

1-1-1972

## The United Nations Security Council resolution of November 22, 1967 : international politics and law in an organizational setting.

John F. Kikoski  
*University of Massachusetts Amherst*

Follow this and additional works at: [https://scholarworks.umass.edu/dissertations\\_1](https://scholarworks.umass.edu/dissertations_1)

---

### Recommended Citation

Kikoski, John F., "The United Nations Security Council resolution of November 22, 1967 : international politics and law in an organizational setting." (1972). *Doctoral Dissertations 1896 - February 2014*. 1918. <https://doi.org/10.7275/qfxv-rx05> [https://scholarworks.umass.edu/dissertations\\_1/1918](https://scholarworks.umass.edu/dissertations_1/1918)

This Open Access Dissertation is brought to you for free and open access by ScholarWorks@UMass Amherst. It has been accepted for inclusion in Doctoral Dissertations 1896 - February 2014 by an authorized administrator of ScholarWorks@UMass Amherst. For more information, please contact [scholarworks@library.umass.edu](mailto:scholarworks@library.umass.edu).

UMASS/AMHERST



312066013573073

THE UNITED NATIONS SECURITY COUNCIL RESOLUTION OF  
NOVEMBER 22, 1967: INTERNATIONAL POLITICS AND  
LAW IN AN ORGANIZATIONAL SETTING

A Dissertation Presented

By

John F. Kikoski, Jr.

Submitted to the Graduate School of the  
University of Massachusetts in  
partial fulfillment of the requirements for the degree of

DOCTOR OF PHILOSOPHY

May 1972

Major Subject Political Science


THE UNITED NATIONS SECURITY COUNCIL RESOLUTION OF  
NOVEMBER 22, 1967: INTERNATIONAL POLITICS AND  
LAW IN AN ORGANIZATIONAL SETTING

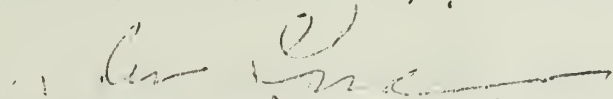
A Dissertation

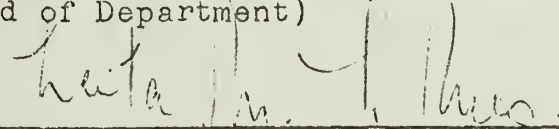
By

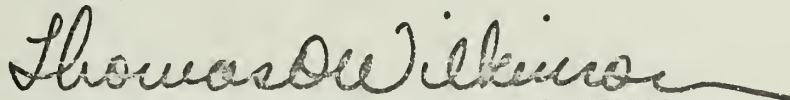
John F. Kikoski, Jr.

Approved as to style and content by:

  
(Chairman of Committee)

  
(Head of Department)

  
(Member)

  
(Member)

May 1972



## PREFACE

One of the many distortions that war produces is that each belligerent believes himself to be the sole possessor of trust and justice. We know of no case in which those who have gone to the extreme of a military confrontation have ever recognized in their opponents the slightest degree of reason. When situations become critical belligerents do not display toward neutral parties the understanding and tolerance that they so fervently claim for their own cause. Because of these special considerations, we venture to presume that neither Arabs nor Jews will be satisfied with our statement, since combatants consider only their allies as friends. And we, in all truth, are not their allies, but are certainly their friends.

---Columbian Ambassador  
Julio Caesar Turbay Ayala,  
General Assembly,  
June 27, 1967.

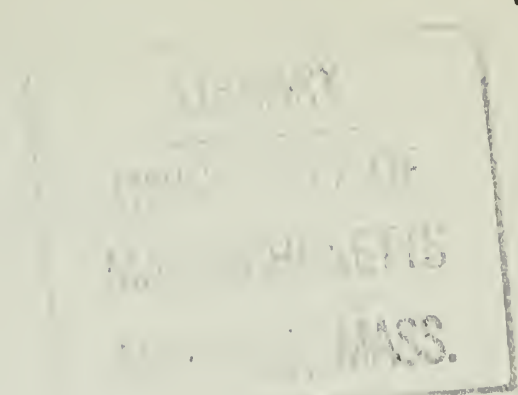
The treatment of this topic is designed to show how the United Nations was employed in a situation of crisis and to trace the interactions of states, international law and organization which culminated in the passage of Resolution 242. Our three foci of investigatory interest are political, legal and organizational. We have sought to allow each approach its position in accordance with their salient or secondary natures at different junctures in the institutional playing-out of this crisis.

A realistic study of the relationship between these factors would begin with a review of the policies and

behavior of the area and superpower states which were parties to the crisis. Our particular concentration here is upon the upswing toward war. Our framed reference is chiefly political. The Arab-Israeli conflict is one whose elements are of long standing. The next section treats each issue of this conflict in its legal form and explores the case which each of the direct parties makes, and whose conflicting tension is reflected in the United Nations and its resolutions. The third section traces the activities which occurred in the United Nations from the period prior to the outbreak of war through November 22, 1967. Here we are concerned with the relationships between states, international law and organization in the unfolding interplay which led up to the adoption of Resolution 242. The concluding section expectedly summarizes and draws judgements upon the points presented earlier.

Our central view is of the United Nations as a vehicle or instrument of political conflict or its resolution. Although the United Nations has been used as a vehicle or tool of great power policy in the past to manage or contain crises, this was one case in which the situation slipped out from under great power control and posed an obstreperous life of its own before the passage of Resolution 242 which suggested the general outlines for a potential peace settlement.

La Rochefoucauld once wrote: "Quarrels would not last long were the wrong all on one side." In keeping with this we have not conducted our inquiry on the assumption that either party to this conflict is "guilty" or "innocent," have not attempted to indict or absolve either side to this dispute; rather, if there be any single motivating force to this inquiry, it is that what has been termed an Arab-Israeli death embrace not become a nuclear death embrace for us all.



#### ACKNOWLEDGEMENTS

The author is deeply grateful to Dr. Ferenc Vali for his encouragement and guidance not only during this study, but throughout his graduate years.

Appreciation is also extended to Dr. Leila Meo for her helpful suggestions and criticisms.

And finally to Catherine and my two boys--these words as symbols of a still deeper debt.



## TABLE OF CONTENTS

	Page
PREFACE . . . . .	iii
ACKNOWLEDGEMENTS . . . . .	vi
Chapter	
I. THE SIX DAYS WAR: BUILDUP AND HOSTILITIES . . . .	1
II. LEGAL POSITIONS OF DIRECT PARTIES . . . . .	36
III. THE SECURITY COUNCIL AND HOSTILITIES . . . . .	111
IV. THE FIFTH EMERGENCY SPECIAL SESSION OF THE GENERAL ASSEMBLY . . . . .	168
V. THE SECURITY COUNCIL AND THE DRIVE TO RESOLUTION 242 . . . . .	218
VI. CONCLUSION . . . . .	264
BIBLIOGRAPHY . . . . .	342

## C H A P T E R    I

## THE SIX DAYS' WAR: BUILDUP AND HOSTILITIES

Perhaps the most widely quoted article on the proximate origins of the Six Day War, by Charles W. Yost, carries the thesis that "no government plotted or intended to start a war in the Middle East in the Spring of 1967." Rather, Yost finds it "more likely that they blundered into it" propelled by the dynamic of "common intolerance and mutual harassment."<sup>1</sup> While there is no lack of intriguing speculation which lays the burden of more-or-less premeditated guilt at the hands of either Arab or Israeli,<sup>2</sup> Yost's judicious approach is not only most analytically comfortable for our purposes, but appears to conform most satisfactorily to the unfolding events as we perceive them. If this be so, then each party to the crisis contributed in some measure to the proximate origins of the crisis. It is the task of this section to delineate these contributions, if this be the proper word. The reader is reminded that we are concerned here only with proximate causes to the war. The grievances in this dilemma are, unfortunately, of near historical standing, so much time has passed without an equitable settlement. However, the long-standing crimes and injustices involved are of less interest to us here than the events and attitudes

which, occurring in 1966 and 1967, led up to the war. It is in this rough sense that we use the word "proximate" to inform the reader of our intent and interest.

Similarly to the others, the Israeli contribution was crucial. There are certain events with which Israel may be charged for being liable and certain attitudes and motifs in Israel policy which we shall discuss here; the events first.

On November 13, 1966 the regular troops of Israel launched a massive retaliatory attack on the Jordinian village of Es-Samu and environs. Jordanian civilian and military casualties included 18 killed and 54 wounded while nearly 200 homes and other structures were demolished, the majority totally so.<sup>3</sup> The representative of Israel pointed out that 71 raids had been conducted against Israel since January, 1965 (14 from Jordanian territory in the preceding 6 months) across both Syrian and other borders, that Israel was holding Arab Governments accountable for inciting or stopping these incursions, that the action was a limited and local one, and that every state possesses the right to protect its citizens from such terrorism and sabotage.<sup>4</sup> Regardless of the merits or their lack thereof concerning Israeli retaliation policy, criticism here centers upon the size and strength used, the target chosen and the ramifications which were either not foreseen or, if foreseen, simply ignored.

The reprisal raid was the biggest since the 1956 war and not Syria, but more moderate Jordan, was the principal victim of these raids.<sup>5</sup> It appeared that Israel had not chosen Syria because of mounting Soviet interest there, the recent defense pact with the United Arab Republic and the higher Israeli casualties which the more rugged Syrian terrain would have brought. The more moderate, isolated, American-influenced and accessible Jordan was chosen instead. In consequence, King Hussein's position was strongly besieged, both from within and without, the United States exposed and embarrassed, Arab moderates undermined, Arab extremists emboldened and Russian influence heightened. Arthur J. Goldberg, chief United States Delegate stated that Es-Samu was a raid "the nature of which and whose consequences in human lives and in destruction far surpass the cumulative total of the various acts of terrorism conducted against the frontiers of Israel."<sup>6</sup> On November 25 the Security Council adopted resolution 226 (1966) by a vote of 14-0-1 which stated that the membership "censures Israel for this large-scale military action . . . [and] . . . emphasizes to Israel that actions of military reprisal cannot be tolerated and that if they are repeated, the Security Council will have to consider further and more effective steps as envisaged in the Charter."<sup>7</sup> The vote was unusually lopsided (only New Zealand abstained), the language of the



resolution was unusually blunt and forceful, the possibility of sanctions raised and even the United States joined in the condemnation. This was doubly unusual, not only because the United States was censuring Israel, but because heretofore the United Nations had censured only acts of member governments; this time it was censuring the Government itself.

The second incident, on April 7, 1967, grew out of divergent interpretations between Israel on the one hand, and the United Nations and Arab states on the other hand. Israel claimed that the Syrian-Israeli General Armistice Agreement<sup>8</sup> had given her near-complete sovereignty over the demilitarized zones.<sup>9</sup> Included among Israel's perceived rights in these zones was the right of cultivation. Any number of observers and Security Council resolutions attest to this and other Israeli activities in the demilitarized zone.<sup>10</sup> Both the stand of the Arab states and the "authoritative" interpretation of various of the provisions of the Israel-Syrian General Armistice Agreement written by Dr. Ralph Bunche, converged upon the point that: "Questions of permanent boundaries, territorial sovereignty . . . and the like must be dealt with in the ultimate peace treaty and not in the Armistice Agreement."<sup>11</sup> According to the Syrian view, when Israel began such cultivation, it initiated an activity which conceivably could prejudice in Israel's favor the claims

to these lands, since title to them could be decided only when and if peace and agreement came.<sup>12</sup> On April 3 the Israeli press announced the cultivation of certain disputed sections of the Israeli-Syrian demilitarized zone. On April 7 such plowing began, Syrian small arms fire commenced and the battle escalated such that jet aircraft fought just outside Damascus with the Israeli pilots reportedly buzzing the city itself after dispatching six Syrian aircraft.<sup>13</sup>

Israel termed this a reprisal while the Arab states called it a deliberate provocation to incite a new war.<sup>14</sup> The deep pursuit of Syrian aircraft in this second, large-scale and dramatic action by Israel upon bordering Arab states was cause for concern in Damascus, Amman and Cairo. Moreover, an Arab state had been invaded without any military response from the U.A.R. with which it had had a formal treaty of mutual defense since 1966. Repeated massive reprisals of this type could only place a leader such as Nasser, whose ascendant leadership had been slipping, in a position such that he would feel it necessary to respond massively in kind. Walter Z. Laqueur, a fair observer, but one sympathetic to Israel wrote:

Moreover, Israel's policy of retaliation had lately exacerbated the conflict. But for Samu and the battle of 7 April, there would not have been a war in 1967. . . . Had Israel refrained from major raids, the storm might have passed it by, and left the Arab leaders entirely absorbed in their own

bitter conflicts. Then in a few years time, some Arab governments might be readier to resign themselves to Israel's existence.<sup>15</sup>

Then there is the matter of Israeli bellicosity in speech in early and mid-May. On May 7, Prime Minister Levi Eshkol said that Israel would "adopt suitable counter-measures against the foci of sabotage and their abettors."<sup>16</sup> On May 14, Eshkol stated that Israel would, concerning border incursions, "respond at a place, time and by a method of OUR choosing."<sup>17</sup> A dispatch from Jerusalem published on May 14 in The New York Times reported a highly placed Israeli source as threatening "military action aimed at overthrowing the Syrian regime" unless Syria ceased her support and incitement of incursions by the Palestinian guerrilla organization, Fateh.<sup>18</sup> Finally, on May 14 the usually authoritative Jerusalem Post Weekly reported ultimatum-like statements from the Israeli Prime Minister and Foreign Minister predicting an inevitable "major military clash" with Syria.

The dispatch continued very specifically:

Military experts here believe that Israel is prepared to risk Egyptian intervention in its determination to put an end to Syrian aggression.

The anticipated clash is not thought likely to assume the dimensions of a full campaign but to be in the nature of a military expedition intended to take the wind out of the Syrian's sails once and for all.<sup>19</sup>

Not that Syria or Fateh were innocent of provoking Israel so that this sort of situation came about, but certainly Israel, at this time, was considering an

extraordinary retaliation, just below the level of a "full campaign," but at or above the threshold which might stimulate an Egyptian response. One line of interpretation attempts to explain away this Israeli contribution by claiming that a Western wire service sent a "garbled" account of official Israeli thinking at that moment which was then printed by newspapers in the rest of the world.<sup>20</sup> While it is entirely possible that this occurred, such an interpretation does not explain the appearance or content of the dispatch domestically printed in the usually authoritative Jerusalem Post Weekly and cited above. On May 19 Secretary-General U Thant said:

Intemperate and bellicose utterances by officials and non-officials . . . are unfortunately more or less routine on both sides of the lines in the Near-East. In recent weeks, however reports emanating from Israel have attributed to some high officials in that state statements so threatening as to be particularly inflammatory in the sense that they could only heighten emotions and thereby increase tension on the other side of the line.<sup>21</sup>

It is extremely likely that such Israeli statements could have persuaded not only the Damascus regime but also Nasser that a major military strike was in the offing which could endanger Damascus itself.

The first proximate Arab contribution to the Six Day War began with the Fateh raids from Syria. In early 1966 a more radical regime came to power by a coup in Syria. Armed forays by Fateh commandos into Israel proper usually



ebbed after Israel retaliated, although public opinion and concern in Israel reached newer heights after the raids inevitably began again. Israel charged that Syria was violating her United Nations Charter obligations and the 1949 Armistice Agreement by permitting unlawful border crossings and the use of force.<sup>22</sup> Syria retorted that she had no authority to obstruct the drive to redress and self-determination promised to the Palestinian Arabs by the U.N. Charter, but denied them by Israel.<sup>23</sup> Incursions and incidents increased in number as late 1966 and early 1967 passed; Israel reported eight incidents attributed to Syrian-based groups in the twenty-five day period between April 14 and May 8, 1967.<sup>24</sup> Prime Minister Eshkol spoke of "ever-fresh graves" in a speech on May 15.<sup>25</sup> Merits of all cases aside, the policy of Syria to promote and encourage such activities to emanate from her territory was both unrealistic and adventuresome. Syria was militarily weak in comparison to Israel. It is dangerous to conduct a campaign of violence against a stronger opponent who is known to respond violently when in this sort of a position. U Thant could have had this in mind when he stated on May 19 in the same report which noted Israel's verbal bellicosity that Fatch activities "are a major factor . . . [in aggravating the situation and increasing tension] in that they provoke strong

reactions in Israel by the government and population alike."<sup>26</sup>

The second proximate Arab contribution to the Six Day War centers upon the United Arab Republic's decision to terminate its consent for the continued presence of United Nations Emergency Forces (UNEF) stationed in the Sinai since 1957. This action and the ramifications which followed stemmed from the actions we have described above. On May 13 Nasser stated that he received reports from both Syrian and Soviet intelligence that "there was an enemy plan for the invasion of Syria" and decided "not to accept this silently."<sup>27</sup> Nasser was under multiple pressures: his military venture into Yemen was debilitating Egypt's never strong economy, PL 480 wheat purchases from the United States had been cut off, and he had come under withering Arab criticism for not reacting to earlier Israeli incursions against Jordan and Syria. Nasser's successes had soured and his influence and prestige were slipping. If Syria were attacked she certainly could call for Egyptian assistance under the Treaty of Mutual Defense of November, 1966. It is important here to understand the Arabs' conviction concerning Israel's willingness to "try it [armed conquest] again" as well as their determination never to be caught militarily unprepared and off-guard as was the case in 1956 against the combined British-French-Israeli

operation.<sup>28</sup> A display of determination and force then would serve not only his position in the Arab world, but possibly to deter Israel from invading Syria. Israeli observers believed, on the other hand, that Moscow and the Syrian regime had "bluffed" Nasser into serving the more radical and warlike policy of Damascus.<sup>29</sup> But, unquestionably, both Arabs and Israelis would take Nasser's posturing for cant so long as buffering UNEF forces were stationed on Egyptian territory.

On May 15 Nasser put U.A.R. armed forces on alert and began moving them ostentatiously through Cairo to the Sinai. On May 16, 2200 hours GMT, the Chief of Staff of the United Arab Republic Armed Forces, General Fawzy, sent a written message to Major-General Rikhye, Commander of UNEF, requesting withdrawal of "all UN troops which install observation posts along our borders." Secretary-General U Thant notified the Permanent Representative of the United Arab Republic of compliance with his country's request by letter on May 18.

The alacrity by which this decision was reached has provided fodder for a major and long-lasting controversy. The Secretary-General held that the "consent and cooperation of the host country is essential to the effective operation and . . . very existence" of any UNEF-type force; that just as "Israel exercised its sovereign right to refuse the stationing of UNEF on its side" so, the

United Arab Republic Government should not then "be told that it could not unilaterally seek the removal of the forces."<sup>30</sup>

We choose at this point not to enter into a discussion of the various other legal positions concerning the Secretary-General's action. But a few comments on certain aspects would be in order. First, Alastair Buchan then Director of the Institute for Strategic Studies (London) suggests that Nasser did not expect UNEF to be withdrawn so meekly, and that there was doubt expressed even in Israel that Nasser wanted so rapid a withdrawal.<sup>31</sup> Buchan tells us that Dag Hammarskjold had left Nasser "in no doubt that the Secretary-General would not withdraw UNEF simply when Egypt requested it" and that "an exchange of views would be called for towards harmonizing the positions."<sup>32</sup> The public commitments of the United Arab Republic and U Thant's unexpected behavior made it difficult for Nasser to back down when he got more than he bargained for. Secondly, the total withdrawal of UNEF placed the UAR and Israeli troops in an eyeball-to-eyeball confrontation situation the likes of which had not been seen since 1956 when Israel claimed the massing of Egyptian troops in the Sinai as a casus belli. Third, Sharm El Sheikh was now openly devoid of neutralizing forces and beckoned to be occupied by U.A.R. troops--an act which placed them in a position to threaten the passage of



ships through the Straits of Tiran.

On May 22, Nasser announced the re-imposition of a blockade of the Straits of Tiran to ships flying the Israeli flag and ships of other countries carrying strategic goods to Israel. This too had been one of the casus belli in 1956.<sup>33</sup> Egypt claimed the waters were exclusively Arab; Israel claimed the rights of a littoral state; Egypt invoked the belligerent status which flows from a continuing state of war; and Israel (with other maritime nations including the United States) claimed the right of innocent passage. Israel had repeatedly warned through the years that free and unimpeded passage was a vital interest of the state and that an attempt to change that status would bring war. Nasser himself estimated the chances for war at 100 percent after the closure of Straits of Tiran to Israeli shipping.

Once again we point out that while this is not the appropriate place to weigh the various legal positions, a number of points do need to be made. First, this was a step which separated Egypt from Syria; it certainly was of no immediate protective value to Damascus. Secondly, prior to May 22, Nasser's moves had been spectacular, but innocuous; now, under the taunts of other Arab States<sup>34</sup> Nasser took a step which galvanized Israel<sup>35</sup> and escalated the crisis to a level at which war was nearly inevitable. Finally, Nasser's offer to take the Straits question to

the International Court of Justice,<sup>36</sup> statements that he would not attack first, but wished merely a return to the pre-1956 situation coupled to Israeli hesitation, and great power urgings of caution and restraint all seemed to point to a spectacular diplomatic success for Nasser which might isolate Israel, damage its "credibility" and, once Israel accepted this perceived limitation of sovereignty, psychologically "appeared to be the beginning of the end, the slow strangulation of the Jewish state."<sup>37</sup> Finally, there is no way of calculating the intensity of the long-repressed Arab feeling toward Israel which inundated and unified the Arab world while providing more fuel for the unintended, but now raging, irreversible flames.<sup>38</sup> However, according to some analysts, Israel would have to accede to this.<sup>39</sup> Whether or not Jerusalem or Cairo literally meant what they said, in the dangerous world of international politics it is more than likely that contentions, and especially actions, will be looked upon gravely and that adversaries will act in response to them. It is also worthy to note that with the signing of the Jordanian-UAR Defense Treaty on May 30, the last of factors present before the Israeli attack in 1956--the multiplication of raids into Israeli territory, border troop build-ups, a blockade at Tiran and the defense agreement with Jordan--all had recurred.

The individual Soviet contribution to the crisis stemmed from Moscow's interest in deterring an Israeli invasion, thereby to assist her favored regime in Damascus. The nature of the Soviet role beyond this is not clear. Information was passed on to Nasser concerning alleged Israeli troop concentrations and, it appears, that certain assurances were conveyed to Nasser prior to his closure of the Straits of Tiran on May 22.<sup>40</sup> The Soviet role must be explained within the context of general Soviet interests in the Middle East. For while Russia is competitively interested in increasing Soviet influence in the Middle East and minimizing that of the United States, there also exists a cooperative interest among the super-powers in avoiding extra-area escalation to nuclear war. Soviet policy toward Israel is aimed toward threats and political pressure to make Jerusalem give up its gains and not at the physical annihilation of the state. Moreover, the continued existence of Israel induces continued cooperation on the part of Arab states with the Soviet Union to blunt the perceived threat of Israeli expansion while being useful to polarize a previously Western domain. Within this context it would be reasonable to guess that Soviet efforts to protect the Damascus regime would coincide with Nasser's aims for leadership in the region. The muscle-flexing and sabre-rattling of pre-May 22 days would appear to conform to these wishes, although at least one report has it that

Nasser merely informed the Soviets of his request to have UNEF withdrawn and acted despite their cautioning.<sup>41</sup> But the closure of the Straits and the events which unfolded thereafter do not appear to have been within the control of the Russians.<sup>42</sup>

The Soviets did encourage Arab initiatives at the beginning while later exercising only the weakest constraining influences. This attitude was of crucial value in creating the crisis. Russia supported Egyptian mobilization in the Sinai, dampened proposals for the United Nations' involvement in the situation, tried to bully Israel and acted in a restrained manner only in the avoidance of a superpower confrontation. While the Soviets underestimated Israeli determination and strength, it overestimated the United States' restraining influence on Israel, and the Arab capacity to handle the full war situation which came about. So, amidst the quick pace of developments and spectacular successes extracted by Nasser, the Soviet Union found itself swept along, not unwillingly at first, by its public and private commitments to Arab states. What other reason, for example, is there for awakening both Nasser and Eshkol at 3:00 A.M. on May 27 to deliver notes to pajamad Heads-of-state which attempted to moderate the situation somewhat?<sup>43</sup> The Soviets had an interest in encouraging the initial events of what turned out to be a full-scale subsystem confrontation; they exercised



little or no moderation over events as they unfolded; and, consequently, the major reactions and counter-reactions occurred in Cairo and Jerusalem, Amman and Damascus rather than Moscow, Washington or New York.

The major individual contribution of the United States to this crisis lay in Washington's unwillingness, hesitancy and erraticism in acting. Secretary of State John Foster Dulles and President Dwight D. Eisenhower in 1957 had conveyed both in letter and speech their assurances to Israel that the Straits of Tiran would remain open to unimpeded Israeli shipping despite the pullback of Jerusalem's troops and then withdrawal by UNEF forces.<sup>44</sup> Half-hearted suggestions and attempts by the United States in 1967 to assist the opening of the Straits to free and innocent passage came to naught.<sup>45</sup> And it soon became apparent that the only power that would reopen the Straits to Israel would be Israel herself. On the other side of the coin, the UAR and Israel were left without an intervening or mediating power between them, given this United States policy. On his trip to the United States on May 26, Israeli Foreign Minister Abba Eban found President Lyndon Johnson sympathetic, but in no mood to be hurried into a new theatre of hostilities given the then-current commitment in Viet Nam.<sup>46</sup>

Much American behavior during this period underlines the general (and in this case specific) indecisiveness of



American policy which flows from the "pattern of limited commitment, limited objectives . . . limited understanding."<sup>47</sup> The prime conditioning factor of United States Middle East policy is its recognition and support of the State of Israel. This has precluded the realization of any real policy of "even-handedness." David Nes, United States Chargé d' Affaires in Cairo in 1967 through the June war, has alleged that despite such tension-constraints as oil investments and the global-strategic position of the area, U.S. commitments were not as limited as one would believe.

During the months before the June 1967 hostilities the military intelligence requirements required by Washington from American embassies, the Central Intelligence Agency and military intelligence staffs in the Middle East were largely based on Israeli needs, not on American interests. The effectiveness of the Israeli air strikes on June 5, 1967 was assured at least in part by information on Egyptian airfields and aircraft disposition provided through American sources. With political and economic information, it has long been State Department practice to provide the Israeli Embassy in Washington with copies of all our reports from Middle East embassies considered to be of interest.<sup>48</sup> Geoffrey Kemp, a student of arms control policy and security in the region concluded that the de facto aim of the Western powers' arms policy has been

not equilibrium, but to provide sufficient arms to Israel such that she "would be in a marginally superior military position over any combination of local Arab countries."<sup>49</sup> Assistant Secretary of State Joseph Sisco stated that the United States "has supported the security and well-being of Israel for two decades, with a constancy rarely surpassed in the history of relations between nations."<sup>50</sup> On the other hand, for reasons of transportation and communication, land bridges, oil and strategy the United States seeks friendship and influence with the Arab states. It is the contradiction between these policies which traditionally projects a "floundering" U.S. diplomacy in the area and helped stymie potential United States influence in this particular case.

There followed a number of "forceful initiatives"<sup>51</sup> by the United States which included on May 31 a UN draft resolution (S/7916) which criticized UNEF's hasty departure, questioned the legal grounds for the Straits blockade and urged a "breathing spell" during which the Gulf of Aqaba would be at least temporarily reopened. The United States also attempted to reopen the Straits to Israeli shipping at first, by an international naval task force to test the blockade, and then by a declaration of maritime powers which stated the right of innocent passage for ships through the international waterways of the Strait of Tiran and Gulf of Aqaba coupled with their willingness to "assert"

this right for their own ships. The first initiative failed and the second was formally alive though unofficially nearly dead by the start of the war.

An interesting insight is provided by David Nes, former acting chief of the United States mission in Cairo from February 1967 until literal hours before the June war--an insight denied us in the Soviet case of how control of the crisis slipped out from under the U.S., and may even have been accelerated by American behavior during the slide toward war. According to Nes, President Lyndon B. Johnson's administration had long and evasively delayed the firm extension requested by Egypt of a \$150 million a year PL480 food plan which was absolutely central to planning, national diet, foreign exchange and to internal economic development. Nes holds that the original plan was "sold" to the American Congress as a manner of influencing Nasser to behave in ways compatible with United States aims. But at the end of the original three-year program period, Congress balked at approving an extension on the grounds that "the U.S. had failed to receive the advantages on which the plan had been predicated."<sup>52</sup> Nes holds that because Johnson chose to respond evasively rather than to provide a candid explanation of congressional difficulties, "there was created in the Egyptian mind a feeling that our basic policy of friendship and normal relations had changed to one of hostility."<sup>53</sup> Next, in the economic area

Washington postponed releasing for domestic development projects the United Arab Republic pound reserves which were held by the United States, and placed pressure on the international bank to prevent the U.A.R. from utilizing drawing rights to hard currency to which Cairo was entitled. Washington was the only creditor of Egypt (among whom Nasser counted most of the Western powers) which refused to reschedule the U.A.R. debt.<sup>54</sup> In addition, the "refusal" of the U.S. to continue discussing certain large development projects important to Egypt, such as nuclear desalinization and Suez Canal modernization (which Washington had previously looked upon with favor), coupled with the distinctly cool U.S. response to Nasser's request to mediate the Yemsi problem and to an invitation extended to Secretary of State Dean Rusk to visit Cairo--all of these cumulatively added up to a new official view of U.S. intentions:

All of these were minor irritations in themselves but taken together, they created an impression with the Egyptian leadership that the U.S. was endeavoring to force them into international bankruptcy, was isolating them in the Arab world and was, in effect, pursuing a policy designed not only to undermine their position in the area, but also to create opposition within Egypt which might result in the overthrow of the Nasser regime.

There is good reason to believe that backed into a corner as it were, by the series of American actions and inactions, by interpreting them as signs of hostility, President Nasser and his principal governmental advisors felt that they had to break out of this encirclement through some sort of dramatic political action. The action that they finally took is, of



of course, well-known and part of history resulting in the hostilities known as the June War.<sup>55</sup>

In consequence, American influence in Cairo fell to an extremely low ebb: Nasser would not even receive the State Department's special emissary, Charles Yost, who arrived in Cairo on May 29; nor did he respond to Johnson's handsigned messages:

On his [Nasser's] desk lay an unanswered letter he had received from Johnson the previous week. "I have received a nice letter from President Johnson," he informed the French Ambassador in Cairo, "and I don't intend to answer it for the time being."<sup>56</sup>

Just at the crucial moment when American influence was at its lowest, the need for its focused exercise in Cairo was at a height. Moreover, the chosen behavior of the Soviet Union left the responsibility for peace-keeping to the U.S. The point may be illustrated by sequential newspaper dispatches during late May:

So far, Moscow has played a passive role, a passivity that hinders Washington by leaving it the burden of resolving the current crisis. This handicap is significant at a time when Moscow's voice carries great weight in Arab capitals while Western influence in Egypt and Syria is at a low ebb.<sup>57</sup>

.....  
The diplomatic problem for the United States became one of not only holding the Israelis in check, but finding some face-saving way for Mr. Nasser to retreat on his blockade.<sup>58</sup>

.....  
The essence of the problem as seen at the White House therefore is to find a face-saving formula by which the United Arab Republic can avoid or rescind its blockade of the Gulf of Aqaba. . . .<sup>59</sup>

Not only did the United States face the problem of lack of influence in Cairo, but in Jerusalem as well. It



seems surprising that despite Israel's vital dependence on Washington's good graces for vast military, and especially economic gifts and aid, that Washington did not have more of a voice in Israeli decision-making, but such was the case.<sup>60</sup> One crucial moment was the Israeli cabinet meeting which followed Abba Eban's talk with President Johnson:

The Johnson administration had been fearful that Israel's military leaders might persuade Premier Levi Eshkol and the cabinet to approve an offensive to try to force President Gamal Abdul Nasser to lift his blockade of the Strait of Tiran to Israeli ships. . . . The object of greatest White House interest today was the meeting of the Israeli cabinet, which it was felt, might provide the major test of the President's persuasiveness with Abba Eban.

The Administration has hesitated, therefore, to offer any new commitments of support for the Israelis fearing that such commitments would only encourage the most militant quarters in Jerusalem.<sup>61</sup>

Two points need to be made here. First, on a theoretical level, when a small state perceives a sufficient threat to a vital interest which is not viewed as effectively countered by its great power protector, the small state may act alone. Second, despite the reduced nature of the world due to modern communications, the final decision for war was made in Jerusalem, and there was little Washington could do about it. Such is the delicacy of civilization's web. So is this crisis crucial to humankind.

The United Nations played a weak and steadily declining role in the crisis until the outbreak of war. For various reasons, the Security Council did not hold its

first meeting on the Middle East situation until May 24, was not consulted on the UNEF withdrawals, and met for eight days, until June 3 without formulating a position on the Straits question. While the United Nations may be criticized for failing to exercise any influence of significance on the developing crisis, criticism for contributing to the war must be shared between the area and great powers: both the Arab States and Israel chose to cajole and threaten each other rather than demand Security Council action during this period; the great powers presented increasingly rigid and visible disagreement on substantive matters. For example, while the Soviet Union as late as May 29 questioned the necessity for the Security Council even to deal with the Middle East situation,<sup>62</sup> the United States, once its forceful initiative on the Straits of Tiran and the Gulf of Aqaba came to naught, refused to alter its public stand and awaited the outbreak of war.

In this developing crisis the United Nations did not appear to have an independent political role concerning the peace and security of the world. Rather, its inability to affect significantly the course of events indicates mirror-like the reflective nature of small, and especially great power disagreement, and the symmetrical United Nations paralysis which occurs when great power aims conflict than converge. This may be epitomized in the UNEF withdrawal issue: while the UAR requested their withdrawal, Israel

was unwilling to permit UNEF stationing on her side of the cease fire line and the United Nations lost considerable of the effectiveness which it possessed in the area. Great power disagreement and lack of coordination in the Security Council did not permit the reinstitution of such a force in the Middle East. In fact, during this upswing phase preliminary to conflict, the great powers by their staunch support of their client states, and consequent rigidity of position reduced the chances for compromise and accommodation at the area level, thereby assisting in the unintended drive toward war.

On June 5, 1967 the armed forces of the Israel Government swung into action as Abba Eban said, to

. . . repel the attempt which was mounted three weeks ago to procure our encirclement and strangulation and thereafter to work with our neighbors to build a better and more stable system of relationship. These are our objectives; these are our aims.<sup>63</sup>

Militarily, the fulfillment of these aims began with unbelievably devastating air sweeps directed at the air forces first of Egypt, then of Syria, Jordan and Iraq. The advance planning and superbly trained initiative of the Israel Air Force staff and pilots destroyed the bulk of the Arab aircraft on the ground the very first day. According to General Mordechai Hod, Commander of the Israel Air Force, 410 Arab planes were destroyed on the first day, 19 on the second day, 14 on the third and 9 on the fourth.<sup>64</sup> Simultaneously, Israel infantry, armor, helicopter and

then airborne troops struck at the Gaza Strip and penetrated as deeply as forty miles into the Sinai Peninsula on the first day.<sup>65</sup> Khan Yunis and el Arish in Gaza and northern Sinai were captured on the first and second days (June 5 and 6), respectively. On June 7 the Mitla Pass was blocked and the final fate of thousands of Egyptian fighting men and their vehicles, now fleeing, sealed.<sup>66</sup> Parachutists took Sharm el Sheikh and were deploying up and down the Suez Canal by June 8. Egyptian manpower losses in the Sinai campaign were put at 11,500 officers and soldiers killed, over 5,000 captured and 80 percent of Egyptian equipment lost (destroyed or intact). Israeli losses were put at 275 officers and enlisted men killed and 800 wounded.<sup>67</sup>

Fighting began between Israel and Jordan on June 5. Against perhaps the most stubborn and courageous of Arab resistance, fast wheeling Israeli forces captured the cities of Jenin, Ramallah and Nablus by late June 7 aided by the efforts of their air force now helpfully concentrating on Jordanian and Iraqi armor. A coordinated attack by Israeli artillery, armor, aircraft and infantry simultaneously began the encirclement and isolation of Jerusalem on June 5. Early on June 7 the assault on the Old City began, climactically seizing the Wailing Wall, a feat which released a floodtide of emotions among Israelis, before the Israeli force pressed on to Bethlehem



and Hebron. By the evening of June 7 when the representatives of both Jordan and Israel accepted the cease-fire in the Security Council the entire West Bank was in Israeli hands. The Jordanian Government estimated its losses at just under 7,000 killed, wounded, missing or captured (the majority killed). Israel losses against Jordan exceeded those in the Sinai operation: 299 were officially listed as killed and 1,457 wounded by the Jerusalem Government. Losses of Jordanian equipment were proportionately high.<sup>68</sup>

Until June 9, action on the Syrian front was comprised primarily of artillery and air bombardments broken only by minor Syrian armor and infantry attacks on June 6. Following the Jordanian collapse, Israeli troops wheeled north while its air force concentrated its operations against the Golan Heights. The offensive against Syria was delayed by Israel because of uncertainty over Security Council activity which might cause Israel to suffer casualties in vain, and perhaps by Soviet sabre-rattling which threatened intervention. The buildup of Israeli troops actually was ordered into operation after Israeli and Syrian representatives in the Security Council had formally agreed to a cease-fire.

Where fighting occurred on the Maginot Line-like Syrian front, it was fierce and casualties relatively heavy on both sides; the technology of air strikes and artillery



mingled with frequent age-old hand-to-hand combat in trenches and prepared positions especially at the northern Syrian stronghold at Tel Fahar.<sup>69</sup> Notable indeed was the Israeli advance in the northern Kfur Szold-Banias region where the Israelis fought up a rootless mountain behind mine removers and bulldozers preparing the way for the tanks which followed. The fall of Kuneitra on June 10 signified to the Syrians that little if any help could be expected from the rear and that the Israelis were on their way to encircle and trap them. A headlong retreat by the remaining Syrian forces began which, while it saved their lives and provided additional troops for the defense of Damascus, literally left only mobility as a restraint on the Syrian territory Israel could seize. Syrian losses were put at approximately 2,500 killed and 5,000 wounded.<sup>70</sup>

With the conclusion of the war Israel found itself controlling about 47,000 square miles of Egyptian, Jordanian and Syrian territory in contrast to the pre-June 6, 1967 Israel of about 8,000 miles. An additional one million Arabs now lived in areas under Israeli control. The war was quick, furious, rapidly moving and militarily decisive. Certainly there could be no question of the paramountcy of the armed forces of a modernized nation, in comparison with those of developing states within the then-parameters making up the Middle Eastern international system. Arab losses were great not only in terms of land,

but also in terms of a particular type of man. The armed forces compose a significant percentage of the modernized manpower pool available to the Arab world. William Polk has estimated that the loss of 25,000 to 30,000 such men "amounts to perhaps five percent of the modernized labor force of the Arab countries. In terms of a rough comparison with the United States. This would be a loss of approximately five million men."<sup>71</sup> We can only acquire glimpses of the psychological exhilaration, despair, accommodation and intransigence engendered by the war.

# NOTES

1. Charles Yost, "The Arab-Israeli War: How It Began," Foreign Affairs (July, 1968), pp. 319, 305.
2. For accounts which generally ascribe blame to Arab states see: Randolph S. and Winston S. Churchill, The Six-Day War (Boston: Houghton Mifflin Co., 1967); and Theodore Draper, Israel and World Politics (New York: Viking, 1968). For works which generally ascribe blame to Israel see: Ibrahim Abu-Lughod, "Israel's Arab Policy" and Hisham Sharabi, "Prelude to War: The Crisis of May-June 1967" both in the Arab-Israeli Confrontation of June 1967: An Arab Perspective, ed. by Ibrahim Abu-Lughod (Evanston: Northwestern University Press, 1970), and Henry Cattán, Palestine, The Arabs and Israel (London: Longmans Green, 1969).
3. Report of the Security Council, 16 July 1966-15 July 1967, A/6702, p. 22.
4. For an excellent treatment of the Israeli view of the policy of retaliation see Moshe Brilliant, "Israeli's Policy of Reprisals," Harper's Magazine (March, 1955), pp. 68-72. For background to this article, see Kennett Love, Suez: The Twice-Fought War (New York: McGraw-Hill, 1969), p. 58. For a wider view of the problem see Fred Khouri, "The Policy of Retaliation in Arab-Israeli Relations," Middle East Journal (Autumn, 1966), pp. 435-55.
5. Prime Minister Levi Eshkol told the Knesset: "I have repeatedly stated that the fundamental responsibility for the waves of attacks rests on the shoulders of the Syrian Government, which trains and dispatches the saboteurs." Jerusalem Post Weekly, November 21, 1966.
6. The New York Times, November 17, 1966.
7. A/6702, p. 23.
8. United Nations Treaty Series (U.N.T.S.) 327, No. 657 (1949).
9. Cattán, op. cit., pp. 94-96.

10. See for example, E. H. Hutchison, Violent Truce (New York: Devin-Adair Company, 1956), p. 107; General Carl Von Horn, Soldiering for Peace (London: Cassel, 1966), pp. 69-79, 115-16; and Lt. Gen. E. L. M. Burns, Between Arab and Israeli (New York: Ivan Obolensky, 1962), pp. 92-99, 111-18 for particular examples of first-hand observers attached to or commanding the United Nations Truce Supervision Organization or United Nations Emergency Forces. For resolutions, see Security Council Resolutions 93 (1951), 100 (1953), 11 (1956) and 171 (1962), November 2, 1966.
11. For the complete text of Dr. Bunche's letter, see N. Bar-Yaacov, The Israel-Syrian Armistice (Jerusalem: Magnes Press, Hebrew University, 1967), pp. 56-58.
12. S/7573, November 2, 1966.
13. Note S/7896, May 19, 1967, for the Secretary-General's overview of the events leading up to what ultimately became war. For the Israeli view of this specific incident, see S/7843, April 7, 1967 and S/7853, April 14, 1967; for the Syrian view, see S/7845, April 9, 1967 and S/7849, April 12, 1967.
14. S/7845, April 9, 1967 and S/7843, April 7, 1967.
15. Walter Z. Laqueur, The Road to War 1967 (London: Weidenfeld and Nicolson, 1968), p. 233. It is only fair to note that by and large, Laqueur called this a "faint hope" and believed the arms levels and anti-Israel feeling made a trial by arms almost certain later, if not sooner.
16. From the official Israeli Weekly News Bulletin, May 9-15, 1967, quoted in Draper, op. cit., p. 245.
17. Henry Christman, ed., The States Papers of Levi Eshkol (New York: Funk & Wagnalls, 1969), p. 71. (Emphasis mine.)
18. The New York Times, May 14, 1967.
19. Jerusalem Post Weekly, May 14, 1967.
20. Laqueur, The Road to War 1967, pp. 74-75; see also David Kimche and Dan Bawly, The Sandstorm (London: Secker & Warburg, 1968), pp. 88-89.



21. The Economist, May 20, 1967, p. 779, stated: "The deduction that people are now drawing, and which the Israelis are allowing them to draw, is that this . . . [next] . . . step would be a major raid into Syria aimed at toppling the present Syrian government. And the Israelis, and others, could yet be wrong in their calculation that the Egyptians are too tied up in Yemen to be able to do much in Syria's defense." See also The New York Times, May 21, 1967, which reported from Jerusalem: "Officials here believe the current tension is the result of a series of miscalculations, their own ability to withstand a sharply heightened sabotage and guerrilla campaign. Another was the effect, underestimated by Israeli leaders, of their warnings of retaliation against Syria."
22. S/7853, April 14, 1967.
23. S/7885, May 15, 1967.
24. S/7880, May 11, 1967.
25. Christman, op. cit., p. 70.
26. Report of the Secretary-General on the Situation in the Near East. S/7896, May 19, 1967, p. 110.
27. See "Nasser's Resignation Broadcast, June 9, 1967" in Walter Laqueur, ed., The Israel-Arab Reader (New York: The Citadel Press, 1969), p. 189.
28. John S. Badeau, "The Arabs, 1967," The Atlantic (December, 1967), pp. 108-9. See also Majdia D. Khadduri, ed., The Arab-Israeli Impasse (Washington: Robert B. Luce, Inc., 1968), for a singular collection of articles, including Badeau's.
29. The New York Times, May 19, 1967.
30. Report of the Secretary-General on the Withdrawal of the United Nations Emergency Force, A/6730/ADD.7, June 26, 1967, in GAOR 5th Emer, Spec. Sess., Annexes, pp. 5, 15. For relevant articles on this controversy see: E. Burns, "The Withdrawal of U.N.E.F. and the Future of Peacemaking," International Journal (Winter, 1967-68); M. Cohen, "The Demise of U.N.E.F.," ibid., and Y. Tandon, "U.N.E.F., The Secretary-General and International Diplomacy in the Third Arab-Israeli War," International Organization (Spring, 1968).



31. The New York Times, May 21, 1967.
32. Alastair Buchan, "Great Contingency," Encounter (August, 1967), p. 4. A New York Times dispatch from Jerusalem datelined May 21, 1967 reported that some Israeli officials "hold the view that President Nasser and Secretary-General Thant miscalculated in the rapid exchange over demands for the United Nations withdrawal. When Cairo called for the pullback, Mr. Thant acceded before international opinion could be mobilized against it."
33. Moshe Dayan, Diary of the Sinai Campaign (New York: Harper & Row, 1965), p. 4.
34. In his July 23, 1967 Revolution Anniversary Speech at Cairo University Nasser stated: "Then we restored Egyptian sovereign rights in the Gulf of Aqaba. This was one of the things our Arab brothers had always insisted on." Laqueur, The Israel-Arab Reader, p. 200.
35. The New York Times, May 23, 1967.
36. See Sharabi's article in Abu-Lughod, op. cit., p. 52. A note that no further mention of this could be found in the United States or United Kingdom presses.
37. Laqueur, The Road to War 1967, p. 95.
38. Gil Carl Alroy's "The Middle East Conflict" in The Reporter (May 16, 1968) and reprinted in Survival, August, 1968, is one of the best extant statements of this psychological dimension in the context of the 1967 war.
39. Some idea of the ethos of those days can be gleaned from the Economist, p. 995, which printed its opinion on June 3, 1967 that: "The blunt fact is that the Israelis have been outmanoeuvred. Their chief aim now ought to be to secure a settlement that gives firm great power recognition to Israel's right to exist. And settlement means concessions."
40. Le Nouvel Observateur, June 13, 1967, reprinted in Atlas (August, 1967), pp. 17-20 and collected in the Arab-Israeli Impasse, ed. by Khadduri, op. cit., pp. 91-96, as the "The Soviets, The Puppet."
41. Ibid.
42. Ibid.; see also the Economist, June 3, 1967, p. 993.

