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March 5, 1956

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Embassy Telegram 1296

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Legal Opinions on Peace with Israel and Multilateral Defense Agreements  
Handed Down by Top Religious Authorities

Sometime after Prime Minister Eden's Guildhall speech dealing with the Arab-Israeli conflict, a group of professors from al Ashar, the foremost Islamic university in the Arab world, requested the Grand Mufti of Egypt, Sheikh Hassan Ma'moun, to prepare a "fatwa" (religious legal opinion and ruling) on the questions of concluding peace with Israel and signing multilateral defense agreements with non-Arab states. The Grand Mufti reviewed Islamic law and practice on the two points, and handed down his fatwa on 5 January 1956. It was published the following day in Al Akhbar. (Enclosure 1)

During the same period, a study of the two questions was also undertaken by the religious and legal scholars of al Ashar. The university officials grouped into the Committee on Fatwas constitute the supreme authority on Islamic law and practice. They represent the four major schools or traditions in Islam and as a result their rulings are binding on all Moslems. The University Committee, under the chairmanship of Sheikh Muhammad Masarin Makhlof, met on January 9, 1956 and approved the final draft of the fatwa on the Israeli and the military pact problems. The complete text of the fatwa was published in Al Nahda the following day. (Enclosure 2)

Fatwa of the Grand Mufti - Palestine

The Grand Mufti defined Palestine as part of the "Dar al Islam" and from this definition proceeded to outline in accordance with traditional Moslem legal thinking the duties of Moslems when a part of the "Dar al Islam" is attacked by non-Moslems. According to the Mufti such an attack creates an obligation on the part of the inhabitants of all Moslem territories, and particularly the inhabitants of the area attacked, to carry out a "jihad" until the territory has been regained. From the Mufti's phrasology it may be concluded, however, that he does not advocate the adoption of aggressive measures at present since he emphasizes the necessity for the preparation by the Moslems for defensive war.

Having stated the basic premise that Moslems may not rest until Moslem territory has been "regained", the Mufti discusses the question of the conclusion of peace with the aggressors. In theory, he says, the conclusion of a peace treaty would be acceptable providing it involved the restoration of the territory of the Moslems to its rightful owners. As though aware such an arrangement is unlikely, the Mufti then discusses the acceptability of a truce. (By truce the Mufti apparently means some form of political arrangement going beyond the present armistice agreements.) The

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mufti concludes that a truce is acceptable providing it is in the interest of the Moslems, but disclaims any capacity for determining what conditions might be included in a truce which would make it advantageous. This problem he leaves to "others who have been dealing with this problem". He clearly excludes, however, any provisions which would seem to recognize Israeli rights to "that part of Palestine they have stolen".

Pending the resolution of the Palestine problem (i.e. the restoration of Arab sovereignty), the mufti requires the Moslems to strengthen themselves militarily by obtaining arms "from all arms-producing countries" and to maintain and extend the blockade so as to weaken Israel's military capacities. It is not clear whether these strictures would persist during a period of "truce" but there appears to be an implication that they would.

#### The Ashar Fatwa - Palestine

The Ashar Fatwa adopts the same basic premises as that of the mufti. It states that peace is not permissible if it allows the continuation of a Jewish state in Moslem territory. Such a peace would not only be contrary to Moslem law but would sanction aggression and legitimize the stealing of property. The Ashar Fatwa does not discuss the possibility of a truce. Like the mufti fatwa, that of Al Ashar calls on all Moslems to cooperate in restoring a Moslem territory to its inhabitants by force of arms and in every other way. The Ashar Fatwa does not, however, refer to "jihad". At the same time Moslems are called on to prevent, by force if necessary, the execution of any "projects" which would be helpful to Israel. (This would appear to be a veiled reference to the Jordan diversion scheme.)

#### Facts

The mufti in discussing the legitimacy of pacts between Moslem and non-Moslem states approved of such arrangements providing they were in the interest of the Moslems but he preferred the conclusion of pacts with other Moslem states so as to avoid any possibility of supporting "the aggressors" in Palestine. The Fatwa of the Ashar Committee is much more negative. It accuses the "imperialist states" of supporting Israel and therefore concludes that no support should be given to pacts with such states since this would be equivalent to supporting the enemies of the Moslems.

