In recent years the United Nations has increasingly become a tool used by the Arabs for waging a determined legal assault against Israel. The world body, whose avowed purpose is the maintenance of international peace and security and whose guiding principles include the principle of the sovereign equality of states, is being manipulated in the cause of deligitimizing and destroying a modern state. Professor Stone in this valuable study sets out to show how the assault against Israel in, and by, the United Nations has in fact been an assault on international law itself. He masterfully exposes and rebuts the arguments which have been devised in the pseudo-legal campaign against Israel.

Stone traces the changes which have occurred in the United Nations since 1967, when repeated attempts by the Soviet Union to have the Security Council or the General Assembly brand Israel as an aggressor failed. The changes which have taken place relate to the composition of the UN and the influence of Arab oil and wealth on both poor and wealthier members. These factors, combined with the inveterate hostility of the Soviet Union toward Israel, have led UN bodies to churn out with regularity a multitude of resolutions condemning Israel and extolling Arab and Palestinian rights.

On December 2, 1977, the General Assembly established the Committee on the Exercise of the Inalienable Rights of the Palestinian People which, through a series of "studies" has sought to impart a mandatory quality to the anti-Israel resolutions. In effect they brand Israel as an outlaw legally obliged to surrender territory and status to the Palestinians.

The author critically reviews the five main theses which these studies endeavor to establish: 1) that the General Assembly is an international lawmaker; 2) that the 1947 Partition Resolution continues to bind Israel (but not the Arabs); 3) that repeated recitals of General Assembly resolutions have established a "right of return" in international law for Palestinian Arabs; 4) that the resolutions of the General Assembly have established a legal "right to self-determination" of Palestinian Arabs, empowering the Assembly to remodel Israel's boundaries; and 5) that the status of Jerusalem under international law remains that of a corpus separatum as prescribed in the 1947 Partition Resolution.

Stone points out that it is the underlying assumption of these theses that the "Israel-Arab question arises from encroachment by the state of Israel on some international law right of self-determination of a Palestinian Arab nation" (p. 126). This assumption, the author maintains, is based on the historical fallacy that the contending claims in the crucial period 1917-1919 were those of the Jews against those of the Palestinians. In fact, at that time the two claimants for self-determination in the Middle East were the Arab and Jewish peoples. Their claims were equitably and satisfactorily settled, with the overwhelming share of territory and resources going to the Arabs and Palestine alone earmarked for the development of the Jewish national home. In 1922, even that small allotment was radically reduced when Palestine was divided into two parts: the land from the west bank of the Jordan to the Mediterranean was set aside for Jewish
development, ultimately to become the state of Israel, while the east bank was reserved for Arab development, and ultimately became the Palestinian state of Transjordan (today Jordan). Stone maintains that the principle of self-determination was thus more than satisfied in relation to the Arab nation, and that any claims which the Palestinians (after a process of self-identification which first originated in 1919) now seek to raise should be directed to the vast territory of the Arab states.

Concerning the legal effect of General Assembly resolutions, Stone points out the dilemma of the authors of the Committee studies. Given their aim of deligitimizing Israel, they would prefer to contend that the 1947 Partition Resolution adopted by the Assembly was without force and, as the Arabs argued all along, illegal. This would in a sense justify the Arab invasion of Palestine in 1948. But on the other hand, the authors wish to have Israel bound by certain features of the Partition Resolution and to impart a mandatory quality to post-1967 Assembly resolutions dealing with Palestine. In order to overcome this “schizophrenic posture” of arguing the original nullity of the Partition Resolution while claiming that Israel (but not the Arab states) is bound by it, the authors of the studies (like Cattan before them) seek to oblige Israel by dint of so-called “unilateral declarations” which Israeli officials ostensibly made with regard to the partition plan. This venture into “split personality” was effectively dismissed by Professor Nathan Feinberg and is also rebutted by Professor Stone in this book. Israel’s statehood, like that of any other state, is premised on the fact of its being — and not on any external factor, be it the partition plan, admission to the United Nations, or any other international act.