43. Laqueur, The Road to War 1967, pp. 138-39.
44. See "Aide Memoire from Secretary Dulles to Israel Ambassador to the United States Abba Eban, February 11, 1957," in Staff of the Senate Committee on Foreign Relations, 90th Cong., 1st Sess., A Select Chronology and Background Documents Relating to the Middle East (1st rev. ed.; Washington: U.S. Government Printing Office, 1969), pp. 155-58. See also U.S. Dept. of State, Bulletin, No. 36 (Washington, D.C.: Government Printing Office, 1957), p. 393. For President Eisenhower's verbal remarks see *ibid.*, pp. 387-90.
45. See for example The New York Times, June 2, 4, 5, 1967.
46. See Draper, *op. cit.*, pp. 89-91; and Laqueur, The Road to War 1967, pp. 135-38.
47. Leonard Binder, "The Middle East Crisis: A Trial Balance," Bulletin of the Atomic Scientist (September, 1967), p. 3.
48. See David Nes, "A Very Special Relationship," Middle East Newsletter (April-May, 1971), pp. 4-6, also published in The Times (London), February 5, 1971, for a cogent summary of this relationship.
49. Geoffrey Kemp, Arms & Security: The Egypt-Israel Case (Adelphi Papers, No. 52) (London: Institute for Strategic Studies, 1968), p. 20.
50. Joseph Sisco, "The United States and the Arab-Israeli Dispute," Annals, No. 384 (July, 1967), p. 70. While substantially true, Sisco's statement tends to ignore some of the rockier times in American-Israeli relations, especially during the Eisenhower-Dulles years.
51. Oran Young, "Intermediaries and Interventionists: Third Parties in the Middle East Crisis," International Journal (Winter, 1967-68), p. 53.
52. David G. Nes, "Interview," The Arab World (March-April, 1970), p. 8. See also "Our Middle Eastern Involvement," in Middle East Forum, XLV, 3 (1969), 15, 28, especially 18-20, based upon an address delivered by Mr. Nes on April 18, 1969 at the Conference on World Affairs held April 14-18, 1969 at the University of Colorado, Boulder.

53. Nes, "Interview," p. 7.
54. Miles Copeland presents an extremely similar analysis which lacks Nes' program detail and insight into the American political process, but which nonetheless arrives at much the same conclusions in The Game of Nations (London: Weidenfeld & Nicolson, 1969), pp. 233-38. See also Le Monde, December 27, 1967, for a similar economic-based analysis of Nasser's motivation, with conclusions more precise than Nes and less sweeping than Copeland.
55. Nes, "Interview," pp. 7-8.
56. Winston Burdett, Encounter with the Middle East (New York: Atheneum, 1969), p. 304.
57. The New York Times, May 27, 1967.
58. Ibid., May 28, 1967.
59. Ibid., May 29, 1967.
60. For an insight into Israeli decision-making at the cabinet level see E. A. Bayne, "Israel's Decision Makers," American Universities Field Staff Reports Service: Southwest Asia Series, XVI, No. 3 (Israel), 11-17. See also Laqueur, The Road to War 1967, pp. 109-59. See also Maxime Rodinson, Israel and the Arabs (Harmondsworth: Penguin Books Ltd., 1968), pp. 204-5.
61. The New York Times, May 29, 1967.
62. Arthur Lall, The United Nations and the Middle East Crisis, 1967 (New York: Columbia University Press, 1968), p. 38.
63. S/PV, 1350, June 7, 1967, p. 16.
64. Jerusalem Post Weekly, July 3, 1967. The estimates of the Institute for Strategic Studies (London) put combat aircraft losses for the U.A.R. at 340, Syria 21, and Jordan 37. See Keesing's Research Report, The Arab-Israeli Conflict: The 1967 Campaign (London: Keesing's Publications Limited, 1968), p. 40. The I.S.S. did not include Iraqi losses, transport aircraft, helicopters or unarmed trainer aircraft in their totals which might help explain the discrepancy between their own and Hod's estimates.

65. Nadav Safran, From War to War (New York: Pegasus, 1969), p. 342.
66. The New York Times, June 8, 1967.
67. Safran, op. cit., p. 349.
68. Ibid., p. 368.
69. S. L. A. Marshall, Swift Sword: The Historical Record of Israel's Victory, June 1967 (New York: American Heritage Publishing Company, Inc., 1967), p. 131. See also The New York Times, June 12, 1971, which reported: "It was a new kind of fighting for the Israeli Army. . . . Here in the hills of Syria there was no element of surprise and no chance to make quick flanking movements around stubborn pockets of resistance. Friday was a day for uphill infantry assaults on bunkers and barbed wire." The dispatch went on to cite that in the first day's fighting one Israeli battalion was more than decimated (if the word be used in the sense of taking at least a tenth part of), while another counted an advance of only 150 yards into Syria after a full day's carnage.
70. Safran, op. cit., p. 381.
71. William R. Polk, The United States and the Arab World (Rev. ed.; Cambridge: Harvard University Press, 1969), p. 302. Mr. Polk's work dealt with the Arab "core" countries extending geographically from the Tigris to the Nile rivers, and from the Mediterranean to the Arabian Seas.



## C H A P T E R    I I

## LEGAL POSITIONS OF DIRECT PARTIES

A "Just and Lasting Peace" between Arabs and Israelis is the dream of all men in all lands, not just the dream of men who inhabit or are concerned with the Middle East. But the Arab-Israeli conflict, the Palestinian problem, the question of Arab or Israeli aggression--however one's position on the compass of sympathy or bias affects the semantic choices manifesting his perception of the problems--the problem has been with us for more than two decades. Not only that, the fact that the conflict is geographically embedded in an area of significance particularly vital to the West, the facts of transit-communications linkage between continents, oil and simple geostrategic position all being descriptive of the Middle East lends a note of real possibility to the escalatory, holocaustic scenarios of Great Power nuclear confrontation depicted as springing Medusa-like from the maws of this problem.

Oddly enough this eruption may have unrecognizably carried within itself the seeds of settlement which could grow into peace--certainly not strong and sturdy at first, but peace nonetheless. Arthur Lall has written wisely:

It is a seeming paradox, but nevertheless a recurring one in international affairs, that the worse the situation becomes, the more drastic are the remedies that commend themselves to the international community. The paradox is only superficial. Clearly, conflict in itself shows that the situation has deteriorated seriously and therefore demands a basic solution.<sup>1</sup>

It was this sort of sentiment--that after the bitter harvest of more than two decades of war, belligerency, guerrilla or terrorist activity, this hemorrhage of men, treasure and emotion "had become a burden to world peace, and that the world community should finally insist on the establishment of a condition of peace, flowing from the agreement of the parties."<sup>2</sup> The United States, though it tended to protect the interests of Israel in the United Nations, recognized this while the Soviet Union was still singularly engrossed in the more immediately gratifying though arid effort to condemn Israel for "aggression."<sup>3</sup> But the United States was hardly alone in its perception. During its session of June 6, 1967, seven members of the Security Council--Argentina, Canada, China, Ethiopia, Japan, The United Kingdom and, surprisingly, Mali joined the United States in agreeing to the necessity either to face up to the fundamental problems at the root of the conflict, and to attempt to solve them, or expect to meet the problem in a crisis situation again.<sup>4</sup> Such a feeling certainly provided much of the motive drive which eventually resulted in the November 22, 1967 Security Council Resolution.

Such an approach certainly is consistent with the basic mission of the United Nations as set forth in its Charter. Certainly it is consistent not only with Article 1 which sets forth the purposes of the organization, but also with Article 2 which describes the principles in accordance with which members shall act. Among other purposes and principles the former calls for the United Nations to "maintain international peace and security," to settle breaches of the peace "in conformity with the principles of justice and international law" and to act as "a centre for harmonizing the actions of nations" toward these ends; the latter speaks to the peaceful settlement of international disputes such that "security and justice are not endangered" while refraining from the threat or use of force. The principle is also consistent with Article 24 which confers on the Security Council "primary responsibility for the maintenance of international peace and security." Nor need we but mention this principle's conformity with Articles 33 and 34 which has to do with the "Pacific Settlement of Disputes" as well as with Article 40.

As for the rest, the content of the hope for "A Just and Lasting Peace" will unfold simultaneously with our discussion.

To the victors belong the spoils and throughout the Arab-Israeli conflict, the most sought-after spoil has been land. With her lightning conquest, Israel greatly increased the amount of land under her control. The Gaza Strip, crowded hothouse of Palestinian misery and resistance; the Sinai Peninsula, historical defensive buffer for the possessor state, natural offensive threat to the state denied its possession; the West Bank, vessel for Jerusalem and vital strategic dagger; and the Golan Heights, threat to Israel, pride of Syria--all were taken in the Israeli Blitzkrieg-type campaign. For the first time in Israel's history, virtually every prior threatening area was in her hands and her jagged, indefensible boundaries now were straightened and more manageable. In a sense, land is a "zero-sum" quantity in the Middle East equation. And what Israel had won, Arabs had lost. Not just the Palestinians this time--Arabs. Syrians, Jordanians, Egyptians and Palestinians now shared a common experience which to them irrefutably proved again the threat which an expansionist-minded Israel posed. Israel was forced to disgorge its 1956 conquests by a United States President who believed in conformance "to the strong sentiment of the world community as expressed in various United Nations resolutions relating to withdrawal."<sup>5</sup> In 1967, no such conformance was insisted upon.



The Israeli case is as follows: by "going to war" the Arab Governments had automatically repudiated the armistice agreements and its demarcation line. Israel will not withdraw from the conquered areas until the Arabs ceased their claim to a legal state of war, nonrecognition of the sovereign equality of Israel, hostile actions and continual threats against Israel's existence and agree to free passage through international waterways for ships of all nations. Once before, in 1956, the Israelis had withdrawn from territory on the basis of promises and understandings rather than a binding peace treaty negotiated directly and without the intermediaries of even the closest friends. Therefore, Israel felt justified in retaining these conquests until peace actually came.<sup>6</sup> At first espousing no territorial claims, Israeli officialdom quickly changed its mind.<sup>7</sup> Remembering on the one hand, the United States' 1957 position that the Charter precluded "using the forcible seizure and occupation of other lands as bargaining power in the settlement of international disputes" and the American commitment to "remedying" Israel's "legitimate grievances" concerning the Gulf of Aqaba and the Gaza Strip<sup>8</sup> and, on the other hand, the promises and understanding which never materialized after Israel's unconditional withdrawal, Israel felt justified in acting differently this time. This time Israel would not withdraw

except as part of a firm conditional agreement, negotiated on a face-to-face basis, in which such questions as the Arab claim to a state of war, borders, recognition and refugees would be dealt with.<sup>9</sup> Jerusalem was not about to entrust its security either to a great power or an international organization which had proved unreliable in the past. At the moment of crisis, the United Nations had been paralyzed while the United States vacillated. Israel would retain control of the occupied territories until a peace settlement was negotiated and her terms met. In the meantime, Israel constructed the Bar-Lev line of fortifications along the Suez Canal, sprinkled Nahal fortified kibbutzim in the West Bank and annexed Jerusalem.

There are two separate points to the Arab position concerning Israeli troop withdrawal. The first point relates to the maintenance of armed military forces in foreign territory without the consent of the host state; the second point concerns the inadmissibility of acquisition of territory by war--the more familiar "no fruits of aggression" principle according to Charter articles I and II.

International law prohibits the maintenance of armed military forces on the territory of another state without that state's consent. Article 10 of the Covenant of the League of Nations and the 1928 Kellogg-Briand Pact were cited by Secretary of State Stimson and recognized by the

League in the Stimson Doctrine in which the United States refused to recognize any alteration of rights stemming from the Japanese invasion and occupation of Manchuria in 1931.<sup>10</sup> The principle, "no fruits of aggression" is firmly rooted in contemporary international law.

Moreover, the Arab case continues, Article 51 of the United Nations Charter accepts the inherent right of state self-defense upon armed attack only "until the Security Council has taken measures necessary to maintain international peace and security." The interpretive content of phrases such as these are subject to wide differences. It appears that territorial occupation by military forces of another state must cease when peace and security are restored, even if the case is put forward that such occupation was initially justified as a defensive measure. Arab states insist that the first step toward establishing peace, on the basis of the principle, is the withdrawal of Israeli forces. However, Israel insisted on withdrawal only as part of a more complete settlement. Principle certainly requires that Israel not retain its occupied areas as a bargaining weapon, claims the Arab case. For if Israel extracted territorial or political concessions as a result, a premium would be put on aggression which, in effect, would "permit the aggressor to use the fruits of his aggression to gain the ends for

which he went to war."<sup>11</sup> This could only encourage aggression generally in other parts of the world and specifically, according to the Arab view, by an Israel whose design had always been perceived as expansionist. The precedent of Israel striking the first blow and being allowed to retain the fruits of its conquest while in consequence dictating the terms of a settlement to its liking could only weaken the foundations of the United Nations and international law, claims the Arab case. Moreover, Israel's current unilateral dissolution of the Armistice Agreements and Commissions was disputed by Secretary-General U Thant who in 1967 pointed out:

. . . there has been no indication either in the General Assembly or in the Security Council that the validity and applicability of the Armistice Agreements have been changed as a result of the recent hostilities or of the war of 1956; each agreement, in fact, contains a provision that it will remain in force "until a peaceful settlement between the parties is achieved." Nor has the Security Council or the General Assembly taken any steps to change the pertinent resolutions of either organ relating to the Armistice Agreements or to the earlier cease-fire demands. The Agreements provide that by mutual consent the signatories can revise or suspend them. There is no provision in them for unilateral termination of their application. This has been the United Nations position all along and will continue to be the position until a competent organ decides otherwise.<sup>12</sup>

Related to, yet beyond the principle of withdrawal from occupied territory lies the more specific principle of inadmissibility of the acquisition of territory by war. We shall shortly review the case of Jerusalem. Israeli



statements have made clear that there will be no return to the status quo ante in the Gaza Strip, Sinai, the West Bank or Golan Heights if Israel's current aims are fulfilled. But simple military occupation of territory legally that of another state gives no title to that occupied territory. This was affirmed in the Pan American Conference of 1890 through the Buenos Aires Declaration of 1936<sup>13</sup> and Lima Declaration of 1938<sup>14</sup> and finally, the Bogota Charter of the Organization of American States in 1948.<sup>15</sup> Plebiscites rather than force or occupation were required for territorial transfers under Woodrow Wilson's Fourteen Points and applied in some of the peace settlements.<sup>16</sup> Article 10's guarantee of territorial integrity for members found in the League of Nation's Covenant carries this implication.<sup>17</sup> The Kellogg-Briand Pact of 1928<sup>18</sup> concurred in this. Territorial acquisitions were rejected by the Atlantic Charter.<sup>19</sup> Finally, it may be pointed out that:

The Charter of the United Nations contains no collective declaration of non-recognition of territorial changes effected through non-pacific means, but the members of the United Nations have pledged themselves to suppress acts of aggression or other breaches of the peace (Art. I, par. 1), to settle their disputes by peaceful means (Art. 2, par. 3), to refrain from the threat or use of force against the territorial integrity or political independence of any state (Art. 2, par. 4), and to refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action (Art. 2, par. 5). It is hardly possible that recognition of illegal acquisition could be compatible with these obligations.<sup>20</sup>

The case of Jerusalem is such that it requires separate treatment. On June 7 after bitter fighting Israel announced the capture of Jerusalem's Old City and its environs since 1943 governed by Jordan. On June 28, 1967 the state of Israel announced its unilateral annexation of these conquered territories. Much of what has been previously written concerning withdrawal from conquered territories applies here. But because of its annexation, unlike other conquered territories and primarily because of Jerusalem's special significance as an eternal city, holy to three faiths and host to their shrines, this sector of land, this city and its environs takes on a special significance of a nature dissimilar from other areas.<sup>21</sup>

For 3,000 years, control of Jerusalem has been acquired by conquest.<sup>22</sup> Disputes and friction--at least among Christians concerning shrines and their control were not unknown to the city.<sup>23</sup> In the twentieth century, Articles 13 and 14 of the League of Nations mandatory agreement for Palestine made special mention of the city's unique religious character and of the mandatory's responsibility to protect the rights of all religious character and of the mandatory's responsibility to protect the rights of all religions, their Holy Place, access, worship and control of them.<sup>24</sup> In 1937, the Report of the Peel

Commission recommended an enclave to include and surround Jerusalem and Bethlehem under continued British control, but because of its religious character, separate from the rest of the proposed partitioned Palestine. The Anglo-American Committee on Palestine and Related Problems recommended in 1946 that while "international guarantees" should protect the interests of the three faiths, the continuing mandatory (British) government should closely supervise holy places and their vicinity.<sup>25</sup>

On November 29, 1947, the General Assembly of the United Nations passed Resolution 181 (II) better known as the Palestine Partition Resolution. Part III of the resolution began: "The city of Jerusalem shall be established as a corpus separatum under a special international regime and shall be administered by the United Nations"--a point which only carried out the proposal of the majority report of the UN Special Committee on Palestine (UNSCOP).<sup>26</sup> The spiral of deterioration in Palestine made faint any possibility of implementation. The de facto holdings of Israel (the New City) and Jordan (the Old City) were formalized in the Israeli-Transjordanian Armistice Agreement of 1949<sup>27</sup> which created a status quo which lasted until 1967.

The General Assembly reconfirmed its commitment to internationalization by passing Resolution 194 (III) on

December 11, 1948, Resolution 194 (III) created a Conciliation Commission for Palestine and deemed that the city and its environs should receive "special and separate treatment from the rest of Palestine" while being placed "under effective United Nations control."<sup>28</sup> On May 11, 1949, the General Assembly admitted Israel to United Nations membership by Resolution 273 (III). This resolution specifically recalled the General Assembly's "resolutions of 29 November 1947 and 11 December 1948" which sanctioned the internationalization of Jerusalem and the right of the Palestine refugees to compensation or return. The resolution continued by "taking note of the declaration and explanations made by the representative of the Government of Israel before the Ad Hoc Political Committee in respect of the implementation of said decisions."<sup>29</sup> The post-1967 Arab case points out here that Jerusalem has been annexed and the Palestinian refugees not offered the choice of return or compensation. Especially concerning the refugees, Jerusalem vigorously placed the blame for the stalemate upon the Arab states. Just one year later, on December 9, 1949, the General Assembly approved by a two-thirds margin Resolution 303 (IV) which reasserted internationalization as a goal for Jerusalem and directed the Trusteeship Council to plan for and seek implementation of this goal.<sup>30</sup> The Trusteeship Council attempted to put forward a plan for a



demilitarized, neutralized, internationalized corpus separatum under United Nations auspices, but failed to arouse the necessary Jordanian or Israeli support.<sup>31</sup> A modified statute which instead was more congruent with the Jordanian-Israeli position was submitted to the General Assembly but no further action was taken. The General Assembly did not act on the question of Jerusalem again until 1967.

Both Israel and Jordan strengthened their de facto if not de jure presence in Jerusalem by placing educational, medical and government institutions in the area. Both Israel and Jordan annexed their areas. Jordan annexed its sector of Jerusalem in 1949 and proclaimed the city to be its second capital in 1959. In 1950 Israel's Knesset proclaimed Jerusalem to have been the capital of the State since independence; in 1953 the last ministry, the Foreign Ministry, was moved from Tel Aviv to Jerusalem.<sup>32</sup> The United States still retains its embassy in Tel Aviv, as do the Soviet Union and many other states as an expression of the nonrecognition of the designation of Jerusalem as Israel's capital. The construction of a new \$7 million Knesset building in Jerusalem on August 30, 1966 indicated the Israeli intent to stay.<sup>33</sup>

Following Israel's annexation of Jerusalem and its environs on June 27, 1967 (which included the taking of

substantial West Bank territory nine miles north to Kalandia airport and to within one mile of Bethlehem to the south,<sup>34</sup> the General Assembly in its fifth emergency special session passed Resolution 2253 (ES-V) on July 4, 1967 by the overwhelming vote of 99-0-19. The Assembly expressed its deep concern at the situation in Jerusalem in consequence of "the measures taken by Israel to change the status of the city," considered "that these measures are invalid," called for Israel to "rescind" these measures and to "desist forthwith" from such future actions while calling on the Secretary-General to report on the resolution's implementation within one week.<sup>35</sup>

Open Israeli determination to retain Jerusalem regardless of U.N. action or world opinion contributed to another groundswell of sentiment which Israel was unable to stem despite later conciliatory efforts.<sup>36</sup> On July 14, a second Pakistan-sponsored resolution, 2254 (ES-V), was adopted by a General Assembly vote of 99-0-18.<sup>37</sup> Having received the report of the Secretary-General,<sup>38</sup> the Assembly deplored and took note of the "non-compliance" by Israel with Resolution 2253 (ES-V) and reiterated its call to Israel to "desist" from future alterations in the status of Jerusalem while requesting the Secretary-General to report on implementation.

The Israeli case, like virtually every facet of this conflict, has its roots deep in emotion and the

question of security. To wit--David Ben Gurion, after referring to Jerusalem, "by decree of our history our capital"<sup>39</sup> continued:

Jewish Jerusalem is an organic and inseparable part of the State of Israel, just as it is an inseparable part of Jewish history, Jewish religion, and the Jewish soul. Jerusalem is the very heart of the State of Israel.<sup>40</sup>

An emotion of another type is revealed by Walter Eytan:

The people of Israel as a whole can never forget the . . . [1948] . . . siege--any more than they have been able, since the Babylonian exile, to forget Jerusalem itself. Having, as they see it, with their own forces alone saved Jerusalem from the Arab attempt to destroy it, they can never agree to see the city subject to a foreign, even if an "international" regime. Despite all anxiety for the Holy Places, the United Nations and its members did nothing to protect Jerusalem, apart from passing resolutions. Israel resented this bitterly at the time and resents it to this day. The Jews of Jerusalem would not dream of relying for protection on an "international" governor and police.

This attitude, with which the official policy of the Israel Government conforms, has led Israel into conflict, or at least open disagreement with other countries, and at times with the United Nations itself.<sup>41</sup>

The objective of Israel, then, was national control of the eternal city, in direct contradiction with the professed goal of 194 (III), (1948), which was to grant Jerusalem and its environs "special and separate treatment from the rest of Palestine."

The constant overlayer in Israel's position is that of the special interests and rights of her claim to Jerusalem.<sup>42</sup> Below this surface constancy changes in

position have occurred in consequence of Israeli-Jerusalem holdings. While she held only the New City with its largely Jewish population, the Government of Israel addressed the U.N. about self-determination and functional internationalization. Self-determination was necessary because no "regime for the protection of religious interests can endure amidst a discontented, aggrieved and turbulent population." Rome-like functional internationalization was opposed to territorial internationalization; the safeguarding of holy shrines did not necessitate the internationalization of Jerusalem in toto, merely an official U.N. presence to supervise their protection, ensure free access and the like.<sup>43</sup> Just as such an arrangement did not violate Italian rights and sovereignty, so the same would be true for Jerusalem and its inhabitants, went the Israeli approach.

Later, after winning all of Jerusalem, Israel policy changed. According to the Israeli thesis, the Jordanian attack violated the Armistice Agreement between the two parties and released Israel from any of its obligations. According to Foreign Minister Abba Eban, "the term 'annexation' . . . is out of place. The measures adopted . . . [re: 27 June 1967] . . . relate to the integration of Jerusalem in the administrative and municipal spheres, and furnish a legal basis for the protection of the Holy Places."<sup>44</sup>



This theme was carried forward while an opening was presented to the Christian countries on 11 September 1967 when Abba Eban informed Secretary-General U Thant by letter:

This does not foreclose the final settlement of certain important aspects of the Jerusalem situation which lie at the origin of the international interest in the city. I refer to the need to secure appropriate expression of the special interest of the three great religions in Jerusalem. . . . I am confident that in an atmosphere of international tranquility substantial progress could be made toward this aim, which has hitherto had no concrete fulfillment.<sup>45</sup>

Meanwhile, the Personal Representative of Secretary-General U Thant to the area reported conversations with Israel leaders which included the Prime Minister and Minister of Foreign Affairs in which "it was made clear beyond any doubt that Israel was taking every step to place under its sovereignty" the newly conquered Jerusalem; that it was the "declared objective" of the Israel Government "to equalize the legal and administrative status" of all inhabitants of Jerusalem, and that the "process of integration was irreversible and not negotiable."<sup>46</sup>

The Arab case is also at base emotional, and to comprehend it fully we would need "to borrow from religion its deep feelings and from poetry her sweet tunes."<sup>47</sup> Jerusalem is venerated by both Moslem and Christian Arabs. Though too rooted deep in emotion, the Arab position here relies also upon a legal basis. The very backbone consists of the already cited Resolutions 181 (II) of November 29, 1947

which called for "a corpus separatum under a special international regime . . . administered by the United Nations," and 194 (III) of 11 December 1948 which instructed the Conciliation Commission established by the same resolution to submit proposals for "a permanent international regime for the Jerusalem area "providing maximum local autonomy for distinctive groups consistent with the special international status of the Jerusalem area." In addition, Resolution 303 (IV) (1949) which, never having been repealed, supplanted or modified, continued to stand as the official position of the United Nations. The internationalization of Jerusalem which 303 (IV) recommends provides at least a temporary congruency to U.N. and Arab goals while creating tension between the objectives of Israel and the world body.

Arab policy too has changed. From the outright rejection of the partition resolution and the internationalization which was part of it, Arabs came to accept internationalization. Until the 1967 war, the Arab case rested chiefly upon the dissimilarities between the Israeli and the U.N.'s conception of Jerusalem's status. Following the 1967 War, the Arab position broadened. Resolutions 2253 (ES-V) and 2254 (ES-V) indicated that the world community considered Israel's action as invalid and called for their rescission.<sup>48</sup> Even the United States did not recognize the step of annexation as valid.<sup>49</sup> Arab

inhabitants of the old city were opposed to civil incorporation into the Israel administrative system. This they saw as a violation of accepted international administrative and legal structure in that territory.<sup>50</sup> Inhabitants also complained that the United Nations Charter and Universal Declaration of Human Rights were being violated so long as the population of East Jerusalem was denied the rights of self-determination.<sup>51</sup> While the Israel Government points to the exclusion of Jews from the Wailing Wall prior to the 1967 War, Arabs point to an alleged two-hour prayer service conducted by the chief Rabbi of the Israel Army in the Haram Al-Sharif Mosque on August 15, 1967, a provocation which "infringed upon the inviolability of a Holy Place venerated by all Islam." In addition, the charge was made that on August 12, 1967, the Israeli Minister for Religious Affairs stated that

The occupational authorities considered the Mosque of Omar and its outlying buildings as their property either by past acquisition or by recent conquest. He also expressly proclaimed that those authorities were determined sooner or later to rebuild their temple on the Dome of the Rock itself.<sup>52</sup>

If any single controversy pervades the others in this Gordian knot of complexity, it is the disagreement over interpreting the state of war and concept of belligerency. Whether we are dealing with issues of innocent passage, borders or recognition, the question

of war and belligerency arises. The controversy is between what might be termed the "classical concept" and the "more modern view" of the state of belligerency in relation to the Armistice Agreements between Israel and the Arab States. These are the only legal instruments which govern the relationship between the Arab states and Israel.

Pursuant to Security Council Resolution 62 (1948) which called upon the states to conclude Armistices as "provisional measures," negotiations resulted in Armistice Agreements between Israel, on the one hand, and Egypt, Lebanon, Jordan and Syria on the other, between February 24 and July 20, 1949.<sup>53</sup>

The Arab case holds that a state of war continues until terminated by a peace treaty. In this classical view a state of war persists during an armistice or truce. The Armistice Agreement itself is cited as evidence. For example, Article 4 of the Agreement reads, "the principle that no military or political advantage should be gained under the truce ordered by the Security Council is recognized; "and Article 9 reads "no provision of this Agreement shall in any way prejudice the rights, claims and positions of either party hereto in the ultimate peaceful settlement of the Palestine question" [emphases mine]. The Arab position also notes Article 1 which reads in part: "No aggressive action by the armed forces--land, sea or air--



47. A. L. Tibawi, "Jerusalem: Its Place in Islam and Arab History," in I. Abu-Lughod, ed., The Arab-Israeli Confrontation of June 1967 (Evanston: Northwestern University Press, 1970), p. 42.
48. See below, Chapter III,
49. United States Ambassador Goldberg stated: "I wish to make it clear that the United States does not accept or recognize these . . . [Israeli] . . . measures as altering the status of Jerusalem." U.N. Document A/PV. 1544, July 14, 1967, p. 48. See also The New York Times, July 15, 1967.
50. S/8146, September 12, 1967, p. 252.
51. Ibid.
52. Ibid., p. 259.
53. 42 U.N.T.S. 251, No. 654; see also U.N. Document S/1264/ Rev. 1 (1949), for Egypt; 42 U.N.T.S. 287, No. 655; see also U.N. Document S/1296/ Rev. 1 (1949) for Lebanon; 42 U.N.T.S. 303, No. 656; see also U.N. Document S/1302/ Rev. 1 (1949) for Jordan; and 42 U.N.T.S. 327, No. 657; see also U.N.T.S. 327, No. 657; see also U.N. Document S/1353/ Rev. 1 (1949) for Syria. The Egyptian-Israel General Armistice Agreement may also be found in Hurewitz, op. cit., pp. 299-304 while the complete text of the Israel-Syrian General Armistice Agreement may also be found in Appendix I of N. Bar-Yaacov, The Israel-Syrian Armistice (Jerusalem: Magnes Press, The Hebrew University, 1967).
54. See Michel Bar-Zohar, Ben-Gurion: The Armed Prophet, trans. by Len Ortzen (Englewood Cliffs: Prentice-Hall, 1966), p. 155 for word by Ben-Gurion's official biographer who had access to his personal notebooks. See also Shabtai Rosenne, "Directions for a Middle East Settlement - Some Underlying Legal Problems," and Leo Gross, "Passage Through the Strait of Tiran and in the Gulf of Aqaba," both in John W. Haldermann, ed., The Middle East Crisis: Test of International Law (Dobbs Ferry: Oceana, 1969), for divergent analyses which support an analysis favorable to Israel of this incident.
55. See E. L. M. Burns, Between Arab and Israeli (New York: Ivan Obolensky, 1962), pp. 92-98.

of either party shall be undertaken," while noting the Israeli lightning dash across the Negev to the Arab fishing village of Om Rashrash (now Elath) on the Red Sea. The Egyptian-Israeli Armistice Agreement is dated February 24, 1949; Ben Gurion authorized "Operation Fait Accompli" which took Om Rashrash on March 10, 1949.<sup>54</sup> Article VIII of the same Armistice Agreement notes that "the village of El Auja and vicinity . . . [as defined later in the Article] . . . shall be demilitarized and both Egyptian and Israeli armed forces shall be totally excluded therefrom." On September 21, 1955, two companies of Israeli infantry entered and occupied the El Auja demilitarized zone.<sup>55</sup>

Commercial Cable Co. v. Burlson (1949) found that "an armistice effects nothing but a suspension of hostilities; the war still continues."<sup>56</sup> Also Oppenheim is most often cited by the Arab case:

Armistices or truces, in the wider sense of the term, are all agreements between belligerent forces for a temporary cessation of hostilities. They are in no ways to be compared with peace, and ought not to be called temporary peace, because the condition of war remains between the belligerents themselves, and between the belligerents and neutrals, on all points beyond the mere cessation of hostilities.<sup>57</sup>

If this general trend of analysis is accepted, then a traditional state of war continued to exist between the Arab states and Israel since the conclusion of the 1949 Armistice Agreements. Exercising the rights of a belligerent is not against the terms of the General Armistice

Agreements in the Arab view.

Israeli's collusion with Britain and France in 1956 is put forward as leading to an aggression which was a clear violation of the Charter and inconsistent with Israel's claim to be a peace-loving member of the United Nations, as are Arab charges of military action by Israeli forces carried out against neighboring Arab states since 1948.<sup>58</sup> Finally, if the Charter is obligatory upon the Arabs, so too it is upon the Israelis. The internationalization of Jerusalem and the right of the Palestinian refugees to return or compensation are two points on which U.N. resolutions have not been implemented, the Arab case selectively points out, despite Israel's assurances to the contrary. Resolution 273 (III) of May 11, 1949 by which Israel was admitted to United Nations membership specifically noted, "The declaration by the State of Israel that it 'unreservedly accepts the obligations of the United Nations Charter' while specifically recalling Resolutions 181 (II) of November 29, 1947 and 194 (III) of December 11, 1949, the latter of which called for the compensation or return "at the earliest practicable date" of the Palestinian refugees--a pledge which has not been fulfilled."<sup>59</sup>

The Israeli position claims "a more modern view which treats an armistice more as a peacy treaty."<sup>60</sup> The view is that in certain cases an armistice takes the place of a treaty to all practical purposes. Because of the longer

time period between an armistice and a peace treaty, that intervening time may be treated differently; Israel suggests the de facto termination of the state of war in place of merely the cessation of hostilities. To wit, Security Council Resolution 95 of September 1, 1951 stipulated:

. . . that since the Armistice regime, which has been in existence for nearly two and a half years, is of a permanent character, neither party can reasonably assert that it is actively a belligerent.<sup>61</sup>

Further, the Israeli position points out as a matter of principle that "the very existence of a state of war is utterly incompatible with membership in the United Nations and the obligations imposed by the Charter."<sup>62</sup> The basic premise is that the Armistice Agreements did mean what was written and that, for example, according to Article I of the Israel-Syrian Armistice Agreement as well as the Egyptian-Israel Armistice Agreement:

No aggressive action by the armed forces--land, sea or air,--of either Party shall be undertaken, planned or threatened against the people or the armed forces of the other.<sup>63</sup>

According to Article 2 of the Charter, member-states are called upon to "settle their international disputes by peaceful means" in addition to "refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state" or acting in a manner inconsistent



with the United Nations' purposes, while the use of force is legitimate in the case of individual or collective self-defense<sup>64</sup> if under U.N. authority during armed attack.<sup>65</sup> Israel was admitted to United Nations membership on May 11, 1949. Since a state of war with a "sovereign equal" under the Charter is outlawed, Israel has the clear right to demand not only that the Arab states which are fellow signatories to the Charter drop their claim of being in a state of war with Israel, but also abandon their charge that Israel has no right to exist.<sup>66</sup> Finally, continued Arab threats against the very existence of the people and state of Israel are immoral, contradictory to all canons of law and ethics, and unparalleled in the contemporary world.

Israel claims that her sovereignty, territorial integrity and political independence should be recognized consistent with the purposes and principles of the Charter. Her boundaries remain undetermined, cease-fire or armistice demarcation lines. According to the Israeli position because the Arabs, by their aggression, violated the original 1947 partition recommendation Israel no longer felt constrained to her old UN-demarcated boundaries in the course of protecting herself. Moreover the Israelis were attempting to implement 181 (II) by setting up a Jewish state, while the Arabs never attempted to create

an Arab State. The Arab States were ready to assent to the 1947 partition resolution in 1949. Because of the Arab states' aggression and fighting which followed, Israel came to occupy larger areas of Palestine than originally planned. In 1967 Israel swelled in size even more. Israel is not interested in territory except as a means of ensuring security.

The Arab position disputes the legal right of the United Nations in the late 1940's to have decided the disposition of territory immemorially Palestinian and notes the inherent right of an indigenous population to determine by itself its own government and constitution. In returning to the origins of the case it also notes that in reference to the Balfour Declaration which was merely a statement of policy until incorporated into the mandate of Palestine:

The most significant and incontrovertible fact is, however, that by itself the Declaration was legally impotent. For Great Britain had no sovereign rights over Palestine; it had no proprietary interest; it had no authority to dispose of the land. The Declaration was merely a statement of British intentions and no more.<sup>67</sup>

So, according to the Arab position, the Balfour Declaration was issued without Palestinian participation or approval while the right of the United Nations to dispose of and treat the Palestinian territory and Arabs (the former in large bulk Arab-owned, the latter by a large majority Arab) as they did, erodes the legality of the

State of Israel from the moment of its conception. The original partition was illegal, the land Israel holds rests solely on military conquest (1948 or 1967). Jus ex injuria non oritur (rights do not arise from wrongs) and military conquest does not confer lawful sovereignty. To the Arab view, the question of sovereignty, secure and recognized boundaries and the like are inadmissible in keeping with the postulate that a poisonous tree can produce only poisonous fruit.<sup>68</sup>

Security Council Resolution 242 (1967) affirmed the necessity "for guaranteeing freedom of navigation through international waterways in the area." Certainly to solve this problem would put an end to one of the longest-lasting and most critical points of contention between Israel and Arab states. It was the denial of such freedom concerning the Straits of Tiran which proved to be a proximate causative factor igniting the Six Day War. Similarly since 1948, Egypt placed a variety of restrictions upon free Israeli transit of vessels and cargoes through the Suez Canal. Any lasting peace settlement must come to grips with the problems associated with the waterways.

The Suez Canal controversy swirls around divergent interpretations of a number of documents and principles.

The documents include: (1) the Constantinople Convention signed on October 29, 1888;<sup>69</sup> (2) the Egyptian-Israel Armistice Agreement of February 24, 1949;<sup>70</sup> and General Assembly Resolution 2322 of September 1, 1951.<sup>71</sup> The principles are those of territorial sovereignty, that the Suez Canal is an international waterway and, finally, that the Suez Canal is a neutral waterway. The Israel case is one which extends the principles of internationality and neutrality while restricting that of territorial sovereignty and placing one set of interpretations upon these documents. The United Arab Republic case is one which extends the principle of territorial sovereignty while restricting those of internationality and neutrality in their exegesis, naturally coming forth with divergent interpretations.<sup>72</sup> The reader is reminded of our earlier discussion of belligerency, which is central to the task at hand.

Israel claims that the U.A.R.'s varied restrictions and closures upon the transit of Israeli ships and cargo through the Suez Canal is in violation of international law, the Constantinople Convention, the 1949 Armistice Agreement and Security Council Resolution 2322 (1951). Freedom of the seas and in particular innocent passage through international waterways is looked upon as a cornerstone of customary international law, one which would lead to an identity of attitudes between almost every "maritime nation" and Israel.<sup>73</sup> Article I of the Constantinople



Convention sweepingly reads: "The Suez Maritime Canal shall always be free and open, in time of war as in time of peace, to every vessel of commerce or of war, without distinction of flag." The Israeli case holds that the grant is wide and broadly construed that there can be no doubt as to its meaning, that the contravention of passage for Israel's ships and cargoes is therefore illegal. The Israeli case holds that the Rhodes Armistice Agreement not only suspended the hostilities between Egypt and Israel, but also put an end to this state of war, it being the purpose of the agreement to terminate the acts of belligerency.<sup>74</sup> Inspections of cargo for contraband and blockading the canal to Israeli vessels was held to be irreconcilable with the intent of the Armistice. It was such a line of reasoning which led to the passage of Security Council Resolution 2322 (1951) if its language be a guide. The resolution called upon Egypt:

To terminate the restrictions on the passage of international commercial shipping and goods through the Suez Canal wherever bound.

The resolution recalled the "pledge" in the Armistice Agreements against any further acts of hostility between the parties "and considered violations inconsistent with the objectives of peaceful settlement and permanent peace while stating that after the two-and-a-half year existence of the Armistice:

Neither party can reasonably assert that it is actively a belligerent or requires to exercise the right of visit, search, and seizure for any legitimate purpose of self-defense.

On the other hand, the Egyptian case notes that Article X of the Constantinople Convention provides that there may be measures which the territorial sovereign "might find it necessary to take to assure by their own forces the defense of Egypt and the maintenance of public order." The Egyptian position notes the limitation on Article X placed by Article XI which requires that such measures "shall not interfere with the free use of the canal." The pull of territorial sovereignty, internationality and neutrality are particularly and paradoxically strong here. In his classic work, Baxter writes that while free passage is guaranteed to all vessels, the United Arab Republic may take defensive measures in time of war so long as these do not interfere with free passage for nonbelligerents. The Egyptian position notes how few ships have been affected by these practices, and that free passage for vessels of other nations has not been impeded. Moreover, the United Arab Republic can hardly be expected to permit use of the canal to carry war materials to Israel. The "aggressions" of 1956 and 1967 are pointed to in support of this basic right of self-defense.<sup>75</sup> Egypt denies that the Armistice Agreement put an end to the state of war and claims that an armistice only suspends

hostilities; the war still continues.<sup>76</sup> If Egypt is to respect Israel's claim to the internationality and neutrality of the canal, Israel must respect the territorial sovereignty of Egypt. Israel's right to invoke free passage under Article I is not denied. Rather, it does appear anomalous for Israel to deny Egypt's right to invoke Article X while committing aggressions against it. Finally, Great Britain provided the precedent of a de facto closure of the canal to hostile shipping during World War II.<sup>77</sup>

Controversy over passage into the Gulf of Aqaba through the Straits of Tiran swirls around four fundamental points of difference: (1) the status of the Gulf of Aqaba in international law; (2) the status of Israel as a littoral state to/on the Gulf of Aqaba; and (3) freedom of passage through the Straits in addition to (4) the expected tension over the state of war and rights of belligerency.<sup>78</sup> Our discussion of the Arab and Israeli cases will center upon these points while certainly not excluding others. It is appropriate to point out at this time that the Gulf of Aqaba is about 100 miles long, 7 to 15 miles wide and bounded on three sides by the State of the United Arab Republic, Israel, Jordan and Saudi Arabia. Before the entrance lay the islands of Sanafir and Tiran validly occupied by the United Arab Republic.<sup>79</sup> Although the mouth of the Gulf is nine miles wide, the only navigable channel

by which Aqaba may be entered is the four mile wide Strait of Tiran which lies between the island of Tiran and the Sinai Peninsula.

The Arab position holds that Aqaba consists of inland, internal waters subject to absolute Arab sovereignty. The Gulf is a mare clausum, not an international waterway by its very geographical configuration. Even if the Gulf were considered as part of the high seas, the narrowness of the Gulf means that territorial areas of littoral states overlap one another.<sup>80</sup> This has become even more obvious since Arab states have extended their territorial limit from six to twelve miles, thus making all of the maximum fifteen-mile wide Gulf subject to the territorial jurisdiction of bordering Arab states. Finally, the Gulf has been an exclusive and historic Arab route under Arab sovereignty to the shrines of Islam.

The Arab position further holds that Elath and Israel's five-mile long Aqaban frontage was seized in violation of the Egyptian-Israeli Armistice Agreement. On March 9, 1949, thirteen days after the signing of the Armistice with Egypt and taking advantage of the one free flank this afforded, Israeli military units set out for Om Rashrash (now Elath) which they took on March 15. Since this action occurred in violation of the already-signed agreement, Israel's presence on the shores of Aqaba does not confer on her the standing of a littoral state. Moreover,



this coastal area was not within the temporary borders established for Israel by the Security Council Resolution of July 15, 1948. Israel's occupation in Arab eyes is, therefore, an aggression and a belligerent occupation.<sup>81</sup> Oppenheim tells us: "An occupant in no wise acquires sovereignty over such territory through the mere fact of having occupied it."<sup>82</sup> Israel is not a legitimate littoral state and therefore possesses no rights to free passage through these waters. The only entrance to the Gulf of Aqaba is through the Straits of Tiran, an area totally within the territorial waters of the United Arab Republic and Saudi Arabia. Because Aqaba is not regarded by Arabs as part of the high seas, because of the existent state of war, because of Israel's illegitimate littoral status, Israel is not deemed by the Arab case to be entitled to free passage through the Straits of Tiran and the Gulf of Aqaba.

The Israeli position holds that the Gulf of Aqaba is an international bay shared by more than one state and that the Straits of Tiran are, like other international Straits connecting portions of the high seas and of an international bay open to innocent passage by vessels of all nations.<sup>83</sup> As international waters, Egypt is legally bound to permit innocent passages.<sup>84</sup> Otherwise, Israel is justified in protecting its own rights and interests. So-called Arab "immemorial possession" was interrupted by

Ottoman Control lasting from 1517 to 1918. After then, Aqaba was bounded by the Mandate of Palestine from which both Jordan and Israel emerged. Any claim flowing from religious usage may be dismissed. Even were it considered a mare clausum the waters of Aqaba could not be subjected to a regime which excluded one of the littoral states. A final point is that the Convention on the Territorial Sea and the Contiguous Zone of 1958 provides for innocent passage through straits used for international navigation between high seas and the territorial sea of a foreign state in addition to parts of the high seas.<sup>85</sup>

Israel's retort to Arab charges concerning a possible invalid presence on the shores of Aqaba notes the point that the 1947 General Assembly Partition Plan Resolution provided that Israel should reach and include a section of the Aqaban coastline formally under the Mandate. The Israeli position also notes that no armistice demarcation line was drawn along the Gulf of Aqaba. The Israeli position naturally bases itself on the 1947 Resolution. The distinction then is drawn between control and deployment of forces. Control exists even if forces are not present. The extension of Israeli military forces to Aqaba following the Egyptian-Israeli Armistice Agreement simply made congruent control and deployment of forces. So the presence of Israel and its port, Elath, on the Gulf of Aqaba is therefore legitimate and within the boundaries

of the Jewish state.<sup>86</sup> Israel is a legal littoral state and Aqaba consists of international waters according to its case.

While the Straits are undeniably located in Arab territorial waters, Israel claims the right of free passage there and through the waters of Aqaba. The Israel case cites an Egyptian aide-memoire handed to the United States in 1950 which allowed that the occupation of the islands of Tiran and Sanafir was not intended to hinder innocent passage through the Straits which would remain open.<sup>87</sup> A proclaimed state of belligerency, enemy vessels or contraband cargoes do not come under this umbrella's protection, however, for in a clear state of war a state may deny passage to enemy vessels.

The 1958 Convention on the Territorial Sea and Contiguous Zones, as mentioned above, provides for innocent passage through Straits used for international navigation not only between parts of the high seas, but also between high seas and the territorial sea of a foreign state.<sup>88</sup> Egypt, however, has not ratified this document.

Whether a state of war legally persists perhaps is the single most significant legal factor which affects passage through these waters and Straits. In a clear state of war, a state may deny passage to enemy ships or ships carrying contraband cargo. The Egyptian aide-memoire of 1950 and the 1958 Convention of the Territorial Sea would,

for example, be inapplicable. Israel, therefore, cites Security Council Resolution 95 (1951) as support for her view, reflected in the language of the resolution, that neither Israel nor Egypt can reasonably assert that it is an active belligerent or can justify the acts of visit, search or seizure as a function of self-defense. Although neither Aqaba nor Tiran are referred to in the operative section of the resolution, this may be taken as a validly political if not a legally correct view of Aqaba and Tiran congruent with the position of Israel. As we are aware from our previous discussion, in particular of the Suez Canal, Egypt continued to maintain the classical view that only a peace treaty could terminate the state of war and cited the 1956 and 1967 wars as buttressing evidence.