#### COMMENT:

Both fatwas appear solidly grounded on traditional Islamic beliefs which may be summarized according to the fatwas as follows:

1. Moslem territory ("dar al Islam") - defined as territory primarily inhabited by Moslems - must be defended by every possible means against invasion.
2. No permanent legal sanction can be given to non-Moslem occupation of Moslem territory. However if the strategic situation warrants, a "truce" is permissible provided the political authorities determine it to be "in the interest of the Moslems". Such a truce does not prejudice permanent principles, is not an end in

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itself, and need not be maintained if it is violated by the other side or if it no longer serves the Moslem interest.


3. During a period of occupation of Moslem territory (whether a truce exists or not) all Moslems are obliged to refrain from aiding the invader directly or indirectly and should avoid dealings with the invader's allies, in the hope that the invader will grow weak. At the same time Moslems must unite and strengthen themselves militarily and politically so as to be able to prevent further occupation and eventually to recapture the occupied territory.

This classic Moslem attitude towards "foreign occupation of Moslem territory" is not limited, of course, to the problem of Palestine. It has been frequently reiterated since the days of the crusades not only as regards the Near East but concerning North Africa and India as well. We do not consider, therefore, that the latest fatwas on this subject represent a new departure. Consequently, their significance seems to lie less in their content than in their timing. The Mufti's Fatwa seems to mirror Nasser's attitude towards the problems of Palestine and the Baghdad Pact of the period following Eden's speech in that it condones a settlement short of permanent peace, and while placing intra-Arab pacts ahead of inter-area groupings does not completely outlaw the latter. It would seem, therefore, that the Mufti may have been given the task of providing a theological justification for further action by Nasser should the latter see fit to develop his generally favorable attitude toward Eden's Guildhall speech.

The Ashar Fatwa seems on the other hand primarily designed for consumption in other Arab countries to convince them that Egypt is not seeking a separate peace with Israel and to support the Egyptian thesis that the Baghdad Pact aids Israel. Such a measure might have seemed particularly necessary in view of the equivocal language of the Mufti's Fatwa and may also reflect the hardening in Nasser's attitude which may have taken place following Templer's mission to Jordan.

Neither fatwa had any perceivable impact in Egypt although it is possible that the Ashar Fatwa may have been slightly helpful to the regime in Khwani circles. The fatwas were ignored by editorialists; the Ashar Fatwa was not even published in full in the morning papers. Some of this indifference may be attributed to the fact that Egyptian public life is heavily secularized and the opinions of the Ulama carry little weight in the eyes of the politically sophisticated. At the same time a public discussion of the "loop holes" in the Mufti's Fatwa or of the more extreme phrases in that of Al Ashar would have embarrassed the Government. Having published the texts the Government is probably content to keep them "on ice" to be defrosted when necessary to justify either a campaign against Israel, if Israel should attack, or a settlement with Israel short of "peace" if one can be worked out which the Government is prepared to defend as "in the interest of the Moslems".

FOR THE AMBASSADOR:

  
Alexander Schnee  
Counselor of Embassy for Political Affairs

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AL AKBAB, 6 January 1956

FATWA OF THE GRAND MUFTI OF EGYPT  
Concerning Peace with Aggressive Israel

Following Eden's statement about the Palestine question and the concluding of peace between the Arabs and the Jews, a number of Al Ashar Ulama called on the Grand Mufti of Egypt, Sheikh Hassan Ma'moun, and asked him to hand down a fatwa embodying Islamic law and practice on the point of concluding peace with the aggressive Jewish state, and on alliances with foreign and imperialist powers which antagonize the Arabs and Moslems and support the aggressive Jews.

After a thorough investigation, the Grand Mufti yesterday released the following important official fatwa which reads:

The question put to us reveals that the land of Palestine has been conquered by the Moslems who have lived there for a long time, and has thus become a part of the Moslem territory where minorities of other religions dwell. Accordingly, Palestine has become a territory under the jurisdiction of Islam and governed by Islamic laws. The question further reveals that the Jews have taken a part of Palestine and there established their non-Islamic government and have also evacuated from that part most of its Moslem inhabitants.