As to the original validity and binding force of the Partition Resolution when adopted by the Assembly, two schools of thought have arisen (outside the Arab bloc which has steadfastly maintained that adoption of the resolution was ultra vires of the United Nations). According to one theory (which Stone expounds), the UN was empowered under Article 10 of its Charter to adopt the resolution but could not impart a binding quality to it, since, except in certain instances, the General Assembly is limited to making recommendations. The resolution, therefore, could not have legislative effect so as to vest territorial rights in either the Jews or Arabs. It was, in fact, an enabling resolution which would bind the parties only to the extent that they agreed to implement it. No such agreement was ever forthcoming, and so the whole partition scheme fell to the ground.

An alternative argument can be made that the Partition Resolution, when adopted, was not only valid but binding, since, in the matter of mandates the Assembly was empowered to act in conjunction with the mandatory power (Great Britain) to modify the terms of the mandate. In the case of Palestine, the mandatory power and the Assembly acted in concert in 1947 when the British government brought the matter before the General Assembly and the latter adopted the Partition Resolution.

The 1950 advisory opinion of the International Court of Justice on South West Africa is cited as authority for this viewpoint. But, regardless of the original binding nature of the Partition Resolution when adopted, it was drained of all authority when the Arabs violently rejected the resolution on May 15, 1948. In the face of the belligerency of one of the parties, the resolution ceased to obligate, since it could not bind one party only. Given the inability and/or unwillingness of the United Nations to halt the aggression and permit implementation of the partition resolution, the other party could obviously no longer be held bound to the terms of the resolution, and the whole partition enterprise came to nought. Under either interpretation, Israel’s existence as a sovereign state is neither derived from, nor in any way dependent upon, the Partition Resolution.

While denying the General Assembly the original power to adopt the Partition Re-
solution, the Committee studies now seek to impart a binding quality to Assembly resolutions on the subject of Palestine adopted since 1970. However, the General Assembly has no power to bind member states except on such issues as the UN budget and internal administrative matters. Resolutions of the General Assembly remain mere recommendations no matter how frequently adopted and no matter with what majority. It is precisely because all states realize the non-binding nature of Assembly resolutions that these resolutions are adopted with such lopsided majorities. They oblige no one to adhere to any given line of policy.

Where the resolutions relate to Israel and the Palestine question, the element of duress also enters into the picture since so many member states of the UN are beholden to Arab oil and wealth. This coercion diminishes even more any authority which the Assembly recommendations might have under international law. Even as recommendations they lack moral credibility. It is, therefore, quite absurd for anyone to assert that the General Assembly is empowered to redraw the frontiers of the Middle East map. The Security Council itself is only empowered to act to secure international peace and security; it cannot redraw national frontiers. Still less is the General Assembly qualified to do so.

As to the legality of Israel's occupation of Judea and Samaria (the West Bank), Stone contends that as long as the Arab states (other than Egypt) fail to come to the peace table, Israel is justified in holding onto the territories which came into her possession as a consequence of a war of self-defense. Stone argues that Israel's presence in Judea and Samaria has at least as much validity, if not more, than Jordan's presence prior to 1967. Whereas Jordan invaded that area in 1948 in violation of general international law and of specific UN resolutions, Israel gained control of the area in 1967 only as a result of a war of self-defense. Moreover, Israel is the sole entity to arise in former mandatory Palestine and, as such, its claim is certainly not inferior to that of Jordan. In any final settlement, Stone points out, Israel's claims to this area may in fact be regarded as superior to that of any other claimant.

This analysis has particular pertinence to the question of Israel's status in East Jerusalem. It is well known that Jordanian control over East Jerusalem never gained international recognition. Of the states which accorded recognition to Jordan's 1950 annexation of the West Bank, only one state, Pakistan, extended that recognition to East Jerusalem. The other state, the United Kingdom, expressly excluded East Jerusalem from its act of recognition. In effect, Jordan remained in East Jerusalem as a belligerent occupant consequent to a war of aggression. The international community never accorded it any other status. In contrast, Israel's entry into East Jerusalem in 1967 came about in the course of a war of self-defense. Stone endorses the view expounded by Professor Stephen M. Schwebel (currently U.S. Judge on the International Court of Justice) that

having regard to the consideration that, as between Israel, acting defensively in 1948 and 1967, on the one hand, and her Arab neighbors, acting aggressively in 1948 and 1967, on the other, Israel has better title in the territory of what was Palestine, including the whole of Jerusalem, than do Jordan and Egypt. (pp. 120-121).