Of all the problems which compose the Arab-Israeli conflict, none is more critical to peace or so intractable than that of the refugees. In 1967 the Report of the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) estimated that there were a total of 1,144,390 refugees living in Syria, 160,720 in Lebanon, 316,776 in the Gaza Strip and 722,687 living in Jordan.<sup>89</sup> There were about 262,000 Palestinians who were cut off from their fields, property or livelihood, but did not lose their home and, therefore, though needful are not eligible for UNRWA



assistance. There is a second group of intermediate refugees--11,000 Arabs who were expelled from their homes and villages in demilitarized zones by Israel after the July 1, 1952 deadline for eligibility for UNRWA aid.<sup>90</sup> Finally, there is the final category of refugees--120,000 registered old-time refugees who fled for the second time in the 1967 war from Israeli-occupied areas to Arab lands, and approximately 232,000 previously unregistered inhabitants of Jordan, Syria and the Sinai Peninsula who became new refugees for the first time during the same war.<sup>91</sup>

The Israeli case cites "abundant evidence" that Arab orders and threats "first set the Arab masses on the move in 1948."<sup>92</sup> Since the Arabs first caused the problem, so it was up to the Arabs to solve it. Since "equality of status" was necessary in possible negotiations dealing with the refugee question, the parties to the conflict in the Israeli view could not be "the Palestine Jews and Palestine Arabs, but the Palestine Jews and the Arab States."<sup>93</sup> Israel would not negotiate with the original party, the Palestinian refugees, but only with sovereign Arab Governments when the time came since "equality of status" between the negotiating parties was requisite in Jerusalem's eyes. Arab aggression and Arab violation of Resolution 181 (II) (1947) released Israel, in its own eyes, from the Resolution's detailed provisions regarding minority protection.<sup>94</sup>

Arab governments were accused of "Machiavellian" use of their displaced kith or kinfolk and in their grasp of the worth of the refugees as a political asset and means to their own selfish political ends.<sup>95</sup> Moreover, that the pattern of pre-1948 Arab life "no longer exists and cannot be restored"<sup>96</sup> was cited mere weeks after the exodus. It would be more humane to permit these refugees to settle amidst their own culture and people in an Arab world large enough in area and sufficiently rich in resources to meld and absorb them. The refugees therefore should be settled in the neighboring Arab countries and integrated into the region's economic life.<sup>97</sup> Israel is small; repatriation is difficult for this reason and especially because of the serious social, political and security consequences attendant upon such a reality, not to speak of the state of war which the Arabs purport continues to exist. It is the Arab states which have refused to face up to the reality of the existence of the State of Israel and to resettle the refugees in the countries to which they have journeyed. There is no longer any home for Arabs to return to. Arabs have "continued to cling" according to Israel's long-time Director-General of the Foreign Service, Walter Eytan, to the postulate found in 194 (III) (1948) which entitled Palestinian refugees to "return to their homes" or to compensation for property lost for those choosing not to return.<sup>98</sup> The problem is extremely complex, stipulates the

Israeli case. Israel has shown its willingness to meet the problem by offering to accept 100,000 refugees in 1949,<sup>99</sup> by releasing £ 2,790,000 of Palestinian refugees' bank accounts by June 30, 1960,<sup>100</sup> and by approving entrance permits for 20,658 "new" refugees to return to Israel by August 31, 1967.<sup>101</sup>

The refugee problem is only part of the total political problem which can be solved only by means of an overall peace settlement, continues the Israeli case. Not only are the aspirations of the refugees to be considered, but also the vital interests of the relevant states. Israel is not responsible for the origin of the refugee problem, nor is she responsible for its continuance. The Arab states cynically have used the refugees to suit their own purposes. To repatriate Arab refugees to their previous homes in Israel would be to ask Israel to place a "dagger" at her own heart. Moreover, social and economic development has unfolded along lines which simply preclude the return of any but a token number of repatriates. The Palestinian refugees must be resettled in societies and states which are Arab. No other solution is both fair and possible.<sup>102</sup>

The Arab case begins by denying the Israeli charge that Palestinian Arabs were urged by their leaders and via radio broadcasts to fello the country. I. F. Stone commented on this point in general in his famous article in the August 3, 1967 issue of The New York Review of Books:

The argument that the refugees ran away "voluntarily" or because their leaders urged them to do so until after the fighting was over not only rests on myth but is irrelevant. Have the refugees no right to return? Have German Jews no right to recover their property because they too fled?<sup>103</sup>

Stone himself cites the work of Erskine Childers, an Irish broadcaster with a great interest in the Palestine question, who sought to test the Israel claim that "the Arabs left because they were ordered to, and deliberately incited into panic by their own leaders."<sup>104</sup> Childers writes in a passage often referred to:

Examining every official Israeli statement about the Arab exodus, I was struck by the fact that no primary evidence of evacuation orders was ever produced. The charge, Israel claimed, was "documented," but where were the documents? There had allegedly been Arab radio broadcasts ordering the evacuation; but no dates, names of stations, or texts of messages were ever cited. In Israel in 1958, as a hopeful of serious assistance, I asked to be shown the proofs. I was assured they existed, and was promised them. None had been offered when I left, but I was again assured. I asked to have the material sent on to me. I am still waiting.<sup>105</sup>

The Arab case claims that the Palestinian refugees left their homeland not of their own free will, but because of fear of and threats by Zionist forces.<sup>106</sup> Indeed, on April 8, 1948, more than one month prior to the declaration of Israel's independence, members of the Stern gang and Irgun Zvai Leumi, Zionist terrorist organizations, seized the hitherto neutral Arab village of Deir Yasin and murdered 254 men, women and children. This crime, comparable only to World War II's massacre of the village of Lidice, was



widely publicized and Arab mass flight, which had been going on since early 1948, accelerated.<sup>107</sup> According to Christopher Sykes:

It can be said with a high degree of certainty that most of the time in the first half of 1948 the mass-exodus was the natural, thoughtlessness, pitiful movement of ignorant people who had been badly led and who in the day of trial found themselves forsaken by their leaders. . . . But if the exodus was by and large an accident of war in the first stage, in the later stages it was consciously and mercilessly helped on by Jewish threats and aggression towards the Arab populations.<sup>108</sup>

George Kirk comments on this point:

At this stage of the fighting . . . [about April, 1948]. . . . The Jewish attitude to the Arab flight was ambiguous, since there is clear evidence that the civil authorities at Haifa tried to tranquilize the Arab population. . . . At a later stage, the Israeli armed forces did not confine their pressure on the Arab civilian population to playing upon their fears. They forcibly expelled them: for example, the population of Akka (including refugees from Haifa) in May; the population of Lydda and Ramla (including refugees from Jaffa) in July; and the population of Beersheba and western Galilee in October.<sup>109</sup>

Nadav Safran, himself Jewish, born in Egypt and an eminent student of the area's history and politics has written succinctly:

On the basis of first-hand observation it can be said that until about the end of May-early June 1948, the refugees from areas under Jewish control left, and left in the face of persistent Jewish efforts to persuade them to stay. From that time on, they were expelled from almost all new territories that came under Israeli control.<sup>110</sup>

John Davis, an American and former Commissioner-General of United Nations Relief and Works Agency for Palestine Refugees

(UNRWA) is very often cited in seeking to refute the Israeli allegation that Palestinian refugees are being held as idle hostages by insensitive, uncaring Arab governments which seek their own political than the refugees' human ends. Davis writes that about 20 percent of the 1948 Palestinian refugees were skilled and from urban areas-- consequently this group quickly became self-supporting and have not been dependent upon doles from UNRWA or similar organizations. Approximately 70 percent of the total number of 1948 refugees were surplus, illiterate farm laborers in a part of the world already surfeited with them.<sup>111</sup> The problem is compounded, Davis writes, for the refugee son:

. . . in the Middle East, as in all developing areas of the world, well over 95% of all youths learn work habits and skills by working beside their fathers. Because, in general, rural refugee fathers have been unemployed, their sons have had but limited opportunity, if any at all to learn even the self-discipline of work or the skills of their fathers. Therefore, in competition with other young people, particularly the indigenous rural boys, who are migrating from farms to urban centers in vast numbers, the maturing refugee boy has been and is at a serious disadvantage.<sup>112</sup>

Davis points out that the refugee host countries of Jordan, Lebanon, Syria and the United Arab Republic have spent more than \$100 million for direct refugee assistance (education, health services, camp sites, housing, etc.)-- which Davis (who is sympathetic to the Arab case) calls "generous and hospitable." Davis comments on host country resistance to resettling Palestinian refugees on new land:

In general, opposition to UNRWA's land settlement projects, which have been by far its largest undertaking, arose because these projects involved the award of land to refugee settlers, in preference to the thousands of indigenous farmers' sons who were eager for land; a type of opposition one would expect to find in any developing area where arable land was scarce.<sup>113</sup>

We have devoted more space and documentation in responding to specific Israeli charges to this point than were given to the charges themselves. We expect the American reader to be far more conversant with the Israeli than Arab side. Therefore, we feel it incumbent to present more space relating the Arab interpretation.

Finally, a scholar as deeply concerned for the safety of Israel as Walter Z. Laqueur could, while retaining the belief that Arab governments had maintained the refugees to serve their own political ends,<sup>114</sup> yet write:

A more imaginative approach might have had results, it would not have worked a miracle. True, there was the talk about using the refugees as a fifth column--but how many refugees would have played that role? Was not Israel strong enough to absorb all the refugees who would have actually chosen to return? An Israeli declaration to take back by stages all refugees willing to return would have been a risk, but not perhaps so great a risk as most Israeli leaders thought.

It is unlikely that most refugees would have come back, and such a declaration would have taken the wind out of the sails of the Arab governments and compelled them to face their responsibilities.<sup>115</sup>

The Arab case continues by citing Article VIII of the American Declaration of the Rights and Duties

of Man approved at Bogota in 1948 which reads: "Every person has the right to fix his residence within the territory of the state which he is a national, to move about freely within such territory, and not to leave it except by his own will."<sup>116</sup> Article 13 of the Universal Declaration of Human Rights provides that everyone possesses "the right to freedom of movement and residence" within each state and the "right to leave any country, including his own, and to return."<sup>117</sup> In addition, the International Covenant on Civil and Political Rights of 1966 provides for similar rights consistent however with "national security, public order public health or morals, or the rights or freedoms of others."<sup>118</sup>

The Arab position also holds that the refugees were denied their basic right to self-determination as provided for in Article V of President Wilson's Fourteen Points,<sup>119</sup> the second and third principles of the Atlantic Charter<sup>120</sup> and Article I, paragraph 2, and Articles 55, 56, 73, 76 and 79 of the Charter which provided in general for self-determination and self-government in keeping with the freely expressed wishes of the peoples concerned.<sup>121</sup> In addition, Article 2 of the Mandate described the obligation of "safeguarding the civil and religious rights of all the inhabitants of Palestine, irrespective of race and religion."<sup>122</sup> When partition was being considered, Arab members of



the United Nations pointed out that no change in the Mandate was legitimate until all the people of Palestine had given their consent. An advisory opinion of the International Court of Justice on the compatibility of partition without consent was sought under Article 80 of the Charter by the Arab states. This was rejected.<sup>123</sup>

Even a general reading of the law of war requires the belligerents to spare the noncombatant population as much suffering and destruction of property as possible and "refusal to allow repatriation or compensation would violate the law."<sup>124</sup> Count Folke Bernadotte stated in a report to then-Secretary-General Trygve Lie:

The right of innocent people, uprooted from their homes by the present terror and ravages of war, to be returned to their homes should be affirmed and made effective, with assurance of adequate compensation for the property of those who choose not to return.

The liability of the provisional government of Israel to restore private property to its private owners and to indemnify those owners for property wantonly destroyed is clear. . . . [There would occur] . . . an offense against the principles of elemental justice if those innocent victims of the conflict were denied the right to return to their homes while Jewish immigrants flow into Palestine and offer the threat of permanent replacement of the Arab refugees who have been rooted in the land for centuries.<sup>125</sup>

To charge that Arab aggression and violation of Resolution 181 (II) (194) alone is responsible for the

hostilities, thereby releasing Israel from further responsibility on the refugee question is to enter an area of great controversy. Certainly it is clear that outside the urban, compound-like areas where British control continued, public order had broken down and the hands of neither side were free of blood. For example, Menachem Begin, the leader of the extremist Irgun, described in his autobiography how his troops conquered a near-totally-Arab Jaffa approximately three weeks before the Arab armies opened hostilities.<sup>126</sup>

On December 11, 1948 the United Nations General Assembly approved of Resolution 194 (II) which resolved:

That the refugees wishing to return to their homes and live at peace with their neighbors should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return or for loss or damage to property which, under principles of international law or in equity, should be made good by the governments or authorities responsible.<sup>127</sup>

The Arab case emphasizes the right of the refugees to choose themselves between repatriation or compensation. The resolution also created a Conciliation Commission which struggled long and valiantly to solve the problem. The United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) was created by General Assembly Resolution 302 (IV) (1949). Each year the General Assembly has gone through the motions of reaffirming the principles embodied in

194 (III) (1948) but makes no move toward implementation. Pertinent resolutions are as follows: 194 (III) of December 11, 1948; 302 (IV) of December 8, 1949; 393 (V) and 394 (V) of December 2 and 14, 1950; 512 (VI) and 513 (VI) of January 26, 1952; 614 (VII) of November 6, 1952; 720 (VIII) of November 27, 1953; 818 (IX) of December 4, 1954; 916 (X) of December 3, 1955; 1018 (XI) of February 28, 1957; 1191 (XII) of December 12, 1957; 1315 (XIII) of December 12, 1958; 1456 (XIV) of December 9, 1959; 1604 (XV) of April 21, 1961; 1725 (XVI) of December 20, 1961; 1856 (XVII) of December 20, 1962; 1912 (XVIII) of December 3, 1963; 2002 (XIX) of February 10, 1965; 2052 (XX) of December 15, 1965; and 2154 (XXI) of November 17, 1966.<sup>128</sup>

Whereas the Israelis point to the fact that over 450,000 Jewish refugees from Arab lands were willingly absorbed by Israel between 1948 and 1958,<sup>129</sup> Arabs point to the Jewish experience in Europe during and after World War II. The Arab case notes that the principle seems firmly established that a state (in this case Israel) could seek indemnification from another state in restitution for acts committed against persons who were not their citizens at the time of the injuries' commission. Accordingly, Arab states then are entitled to seek redress for the Palestinian refugees. However, while Germany paid over one and a

half billion dollars in reparations to the Jewish state, organizations and individuals, the Palestinian refugees have not been so fortunate. United Nations support for the refugees is evidence of its felt-sense of responsibility in this matter. It is a moral contradiction of the deepest nature for Israel to deny the Palestinians their right to return to land within living memory and for centuries theirs while terming the "law of Return" for the world's Jewish population the "right that built the state."<sup>130</sup>

Don Peretz cites estimates of the value of abandoned lands at £P 100,383,784 movable absentee property at £P 18,600,000 and abandoned Palestinian non-Jewish immovable property at £P 22,100,000.<sup>131</sup> Peretz was led to conclude: "Abandoned property was one of the greatest contributions toward making Israel a viable state."<sup>132</sup> The Arab position holds that Israel seized and utilized the property by means of such illegitimate laws as the abandoned Areas Ordinance (1948), Cultivation of Waste Lands Regulations (1948), Absentee Property Regulations (1948), Absentee Property Law (1950) and Development Authority Law (1950).<sup>133</sup>

Oppenheim states:

Immovable private enemy property may under no circumstances or conditions be appropriated by an invading belligerent. Should he confiscate and sell private lands or buildings,



the buyer would acquire no right whatever to the property.<sup>134</sup>

Oppenheim further states that if a foreign state enacts legislation which confiscates without compensation property of citizens of another state:

Such legislation may properly be treated as a nullity and, with regard to rights of property, as incapable of transferring title to the State concerned either within its territory or outside it.<sup>135</sup>

Resolution 181 (II) (1947) prohibited the expropriation of Arab-owned lands in the Jewish State except in the case of full payment prior to public use. Resolution 194 (III) (1948) further stipulates the refugees' right of return and of property compensation for those who chose not to return. Neither resolution has been respected let alone implemented.

Israel has always insisted that at least some refugees would be allowed to return, given a final peace settlement, but has asserted the hypocrisy of Arabs living in what has always been envisioned as a Jewish community. The New York Times on June 26, 1967 reported: "According to unimpeachable sources, the Israelis are driving Arabs out of occupied South Syria." And on July 3, 1967, Moshe Dayan was reported as saying that he was happy to see the Arabs go and did not "want them to come back."<sup>136</sup>

Given the vastly larger number of refugees from

the 1967 war the Israeli position emphasized resettlement in Arab areas more than ever before, with provisions even for a possibly autonomous West Bank state. But severe problems and potential dangers remain. Michael Howard and Robert Hunter recognized this in stating that: "two and a half million Jews now control territory containing nearly a million and a half Arabs, and whatever settlement is made on the West Bank, Arabs are likely in the future to make up at least a quarter of Israel's population." Not only will Israel face the usual problems of a multi-racial society, but in addition one containing a hostile minority. Howard and Hunter conclude: "on her ability to solve this problem, Israel's future security will depend."<sup>137</sup>

Demilitarized zones exist between Israel and three of the four Arab states which are contiguous with it: Jordan, Egypt, and Syria. Originally created as a vehicle to prospectively dampen the conflict, and similarly envisaged in resolution 242, the existence of demilitarized zones in the past has often served the function of tinder for a flame. Jerusalem was the scene of a number of neutral areas, no-man's lands, and demilitarized zones between Jordan and

Israel--residues all of the 1948-1949 fighting.

The best known demilitarized zone is that of Mount Scopus in northerly Jerusalem. Under Article VIII of the Jordan-Israel Armistice Agreement, joint special committees were to be set up to "enlarge the scope" and "effect improvements in . . . application" of the agreement.<sup>138</sup> On July 7, 1948, the governments of Israel and Jordan agreed to divide the Mount Scopus area into three sections: the first, Israeli though with no contiguity with Israel contained the Hadassah Hospital and Hebrew University; a second sector contained the Arab village of Issawiya; and a third sector contained the Arab Augusta Victoria hospital.<sup>139</sup> These areas were to be demilitarized; Jewish and Arab civil policemen were to be limited in numbers to their respective zones, and to be under the control of the Chief of Staff, UNTSO. The United Nations flag was to be overhead and the U.N. to inspect both zones and the fortnightly resupply and replacement convoys from Israel to the Israeli sector of Mount Scopus.

Culturally, the Mount Scopus area was of significance because of the Hebrew University whose ". . . National and University Library, with over a million books . . . [had] . . . not had a reader for ten years."<sup>140</sup> In a humanitarian sense, the Augusta

Victoria and Hadassah Hospitals also were of significance. Tactically, Mount Scopus crucially and strategically overlooked roads approaching Jerusalem, especially from the Arab West Bank, and is vital to any party hoping to control all of Jerusalem.

Article VIII of the Egyptian-Israel Armistice Agreement read:

The area comprising the village of El Auja and vicinity, as defined in paragraph 2 of this Article shall be demilitarized, and both Egyptian and Israeli armed forces shall be totally excluded therefrom. The Chairman of the Mixed Armistice Commission established in Article X of this Agreement and the United Nations Observers attached to the Commission shall be responsible for ensuring the full implementation of this provision. . . . The movement of armed forces of either party to this Agreement into any part of the area defined in paragraph 2 of this Article, for any purpose, or failure by either party to respect or fulfill any of the other provisions of this Article, when confirmed by the United Nations representatives, shall constitute a flagrant violation of this Agreement.<sup>141</sup>

El Auja (Hebrew: Nitzana), is the site of a historically strategic crossroads which comprise one of the chief invasion routes across the Sinai, linking by road Beersheba in Israel with all the Sinai Peninsula and Egypt. It follows that the party in control of it enjoys a priceless military advantage. In 1948, 1956 and 1967, the decisive Israeli attacks against Egypt were launched from this area.<sup>142</sup>

Article V of the more complete Israel-Syrian General Armistice Agreement of July 20, 1949 stated:



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 a 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, without prejudice to the ultimate settlement.

Paragraph 5 of Article V continued:

(a) Where the Armistice Demarcation Line does not correspond to the international boundary between Syria and Palestine, the area between the Armistice Demarcation Line and the boundary, pending final territorial settlement between the Parties, shall be established as a Demilitarized Zone from which the armed forces of both Parties shall be totally excluded, and in which no activities by military or paramilitary forces shall be permitted.

.....  
(e) The Chairman of the Mixed Armistice Commission shall be empowered to authorize the return of civilians to villages and settlements in the Demilitarized Zone and the employment of limited numbers of locally recruited civilian police in this zone for internal security purposes. . . .143

Intervening subparagraphs described entrance by armed forces, military or paramilitary, by either Party into the Demilitarized Zone as a "flagrant violation" of the Armistice Agreement, gave to the Chairman of the Mixed Armistice Commission, and Observers responsibility for implementation and called for the scheduled withdrawal of armed forces from the Demilitarized Zones.

Because of the particularly complex and difficult nature of the armistice negotiations, Dr. Ralph Bunche, acting mediator, wrote an "Explanatory Note to the Governments of Israel and Syria" on June 26, 1949 in

an effort to effect a compromise on disputed points.

In it Dr. Bunche stated:

The question of civil administration in villages and settlements in the demilitarized zone is provided for, within the framework of an armistice agreement. . . . Such civil administration, including policing, will be on a local basis, without raising general questions of administration, jurisdiction, citizenship and sovereignty.

Where Israeli civilians return to or remain in an Israeli village or settlement, the civil administration and policing of that village or settlement will be by Israelis. Similarly, where Arab civilians return to or remain in an Arab village, a local Arab administration and police unit will be authorized. . . .

. . . . .  
Questions of permanent boundaries, territorial sovereignty, customs, trade relations and the like must be dealt with in the ultimate peace settlement and not in the armistice agreement.

. . . . .  
I call attention to the fact that in the Israeli-Transjordan Armistice Agreement in Article V, paragraph c, and in Article VI, paragraph 2, the armistice demarcation lines agreed upon involved changes in the existing truce lines, and that this was done in both cases without any question being raised as to the sovereignty over or the final disposition of the territory involved. It was taken for granted by all concerned that this was a matter for final peace settlement. The same applies to the provision for the al-'Auja zone in the Egyptian-Israeli Agreement.<sup>144</sup>

This Demilitarized Zone between Israel and Syria is divided into three noncontiguous, but constituent sectors--the northern, central and southern sectors. Together, they comprise about 66.5 square kilometers. Though of strategic importance, to be sure, they are of less significance than Mount Scopus, and certainly less important than El Auja. Where part of their value does

lie is in access to water and in their land. The Banyas River ran through the northern demilitarized sector; the central demilitarized sector touched upon and/or incorporated Lake Hula, its marshes and the Jordan River. The southern demilitarized sector extended along about one-quarter of the shores of Lake Tiberias (Hebrew: Kinneret). The rich farmland of the central demilitarized sector, especially, was a constant and bitter source of contention between Arab and Israeli farmers.

Incidents between Arab states and Israel which occurred in the Demilitarized Zones in Jerusalem, the Sinai, and between Syria and Israel are, unfortunately, too numerous to review thoroughly. But at least some of the more intense incidents must be sketched to convey at least a caricature of the conflict.

Tension occurred in the Mount Scopus area when Israeli police, despite UNTSO protests, began patrolling up to the fringes of Issawiya and, by 1954, had set up a roadblock on the road between the village and Jerusalem, and claimed sovereignty up to Issawiya.<sup>145</sup>

Jordanians also charged that the Israelis were illegally smuggling into Mount Scopus armaments and other prescribed materials.<sup>146</sup> Finally, Israel, calling its area sovereign, only rarely permitted the movement of U.N. observers in its sector to check on Jordanian

charges of arms smuggling, or the construction of fortifications.

Tension from the Israeli point of view stemmed from an adamant Jordanian stand which denied free access to and the normal functioning of the cultural and humanitarian institutions on Mount Scopus, and denied also free access to places holy to Judaism, but in the Jordanian-held Old City, such as the Wailing Wall, and the cemetery on the Mount of Olives.

There were other neutral areas, demilitarized zones, and no-man's lands in Jerusalem. But none except the area surrounding Government House, which included UNTSO headquarters, was the subject of a Security Council resolution. In the summer of 1957, Israel sent workers into this area which it claimed to plant trees.<sup>147</sup> Jordan, fearing a precedent which later might help allow an Israeli claim to this land, protested to the Chief of Staff, UNTSO, who ruled that Israel should temporarily cease work until the merits of the case could be decided. Israel refused, but finally relented to Security Council Resolution 127 (1948). This resolution called for suspension of all work until a determination could be made of whether or not Arab land was involved.<sup>148</sup>

In 1950 about 3,500 bedouin Azazme tribesmen



were expelled from the El Auja Demilitarized Zone. Despite Security Council Resolution 89 of November 17, 1950 which called upon Israel to permit the Azazme to return to the area, the resolution has not yet been fully implemented.<sup>149</sup>

On September 28, 1953, Israel established an experimental agricultural kibbutz in the El Auja Demilitarized Zone called Ketsiot. Israel cited the grounds that civil activity such as pioneer farming did not violate the Armistice Agreement, since only military restrictions had been placed upon the Zone. Israel also claimed complete sovereignty over the Zone in all but a military sense. On September 30, 1954, the Egyptian-Israeli Mixed Armistice Commission found that Ketsiot was organized as and staffed by a unit of the Israeli armed forces, in direct breach of the Armistice Agreement. Inspections by U.N. Military Observers and Lieutenant-General E. L. M. Burns himself, then Chief of Staff, UNTSO, both commented upon the apparent low ratio of agricultural work accomplished in relation to the size of the kibbutz.<sup>150</sup>

On September 21, 1955, following a problem over the marking of the Zone's international frontier, Israeli troops took sudden and complete military control of the El Auja Demilitarized Zone, and constructed fortifications and laid minefields. Israeli military

forces installed themselves permanently here and did not withdraw, even after the 1956 Sinai war.

Problems between Israel and Syria concerning the Demilitarized Zone have been many and complex. They include attempts to divert Jordan River waters, disputes over Lake Tiberias, problems concerning policing the Zones, and conflicts over the right to plow and harvest the rich farmland.

Shooting occurred in 1951 when Israel began the attempt to drain Lake Hula and the surrounding marshes in the central demilitarized sector. Not only would this have provided a good deal more land for cultivation, but the project would help substantially in eliminating malaria from the area--a benefit to both Israeli and Arab. About seven acres of Arab-owned land was crucial to the Israeli project. The Israelis tried to buy, the Arab owners refused to sell this land, Israel charged, because of personal threats they had received from Syria. The situation was complicated by the fact that Israel, claiming sovereignty over the area had not consulted with the Mixed Armistice Commission before starting work, claimed a free hand in the Zone, and put forward the Palestine Land Development Company as a private concessionaire doing the work. The Chairman of the Mixed Armistice Commission rejected the claim of sovereignty by Israel over this area, as

well as the claim by Syria that this action would change the military status quo of the Zone in violation of the Armistice Agreement, and therefore that Syria's consent was needed. Instead, he ruled that the project would be acceptable if it did not affect the Arab lands without their consent, or if it did not interfere with the normal resumption of civilian life in the Zone--a stand supported by Security Council resolution 93 of May 18, 1951.<sup>151</sup>

A far more serious dispute over water rights concerned the diversion of the Jordan River. On September 2, 1953, Israel began to dig a canal to divert Jordan River waters between Lake Hula and Lake Tiberias. Because the Jordan River ran through her territory at that point, Israel claimed to be free to dispose of the waters since she said her plans would not affect any Arabs then using waters. Syria denied both Israeli points. UNTSO ordered Israel to stop work; Israel refused. The Chief of Staff, UNTSO, told the Security Council it was possible that Arab water rights might be jeopardized, that the project could upset the Zone's military status quo, and that, once again, Israel did not consult with the Chairman of the Mixed Armistice Commission before starting work. Israel ceased work only when the United States terminated economic aid to Israel, subject to resumption only with

the UNTSO decision.<sup>152</sup> A draft resolution offered by the United States, Britain, and France which directed the Chief of Staff, UNTSO, to reconcile these conflicts was vetoed by the Soviet Union.<sup>153</sup>

During this period of time, Eric Johnston, a personal representative of President Eisenhower, attempted to derive agreement among the Arab states and Israel concerning the development and use of the Jordan's waters. The negotiations came extremely close to technical and even, to a lesser degree, political agreement on the division of the waters. However, the negotiations foundered on the "obduracy of the Syrian politicians. They simply would not agree to anything that would benefit Israel, even if the Arab states would thereby achieve greater benefits."<sup>154</sup>

In early 1956, then, following the failure of the Johnston mission, Israel resumed work on the project, but this time, proposing to draw water from Lake Tiberias which Israel considered to be under her own sovereignty. Israeli work on the project progressed until Arab summit conferences in January and September, 1964, determined to divert the headwater rivers of the Jordan--the Hasbani and Baniyas. Incidents continued to occur involving shots in both directions across the armistice demarcation line until Israeli air action against the diversion project on July 14, 1966 put an



end to such efforts.

On January 19, 1956 the Security Council unanimously passed a resolution cosponsored by the United Kingdom, France and the United States which condemned Israel for a raid conducted against Syria north of Lake Tiberias in which 56 Syrians were killed. The resolution was notable in that Israel for the first time, was threatened with more severe measures in the future if Charter obligations were not complied with.<sup>155</sup>

Finally we come to the announced intention on April 3, 1967 by the Israeli Government to plow certain controversial lots in the Demilitarized Zone which Syria claimed belonged to Arab farmers. Syrians started shooting with the appearance of the Israeli armored tractors and the fighting escalated until six Syrian jet fighters were shot down over Damascus in an incident which helped lay the groundwork for the June war.<sup>156</sup>

Many legal problems stemmed from the Demilitarized Zone between Israel and Syria. The Israeli case claimed that the General Armistice Agreement conferred sovereignty over the entire Zone upon her. The Israeli Government claimed this territory as an area that was only occupied by Syrian troops who later withdrew. Abba Eban stated before the Security Council:

The fact that parts of the demilitarized zone may at one time have come under Syrian military occupation

is of course quite irrelevant, for military occupation does not give rise to legal sovereignty.<sup>157</sup>

Our view happens to be that since the Armistice Agreement does not affect the previous status of this area, except by demilitarizing it, its juridical status is the same as it was on the day that the Mandate expired and Israel's independence was proclaimed.<sup>158</sup>

Since the Demilitarized Zone was sovereign Israeli territory, in Jerusalem's eyes, it followed that Syria had no say in any matter concerning the Zone. Neither, in Israeli eyes, did any other body except to a small degree the MAC Chairman. Nor did the General Armistice Agreement concern itself with any matters except the purely military ones which signified the only change in status which international law recognizes in a Demilitarized Zone--demilitarization. So the civilian life, agriculture and police would develop under Israeli control and guidance.

The Arab case disputed the Israeli claim to sovereignty over the Zone and pointed out that the General Armistice Agreement had left the "rights, claims and positions of either Party hereto in the ultimate peace settlement."<sup>159</sup> Since the final peace settlement, and not the Armistice Agreement would here govern, neither Israel nor Syria could legitimately claim to solely control civilian activity. Israeli activity might prejudice in Israel's favor claims to

these lands since title to them would be decided only with a final peace agreement.<sup>160</sup>

The Arab or Syrian case disputed the Israeli claim to sovereignty and pointed out that the General Armistice Agreement, and even more explicitly, acting mediator, Ralph Bunche who helped write it, said in an Explanatory Note concerning the Agreement: "Questions of permanent boundaries, territorial sovereignty, customs, trade relations, and the like must be dealt with in the settlement and not in the armistice agreement."<sup>161</sup> Therefore, Israel had no right in claiming the right to act alone in decisions concerning the various Zones. This being so in Arab eyes, the Chairman of the Mixed Armistice Commission was recognized as having more power by the Syrians, both in terms of civilian life, major changes in the Zone's status, and interpreting the Armistice Agreement. Bunche's interpretation of the General Armistice Agreement was looked upon by the U.N. as authoritative; therefore, there was a general coalescence between the Arab and United Nations positions on this point.

# NOTES

1. Arthur Lall, The UN and the Middle East Crisis, 1967 (New York: Columbia University Press, 1968), p. 55.
2. Eugene V. Rostow, "Legal Aspects of the Search for Peace in the Middle East," American Journal of International Law (September, 1970), p. 66.
3. U.S. Department of State, Bulletin (June 26, 1967), pp. 949-53; The New York Times, June 20, 1967.
4. U.N. Document S/PV. 1348, p. 13.
5. See letter from the President of the United States to the Prime Minister of Israel, March 2, 1957 in Department of State, Bulletin (March 18, 1957), p. 443. See also Staff of the Senate Committee on Foreign Relations, 90th Cong., 1st Sess., A Select Chronology and Background Documents Relating to the Middle East (1st. rev. ed.; Washington: U.S. Government Printing Office, 1969), p. 169.
6. A/PV. 1544, June 30, 1967.
7. On June 6, 1967 The New York Times reported Prime Minister Levi Eshkol, Defense Minister Moshe Dayan and Foreign Minister Abba Eban as separately risking statements which collectively claimed that Israel had "no territorial aims." On June 8, Dayan stated that Israel would keep the Old City of Jerusalem (The New York Times, June 9, 1967), and days later Prime Minister Eshkol rejected an absolute return of all the captured Arab territory.
8. Public Papers of the Presidents of the United States: Dwight D. Eisenhower, 1957 (Washington, D.C.: General Services Administration, 1958), p. 145.
9. A/PV. 1526, June 19, 1967, pp. 26-62.
10. Quincy Wright, "The Stimson Note of January 7, 1932," in American Journal of International Law (April, 1932), pp. 342-46.
11. S/PV. 1358, June 13, 1967, p. 110.



12. U.N. GAOR. Introduction to the Annual Report of the Secretary-General on the Work of the Organization 16 June 1966-15 June 1967, A/6701/Add. 1. Supp. 1A, p. 6.
13. Marjorie M. Whiteman, Digest of International Law 5, (Washington: Dept. of State Publication 7873, 1965), pp. 880-81, quotes "Proscription of territorial conquest and that, in consequence, no acquisition made through violence shall be recognized."
14. Ibid., p. 881, cites: "a fundamental principle of the Public Law of America, that the occupation or acquisition of territory or any other modification or territorial or boundary arrangement obtained through conquest by force or by non-pacific means shall not be valid or have legal effect the pledge of non-recognition of situations arising from the forgoing conditions is an obligation which cannot be avoided. . . ."
15. Ibid., p. 886: ". . . victory does not give rights." Article 17 provides "No territorial acquisitions or special advantages obtained either by force or by other means of coercion shall be recognized."
16. Ibid., p. 42.
17. See Yearbook of the League of Nations, 1925, World Peace Foundation Pamphlets, Vol. VIII, Nos. 8-9, p. 598: "Members of the League undertake to respect and preserve . . . the territorial integrity and existing political independence of all members of the League."
18. 94 L.N.T.S. 57, No. 2137, "General Treaty for Renunciation of War as an Instrument of National Policy, August 27, 1928."
19. Whiteman, op. cit., pp. 44-45.
20. Ann Van Wynn Thomas and A. J. Thomas, Jr., Non-Intervention: The Law and Its Import in the Americas (Dallas: Southern Methodist University Press, 1956).
21. See U.N. GAOR, United Nations Special Committee on Palestine: Report to the General Assembly, Vol. I, 2d Sess., Supplement No. 11 (1947), pp. 57-58: "Jerusalem is a Holy City for three faiths, their shrines are side by side; some are sacred to two

faiths. Hundreds of millions of Christians, Moslems and Jews throughout the world want peace, and especially religious peace to reign in Jerusalem. . . . Disturbances in the Holy City would have far-reaching consequences extending perhaps beyond the frontiers of Palestine."

22. According to a letter sent by Charles T. Bridgeman to the President of the Trusteeship Council, January 13, 1950, A/1286 and cited in Henry Cattan, Palestine, The Arabs and Israel (London: Longman, 1969), p. 5. There have been 19 separate ruling powers over Jerusalem between 586 B.C. when the Israelite Kingdom fell to the Babylonians and 1947 A.D. when the Jordanian army and Israelis seized control.
23. According to one report, rivalries between christian groups over Holy Shrines became bitter so that the Turks appointed a Moslem family to retain the keys to the Church of the Holy Sepulchre--a practice which stayed in force some hundred years. See Evan Wilson, Jerusalem, Key to Peace (Washington: Middle East Institute, 1970), p. 120.
24. See Great Britain, Parliamentary Papers, 1922, Cmd. 1785, found as The Mandate for Palestine 24 July 1922, in J. C. Hurewitz, Diplomacy in the Near and Middle East, Vol. II (Princeton: D. Van Nostrand, 1956), p. 109.
25. See Anglo-American Committee of Inquiry, Report to the United States Government and His Majesty's Government in the United Kingdom (Washington: Dept. of State Publication 2536, 1946), found in Hurewitz, op. cit., pp. 264-66.
26. See UNSCOP, Report to General Assembly (1947), pp. 57-58.
27. 42 U.N.T.S. 303, No. 656.
28. U.N. GAOR, Resolutions, 3d Sess. (1948), pp. 21-25.
29. U.N. GAOR, Resolutions, 3d Sess. (1949), p. 18.
30. U.N. GAOR, Resolutions, 4th Sess. (1949), p. 25.
31. Special Report of Trusteeship Council, U.N. Document A/1286 (1950).

32. George Kirk, The Middle East, 1945-50 (London: Oxford, 1954), p. 308.
33. The New York Times, August 31, 1966.
34. See ibid., June 29, 1967. For boundaries see also Report of the Secretary-General under General Assembly Resolution 2254 (ES-V) relating to Jerusalem, S/8146, September 12, 1967, paragraphs 5-18.
35. U.N. GAOR, Resolutions, 5th Emergency Special Session (1967), Supp. No. 1 (A/6798), p. 4.
36. The New York Times, July 12, 13, 1967.
37. A/6798, p. 4.
38. A/6753, July 10, 1967. Also circulated as S/8052.
39. David Ben Gurion, Israel: Years of Challenge (New York: Holt, Rinehart and Winston, 1963), p. 54.
40. Ibid., p. 56.
41. Walter Eytan, The First Ten Years (New York: Simon and Schuster, 1958), pp. 70-71.
42. See Minister for Foreign Affairs Moshe Shertok's (Sharret) letter to Count Folke Bernadette, U.N. Mediator on July 5, 1948 which spoke of "the fundamental facts of the problem: the historic associations of Judaism with the Holy City; the unique place occupied by Jerusalem in Jewish history and present-day Jewish life; the Jewish inhabitants, two-thirds majority in the city. . . ." in Progress Report of the United Nations Mediator on Palestine, U.N. Document A/648 (1948), p. 25.
43. Eytan, op. cit., pp. 74-75.
44. U.N. Document S/8052, July 10, 1967, p. 75.
45. U.N. Document S/8146, September 12, 1967, paragraph 155.
46. Ibid., paragraphs 33-34. Words of Ambassador Ernest A. Thalmann (Switzerland) as Personal Representative of the Secretary General pursuant to the July 14 resolution 2254 (ES-V) of the General Assembly, in conversation with Israel authorities.



47. A. L. Tibawi, "Jerusalem: Its Place in Islam and Arab History," in I. Abu-Lughod, ed., The Arab-Israeli Confrontation of June 1967 (Evanston: Northwestern University Press, 1970), p. 42.
48. See below, Chap. IV, p. 211.
49. United States Ambassador Goldberg stated: "I wish to make it clear that the United States does not accept or recognize these . . . [Israeli] . . . measures as altering the status of Jerusalem"; U.N. Document A/PV. 1544, July 14, 1967, p. 48. See also The New York Times, July 15, 1967.
50. S/8146, September 12, 1967, p. 252.
51. Ibid.
52. Ibid., p. 259.
53. 42 U.N.T.S. 251, No. 654; see also U.N. Document S/1264/Rev. 1 (1949), for Egypt; 42 U.N.T.S. 287, No. 655; see also U.N. Document S/1296/Rev. 1 (1949) for Lebanon; 42 U.N.T.S. 303, No. 656, see also U.N. Document S/1302/Rev. 1 (1949) for Jordan; and 42 U.N.T.S. 327, No. 657, see also U.N.T.S. 327, No. 657, see also U.N. Document S/1353/Rev. 1 (1949) for Syria. The Egyptian-Israel General Armistice Agreement may also be found in Hurewitz, op. cit., pp. 299-304, while the complete text of the Israel-Syrian General Armistice Agreement may also be found in Appendix I of N. Bar-Yaacov, The Israel-Syrian Armistice (Jerusalem: Magnes Press, The Hebrew University, 1967).
54. See Michel Bar-Zohar, Ben-Gurion: The Armed Prophet, Translated by Len Ortzen (Englewood Cliffs: Prentice-Hall, 1966), p. 155 for word by Ben-Gurion's official biographer who had access to his personal notebooks. See also Shabtai Rosenne, "Directions for a Middle East Settlement--Some Underlying Legal Problems," and Leo Gross, "Passage Through the Strait of Tiran and in the Gulf of Aqaba"--both in John W. Haldermann, ed., The Middle East Crisis: Test of International Law (Dobbs Ferry: Oceana, 1969), for divergent analyses which support an analysis favorable to Israel of this incident.
55. See E. L. M. Burns, Between Arab and Israeli (New York: Ivan Obolensky, 1962), pp. 92-98.



56. Commonwealth Cable Co. v. Burleson, U.S. District Court, Southern District of N.Y., 1919, 255 F. 99.
57. See L. Oppenheim, International Law: Disputes, War and Neutrality, ed. by H. Lauterpacht (7th ed.; London: Longmans Green, 1952), pp. 546-47.
58. Kennett Love, Suez: The Twice-Fought War (New York: McGraw-Hill, 1969), passim.
59. U.N. GAOR, Resolutions, 3d Sess. (1949), p. 18.
60. Robert H. Forward et al., "The Arab-Israeli War and International Law," The Harvard International Law Journal (Spring, 1968), p. 251.
61. U.N. SCOR, Resolutions, 6th Sess. (1951), p. 11. See also Staff of the Senate Committee on Foreign Relations, A Select Chronology, op. cit., pp. 132-33.
62. Rosenne in Haldermann, ed., op. cit., p. 52.
63. See note #48, *supra*. See especially, Bar-Yaacov, op. cit., p. 340.
64. U.N. Charter, Article 51.
65. Ibid., Articles 39, 42.
66. Ibid., Article 2.
67. Sol M. Linowitz, "Analysis of a Tinderbox: Legal Basis for the State of Israel," American Bar Association Journal, 1957, pp. 522-23. For a variety of early interpretations placed upon the Balfour Declaration, see Nevill Barbour, Nisi Dominus (Beirut: Institute for Palestine Studies, 1969), pp. 66-69.
68. Cherif Bassiouni, "Some Legal Aspects of the Arab-Israeli Conflict," in Abu-Lughod, op. cit., p. 92.
69. U.S. Department of State, The Suez Canal Problem, Publication 6392 (Washington, D.C.: Government Printing Office, 1956), pp. 16-20. See also Hurewitz, op. cit., pp. 202-5.
70. See note #53.
71. See note #61.

72. See Majid Khadduri's article, "Closure of the Suez Canal to Israeli Shipping," in Haldermann, ed., op. cit., pp. 148-57.
73. Benno Avram, The Evolution of the Suez Canal Status from 1869 up to 1956 (Geneva and Paris: Libraries Droz and Minard, 1958), p. 121.
74. R. R. Baxter, The Law of International Waterways (Cambridge: Harvard University Press, 1964), p. 227.
75. Ibid., p. 228.
76. S/PV. 1343, May 29, 1967.
77. Joseph A. Obieta, The International Status of the Suez Canal (The Hague: Martinus Nijhoff, 1960), pp. 82-83.
78. Leo Gross in Haldermann, ed., op. cit., p. 125.
79. See Baxter, op. cit., pp. 209-10.
80. Bassiouni in Abu-Lughod, op. cit., pp. 116-17.
81. See Note #54.
82. Oppenheim, op. cit., p. 433.
83. Quincy Wright, "Legal Aspects of the Middle East Situation," in Haldermann, op. cit., p. 22.
84. Whiteman, op. cit., p. 466.
85. United Nations Conference on the Law of the Sea, U.N. Document, A/CONF. 13/38 (1958).
86. See Leo Gross in Haldermann, op. cit., pp. 129-33.
87. See Staff of the Senate Committee on Foreign Relations, A Select Chronology and Background Documents . . ., pp. 155-57, taken from Department of State, Bulletin (March 11, 1957), pp. 392-93.
88. A/CONF. 13/38 (1958).
89. Report of the Commissioner-General of the United Nations Relief and Works Agency, U.N. Document A/6713 (1967), pp. 59-61.

90. Report of the Commissioner-General of the United Nations Relief and Works Agency, U.N. Document A/6013 (1965), pp. 4-5.
91. A/6713 (1967).
92. Study Group set up by the Hebrew University of Jerusalem, Israel and the United Nations (New York: Manhattan Publishing Co., 1956), p. 146, citing The Arab Refugees (Jerusalem: Government Printer, 1953), pp. 9-11.
93. Study Group . . . , op. cit., pp. 67-68.
94. See Reply of the Provisional Government of Israel to the Proposal Regarding the Return of Arab Refugees, A/648, 3d Sess., Supp. No. 11 (1948), p. 28. "Arab mass flight from within Israel and Israel occupied areas is a direct effect of Arab aggression from outside. . . . If the war has brought in its wake a mass exodus, mostly spontaneous . . . the responsibility for it rests on those who fomented and have carried on the war. . . ."
95. Eytan, op. cit., p. 58.
96. See note #94, A/648, p. 28.
97. The New York Times, July 3, 1967, reported Moshe Dayan as admitting that they were happy to see Arabs leave Israel and "did not want them to come back." Refugee resettlement outside of Israel is discussed in Joseph Schechtman, The Arab Refugee Problem (New York: Philosophical Library, 1953), pp. 61-94, from an Israeli viewpoint.
98. Eytan, op. cit., p. 127.
99. See U.N. Document A/927, June 21, 1949. See also Don Peretz, Israel and the Palestine Arabs (Washington: The Middle East Institute, 1958), pp. 40-50.
100. U.N. Document A/4573, November 14, 1960.
101. The Report of the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East 1 July 1966-30 June 1967, U.N. Document A/6713, states that Amman reported 40,000 completed applications in respect of approximately 150,000 (out of the 200,000 persons who crossed to



the East Bank. Israel reported receiving some 32,000 applications relating to 100,000 persons. Jordan reports approving 5,122 applications relating to 18,236 persons while Israel reported approving 5,787 relating to 20,658 persons. By August 31, Amman reported 14,150 persons actually crossed into Israeli-occupied territory while Jerusalem reported 14,056. Only a small fraction of the total number of persons applying to return were permitted to do so. A/6713 reports few inhabitants of the Arab sector of Jerusalem were "permitted to return," and very few refugees from West Bank UNRWA camps. The report continues: "it is clear from the figure given above that the hopes which were generated at the beginning of July that at least the bulk of the displaced persons would be able to return to the West Bank in pursuance of the terms of the Security Council's resolution 237 (1967) have not been realized. The reasons for the frustration of these hopes are disputed and are not a matter on which the Commissioner General believes he can helpfully comment in present circumstances. However, from personal observation, he and his staff in Amman are able to record that the Jordanian authorities did all that was humanly possible to ensure that those whose applications to return were approved were promptly informed and given every assistance in re-crossing the river. Nevertheless, the bulk of the displaced persons remain in the East Bank and, whatever the reason may be and wherever the responsibility may be, have not been able to return to their former homes.

