of his report (paragraph 8) states: "I have just been informed that the Palestine Land Development Company has submitted a project which, it is claimed, can be carried out without encroaching on the east bank of the Jordan and interfering with normal irrigation."

I will give another instance, that of the test of the checking gates south of Lake Huleh, on 8 and 9 October 1951. In this connection, General Riley has reported to the Security Council as follows (paragraph 22 of his report dated 6 November 1951 (S/23897)):

"The water loss in the irrigation system of Buteiha Farm (in Syrian territory) was estimated by United Nations Observers to have been as much as 70 per cent. The test was terminated and the project to reduce the flow of water by means of the checking gate abandoned. It is a matter of satisfaction that, in this case, requests to cease the operations made by the Chairman were immediately complied with."

11. The above are the comments you had requested on the considerations you have set forth. I apologize for their length. I have, however, thought it necessary to explain as fully as possible the motives of my decision, especially in view of the fact that the issue has been submitted to the Security Council.

Yours sincerely,

Major General Vagn Bennike
Chief of Staff

His Excellency Mr. Moshe Sharett,
Minister for Foreign Affairs,
Government of Israel.

