

International Progress Organization



Organisation Internationale pour le Progrès

Special meeting in observance of the
International Day of Solidarity with the Palestinian People

General Assembly of the United Nations
Committee on the Exercise of the Inalienable Rights of the Palestinian People

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4 p.m.

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Statement on behalf of civil society

Mister Chairman,
Excellencies,
Ladies and Gentlemen,

In this year 2017, we are witnessing three round anniversaries none of which is cause for celebration. 100 years since the writing of the letter that has become known as the “Balfour Declaration,” 70 years since the “recommendation” of the United Nations General Assembly to partition Palestine into three territorial units, with Jerusalem as a separate entity with special international status, and 50 years since the beginning of Israel’s occupation of the West Bank, including Arab Jerusalem, as well as Gaza and the Syrian Golan Heights – the time has come to recall the historical facts, draw the lessons and define the elements of the path forward. This is all the more important as, for the Arab people of Palestine, the past hundred years have been an era of injustice, false hopes and broken promises resulting in a continued – as some would wish, perpetual – denial of their right to self-determination, the principle the victorious powers, under the leadership of Woodrow Wilson, had committed themselves to uphold upon the end of World War I.

Because of the coincidence of these anniversaries, and in response to celebrations of the first one in various places, including in the British capital, allow me, this time, to go into more detail about history and origin of the Palestinian tragedy. Only if people, and nations, are aware of the historical truth can they master the future.

The Balfour Declaration of November 2, 1917, promising the Jewish people a “national home” in Palestine, will forever be remembered as document of a policy that has been at the roots of the injustice inflicted on the large majority, in fact 94 percent, of the people inhabiting Palestine at that time. For the sake of truth it is to be recalled, however, that the letter by Lord Balfour, written on behalf of the British Government, also contained a commitment “that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine.” As I just said, those communities made up the vast majority of the total population, but nothing was done by the British Empire to live up to this commitment. The Arabs were betrayed and promises for their own independent state, given to them in the course of World War I, were never acted upon. In 1922, the text of the letter of Lord Balfour was incorporated into the Preamble to the Palestine Mandate of the League of Nations, but the protective clause assuring the rights of the non-Jewish majority, which was also part of the Preamble, had no effect on the exercise of the Mandate by Britain. Contrary to what the Covenant of the League of Nations, in its Article 22, had envisaged for

“certain communities formerly belonging to the Turkish Empire,” namely recognition as independent nations, the Arab majority’s right to exist as such an “independent nation” in Palestine – unlike the Jewish minority’s – was not “provisionally recognized” (to use the terminology of the Covenant). This historical injustice has exposed the double standards of the post-World War I powers concerning self-determination. In this sense, the British Mandate in Palestine was the legacy of colonialism, as particularly manifested in the secret Sykes-Picot Agreement of 1916 with France, and it eventually led hundreds of thousands of Arab Palestinians into the catastrophe of expulsion from their native land after Britain ended the Mandate in May 1948. The Palestinian Exodus of 1948, the *Nakbah*, is the sad legacy of the Balfour Declaration. This is no cause for celebration, neither in London nor anywhere else.

Mr. Chairman,

Exactly to the day, 70 years ago, the United Nations General Assembly under whose auspices we gather here today adopted resolution 181(II) on the “Future government of Palestine.” For the sake of accuracy, and in order to dispel unfounded myths, it must be said that this resolution was not the legal basis for the creation of the state of Israel, nor much later of the state of Palestine. In strictly legal terms, the General Assembly merely “recommended” to the United Kingdom, as mandatory Power, and to the member states of the United Nations the adoption and implementation of a “Plan of Partition with Economic Union,” and “requested” the Security Council to “take the necessary measures” for its implementation. According to Article 10 of the UN Charter, the Assembly is only competent to make recommendations to the member states and the Security Council; it has no authority to create states or divide territories for the creation of states. (It is worthy of note that, in a letter dated April 2, 1947, addressed to the Secretary-General, the United Kingdom merely requested the General Assembly to make *recommendations* – not binding decisions – “concerning the future government of Palestine.”) The Security Council has no competence either to allocate territories or create states. Its vast coercive powers under Chapter VII of the Charter only relate to measures to maintain or restore international peace and security. Accordingly, and correctly so, the Security Council, in resolution 42 (1948) of 5 March 1948 merely acknowledged receipt of the General Assembly’s resolution and called on the permanent members to make “recommendations (...) which the Council might usefully give to the Palestine Commission” of the United Nations. In the many subsequent resolutions, the Council nowhere took action to implement resolution 181(II) of the General Assembly by resorting to its Chapter VII powers, which would anyway have been unconstitutional as the