102. To gain a good idea of how little policy toward refugees has changed, see the letter from the Minister of Foreign Affairs of the Provisional Government to the U.N. Mediator, August, 1948, A/648 (1948). For an insight into Ben Gurion's thinking see his authorized biography, Bar Zohar, op. cit., p. 103. Perhaps the best single, short piece on the official Israeli view of the refugee problem is Abba Eban's "The Refugee Problem," in Walter Z. Laqueur, The Israeli-Arab Reader (New York: Citadel Press, 1969), pp. 151-64.
103. I. F. Stone, "For a New Approach to the Israeli-Arab Conflict," New York Review of Books (August 3, 1967), p. 10. See the excellent retort by Marie Syrkin, "I. F. Stone Reconsiders Zionism," in Laqueur, op. cit., pp. 327-41, reprinted from Midstream (October, 1967). Stone's article also



may be found in Laqueur's fine reader, op. cit., pp. 308-26.

104. Erskine Childers, "The Other Exodus," The Spectator (May 12, 1961), p. 672. Childers' article is also reprinted in Laqueur, op. cit., pp. 143-51.
105. Childers, The Spectator, p. 672.
106. Sir John Bagot Glubb, A Soldier with the Arabs (London: Hodder and Stoughton, 1957), p. 251.
107. Menachem Begin, The Revolt, Story of the Irgun, trans. by Schmucl Katz (New York: Schuman, 1951), p. 164, has written: "Arabs throughout the country, induced to believe wild tales of 'Irgun butchery' were seized with limitless panic and started to flee for their lives. This mass flight soon developed into a maddened, uncontrollable stampede. Of the about 800,000 Arabs who lived on the present territory of the State of Israel, only some 165,000 are still there. The political and economic significance of this development can hardly be overestimated." See also p. 363.
108. Christopher Sykes, Cross Roads to Israel (London: Collins, 1965), p. 420.
109. Kirk, op. cit., p. 264.
110. Nadav Safran, From War to War (New York: Pegasus, 1969), p. 34.
111. John H. Davis, The Evasive Peace (London: John Murray, 1968), pp. 63-64.
112. Ibid., p. 66.
113. Ibid., pp. 68-69. For a review of UNRWA activities, see David P. Forsyth, "The UNRWA, The Palestine Refugees and World Politics: 1949-1969," International Organization (Winter, 1971), pp. 26-45.
114. Walter Z. Laqueur, The Road to War, 1967 (London: Weidenfeld and Nicholson, 1968), quotes King Hussein as stating on January 17, 1960 that Arab leaders had used refugees irresponsibly: "They have used the Palestine people for selfish political purposes. This is ridiculous, and I could say, even criminal." P. 53.

115. Laqueur, The Road to War, 1967, p. 53.
116. "American Declaration of the Rights and Duties of Man, Adopted at Bogata, Columbia, May 2, 1948," Documents on American Foreign Affairs, Vol. X, ed. by Raymond Dennett and Robert Turner (Boston: Princeton University Press for the World Peace Federation, 1948), pp. 28-32.
117. See the Universal Declaration of Human Rights, U.N. Document A/810, December 10, 1948.
118. See International Covenant on Civil and Political Rights, U.N. Document A/6316, December 16, 1966.
119. Whiteman, op. cit., p. 42.
120. Ibid., p. 44.
121. Ibid., pp. 66-67.
122. Hurewitz, op. cit., p. 107.
123. See Ad Hoc Committee on the Palestine Question, U.N. Document A/AC. 14/32 (1947).
124. Quincy Wright in Haldermann, op. cit., p. 19.
125. U.N. Document S/801, May, 1948.
126. Begin, op. cit., pp. 354-71.
127. See note #28.
128. For a complete and convenient listing see Yearbook of the United Nations 1967 (New York: Office of Public Information, United Nations, 1969), p. 267.
129. Abba Eban, "The Refugee Problem," in Walter Z. Laqueur, The Israel-Arab Reader, op. cit., pp. 158-60.
130. Ben-Gurion, op. cit., p. 60.
131. Peretz, op. cit., pp. 148-49. The £ at that time was approximately equal in value to £S, then worth \$4.03 (U.S.) in exchange.
132. Ibid., p. 143.

133. See Cattan, op. cit., pp. 80-82.
134. Oppenheim, op. cit., p. 403.
135. L. Oppenheim, International Law: Peace, ed. by H. Lauterpacht (8th ed.; New York: David McKay, 1955), p. 268.
136. The New York Times, July 3, 1967.
137. Michael Howard and Robert Hunter, Israel and the Arab World: the Crisis of 1967, Adelphi Papers, No. 41 (London: Institute for Strategic Studies, 1967), p. 43.
138. U.N. Document, S/1302/ Rev. 1, April 3, 1949.
139. The July 7, 1949 Agreement for the Demilitarization of Mount Scopus Area, is annexed to S/3015, May 14, 1953.
140. Eytan, op. cit., p. 42.
141. S/1264/ Rev. 1, February 23, 1949.
142. Burns, op. cit., p. 92.
143. S/1353/ Rev. 1, July 20, 1949.
144. See Bar-Yaacov, op. cit., pp. 56-59.
145. S/4030, June 7, 1958; S/4030/ Add. I, July 28, 1958.
146. See Hutchison, op. cit., pp. 20-29 for the details of one well-known such incident. See also S/2833, November 4, 1952.
147. Eytan, op. cit., pp. 41-43.
148. S/3892, September 24, 1957; U.N. SCOR, Resolutions and Decisions of the Security Council, 1958, pp. 1-2; The New York Times, January 29, 1958.
149. S/3172, February 3, 1954; U.N. SCOR, Resolutions and Decisions of the Security Council, 1950, pp. 9-11; see also S/3456, November 3, 1955.
150. Ibid.; S/3596, May 9, 1956, especially Annex 5; Burns, op. cit., p. 94.

151. See S/2061, March 29, 1951; S/2067, April 4, 1951; S/2072, April 6, 1951; S/2074, April 6, 1951; S/2084, April 12, 1951; S/2088, April 13, 1951; S/2089, April 16, 1951; U.N. SCOR, Resolutions and Decisions of the Security Council, 1951, pp. 7-10.
152. S/3106, October 12, 1953; S/3108/ Rev. 1, October 16, 1953; S/3122, October 23, 1953; The New York Times, October 30, 1953.
153. S/3151/ Rev. 2, January 20, 1954.
154. Burns, op. cit., p. 113.
155. U.N. SCOR, Resolutions and Decisions of the Security Council, 1956, pp. 1-3.
156. Cattani, op. cit., pp. 97-100.
157. SCOR 542, April 25, 1951, p. 15.
158. SCOR 547, May 18, 1951, p. 135.
159. Bar-Yaacov, op. cit., p. 340.
160. S/7573, November 2, 1966.
161. Bar-Yaacov, op. cit., p. 57.



## C H A P T E R   I I I

## THE SECURITY COUNCIL AND HOSTILITIES

The Security Council convened in an emergency session on June 5 following the notification first by the representative of Israel, then by that of the United Arab Republic that the other side had engaged in an aggression. Ambassador Gideon Rafael of Israel charged in session that:

Fighting has erupted on Israel's frontiers and that the Israel defense forces are now repelling the Egyptian Army and Air Force.<sup>1</sup>

.....

The Egyptian forces met with the immediate response of the Israel defense forces, acting in self-defense.<sup>2</sup>

Ambassador Mohammed Awad El-Kony of the United Arab Republic countercharged that "reports indicate that the dimensions of the Israel attack are so wide that no one can doubt the premeditated nature of this aggression."<sup>3</sup> Reminding the Council of the "black days of 1956" when Israel "planned and engineered" another aggression "in defiance of all norms of law and decency and in flagrant contravention of the United Nations Charter,"<sup>4</sup> El-Kony concluded by stating that his country had no choice but self-defense under Article 51 of the United Nations Charter.<sup>5</sup> According to Arthur Lall, privately Israeli diplomats admitted at this time that they had launched

the massive military strike.<sup>6</sup>

Here, at the very beginning, the antithetical and complex nature of the dispute was highlighted. Israel claimed that the Arab closure of the Straits of Tiran was illegal and a prior, precipitative act of aggression against Israel; further, that Cairo's withdrawal of its consent to UNEF's presence, and movement of forces toward Israel were further manifestations of aggressive intent. So in Jerusalem's view, these "aggressive" acts justified defensive actions by Israel under Charter article 51. To these Jerusalem added the persistent Arab and Egyptian protestations of a state of war existing with Israel and threats to Israel's independence and territorial integrity.

The Arab position and, in particular, that of the U.A.R. looked upon its actions of blockading Tiran to Israeli shipping and cargo, and requesting the withdrawal of UNEF as within the realm of its domestic jurisdiction. Cairo pointed out that Israel did not allow UNEF to cross to its side of the cease-fire line despite U Thant's request, and that the U.A.R. moved troops into the Sinai, and Gaza Strip, solely in response to Israeli troop concentrations against Syria. Cairo also made clear its numerous reiterations that it would not be and was not the first to launch a military attack. Similarly to Jerusalem, the Arab case claimed Israel to be the aggressor and its own acts to be defensive actions under article 51 of the Charter.

Since a cease-fire was finally established without condemnation or the branding of one party or the other as an aggressor under Charter provisions, no definitive legal opinion may be expressed as to which, if indeed any party had solely engaged in an aggression. Nor was the claim to self-defense validated for either party. We do not wish to fall into the miasmal pit of partisanly defining what act was here "aggressive." But what is commonly referred to as the Six-Day War began with an Israeli invasion "claimed to have been in self-defense, but which, although by no means unprovoked, did amount to a first use of force by Israel."<sup>7</sup>

Finally, there is the strategic and moral case as Israel perceived it. Before June 4, 1967 no spot in Israel was more than twenty-five miles from an Arab neighbor. Both on land and in the air Jerusalem viewed three fronts on which there was "no alternative" to offensive operations which carried swiftly into enemy territory; put simply, Israel possessed insufficient room to retreat. Moreover, there was an inequality of dangers in Israeli eyes; a defeated Israel probably could not rise again to fight, as the Arab governments had, because of its limitations in space and population. Therefore, in the eyes, for example, of Yigal Allon:

Israel must regard any massive concentration of offensive forces on her borders as an aggressive

threat to which she was entitled to respond with force before the enemy took the initiative against her.<sup>8</sup>

Allon's doctrine of "anticipatory counterattack," justified by a perceived threat to Israel's existence, appears to help explain what happened in 1967. There were six contingencies under which Israel would be entitled to go to war in Allon's estimation: (1) A concentration of military forces sufficient to be dangerous to Israel; (2) when a surprise enemy air attack is clearly being planned; (3) when air attacks were conducted against atomic and scientific installations; (4) when guerrilla raids reached an unacceptable level; (5) upon Jordan's conclusion of a military pact with another Arab country; and (6) if Egypt closed the Straits of Tiran. In Allon's eyes, any one of these contingencies would constitute a casus belli. Allon continues to define the term

"anticipatory counter-attack" as an:

Israeli operational initiative taken against concentrations of enemy forces and the occupation on enemy territory of targets having a vital security significance, at a time when the enemy is mustering his forces for an attack but before he has had time actually to start his offensive.<sup>9</sup>

An anticipatory counterattack would begin by destroying enemy air forces on the ground. According to Allon, Israeli's territorial vulnerability and Arab hostility gave Israel the moral right to utilize this strategy. However, even Ben-Gurion thought it to be



too similar to a preventive war.<sup>10</sup>

However, the war did not spring, Medusa-like, into existence on the morning of June 5, 1967. The precedent factors are decades old; the immediately precipitative factors herein perceived were outlined in Chapter I. Damascus and especially Cairo certainly bear responsibility in good measure for the provocation (witting or unwitting) which we have reviewed as bringing about this whole train of events. These Arab contributions to the outbreak of hostilities are contradictory especially to the purposes and principles of the Charter which include members refraining not only from the "use," but also from the "threat" of force in their international relations.

It is extremely difficult in light of our analysis to label one or another party as the sole and singular contributor to the crisis under the terms of the Charter. While the partisans to each side would certainly enjoy the benefits flowing from the designation of the other side as the "aggressor," this may not have been organizationally advisable, politically possible, or legally correct. It may appear that some reciprocity was necessary in the downward spiral to hostilities, just as it will be necessary in the far more arduous upward spiral to peaceful settlement. In conclusion, however, one must recognize that the Allonian doctrine of "anticipatory counterattack" provides plenty of fodder for debate.

Both parties possessed the will and believed they possessed the capacity to carry out the conflict to a conclusion favorable to themselves. It was this initial intransigence of the parties to the conflict both holding hopes of victory<sup>11</sup> initially buttressed by the Soviet Union, for example, which tried to hold out for a withdrawal of all forces to their June 4 positions, which paralyzed the Security Council at the start.<sup>12</sup>

The will of the warring states and the flood of events simply bowled over any attempts at changing the course of what is now history. The recess of the session for consultations proved fruitless and the stalemated Council adjourned until the evening of June 6.

While consultations went on during the next day (June 6), it became more and more apparent that neither Egypt nor Jordan could halt the Israeli juggernaut. In addition, emphasis on both withdrawal and disengagement was dropped as the need to concentrate simply on a cease-fire became essential. Forwarding the proposition that Israel could not have launched its attack without U.S. foreknowledge and consent, Moscow accused the United States of hypocritically procrastinating in the Security Council in the hope that additional time would permit further Israeli advances, especially upon Sharm el-Sheikh and the Sinai.<sup>13</sup>

On the evening of June 6, resolution 233 was

unanimously passed by the Security Council. In the language of the resolution, the Security Council called upon the various Governments to "take forthwith all measures for an immediate cease-fire" and cessation of military activities, and requested the Secretary General keep it "promptly and currently informed on the situation."<sup>14</sup>

Thereafter, Ambassador Arthur Goldberg of the United States stated his country's consistent support of a cease-fire over the preceding thirty-six hours while expressing his fervent hope that compliance would be complete and immediate. Lord Caradon, representative of the United Kingdom, joined Mr. Goldberg in denying the involvement of their aircraft in the hostilities.<sup>15</sup> Lord Caradon also welcomed the resolution. In a very characteristic discourse he noted his Government's unchanging position on the major issues--a personal constancy as well which we shall describe and which was to be a wellspring of great strength for him later on through the time when resolution 242 was actually passed. He also commented on the current crisis in international authority which, if not met, could "betray" world hopes for progress and peace. Surprisingly enough too, in the midst of war and confusion, Caradon still spoke with foresight of the Council's inescapable "responsibility to go forward, to take the other steps now so urgently required." It was

also characteristic of him to recognize and remind Council members that failure would result in more bloodshed and suffering by innocents:

We need not look farther than the Near East to see evidence that when conflict comes it is always the innocent who suffer most, and suffer worst.<sup>16</sup>

Ambassador Nikolai Fedorenko of the Union of Soviet Socialist Republics who followed Caradon condemned Israeli aggression, called for a cease-fire and the immediate withdrawal of aggressive forces "behind the truce line," reminded the United Nations of its "primary duty . . . [to] condemn the actions of Israel and take urgent measures to restore peace in the Middle East."<sup>17</sup> Joining with Ambassador Milko Tarabanov of Bulgaria, the U.S.S.R. stated that resolution 233 (1967) should be considered only a minimum first step. Immediate and unconditional withdrawal by Israel behind the armistice lines should be considered and adopted by the Council in light of this flagrant violation of international law. The Russian position had eroded after reports were received of Israeli battlefield successes.<sup>18</sup>

Notable also was an early willingness to see the Middle East problem through to a different solution which was expressed by a number of representatives. Ambassador Liq Endalkachew Makonnen of Ethiopia called for "following up our decision of today with concerted action which can lead to the creation of fair and equitable conditions for



a just and lasting settlement."<sup>19</sup> Ambassador José Maria Ruda of Argentina stated that the cease-fire "should be immediately followed by the most intensive efforts in the Middle East."<sup>20</sup> Mr. George Ignatieff of Canada concurred in that "We cannot and we must not wait for another ten years, for another crisis which will . . . bring us all once more to the edge of catastrophe."<sup>21</sup> Even Ambassador Moussa Leon Keita of Mali called for a "searching study" of this question so that action will amount to more than putting "a few more lines on another sheet of paper under the illusion of having solved a problem that will soon be confronting us again at the next crossroads."<sup>22</sup>

To these appeals by these representatives to commence the search for a more profound solution, three other members--China, Japan and the United States--joined in also urging that the next step be a concerted effort to delineate a basic settlement to this profound problem--one which had evoked three area wars in two decades. If we add to this group the remark of Ambassador Roger Seydoux of Gaullist France that once peace had returned "we shall have to embark upon a lengthy process,"<sup>23</sup> the breadth of support for a fundamental settlement, after the cease-fire can be appreciated.

These calls, just as the conflict itself, marked a new turn in the course of events. Prior to June 5, some representatives, especially the American and British, had

appealed for caution and restraint in their effort to forestall actual hostilities as war clouds gathered. A chance always existed that the parties would not resort to the grave alternative of war, that the situational relationship was still sufficiently viable to enable the parties themselves to work out their grievances. With the advent of hostilities, the need for restraint to avoid hostilities collapsed in face of the necessity to grapple with the problems of hostilities themselves. India, for example, made a strong stand for a cease-fire coupled to withdrawals to positions held on June 4 "based upon the sound principle that the aggressor should not be permitted by the international community to enjoy the fruits of aggression . . . [as] . . . the only basis on which a lasting peace can be built."<sup>24</sup> Meanwhile, the Iraqi delegate termed the cease-fire resolution previously adopted "a complete surrender to Israel,"<sup>25</sup> and the Syrian representative, Georges Tomeh, called for the condemnation of Israel as an aggressor and for sanctions under the Charter.<sup>26</sup> To the calls for a withdrawal and a cease-fire, the Soviet Union added the condition of a condemnation of Israel. The United States upheld Israel's point that any cease-fire must be unconditional. This opened the United States position to Soviet and Arab charges that by refusing to link the cease-fire to

withdrawal as the Indian position advocated, the U.S. was hypocritically abetting its client, Israel, to enjoy the added fruits of its aggression in direct violation of international law. The rush of events stripped away the luxury of discussing how or in what manner a cease-fire resolution should be passed by the Security Council. Unquestionably the early pre-June Soviet attitude changed once an assessment of the incredibly successful Israeli first strike against Arab military airports was available. Further delay could only mean further losses in men, territory and equipment. This may be illustrated by a consideration of the contrasting, hurried adjectives that Ambassador Fedorenko used at this point "the first urgent step . . . stop immediately . . . take urgent measures" in the Security Council late on June 6 when stating it:

. . . to be the bounden duty of the Security Council to adopt without any further delay a decision concerning the immediate and unconditional withdrawal of the forces of the aggressor behind the Armistice lines.<sup>27</sup>

Now, even the Soviet Union was forgetting its prior specific demands for condemnation of Israel by the Security Council in the interests of the nub of the matter--a cease-fire.

It was in this sort of a setting that this widespread, though not yet total international groundswell for a more profound treatment and solution to this problem surfaced. But it remained the immediate problem of

halting hostilities which transfixed the energies of the Security Council.

The American remarks could only have been directed at the prior positions of both Russia and the United Arab Republic in order to contrast Washington's official constancy with Moscow and Cairo's erraticism on the record, as well as to point out to the Security Council members how important it was for them to act promptly and appropriately in matters such as these. It is worthy to note here that just as the Security Council on one level was unable to act on the crisis in the period between U Thant's return from Cairo on May 25 and the June 6 fighting, so too it was stymied in adopting a draft cease-fire resolution from the early morning of June 5 until the passage of 233 (1967) late on June 6 because, in Ambassador Goldberg's words, that "draft resolution was not supported by other powers."<sup>28</sup>

But fighting did not cease. No state accepted the call for a cease-fire in 233 (1967), so Resolution 234 (1967) was adopted unanimously by the Security Council on June 7 at its 1350th meeting. There are a number of differences between Resolution 233 of June 6 and Resolution 234 of June 7. Resolution 234 was a much stronger resolution than 233. The June 6 resolution noted the "oral report of the Secretary-General" on the situation, while the June 7 resolution noted that "in spite of its appeal"



to the Governments to prepare immediately "for an immediate cease-fire and for a cessation of all military activities . . . military activities are continuing." Resolution 233 spoke of concern "at the outbreak of the fighting and with the menacing situation" while 234 was concerned that the continuation of fighting "may create an even more menacing situation in the area." (Emphasis mine.)

The 1,349th meeting of the Security Council opened on June 7 in response to the urgent request of the representative of the U.S.S.R. The Soviet Union had come a long way since the month of May when it maintained that to call the Security Council into session was pointless since no grounds for convening it existed. After stating that Resolution 233 had had no effect and that the aggressor was continuing in his aggression, the Soviet representative introduced a draft resolution which reaffirmed the Council's call for a cease-fire. Ambassador Fedorenko then pressed for an immediate vote.<sup>29</sup> Certainly this reflected the intense pressure which both the Soviets and the Arabs felt themselves to be under. One indication of this from an Arab state traditionally pro-Western was the Secretary-General's announcement that Jordan had accepted the Council's cease-fire Resolution 233 that morning at 6:00 A.M.<sup>30</sup> Upon a request by Brazil for "a very short recess so that we can at least become acquainted

with the wording of the text before us,"<sup>31</sup> the President of the Council, Hans Tabor of Denmark, recognized Ambassador Goldberg. The American Ambassador, in contradiction to the sudden Soviet turnabout concerning a cease-fire pointed out:

My delegation has been conscious of the gravity of this situation not since last night, but for three weeks . . . if certain powers had not objected and had not deprecated our statements about the gravity of the situation, a resolution would have been in the hands of the council for effective action to avert the outbreak of hostilities in the Near East.<sup>32</sup>

While the earlier resolution (233) called for "an immediate cease-fire and for a cessation of military activities," the latter one (234) "demanded" (emphasis mine) a cease-fire "as a first step" and set a brief deadline for the discontinuance of military activities. But once again, no mention was made of steps which would be taken if compliance were not forthcoming.<sup>33</sup>

Following the vote Ambassador El-Kony repeated charges which he and other Arab delegates had made about British and American collusion with the Israeli attack and commented upon the United States "policy of hypocrisy and antagonism towards Arab nations which, while guaranteeing the independence and territorial integrity of the States in the Middle East, have tolerated one expansion of Israel after another." El-Kony then asked a pointed question: "Is the United States asserting today, by deed or action, that it will not allow Israel to annex an inch of Arab

territory?"<sup>34</sup> It was significant that while the representative from Egypt repeated the request for Council condemnation of Israel, this was no longer echoed by the Soviet Union. Still on June 7, Foreign Minister Abba Eban of Israel possessed of flawless Arabic and perhaps the most eloquent living command of the English language rebutted. After dismissing the allegations of collusion with the United States and United Kingdom as "absurd," Eban clearly stated the pith of the Israeli response to the Arab charges of aggression:

The central theme of the Arab Israel conflict is clear and simple. There are Member States that desire to destroy another Member State. There are those . . . who both proclaim and at times carry out, measures for the destruction of its independence and its integrity. There is neither any historic basis nor moral justification nor juridical foundation for that assertion.<sup>35</sup>

Eban then turned to the question of attitudes toward the cease-fire. In contrast to the U.A.R., Syria and Iraq which had rejected the cease-fire resolution and Jordan whose acceptance was clouded for Israel by her common defense pact with the United Arab Republic, Eban proclaimed of his Government: "We welcome, we favour, we support, we accept the resolution calling for immediate measures to institute a "cease-fire."<sup>36</sup>

To this view on one level came a response on another level. The Bulgarian Ambassador Tarabanov pointed out that while Foreign Minister Eban appeared to have agreed to

abide by Resolution 234 (1967), "We have neither heard nor seen anything to indicate that this is the case."<sup>37</sup>

Tarabanov was shortly answered by action, as Israel announced her acceptance of the cease-fire, provided that her Arab foes also agreed.<sup>38</sup> Following contributions by other states, the Council adjourned for nearly one full day.

Certainly in any case of diplomatic negotiations between parties, the fundamental and mutual exclusion by each of the other's starting premises almost forecloses chances for the success of the effort. In such a situation only greater powers which exert their own good offices and influence can bring hope. The non-policy of drift, hesitancy and half-heartedness of the U.S. was consistent, being in evidence both during the upswing toward hostilities and during much of the fighting as Israel demonstrated its ability to take care of itself.<sup>39</sup> The Indian position actually was quite close to the final United States position of 1956. A rereading of General Assembly resolutions during the fighting of that crisis indicated there too a U.S. emphasis upon stopping the fighting, but coupled with the call for withdrawal. The U.S. stand thus had departed from the form of its 1956 behavior in insisting in 1967 that the most basic of the norms affecting conduct between nations be dealt with first--a cease-fire--before questions affecting either condemnation or withdrawal be



dealt with. It is inescapable, moreover, to note the Soviet contention that the American position, by refusing to link a cease-fire with withdrawal, permitted more latitude for the Israelis to retain the fruits of their conquest than the Soviet position which linked a cease-fire to withdrawal. Such talks without Israel's withdrawal from occupied territory did best suit Israel. This is inescapable for it is precisely what happened. The fact that this norm of international law--withdrawal from territory occupied by force of arms--was not injected at this point, as it was in 1956, had an influence upon events as they unfolded. Of course, it was not the norm, or its passage or nonpassage, but the U.S. choice to abide by the norm in 1956 coupled to the will to see it through which in part accounted for the difference. Another important consideration is that the war in 1967 moved much faster than the one in 1956. Consequently, in 1967 a necessarily higher premium was placed on simply halting the fighting.

On June 8, the Council convened for the 1351st meeting after notification by both Israel<sup>40</sup> and again Jordan<sup>41</sup> of their acceptance of the call for cease-fire in Resolution 234 (1967). Both the U.S. and the U.S.S.R. had requested this session. Ambassador Fedorenko of the U.S.S.R. stated that "the extremist circles in

Tel-Aviv obviously are drunk with their temporary successes on Arab soil" and have "maliciously" laid down conditions for their acceptance of the Council cease-fire Resolution 234 (1967) as have aggressors through history.<sup>42</sup> The Arabs are forced into defensive action. The Soviet Ambassador Fedorenko went on to state the necessity that the Council safeguard the rights of the victims of such aggression by approving a new draft resolution. In it, the Soviet Union stated that Israel had not only ignored Resolutions 233 and 234 (1967), but seized more territory in the interim and that such defiance of the United Nations continued. The draft also asked that the Council "vigorously condemns" Israel's violations of U.N. resolutions and principles while demanding an immediate halt to Israeli military activity and their withdrawal "behind the armistice lines."<sup>43</sup> The Russian draft resolution may have been on weaker grounds in its condemnatory mention only of Israel concerning military activity, but on the point of the continuing Israeli territorial advance was on stronger grounds. Yet, despite the undeniable validity of this latter point, it is not altogether clear if (1) the Soviet draft was not too partisan to attract the wide consensus sought at this time, and (2) whether or not condemnation is a legitimate Charter approach to peace inducement.

The United States which also had requested the

session submitted its own proposal whose approach basically diverged from that of the Russians. After noting the various resolutions and indications to accept a cease-fire, the United States draft resolution registered its "deep concern" that no agreement to a cease-fire had yet been reached. In addition, it called for: (1) "scrupulous compliance" by Israel and Jordan with the cease-fire; (2) immediate compliance with the "Council's repeated demands for a cease-fire and cessation of all military activity" as a first step toward peace in the area; (3) called for

. . . discussions promptly thereafter among the parties concerned, using such third party or United Nations assistance, as they may wish, looking toward the establishment of viable arrangements encompassing the withdrawal and disengagement of armed personnel, the renunciation of force regardless of its nature, the maintenance of vital international rights and the establishment of a stable and durable peace in the Middle East;

(4) requested steps by the President of the Security Council and Secretary-General to secure compliance within twenty-four hours; and (5) requested the Secretary-General to "provide such assistance as may be requested in facilitating the discussions called for" in (3) above.<sup>44</sup> Emphasis upon the "essential" first step of a cease-fire is clearly evidenced in operative paragraphs one, two and four. Jordan, Israel, and immediately after Goldberg concluded speaking, the United Arab Republic announced acceptances

of the cease-fire call as in 233 and 234 (1967) on the condition that the other party/parties reciprocate.

No mention was made in the American draft of the lines to which withdrawal should be made--those of June 4 or the Armistice lines. The matter was left ambiguous. Moreover, operative paragraph (3) of the American draft, though admirable in intent and certainly less blatantly one-sided than the Russian proposal, remained perhaps just as incapable of adoption. While communication in some form should occur, at this moment the war was still on, blood was still being spilled; this was hardly the time to expend energy upon the basic elements which would make for a "stable and durable peace," admirable as that may have been, whose very definition and clearer focus envisaged prompt discussions. The full extent of the victory/defeat were not yet known, indeed were still in process. No matter how valid the content of the U.S. draft resolution would have been over the long run, tactically it suffered because it advocated far too much far too soon.<sup>45</sup> Both draft resolutions, then, each in its own way was dissonant to the tasks at hand.

Into the breach of these widely disparate proposals conciliatorily stepped Lord Caradon who spilled calming oils upon the raging waters. First he reminded the Council members of his and his Government's "connected and continuous" actions since early Monday morning--leaving



unsaid the erratic and discontinuous actions of other members.<sup>46</sup> Next, he spoke of the delay; not only that of the prewar period (" . . . had there not been delay last month . . . we might even have been able to avert and prevent the war altogether"), but of delay once war broke out ("we remain of the strong opinion that the Council should have acted twenty-four hours earlier . . . as we urgently advocated on Monday morning").<sup>47</sup> While he quietly criticized the early Soviet attitude that the dangers of the situation were "overdramatized and the urgency artificial,"<sup>48</sup> he levelled an accusing finger not at one party to the conflict, as did the Soviet proposal, but at both in saying that they "have fallen far short of readiness to respect and employ international authority" without distinction between them.<sup>49</sup> Similarly, Caradon ignored the sweeping U.S. proposals and spoke instead more narrowly that the "next urgent step must be to provide for the implementation of the . . . cease-fire . . . call,"<sup>50</sup> while speaking of the coming work" which will urgently occupy us for a long time to come"<sup>51</sup> and concluded with the view that the immediate United Nations' task should be more limited and humanitarian while the more distant should be so vague and ambiguous that no party could object to them:

. . . to stop the fighting--and we pray that the fighting may very soon be stopped; to ensure and secure disengagement; to bring relief and succour

to the wounded and the homeless; and to move on to the greater tasks of conciliation and the establishment of order and justice. These practical tasks are enormous. They will occupy us for a long time to come.<sup>52</sup>

Finally, Caradon appealed to the Members' creative vision and to the United Nations' role in the crisis by seeking "new means of establishing an effective United Nations presence "beyond the rear-guard of UNEF while setting the organization back on the "hard uphill road to international authority." After observing that there still existed an opportunity to demonstrate that there was nothing wrong with the U.N. or its Charter "but with those who refuse to use it," Caradon "earnestly and sincerely" appealed to Council members

. . . to approach these tasks with a will to work together to abandon old prejudices, to realize that the world looks to us not to perpetuate animosities, but to heal wounds and repair the damage, and give to all the peoples of the Near East the security they need and the security they long for, to make their lives tolerable and their future not a future of fear, but a future of hope.

In all these purposes we, round this table, have an inescapable obligation. I trust that we shall show that we are determined to rise to it.<sup>53</sup>

Here, by means of an appeal to fulfill the general norms for which the U.N. stands, here, by means of a general appeal to the core of morality and concern for life which is the basis both for international organization and international law--here Lord Caradon exhibited that presence of mind and embodiment of principles by which men consistently influence events.

At 1:00 A.M., June 9, the President of the Security Council was informed by the Secretary-General of Syria's acceptance of the Council's cease-fire appeals contained in the Council's resolutions of June 6 and 7 "provided that the other party agrees upon the cease-fire."<sup>54</sup>

At 5:30 A.M. the Israel representative reported heavy Syrian shelling of 16 Israeli villages and at 6:00 A.M. the representative of the Syrian Arab Republic, George Tomeh, requested an urgent meeting of the Security Council. The war on the Syrian front was on in earnest.

At 1:05 P.M., June 9, Resolution 235 (1967) was adopted by the Security Council. This marked the third cease-fire resolution passed unanimously since June 6. Briefly, 235 (1967) (1) cited resolutions 233 and 234 (1967) concerning an immediate cease-fire and cessation of military activity; (2) demanded the forthwith cessation of hostilities; (3) requested the Secretary-General to immediately contact the Governments of Israel and Syria to arrange immediate compliance and to report back to the Security Council within two hours; and (4) noted that the Governments of both Syria and Israel had announced their acceptance of a cease-fire.<sup>55</sup>

It is worthy to note here that in Resolution 235 the duty of the Secretary-General went beyond mere reporting on the situation to the arrangement of compliance. In addition, not only was a time limit placed on compliance,

but a time limit only of two hours.

Ambassador Goldberg's remarks after this vote may have reflected the restraining of Lord Caradon. Goldberg spoke of a "lack of ability to concert our actions"<sup>56</sup> as a consistent failing point for the Council and then went on in a less than oblique fashion to state:

I say this very plainly and very categorically. My Government is willing to concert its actions with every member of this Council so that we can bring the fighting to an end, so that we can start consideration of all that we need to consider . . . we are ready at any time to do this, we are ready under any circumstances. . . .<sup>57</sup>

Clearly, the United States was prepared to offer more flexibility than it had previously demonstrated.

When Ambassador Fedorenko spoke after this, his remarks continued in the same vein as before with little change in policy; again he insisted that Israel be punished by an active Security Council, that it cease military activities and withdraw its troops from Arab territories. There was no question but that the Soviet Union intensely desired withdrawal:

. . . by what right does Israel refuse to withdraw its troops from the territories which it has seized. . . . Or is it that Israel has decided to give birth to new principles all by itself . . . that it is possible and permissible to seize foreign territories by armed force. . . . This situation brooks of no delay.<sup>58</sup>

The 1,353rd meeting of the Security Council opened later on June 9 to a barrage of charges, denials and counter-charges by the representatives of Syria, Israel, and Egypt.



Each state claimed to have accepted the cease-fire while accusing the other state of violating it anew. The increasing level of fighting between Israel and Syria evoked a new and stronger response from Ambassador Fedorenko. Accusing the United States of complicity and Israel of "unbounded" arrogance and hypocrisy, in a broadside accusation of violating international law, treading underfoot the Charter and sabotaging Security Council resolutions, the Soviet delegate by his vituperative words indicated the increasing urgency with which his government viewed this latest of a long-series of armed clashes all of which resulted in marked Israeli successes. The first avenue was through the Security Council. It ". . . should immediately take resolute and effective measures" to guarantee Israel's abidance of Council decisions; "must condemn" Israel's disregard of its resolutions; "must demand" that Israel cease military action at once and:

. . . should warn Tel Aviv that non-compliance by Israel . . . will have the gravest consequences for the Israeli State, and that the Security Council will be compelled to use the powers which are invested in it by the Charter of the United Nations to deal with such situations.<sup>59</sup>

Whatever their chance of passage in the world body, these were certainly strong measures to advocate. To ensure full impact of its attitude, the Soviet delegate drew the attention of the Council members to a communiqué issued the

same day by the States of Bulgaria, Hungary, East Germany, Poland, the U.S.S.R., Czechoslovakia and Yugoslavia. The communiqué reviewed Israeli aggression and noncompliance, imperialist collusion, illegal occupation of Arab territory and, after declaring their full and complete "common cause" with the Arab people "to repeal the aggression and defend their national independence and territorial integrity," and asking for the condemnation of Israel, concluded:<sup>60</sup>

If the Security Council does not take the proper measures, great responsibility will rest on those States which fail to fulfill their duty as members of the Security Council.<sup>61</sup>

In other words, "while the Western powers voted in the Security Council for the cease-fire resolution, they were not exerting the influence on Israel that the Western powers called for."<sup>62</sup>

A number of points need to be made here. Perhaps the paramount one is the mixed nature of Fedorenko's statement and the communiqué. While increasing their backing of the Arabs from support to "assistance" in repelling aggression and defending Arab national independence and territorial integrity, thereby raising the stakes in the game, at the same time, there was no talk threatening Israel's national independence or territorial integrity. This was significant. It was also significant that though the threat to widen the conflict was certainly there, both

Fedorenko's statements and the East European communiqué will support the interpretation that this was only a last resort measure, that first every U.N. channel would be explored and exhausted. So a mixed bag of bellicosity, reason, immoderation and caution resulted. In any event, the Middle Eastern nations were at loggerheads and Russia obviously was floundering toward extremism against her will due to the nature of the situation's evolution and the U.N.'s inability to affect the same evolution.<sup>63</sup>

Into this situation stepped Ambassador Goldberg of the United States with a statement on the "full authority" of his Government: hewing close to the consistent principle "that the Security Council's resolutions shall be complied with in letter and spirit by Israel and the Arab countries involved,"<sup>64</sup> he went on to remind the Council of the continuing U.S. commitment to halt hostilities and bloodletting in the area and to get on to a final settlement of the outstanding questions between the parties. He reviewed official U.S. policy which we might excerpt to be: (1) a firm commitment to "the political independence and territorial integrity of all the nations of the area"; (2) "the United States strongly opposes aggression by anyone in the area, in any form, overt or clandestine"; (3) "the United States has consistently sought to have good relations with all the States of the Near East"; and (4) while this has not always been so, U.S. differences with and between

area States "must be worked out peacefully and in accordance with accepted international practice."<sup>65</sup> Going on to appeal to "every fair minded person"<sup>66</sup> Ambassador Goldberg proposed an impartial investigation by the Secretary-General of all allegations of cease-fire violations as well as the creation of adequate machinery to implement the cease-fire resolutions adopted by the Security Council. This was done in order to ascertain exactly what the situation was so that the appropriate steps can be taken.

Following this, Ambassador El-Farra of Jordan called his state the victim of a war crime-aggression by Israel--and expressed his regret that the United States chose to ignore this aggression and the need, in Jordan's eyes to condemn it and all for an Israeli withdrawal. Ambassador Tarabanov of Bulgaria attempted to whiplash the U.S. on its stands concerning respect for area state territorial integrity and political independence now that Israel military units were advancing on Arab soil. In addition, Tarabanov called it time for the Security Council to find out just what the situation was in the Middle East so that the Council could act.

Now that representatives of both blocs had requested it, Ambassador Tomeh of the Syrian Arab Republic "categorically" declared his Government's readiness to facilitate such a U.N. investigation. Ambassador Rafael of Israel found himself ". . . in singular agreement with the



representative of Syria" on this matter.<sup>67</sup> Then, both Tomeh and Rafael were urging and seconding motions to contact U.N. observers on the spot to assess real developments in the area. Certainly the logjam was beginning to move. There followed a report by the Secretary-General concerning just what facilities would be helpful and how area states could be cooperative with U.N. observers.

Following the U.S.S.R.'s support of both the Secretary-General's requests and the Syrian suggestion, Lord Caradon suggested that since the Council was dealing with rumor and hearsay, it made sense to adjourn and permit the Secretary-General time to gather information from U.N. observers on the spot. Following a further refinement by the French representative, Caradon pushed and led the Council (not against its will) to find a way out of the miasma of charge and counter-charge.<sup>68</sup>

Shortly thereafter Security Council President Tabor was able to present a formula acceptable to all camps-- that cooperation be extended, Government House in Jerusalem be restored and freedom of movement be facilitated for United Nations observers in the area. Thereafter, the Council adjourned.<sup>69</sup>

Lord Caradon's feat was no mean one. According to Arthur Lall, it was he who was the prime mover behind the entire successful process. Developments both in the area and in the Council moved with such rapidity that obviously

he could not have received any instructions from his Government. Caradon's contribution, acting on his own, enabled him to find that "slender piece of middle ground" which permitted movement toward resolution.<sup>70</sup>

The Security Council next convened at a pre-dawn emergency special session on June 10 called at the request of the Syrian Government in response to the deterioration along her Israeli front. The representative of the Syrian Arab Republic stated that Israeli forces had occupied the town of Kuneitra and were proceeding toward Damascus. An oral report by the Secretary-General was not able to validate the Syrian charges due to the fragmentary nature of U.N. observer assessments in the area whose freedom of movement was still restricted. Ambassador Tomeh told the Council that the Israeli representative was deliberately misleading the Council in stating his country's acceptance of the cease-fire and requested that this body apply sanctions to Israel in view of its disregard for unanimous Council resolutions.

Representative Fedorenko continued along this line in stating that the Ambassador from Israel had attempted to "mislead and deceive the Council by using casuistical subterfuges and ambiguous reservations, the real purpose of which was to conceal the attack by the Israeli aggressors against the Syrian Arab Republic."<sup>71</sup> "The U.S.S.R. continued to request the condemnation of Israel for its criminal

bandit activity against Syria."<sup>72</sup> The representative from India joined in with the denunciations of Israel's defiance of the U.N.

The Soviet representative charged that it was absolutely plain that Israel was continuing to advance on Syria and that condemnation was called for. This was buttressed by similar statements from the representatives of Bulgaria, Mali and India calling for immediate measures to halt this aggression.

The representative of Israel denied these charges and stated that Israeli forces were in Syria only to silence Syrian gun emplacements which had continued to bombard Israel in direct violation of the Security Council cease-fire resolutions.

Ambassador Goldberg insisted on awaiting the report of the Chief of Staff of the United Nations Truce Supervision Organization (UNTSO), General Odd Bull, on whether or not Kuneitra was in the hands of the Syrians or the Israelis. "When we get that information the Council will know what to do."<sup>73</sup> Goldberg stated that his Government believed that both sides had an obligation to comply with the cease-fire. But it was not appropriate to pass judgment merely on an allegation by one of the aggrieved parties.

Then a communication from the U.N. machinery in the area reported air attacks on Damascus.<sup>74</sup> Despite taunts

from the Soviet and Bulgarian representatives, Ambassador Goldberg insisted this was not a "comprehensive report on what is going on the whole area."<sup>75</sup>

Later, contradictory reports of both Israeli and Syrian action from General Bull stated: "there have been and are Israeli aircraft in the vicinity of Damascus; they are there as protective cover for the Israeli forces in the area" as well as indications of the Syrian shelling of Israel which Gideon Rafael had complained.<sup>76</sup>

Certainly this meeting pointed up the vital role of U.N. machinery in an area of conflict and the near-total dependence of the U.N. upon such machinery if they are to deal promptly and appropriately with dangerous cases of conflict.

Reconvening shortly after eight that same morning (June 10), the meeting began with another oral report by U Thant on developments in the area. The message read that air attacks were reported to the north of Damascus and in the area of its airport. Fedorenko jumped to the attack exclaiming:

The perpetration of the crime is proved. Nevertheless, in spite of this we are compelled to note the inexplicable position adopted by certain members of the Security Council, especially the representative of the United States. We have heard his explanation. We are forced to reject the attempt of the representative of the United States to confuse a clear situation. We cannot attribute objectively to him. . . .<sup>77</sup>



Again Caradon moved the Council off a stalemated dead-center by speaking very deliberately, succinctly and incisively to the crisis of the day. Reminding both Syria and the Soviet Union of their not-hours-old commitment to U.N. machinery and authentic, verified information, Caradon went on to meld their criticism and get the Council back on the track it belonged:

We should condemn in the strongest terms any breach of our call for a cease-fire. We should condemn in the strongest terms every breach of our call for a cease-fire. I would like to repeat that. . . . We should condemn any and every breach of the cease-fire, without exception.<sup>78</sup>

Certainly no nation which subscribed to the Charter could help but agree to this. The stand was irreproachable. Moreover, Caradon had the knack of lifting the scales from members' eyes:

We must not at this time lose sight . . . of our first and overriding purpose, the purpose on which we have all agreed and on which we have three times voted unanimously. Our first and overriding purpose is to stop the fighting and stop it at once. That is the purpose we have had from the start, and I believe that we shall concentrate, without diversion and without delay, all our effort on that main purpose.<sup>79</sup>

Immediately after this, Thant reported that General Odd Bull had been asked to meet Israeli Defense Minister General Moshe Dayan to discuss an effective cease-fire. Tomeh of Syria described additional Israeli aggressions, Keita of Mali called for the condemnation of Israel and Fedorenko of Russia threatened, with other peace-loving states to apply sanctions to Israel unless the aggressions

ceased. The Ambassador of Canada, George Ignatieff, proposed the strengthening of UNTSO (already suggested officially by both the U.S. and India) and the sending of a special representative of the Secretary-General to the area (first suggested by India). The Council adjourned on the news from the Secretary-General that real progress was being made toward implementing a cease-fire between Israel and Syria. Nonetheless, the U.S. was suspect in many eyes of hypocritically and quietly favoring its client-victor at this point.

At 9:00 P.M. that same evening (June 10) the Security Council met again at the request of the Soviet Union whose representative charged that Damascus was under air attack and that ground fighting had resumed. Again the problem was fragmentary reporting from the area from U.N. machinery due to limitations of size and less-than-complete freedom of movement. Again the same paradox presented itself: how to act on this basis? Kuneitra had changed hands. Military activity was continuing long after both states ostensibly had accepted the cease-fire. Should the Council consider condemnation, should it strengthen the U.N. presence, should it await further information, or pass another resolution?

Ambassador Goldberg countered the Soviet demands for condemnation and withdrawal with a draft resolution condemning "any and all violations of the cease-fire" and requesting that the Secretary-General order full investigation

of all reports of cease-fire violations and report to the Security Council. It also called upon the Governments concerned to issue "categoric instructions" to cease fire and military activities.<sup>80</sup> Lord Caradon's presence may be felt. Fedorenko then accused Goldberg of "some discomfort as he was facing the obvious fact of the flagrant violation by Tel Aviv of the cease-fire."<sup>81</sup> He went on to ask the U.S. representative: "Does he condemn the bombing of Damascus? Does he condemn the fact that the representative of Israel has been cynically misleading the Security Council?"<sup>82</sup> before offering to yield the floor for a response. Ambassador Goldberg responded by citing his draft resolution which condemned all cease-fire resolutions and with a question of his own for Fedorenko: "Is he prepared to condemn all the violations of the cease-fire confirmed by the Security Council in his report?"<sup>83</sup> While Fedorenko offered to answer Goldberg's query, in fact, he never did for there had been earlier breaches by Syria. Later, there arrived a report from General Bull: "No Arab breaches of the cease-fire."<sup>84</sup> The Council adjourned just before 3:00 A.M. the next morning.