To know the ruling of Islamic law and practice about concluding peace with the Jews in occupied Palestine, irrespective of political considerations, we have firstly to consider whether the attack of an enemy on any country of the Moslems is, or is not, allowed; and should the attack be not allowed what actions the Moslems will be required to take against the attack.

Any attack by the enemy on any Moslem country is not allowed by Islamic law, no matter what the motives or causes of such an attack may be. Moslem territory should remain in the hands of its owners.

In the event of an attack on any Moslem country, Moslems do not differ as to the necessity of fighting the enemy by force. Al Mushai says: "Jihad (i.e. religious war) is necessary in three cases: (1) when the two forces meet; (2) if the infidels occupy a (Moslem) country, in which case its inhabitants must fight and repel them; (3) when the Imam appeals to (Moslems) for help they must answer the call."

Therefore, God has made it a duty for all Moslems to be ready to repulse any attack from the enemy on their territory. God has said in the Koran: "Prepare all the force and cavalry you can to terrify God's enemy and yours".

Therefore, preparedness for defensive war is the duty of all Moslem governments against any one who attacks the Moslems because of their religion, and against those who have ambitions in the countries belonging to Moslems. Without that preparedness the Moslems will be a weak nation and thus become an easy prey for the attackers.

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Moslem legal scholars and judges may disagree somewhat about the requirement for the Jihad when non-Moslem countries are attacked, but the Jihad is an absolute necessity when Moslem territories are attacked.

In his work on Jihad, Al Hafis Ibn Hagar says that Jihad is a duty, according to the most acceptable theories; it becomes inevitable if the enemy attacks Moslems. Jihad against the infidels is the duty of every Moslem who should carry it out by his hand, his tongue, his money, or his heart.

In light of those rulings, the action taken by the Jews in Palestine is an attack on an Islamic country. It is the duty of the Moslems therein to repulse the attack by force until the country has been liberated and restored to the Moslem owners. In this case the Jihad is the duty of all Moslems, not just those who can undertake it. And since all Islamic countries constitute the abode of every Moslem, the Jihad is imperative for both the Moslems inhabiting the territory attacked and Moslems everywhere else because even though some sections have not been attacked directly, the attack nevertheless took place on a part of the Moslem territory which is a legitimate residence for any Moslem.

Now, that we are acquainted with the ruling about attacks on Moslem countries, we proceed to the findings of the Moslem law about whether concluding peace with the aggressor is, or is not, allowed.

The answer is that peace is acceptable if it is based on the restoration of the lost part of the country to its rightful owners. But peace will be void and false if it is based on the toleration of the attack and the seizure by the attacker of what he has taken by force.

Moslem legal scholars and jurists have allowed the conclusion of a truce for a fixed period of time with the people of the Lar al Harb or a group of them, if this is in the interest of the Moslems. For God has said in the Koran: "If they tend towards peace, tend thou also towards peace and rely on God".

It is said, however, that though this Koranic verse does not involve restrictions, the majority of commentators say that this inclination towards peace stipulates that there should be some advantage to Moslems. This is borne out by another Koranic verse which says: "Do not become so easy as to call for peace while you are the stronger party". Truce, therefore, is not permissible unless there is some advantage to Moslems.

It is our opinion then that concluding peace with the Jews on the basis of their retaining that part of Palestine they have stolen without restoring it to its rightful owners will only realize a benefit for the Jews with no advantage to Moslems. Accordingly, we shall not allow it except under certain conditions and restrictions which will achieve the interests of the Moslems.

It is not in our capacity to put forward those conditions and restrictions, because others who have been dealing with this problem are more able in their knowledge of it and of its characteristics in a detailed way than we are and to dispose of it according to the interpretations from us.

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Our answer to the second question is that pacts or alliances which Moslems may conclude with non-Moslem states, are allowed according to the Islamic law and practice provided that such pacts and alliances are in the interest of the Moslems. But if those pacts or alliances are intended to support an aggressive state such as the Jews who attacked Palestine, then they are not allowed by Islam since they will strengthen the attacker who will utilize that added strength to carry out further aggressive actions.