Delegate of the United States to the United Nations correctly said in his speech at the Security Council on 24 February 1948. Because of the historical importance of this statement and in view of its relevance in terms of international legality also in the current situation in Palestine, I quote from Ambassador Warren's words: "The Security Council is authorized to take forceful measures with respect to Palestine to remove a threat to international peace. The Charter of the United Nations does not empower the Security Council to enforce a political settlement whether it is pursuant to a recommendation of the General Assembly or of the Security Council itself. (...) The Security Council's action, in other words, is directed to keeping the peace and not to enforcing partition." (Security Council, Official Records, 3rd Year, 253rd Meeting, 24 February 1948, p. 267) Similarly, the President of the Security Council stated on 19 March 1948: "The United Nations was created mainly for the maintenance of international peace. It would be tragic indeed if the United Nations, by attempting a political settlement, should be the cause of war." (Security Council, Official Records, 3rd Year, 271st Meeting, S/PV 271, March 19, 1948)

Thus, the so-called "partition resolution" was never implemented by, or in the framework of, the United Nations. What actually happened were a unilateral declaration of independence by only one community in Palestine and the creation of a state by use of armed force, with borders different from those envisaged in the Partition Plan. Thus, unlike what interested parties may have stated over the years, resolution 181 (II) of the General Assembly is not in any way the legal basis for the creation of the State of Israel. It was exploited, however, for purposes of moral legitimation vis-à-vis international public opinion.

It is not intergovernmental organizations that create sovereign states by way of resolutions, but the people themselves on the basis of their inalienable right to self-determination as enshrined in Article 1(2) of the UN Charter. Thus, the State of Palestine has come into existence by virtue of a sovereign decision of the representatives of the Palestinian people, not by executive fiat of international organizations. Recognition of the state by a large majority of UN member states – as now is the case – is not the legal basis of its existence. Diplomatic recognition is merely the acknowledgment, by those states, of its creation, a sovereign act of the people itself that cannot be arrogated by, or delegated to, any other state or entity.

Mr. Chairman,

This brings me to the third sad anniversary, which is related to the occupation, more than 50 years ago, of Palestinian and Syrian territory in the war of 1967. Much has been said,

and literally hundreds of resolutions and solemn declarations have been made, on the inadmissibility of the acquisition of territory by force and on the systematic violation of international humanitarian law by the occupying power in Palestine. All calls for withdrawal from the territories so far remained unheeded. However, there is one positive development to report in terms of the legal situation. Since we last met, a year ago, in this august gathering, the Security Council has eliminated a serious legal ambiguity in terms of Israel's obligation to withdraw. While Council resolution 242 (1967), unanimously adopted after the Six Day War, had stated Israel's obligation, under Article 2 of the UN Charter, to withdraw "from occupied territories" – not from the occupied territories – (a vagueness exploited by Israel to delay withdrawal), resolution 2334 (2016), adopted on 23 December 2016 by an overwhelming majority of 14 votes with one abstention, has set things straight. Without any room for interpretation, the resolution "underlines" that the Council "will not recognize any changes to the 4 June 1967 lines, including with regard to Jerusalem, other than those agreed by the parties through negotiations." Though it took the Council almost half a century to correct the situation, it is an important signal nonetheless that documents the determination of the international community in the face of an ever more arrogant occupation – and annexation – régime in Palestine. Even this resolution, however, can not do away with the basic predicament of all Security Council action on the question of Palestine: because of the veto right, the Council has never been able to use its coercive powers under Chapter VII of the Charter. This will not change as long as the United States does not reconsider her unconditional commitment to *one* party to the conflict in Palestine. Ironically, it was Ambassador Warren Austin of the United States who, in February 1948, had acknowledged the Security Council's authority to take "forceful measures" with respect to a threat to international peace in Palestine.