Late Sunday evening the Council gathered for its 1,357th meeting in response to a Syrian charge of Israeli advances aimed at the Yarmuk River, a large tributary of the Jordan. General Odd Bull reported movement of Israeli tanks south of Rafid. While the Syrian representative

claimed Israeli military operations after the cease-fire had gone into effect, the Israeli representative retorted that there had been movement by military vehicles within the new truce lines, but no advance beyond them and that there was no fighting anywhere along the front lines.

The Soviet representative accused Rafael of stalling for time and ". . . trying by any means, with the support of Washington and certain others, to enable the Israeli army to take as much territory as possible."<sup>84</sup> Fedorenko again asked for quick and decisive Council action, for the cessation of hostilities, the unconditional withdrawal of troops ("the Security Council cannot permit Israel to enjoy the fruits of its aggression"),<sup>85</sup> and condemnation for Israel. Israel continues to defy the United Nations and Security Council resolutions, stated Fedorenko. Its aggressions and violations deserve condemnation as the Soviet draft resolution recommends and upon which the Soviets wanted a vote, he continued. The independence, sovereignty and legitimate rights of a member State are at stake. The Council should act energetically and without delay, concluded Fedorenko.

Again Caradon threw himself into the breach, but with typical discretion and acuity. After stating his understanding of the importance of this matter to the Syrian representative, Caradon said:



We have worked for a week for a cease-fire. We hope that we have achieved it. Anything which jeopardized that cease-fire would be a matter of the utmost gravity. . . .

. . . . .  
I suggest that what we can do, what we should do and what we must do is to make absolutely clear, tonight, now, that we insist that there should be no breach whatsoever, of the cease-fire and . . . that we in the Security Council would take the most serious and grave view of a breach of any kind.  
. . . . 86

Lord Caradon then suggested that since it would be dawn soon in the Middle East, the Council take a short recess to await fresh reports. Before the recess, the representatives of Mali, Egypt, and Bulgaria again demanded the condemnation of Israel and the immediate withdrawal of its armed forces. The representative of India repeated his earlier proposal for an immediate withdrawal to the positions occupied on June 4. The United States representative also voiced his support of the thrust of Caradon's argument.

After a brief recess, the Security Council at 3:00 A.M. unanimously adopted Resolution 236 (1967) of June 12, 1967. Here again Ambassador Tabor, President of the Security Council, was most instrumental, as usual, in the unanimous vote. In addition, Tabor introduced the draft resolution.

Briefly, the resolution: (1) condemned any and all cease-fire violations in keeping with Lord Caradon's earlier formulation; (2) requested the Secretary-General

to continue and report his investigations to the Council as rapidly as possible; (3) affirmed the demand for a cease-fire and specifically a prohibition of any forward military movements after the cease-fire; (4) called for the prompt return to cease-fire positions of any troops who may have moved forward subsequent to 1630 GMT, June 10, 1967; and (5) called for full cooperation with the Chief of Staff and observers of UNTSO specifically mentioning freedom of movement and adequate communications.<sup>87</sup>

The resolution was narrowly tailored to fit the broadest possible ground of the moment. No condemnation and no withdrawal were included, but then, a firm and unviolated cease-fire was essential before consideration of any other steps. The Syrian front was, for the most part, quiet thereafter.

The U.S.S.R. requested and was the first to speak at the 1,358th session of the Security Council convening on June 13. In a long position statement, Ambassador Fedorenko wove together a fabric which included strands of power politics, ideology, support for clients and the invocation of international law. "The aggression by Israel," said Fedorenko, "was aimed at changing the so-called balance of power in the Near-East." Ideologically, its purpose was to attempt to "undermine the national liberation movements of the Arab people and to weaken the progressive regimes in the United Arab Republic, Syria and other Arab

countries."<sup>88</sup> The Israel aggression in Soviet eyes, "was the result of a conspiracy of certain imperialistic forces primarily the United States, against the Arab states."<sup>89</sup> Occupation of Arab soil by Israeli military forces is "illegal, criminal, contrary to the United Nations Charter and the elementary principles of contemporary international law." The position of the Soviet Union, the Arab States, India, Mali and others "is based upon the well-known principle of international law that the aggressor should not be permitted to enjoy the fruits of his aggression."<sup>90</sup> The most elemental principle of international law should be respected, Fedorenko continued, and Israel should be condemned; her military forces should withdraw immediately and unconditionally behind the General Armistice lines in accordance with a draft resolution which Fedorenko presented. After quoting statements by Israeli Prime Minister Levi Eshkol and General Moshe Dayan of Israel which hinted at "expansionist plans," Fedorenko quoted a statement of Ambassador Goldberg concerning the firm U.S. commitment "to the support of the political independence and territorial integrity"<sup>91</sup> of all nations in the area and then asked

. . . if that statement of the representative of the United States is still valid, and if so, is the United States prepared to affirm that it is against the territorial claims of Tel Aviv?<sup>92</sup>

Ambassador Goldberg's response was lengthy in turn.

He reviewed official United States efforts to solve the various components which go to make up the Arab-Israeli problem, reviewed the depth of U.S. commitment in 1956 and the "even-handed" approach toward recent border problems which included the Security Council call for the Government of Syria to restrain raids launched from its territory and the U.S. vote approving the unanimous Council censure of Israel for the Es-Samu raid. He also reminded the Council of the Soviet Union's foot-dragging and charged over-dramatization in terms of the gravity of the early situation while the U.S. was calling "for urgent action by this council."<sup>93</sup> The inability of the Security Council to act between May 24 and June 5 and the incapacity of the Council to pass a simple cease-fire resolution during the first two days of hostilities were laid at the feet of "Soviet obstruction."<sup>94</sup> Goldberg then compared the Soviet proposal to running a film "backwards through the machine to that point in the early morning of June 5 when hostilities had broken out," with troops back on either side of a border without the buffer or a U.N. presence.<sup>95</sup> Rather, foundations for a broad new peace must be created in the Middle East; solutions must not be thought of as impossible, because "for many years, they have not been tried really seriously."<sup>96</sup> The Council had a responsibility and a chance to get at the deep-seated causes of all the three wars in the Near East:



It is necessary to begin to move, not some day but now, promptly while the memory of these tragic events are still vivid in our minds, toward a full settlement of all outstanding questions--I again repeat "all outstanding questions. . . ."<sup>97</sup>

Goldberg's hope was all-encompassing:

There are legitimate grievances on all sides of this bitter conflict, and a full settlement should deal equitably with all legitimate grievances and all outstanding questions from whatever side they are raised. In short, a new foundation for peace must be built in the Middle East.<sup>98</sup>

Goldberg also foresaw a continuing role for the Security Council:

. . . agreements between the parties on these profoundly contentious matters will take a long time, but the United Nations, speaking, through this Council, has an urgent obligation to facilitate them and to help build an atmosphere in which fruitful discussions will be possible.<sup>99</sup>

The United States proposal was comprehensive, sweeping, dramatic and perhaps too quick for those reasons as have been pointed out earlier. The Soviet resolution was narrower and more open in its favoritism of one party. Both apparently were difficult for the Council to accept.

The representative of Israel present at the meeting, Reginald Kidron, rejected the anti-Zionist speeches of the representatives of Jordan and Saudi Arabia and rejected the Soviet draft resolution as "negative and one-sided."<sup>100</sup> The Ambassador from Morocco, Ahmed Taibi Benhima, provided an insight into the depth of the Arab feeling towards Zionism which is a part of the problem, and Mohammed El-Kony, after castigating the U.S. for its alleged

involvement in the attack, urged the Council to pass the American draft.<sup>101</sup> Shortly thereafter the Council adjourned after rejecting a Soviet bid that its proposal be voted on immediately.

At the convening of the 1,360th Council session on June 14, Lord Caradon attempted to lend some balance to members' thinking. While recognizing representatives' responsibilities to express national policies and defend national interests, Caradon reminded them that they also "are charged with a much heavier obligation." People of the world look to this august body to

. . . make an effort to understand, to find common ground, to harmonize the actions of nations . . . to seek just and honorable solutions, to establish and keep a peace firmly based on international authority.<sup>102</sup>

Caradon asked for a "further supreme effort to work together" and asked diplomatically that faces be turned forward than backward: "In the hope that we can set out on the second phase of our work in a better spirit, I shall not go back over the past three weeks."<sup>103</sup> Then Caradon characteristically began to outline the specific rather than broad or condemnatory steps to be taken: (1) the area U.N. machinery should be strengthened; (2) Government House in Jerusalem with its records and communications equipment should be returned to General Bull and his staff by Israel; (3) the problem of civilian suffering and of new and larger numbers of refugees should be alleviated and a

U.N. investigation should be undertaken concerning Arab charges of Israeli pressure to coerce Arab civilians to leave their homes; and (4) that the Secretary-General depute a personal representative to help in restoring peaceful conditions, and that the Security Council should appoint a mediator to ". . . undertake discussions with the Governments concerned so that an immediate start can be made in setting the foundations for a just and lasting peace."<sup>104</sup> Throughout his speech, Lord Caradon never wavered in his own faith and constantly sought to replenish the faith of those who might have wavered in the ability of the United Nations to effectively discharge its obligations in trust.

Caradon's proposals were not acted upon. While surely they could not have been accepted except after deliberation and harmonization of views, there was little in them by themselves which could have caused rejection. Had they been accepted, possibly the unfolding process which culminated in resolution 242 (1967) might have been concluded more quickly.

Despite Roger Seydoux's statement as representative of France that "conquest by force of arms cannot confer the right to occupy a territory," France later abstained from voting on the Soviet draft on the basis that "we should work together to facilitate talks when the time comes which could lead to agreements acceptable to all

parties.<sup>105</sup> (Emphasis mine.)

But immediately thereafter, the Soviet Union draft resolution postponed from the last session, was put to the vote. Voting occurred by operative paragraphs. Concerning the key points--condemnation and withdrawal--only four members out of the fifteen Council members--Bulgaria, India, Mali and the U.S.S.R. voted for the first point, while the original four states were joined only by Ethiopia and Nigeria on the second point of withdrawal. No negative votes were cast. Instead, all other members abstained. This may be taken to indicate a variety of interpretations: the Soviet resolution was too unyielding and too closed to compromise; Council members had decided that Israel was not guilty of acts deserving condemnation; or, that though Israel deserved condemnation such an act was dissonant with the search for a just and lasting peace in the Middle East--a search which depended upon attitudes and the manner in which proposals resonated as upon anything else. Against a crystal-clear Soviet intention to ". . . oppose the United States draft resolution and vote against it"<sup>106</sup> because of its alleged accommodation to Israeli violations of the Charter, Council resolutions and international law, Ambassador Goldberg made clear his nation's "desire to accommodate our views to that of other members of the Council in the effort to find a common approach to the solution of this grave problem."<sup>107</sup>



One can hardly be surprised that the effort was unsuccessful since the U.S. refused to compromise on the points either of condemnation or unconditional withdrawal behind General Armistice lines--points on which Moscow would not compromise either. No other resolutions were then put to the vote.

Hours later, the Council reconvened and quickly and unanimously adopted Resolution 237 (1967) on June 14. Resolution 237 stressed the urgent need to spare the civilian population and prisoners of war in the Middle East from further suffering while considering that inalienable human rights are to be respected even during war and that the Geneva Convention relative to prisoners of war should be respected: (1) to ensure the safety, welfare and security of inhabitants of areas where hostilities occurred and to facilitate the return of those inhabitants who had fled since their outbreak; (2) recommended to all concerned Governments scrupulous respect of prisoners of war and civilians relative to the Geneva Convention of 1949; and (3) requested the Secretary-General to effectively implement the resolution and report back to the Security Council.<sup>108</sup>

Mutual exclusivity is an analytical term of haunting appropriateness here on certain of the major Soviet and United States points: unconditional versus conditional withdrawal by Israel troops is an example. Perhaps this is what led the representative of the Soviet Union to announce "the Security Council has in fact concluded its examination

of this problem at the present stage."<sup>109</sup>

The Council adjourned amidst wide rumors that the Soviet Union was about to request an emergency session of the General Assembly to continue the press for fulfillment of its goals.

There should be no misunderstanding by this time of our view concerning the Soviet Union's behavior during this period; certainly it was erratic when one compares the delaying behavior of May with the sense of urgency depicted in June. But we have not commented in great detail upon the behavior of the United States other than to describe it. At this point it may be instructive to examine briefly U.S. behavior during the 1956 Suez crisis to see what points emerge.

During the actual fighting in 1956, the United States submitted two draft resolutions, one to the Security Council and one to the first emergency special session of the General Assembly. U.N. Document S/3710, October 30, 1956 noted "that the armed forces of Israel have penetrated deeply into Egyptian territory in violation of the General Armistice Agreement . . ." and expressed its grave concern at this, but, most importantly to our examination, called upon "Israel immediately to withdraw its armed forces behind the established armistice lines."<sup>110</sup> Similarly, on November 1 the United States submitted a draft resolution to the first emergency special session of

the General Assembly (A/3256) which subsequently was adopted by the Assembly and became Resolution 997 (ES-I) on November 2, 1956. After expressing grave concern over "the disregard on many occasions by parties to the terms of the Israel-Arab armistice agreements of 1949," the French and British military operations in Egypt, and the interruption of the Suez Canal to traffic, urged "an immediate cease-fire" and an end to the movement of military forces and arms into the area. Again, most important to our purposes, A/3256 and 997 (ES-I) identically continued: "urges the parties to the armistice agreements promptly to withdraw all forces behind the armistice lines. . . ."

In introducing A/3256 on November 1, United States Secretary of State, John Foster Dulles, cited the many "expressions of hostility" by the Egyptian Government toward the Israel Government and reviewed the "somewhat laggard, somewhat impotent" U.N. action toward "the many injustices inherent in the Middle Eastern situation." But then he went on:

If, however, we were to agree that the existence in the world of injustices which this Organization has so far been unable to cure means that the principle of the renunciation of force should no longer be respected, that whenever a nation feels that it has been subjected to injustice it should have the right to resort to force in an attempt to correct that injustice, then I fear that we should be tearing this Charter into shreds, that the world would again be a world of anarchy.<sup>111</sup>

We need only contrast these resolutions and words

delivered during the U.N. proceedings in 1956 with the documentation provided above to witness that U.S. formal, official behavior in 1967 was radically different from that of 1956. Certainly we should note that the 1956 situation involved something of a betrayal of French, but especially British word and confidence to Dulles and especially President Dwight D. Eisenhower.<sup>112</sup> While the 1967 war was "cleaner" in the sense of Israeli involvement only and incredibly blundering Arab provocation including the Syria-based commando activity, Nasser's request for UNEF withdrawal (acted upon albeit too hastily by Thant), and his closure of the Straits of Tiran which lent to the Israeli claim of self-defense a sounder ring than the truly shallow case of 1956. Whether because of fear of another Viet Nam-type involvement, domestic pressures, previous commitments, the nature of the Russian involvement and consequent further polarization of the Middle East, or other unknown factors--we can only speculate--President Lyndon B. Johnson refused to direct U.S. policy to act in conformance with norms of international law previously espoused by the U.S. Government and applied to a similar situation of invasion following provocation. The United States had the chance to deviate from the legal norm concerning withdrawal in 1956 and it did not. It had a similar opportunity to deviate in 1967 and it did. President Johnson, unlike President Eisenhower, chose not to exert



influence upon Israel while it swiftly and decisively seized the territory of an Arab state.

Israel had gone this route once before in 1956 and, in the conflict between abidance with the U.N. resolutions or serving her perceived national interest chose, in 1967, the latter route. No longer would it be possible to fire shots into Israeli Jerusalem or possible to shell the suburbs of Tel-Aviv, to place aircraft, or possibly missiles in the Sinai closer to Jerusalem, more distant from Cairo; no longer would Syrian army units look down into Israel from the Golan Heights.

Israeli defense needs would be served as they had not been for nineteen years. Resolution 233 passed on June 6 was not acceptable to the Arabs because it did not label Israel as the aggressor nor call for her withdrawal. This, despite the Soviet Union's vote for the cease-fire adoption. On June 7, cease-fire Resolution 234 was passed unanimously.

Quickly, Jordan and Israel agreed to a cease-fire "provided that the other parties accept"<sup>113</sup> in the case of Israel and "except in self-defense"<sup>114</sup> in the case of Jordan. Egypt accepted the cease-fire on June 8 again with the same proviso for reciprocity. Since June 7 Israel troops had been rushing to the northeast front. Fears that the Security Council might successfully attempt to stop the attack and cause needless casualties and of Russian

intervention restrained Moshe Dayan from giving the final go-ahead until:

. . . 7:00 A.M. of June 9 . . . the go-ahead thus came nearly four hours after the representatives of Syria and Israel in the Security Council had formally accepted a cease-fire injunction.<sup>115</sup>

Syrian shelling of Israel had occurred in the prior days of the war and was reported on June 9 also. However, given the extent of the Israeli gains--the road to Damascus beyond Kuneitra, the Golan Heights and the headwaters of the Banyas and Dan Rivers<sup>116</sup>--it is difficult to resist the conclusion that in this instance Israel deliberately did not heed the cease-fire resolutions of the Security Council.

Adherence to international law is not deemed to imply jeopardizing the existence of the state; in this delineated instance Israel deemed this area to be one of vital interest and proceeded to take it, especially in light of the commando activities of 1966-67. On the other hand, Charter Nations are not to employ the use of force in settling disputes among nations, nor are they to decide themselves that compliance with U.N. resolutions is to occur only after the desired goals of war are achieved. The tension here concerning the timing and taking of the Golan Heights between self-interest and international law is an old and tragic one.

## NOTES

1. U.N. Document S/PV. 1347, June 5, 1967, pp. 17-20.
2. Ibid., p. 21.
3. SCOR 1347, June 5, 1967, p. 4.
4. Ibid.
5. Ibid., pp. 27-30.
6. Arthur Lall, The U.N. and the Middle East Crisis, 1967 (New York: Columbia University Press, 1968), pp. 47-48. We wish to acknowledge to the reader our personal indebtedness to Lall in this and succeeding chapters. Through his wide personal experience and profound scholarship, Mr. Lall has placed in his debt all students of 242's passage. Lall's book remains the classic and definitive work on the subject.
7. John Lawrence Hargrove, "Abating the Middle East Crisis Through the United Nations (and Vice Versa)," The University of Kansas Law Review (Spring, 1971), p. 367.
8. Winston Burdett, Encounter with the Middle East (New York: Atheneum, 1969), p. 119.
9. Yigal Allon, The Making of Israel's Army (London: Vallentine, Mitchell & Co., 1970), pp. 70-75.
10. Burdett, op. cit., p. 120.
11. The New York Times, June 6, 1967.
12. Ibid., June 7, 1967.
13. Foreign Broadcast Information Service, Daily Report No. 109, June 6, 1967; pp. BB 4-5. Hereafter cited as FBIS.
14. Security Council Resolution 233, June 6, 1967. See U.N. Document S/7935, June 6, 1967.
15. For a sample of charges, see FBIS, op. cit., pp. B2, B5-8.

16. S/PV. 1348, June 6, 1967, pp. 18-20.
17. Ibid., p. 27.
18. The New York Times, June 7, 1967.
19. SCOR, 1348, June 6, 1967, p. 3.
20. Ibid., p. 6.
21. Ibid., p. 7.
22. Ibid., p. 9.
23. S/PV. 1348, June 6, 1967, p. 17.
24. Ibid., p. 46.
25. SCOR 1348, June 6, 1967, p. 11.
26. Ibid., p. 22.
27. S/PV. 1348, June 6, 1967, p. 27.
28. S/PV. 1349, June 7, 1967, p. 17.
29. SCOR 1349, June 7, 1967, pp. 1-2.
30. S/7943, June 7, 1967.
31. S/PV. 1349, June 7, 1967, p. 16.
32. Ibid., pp. 16-17.
33. Security Council Resolution 234, June 7, 1967. See S/7940, June 7, 1967.
34. S/PV. 1350, June 7, 1967, pp. 13-15.
35. Ibid., p. 16.
36. Ibid., p. 17.
37. Ibid., p. 26.
38. The New York Times, June 8, 1967 offers a precise, hourly chronology of the resolution's passage and acceptance.



39. See for example the report in The New York Times, May 29, 1967, for an example of the situational elements in which one observer saw Washington tenuously and gingerly bound: "Mr. Johnson has hesitated to express even his sense of the gravity of the confrontation, fearing that the acknowledgment of tension would be misread in Cairo or Jerusalem as a signal that diplomatic efforts had been exhausted. The Israelis and American Jewish organizations through massive mail and telegram efforts have tried to push the President just a little further toward a firm commitment than he has been willing to go. Mr. Johnson, convinced that the Egyptians are really no more eager to fight a war than the Israelis, has been leading an equally delicate effort to balance pressure for the avoidance of a blockade against the risk that vigorous threats would only force the Soviet Union into giving Mr. Nasser greater support."
40. S/7945, June 7, 1967.
41. S/7947, June 7, 1967.
42. S/PV. 1351, June 8, 1967, p. 21.
43. S/7951 Rev., June 8, 1967.
44. S/7952 Rev. 1 June 8, 1967.
45. See President Johnson's announcement of a new high level committee to review and draft special policies for a "new peace" in the area reported by Max Frankel, The New York Times, June 8, 9, 1967.
46. S/PV. 1351, June 8, 1967, p. 31.
47. Ibid.
48. Ibid., pp. 33-35.
49. Ibid., p. 31.
50. Ibid., p. 32.
51. Ibid., pp. 33-35.
52. Ibid., p. 32.
53. Ibid., pp. 33-35.

54. S/7958, June 9, 1967.
55. Security Council Resolution 235, June 9, 1967. See S/7960, June 9, 1967.
56. S/PV. 1352, June 9, 1967, p. 27.
57. Ibid., p. 27.
58. Ibid., p. 41.
59. S/PV. 1353, June 9, 1967, p. 27.
60. Ibid., pp. 27-30.
61. Ibid., p. 31. See also The New York Times, June 10, 1967.
62. FBIS, Daily Report No. 112, June 9, 1967, p. BB4.
63. See the interesting account of an all night Politburo session in the Kremlin, The New York Times, June 9, 1967.
64. S/PV. 1353, June 9, 1967, p. 42.
65. Ibid., p. 46.
66. Ibid., p. 47.
67. Ibid., p. 82.
68. Ibid., pp. 99-101.
69. Ibid., pp. 102-3.
70. Lall, op. cit., pp. 81-82.
71. S/PV. 1354, June 10, 1967, p. 18.
72. Ibid., p. 21.
73. Ibid., p. 27.
74. Ibid., p. 36.
75. Ibid., p. 42. See the report by James Reston, The New York Times, June 11, 1967: "Israel's objective is perfectly clear. It is not trying to kill people, but it is determined to smash every enemy machine

that flies or rolls or fires shells near its territory. For this it needed time--not much--but some--and it has talked at the United Nations endlessly, because every argument has meant a few more Syrian tanks or planes destroyed. The United States is asking for a detailed and verified report on 'the facts' in the Israeli-Syrian war, which it knows will give the Israelis time to knock out the Syrian guns and bring the last of the Arab states into line by threatening the capital of Damascus." However, another report the next day (not by Reston) stated: "The administrations' greatest pressures to have Israel halt the fighting did not develop until Friday while the Israelis were making their final bid to seize high grounds in Syria." The New York Times, June 12, 1967.

We cannot disregard the attitude of the Johnson administration which can only be described as more sympathetic to the Israelis than to the Arabs. But we cannot determine how far that sympathy went, or what forms it took. It is conceivable that the United States took passive satisfaction in its client's success and ability to handle itself and chose not to exert pressure. However, upon the threats to world peace which grew out of the Syrian invasion, the Johnson administration chose to exert pressure in order to help cool down the Soviet threats and rhetoric.

76. S/PV. 1354, June 10, 1967, pp. 63-65.
77. S/PV. 1355, June 10, 1967, p. 6.
78. Ibid., p. 27.
79. Ibid., pp. 28-30.
80. S/PV. 1356, June 10, 1967, p. 46.
81. Ibid., p. 61.
82. Ibid.
83. Ibid., pp. 62-65.
84. Ibid., p. 107.
85. S/PV. 1357, June 11, 1967, p. 26.
86. Ibid., pp. 28-31.
87. Security Council Resolution 236, June 12, 1967.

88. S/PV. 1358, June 13, 1967, p. 11.
89. Ibid.
90. Ibid.
91. Ibid.
92. Ibid. Facing failure in its attempt to have the Security Council pass a resolution on an Israeli withdrawal, the Soviet Government at this time made known its wishes for an emergency session of the General Assembly. The New York Times, June 14, 1967.
93. Ibid., pp. 43-45.
94. Ibid., p. 47.
95. Ibid., pp. 48-50.
96. Ibid., p. 52.
97. Ibid., p. 52.
98. Ibid.
99. Ibid.
100. SCOR 1358, June 13, 1967, p. 23.
101. Ibid., p. 31.
102. S/PV. 1360, June 14, 1967, p. 6.
103. Ibid., pp. 7-10.
104. Ibid., p. 16.
105. SCOR 1360, June 14, 1967, p. 7.
106. S/PV. 1360, June 14, 1967, p. 91.
107. Ibid., pp. 93-95.
108. SCOR 1361, June 15, 1967.
109. S/PV. 1361, June 15, 1967, pp. 58-60.
110. S/3710, October 30, 1956, p. 110.



111. U.N. GAOR, 1st Emer. Spec. Sess. Plenary Meetings and Annexes, 561st meeting, p. 10.
112. See Kennett Love, Suez: The Twice-Fought War (New York: McGraw-Hill, 1969), p. 503.
113. S/7945, June 7, 1967.
114. S/7947, June 8, 1967.
115. Nadav Safran, From War to War: The Arab-Israeli Confrontation 1948-1967 (New York: Pegasus, 1969), p. 375.
116. See The New York Times, June 10, 1967.

The United Nations Security Council Resolution of  
November 22, 1967: International Politics and  
Law in an Organizational Setting. (May 1972)

John F. Kikoski, Jr., B.A., Wesleyan University

M.A., University of Massachusetts

Directed by: Dr. Ferenc Vali

ABSTRACT

The treatment of this topic is designed to show how the United Nations was employed in a situation of crisis and to trace the interactions of states, international law and organization which culminated in the passage of Resolution 242. Our three foci of investigatory interest are political, legal and organizational. We have sought to allow each approach its position in accordance with their salient or secondary natures at different junctures in the institutional playing-out of this crisis.

A realistic study of the relationship between these factors would begin with a review of the policies and behavior of the area and superpower states which were parties to the crisis. Our particular concentration here is upon the upswing toward war. Our framed reference is chiefly political. The Arab-Israeli conflict is one whose elements are of long standing. The next section treats each issue

of this conflict in its legal form and explores the case which each of the direct parties makes, and whose conflicting tension is reflected in the United Nations and its resolutions. The third section traces the activities which occurred in the United Nations from the period prior to the outbreak of war through November 22, 1967. Here we are concerned with the relationships between states, international law and organization in the unfolding interplay which led up to the adoption of Resolution 242. The concluding section expectedly summarizes and draws judgements upon the points presented earlier.

Our central view is of the United Nations as a vehicle or instrument of political conflict or its resolution. Although the United Nations has been used as a vehicle or tool of great power policy in the past to manage or contain crises, this was one case in which the situation slipped out from under great power control and posed an obstreperous life of its own before the passage of Resolution 242 which suggested the general outlines for a potential peace settlement.

C H A P T E R   I V  
THE FIFTH EMERGENCY SPECIAL SESSION OF  
THE GENERAL ASSEMBLY

A letter from the Minister of Foreign Affairs for the U.S.S.R. to the Secretary-General on June 13, 1967 requested the prompt convening of an emergency session of the General Assembly. The grounds stated were that Israel had seized additional Arab territory despite the resolutions of the Security Council calling for a cease-fire. Therefore, under Article 11 of the Charter, the General Assembly should convene to consider the situation and to act to liquidate the fruits of "aggression" and to bring about the withdrawal of Israeli forces behind the Armistice lines.<sup>1</sup>

The fifth emergency special session of the General Assembly convened on June 17, but actually did not get down to business until June 19. Between then and July 5, 1967, 25 meetings were called and 7 draft resolutions were put before the Assembly. Of these, two were adopted and were concerned with humanitarian assistance and refugees, and with unilateral Israeli changes in the status of Jerusalem. All but one of the remaining five draft resolutions were voted upon and rejected. Between July 5



and July 12, the General Assembly recessed and the Security Council met to hear mutual cross-charges by Israel and the United Arab Republic concerning violations of the cease-fire resolutions.

When the General Assembly reconvened on July 12 further discussion of the noncompliance of Israel with the previous Assembly resolution was discussed and another, stronger resolution relating to the status of Jerusalem passed. Further discussions proved sterile and on July 21, by Resolution 2256 (ES-V), the body decided to temporarily adjourn the special session and to request the Secretary-General to forward Assembly records to the Security Council so as to facilitate resumption by the Council as an urgent matter. The Assembly then adjourned until it reconvened on September 18, 1967 when it adopted Resolution 2257 (ES-V) expressing concern over the Middle East situation and placing the matter on the agenda of the twenty-second regular session as a matter of high priority.

As befits the superpower which sought the emergency session attended by many Heads of Government and Ministers for Foreign Affairs, the Chairman of the Council of Ministers of the Soviet Union, Alexei Kosygin, on June 19 led off the speakers. Chairman Kosygin began by explaining that the Middle East could explode again so long as Israeli troops occupied conquered Arab lands and urgent measures were not taken to eliminate the consequences of aggression. It is up

to the Assembly to adopt those decisions which might open the way to peace in that area. Speaking to the small nations which comprise the bulk of the voting members of the Assembly, Kosygin noted:

. . . there are many regions of the world where there are bound to be those eager to seize foreign territories, where the principles of territorial integrity and respect for the sovereignty of States are far from being honoured. If Israel's claims do not receive a rebuff today, tomorrow a new aggressor, big or small, may attempt to overrun the lands of other peaceful countries . . . whether the United Nations will be able to give a due rebuff to the aggressor . . . gives rise to anxiety on the part of many States from the point of view of their own security.<sup>2</sup>

This smooth blending of law, self-interest, the role of the United Nations and the age-old fear of the small, born of their vulnerability certainly found resonances with some smaller nations. Kosygin also tried to broaden and polemicize the point by stating that Israel did not act alone; that the aggression was aimed at toppling the national independence regimes of the U.A.R. and Syria which "evoke the hatred of the imperialists."<sup>3</sup>

Chairman Kosygin repeated in a legal form the main points of the just-ended Security Council debates:

The Arab States, which fell victim to aggression, are entitled to expect that their sovereignty, territorial integrity, legitimate rights and interests which have been violated by an armed attack, will be reconstituted in full and without delay.<sup>4</sup>

In keeping with its general line of Security Council days, the draft resolution which the Soviet Union introduced<sup>5</sup>

called for the (1) vigorous condemnation of "Israel's aggressive activities" and continuing occupation of Arab lands which constituted "an act of recognized aggression"; (2) demanded that Israel "should immediately and unconditionally withdraw . . . its forces . . . behind the armistice demarcation lines . . . and should respect the status of the demilitarized zones, as prescribed in the Armistice Agreements; (3) in a new point, demanded full and rapid restitution by Israel for its aggression against the aggrieved Arab States and their nationals and "should return to them all seized property and other material assets"; and (4) in a surprising point appealed for continued use of the Security Council to "take . . . immediate effective measures in order to eliminate all consequences of the aggression committed by Israel."<sup>6</sup>

The last two points were novel and while (3) might be dismissed as an upset over \$2 billion loss of Soviet military equipment in the Sinai alone, (4) merited attention as a hopeful indicator. The Soviet Union apparently had not totally excluded the Security Council as an appropriate and useful channel for possible action in the future. If we add to (4) another statement of Kosygin's that should the General Assembly:

. . . find itself incapable of reaching a decision in the interests of peace, this would deal a heavy blow to the expectations of mankind regarding the possibility of settling major international problems by peaceful means, by diplomatic contacts and negotiations. No

state which genuinely cares for the future of its people can fail to take this into consideration. The peoples should rest assured that the United Nations is capable of achieving the aims proclaimed in its Charter, the aims of safeguarding peace on earth.<sup>7</sup>

Coming at the very conclusion of Kosygin's speech before the General Assembly, this was no mistake; Soviet commitment to the United Nations was remaining in this affair. This was a welcome sign. Another such sign was the Soviet awareness of the dangers of civilizational conflagration:

The problem concerns war and peace period. In the present tense international situation, hours or minutes can settle the fate of the world. Unless the dangerous developments in the Middle East . . . are curbed, if conflicts are permitted to spread, the only possible outcome today or tomorrow would be a big, world war. And no single State would be able to remain on the sidelines.<sup>8</sup>

On top of this conscious restraint on the world-wide level came a statement of restraint on the area level concerning recognition and enunciation of Israel's right to exist: "every people enjoys the right to establish an independent national State of its own. This constitutes one of the fundamental principles of the policy of the Soviet Union."<sup>9</sup>

A final positive note was sounded when Kosygin noted:

Much depends on the efforts of the big Powers. It would be good if their delegations as well found a common language in order to reach decisions meeting the interests of peace in the Middle East and the interests of universal peace.<sup>10</sup>



The Russian view here was based on the primacy of Israeli aggression. Working off of this condemnation, withdrawal and even restitution were requisite in Russian eyes in terms of international law if only the "use of force" according to Article 2 is accepted. The fact that Kosygin did not rule out further use of the channel of the United Nations and indicated a willingness to find a "common language" with the U.S. was a hopeful sign. However, the case was not so clear, for the Charter also rules out "threats" to use force. And the Arab states themselves had ruled out their total exoneration on this count by their many threats against Israel prior to the actual outbreak of fighting. On June 4, for example, in a live speech broadcast domestically, Nasser told the Israelis: "we are facing you in the battle and are burning with the desire for it to start, in order to get revenge for the 1956 treachery."<sup>11</sup>

The Russian case here may be perceived on three levels: (1) a selective appeal to the precepts of international law to eliminate the reward of aggression; (2) a supportive commitment to the position of Arab states with which, as we shall see, the Russian position was not exactly consonant; and (3) a shielded indication of the U.S.S.R.'s willingness to seek an accommodation of some sort on a superpower level built upon a continued commitment to the existence of the state of Israel. What

appears to emerge from this position is not so much a commitment to international law as a desire to satisfy the Arab states while avoiding the escalation into worldwide holocaust which was so much evident in Kosygin's statement. As the vote on it ultimately demonstrated, the Russian draft resolution was too partisan to gather the required two-thirds vote.

The Yugoslav draft resolution was delivered to the Assembly by that country's Prime Minister, Mika Spiljak. As a communist, albeit independent state and a firm friend especially of the U.A.R.'s Gamal Abdul Nasser, the Yugoslav resolution called for Israel's immediate and unconditional withdrawal on the basis that:

Any other approach would actually be tantamount to a rewarding of the aggression and a sanctioning of attempts aimed at solving disputes among States by force.<sup>12</sup>

This was justified on the grounds that:

One cannot tolerate the realization of territorial and other pretensions through the use of force, nor is it permissible to employ this expedient to impose political solutions violating the sovereignty, territorial integrity and independence of States. . . . Solutions founded on coercion . . . are not even durable. In this case, too, such solutions would give rise to general indignation, hatred and resistance, which inevitably leads to new and more serious conflicts, and is fraught with dangers to world peace.<sup>13</sup>

Israeli indemnification too was called for, but only in the speech, not the draft itself. This provides an insight into the attitude of one of the drafters.

The obligation of indemnification stems from the responsibility of those who have committed aggression to offer just compensation to the victims of their attack.<sup>14</sup>

Similarly to the Soviet position, and in contradistinction to that of the Arabs, the Yugoslav view recognized the existence of Israel: "we had maintained, until the recent events, normal relations with Israel, whose existence we have never questioned."<sup>15</sup> But where it was in conformity with the Soviet and Arab view of unilateral Israeli recourse to aggression, in contrast to these views, the Yugoslav draft at least mentioned negotiations:

There can be no negotiations prior to execution of the withdrawal, nor can there be any search for arrangements that would otherwise be necessary for the long-term stabilization in the Near East and securing of the independence and territorial integrity of the countries of the region, as long as the forces of the aggressor are not withdrawn from the occupied territory.<sup>16</sup>

The original version of the draft resolution introduced on June 28 was sponsored by Afghanistan, Guinea, India, Indonesia, Kenya, Malaysia, Mali, Pakistan, Somalia, Tanzania and Zambia in addition to Yugoslavia. Revised texts were introduced on June 30, July 1 and July 3 with Senegal and Cambodia having joined the list of sponsors.

In its final version, what came to be termed as the 17-Power or Nonaligned draft called for: (1) Israel's immediate withdrawal of its forces to the positions they held prior to June 5, 1967; (2) requested the Secretary-General to ensure compliance with the resolution and to secure, with

the aid of the Security Council-established UNTSO, the strict observance by all parties with the General Armistice Agreements; (3) further requested that the Secretary-General designate a personal representative to assist him in compliance with this resolution and to be in contact with the concerned parties; (4) called upon all States to assist the Secretary-General in every way possible in implementing this Resolution in accordance with the United Nations Charter; (5) requested the Secretary-General to urgently report on compliance with this resolution to the General Assembly and Security Council; and (6) requested that the Security Council consider all of the Middle East situation and seek peaceful solutions of all the problems--legal, political and humanitarian--through appropriate channels guided by those principles contained in Articles 2 and 33 of the Charter.<sup>17</sup>

This appeared to have a better chance of passage than the Soviet resolution. The sheer fact of sponsorship alone was significant; the center of voting gravity had shifted in the United Nations toward this bloc of third-world States which were the principal sponsors. The resolution coupled immediate and unconditional withdrawal with more openness toward a negotiated settlement of long-standing grievances; it spoke of intermediately utilizing UNTSO and a personal representative of the Secretary-General (in accordance with the suggestion made earlier by India) to



begin contact with the parties; condemnation was not required in the actual draft resolution itself. In this and its other provisions, this was more proximate to the Arab goals and case, though less partisan than the Soviet proposal. Finally, the strong emphasis on immediate and unconditional withdrawal assuaged and appealed to the national interests of small and vulnerable new nations while being in exact accordance with a strict definition of international law and certainly the principles embodied in the Charter.

The Arab position, like the Israeli one to be examined below, was unto itself and though certainly related to the Soviet position, was not an exact identity. Condemnation and a call for the immediate and unconditional withdrawal of Israeli troops were accompanied by an uncompromising stand against negotiations with Israel of any sort--direct or indirect--an element of inflexibility missing at least in kind from the Soviet position which spoke gradually of negotiations on a big power level and the 17-Power draft which ruled out negotiations, but only until withdrawal occurred. Jamil Baroodi, Ambassador to the United Nations from Saudi Arabia, in many points, one of Washington's best Arab friends, underlined this in his remark that:

The Arab world cannot accommodate Zionism in our midst. It is not a question of thousands of official

statements. . . . If our leaders did not reflect the mood of the Arab people, they would not remain leaders. This is something which should be noted by all countries, especially the Western countries which were instrumental in creating Israel. They have forgotten that this artificial State has destroyed the indigenous people of Palestine.<sup>18</sup>

Dr. Nouredin Atassi, Chief of State of the Syrian Arab Republic dug this unrelenting position even deeper.

After noting that:

. . . when Syria and Israel agreed to the cease-fire ordered by the Security Council, the Israeli forces of aggression had not yet occupied one iota of Syrian territory. It was after we informed Secretary-General U Thant that we had ceased fire as from 1630 GMT, 10 June, that the Israeli invasion of our territory began.<sup>19</sup>

Atassi then sought to broaden his appeal both by referring to the imperialists who wish "to seize the raw material [oil] of our homeland" and by calling up images of the "law of the jungle" to smaller nations.<sup>20</sup> Atassi pointed out that: "if we accept that logic, the result would be that we admit the right of the stronger to conquer the lands of the weaker and retain them by force."<sup>21</sup> Atassi concluded with a blending of self-interest, the compatible self-interest of others, and an appeal to international law, and organization:

The problem does not belong to the Arabs alone, but to every individual in the international community whose country may one day be the victim of an invasion. To condemn, therefore, the aggression, to liquidate its fruit and to punish the aggressors not only is a victory for the Arab people, who are the direct victims, but it is a victory for International Organization, for the principles of the United

Nations and for all great and noble human values.<sup>22</sup>

Despite this attitude which shall be of major import later, Dr. Atassi supported the Soviet draft resolution. Moreover, there certainly was no recognition of Israel's right to exist, as Kosygin had spoken of it.

This general stand was reiterated, though in more cautious and moderate tones by the experienced and able Mahmoud Fawzi, Deputy Premier of the United Arab Republic. The Prime Minister of Sudan, M. A. Mahgoub, specifically spoke to the Israeli claim to right of passage through the Straits of Tiran and Gulf of Aqaba. He pointed out that if Israel could calm the legitimate exercise of her right to belligerency, in June, 1967, Egypt also had a right to a belligerent act--to close the Straits of Tiran to enemy ships and cargo.<sup>23</sup> He too noted the Israeli occupation of Elath about one month following the General Armistice Agreement between Egypt and Israel. Mahgoub went on to point out that Israel's massive attack was not within the intent of the U.N. Charter's Article 51, since Israel had not in point of fact been subjected to armed attack. He too pressed for immediate Israeli withdrawal, but appeared more to favor the Soviet leaning toward compromise than to the Syrian view, for example, of no compromise with Israel.

Thus the Arab position seemed to be comprised of full and unconditional withdrawal, condemnation of Israel and

restitution--in full agreement with the Soviet Union. But the Arabs diverged from the Soviet Union by taking a much harder stand in general against negotiations stemming, one expects, from their deep feelings of betrayal and injustice of repeated and decades standing. Even Habib Bourguiba, Jr., of Tunisia, a nation hardly noted for its inflexibility toward this problem, clearly stated:

Although we continue to believe that war can offer no solution for any problem, we likewise believe that it is dangerous to drive a people to despair, to force them to consider the problem of their survival and their freedom only in terms of violence.

. . . . .  
Some may consider that they have won the war. They are mistaken. Violence is but a provocation to violence, and the pernicious logic of war can be demolished only by redress of the injustice.<sup>24</sup>

If one reads these carefully, one can apply these remarks to the Israeli as well as the Arab side, a tragic commentary on the reciprocity of the situation, though this may not have been intended. Bourguiba continued:

It is only a return to the status quo ante bellum that will make possible an examination of the chances for a solution. That solution cannot possibly be a part of the booty of war or the consequences of a diktat. The evacuation of the occupied territories is a condition sine qua non of any prospect for a peace.<sup>25</sup>

Bourguiba, Jr., then went down the line on the points of condemnation, and repatriation, but immediately tempered it by his hope that:

. . . being equally responsible for both the origins and the subsequent development of a situation that has constantly deteriorated . . . is it possible to hope that the great powers may concert their efforts today



for the purpose of opening up new prospects for a durable . . . peace based on the restoration of the right of the Palestinian people to their homeland and their dignity.<sup>26</sup>

King Hussein of Jordan in the cadence of his prose was perhaps more qualified to speak of the plight of the Palestinian people than any other official national representative permitted to speak before the Assembly. Hussein not only ended, but began with the sense of injustice felt by the Arabs and Palestinians:

Today's war is not a new war, but part of the old war, which will go on for scores of years if the moral and physical wrong done to the Arabs is not righted.<sup>27</sup>

This brave monarch spoke not of legal niceties, or national interests, but certainly from his own heart and those of many of his people when he stated to the Assembly:

If there is one military lesson to be learned from the recent battle, it is that victory goes to the one who strikes first. This is a particularly ironic and dangerous lesson to be established. But one way of establishing it is to reward the aggressor with the fruits of his aggression. The members of this Assembly should ponder well this point, or they will surely risk setting a precedent which will haunt these halls and the world for decades to come.<sup>28</sup>

Or again:

Should this aggression not be condemned and should the return of all our lands be delayed any further . . . Jordan will still survive. Ground down by sorrow for the moment, we will rise again. And with us will arise the Arab Nations. It is apparent that we have not yet learned well enough how to use weapons of modern warfare. But we shall if we have to. The battle which began on June 5th will then become only a battle in what will be a long war. The political state of David and Solomon lasted only 70 years. That of the crusaders just under 100. It might be well for Israel to re-read its history.<sup>29</sup>

The Arab position was similar to a montage in some respects by the very division of the Arab world into disparate, sovereign parts. From the unrelenting stand of Syria to the more conciliatory one of Tunisia, variation was in evidence. But if there were then unities to the total position, they lay in the Arab demand for condemnation and withdrawal of Israel and a unanimity on the necessity to recognize the injustice committed and continually perpetrated upon the Arab people of Palestine. The Yugoslav resolution not only had a good chance of passage, but incorporated the key Arab demand: immediate and unconditional withdrawal. This was necessary before any other aspect of the issue could be examined. If, said Arab representatives, the aggressor is permitted to keep these fruits of aggression, this would encourage other states to strike first, to use force, to expand at will and endanger the territorial integrity and political existence of neighboring states--contrary to the very basis of international law. The foundation not only of international law, but organization would then be violated and endangered. There was a legal and United Nations precedent for withdrawal, but this was not being insisted upon in 1967 as it was in 1956.

Sadly, while they railed against the illegality of the Israeli use of force, there was no mention of the Arab threats to use force--equally illegal under Charter Article 2. Reciprocity is also fundamental to law. Whether

one believes that Nasser deviously meant to attack Israel in league with a malicious Moscow, sought to use the presence of force to gain a diplomatic victory but still was confident to test Arab armed forces against those of Israel if it came to that, or as a character in search of a role, this time stumbled upon an improvisational, unwritten scenario whose major content was bluff than actuality and whose outcome was hoped to be more peaceful than warlike--whatever line one's attitude leads him to selectively accept or reject, the reality of Arab threats--by act and word--to force and to the peace cannot be denied.<sup>30</sup> One can plead that they meant what one said or that Arab rhetoric should be kept in context, but if one is to apply a strict interpretation to use of force, the same is only fair for threats.

Here politics truly intrudes upon the legal milieu. Arabs saw the war as merely another in a long series of immoral expansions by a state never welcomed into the area; whose creation to house refugees to right the immemorial wrong of European anti-semitism, especially after World War II, committed a wrong against the right of immemorial inhabitants of Palestine by not permitting them to return and thus creating new refugees; a state whose ideology was exclusivist and alien to the Middle East; whose support by the imperialist powers was proof of a desire to perpetuate and extend imperialism by new means; and which now, by its

actions threatened the territorial integrity of neighboring states in a manner which violated international law and flouted respect for the United Nations. The State of Israel itself was a bitter fruit to the Arabs, a construction whose essence and creation was a denial and derogation of the rights of others.