Stone rejects the claim made by the aforementioned studies that the original internationalization clauses of the Partition Resolution remain in force and continue to bind Israel even today. Since the whole partition scheme was aborted in 1948 as a result of Arab aggression, the internationalization clauses likewise became null. Stone also dismisses the contention of these studies that the post-1967 General Assembly resolutions calling for "the status of Jerusalem" not to be altered under Israel's adminis-
tration were meant to reinstate the internationalization scheme for Jerusalem. Even if the Assembly had actually intended to revive the internationalization proposal, General Assembly resolutions would have no such dispositive effect. But, as Stone points out, there is not a shred of evidence that the General Assembly, in speaking of the status of Jerusalem, was referring to internationalization at all. Not one of the post-1967 resolutions mentions internationalization or refers even by way of recital as is customary in the preamble of UN resolutions, to the original Partition Resolution dealing with Jerusalem. There is, therefore, neither power nor intention in the General Assembly to reinstate internationalization. The question of the status of East Jerusalem must depend on general principles of international law and these, as noted, give Israel significant standing to assert title.

In discussing the status of Judea and Samaria (the West Bank), Professor Stone notes a line of argument which was first raised by Professor Eugene Rostow. According to Professor Rostow, the West Bank and Gaza constitute unallocated areas of the mandate and, as such, they remain subject to the original mandate including the obligation to devote the area of the mandate to Jewish settlement and development. Rostow bases his thesis on the conclusion of the International Court of Justice in its 1950 advisory opinion on South West Africa, that the mandate continued to subsist even after the demise of the League of Nations. According to Professor Stone, Security Council Resolution 242 should, in the light of Professor Rostow's analysis, be interpreted as an invitation to Israel and the de facto Palestinian state of Jordan to reach agreement:

on a regime accommodating the political, economic, and strategic concerns of both states, the rights of entry of Jews under the mandate, as well as the entitlement of the inhabitants under the Camp David Agreement to "full autonomy" (p. 122).

The Rostow argument is a fascinating one, but with respect, might be open to question. The analogy between Palestine after 1948 and South West Africa after the demise of the League of Nations in 1946 seems tenuous. The International Court, in addition to ruling that a mandate subsists even after the departure of the League of Nations from the scene, also ruled that the status of the mandate can be modified by the mandatory power acting in conjunction with the General Assembly. In the case of Palestine, this is precisely what Britain did in 1947-1948. It submitted the question of the future of Palestine to the General Assembly which resolved that the British mandate should be terminated and a partition scheme instituted. Britain proceeded, over the course of the next six months, to wind up its control over Palestine culminating in the final act of withdrawal on May 15, 1948. Therefore all the necessary steps for the termination of the Palestine mandate were taken in the critical period 1947-1948. Britain acted in full concert with the United Nations to terminate the mandate, and terminate it, it did. After May 15, 1948 neither Britain, nor the United Nations, nor any other outside body had anything further to say regarding the disposition or status of the territory of Palestine. That was left to the inhabitants of Palestine to decide. The end result was the creation of the state of Israel in part of the mandated territory and the occupation of the rest of the territory by the invading armies of the Arab states. This situation held until 1967 when further Arab aggression threw the whole issue of the status of Judea and Samaria (the West Bank and Gaza) into the hopper of legal controversy. It would seem questionable, therefore, if at this belated point the territories in question could still be referred to as "unallocated areas of the mandate". Professor Stone's alternative approach would appear to be unassailable — that the status of these territories lies to be determined by the general principles of international law.
Few people have written as extensively or as profoundly on the international law of the Arab-Israeli dispute as has Professor Julius Stone. In this latest work Professor Stone has performed an invaluable service, not only in exposing the biases and prejudices underlying the various theses presented, but in sounding a warning which goes beyond the confines of the Middle-East dispute. He has demonstrated how international law can be subverted for the purposes of persecution and illegal “prosecution” of a victim state by new methods of collective diplomatic aggression in international forums. No state is immune from this type of pseudo-legal attack. It is not just the individual state, therefore, that is threatened, but the very basis of international organization. For, as Professor Sone has established, the assault on Israel represents little less than an assault on the Law of Nations itself.

Shlomo Slonim