Though the President of the United States, in repeated and powerful pronouncements, created the impression that he might be able to cut the Gordian knot, hinting at a new "blueprint" for mending Arab-Israeli relations, nothing can realistically be expected as long as the US does not define its mediating role on the basis of equidistance from both parties, an approach last practiced – as to my knowledge – under President Eisenhower in the 1950s.

In the meantime, the international community must redouble its efforts to oblige Israel as the occupying power on the West Bank and Gaza to disband existing settlements, cease all further settlement activities and lift the siege of Gaza – to salvage the two-state solution on which agreement has been reached since the Oslo accords between Israel and the PLO. "Just, lasting and comprehensive peace," as envisaged by the Security Council in its resolution

2334, can never be achieved under conditions of hostile occupation. As rightly stated by the United Nations Special Rapporteur for Human Rights in the Occupied Palestinian Territory, Mr. Michael Lynk, occupation does not grant the occupier any right or title to any of the occupied territory. “All occupations must be inherently temporary” and the occupier “must rule in the best interests of the protected people,” he emphasized. (United Nations, Doc. GA/PAL/1397, 15 November 2017) These noble principles, also set out in the Fourth Geneva Convention, could not be further away from the facts on the ground if we look at Israeli projects, announced by the Israeli government earlier this year, to build 11,000 new settler homes in the occupied territories and to “legalize” 4,000 “outpost” Jewish homes. The defiant words of Israeli Prime Minister in his speech on 27 September 2017, marking 50 years of Israeli control over the West Bank and Golan Heights, give not much reason for hope: “There will be no more uprooting of settlements (...) We are here to stay, forever.”

Mr. Chairman,

In its landmark resolution of December last year, the Council has comprehensively laid down the legal facts and requirements for a solution, but it was not able – unless provoking a veto – to adopt enforcement mechanisms under Chapter VII of the Charter. To state it yet again: This is indeed the dilemma of all United Nations resolutions and pronouncements on the Palestine issue since 1947. It cannot be better expressed than in the words of the UN Special Rapporteur in his recent report (15 November 2017) to the Committee on the Exercise of the Inalienable Rights of the Palestinian People: “criticism without consequences is a recipe for drift and inaction.”

Furthermore, in terms of international criminal law, the Prosecutor of the International Criminal Court should conclude the preliminary examination process (ongoing since almost three years) and a full investigation should be initiated into the alleged commission of international crimes on the territory of the West Bank and Gaza. No state, whether the United States or any other member of the United Nations, has the right to exert pressure on the Palestinian Administration so as not to pursue the avenue of criminal justice with the ICC of which the State of Palestine is a party.

It is of utmost importance, at this point in time, when the Arab and wider Muslim world is divided by factional and sectarian disputes and the entire Middle East risks profound, long-term destabilization, that the Palestinians in the West Bank and Gaza close their ranks and act in unity. This will strengthen the credibility of the rightful demands of the people of Palestine, supported by the international community, that Israel disband the settlements and

withdraw from the occupied West Bank – measures without which there can be no viable sovereign Arab state in Palestine. The policy of *fais accomplis* must come to an end once and for all.

Finally, we must not forget that in this year there is a fourth – not only sad, but also shameful – anniversary, namely of the decade-long blockade of the Gaza Strip, with the participation not only of the occupying power. This inhumane and intrinsically illegal measure must end immediately and border crossings have to be reopened. This is the joint responsibility of all actors that have enforced the embargo in the last 10 years – for whatever tactical or political purposes. Security considerations must not further be an excuse for continuing this form of collective punishment. The Palestinian people must not pay the prize for the power games in the Middle East, and Palestine must not become the place where the proxy wars of the Middle East are being fought.

Thank you, Mister Chairman.