In this context the threat and use of force was felt justified by Arabs in the effort to reestablish the legitimate state in Palestine. But this does not help to establish or reestablish the rule of law in this region concerning this problem. Perhaps this is both the strength and flaw of international law in this situation--that it cannot, but is being used to legitimate two different outcomes to a single problem. On the more specific point, however, it was not the principle of withdrawal which was at issue at this time, but whether it should be conditional or unconditional and to which territorial point it should occur.

The next position to be examined is that of the United States. The American position essentially was based upon the "five principles" of President Lyndon Johnson:

Our country is committed--and we here reiterate that commitment today--to a peace that is based on five principles:

First, the recognized right of national life.

Second, justice for the refugees.

Third, innocent maritime passage.

Fourth, limits on the wasteful and destructive arms race.



And fifth, political independence and territorial integrity for all.<sup>31</sup>

Like the Soviet representative, Ambassador Arthur Goldberg basically recapitulated his Security Council position. Recounting that the basic reason for the past decades of crisis in the Middle East was the failure of the parties to deal with the underlying causes of tension, Goldberg asked that these causes finally be grappled with and a permanent, not "band-aid" type solution be sought. Recounting the United States view of how the current crisis unfolded, Goldberg spoke of how the "major insulator" for peace in the Middle East, UNEF, "was stripped away";<sup>32</sup> how peace, then held by a thread as the Secretary-General journeyed to Cairo and the Security Council vapidly debated, was stymied. Concerning the start of the war, Ambassador Goldberg said only: "Early on June 5 the thread of peace was broken,"<sup>33</sup> and then went on to deny charges that the United States obstructed the activity of the Security Council and countered by referring to his country's willingness to accept a cease-fire without debate and without delay right up through the fighting on the Syrian front. Other states obstructed, bickered and falsely accused the United States of military intervention on the side of Israel. The previous day the Soviet Union had introduced before the General Assembly a draft resolution which was "essentially the same as that . . . which the overwhelming

majority of the Council refused to accept."<sup>34</sup> The representative of the United States then repeated his earlier simile about how under the Soviet proposal: "the film is to be run backwards through the projector" such that all the tinder which had previously caused war shall be present in the same places again.<sup>35</sup> This, said Ambassador Goldberg, was not the way to get at the grievances which had caused three wars in nineteen years. The United States proposed its own draft resolution toward the striving for real peace. Hopefully this would prove the basis for real peace rather than just renewed hostilities.

The United States draft resolution bore in mind the previous cease-fire resolutions and invoked regard for the purpose of the United Nations--to harmonize the actions of nations. Substantive paragraphs: (1) endorsed previous cease-fire and called for their scrupulous respect; (2) set the objective of the General Assembly as a "stable and durable peace"; (3) considered that this should be achieved by means of "negotiated arrangements with appropriate third-party assistance" based on: (a) "mutual recognition of the political independence and territorial integrity of all area countries" to include those steps that will give them security against terror, destruction and war-- "disengagement and withdrawal of forces," (b) freedom of innocent passage," (c) a "just and equitable solution of

the refugee problem," (d) "registration and limitation" of arms shipments to the Middle East, and (e) "recognition" of the right of all sovereign nations "to exist in peace and security."<sup>36</sup>

The United States proposal remained as long-term and broad as ever and even more so with the addition of area arms-limitations. While inclusion was made of the alternative third-party assistance in negotiations, there was no mention of specific steps to reduce tensions or to help bring the concerned parties to that stage. Most importantly, while disengagement and withdrawal was called for, there was no mention of the point to which the parties should withdraw and no call for unconditional withdrawal: the Israel Government would still be free under the United States formulation to link withdrawal to other conditions--to use fruits of their conquest to extract peace terms favorable to itself as the Arab states.

It is worth quoting the operative paragraph 3(a) of the draft resolution itself:

Mutual recognition of the political independence and territorial integrity of all countries in the area, encompassing recognized boundaries and arrangements, including disengagement and withdrawal of forces, that will give them security against terror, destruction and war.<sup>37</sup>

We should note that this is quite an expansion upon President Johnson's original statement of June 19 which simply read ". . . fifth, political independence and

territorial integrity for all."

Finally, it appeared that the formula for negotiations called for in the U.S. draft resolution placed too much implicit stress upon potential face-to-face negotiations to be acceptable to the Arabs. Moreover, it was premature to call for them at this early stage. The United States formulation remained as broad in its long-term orientation as the Soviet proposal remained narrow in its short-term orientation.

While full of long-term goals which were worthy of ultimate realization, the United States position was devoid of those shorter-stepped, nearer goals which help get to the more distant ones. In addition, this administration, unlike a previous one, more highly respected Israel's perception of her vital interests in that complex interplay of legal principle, national interests and pragmatic reality termed decision-making.

Abba Eban, Minister for Foreign Affairs of Israel, pleaded the Israeli case with his usual eloquence. His case began with the de facto and de jure existence of the State of Israel--a fundamental point of denial by the Arab Governments. Foreign Minister Eban found the single and "true origin of the tension which torments the Middle East "to lie in the fact that:

Israel's right to peace, to security, to sovereignty, to economic development, to maritime freedom--indeed,



its very right to exist--has been forcibly denied and aggressively attacked.<sup>38</sup>

After a long outline of Arab-Israel relations since 1948, Eban reviewed the chronology of events in May-June, 1967 denying the charge of troop concentrations,<sup>39</sup> severely criticizing U Thant's accession to Cairo's request for the withdrawal of UNEF and citing numerous instances of the verbalized Arab intent to destroy Israel. Of UNEF itself and similar international peace-keeping forces, Eban said:

Israel's attitude to the peace-keeping functions of the United Nations has been traumatically affected by this experience. What is the use of a fire brigade which vanishes from the scene as soon as the first smoke and flames appear? Is it surprising that we are resolved never again to allow a vital security to rest on such a fragile foundation?<sup>40</sup>

Turning to the question of the Straits of Tiran, Eban stated:

The blockade is by definition an act of war . . . never in history have blockade and peace existed side by side. From May 24 onward, the question of who started the war or who fired the first shot became momentarily irrelevant. There is no difference in civil law between murdering a man by slow strangulation or killing him by a shot in the head. From the moment the blockade was imposed, active hostilities had commenced and Israel owed Egypt nothing of her Charter rights.<sup>41</sup>

This certainly was a rejection of the three-power draft which called for the parties' compliance with the General Armistice Agreements and of Kosygin's charge of aggression. Eban noted:

So on that fateful morning of 5 June, when Egyptian forces moved by air and land against Israel's western coast and southern territory, our country's choice was plain . . . our nation rose in self-defense.<sup>42</sup>

Forcefully accusing the U.A.R., Syria and Jordan of aggression, Abba Eban then turned to the Soviet Union. After detailing the Soviet's contribution to the area arms race and charging Russia with an alarmist, then obstructive role in the latest crisis, Eban reviewed the Security Council use of the Soviet veto in the interest of the Arab states and concluded that:

The Council has become a one-way street. . . . The consequences of the Soviet policy have been to deny Israel the possibility of just and equitable treatment in the Security Council, and very largely to nullify the Council as the constructive factor that it should be in the affairs of the Middle East.<sup>43</sup>

After accusing the Arab states of shattering the whole "fabric and texture" of post-1958 interstate relations, including Armistice Agreements, UNTSO and the MAC's, and the old demarcation lines, Eban urged that the concerned states look not backward, but forward. He urged that they withdraw from acts of belligerency and a state of war, and advance toward a negotiated peace of recognition, agreed frontiers and security arrangements. He called for a final peace, and promised "durable and just solutions,"<sup>44</sup> but then returned to the terms always unacceptable to the Arabs of face-to-face negotiations, Arab recognition of Israel and a broad hint that the Old City of Jerusalem

would not be returned to Jordan, given a peace settlement.<sup>45</sup> Further, Eban asked the Great Powers to "remove our tormented region from the scope of global rivalries," advised other small nation-members of the Assembly that "experience . . . teaches us that small communities can best secure their interests by maximal self-reliance"<sup>46</sup> and asked even the United Nations "to respect our independent quest for the peace and security which are the Charter's higher ends."<sup>47</sup>

In apposition to the Arab's denial of recognition, Eban asserted Israel's right to exist. As a member of the United Nations and of the community of nations, Israel had a right, asserted Foreign Minister Eban, to exist and to act to ensure the lives and security of its citizens, especially in this Charter age. Certainly this is a basic right accorded recognized States in international law. The blockade was set in a legal context and termed not another aspect of belligerency, but a provocative act of war aimed at a vital interest which justified a military operation of self-defense. Israeli distrust of international peace-keeping forces and of the Security Council core of the United Nations' peace-keeping was described. As students of this crises we note that these bodies, because they possess no will or strength of their own, except insofar as others allow them, had not served the interests either of peace or equity exactly for either side. Eban rejected the Soviet draft resolution, and instead proposed direct

negotiation, recognition of Israel and a bright dream of progress, cooperation and growth for the entire area once a settlement was reached in accordance with Israel's outlines. However, direct negotiations, as important as they will be, for clarity of understanding between the parties when and if a settlement is ever reached, was anathema especially at this early juncture to the Arabs and probably sensed as so by the Assembly membership. Arab stubbornness on these issues matched that of Israel on withdrawal. In point of fact, the Israeli position said nothing to the issue of withdrawal. And as one astute observer of the United Nations points out:

In light of the Charter of the United Nations, to which Israel is a party, a matter such as withdrawal falls within the clear directions of the law of the United Nations. It is not one that can be left to negotiation unless those negotiations are circumscribed within the framework of the accepted legal position, which, of course, would take care also of Israel's legitimate rights and interests. Would it not have been wiser for Israel at this juncture to make specific its adherence to the principles and injunctions of the Charter and to pledge itself to act accordingly? A plea for negotiations within this framework would have had much more impact on the General Assembly.<sup>48</sup>

Israel rejected the 17-Power proposal which called for unconditional withdrawal. Israel had withdrawn in 1957 on the basis of an "understanding" with Washington. This was a grave error in the Israeli view as the withdrawal of UNEF and closure of the Straits proved. If Israel evacuates the occupied territories before the



Arabs agree to make peace, a similar situation could easily spring up again, as Israel saw it. Since the U.N. had not demonstrated a competence to protect Israel's vital interests, Israel felt justified in holding out for a conditional withdrawal--conditional upon a peace agreement in line with Eban's outline. This matter, said Eban, was not one which can be settled under U.N. or even great power auspices as well as it can be settled by direct negotiations between the parties themselves, independent of all other States or organizations. This is a stand of hard state self-interest so typical of that prime characteristic of Israeli foreign relations--the very intensity of its conduct and policy.

Throughout the early Assembly proceedings, very little was heard from the Latin American States. Distant from the scene of conflict, but interested in its outcome for reasons of world peace, the Latin American delegation in their speeches and in the draft resolution they introduced injected a strong emphasis on juridical and especially Charter principles into the proceedings. Moreover, this reliance on principles was leavened with a strong dose of pragmatism and specific, practical steps which were possible and homologous with international law. Not only legal theory, but practical action was stressed. We wish to extract the flavor of some of the many speeches delivered, for to this single resolution can be attributed a great

deal that was vital to the passage of 242 (1967).

Nicamor Coste Mendez, Foreign Minister of Argentina, set the tone by referring to both the Arab and Jewish communities peacefully resident in Argentina and to "the need for a scrupulous respect for the legal principles that govern relations among States."<sup>49</sup> He spoke of his faith in the Security Council as having both "sufficient authority and ability to handle the issue," and to provide adequate machinery to lastingly solve the problem.<sup>50</sup> Four times, one after another, he repeated in almost identical language his hope:

. . . that this Assembly will not take a purely political stand. We do expect and hope . . . that its objective will not be vitiated and it will not be diverted from its true mission: to bring peace to the Middle East as soon as possible.<sup>51</sup>

Pointing out that his Government would no more vote for a condemnation of Israel than for the Arab States, he went on to speak of the individuality of the state of belligerency:

. . . the state of belligerency could not be invoked only in order to accept part of the logical consequences flowing from the principles governing such a state. If it be invoked in order to give legal justification to certain circumstantial and specific limitations of some general principles, then all its other consequences must also be admitted.<sup>52</sup>

Finally, Costa Mendez powerfully called for a return to the Charter principles found in Articles 1 and 2.

Ambassador Julio Caesar Turbay Ayala of Columbia perhaps best verbalized the basis upon which the Latin

American States sought to make their contributions:

Our strength emanates from our unquestioned impartiality concerning this problem. Columbia, as well as other American States, is not committed to any of the parties to the military confrontation. Our only commitments are those born of respect for the rule of law, for our international obligations, and our duty as a Member of the United Nations and of the American regional system.<sup>53</sup>

With great understanding and insight into the psychological dynamics of the problem, Turbay Ayala continued:

One of the many distortions that war produces is that each belligerent believes himself to be the sole possessor of trust and justice. We know of no case in which those who have gone to the extreme of a military confrontation have ever recognized in their opponents the slightest degree of reason. When situations become critical belligerents do not display toward neutral parties the understanding and tolerance that they so fervently claim for their own cause. Because of these special considerations, we venture to presume that neither Arabs nor Jews will be satisfied with our statement, since combatants consider only their allies as friends. And we, in all truth, are not their allies, but are certainly their friends.<sup>54</sup>

Positing the unoriginal, but welcome view that "the paths of understanding do not lie at the extremes, that they lie rather along the middle of law, reason and justice,"<sup>55</sup> Turbay Ayala, along with the other Latin American representatives injected that note of juridicality, responsibility and ominousness perhaps most eloquently expressed by Ambassador Don Leopold Benito of Ecuador when he asked the Assembly:

. . . to bear in mind the crisis of the League of Nations which led to the most ghastly holocaust of history, and that it was born of the abandonment of

the juridical norm that prohibits the use of war as a means of creating, wiping out, or altering the rights of nations. The Charter of the United Nations took up the principle of the prohibition of war as a means of solving conflicts when it included a provision prohibiting the threat or use of force against the sovereignty and territorial integrity of States, and therefore called for a system of peaceful settlement of international disputes. On this principle rests the very existence of the international community and, therefore, of the United Nations.<sup>56</sup>

In keeping with this approach, Foreign Minister Nicanor Costa Mendez of Argentina said:

. . . in the present circumstances the simple withdrawal of forces would not bring with it a return to peace. We believe that withdrawal must be a condition concomitant with a cessation of the state of belligerency if it is to have a truly logical meaning and juridical basis. Thus, once free from compulsion, the parties themselves could seek solutions and voluntarily abide by the commitments assumed.<sup>57</sup>

In keeping with the above, the first operative paragraph of A/L. 523, June 30, 1967, the Latin American draft resolution, urgently requested the withdrawal by Israel from occupied territories conditional with the ending of the state of belligerency by the parties in conflict, to establish "conditions of coexistence based on good neighborliness" and to have recourse to Charter channels for a peaceful settlement in all cases.

Turbay Ayala of Columbia stated:

. . . conquest through the use of force, whatever its background cannot be legitimized. Therefore, Columbia could not endorse a recommendation by an international organization which would impose a modification of the territorial boundaries of Member States without the voluntary consent of those States.<sup>58</sup>



In conformity, the second operative paragraph of the Latin American draft resolution reaffirmed its conviction that "no stable international order can be based on the threat or use of force" while denying recognition to the valid occupation or acquisition of territories brought about by such means.

The beginning of the third operative paragraph of A/L. 523 (1967) requested the Security Council to continue examination of the Middle East situation. As Foreign Minister Costa Mendez led up to it:

. . . the Security Council should then, with strict and wise determination, undertake the analysis of the present situation and its immediate and remote origins, which we consider indispensable as a foundation for peace.<sup>59</sup>

Operative paragraph 3(a) of the Latin American draft called for the Security Council to carry out operative paragraphs (a) and (b) which provided for Israeli withdrawal and a termination of the state of belligerency. Just as Ambassador Enrique Garcia Sayan of Peru unequivocally called for:

. . . affirmation and recognition of the right of Israel to free transit of its ships through the Suez Canal, the Straits of Tiran and the Gulf of Aqaba.<sup>60</sup>

So, operative paragraph 3(c) called for the "guarantee [of] . . . freedom of transit on the international waterways in the region."

Foreign Minister José de Magalhaes Pinto of Brazil

spoke on the need of ". . . a formal guarantee on the part of the Government of Israel to settle the problem of the refugees on equitable and permanent bases" in addition to:

. . . negotiations for the settlement of all pending problems, including, on the basis of mutual consent, the eventual establishment of demilitarized zones by the methods of peaceful solution envisaged in the Charter. . . .<sup>61</sup>

Accordingly, operative paragraph 3(c) of A/L. 523, June 30, 1967 coupled an appropriate and complete solution to the refugees' problem with guarantees of territorial inviolability, and political independence and the establishment of demilitarized zones.

Similarly, de Magalhaes Pinto spoke of his hope for:

. . . the placing of Jerusalem under permanent international administration, with special guarantees for the protection of the Holy Places with a "corpus separatum" in accordance with the spirit of the United Nations General Assembly resolution of 29 November 1947.<sup>62</sup>

So, operative paragraph 4 of the Latin American resolution reaffirmed the desirability of an international régime for Jerusalem to be considered at the twenty-second session of the General Assembly.

It is not easy to try to assess the significance of the Latin American resolution. There were reports that because it coupled withdrawal with the termination of belligerency, the United States supported this resolution in an effort to defeat the draft resolution originally put forward by Belgrade.<sup>63</sup> Had there been only one

resolution favoring withdrawal and given the Assembly sentiment in its favor, a two-thirds majority for the Yugoslav resolution might have been within closer reach. But two such resolutions split the vote too broadly. While Israel predictably rejected the Yugoslav resolution which she perceived as only slightly less partisan than the Soviet Union's, Jerusalem was only lukewarm about the Latin American proposal. While it provided a quid pro quo on the question of withdrawal (even allowing for its emphasis on territorial changes without the voluntary consent of the involved states), it did not provide for direct negotiations while a larger role for the United Nations was provided than Israel desired in her independent quest for peace.

The Arab states in the full realization of the slim chances for passage by the Soviet draft resolution fell back on the draft of the 17-powers, for it provided for the unconditional, immediate withdrawal by Israel which the Arabs saw as a sine qua non before movement was possible. A diktat by Israel was intolerable and another war was likely unless Israel withdrew. Expectedly, the Latin American resolution did not arouse enthusiasm among the Arab states due to the conditional nature of the envisaged withdrawal.

It was the constancy, conviction and concert with which the Latin American states--Argentina, Bolivia, Brazil, Chile, Columbia, Costa Rica, Ecuador, El-Salvador,

Guatemala, Guyana, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Trinidad and Tobago, and Venezuela-- presented their views both formally and behind the scenes which may have comprised their greatest impact. And, of course, that impact was wrapped around the Latins' reliance upon the juridical approach and the institutions of the United Nations and its Charter principles. Throughout, their speeches, reasoning and proposals were filled with reliance upon and citation of sound legal principles. Not seeking to favor one party over another, aware of the political, psychological, historical and legal complications in the matter and seeking the broadest sort of consensus, the Latin American efforts and draft resolution, while not totally dissimilar to all preceding resolutions, was sufficiently distinguishable in its constant thrust to impress a distinctive and necessary juridical awareness upon the milieu which had not been present, unfortunately, in the same manner before their concerted activity.

Outside of the actual combatants, member support and criticism of the various draft resolutions was varied. Ambassador Goldberg objected to the Yugoslav text on a number of grounds. The very first criticism was very important:

Operative paragraph 1 concerning withdrawal, could not be more clear and definite. Operative paragraph 6, concerning "all aspects of the situation," is vague in the extreme.<sup>64</sup>



There was, then, no connection between withdrawal and the claims of belligerency--"claims which are among the leading causes of all the troubles in the past."<sup>65</sup> On the other hand, the Latin American text--"recognizes that we face a situation the two aspects of which are interdependent--that neither aspect can be solved in isolation from the other."<sup>66</sup> The American Ambassador went on to praise the "concrete guidelines" and recognition of "just grievances on both sides" found in the Latin American text; "unfortunately neither of these claims can be made for the Yugoslav text."<sup>67</sup> The representative of the United States cited the refugee problem, international maritime passage and the status of Jerusalem as three such areas. It is interesting to note the divorce between the U.S. and Israel on the questions of refugees and the status of Jerusalem herein recorded. Andrei Gromyko, Foreign Minister of the Soviet Union, responded. Playing to the non-aligned sponsors of the 17-Power draft resolution "the majority of which have recently become free from imperialist oppression and know full well what aggression and what foreign occupation is,"<sup>68</sup> Gromyko then went on to state:

This draft resolution quite correctly puts into the first place the question of the withdrawal of Israeli troops from the territories they now occupy. Only this decision can bring about the normalization of the situation in the Middle East. The aggressor cannot be allowed to wait for a prize. This is a question of principle.<sup>69</sup>

Similarly to the U.S., the Soviet Union too demonstrated the space between its stand and that of the Arabs when Gromyko continued:

During the discussions and conversations between representatives of various countries, a wish was very frequently expressed to try even now to bridge the gap and come to decisions on other questions relating to the Middle East. The draft resolution presented by the non-aligned countries also meets this wish . . . the troops must be withdrawn immediately, and then there will be a much more peaceful atmosphere than now in order to achieve progress in all the other questions--I emphasize the word "all" questions--which have accumulated on the sidelines. Then there would be revealed those possibilities which have been provided for in the draft resolution of the non-aligned countries.<sup>70</sup>

Clearly the positions of the great powers were less frozen in than those of the actual combatants who felt their vital existence to be more threatened, and were deeply committed to psychological orientations, one toward the other, which precluded the trust so essential to endeavors such as these. Britain and France, with minor modifications of the relevant texts, lined up behind the Latin American and Non-aligned draft resolutions, respectively.<sup>71</sup>

Abba Eban of Israel described the Yugoslav proposal as "one sided, backward-looking and totally indulgent to the continuation of belligerency."<sup>72</sup> Eban saw only a return to the dangers of the past with the Sinai "a springboard for renewed aggression," the Golan Heights where "Syrian guns would again threaten," Tiran where "blockades would

be reinstated."<sup>73</sup> Certainly, all of these were security considerations par excellence. Eban went on to describe the veto-bound discussion of the Security Council prior to the outbreak of war when:

. . . not only that the Security Council could not act, but that it could not even speak, could not even utter a single word in a resolution against the growing threat to Israel's existence . . . the deadly design of politicide--the murder of a State.<sup>74</sup>

Describing "how slender, how fragile" is the present mood and structure of great power relationships on which Israel is being asked to rely, Foreign Minister Eban cited the present Arab refusal to recognize Israel "as a state within the terms of the Charter . . . with which it is their will and intention to live together in peace as good neighbors."<sup>75</sup>

Eban rejected the Yugoslav resolution. Turning to the Latin American draft, Eban stated Israel's principles: (1) a linkage of withdrawal with "the establishment of peace"; (2) that in a peace settlement, "vital security interests" must be taken account of; (3) "total and permanent elimination of the Aqaban and Suez Canal blockade; (4) that "sovereign States have the right and duty to fix their permanent frontiers by mutual agreement amongst themselves"; and (5) to provide and preserve the complete unity and peace of Jerusalem and access to all its Holy Places" consonant with Israel's unchanging views on

territorial internationalization.<sup>76</sup> Clearly, Israel was unsatisfied with the Latin American draft resolution. We also should note the gap with the American position.

The representative of India, Ambassador Parthasarathi, probably gave the clearest and most succinct formulation of the core of both the Arab and non-aligned positions:

. . . we must frankly state that the Latin American draft falls short of the accepted principle and primary objective which I mentioned earlier. It couples withdrawals with the settlement of complicated issues, and thus it becomes a formula for bargaining from a position of strength by Israel. . . . Our view is that it would lead to a deadlock because it does not give primacy to the central issue of immediate withdrawal. No State Member of the United Nations, particularly no small State, could ever agree to negotiate so long as alien armed forces remain on its soil and it is subjected to duress.<sup>77</sup>

A more lucid exposition of the clash between the parties and between the right both sides claimed can be imagined. Here too the tragedy is as if isolated for our examination of its components: divergent rights claimed and justified to the same issue and land at once, both sets isolated, with no points of connection or mutuality, both stands intense and adamant. Here too, the super-powers presented stands divergent from those of the conflicting parties, but were unable or unwilling to exert the influence necessary to resolve the situation to which both had contributed so mightily for so long.

Foreign Minister Sharfuddin Pirzada insightfully expressed perhaps the key factor in the Arab stand:



. . . the reality is that Israel's aggression has inflicted the deepest physical and psychological wounds. How can it be expected that after such a traumatic shock, the two sides will begin to negotiate the terms of a just and lasting peace, unless withdrawal of Israeli forces are first carried out.<sup>78</sup>

On July 4, votes were taken on the non-aligned, Soviet and Latin American draft resolutions unfortunately before the former and latter groups had had more time to work toward a possible compromise.<sup>79</sup> The vote on the non-aligned draft resolution was 53-46-20--(affirmative-negative-abstention)--a majority, but not the two-thirds required. The Soviet proposal was voted upon by separate operative paragraphs: (1) relative to condemnation failed 57-36-23; (2) which urged immediate and unconditional withdrawal was rejected 48-45-22; (3) concerning restitution by Israel was turned down by a vote of 54-34-28; and operative paragraph (4) which appealed for continued use of the Security Council to eliminate the "consequences" of Israeli "aggression" was voted down by 54-36-26. No vote was taken on the draft in its entirety. The Latin American draft resolution also failed to get the necessary two-thirds majority by a margin of 57-43-20.<sup>80</sup>

We must note that an Albanian draft resolution which was more severe than the Soviet draft in its insistence on condemning Israel failed by a vote of 22-71-27.<sup>81</sup> We should also note that a Cuban amendment to the Non-aligned draft which called for the condemnation of Israeli

aggression and its "principal instigator the imperialist Government of the United States of America" against the Arab States and the immediate withdrawal of Israeli forces went down to defeat by a roll-call vote of 20-78-22.

Finally, an Albanian amendment to the draft introduced by Yugoslavia which urged the strong condemnation of Israeli aggression was defeated by a margin of 32-66-20.<sup>82</sup>

It would be instructive to briefly review the composition of the various voting blocs. The Non-aligned draft resolution attracted the votes, of course, of every Arab and Communist state, most Asian and African countries and even the assent of France, Greece, Spain and Turkey in addition to the U.S.S.R. Negative votes were cast by the Latin American group, the remaining NATO and West European states, the white Commonwealth countries, some African countries, China, Ireland, Israel, Phillipines, United Kingdom and the United States. Naturally, positions were reversed in the case of the Latin American draft, except for the abstentions of both France and Israel.<sup>83</sup>

A few conclusions can be drawn from this. First, the Assembly obviously was not in favor of condemning any party to the conflict for aggression. Not only was the Assembly unwilling to assay guilt, but a move such as this, whatever the situation, would not be conducive to encouraging the two parties to draw together in a mutually agreeable, just and lasting peace settlement within a United Nations

framework. The Assembly was not as interested in condemning past actions as in its responsibility toward the future. Next, there obviously was extremely strong sentiment for Israeli withdrawal. Both the Non-aligned and the Latin American draft resolutions drew 53-57 affirmations. This may be interpreted many ways, but whether it be the political interpretation of assisting the Arabs toward negotiating in an honorable fashion; the self-interested fear by the smaller, newer states of their own future occupation of territory; the simple fact of standing by old friends--the U.A.R. and Syria especially; or the adherence to the basic norms of international law in the Charter age--that the fruits of aggression should not be retained, that the use of force and violation of territorial integrity and threats to political sovereignty shall not be tolerated--whatever the motivations, support was broad and deep on this point of withdrawal.

As is always to be expected, beyond the mere stating of the principle, divergences occur. The Arabs and their friends sought an unconditional withdrawal by Israel for reasons of cultural psychology, to avert the situation whereby territorial blackmail could distort the voluntary and lasting nature of any eventual settlement and, finally, because the land was theirs by right in an age when the Charter outlaws the seizure and acquisition of land by

force. To an Arab and certainly to a Palestinian it might appear that he had suffered too much at the hands of so-called international organization and international law. The former had created and the latter perpetuated an alien, expansionist, repulsive state in their midst which had torn from them their most elemental rights--their homes and lands. To have the most elemental precept of international law violated and unenforceable in the halls of the United Nations must have seemed the crowning hypocrisy indeed.

The Latin Americans, the United States and Israel sought a conditional withdrawal. It is irrefutable that while the Government of Israel actually used force, the Government of the United Arab Republic, and especially the Syrian Arab Republic, threatened the use of force and acted in a most provocative manner, whatever their real intention was. The Charter prescribes both the threat and use of force. It also calls for "friendly relations" and recognition of the "sovereign equality" of nations. Within this context, this call for an Israeli withdrawal linked to the ending of belligerency, encouragement of coexistence and good-neighborliness, and recourse to the provisions for peaceful settlement contained in the draft was firmly based upon Charter and other legal principles. (Unfortunately, it also would have had the political side-effect of permitting Israeli troops to remain while any negotiations were going on, thus to prejudice the free and voluntary



nature of the negotiations.) The Latin American draft resolution tried to balance within itself the issues outstanding and to appeal for their discussion and resolution based upon juridical principles. The Latin American draft resolution was the only one voted upon which did not have the backing of at least one of the direct parties to the conflict. Israel voted against the Yugoslav-introduced draft and abstained on the Latin American proposal. To see why, we need merely review certain key principles enumerated by Israel's Abba Eban: two of them were that any peace settlement must take account of Israel's vital security interests and then, that sovereign states alone (no international organization) need become involved in the fixing of mutual borders. Clearly, views of this nature which only lifted the after-phase of war from the hands of the U.N. had little in common with any of the draft resolutions proposed. Any settlement arrived at under such conditions could only be influenced by the use of force which the Charter outlaws. This is why Israel supported neither of the drafts.

But for Israel too international law and international organization were cause for suspicion, not settlement. International law could take away from Israel the territory which was felt to be the only reliable guarantee of state and citizen security. The withdrawal in 1957 from the Sinai

was not as of ten years ago in the Israeli mind, but as of yesterday. What sort of law was it the Israeli Government might ask which deprived a state of fruits it had taken only in consequence of another's aggression? And the U.N. which had not protected Israel in 1948, which had been the instrument of Israel's withdrawal in 1957 and which had stood by, mute and impotent during the ominous upswing toward war in 1967 had thrice proven that its actions were not in conformity with Israel's perceived security interests. While this sense of gentile "standing aside" as Jews faced their peril, while this betrayal was nothing new in Jewish history, unfortunately, the two senses of betrayal, Arab and Israeli did tend to balance off each other, but in a monstrously symmetrical emotionally taut and distrust-laden relationship.

International law here conflicted with an interest Israel deemed vital; her existence's right to strong peace terms favorable to Israel before withdrawal to positions deemed in Israel's security. There would be no return to 1956.

We hold that it was this intense interplay of interests and laws, either uninfluenced or underinfluenced by big powers which caused the deadlock at this level. If peace is ever to come and be lasting, it must flow from the parties' mutual willingness to approach peace. It is the big powers, as arms suppliers if nothing else, which must

exercise mediatory roles and responsibilities here.

At least one attempt in this direction was made by the superpowers. After the July 4 voting, the emergency session was extended until July 21 for a number of reasons. First, Resolution 2254 (ES-V) was passed on July 14 by a roll-call vote of 99-0-18. This resolution regretted the "non-compliance" by Israel with Resolution 2253 (ES-V), which had been passed earlier by a margin of 99-0-20. Resolution 2253 (ES-V) considered the changes by Israel concerning the status of Jerusalem as invalid, called for Israel to rescind them and to desist from any such actions in the future. Resolution 2254 (ES-V) "deplores" Israel's "failure . . . to implement" 2253 (ES-V), "reiterates" its call to Israel "to rescind" such measures already taken and "to desist forthwith" from future actions altering the status of Jerusalem and requested the Secretary-General to report to the Security Council and General Assembly regarding the resolution's implementation. The United States abstained on both measures while Israel announced that it chose not to participate in the vote on the grounds that to return to a divided Jerusalem would result in a return to religious discrimination. Debate and consideration of this measure served to help extend the duration of the emergency session.

During this time negotiations were being conducted between the Non-aligned and Latin American blocs in the

hopes of a possible compromise resolution. A compromise did come, but neither from the parties nor direction expected. On July 18 and 19, Anatoly Dobrynin and Andrei Gromyko, U.S.S.R. Ambassador to the United States and Foreign Minister, respectively, visited with Arthur Goldberg at the United States' United Nations Mission in New York. The result, reportedly, was a draft resolution which both superpowers felt was acceptable. Consisting only of two operative paragraphs, the first was concerned with the issues of withdrawal and the second paragraph with the termination of belligerency. While the exact text has never been released, Ambassador Goldberg did describe the content in a speech:

It provided that the withdrawal of Israel's troops would be linked with the acknowledgement by every member of the U.N. in the area that each enjoys the right to maintain an independent national state of its own and to live in renunciation of all claims and acts inconsistent therewith. . . .84

Certainly while not spelled out as such, a claim to belligerency was inconsistent with this second proposal. This reworking, narrowing and possible rewording of the Latin American draft, returned their land to the Arabs, and so, salved the psychological wound while it provided, by U.N. resolution, support for the Arab states against an expansionist Israel together with support for Israel against an irredentist Arab cause. While we have no word on the Israeli reaction, we do know that the Arab caucus



rejected the draft on July 21 led by Syria and Algeria. Whether the compromise draft was born of Soviet weakness in the attempt to gain a withdrawal for the Arab states, or whether it died of Arab intransigence--the compromise came about so rapidly that there was little time to convey the new Soviet initiative and attitude in a persuasive sense.<sup>85</sup>

In any event, an opening toward movement, as fine as it was unexpected, slipped by. Certainly this was deeply regrettable and a major point which we should note. But since our objective here is not polemicism, praise or condemnation, but understanding, let us pass on as we have before, quietly, but not forgetting the basic issues.

On July 21, also, the Assembly, its patience at an end after repeated extensions approved the temporary adjournment of the emergency session, authorized the President of General Assembly to reconvene it as and when necessary and requested the Secretary-General to forward the records of the emergency Special Session to the Security Council in order to facilitate the resumption by the Council, as a matter of urgency of its consideration of the tense situation in the Middle East. The fifth Emergency Special Session of the General Assembly having no further substantial achievements to its credit, met and voted itself out of existence on September 18, 1967.

## NOTES

1. U.N. Document A/6717, June 13, 1967.
2. A/PV. 1526, June 19, 1967, p. 21.
3. Ibid.
4. Ibid., p. 23.
5. A/L. 519, June 19, 1967.
6. A/PV. 1526, pp. 14-15.
7. Ibid., p. 26.
8. Ibid., p. 22.
9. Ibid., p. 13.
10. Ibid., p. 23.
11. Foreign Broadcast Information Service, No. 108, June 5, 1967, p. B2.
12. A/PV. 1529, June 21, 1967, p. 52.
13. Ibid., p. 51.
14. Ibid., p. 52.
15. Ibid., p. 51.
16. Ibid., p. 52.
17. A/L.522/Rev. 3, July 3, 1967.
18. A/PV. 1526, June 19, 1967, pp. 68-70.
19. A/PV. 1527, June 20, 1967, p. 26.
20. Ibid., p. 31.
21. Ibid., pp. 32-35.
22. Ibid., p. 36.

23. See also the Letter to the Editor, by Professor Roger Fisher of Harvard Law School, The New York Times, June 11, 1967, which brings out much the same point.
24. A/PV. 1523, June 30, 1967, p. 36.
25. Ibid., p. 37.
26. Ibid.
27. A/PV. 1536, June 26, 1967, p. 6.
28. Ibid., p. 8.
29. Ibid., p. 6.
30. See Eban's listing of such threats and provocations, A/PV. 1526, June 19, 1967, pp. 48-52.
31. U.S. Department of State, United States Policy in the Middle East Crisis, Publication 8269 (Washington, D.C.: Government Printing Office, August, 1967), pp. 16-18. Text also in The New York Times, June 20, 1967.
32. A/PV. 1527, June 20, 1967, p. 12.
33. Ibid., p. 13.
34. Ibid., p. 16.
35. Ibid.
36. A/L. 520, June 20, 1967.
37. Ibid.
38. A/PV 1526, June 19, 1967, p. 26.
39. Ibid., p. 37.
40. Ibid., p. 38.
41. Ibid., p. 46.
42. Ibid., p. 48.
43. Ibid., p. 56.
44. Ibid., p. 58.

45. Ibid., p. 51.
46. Ibid., p. 61.
47. Ibid., p. 62.
48. Arthur Lall, The UN and the Middle East Crisis 1967 (New York: Columbia University Press, 1968), p. 140.
49. A/PV. 1537, June 27, 1967, p. 52.
50. Ibid.
51. Ibid., p. 53.
52. Ibid., p. 56.
53. A/PV. 1538, June 27, 1967, pp. 24-25.
54. Ibid., p. 27.
55. Ibid.
56. A/PV. 1539, June 28, 1967, pp. 8-10.
57. A/PV. 1537, June 27, 1967, p. 57.
58. A/PV. 1538, June 27, 1967, p. 31.
59. A/PV. 1537, June 27, 1967, p. 57.
60. A/PV. 1541, June 29, 1967, pp. 13-15.
61. A/PV. 1540, June 28, 1967, pp. 6-7.
62. Ibid., p. 7.
63. The New York Times, June 28, July 10, 1967.
64. A/PV. 1546, July 3, 1967, p. 6.
65. Ibid.
66. Ibid.
67. Ibid., p. 8.
68. Ibid., p. 26.
69. Ibid.



70. Ibid., p. 27.
71. A/PV. 1547, July 4, 1967, p. 42 (U.K.); A/PV. 1546, July 3, 1967, p. 41 (France).
72. A/PV. 1547, July 4, 1967, pp. 28-30.
73. Ibid.
74. Ibid., p. 31.
75. Ibid., p. 32.
76. Ibid., p. 36.
77. A/PV. 1548, July 4, 1967, p. 47.
78. A/PV. 1531, July 22, 1967, p. 66.
79. The New York Times, July 5, 1967.
80. Yearbook of the United Nations, 1967 (United Nations, New York: Office of Public Information, 1969), pp. 209; 220-21.
81. Ibid., pp. 220-21.
82. Ibid.
83. Ibid.
84. Department of State, Bulletin (August 28, 1967), p. 263. See also The New York Times, July 22, for an unofficial text.
85. The New York Times, July 21, 1967 reported that Algeria and Syria were foremost in leading the rejection. Ibid., July 22, 1967. The Caucus rejected the Soviet proposal "indignantly." Ibid., July 23, 1967, used the word "emphatically."

C H A P T E R   V  
THE SECURITY COUNCIL AND THE DRIVE TO  
RESOLUTION 242

On the first of July fighting broke out in the Suez Canal sector and escalated to include tanks, artillery and aircraft. On July 8, the representatives of both Israel and the United Arab Republic requested an urgent Security Council session to deal with the fighting each charged the other had started. The only immediately notable contribution which resulted from the July 8 session was U Thant's announcement of his initiative in broaching with the representatives of both Israel and Egypt the possibility of stationing observers on both sides of the Canal. Operative paragraphs two of both Resolutions 233 and 234 had requested the Secretary-General "to keep the Council promptly and currently informed on the situation." Certainly Thant could not accomplish this without machinery, especially since Israel had withdrawn recognition from UNTSO and the various Mixed Armistice Commissions.

While Lord Caradon and Ambassador Goldberg supported this concrete step at the next meeting, on July 9, Ambassador Fedorenko threatened to invoke sanctions against the aggressor in Russian eyes, Israel, as Chapter VII of the

Charter provides. Fortunately, the nonpermanent members of the Security Council were able to arrange a compromise.

Although not a formal resolution, the following statement by the President was accepted by Council members as a "consensus" of their views without dissent or a formal vote:

Recalling Security Council resolutions 233, 234, 235 and 236 and emphasizing the need for all parties to observe scrupulously the provisions of these resolutions, having heard the statements made by the Secretary-General and the suggestions he had addressed to the parties concerned, I believe that I am reflecting the view of the Council that the Secretary-General should proceed, as he has suggested in his statements before the Council on 8 and 9 July 1967, to request the Chief of Staff of the United Nations Truce Supervision Organization in Palestine, General Odd Bull, to work out with the Governments of the United Arab Republic and Israel, as speedily as possible, the necessary arrangements to station United Nations military observers in the Suez Canal sector under the Chief of Staff UNTSO.<sup>1</sup>

Cease-fire observers were in place by July 17 and the fighting soon subsided.

During the Summer and before the Security Council resumed meetings in the Fall a number of developments occurred which should be reported. First, there was the slow hardening of Israeli claims to occupied territory. After the original Israel disclaimers of territory, it came to pass that Jerusalem especially, the Gaza Strip, Golan Heights and certain areas of the West Bank could be justifiably retained in Israeli eyes. Gradually, as the Summer passed, high Israeli officials began to talk of the

most "natural" of frontiers for Israel--the Jordan River and Suez Canal.<sup>2</sup> Second, there was an important Arab Summit Conference at Khartoum in late August. At Khartoum the serious Egyptian and Jordanian financial plight was alleviated by pledges totaling \$378 million annually from Kuwait, Libya and Saudi Arabia.<sup>3</sup> In addition, a compromise agreement was reached, at least on the Heads of State level, concerning the Yemeni war between the U.A.R.'s Nasser and Saudi Arabia's monarch, Feisal. Finally, while popular sentiment was appeased by the reiteration of such slogans as the "three no's"--no recognition, no negotiation, no peace--there were growing signs of private moderation among attending states, especially Egypt.<sup>4</sup>

By October, there was even a more pronounced private willingness to accommodation and flexibility by the Arabs provided that an acceptable channel were provided whereby the problems could be dealt with without a loss of face.<sup>5</sup> The United Nations Security Council was, of course, ideal for such a function. Among the many factors which affected this, unquestionably the facts of the relative strategic positions helped mold policy stands here. Nevertheless, King Hussein's swing through Western Europe and Washington in early November served as a platform to underline the new Arab willingness to consider compromise and to move



from the intransigent rejection of any sort of erosion of principle.<sup>6</sup> Next, there were intense behind-the-scenes negotiations which were conducted by both permanent and nonpermanent members of the Security Council. The irreplaceable Lord Caradon spoke to this when he stated on October 24:

We all know that members of this Council have been working with increasing urgency, particularly in the past few days, to establish and declare the principles which should govern a settlement, and to take the first practical steps on the hard road to peace. We know that they have set themselves the task of preparing a fair and balanced draft resolution . . . that is the over-riding purpose; that is the prize, a durable peace. It cannot be won without justice and equal recognition of equal obligations on both sides. It cannot be won without a real sense of the utmost urgency.<sup>7</sup>

This was buttressed by the revelation by a non-permanent Council member, Ambassador S. O. Adebó of Nigeria who, on October 25, stated: "Action began to be taken by members of the Security Council as long as two or three weeks ago."<sup>8</sup> Or again, when he revealed that:

The permanent members of the Security Council . . . about a week ago . . . let it be known to the President that they would welcome any initiative which the non-permanent members of the Council might take to help to resolve the whole of the Middle East situation.<sup>9</sup>

Clearly, the drive for a resolution was intense. Finally, the events which provided the "urgency" Caradon spoke of also helped provide the impetus for the Council to reach a final agreement. On October 21, the Israeli

destroyer Eilat was sunk by missiles fired from Egyptian naval vessels. On October 24, Israeli artillery and aircraft attacked the Egyptian city of Suez, drove out hundreds of thousands of civilian residents and destroyed much of Egypt's oil refining capacity.<sup>10</sup> The Security Council convened on that same day in response to a request from both Israel and the United Arab Republic. If nothing more, these events were a reminder to the Security Council of how explosive the situation remained.

Despite the fact that the representative of the U.S.S.R. joined those representatives who had spoken before him, from the United Kingdom, Canada, Denmark and Ethiopia, in the realization "that it is necessary to bring about a political settlement in the Near East,"<sup>11</sup> Ambassador Fedorenko proceeded to introduce a draft resolution which: (1) strongly condemned Israel for its act of aggression committed in the area of the city of Suez; (2) demanded compensation by Israel to the United Arab Republic for the damage caused by this act of aggression; and (3) urgently called upon Israel to strictly observe the cease-fire and cessations of military activity called for in Security Council Resolutions 233 and 234.<sup>12</sup>

Ambassador Goldberg prefaced the United States draft resolution by emphasizing how this latest flare-up merely emphasized the need to move toward a just settlement of all the questions outstanding between the parties to the conflict.

He then introduced a draft resolution which: (1) condemned "any and all violations" of the cease-fire; (2) insisted that the United Nations member states concerned "scrupulously respect the cease-fire" contained in Council Resolutions 233, 234, 235, and 236 in addition to the consensus of July 10 and cooperate fully with area U.N. machinery including the Chief of Staff of UNTSO and other military observers in the discharge of their duties and (3) called upon the concerned Governments to "issue categorical instructions to all military forces to refrain from all firing," as these resolutions required.<sup>13</sup> Following a general appeal by members of the Council for more information on the incidents before passing judgment on the responsibilities, the session was adjourned until the next day, October 25. It is notable that especially beneath the Soviet rhetoric an underlying theme to the statements of non-Middle Eastern or Superpower states was the felt-need for a fair and balanced resolution based on fundamental principles.

After consultations the next day, Resolution 240 (1967) was unanimously adopted. This resolution was in keeping with the sentiment expressed above in that it did not indict either party, but tended more toward an insistence that all parties concerned meet the norms of law and the principles expressed in previous Security Council resolutions. In so doing it reflected more the United States than Soviet draft. Briefly, the operative paragraphs of Resolution 240:

(1) condemned the cease-fire violations; (2) regretted the resultant casualties and loss of property; (3) reaffirmed the necessity that the cease-fire resolutions be strictly observed; (4) and demanded the immediate ceasing of all prohibited military activities in the area and the full and prompt cooperation with UNTSO by area Member States.<sup>14</sup> The representatives of both the Soviet Union and the United States both stated that there was no need to put their drafts to a vote; Fedorenko cited the interest of Council members in unanimity, and Goldberg the refusal by the Security Council to deal with the situation in a one-sided manner and the balanced nature of Resolution 240. After reiterating the old, vital point that: "as long as the Israeli forces of aggression continue to occupy the territory of Arab States there can be no peace in the Middle East," Fedorenko went on to say that:

The Security Council is in duty bound . . . seriously to ponder the need for an immediate political settlement of the situation in the Near East. . . . At the same time, it has to be noted that the majority of Council members indicated in their statements that the situation in the Near East was extremely tense and that it was high time to bend every effort to restore peace and a normal state of affairs. It flows therefrom that there is an almost unanimous feeling that consultations must be speeded up to work out a decision leading to a political settlement in The Near East.<sup>15</sup>

The representative of the other superpower, Ambassador Goldberg, immediately joined with these remarks in voicing



the attitude that: ". . . what the Near East needs is not just a cease-fire, essential though it is, but new steps towards a durable, permanent and just peace . . . thus Council must begin promptly to help move towards a just settlement of all the outstanding questions between the parties. And we believe that . . . there is the framework by which such a settlement can be concluded."<sup>16</sup>

During the remainder of the Security Council sessions, the chronology of major events was as follows: November 7, the U.A.R. requested the convening of the Security Council--the three-Power, and the American draft resolutions also were submitted on that day; on November 16, The United Kingdom delegate, Lord Caradon, submitted the draft resolution which was later adopted as Resolution 242; on November 20, the Soviet Union submitted a surprise draft of its own; and on November 22, the final vote occurred.