It is preferred that Moslems cooperate with each other to repulse any attack they may be subjected to rather than indulging in such pacts. They should conclude among themselves pacts of their own which will show that the Moslems are of one opinion and will work hand in hand to destroy any one who may contemplate attacks on any Moslem country.

If, to these pacts and alliances which are not meant for aggression but for the prevention of aggression, we add efforts to buy arms from all arms producing countries so as to strengthen the allied Moslem armies, such an act would be necessary to guarantee peace which every Moslem wishes for his country and all Moslem countries, nay, for non-Moslem countries as well.

The Jews in Palestine are in an odd position because neither the Palestinians nor any of the Islamic governments have concluded peace with them. Those Jews have not yet given up the occupied territory, but remain there according to the armistice agreement which a number of powers have imposed on the Arabs and the Jews. That armistice to which the Islamic countries have submitted until a justified solution for the problem has been reached has not been accepted nor respected by the Jews who continually violate it.

The only measures which have been taken by the Moslems, and which the Jews consider as trespasses on their rights, are the imposing of a blockade on the Jews and the stopping of arms and ammunition from reaching the Jews via Moslem countries.

To know the ruling of Islam in that question we wish to explain that Moslem jurists have ruled that weapons should be prevented from reaching the enemy because they help the enemy to fight the Moslems. Efforts should also be made to prevent shipments of iron and wood and all materials used for making weapons from reaching the enemy whether before or after an armistice agreement. The Jews have violated the armistice agreement. This being the case, the other party should necessarily be relieved of its obligations under that agreement.

In his wars Prophet Mohamed has ordered the prevention of food from reaching his enemies with the exception of the people of Mecca because they were his relatives although fighting against him. The Jews in Palestine are no relatives of the Moslems and thus we rule that food should not be sent to them according to precedent practiced by the Prophet, because food will still help the Jews and make them more stubborn in their attitude which is against the law of Islam.

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Al Ashira, 10 January 1956

AL AZHAR COMMITTEE FATWA  
On Question of Peace with Israel

The Fatwa Committee of Al Ashar has considered the request for an Islamic ruling on:

1. The conclusion of peace with Israel which has usurped Palestine from its people, driven them out and scattered the women, children and young men to the four corners of the earth, stolen their property and committed the worst crimes against places of prayer and Islamic relics and antiquities.

2. Friendship and cooperation with the imperialist states which have helped Israel in her criminal attacks and supplied her with political and material aid to set up a Jewish state in that Islamic country and among Islamic states.

3. The pacts which the imperialist states advocate and which aim at enabling Israel to remain in the land of Palestine to execute the policy of the Imperialists.

4. The duty of Moslems toward Palestine, its restoration to its people; duty of Moslems towards the projects by which Israel, with the help of the Imperialists' states, is trying to extend her domain and to bring in immigrants and thus strengthen her existence and authority and tighten the noose around her neighbours, increase her threat to them and facilitate their destruction.

The Committee hereby says that peace with Israel as envisaged by those who advocate it is not legally permissible because it would authorize the usurper to continue the act of usurpation; would be a recognition of his right to keep what he has usurped, and would allow the aggressor to retain the fruits of his aggression.

All religious and civil laws are unanimous in condemning usurpation and insist upon the restoration of what has been usurped to the rightful owners. They also urge the possessor of any right to defend it and claim his right. The Prophet said: "He who dies in the defence of his property is a martyr, and he who dies in the defence of his honor is a martyr". The Prophet also said: "The hand which has taken must be punished until what has been taken is returned".

Therefore, Moslems cannot conclude peace with those Jews who have usurped the territory of Palestine and attacked its people and their property in any manner which allows the Jews to continue as a state in that sacred Moslem territory. Moslems should cooperate regardless of differences in language, color or race to restore the country to its people and to secure the Aqsa Mosque which is the place where revelations were made, where prophets prayed, and which God has blessed. They should protect Islamic relics and monuments against those usurpers and help the warriors with arms and other means to fight for this cause and, in furtherance of this, exert every effort and means until the country is purified from the vestiges of those aggressors and despots.