Intense consultations continued through the beginning of November, especially among the nonpermanent members of the Council. Slowed by the desirability and difficulty of reaching a broad agreement, but spurred on by the U.A.R.'s increasing flexibility given her need to cope with 300,000 new civilian refugees from the Suez area, progress was frustratingly slow. On November 7, the United Arab Republic in a letter to the President requested the convening of an urgent session of The Security Council:

. . . to consider the dangerous situation prevailing in The Middle East as a result of the persistence of Israel not to withdraw its armed forces from all the territories it occupied as a result of the Israel aggression committed on 5 June 1967 against the United Arab Republic, Jordan and Syria.<sup>17</sup>

Concurrently, when the Council convened on November 9, Ambassador Parthasarathi of India orally presented to the Council a three-Power draft resolution sponsored by India, Mali and Nigeria. Although Parthasarathi viewed the fifth emergency special session of the General Assembly as inconclusive, nevertheless he felt that the session "revealed certain fundamental areas of agreement which could pave the way towards finding definitive solutions."<sup>18</sup> The representative of India isolated these as--withdrawal by Israel of occupied territory, settlement of the refugee problem and freedom of navigation through international waterways. None of these was surprising. What was surprising was the addition of such points as a termination to the state of belligerency, the right of all states to live in peace and security free from threats or acts of war, and the respect by all states for all states' political independence and territorial integrity. In addition, words such as "condemnation" did not appear in the text while phrases descriptive of the draft itself such as "to ensure equality of obligations" and "fair and balanced formulation" were noteworthy for their presence.<sup>19</sup> Parthasarathi described how over the past month the Afro-Asian's and Latin American's

delegates to the Security Council "have been engaged in intensive and extensive consultations in regard to the most appropriate course to be followed by the Security Council."<sup>20</sup> After examining the totality of varied proposals, the three-Power draft used "the Latin American draft as the basic document of reference"<sup>21</sup> and went so far in certain areas as to use "language identical, word for word, to the . . . Latin American draft."<sup>22</sup>

What exactly did this draft resolution propose?<sup>23</sup> Within the first operative paragraph it affirmed the necessity to reach peace within the Charter's framework. In subparagraph (1) a basic point of the Latin American text was rephrased in the three-Power text to state: "Occupation or acquisition of territory by military conquest is inadmissible" under the Charter and that the armed forces of Israel "should withdraw from all territories occupied as a result of the recent conflict."<sup>24</sup> Linked with this in subparagraph (11) there was the crucial statement in the three-Power draft that:

. . . every state has the right to live in peace and complete security free from threats or acts of war and consequently all states in the area should terminate the state or claim of belligerency and settle their international disputes by peaceful means.

Here the three-Power draft went further and was more comprehensive than the Latin American text upon which it was based. Moreover, if subparagraph (1) had been

offensive previously to Israel, subparagraph (1) had been objectionable to the Arab Governments. It was an admission of the Arabs' difficulties and of their recent willingness to be flexible that their friends should link these principles together and submit them.

Subparagraph (111) of operative paragraph 1 clearly stated:

. . . every state of the area has the right to be secure within its borders and it is obligatory on all Member States of the area to respect the sovereignty, territorial integrity and political independence of one another.

There was a more comprehensive formulation than the Latin American draft. While it provided a legal solution to the raids by Palestinians which have plagued Israel, the phrase "within its borders" provided consolation for Arabs fearful of an expansionist Israel.

The second operative paragraph was divided into two subparagraphs. The first affirmed a "just settlement of the question of Palestine refugees." The second subparagraph affirmed a "guarantee of freedom of navigation in accordance with international law through international waterways in the area." Pathasarathi noted his realization that the reference "in accordance with international law" might obfuscate the issue and prolong potential litigation. The Indian representative recognized this and stated his delegation's readiness "to examine very carefully any



arguments that might be advanced in the Council in respect of the words 'in accordance with International Law.'"<sup>25</sup>

Operative paragraph three was as old chronologically as the call for withdrawal. Indeed, India had been the first state to suggest that the Secretary-General dispatch a special representative to the area "who would contact the states concerned in order to coordinate efforts to achieve the purposes of this resolution" as the three-Power text put it. Indeed, Lord Caradon, who later made this point one of the foremost in his own proposal, followed India's lead on this.

The submission of the three-Power draft was a hopeful sign of the momentum building up for the adoption of a resolution by the Security Council. The fact that friends of the Arab states had submitted this text which called for an end to belligerency and freedom of navigation in addition to recognition of Israel's statehood could only be taken as a sign of tacit acceptance by the Arabs of these and the rest of its provisions. We should note, however, that this was tacitly accepted only in return for the withdrawal of Israeli forces to positions occupied on June 4. The American resolution, to be discussed next was fairly close to the three-Power formulation in most areas except the point of clarity on withdrawal. It was certainly a landmark, for India, Mali and Nigeria--all states which had

voted in favor of and even, in the case of the first two nations, vehemently supported the Yugoslav draft--had now submitted a new draft which, by their own admission, drew most heavily upon the Latin American text. There was little that was homologous in the three-Power draft with either the original Israeli or Arab positions--and intentionally so. The Israelis sought no withdrawal except as a result of bilateral negotiations while the Arabs sought no negotiations until after unconditional withdrawal. To the heavy juridical influence of the Latin Americans had been added the utilitarian short step of the personal representative of the Secretary-General--all under Chapter VI of the Charter--Pacific Settlement of Disputes. This was a deliberate attempt by Council members to give effective meaning to a potential resolution by seeking unanimous rather than merely sufficient Council support.

An American draft resolution was submitted to the Security Council on the same day as the three-Power draft. As Ambassador Goldberg stated before the Council, the presentation of the American draft was somewhat more hurried than had been anticipated:

The process of consultations we had initiated had not run its course when the request for the convening of the Council made it necessary to circulate the product of our efforts on 7 November . . . we would have preferred to hold back our draft resolution until the final results of our consultations were in.<sup>26</sup>

Ambassador Goldberg affirmed that the draft resolution was "guided by certain axioms of negotiation"<sup>27</sup> which flowed from the view that the Council should act under Chapter VI of the Charter. First, that "only the parties themselves, through mutual accommodation, compromise and peaceful means of their own choice, can make peace and impose peace." Peace, said the United States representative, cannot be imposed by one side or the other or imposed on both by an outside authority, for such a peace "cannot endure." Second, that Council members individually, combined and "by virtue of the Council's responsibility under the Charter, can and must assist the process of accommodation." Third, consonant with the preceding, any formula cannot "prejudice the known positions of the parties . . . [or] . . . preclude the acceptance by either side of the assistance, encouragement, help and guidance the United Nations can properly offer." Fourth and last, consultations to achieve this formulation will be invaluable with both the parties involved and Council members.<sup>28</sup> In keeping with these axioms, Chapter VI of the Charter and President Lyndon Johnson's five principles of June 19, 1967, Ambassador Goldberg offered the following draft.<sup>29</sup>

The draft began by reminding member states of their commitment to Article 2 of the United Nations Charter. Operative paragraph (1) of the American draft was expansive and cumbersome. In fulfillment of Charter Article 2, it

called for:

. . . withdrawal of armed forces from occupied territories, termination of claims of belligerence or state of belligerence, . . . mutual recognition and respect for the right of every state in the area to sovereign existence, territorial integrity, political independence, secure and recognized boundaries and freedom from the threat or use of force. . . .

Operative paragraph (2) further affirmed the necessity of "guaranteeing freedom of navigation" through area international waterways, "achieving a limitation" to the area arms race and "guaranteeing the territorial inviolability and political independence" of every area state through measures including demilitarized zones. Operative paragraphs (3) and (4) requested that the Secretary-General designate a Special Representative who would maintain contacts with the concerned states "with a view to assisting them in the working out of solutions in accordance with the purposes of this resolution" while requesting a progress report to the Security Council as soon as possible.

To this U.S. draft resolution, the Soviet Deputy Foreign Minister, V. V. Kuznetsov, focused upon what he termed "the most important aspect . . . how the draft attempts to solve the problem of the withdrawal of troops."<sup>30</sup> Kuznetsov continued his frontal assault:

We must say quite frankly that in the American draft this key provision is formulated in a very ambiguous diluted manner. It is lost somewhere in the midst of other questions. . . .<sup>31</sup>



. . . in the United States draft Israel is not mentioned at all. There is no mention of the withdrawal of Israeli troops from all the territories occupied as a result of the recent conflict, whose troops, where should they be withdrawn from--these are fundamental questions to which the United States draft contains no clear-cut answer.<sup>32</sup>

There was no mention, as in the three-Power Security Council draft that "Israel's armed forces should withdraw from all the territories occupied as a result of the recent conflict."<sup>33</sup> Nor was this an advance over the Latin American text which called for "Israel to withdraw immediately all its forces to the positions they held prior to 5 June 1967."<sup>34</sup> While the American formulation may not have "prejudiced" the known position of Israel, it certainly retreated from the chief issue which seemed to grip the majority of the U.N. membership both in the General Assembly and Security Council as well. It was this single issue of withdrawal which was perceived by them to be the greatest single threat to international law, the United Nations and to their own survival as well.

Ambassador Goldberg met this objection by stating that the United States saw the draft as:

. . . an effort to do what can be done now, to set in motion a diplomatic effort within the United Nations and within the framework of the Charter and to establish guidelines and objectives for such a peace-keeping effort. . . . In all candour, we do not conceive that such a mandate could be stated in terms entirely satisfactory either to the Arab states or to

Israel. Therefore, we have attempted to state it in terms that set forth guidelines on all political issues involved and in language which, in our opinion, takes into account and in no way prejudices, the positions or the vital interests of the States involved.<sup>35</sup> (Emphasis mine.)

It should be noted that, in comparison with the American draft submitted to the emergency session of the General Assembly, the new resolution "required" withdrawal. However, the intent of the United States to lay down general "guidelines and objectives" toward and within which negotiations could occur is orthodox diplomatic technique. And the American concern to phrase the draft in such a manner as to avoid prejudicing "the positions or the vital interests of the states involved" makes good sense if the voluntary consent of the concerned states to work out and abide by a mutually acceptable agreement is sought. But the plain and simple fact of the matter is that on this precise point the U.S. was insensitive and out of step with the thinking of the overwhelming majority of the United Nations membership. The proof lies in the Non-aligned and Latin American drafts voted upon in the General Assembly in which withdrawal was a primary point and in Resolution 242 itself, adopted scant days later by a unanimous vote of the Council. Operative paragraph 1, subparagraph (ii) of the United Kingdom draft resolution both cited "Israel" and required withdrawal "from territories occupied in the recent conflict."<sup>36</sup> This was a

vital point of law deemed paramount by the membership.

The three-Power and American text were close together on the point of a special representative and just settlement of the Palestine refugee problem--one as old as the State of Israel itself. There was a point of difference on the question of area international waterways since the U.S. text contained no complicating phrase such as "in accordance with international law" as did that of India, Mali and Nigeria. The proof that there was agreement here stems not only from textual analysis of the drafts themselves, but once again, a comparative analysis with Resolution 242 itself. It is intriguing, but in November the three Non-aligned states which had supported the Yugoslav draft were urging a principle on withdrawal forwarded by the Latin Americans in the General Assembly while the United States which had voted for the Latin American draft in July moved away from its basic point on withdrawal in early November. Certainly there was room for movement and compromise for the parties to come to an agreement on this vital point at issue.

Beyond his Government's commitment to a stage-by-stage approach--first, on principles, and then, on application--the representative of the U.S. repeated his Government's policy that what the Middle East needs is a "non-prejudicial mandate embracing the essential elements of a

just, dignified and durable peace--that has been the very cornerstone of the United States policy during the entire consideration of this grave matter by the United Nations."<sup>37</sup>

In the drive toward adoption of a resolution, Ambassador Goldberg asked for a truce on old charges and recrimination:

Let there be no more attempts to pervert the Council, this instrument of peace, into a centre of defamation and incendiary charges. For such abuse of the United Nations instrumentalities simply compounds the difficulties of the peace-making process which are already formidable enough.<sup>38</sup>

The only state Goldberg named in this respect, and in his defense of United States consistency in behavior and adherence to international law was Syria.

Israel's final position prior to the vote on November 22 was roughly as follows as Abba Eban gave it:

Our policy is that we shall maintain and respect the cease-fire situation until it is replaced by peace treaties ending the state of war, determining the agreed national frontiers of states, and ensuring a stable and mutually guaranteed security. We cannot return to the shattered armistice regime or to the fragile demarcation lines, or to any system of relations other than permanent, contractually-binding peace. . . . agreement on secure and recognized boundaries is absolutely essential to a just and lasting peace; and we believe that any constructive resolution should emphasize the duties of the states themselves--the states of the Middle East--to work out the conditions of their own peace in direct negotiations.<sup>39</sup>

Eban led up to this position with a spirited effort which admirably wove together two constant, but paradoxical strands in the behavior of every state in its relationship



with international law: that while "Israel is not in a position of juridical defense,"<sup>40</sup> her "vital interests should not be--cannot be--determined outside her consent."<sup>41</sup>

To attempt to depict the tension more clearly, while Israel would determine her own interests without resort to juridical defensiveness--what Israel was proposing was consistent with international law. The representative of Israel characterized the relationship between the Arabs and Israel as a war not of six days', but nineteen years' duration. A withdrawal without bilateral negotiations leading to a contractually binding treaty of peace which would end the state of war and recognize national boundaries, therefore, was unthinkable. Security compelled this. Law led to this.

Two abstract pairings unify and grant insight into the Israeli position. The first might be termed that of continuation-termination; Israel did not wish this to be merely an interval before the next round in this already endless struggle. A conclusive, permanent and contractually binding peace treaty was therefore sought to put an end to the state of war. At the same time, a second pairing, that of ambiguity-clarity was operative. All of this was related to land. Land was the answer to the early Zionist pioneer-dream, the felt-vulnerability since then, and serves as that basic element of any state. Land and its

clear division was the answer here too as Abba Eban made clear:

Now this is really the very heart of the Arab-Israel problem. The central issue to be negotiated in a peace settlement is the establishment of permanent boundaries.<sup>42</sup>

Armistice demarcation lines had been "ambiguous, provisional, precarious, unresolved," while territorial boundaries would be "secure, recognized, respected and acknowledged."<sup>44</sup>

For nineteen years there have been demarcation lines based, according to the 1949 agreements, "on military considerations alone." Nothing has been regarded as permanent. Everything has been unresolved.<sup>45</sup>

. . . . .  
A demarcation line means vulnerability. A negotiated boundary means stability. A demarcation line means the maintenance of reciprocal territorial claims. A boundary implies their mutual and final renunciation.<sup>46</sup>

Negotiation was the key to solve this and other problems in Israeli eyes. Eban was clear on this: "I have never heard of any substantive agreement on any subject ever having been achieved by Governments that do not set eyes on each other."<sup>47</sup> Eban also reviewed statements concerning the India-Pakistan dispute in which the representative of India stressed the need for direct negotiations between the parties directly involved free of external pressure. Eban continued:

No delegation has allowed this fatal concept to appear in any text that we have been shown. The idea of negotiation has been converted from a Charter principle into an Israeli eccentricity . . . [if] . . . it would be "unrealistic" to have negotiations

without withdrawal. I only invite the Council to believe that it is unrealistic to believe that there can be withdrawal without negotiation.<sup>48</sup>

Foreign Minister Eban certainly was not on weak grounds in the basis for his charges. At some point, if the solution to this conflict is to be peaceful, negotiations will have to occur. But to insist on this while occupying territory was not consistent with international law. Arabs claimed it was more consistent with blackmail, while Israelis considered impossible the probability of the victor negotiating with the vanquished in a territorial situation precisely similar to the one prior to the outbreak of hostilities. So do international politics and law commingle.

Eban injected a strong juridical tone into his speech. He pointed out that by the Egyptian interpretation the 1949 General Armistice Agreement did not end the state of war between Israel and the U.A.R., a state consistent with "non-recognition of sovereignty" and "unresolved territorial claims." Eban continued:

We are tired of contesting the United Arab Republic's interpretations. We accept them; we accept that the 1949 agreement signifies what the United Arab Republic has always interpreted it to mean: the absence of peace, maritime blockade, and a prelude to ultimate total war . . . that is why that agreement exploded long ago . . . we can, accordingly, have nothing to do with it or with any of its apparatus or with any similar situation of juridical anarchy. The only judicial possibility now available is full, formal peace. . . . Everything else has been tried.<sup>49</sup>

Finally, in commenting upon the draft texts before the Council, Abba Eban stated: "our standard of judgement is whether or not they prejudice our negotiating position in advance."<sup>50</sup> On this overriding basis, Israel rejected the three-Power draft "unreservedly" on the primary grounds that:

The suggestion that Israel should move from the cease-fire lines without a peace-treaty defining permanent and secure frontiers is unacceptable.<sup>51</sup>

Criticism was also levelled at the maritime freedom passage of the three-Power draft. Eban termed the Soviet draft (which we discuss below) "a backward-looking resolution. It seeks to restore the judicial ambiguity and the territorial vulnerability of the shattered armistice regime."<sup>52</sup> Eban did not convincingly elaborate on this. Moreover, if one reviews the Soviet draft, and especially operative paragraphs 2(b), and 3(a) and (b) (see page 254 below), Foreign Minister Eban's statement appears too strong. A studied silence, by and large, met the United Kingdom draft after it was introduced. Israel preferred more to reiterate its own position.

Eban argued on a judicial basis with telling effect. By accepting the Arab stance that a state of war continued between them, he laid the groundwork for his Government's call for a contractual peace settlement. But while in one sense, this could be considered a reversal of policy,



to accept the Arab case, in another, it evidences the continuity of the Israeli effort to legally end the state of war. A similar remark is applicable to the Israeli concern for territory. A state of war is more consistent with nonrecognition of sovereignty, unresolved territorial claims and unrecognized boundaries than that which would flow from a state of peace. Eban too, stood on ultimately firm ground in his insistence on negotiation. Negotiations are necessary to the peaceful conclusion of the many, many, disputes which go to make up this conflict. The U.N. agreed to this. But to shoulder out the U.N. while perched atop Arab territory and demanding bilateral negotiations apparently struck an unresponsive chord among the U.N. membership. The fruit of victory--territory--clouded the issue. And the high stakes of world peace, coupled to the immense complexities of the problem and the political, if not physical, suicide for an Arab leader to do this precluded such an ultimate step at this time. To defuse the crisis, to get the parties talking, if only through a third party, it appears, was envisioned as the first step. Not only international law, but diplomacy, negotiations and sheer practicality intruded here.

The Arab position at this time, and especially that of the Syrian Arab Republic, demonstrated the tragic cliché in this situation; that for the Arabs and Israelis it has not been so much a case of talking to as talking

past each other when it is a case of talking at all. Just as Eban ignored the refugees, and spoke of a peace treaty and recognized boundaries, so the Syrians ignored treaties and boundaries to talk of the refugees.

The words of Ambassador Adib Daoudy convey perhaps the most economical insight into the Syrian view of the Palestinian refugees:

The right of the Arab people of Palestine are not and can never become the subject of bargaining. Those Arab rights are inalienable. . . . Those who continuously pressure the Arabs to recognize what they call the rights of Israel are in the wrong when they ignore the rights of the Arabs and the obligations of Israel toward those rights.<sup>53</sup>

Ambassador George Tomeh continued in this vein when he observed just prior to the vote on the United Kingdom draft resolution that as he looked around the Council table:

The party directly concerned, the Arab people of Palestine, who should themselves be the first speakers to be heard, since they have never ceded their inalienable rights to anybody nor forfeited them, are totally absent from the picture.<sup>54</sup>

No reference, except "belatedly" is made of the refugees as constituting the refugee problem, Tomeh pointed out. The Charter, the Universal Declaration of Human Rights, and eighteen General Assembly resolutions since 194 (III) (1948) were not meant, stated Ambassador Tomeh, to "deprive people of their inalienable rights to self-determination in their own lands and their right to their homeland in which they had lived for over two thousand years."<sup>55</sup>

Tomeh accused Israel of nineteen years of aggression, topped by the invasion of Syria after the acceptance by Damascus of the cease-fire was conveyed to the Security Council: "the momentum of . . . [Israeli] . . . pre-meditation was so strong that the fact that the Security Council was just at that time considering the very problem involved did not deflect it from its course."<sup>56</sup> The U.K. draft was criticized by Tomeh because it contained no time limit or specified modus operandi for ensuring Israeli withdrawal, because it was silent on the General Assembly resolutions concerning the status of Jerusalem and post-June 5 refugees and for other reasons:

It is inconceivable to Syria that this draft resolution be accepted because it ignores the roots of the problem, the various resolutions adopted by the United Nations on the Palestine Question and the right of the Palestinian people to self-determination . . . it crowns all those failures by offering to the aggressors solid recognition of the illegitimate truths of their wanton aggression when it speaks of "secure and recognized boundaries."<sup>57</sup>

Rather than withdrawing, Israel is consolidating its grip on the occupied territories, said Tomeh.

Israel is the actual aggressor, the real belligerent--it is not an Arab state, but Israel which has annexed land and displaced people, turning them into refugees, the Syrian representative stated. Tomeh recalled Security Council Resolution 228 (1966) in which Israel was censured for the Es-Samu raid. Ambassador Tomeh concluded that his Government's "non-acceptance" was based upon a "real, true

and legal context" and finished:

Peace and security, while being the cherished goal of every society, would only mean new oppression if they were to be emptied of their basic tenet, which is justice. History has taught us all that the seeds of past wars were sown in every unjust peace imposed by force. A lasting peace cannot be imposed by force. One does not open the way for it by seizing another's property and demanding certain concessions before that property is given back to its legal, lawful owner.

Should the principle of putting on an equal footing the aggressor and the victim be approved, thus offering rewards to the aggressor, no safeguard would remain in the world to prevent one power from overwhelming another and extracting concessions therefrom.<sup>58</sup>

While some certainly would call this uncompromising, the legal principles herein espoused are so basic that to permit their violation is to erode the very foundation of international order. Foreign Minister Mon'im El-Rifa'i of the Hashemite Kingdom of Jordan focused on the single question he too felt was one of principle and lies at the very roots of the United Nations and international law:

. . . is occupation or acquisition of territory by military conquest admissible under the Charter of the United Nations and international order. If the answer is negative, then the basic foundations of peace will be established and the United Nations will emerge as the centre for harmonizing the actions of nations in the attainment of the principles and purposes of its Charter. But, if the answer is in the affirmative, then I must ask in all fairness what good purpose this organization serves. . . .<sup>59</sup>

We need but recall the downward spiral for the League of Nations which began with the military conquests of Manchuria and Ethiopia to witness what can occur when international organization cannot or does not answer a similar question negatively. Rifa'i, as Tomeh, made



special reference to the threat posed to small and weaker states. He told the Council that if the U.N. could not effect Israel withdrawal:

We shall have to return to our people and explain to them that they have no other course but to mobilize their own efforts, to use their own resources and to organize themselves in order to liquidate the Israeli aggression, no matter what the price and sacrifice might be.<sup>60</sup>

The initial statements of Mahmoud Riad, Foreign Minister of the United Arab Republic on November 9 appear correlative in content with the introduction of the three-Power draft by the representative of India. This was highlighted in his words describing the decision taken at Khartoum as:

. . . a decision for peace, but not surrender. It was a decision for a political solution to the crisis, and not a decision for national suicide in the name of a political solution.<sup>61</sup>

Riad went further in stating:

The peoples of our part of the world can in no way benefit from a state of war, belligerency . . . the Palestine question . . . can be adjusted only by peaceful and appropriate application of the Charter.<sup>62</sup>

There is little chance of mistaking the desire for a settlement sought by the United Arab Republic. Perhaps this is why the U.A.R. contributed so little in the verbal or formal sense to the proceedings. However, this is not to say that Riad was diluting his Government's stand on withdrawal:

Under no circumstances will the United Arab Republic compromise on this point, nor in our judgement, should the Security Council. An aggression has taken place against the Charter, and therefore the consequences of that aggression have to be fully eliminated in accordance with the Charter.<sup>63</sup>

The U.A. R. delegate also called for self-determination for the people of Palestine and condemned Israel's policy of expansionism and aggression. Sober in the views he presented and seeking to do so on a legal plane, Riad exposed the plight of the Arab position and the need in the Arab view to act promptly. He asked for Charter enforcement measures if Israel did not comply with the minimum measure which the Council should advocate, in Egypt's eyes--immediate withdrawal to the positions of June 4.

The legal and moral case of the refugees, and the legal proposition "no fruits of conquest" and the grave threat its passive acceptance would pose to the orders of both law, nations and international organization were emphasized by the Arab representatives. But here, as if in relief, was highlighted the legal problem in grappling with this problem. Israel began with the premise of its existence and constructed both a legal defense and justification thereupon. The Arab states began with the premise that the existence of the Israeli state itself was illegal and immoral as was the birth and continuance of the refugee status for the Palestinian people. Some basis of commonality, some slight sharing of norms or accepted standards

is requisite for parties to a conflict to accept the justifiability and applicability of law to their quarrel. And because of the nature in which they have played their political hands, those perennial enforcers of common standards--or at best, inducements, at worst penalties--the big powers, had been unable and/or unwilling to actualize this role. So law in the framework in which it had operated had provided no final settlement thus far. The concatenation of norms, diplomacy and fine negotiating skills, personified by Lord Caradon, was able to provide a formally agreed-upon framework for discussions, but this was all. This was a great deal, of course, but after nineteen years--in domestic law there is a final degree of coerciveness such that even the most obstinate parties must accept a decision, once it is handed down from the highest level. But in international law, there is no final degree of coerciveness, no enforcement of decision and no "highest" level. But if some problems do not get solved, perhaps they can be ameliorated.

Into this breach stepped the esteemed and ameliorative Lord Caradon. Upon hearing both the three-Power and American drafts he wisely avoided specific comments on the drafts and bided for time. The representatives of both the United States and India had indicated their willingness to pass a resolution. Once again, Caradon early put the situation into perspective, and lent balance to the proceedings:

It is not my purpose to deal at this stage with the detail of draft resolutions which have been circulated. Nor is it a question of seeking victories in the vote. We want not victories in the vote. We want not victories but a success. It is a question of what resolution we can adopt with the prospect of early effective action.

Consequently I would earnestly put to the Council the suggestion that when we have heard, the opening statements in this debate, we should allow a short period for further urgent consultations among ourselves. There is, I am sure, such a measure of agreement and common ground among us that I cannot believe that such consultations will fail.<sup>64</sup>

On November 15, Caradon evolved that "common ground." After reminding the delegates that time was of the essence and that the obligation for the Council was not to partisanship, but to the discharge of responsibility which will set the peoples of the Middle East either "on a road of hope or a road of despair,"<sup>65</sup> Caradon outlined that area in terms of the direct participants toward which the resolutions were directed:

The Arab countries insist that we must direct our special attention to the recovery and restoration of their territory. The issue of withdrawal is to them of top priority. The Arabs want not charity but justice. They seek a just settlement to end the long and bitter suffering of the refugees. There is a recognition on all sides that a new, comprehensive, imaginative plan, as we have advocated, to deal with this desperately urgent problem is vital.

The Israelis tell us that withdrawal must never be to the old precarious truce; that it must be to a permanent peace, to secure boundaries, to a new era of freedom from the use or the threat or the fear of hostility and force.

Both are right. The aims of the two sides do not conflict. They converge. They supplement and they support each other. To imagine that one can be secured without the other is a delusion. They are of equal validity and equal necessity. The recent consultations



that have been going forward so energetically and continuously reinforce strongly my conviction that we in this Council now have a supreme opportunity to serve the interests of all those concerned. . . . Justice and peace are not in conflict; they are as inseparable as they are indispensable, and one must go hand in hand with the other.<sup>66</sup>

Lord Caradon requested another period of consultations during which:

We should make a final and supreme and successful effort to set aside all differences, many of which are in wording and not in substance, and concentrate on the common ground of agreed purpose and principle.<sup>67</sup>

Then Caradon envisaged the members taking ". . . perhaps the most important decision which the United Nations has ever taken."<sup>68</sup> Caradon again stressed the goal he saw:

We must pass a resolution. I hope we can do so unanimously. That will be the best way to discharge our responsibility and to do so in such a way that action is effective in the interests of all the people concerned.<sup>69</sup>

Caradon had not criticized either the three-Power or American resolutions. He did not advocate the satisfaction of one party over the other. Rather, he appealed to the members to exercise their responsibility according to the highest norms of both international law and organization. His was a search both for common ground and action on which a start toward settlement could be made. As he said on November 20, his draft ". . . was prepared with the greatest care after listening long and patiently to the views put to us by those directly concerned . . . we know and respect their intense feelings."<sup>70</sup> In so keeping, he

wanted "to work with others to devise a resolution which would take full account of the essential interests of both sides as they have stated them."<sup>71</sup> The aim always was agreement to permit forward progress in the Middle East on the issues themselves. In consciously seeking this, he sought out not just the direct parties, or the Council membership, he heeded not just the resolutions of the Security Council or General Assembly, but sought that:

This resolution which stands in our name is the work of us all. It draws on the ideas and formulations of others. It seeks to bring them all together in a balanced whole. It represents, above all, an endeavor to be fair, to be just and to be impartial.<sup>72</sup>

What was the nature of this draft resolution? After expressing continuing concern with the grave situation in the Middle East, the opening paragraphs of what ultimately became Resolution 242 emphasized "the inadmissibility of the acquisition of territory by war and the need to work for a just and lasting peace in which every state in the area can live in security." This was coupled with the statement in the resolution that the establishment of a "just and lasting peace" in the Middle East should include application of the principle of:

Withdrawal of Israeli armed forces from territories occupied in the recent conflict.

This was a denial of the validity of the Israeli claim to withdraw only after bilateral negotiations with the Arab states.

The Latin American resolution submitted to the General Assembly had urgently requested in operative paragraph 1(a):

Israel to withdraw all its forces from all the territories occupied by it as a result of the recent conflict.<sup>73</sup>

The Latin American draft also had reaffirmed its conviction in operative paragraph 2:

. . . that no stable international order can be based on the threat or use of force and declares that the validity of the occupation or acquisition of territories brought about by such means should not be recognized.<sup>74</sup>

The three-Power draft had linked, reversed and re-phrased this to read in operative paragraph 1(I):

Occupation of acquisition of territory by military conquest is inadmissible under the Charter of the United Nations and consequently Israel's armed forces should withdraw from all the territories occupied as a result of the recent conflict.<sup>75</sup>

The three-Power draft certainly was closer to Caradon's than to the U.S. draft which had merely affirmed "withdrawal of armed forces from occupied territory" in operative paragraph 1. While the United Kingdom, three-Power and Latin American drafts specifically mentioned and linked Israel and its armed forces to withdrawal, the United States resolution did not. In addition, such withdrawal was identically called for "from all the territories occupied" in the Latin American and three-Power drafts,<sup>76</sup> while the United Kingdom compromise called instead for withdrawal "from territories occupied." Conceivably application of the United Kingdom formulation could permit border

modifications as a result of negotiations of the sort Israel envisioned for secure borders. The translated French version of the U.K. text reads, however, withdrawal "des territoires occupés," a phrasing with somewhat more specificity and import. Naturally, the Arab governments claimed the French version as paramount. Consequently, after its approval, Abba Eban stated before the Security Council:

I am communicating to my Government for its consideration nothing except the original English text of the . . . [United Kingdom] . . . draft resolution as presented by the original sponsor on 16 November.<sup>77</sup>

Operative paragraph 1(II) of the United Kingdom draft affirmed application of the principles:

Termination of all claims or states of belligerency and respect for and acknowledgement of the sovereignty, territorial integrity and political independence of every state in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force.

Once again, an early formulation belongs to the Latin American text which, in operative paragraph 1(b) requested:

The parties in conflict to end the state of belligerency, to endeavor to establish conditions of coexistence based on good neighborliness and to have recourse in all cases to the procedures for peaceful settlement indicated in the Charter of the United Nations.<sup>28</sup>

As noted above, operative paragraph 2 of the Latin American draft also stated "no stable international order can be based on the threat or use of force. . . ."

The United States draft resolution presented to, but never voted upon by the emergency session of the General



Assembly in operative paragraph 3(A) had called for:

Mutual recognition of the political independence and territorial integrity of all countries in the area, encompassing recognized boundaries and other arrangements . . . that will give them security against terror, destruction and war.<sup>79</sup>

Since the Latin American draft was not introduced until ten days after that of the United States, ten days in which the Latin American delegates sat and listened, it is entirely possible that the American draft was an antecedent here.

The three-Power text contained much of this though more a progeny of the Latin American text. Operative paragraph 1(II) and (III) of the three-Power draft stated:

Likewise, every state has the right to live in peace and complete security free from threats or acts of war and consequently all states in the area should terminate the state or claim of belligerency and settle their international disputes by peaceful means;

Likewise, every state of the area has the right to be secure within its borders and it is obligatory on all Member States of the area to respect the sovereignty, territorial integrity and political independence of one another. . . .<sup>80</sup>

But certainly the November U.S. draft to the Security Council came very nearly closest in words and phraseology to the United Kingdom draft. The November 7 United States draft affirmed in operative paragraph 1:

. . . termination of claims or states of belligerency, and mutual recognition and respect for the right of every State in the area to sovereign existence, territorial integrity, political independence, secure and recognized boundaries and freedom from the threat or use of force.<sup>81</sup>

The remainder of the United Kingdom draft replicated exactly the United States draft of just nine days earlier. Operative paragraph 2 of both the U.S. and U.K. drafts read:

2. Affirms further the necessity
  - (a) for guaranteeing freedom of navigation through international waterways in the area;
  - (b) for achieving a just settlement of the refugee problem;
  - (c) for guaranteeing the territorial inviolability and political independence of every state in the area, through measures including the establishment of demilitarized zones. . . .

The three-Power draft had carried clauses very similar to these in operative paragraphs 1(III), and 2(I) and (II)--with the additional phrase "in accordance with international law" concerning freedom of navigation.<sup>82</sup> In the United States emergency session draft, both freedom of navigation and a just solution of the refugee problem were included.<sup>83</sup> But it was the Latin American draft, once again, which more than embryonically stated in operative paragraph 3(c) the precedent text closest to both the U.S. and U.K. drafts.

. . . guarantee the territorial inviolability and political independence of the states of the region, through measures including the establishment of demilitarized zones.<sup>84</sup>

Operative paragraph 3 of the United Kingdom draft read as follows:

Requests the Secretary-General to designate a special representative to proceed to the Middle East to establish and maintain contacts with the states concerned in order to promote agreement and assist efforts to achieve a peaceful and accepted settlement in accordance

with the provisions and principles in this resolution.

The fourth and last operative paragraph requested a progress report to the Security Council by the Secretary-General as soon as possible.

On November 20, eleven days after the three-Power and United States draft resolutions had been submitted to the Security Council and four days following Lord Caradon's submission of the ultimately successful United Kingdom text, the Soviet Union put forward a draft resolution of its own. Although it was entered too late to be of any consequence in the finely balanced and negotiated consultations which resulted in ultimate formal success, it is worth reviewing this draft for the view it provides us of the evolving Soviet position just before the crucial vote. There were four operative paragraphs to this surprising resolution.<sup>85</sup> Operative paragraph 1 declared that the Charter of the United Nations provided the framework to achieving peace and a final solution to this problem. The second operative paragraph was divided into two subparagraphs: (a) urged withdrawal of armed forces by "parties to the conflict" to positions "held prior to June 5" in keeping with the principle "that the seizure of territory by means of war is inadmissible"; (b) urged that area member states

. . . immediately recognize that each has the right to exist as an independent national State and to live in peace and security and should immediately renounce all claims and desist from all acts inconsistent with the foregoing.

Operative paragraph 3 deemed it "necessary" to continue Council consideration of the Middle East situation by "working directly with the parties concerned and making use of the presence of the United Nations "with a view toward achieving" an appropriate and just solution of all aspects of the problem" on the basis of four principles: (a) "the use or threat of force in relations between States is incompatible" with the United Nations Charter; (b) every area State "must respect the political independence and territorial integrity of all other . . . area . . . States; (c) "there must be a just settlement of the question of the Palestine refugees." (d) "Innocent passage through international waterways in the area in accordance with international agreements." Operative paragraph 4 considered that the area states "should put an end to the state of belligerency, attempt to limit the arms race, and discharge their Charter and other international agreements.

Of course, the key Soviet motive was to seek an Israeli withdrawal "to the positions of 5 June" so that the "fruits of aggression" would not be enjoyed. The linkage of 2(b), withdrawal, had a precedent in the July 19 agreement between the United States and the Soviet Union. The fact that the key Arab demand for withdrawal was linked to the principles of 2(b) and that Kuznetsov himself early in his statement said "on the part of the Arab states there has been a



clear-cut manifestation of interest in a political settlement and of readiness to seek ways and means for the establishment of a lasting peace in the Middle East"<sup>86</sup>--meant that compromise by the Arabs had already occurred. The key point still was formulated by the Russians as "the aggressor has come into foreign lands: the aggressor must leave those lands."<sup>87</sup> This was not quite the formulation the Security Council sought. While this point certainly would be considered prejudicial by Israel, there were two key aspects of the earlier Soviet General Assembly position which had been dropped: the calls for condemnation and compensation. It is noteworthy that the Soviet draft now linked withdrawal to a "principle." It is noteworthy also that as late as November 9, Deputy Foreign Minister Kuznetsov was describing these points as the "essence" of Soviet policy before contradictorily stating next:

However, although the Soviet delegation would have preferred a more radical solution it will be ready to support the draft resolution of India, Mali and Nigeria, if the Arab countries the victims of aggression, do not oppose it.<sup>88</sup>

The draft's position on the incompatibility of the threat or use of force with the Charter and the call for respect of the political independence and territorial integrity of states was novel and welcome from Russia. The subparagraph concerning innocent passage used the three-Power phrasing "in accordance with international agreements" which India already had offered to delete as

causing possibly too much ambiguity. Novel too for the Soviet State were the calls to end the state of belligerency, the arms race and for area states to fulfill their Charter and other international obligations. It was indeed encouraging to see both superpowers calling for an end to the arms race, but sad to see both anomalously arming state parties to the conflict according to their separate justifications. There was no mention of the point of arms limitation in Resolution 242. This draft contained elements of flexibility, but came too late and contained too many features objectionable to Israel and the growing Council consensus to permit its acceptance.

The actual voting was suspense-ridden. The resolution had been so carefully constructed, word-by-word, the compromise was so delicate and tenuous, the Russian draft was so late and unexpected, there were so many probabilities any one of which were it to become a reality could hobble the unanimous vote sought by Lord Caradon and those whom he had encouraged, cajoled, pushed and led to the discharge of their own and the United Nations' higher responsibility. Israel was unhappy with the portion on withdrawal and the inadmissibility of acquisition of territory by war. The Arab states were not gratified by the acknowledgement of Israel's sovereignty, territorial integrity, political independence, and secure and recognized boundaries. And the Soviet Union was embarrassed at not having obtained

Israel's condemnation.

At the request of the sponsors, neither the three-Power nor the American draft was put to vote. The United Kingdom draft was next, followed by the Soviet draft. The United Kingdom draft was brought up for the vote. The vote was unanimous and the Soviet delegate withdrew his Government's draft. Finally, success, as Caradon would put it, was theirs. Now the struggle of implementation would begin.

## NOTES

1. U.N. GAOR, Report of the Security Council, 16 July 1966-15 July 1967, 22d Sess., Supplement No. 2 (A/6702), pp. 53-54.
2. Israel Digest, September 22, 1967, p. 3.
3. Christian Science Monitor, September 2, 1967.
4. The New York Times, September 7, 1967.
5. Ibid., October 15, 22, November 1, 1967.
6. Ibid., November 12, 1967.
7. S/PV. 1369, October 24, p. 27.
8. S/PV. 1370, October 25, 1967, p. 27.
9. Ibid., p. 11.
10. U.N. Documents S/8207 (U.A.R.) and S/8208 (Israel), both October 24, 1967.
11. S/PV. October 24, 1967, pp. 37-40.
12. S/8212, October 24, 1967.
13. S/8213, October 24, 1967.
14. Security Council Resolution 240 (October 25, 1967).
15. S/PV. 1371, October 25, 1967, p. 26.
16. Ibid., p. 27.
17. S/8226, November 7, 1967.
18. S/PV. 1373, November 9, 1967, p. 66.
19. Ibid., p. 71.
20. Ibid., p. 67.
21. Ibid., p. 68.



22. Ibid., p. 71.
23. For text see S/8227, November 7, 1967 incorporated into the record of S/PV. 1373, November 9, 1967, pp. 68-70.
24. A/L. 523, June 30, 1967.
25. S/PV. 1373, November 9, 1967, p. 72.
26. S/PV. 1377, November 15, 1967, pp. 33-35.
27. Ibid.
28. Ibid.
29. S/8229, November 7, 1967.
30. S/PV. 1373, November 9, 1967, p. 111.
31. Ibid., p. 112.
32. Ibid.
33. S/8227, November 7, 1967.
34. A/L. 523, June 30, 1967.
35. S/PV. 1373, November 9, 1967, pp. 128-30.
36. S/8247, November 16, 1967, later adopted as Security Council Resolution 242, November 22, 1967, without change.
37. S/PV. 1381, November 20, 1967, p. 26.
38. S/PV. 1377, November 15, 1967, p. 31.
39. S/PV. 1379, November 16, 1967, p. 16.
40. S/PV. 1375, November 13, 1967, pp. 18-20.
41. Ibid., pp. 33-34.
42. Ibid., pp. 26-27.
43. Ibid., pp. 18-20.
44. Ibid., p. 27.
45. Ibid.

46. Ibid., p. 28.
47. Ibid., p. 26.
48. Ibid.
49. Ibid., p. 22.
50. Ibid., pp. 29-30. See also S/PV. 1382, November 22, 1967, p. 51.
51. Ibid., p. 28.
52. S/PV. 1381, November 20, 1967, p. 31.
53. S/PV. 1377, November 15, 1967, p. 21.
54. S/PV. 1382, November 22, 1967, p. 6.
55. Ibid., p. 7.
56. Ibid., p. 11.
57. Ibid.
58. Ibid., p. 17.
59. S/PV. 1375, November 13, 1967, p. 37.
60. Ibid., p. 42.
61. S/PV. 1373, November 9, 1967, p. 47.
62. Ibid., p. 51.
63. S/PV. 1379, November 16, 1967, pp. 13-15.
64. S/PV. 1373, November 9, 1967, p. 126.
65. S/PV. 1377, November 15, 1967, p. 22.
66. Ibid., pp. 23-25.
67. Ibid., p. 26.
68. Ibid.
69. Ibid.
70. S/PV. 1381, November 20, 1967, pp. 21-22.

71. Ibid., p. 21.
72. Ibid., pp. 23-25.
73. A/L. 523, June 30, 1967.
74. Ibid.
75. S/8227, November 7, 1967.
76. A/L. 523, June 30, 1967; S/8227, November 7, 1967.
77. S/PV. 1382, November 22, 1967, p. 96.
78. A/L. 523, June 30, 1967.
79. A/L. 520, June 20, 1967.
80. S/8227, November 7, 1967.
81. S/8229, November 7, 1967.
82. S/8227, November 7, 1967.
83. A/L. 520, June 20, 1967.
84. A/L. 523, June 30, 1967.
85. S/8253, November 20, 1967.
86. S/PV. 1381, November 20, 1967, p. 6.
87. Ibid., pp. 7-10.
88. S/PV. 1373, November 9, 1967, pp. 108-10.

## C H A P T E R   V I

## CONCLUSIONS

Law and organizations in any setting are not tested in moments of calm and quiet. It is in those tumultuous times of violence and crisis that the trial comes. As international law and international organization have unfolded, they have been accorded great inherent strength by few observers. The bisection of their evolution by the "Middle East conflict" was a test indeed. For this conflict is at once acute, episodic and chronic. Acute because it remains overall the single flash point most laden with the tinder of conflagration. Episodic because, as Chapter I indicates, the proximate sources of crisis tend to be each time somewhat novel and unique. Chronic because, as Chapter II demonstrates, the basic elements of conflict in 1948, 1956 and 1967 remained constant and may be subsumed to a legal analysis. The succeeding chapters attempted to show how international law and international organization met with this episodic crisis and ultimately dealt with it as a chronic conflict so as to fulfill the object of all law: "To define the interests of the parties concerned in a controversy and then to provide adequate procedures for settlement on the basis of rational argument."<sup>1</sup> In so doing, that international organization,



the United Nations, sought to fulfill its primal objective as it is now constituted: "to further political and national security" for its members.<sup>2</sup> To our salvation international law and international organization did not break down under the stress of the 1967 war. To their credit law and organization produced what might even be termed an embryonic peace treaty in Resolution 242 for the warring states. But there are limits to this credit.

Between the inception of this crisis in mid-May and the passage of Resolution 242 in late November, a great deal went on which might be aptly put under the twin headings of statecraft and its absence. Statecraft includes not only transcendent law and the procedures of organization, but threat, pressure, negotiation, compromise, shrewdness, luck, ideals, morality, bargaining, drive and adjustment. The surge toward war and the actual hostilities themselves were notable for the lack of these elements. The environment in which the crisis played itself out was much different from the one in which the Arab-Israeli conflict had last been brought to the U.N. in 1956. Then the international order was much tighter in its bipolarity. John Foster Dulles was the American Secretary of State who personally presented the United States case to the United Nations. His views on the immorality of neutralism are well-known. There were not so many actors to control in the United Nations, and there was much more a habit of command, or at least predominance and

accession to the American efforts. It was an age of alliances, and conflict and struggle in the United Nations marked more by contention than cooperation. Smaller states played lesser roles. But as Dulles passed from the scene and decolonization produced more members both for ultimate U.N. membership and the international system, the smaller and newer states began to seek out policies sometimes quite discontinuous with the past wishes of the superpowers. Both "congruence and discontinuities" began to appear in the international system as the new states began to realize independence not only in their domestic, but in their foreign policies as well.<sup>3</sup> Within the United Nations, life became more than a matter of getting the opinion or tacit support of the senior partners.<sup>4</sup>

The relationship of the superpowers with the Middle Eastern situation and states also had changed. Unlike what happened in 1956 there was not the flagrant victimization of the sovereign rights and invasion of the sovereign territory of a weaker Egypt on the most shallow of justifications. Nor was there the cheap complicity of formerly colonial overlords, thus raising the specter of imperialism, or the callow double-cross of a trusted ally, the United States. Instead, at a time of economic weakness for both Eshkol and Nasser<sup>5</sup> by bluff and miscalculations the Arabs, led by an adventurous Damascus and an improvisational Cairo provided Jerusalem plenty of provocation. The growing escalation of the Israeli responses gave perceived proof to the Arab interpretation of

Israeli intentions. Amidst all the uncertainty present when one risks the existence of a state, Israel's policy-makers put into action a plan more than sixteen years old,<sup>6</sup> implemented by armed forces of whose worth they had no question,<sup>7</sup> and with whose capabilities the United States intelligence services shared a high estimation.<sup>8</sup> But while the 1967 episode was more area-confined in its proximate delimitations the superpowers, and especially the Soviet Union, were more deeply committed than in 1956.