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Those who fail to do so, refuse to help the Moslems, advocate what leads to division, thus enabling the imperialist states and Zionists to execute their plans against the Arabs and Islam and against the Arab and Islamic country, are heretics in terms of the teachings of Islam, and by this they commit the worst possible crime.

Everyone knows that from the early days of Islam to the present day the Jews have been plotting against Islam and Moslems and the Islamic homeland. They do not propose to be content with the attack they made on Palestine and on Al Aqsa Mosque, but they plan for the possession of all Islamic territory from the Nile to the Euphrates.

Islam requires that Moslems stand as one indivisible unit in defense of Islam. It is therefore the duty of Moslems to unite to ward off this danger, defend the country and save it from the usurpers.

As to cooperation with those states which support that group of aggressors and supply them with money and equipment in order to enable them to continue living in that territory, this is legally not permissible because it means helping that group in its aggression and supporting it in its enmity to Islam and the territory of Islam.

The Koran says: "God forbids you to have relations with those who fight your religion, drive you out of your country, or help drive you out because they are oppressors. You should not accept them as masters."

There is no doubt that dealing with the enemies and befriending them is equal to supplying them with help whether this help be in advice, ideas, weapons or force - secretly or openly - directly or indirectly, because this strengthens them and sustains their existence. All this is not permissible to Moslems whatever excuses or justifications they may resort to.

From this we deduce that no Islamic state should show any sympathy for or join the pacts advocated by the imperialist states which are working hard to conclude those pacts in order to divide the Moslem countries and create trouble among them thus giving the imperialists a chance to control the Islamic states and carry out their policy toward the Arabs, because such action spells a great danger to the Islamic countries. It is especially a danger to martyred Palestine which these imperialist states have handed over to the aggressive Zionists for the purpose of harming Islam and its people, and for the creation of a state in the heart of the Arab world upon which the imperialists can depend to carry out their designs - designs which are harmful to Moslems, their property, and their country. Acceptance of such political domination is the worst type of offense which Islam proscribes.

The law of Islam also prohibits Moslems from enabling Israel and the imperialist states which have guaranteed its protection and continued life to execute those projects which aim at bringing prosperity to the state of the Jews, provide it with an easy life and fertile land and thus continue as a state which fights the Arabs and Islam over their dear country, brings the worst evils to that country, and plots against Moslems who should prevent with force the

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execution of those projects and stand as one in defense of what is in the possession of Islam, foiling these evil conspiracies especially the harmful projects. Those who fail to do this or help in the execution of these projects, or who take a passive stand, commit a very serious crime.

Moslems should adopt the example of the Prophet when the people of Mecca drove him and his men from Mecca, stopped them from using their property and practicing their religious rites, and desecrated the Holy Kaba by worshipping idols in it. God ordered the Prophet to get ready to save the Kaba from the aggressors and make life difficult for them until they yielded.

The Prophet restricted their economic life until war broke out between the armies of the believers and those of the infidels, until the Prophet triumphed and entered Mecca, the bastion of the infidels.

He helped the weak men, women and children, purged the Ka'ba of the idols, and destroyed aggression and heresy although Mecca belonged to the infidels while Palestine belongs to the Moslems, and the Jews have no right to rule it or establish a state in it.

God said: "Kill them wherever you find them and drive them from where they have driven you". He also warned Moslems to reply to attack by saying "when you are attacked, reply in the same manner".

This is the ruling of Islam in the Palestine case and with regard to Israel and the imperialist states which support it. This is also the ruling of Islam with regard to the duties of Moslems in this matter as found by the Fatah Committee of Al Ashar.

The Committee calls on Moslems generally to believe in God and rise to attain glory and honor. They should realize the results of weakness before the attack of the aggressors and the conspiracy of the intriguers. They should come together to do service to God and the coming generations in compliance with their religion.

Signed by Hasanein Makhlof, Chairman and Ex-Mufti of Egypt

Ima Mannan, ex Sheikh of the Shari'a College (Shafi Sect)

Mahmoud Shaltout (Hanafi Sect)

Muhammed at-Tanikhi, Director of Religious Guidance  
(Maliki Sect)

Muhammed Abd Al Latif as-Sabki, Director of the Ashar  
Inspectorate (Hanbali Sect)

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