The Soviet Union contributed by playing up reports of Israeli troop concentrations against the shaky Syrian regime which Moscow sought to buttress. And while the existence of these concentrations remains unproven today, reports of Israeli threats in mid-May which, at the time, could not be researched in a scholarly fashion, triggered Nasser's entry into the fray to reassert his Arab-world ascendancy. Also, these threats lent credence to the Soviet-circulated intelligence.<sup>9</sup> Soviet obstructionism in the Security Council not only helped guarantee the outbreak of hostilities, but also greatly contributed to the near bankruptcy which the U.N. experienced in the vital realm of peace keeping. Prior to June 5 the Soviet Union appeared disinterested in the idea of restraint. True, there were midnight contacts made by Soviet Ambassadors to Israeli Prime Minister Levi Eshkol and Egyptian President Gamal Abdul Nasser,<sup>10</sup> but within the

vehicle of the United Nations little urgency can be detected. We do not hold that the Soviet Union sought a war. But we do hold that as the crisis developed, Kremlin leaders saw an opportunity to further divorce the Arab world from the United States by accentuating a pro-Israel American stance, simultaneously drawing the Arabs more tightly into its ambit, and furthering Russia's paramount aim of ejecting, or at least drastically lessening the United States position in the oil-rich and strategically vital Middle East land bridge. We hold, with C. B. Marshall, that while the Kremlin leaders have no precise timetable, their prime aim is to erode U.S. influence and to become a "regional arbiter exercising paramount influence among a diversity of client states."<sup>11</sup> With its erosion of ideology, and consequent loss of direction and purpose, fragmentation of decision-making and globalization of foreign policy since Khrushchev, Soviet foreign policy has become more Russian in its drive to the south and in its willingness to cooperate with states less on the basis of ideology than national interest.<sup>12</sup> This in no way conflicts with the Russian drive to outflank NATO to the south, to grab as much gain as the traffic will bear, and to simultaneously threaten American security with "a possible shift in the global balance of power comparable to Cuba in 1962."<sup>13</sup> While it is unquestionable that both old and new occupants of the Kremlin wished to be active in the Middle East, one wonders how far their influence would



extend without the Arab-Israeli conflict; by and large, Russia has been "invited" in by the Arab states as Laqueur says, in response to the threat they perceive from Israel.<sup>14</sup> However, the danger in building such spheres of influence are two-fold, given that all policies acquire a momentum of their own: first, that Russia may be drawn in more than it desires to be; and second that it may commit itself more deeply than the area warrants.<sup>15</sup> Therefore, much depends on the course Kremlin leaders choose and find themselves drawn into.

As the Israeli Government has correctly stated:

Moscow is not merely engaging in policy support and aid for Egypt . . . [or other Arab states]. . . . It is pursuing a fundamental strategy of its own, one that is dictated by its own self-interests and calculated to achieve major Soviet goals. The U.S.S.R. is striving for power in the Middle East. In so doing, it has sought to make maximum mileage out of the Israel-Arab dispute to enhance its own presence and influence in the region and to achieve predominance at Western expense.<sup>16</sup>

However, for the Arabs as Curt Gasteyger has pointed out, this relationship:

. . . is, of course, a function of their conflict with and fear of Israel. As long as this conflict lasts the Soviet Union has a welcome pretext for continuing both its presence in the Mediterranean and its influence in the Arab world. The main focus of the Soviet objectives is the U.A.R., not only because it is the leader of the "progressive" Arab states, but because it provides a key to Africa and via the Suez Canal, to the Indian Ocean.<sup>17</sup>

In addition to the deep sense of humiliation which Arab society in general suffered at the hands of Zionism, Arabs fear Israeli expansionism and seek to restore the political

community of Arab Palestine.<sup>18</sup> There is hardly a viable convergence here of Soviet and Arab interests as the events of 1967 so nearly catastrophically proved. As the Soviet influence deepened, so did their commitment, but the commitment came without adequate control, as Chapter I indicates. The engine of Soviet imperialist ambition--the Arab-Israeli conflict--exploded in the face of Moscow for reasons quite beyond Moscow's control.

The Soviet press during this period viewed the war as part of a deliberate CIA-Pentagon "Salame" policy or "local war doctrine" to "fight the national liberation movement, to suppress revolutions in Asia, Africa and Latin America."<sup>19</sup> The perception in the Soviet press was that:

The "local war doctrine" seeks to attain piecemeal what the total war doctrine was to attain all at once. The idea is to unleash a local war first in one spot, then in another, then in still another. If these local wars are successful the influence of progressive principles will wane, the local wars will merge and gradually approach the borders of U.S. imperialism's main enemy.<sup>20</sup>

According to this doctrine the prevention of a communist takeover in South Viet Nam, and the "liquidation of progressive regimes in the Arab countries" were major elements of U.S. policy. With this there can be no argument. And certainly these were part of the overall global balance of power. But although De Gaulle appears to be right in his view that Viet Nam made peace in the Middle East more difficult to achieve following the hostilities, there is

no historical evidence that any sort of a "deal" was struck between Moscow and Washington linking these two areas. On the other hand, one of Washington's fears was the "Nasserization" of the remainder of the Middle East, as we shall see below. Nasser too reiterated this Soviet perception of Washington's desire to hasten the downfall of "progressive regimes" in the Arab world in his July 23, 1967 speech on the 15th anniversary of the July revolution.<sup>21</sup> The Soviet case, however, was careful not to charge the United States with actively planning and initiating the war. While the Soviet view did make a "connection" between the local wars in the Middle East and South Viet Nam, it pointed out:

Needless to say this connection should not be turned into a dogma, for it would be wrong to regard every aggressive action of the imperialists as a step of the Pentagon devised and planned beforehand. Life is more complicated than any plan. But the U.S.A. encourages and supports all local conflicts if they coincide with their "local war doctrine" and if they can be used for a general offensive against the national liberation movement of Asian, African and Latin American peoples. Acting as the agent of U.S. imperialism in the Middle East the Israeli government pursues its own aggressive aims, which in some details may not coincide with those of their American bosses. Since Israel's interest does not contradict Washington's interest in principle the U.S.A. encourages and promotes Israel's ventures, the more so as they are directed against the national liberation movement of the Arab peoples and can be developed into a "local war" as part of their total strategy, a war that will suit the U.S.A. to wage through other people without deploying an American expeditionary force.<sup>22</sup>

According to this view, the "U.S. ruling circles would not object" to an "aggressive front" anchored at one end by South Viet Nam and at the other by the colonel's Greece.

Asia would be encircled from the south by a chain of military bases shielding newly independent East Africa, Southern Arabia, and the Persian Gulf. In the Middle East, the Israeli-occupied West Bank and Israel's attempt "to draw Transjordan with Amman . . . into its orbit . . . [by future subjugation or the threat thereof] . . . in order to come into direct contact with Saudi Arabia, where feudal reaction still holds strong positions" would result in "an imperialist corridor running across the Arabian Peninsula from south to north." This would pose a direct threat to the "progressive regimes" in Arab countries, permit the British to retain influence in Aden and Saudi Arabia by "going without leaving," and buttress the positions of Turkey, Iran and Pakistan.<sup>23</sup>

There are a number of points to make concerning this view. First, it is predominantly geopolitical. In its wide expanse, it envelops a view of the global balance of power between the Soviet Union and the United States which was reciprocated by Washington. Secondly, the fear for the safety of "progressive Arab regimes" while having its ideological undertones, also served the Kremlin's great power aims most handsomely. Third, this doctrine goes beyond the mere satisfaction of the Arab states in considering the Soviet insistence on Israeli withdrawal from the occupied territories; even beyond the principles of international law the Soviet position would be threatened



by an unwelcome and threatening "imperialist corridor." Lastly, the doctrine totally ignored the issue of the Palestine refugees and demonstrated the long-standing Soviet view of the refugees as an issue to be kept alive, but not solved so as to keep the Arab-Israeli conflict suitably active in the Soviet Union's own interest. The reopening of hostilities would most possibly result in another Israeli victory, the further extension of Israeli occupied land and the downfall of "progressive" Arab regimes. The massive airlift-resupply of Arab states with carefully selected defensive military supplies, the opening of negotiations between Israel and the Arab states and the "domestic protection and the retrenching of our revolutionary system, and the consolidation of the Arab revolutionary movement"<sup>24</sup> in Nasser's words, would all serve the Kremlin's interest.

We should also realize that the adamant Soviet support of the Arab position in the U.N. was based upon another factor. Moscow feared that Peking might utilize the poor Soviet showing in the crisis to intensify its rivalry with Moscow in the Arab states, and perhaps even offer nuclear weapons to Nasser.<sup>25</sup> In addition, a withdrawal by Israelis from the banks of the Suez Canal and its reopening would considerably shorten, simplify and cheapen the shipment of military supplies to North Viet Nam by Moscow. Thus, some of the complexity behind Soviet behavior in the United Nations

becomes more clear.

The Soviet Union approved a cease-fire in the Security Council before any of the Arab states accepted one. This was looked upon as "a complete capitulation from the position of support for the Arab states. It shows that the Soviet Union fishes in troubled waters, but will not risk its security on behalf of its friends in the so-called third world."<sup>26</sup> If this doctrine of "local wars" truly reflected part of the thinking of members of the Politburo during the hostilities, it may throw light upon Chairman Kosygin's hot line message to President Johnson during the Syrian campaign on June 10: Johnson reported "Mr. Kosygin said that they had reached a very crucial decision, that they were prepared to do what was necessary, including using the military."<sup>27</sup> It may be that Moscow foresaw the physical seizure of Damascus with attendant greater chances for the downfall of the progressive Syrian regime.

With the conclusion of hostilities, the Arabs felt outraged at what they saw as a Soviet betrayal and were stunned by their defeat. Their own strategy in the United Nations was to press for the indictment of Israel for aggression and to secure the prompt and unconditional withdrawal of Israeli military forces from territories occupied during the recent hostilities. Here the Soviet Union was in a quandary. On the one hand, it sought accommodation with Washington to reduce the possibility of skirting the nuclear

precipice once again. On the other hand, to further its own policy, possibly roll back the U.S. "local war" doctrine, and satisfy the Arab states, Moscow felt it incumbent to behave on the basis of quite different interests. A certain amount of tension and oscillation naturally resulted.

As a general rule the Soviet Union perceives the Security Council as a "forum of accommodation" and the General Assembly as an "arena of conflict."<sup>28</sup> Therefore, following its failure to gain passage of its June 13 draft resolution which condemned "Israel's aggressive activities" and demanded the unconditional withdrawal of her troops, Moscow requested the convening of the fifth emergency special session of the General Assembly. Here, too, while putting forward its own condemnatory draft resolution, it worked diligently to secure the passage of the more moderate non-Aligned draft which called for the unconditional Israeli withdrawal to the positions held prior to June 5. Given the split that occurred in the General Assembly between this and the Latin American draft resolution, the Soviets again faced the humiliating prospect of leaving an organ of the U.N. empty-handed. Accommodation with the United States was sought in the privately worked out draft resolution of July 19, 1967. However, there was no mention of Israel's condemnation, as well as ambiguity concerning the terms of withdrawal. And so it was rejected by the caucus of Arab

states. Activity returned to the Security Council in the Fall where the norm of accommodation was more prevalent. The Soviet representative to the Security Council approved the November 22 resolution with a clear emphasis on the "first necessary principle for the establishment of just and lasting peace in the Near East. We understand the decision taken to mean the withdrawal of Israel forces from all, and we repeat, all territories belonging to Arab states and seized by Israel following its attacks on those states on 5 June 1967."<sup>29</sup>

United States policy toward the Middle Eastern states epitomizes contradiction. The main juggling act simultaneously tries to keep in the air policies of support for Israel and influence with Arab states. But within these basal strictures, alternate policies have been introduced. The 1950's are the best example. For the Arabs U.S. policy veered from strong support for Nasser early in his tenure<sup>30</sup> to great antagonism after he had concluded the misnomered Czech arms deal in 1955 much against his wishes.<sup>31</sup> In turn this led to the abrupt withdrawal of American financial support for the Aswan dam which embarrassed and insulted Nasser, and led to his nationalization of the Suez Canal Company, and the sorrowful scenario which led up to the 1956 war. Since then, with the exception of the Kennedy years when a new attempt at deepening understanding was made between President Kennedy and Nasser,<sup>32</sup> the relationship



between Washington and Cairo tended, at best, to be formal and correct. Beginning in early 1966, U.S. footdragging on a variety of matters, but in particular on a PL 480 food program on which the U.A.R. was particularly vulnerable, led the Egyptians to suspect "a growing hostility on the part of the United States, and a very active endeavor on our part to overthrow the regime in Egypt and to isolate Egypt from the rest of the Arab world."<sup>33</sup> This had the effect of making American influence in Cairo negligible on the eve of the June 1967 war.

Policy took its twist towards Israel too. From the blatant partisanship of President Harry S. Truman, Secretary of State John Foster Dulles and President Dwight Eisenhower attempted to institute a policy of "friendly impartiality" and even-handedness.<sup>34</sup> Early Dullesian efforts to entice Egypt into a Middle East defense pact scared Israeli leaders half to death while U.S. threats, for example, forced Israel both to cease work in October 1953 on the Jordan River hydro-electric project it was continuing in defiance of a United Nations Truce Supervision Commission injunction, and to withdraw from the Sinai in 1957.<sup>35</sup> Dulles' policy of "friendly impartiality," paradoxically enough, drove Cairo toward Moscow and Tel Aviv toward Paris. All these and others had the effect according to Abba Eban of giving:

. . . the Israeli public the impression that American friendship for Israel had been a fleeting and accidental

circumstance of history, linked organically with the Truman administration . . . therefore a greater policy of militance should develop in Israel for two reasons: both as a compensation for American friendship and perhaps, as a way of forcing the United States to recoil from any change adverse to Israel . . . the response in Israel was toward greater self-reliance, a very active policy of retaliation on the frontiers.<sup>36</sup>

What has this to do with the American contribution to the 1967 crisis? This is more than a residue of history. Eban's words provide us with a very profound insight into the evolution of the crisis.

In Washington in 1967 there was a very strong feeling that one crisis was about all the United States could handle at a time. And the White House and Pentagon were immersed in handling Viet Nam. Eban's meeting with Johnson on the evening of May 26 was "friendly but indecisive."<sup>37</sup> And while the President made it clear that he would need the full support of Congress on, for example, American efforts outside the U.N. to open Aqaba, he was not clear on what he would do if such support was not forthcoming.<sup>38</sup> While U.S. and Israeli intelligence reports concurred on the superiority of Israel's military forces, Israel alone and again was left to test the speculation. So Eban did not return to Jerusalem on May 27 with any but the most ambiguous and vague of assurances if that. Eban's report to the Israeli cabinet was a stormy one because his trip had forestalled any military measures while producing nothing tangible.<sup>39</sup> The bankruptcy of American policy in Israeli eyes was at its

worst on the question of free passage through the Straits of Tiran. President Johnson seemed to have forgotten Eisenhower's verbal promises and Secretary of State Dean Rusk appeared unable to find Dulles' 1956 memorandum to Eban on this matter.<sup>40</sup> For a people whose collective consciousness told them to expect the turning away of Gentiles at the moment of crisis, the sinking feeling of abandonment once again brought to the fore the chief lesson of Zionism, that in the last analysis Jews could rely only on themselves. Once again Israel was alone because Washington's studied inaction had placed the major responsibility for the crisis upon Israel.

Antithetically coupled to this American inaction was the rising swell of pro-Israel sentiment which was sweeping the country.<sup>41</sup> And, for what it was worth, there was the characteristically Johnsonian pique at American liberals, often Jewish, who were "doves" on Viet Nam, but sudden "hawks" on Israel.<sup>42</sup> These antagonistic riptides of pressure helped lead to inaction and indecisiveness, verbal huffs and puffs, as Alastair Buchan put it,<sup>43</sup> by Johnson as contrasted with the forceful actions of Eisenhower in the disorganized hallucinogenic trip toward war the world was taking in 1967.

The Middle East is an area of real and significant value to the interest of the United States:

. . . The region is still the fastest, cheapest transportation route--by air or sea--between Western Europe and Asia. And still more important, beneath

its desert sand lies close to 300 billion barrels of petroleum, about three-fourths of the non-Communist world's proved resources. . . . According to oil consultant Walter Levy, the complete loss of this oil could not be made up by any combination of other sources within a decade--if at all. Western Europe imports 5,600,000 barrels of Arab oil each day, 65 percent of its requirements, and Japan 1,200,000 (60 percent). If the Russians should achieve domination of the Arab countries, as many Arabs now fear they will, they could blackmail both Western Europe and Japan by threatening to turn off the taps and cripple their economies. The ultimate price for assured oil supplies, some American diplomats grimly speculate, could well be a sharp diminution of U.S. influence in Europe and Asia.<sup>44</sup>

But of great importance to the decision-making calculus was the strategic position of the Middle East placed, as it is, to the rear of NATO's eastern flank and to the southeast of Europe itself in relation to a perceived drive to complete the "Nasserization" of the Arab Middle East.<sup>45</sup>

American policy toward the area has been balanced on the horns of a dilemma. A realization of the area's significance would prompt policies of friendship with the majority Arab inhabitants of the area while domestic support and sympathy for Zionist aims, especially after the unimaginable holocaust of World War II, would encourage a policy of friendship with the much smaller state of Israel. While both factors have deeply conditioned U.S. policy in the region, on balance, Washington has come to be identified as a protector of Israel (especially since the polarization which began once Moscow started moving into the area in the 1950's).



The chief question which arises in considering the behavior of the United States is to explain the shift in U.S. policy on the point of national sovereignty and territorial integrity concerning Middle Eastern states. The Tripartite Declaration of May 25, 1950 stated that the Governments of the United Kingdom, France and the United States unalterably opposed:

. . . the use of force or threat of force between any of the states in that area. The three Governments, should they find that any of these states was preparing to violate frontiers or armistice lines, would, consistently with their obligations as members of the United Nations, immediately take action, both within and outside the United Nations, to prevent such violations.

These principles were reaffirmed by President Eisenhower on November 15, 1955, Secretary of State Dulles on February 24, 1956, by White House statement on April 9, 1956, by Article 2 of the "Eisenhower Doctrine" approved on March 9, 1957, and again by Secretary of State Dulles on September 10, 1957. President John F. Kennedy provided continuity to these principles on August 5, 1960 and May 8, 1963. President Lyndon B. Johnson associated himself with these principles in June, 1964.<sup>47</sup>

Max Frankel provided a prescient view of what would later transpire in a New York Times article published on June 8, 1967.<sup>48</sup> In it he wrote of the White House's plans for a review of policy in the hopes that the war had stimulated the chances for energetic peace efforts. The

dispatch from Washington continued that the administration expected "stiffer" terms from Israel concerning a withdrawal from occupied territory than in 1956, and that there was "measured sympathy for the Israeli decision to seize an improved bargaining position" rather than wait for the Western powers to challenge Nasser's blockade of Tiran. Frankel's dispatch continued:

A decisive Israeli victory . . . it was thought would lead to additional complications in the form of new claims to what has been Arab territory.

The White House adhered to President Johnson's declaration that the United States was firmly committed to the territorial integrity of all Middle Eastern nations. Officials indicated that they could not support any annexation by Israel. But again there was some sympathy for the Israelis desire to command certain strategic positions for which they have repeatedly had to shed blood. Senators who heard Mr. Rusk gained the impression that the United States would favor having all troops stay in their present positions while a full-scale peace was negotiated.<sup>49</sup>

On June 5 and again on June 19, President Johnson voiced and echoed sentiments to the effect that this conflict had become a "burden to world peace" and that the international community should insist on proper steps to resolve it.<sup>50</sup>

John C. Campbell has noted:

On the conclusion of the war, the United States took the position that an attempt should be made to reach a durable peace settlement instead of merely restoring the armistice arrangements, which had proved inadequate to keep the peace. The desired settlement was to include, in addition to withdrawal of forces, all the major issues which were at the heart of the Arab-Israel conflict: frontiers, refugees, freedom of navigation, renunciation of belligerency, recognition of the right of all states to exist. . . .<sup>51</sup>

In so doing the United States sought a middle ground between the exclusive stands of Israel and the Arabs, Washington:

. . . does not wish to be totally identified with Israel's cause but its apparent acceptance of the Israel view that no Arab territory need be given up except as part of a comprehensive settlement is to the Arabs convincing evidence of total partiality.<sup>52</sup>

This line of analysis is buttressed in the U.S. case by an unusual insight into the thinking of at least one American decision-maker afforded by Eugene V. Rostow, former Undersecretary of State for Middle East policy during the period under study.<sup>53</sup> Professor Rostow found the Mediterranean to be a cockpit of Soviet Cold War machination and felt that the weakening or destruction of Israel "would be a long step towards complete Soviet control of the vast region between Morocco and Iran."<sup>54</sup> He stated that the British and French withdrawals, the velocity of Soviet penetration, and the State of Arab politics had induced a review of Middle East policy which led President Johnson to conclude in Winter 1966-67 - Spring 1967 that Western economic, political and strategic interests were "threatened" by "Nasserization" such that NATO and the U.S. would face "a security crisis of major and potentially catastrophic proportions."<sup>55</sup> Rostow went on to write that an Arab-Israeli war should be perceived "not as a local conflict but as a stage in a process which threatened the security of Europe and the United States in fundamental ways."<sup>56</sup> Rostow felt

that Nasser's imposition of a blockade on Tiran was the prime precipitative act leading to hostilities and "justified Israeli military action" under U.N. Charter Article 51. On the point of aggression, Rostow later backtracked a bit and called the question of who fired the first shot one of "Byzantine complexity" for the provocation Nasser supplied. "Before that mystery, sober opinion refused to reach the conclusion that Israel was the aggressor. And no serious attempt was made to obtain a resolution declaring the United Arab Republic to be the aggressor."<sup>57</sup> Mr. Rostow then clearly states ". . . the experience of the international community with the understanding which ended the Suez Crisis of 1956-1957 led to the conclusion that Israel should not be required to withdraw from the cease-fire lines except as part of a firm prior agreement which dealt with all the major elements of the crisis."<sup>58</sup> On the key issue of "to what boundaries should Israel withdraw?" the Armistice Agreement of 1949 was cited in those critical sections which provided that the Armistice Demarcation Line "is not to be construed in any sense as a political or territorial boundary, and is delineated without prejudice to rights claims or positions of either Party to the Armistice as regards ultimate settlement of the Palestine question."<sup>59</sup> Because the Armistice Agreements were to facilitate the transition to permanent peace all nonmilitary "rights, claims, or interests" were subject to "later settlement"



in agreement among the parties in the transition to permanent peace.

These paragraphs, which were put into the . . . [Armistice] . . . agreements at Arab insistence, were the legal foundation for the controversies over the wording of paragraphs 1 and 3 of Security Council Resolution 242, of November 22, 1967.<sup>60</sup>

Professor Rostow stated that while the "new and definitive boundaries should not represent 'the weight of conquest' . . . they need not be the same as the Armistice Demarcation Lines. The walls and machine guns that divided Jerusalem need not be restored." Rostow continued by citing paragraph 2 of Resolution 242 as further bases for "adjustments and boundaries."<sup>61</sup> This series of points is somewhat surprising because it appears to adopt the Arab legal position on the existence of a continued state of war, boundaries, and the demilitarized zones.

Rostow reviewed the point that Resolution 242 calls for a withdrawal "from territories occupied" rather than "from the territories occupied."<sup>62</sup> (Emphasis mine.)

Repeated attempts to amend this sentence by inserting the word "the" failed in the Security Council. It is therefore not legally possible to assert that the provision requires Israeli withdrawal from all the territories now occupied under the Cease-Fire Resolutions to the Armistice Demarcation Lines.

This aspect of the relationship between the Security Council Resolution of November 22, 1967, and the Armistice Agreements of 1949 likewise explains the reference in the resolution to the rather murky principle of the "inadmissibility of the acquisition of territory by war." Whatever the implications of that obscure idea may be, it would permit the territorial adjustments and special security provisions called for

by the Security Council resolution and the Armistice Agreements of 1949.<sup>63</sup>

Rostow went on to state that "Israel has said repeatedly and officially that it has no territorial claims as such; that its sole interest in the territorial problem is to secure its security and to obtain viable guarantees of its maritime rights. . . . The assurances by Israel have been the foundation and the predicate of the American position in the long months since June 1967."<sup>64</sup> In order to implement Resolution 242, Rostow called for NATO's "concerted Alliance diplomacy to protect its interests in the Mediterranean, North Africa and the Middle East. But thus far, unfortunately, those resolutions have not been used as the basis for a credible policy of warning and deterrence." Rostow also proposed that U.S. troops be kept in Europe in part, for possible physical commitment to the Middle East in a crisis, and that a NATO-U.S. guarantee of the peace be offered Israel and the Arab states on the basis of Resolution 242.<sup>65</sup>

Rostow also addressed himself to the question of which nations have "accepted" Resolution 242? He feels that "this is not a real issue, since the key parties to the hostilities gave it advance assurances to the British and American governments that they would cooperate with the Secretary-General's representative to promote the agreement called for in the resolution."<sup>66</sup>

We have quoted at length because of the near-uniqueness of the source, and because the intent was to gain whatever insight is possible from the writings of participants in official American thinking and decision-making at this critical juncture. Professor Rostow perceived a threat and conceived the problem primarily on a geostrategic plane to U.S. interests and reacted on that basis. He termed the Arab-Israeli conflict secondary. While we hold that some boundary rectification would be beneficial to long-term peace, given that a peace settlement was achieved, we cannot submit that the principle of the Charter of the "inadmissibility of acquisition of territory by war" possesses quite the murkiness or obscurity to which Mr. Rostow attributes it. Indeed, had the tables turned and the war theoretically gone against an Israel which was truncated, but still in existence due to U.N. action, Jerusalem can be expected to have appealed to the same norm, and quite justly. For there is a reciprocity, a basic equity to this norm which lies at the very heart of a stable international system--a condition which Mr. Rostow's conception does not seem to recognize. The decision to strive for a complete peace agreement is also quite understandable in view of the breakdown of the 1957 arrangements. For in the view of one American intimately involved with policy-making, "The Soviet Union and its chief Arab associates wished to have Israel declared the aggressor and required,

under Chapter VII if possible, to withdraw to the Armistice Demarcation Line as they stood on June 5, in exchange for fewest possible assurances."<sup>67</sup> The experience "with the understandings which ended the Suez Crisis of 1956-1957 led to the conclusion that Israel should not be required to withdraw from the cease-fire lines except as part of a firm prior agreement which dealt with all the major issues in the controversy."<sup>68</sup>

Since Johnson apparently did not choose to link a cease-fire with a prompt Israeli withdrawal behind the armistice lines and did not insist on an Israeli withdrawal following the cessation of hostilities (as Eisenhower did in 1956-1957), we can only conclude that U.S. policy in 1967 appears to have envisioned the withdrawal of Israeli military forces as part of an overall settlement reached among area states. If this view is accepted and combined with the "hidden veto" which a traditionally predominant United States was able to exercise in the U.N.<sup>69</sup> along with Soviet subordination (both now changing) and coupled to the somewhat less predictable third world nations, we may derive a clearer idea of why the battle in New York was so hard fought and why the formulation closer to Washington's than Moscow's stand finally was approved.

Short of the publication of a set of documents akin to the Viet Nam Pentagon Papers, we cannot be absolutely sure of the weight which should be ascribed to Mr. Rostow's



pronouncements, especially those concerning U.S. policy toward the Charter principle of "inadmissibility of acquisition of territory by war." However, a certain congruence on the question does emerge from Max Frankel's June 8, 1967 New York Times dispatch, John Campbell's insights and Mr. Rostow's writings: Washington appears to have envisioned Israeli troop pullbacks from occupied territories as part of a larger peace settlement between the parties directly involved. In The Vantage Point, Lyndon Baines Johnson, then President of the United States, reviewed the "strong commitment" of the United States to territorial integrity in the area.<sup>70</sup> After reviewing the Tripartite Declaration of 1950 and the public reaffirmations of this principle by Presidents Truman, Eisenhower, Kennedy and himself,<sup>71</sup> Johnson concluded: "But in the 1960's it was Israel whose territory was threatened by hostile neighbors."<sup>72</sup> No further specific mention of this principle was made. In concluding his treatment of the 1967 crisis, President Johnson wrote:

I was convinced that there could be no satisfactory future for the Middle East until the leaders and the peoples of the area turned away from the past, accepted Israel as a reality, and began working together to build modern societies unhampered by old quarrels, bitterness and enmity.

Clearly the parties to the conflict must be the parties to the peace. Sooner or later it is they who must make a settlement in the area. It is hard to see how it is possible for nations to live together in

peace if they cannot reason together.<sup>73</sup>

The Soviet Union and the United States were in a dilemma. Both sought to avoid worldwide nuclear war. But neither sought to regulate the crisis. Where the Soviet Union did not wish to pay the price of jeopardizing its influence in Arab capitals, Washington was paralyzed by the contradiction between fear of another overseas involvement, with far greater chance for a superpower confrontation, and the domestic support favoring Israel.<sup>74</sup> This is one reason why "the keys to the crisis were in Cairo, Damascus and Jerusalem" rather than in Washington, Moscow or New York.<sup>75</sup> There was an acute abrogation of responsibility here. There was little coordination of superpower efforts.

There were a variety of points where, had cooperation than conflict ruled the superpower relationship, the outcome might have been different. A joint peacekeeping force under U.N. auspices might have replaced UNEF, ships might have been sent through the Straits of Tiran in a joint venture, or perhaps led by the U.S., but with Russia's tacit approval. Either one or both of these alternatives would not have left Nasser "face-to-face with an infuriated, mobilized Israel with no intervening hand between them," while allowing Nasser to de-escalate the crisis in a face-saving way while relieving the threat to Israel.<sup>76</sup> Stern

and parallel action in the Security Council prior to June 5 could have been utilized in tandem with diplomatic bilateral contacts with client states to let them know that hostilities would not be tolerated. Once fighting began Jordan and perhaps Syria might have been pressured into staying out of action entirely. The United Arab Republic might have been induced to accept a cease-fire earlier than June 10, thus making less weighty the problem of withdrawal from occupied territory. Washington might have held Israel to her professed desire for a cease-fire earlier and, once having accepted it, might have been persuaded not to break it to invade Syria. On a grander, but perhaps more realizable scale, the super-powers could have instituted controls on arms shipments to the area. And, on a greater but more profound basis, there could have been a drive toward settlement of the fundamental questions by the U.S. and Soviet Union in years past.

The superpower split, the nature of international organization and of the people who happened to hold policy-making decisions also played a role in the crisis through the period of hostilities. For the first, it would appear dubious that a Secretary-General such as Dag Hammarskjold would have permitted the U.A.R. to have so easily or quickly effected the withdrawal of UNEF forces.<sup>77</sup> Hammarskjold in 1957 outlined the procedure for the withdrawal of UNEF forces which included notification of the Advisory Committee of UNEF by the

Secretary-General of such a request which would then determine if the question would be brought to the attention of the General Assembly. Only then could the Secretary-General act on his own.<sup>78</sup> Moreover, Derek Bowett points out that Hammarskjold repeatedly made it clear after 1956 that UNEF had been created by a bilateral agreement between Egypt and the United Nations: "were either side to act unilaterally in refusing continued presence or deciding on withdrawal an exchange of views would be called for toward harmonizing the position."<sup>79</sup> However, U Thant's precipitative action is ameliorated by the unadorned fact that three weeks passed after the request for UNEF withdrawal and the opening of hostilities, during which time the U.S. and U.S.S.R. did little to amend the situation.

Trouble may be the United Nations' chief business, as Andrew Boyd put it,<sup>80</sup> but during both the swing toward hostilities and during the hostilities themselves, the U.N. did not do a very good job of it. From the Achaean League on down through history, international organizations have faced the problem of the reservation of sovereignty on the part of its members. In addition, the permanent seats which Article 23 of the Charter accords to China, France, the Soviet Union, the United Kingdom, and the United States, and the "primary responsibility for the maintenance of international peace and security" conferred upon the



Security Council by Article 24 and almost all of Chapters VI and VII point to the ascendant role of the great powers in peacekeeping. But the wartime unity upon which the concept of the concerted peacekeeping by great powers was constructed had long since passed away. The fact that the representative of China held the Presidency of the Security Council during the month of May did far more to hinder than help peacekeeping efforts. For because of diplomatic tensions between his country and various Council members, the informal processes in which the Security Council excels because of its small size were hamstrung. If we add to this, Russian obstinacy through June 6 against any Council action at all, the difficulty of the U.N. emerging with any independent role becomes obvious. While the United States was more active and consistent in its calls for moderation and peace during this period, it too exercised only the mildest restraint from its cockpit in the Security Council.

Oran Young suggested two roles for U.N. activity in this crisis: direct political action and service roles.<sup>81</sup> He pointed out that while the U.N. machinery in the Middle East was able to act as a go-between in communications between the Arabs and Israelis, was able to send vitally needed information back to Council sessions, and was instrumental in helping to effectuate the Israeli-Syrian cease-fire, the "partisan disagreements of the interventionists" paralyzed

the U.N. in its political action role and dealt it a heavy blow.<sup>82</sup> Once again, the tension at the core of international organization was so taut, due to commitment to client states and the unwillingness to pay the price of superpower co-operation, that very little space remained for the U.N. to work out an independent role amidst the fast pace of events. So long as the superpowers pursued competitive than co-operative interests, so long was the United Nations unable to muster peacekeeping strength of its own.

The bewildering pace with which events unfolded and Israel won its military objectives introduced a high element of risk and uncertainty in superpower restraining action. On the first day of the war, June 5, the Soviet Union evidenced little interest in a cease-fire and the United States was either unable or unwilling to push hard for one. It was not until the second day of the war, as the enormity of the Arab defeat became clear that the Soviet Union brought forth a demand for a cease-fire conditional upon the condemnation and withdrawal of Israeli forces which was at the heart of the Arab demands.

One may glean an indication of the gap between the Soviet Union and the U.A.R. by realizing that it was not until June 10 that Egypt agreed to a cease-fire. And while the United States was consistent in its calls for a cease-fire, throughout the war, it also was consistent in not

including withdrawal in its draft resolution as it had in 1956, a move which served to strengthen the hand of Israel after the 1967 hostilities, but then barreling on to victory. Finally, of course, in behavior which was to become a pattern, the Soviet Union moved toward the U.S. formulation for an unconditional cease-fire which ultimately prevailed. In fact, it was not until after the invasion of Syria began that Ambassador Goldberg announced that his Government was "willing to concert its actions with every member of this Council . . . at any time . . . under any circumstances."<sup>83</sup> Or again, that on the full authority of his Government, he wished to let it be known that: "The United States strongly opposes aggression by any one in the area, in any form, overt or clandestine."<sup>84</sup> It is more than interesting to note that President Johnson recently let it be known that in a "hot line" call after the Israeli invasion of Syria had begun, Kosygin threatened to take "necessary actions, including military" unless Israeli military activities were not quickly restrained by Washington.<sup>85</sup>

There was little recourse to law in the conflict phase. The prime goal was to stop the fighting. And here the superpowers began to demonstrate the degree to which their positions were rigidifying parallel to the views of the clients who represented them in the area. And

unfortunately, in a quick-moving situation in which the vital interests of smaller powers are involved, the latitude for superpower influence was not wide--whether or not this was chosen to be so by Washington and Moscow. Because of their contrary commitments, because the war ran out from under them, because the superpowers chose to emphasize their competitive than cooperative interests, the United Nations emerged from the hostilities in a state of shambles. Axiom: the United Nations has little relevance to peace-keeping in times of fluid flux when the superpowers disagree.

Failing to satisfy the Arab states with a satisfactory resolution in the Security Council, the Soviet Union moved the scene of action to the General Assembly. The Soviets reflected Arab interests, but they began to exhibit a role of their own in acknowledging the de jure existence of Israel which the Arabs did not though Soviet relations with Israel had been severed. But in reflecting Arab interests, the Soviets overstepped the line of partisanship. So Arab and Soviet support focused on the Non-aligned resolution. The rationale and chief thrust behind this was that Israeli withdrawal must occur behind the positions held on June 5 on the basis that any other alternative would reward aggression. The non-aligned states were on strong ground here and could appeal, especially, to the self-interest of smaller states in a manner which rang of legality. Certainly



this is the basic norm of the international order: that neighboring states shall not strike the first blow, seize territory and then demand negotiations and concessions before sovereign territory would be returned. While the Arabs spoke of belligerent rights which justified blockade and invoked the phantom of the Palestine Arabs who had been refugees for so long, they too concentrated their efforts on the point of Israel's use of force to violate this most basic of legal norms. However, the Arab states were strangely quiet concerning their own threats to use force which had contributed so mightily to the crisis.

Israel was not about to let them forget this. Abba Eban presented a tight legal case which concentrated on the many Arab threats against Israel's existence and the blockade of Tiran which Eban identified as an act consistent only with a state of war. Focusing his verbal eloquence upon Israel's right to exist under the Charter, and on Israel's right to defend itself since neither the United Nations as a body nor the Security Council had demonstrated excellence in this area, Israel felt compelled to sit tight atop the Arab lands until a settlement satisfactory to national security needs was forthcoming. Israel, adamant on face-to-face negotiations concerning an Israeli Jerusalem and an "independent quest" for peace and security outside the bounds of the United Nations, did not conform to the thrust of other efforts in the United Nations. For Israel Arab "aggression"

helped justify her continued retention of Arab territories which she claims to have occupied in "self-defense."

The United States draft resolution was in keeping on many points with its announced search for a fundamental and durable peace in the area. Many elements of this General Assembly draft ultimately can be found in Resolution 242. For all its foresight and comprehensiveness, the United States draft was as visionary and distant in application in the beginning as the Soviet draft was partisan and immediate. Ultimate virtue here was an immediate flaw as there were insufficient, pragmatic and interim steps to lead to the more distant principles evoked. More important, the U.S. draft suffered from haziness and ambiguity on the all-important question of withdrawal. Here the Israeli position drew strength, here the U.S. and Soviet Union could not actualize the norm of cooperation.

Into the breach Lord Caradon had been trying so valiantly to stem came the Latin American states with their own draft which judiciously strove to lift the debate out of the context of purely political positions and to place them on the plane of legal principle and Charter norms. With the failure of the League of Nations on the points of armed invasion and territorial aggrandizement in the nineteen-thirties ringing in their ears, the Latin Americans made the greatest single contribution in the genesis of Resolution 242 by linking Israeli withdrawal "from all the recently occupied territories" with the termination of the state of belligerency,

the establishment of the conditions of coexistence and good-neighborliness and reliance upon Charter provisions for peaceful settlement in all cases. It was this linkage of basic norms, founded upon the reciprocity and mutuality which underlie all law, which later broke the deadlock in the Security Council. This is an example of how an appeal to law and the effective operation of international organization can go hand-in-hand. It is not necessary to review the other paragraphs of the draft here since we have dealt with them earlier. Suffice it to say that in their open and consistent resort to sound legal principles they provided the format and created an atmosphere in which the efforts were removed from the sterility of a conflict between parties to a level on which the approach taken was what is legal, what is right?

As deadlock in the emergency session loomed imminent the Soviets on July 18 and 19 twice came to the United States representative, physical acts whose diplomatic import should not be overlooked, and agreed on a proposal to meet the crisis. Below the surface rigidity which marked Assembly sessions, both powers were aware of the necessity for momentum to meet the challenge to civilization posed by the continuance of inaction. Cooperation had unexpectedly gained ascendancy over contention as, for the first time we are aware, the superpowers closed the gap between them and chose a parallel course of action. However, the maneuverability of

the Middle Eastern states was not yet that circumscribed and the Arab states were not yet ready to compromise. The suddenness of the Soviet shift left little time for the Arabs to react flexibly and the proposal was rejected. Although the emergency special session was formally fruitless, a sense of consensus did emerge among the membership which was to have echoes later in the Security Council. The assistance and consultations which the smaller nations had initiated was to bear fruit in the Fall.

In the grand sense, the behavior of France in this crisis was directed by President Charles De Gaulle's drive to reassert the great power status of France by assuming an independent, non-aligned status between Washington and Moscow, and thus contributing to the balance of power between nations which he saw as vital to peace. One of France's roles, therefore, was as "a potential conciliator."<sup>86</sup> A chief avenue here would be a four-power conference. De Gaulle suggested this to Abba Eban in Paris on May 24.<sup>87</sup> Another similar proposal to have the big powers settle the crisis was turned down by Moscow on May 30, 1967.<sup>88</sup> Premier Georges Pompidou's journey to Moscow in early July with a four-power conference as at least, one of the objectives received a similar rebuff.<sup>89</sup>

A second facet to De Gaulle's perception of France's role was the emphasis upon "deliberate objectivity by Paris."<sup>90</sup> France opposed sending a vessel through the Straits



of Tiran to test Nasser's blockade.<sup>91</sup> Following the outbreak of war, Paris announced the withholding of arms shipments to all parties to the hostilities.<sup>92</sup> Finally, fearing in general a drift toward war by the great powers and specifically the outbreak of war in the Middle East, De Gaulle warned Eban on May 24, 1967 not to make war by firing the first shot and announced on June 2 that Paris would not give support or bestow its approval to the party commencing hostilities.<sup>93</sup> Later, De Gaulle publicly announced that France would not become entangled by going to the assistance of either side and would determine its stand on the basis of "who fired the first shot."<sup>94</sup> This melded into France's stand on its own neutrality when it became the first Western power to refuse to support Israel's territorial claims flowing from the hostilities. At the same time Paris announced that while only a freely negotiated settlement was realistic the physical and psychic effects of the war were so great that Israel and the Arabs needed the four powers to bring them together.<sup>95</sup> Thus, De Gaulle wanted no French involvement in a Middle Eastern war beyond France's soil (especially after the costly involvement of 1956), sought to regain French prestige, and maneuvered toward a diplomatic position free to encourage ultimate negotiations.<sup>96</sup>

But, of course, the seat of diplomatic activity was the United Nations, not a four-power conference. France, of

course, voted for all the cease-fires during the hostilities. It abstained from the vote on the Soviet draft in the Security Council on June 14, calling for Israeli condemnation and withdrawal, probably on the grounds that during the "long road before us" discussion and agreement by all parties on all issues would eventually be necessary if peace was to be restored.<sup>97</sup> During the emergency special session of the General Assembly, France abstained on the Soviet draft resolution which called only for withdrawal without further activity under Council supervision which might lead to a settlement. Understanding France's position on withdrawal and provisions for Council action which might lead to a settlement, it comes as no surprise that France lined up with the Soviet Union in supporting the non-Aligned draft resolution. On September 1, 1967 France announced its support of the British draft resolution which was essentially passed as Resolution 242.<sup>98</sup>

The Security Council certainly was an appropriate framework for action in France's eyes, given its great power presence. In a statement to this body on November 22, 1967 the French representative pointedly said:

I must confess that . . . the three power-draft, or a draft based on certain ideas of the Latin American text proposed in the General Assembly in July would in our opinion have had considerable advantages. It appeared, however, that the desired agreement could not be achieved on those texts, whatever their merits.<sup>99</sup>

France voted in favor of Lord Caradon's draft, but only

after pointing out its ambiguity of language, its view of the "equally authentic" French text which speaks of withdrawal "des territoires occupés," though in general, approving of the other enunciated principles.<sup>100</sup>

France's independence certainly turned out to favor the Arabs. In consequence, French influence, commerce, and its cultural presence climbed sharply after the events of 1967. France hoped for, but was disappointed in, the award of oil concession agreements, but was not disappointed in her sale of military jet aircraft to both Iraq (\$70 million) and later Libya (\$400 million), while maintaining at the same time an arms embargo upon the same type material (heavy tanks and the vital Mirage-fighter-bombers) to the direct parties to the conflict. This affected Israel more than the Arab states. With the U.S. bearing Arab enmity and Britain steadily seeping out of the area, only France was left in De Gaulle's eyes to provide "balance" in the area to counter the possibility of Soviet "hegemony."<sup>101</sup> De Gaulle believed also that "all world tensions had one root--Viet Nam"--and that there was no chance for world peace until the American involvement in Viet Nam ended.<sup>102</sup> By urging this upon Washington, by being the only western state on the scales counterbalancing the Soviet presence in the Middle East and by being a potential conciliator in the crisis, De Gaulle was, in his vision, serving world peace. But

certainly, in serving the interests of world peace, De Gaulle also served the interests of France--and vice-versa. Even Raymond Aron who was highly critical of what he perceived as an anti-Israel policy by De Gaulle tried "to provide a basis for the interpretation of General De Gaulle's diplomacy . . . in 1955 he was thinking of a move aimed at strengthening the non-Arab or non-Muslim minorities in the area, today he is backing the Arabs, not because he is anti-Zionist or still less anti-semitic, but in the interest of France."<sup>103</sup>

Over the summer and into the autumn Israel settled yet farther into the occupied lands, parts of which it deemed so vital to security. At the same time, the full weight of defeat settled more heavily upon the Arab states. Israel was a victor and, as defeats go, it was more for the vanquished to compromise. The submission of the three-Power draft was an admission of this. We need not recapitulate the debt openly acknowledged to the Latin American effort. Withdrawal was called for, but so was the termination of the state of belligerency, the right of all states to peacefully exist without threats or acts of war, and respect for the political independence and territorial integrity of area states. Not only had Charter and legal principles been incorporated, but the organizational nature of the United Nations--a place where all states were represented, in close contact and with the opportunity for consultations--began to



be felt as time passed and this quality asserted itself.<sup>104</sup> Unthinkably in 1956, the smaller states played and were even asked to play as large a role as they could in the urgent drive for a resolution although final approval by the superpowers was necessary. Their cumulative and united efforts, as Lord Caradon might have said, together with the parties involved, directly and indirectly, were successful as the three-Power and the United States drafts were successfully bridged by Lord Caradon in the most delicate and astute of negotiations.

Caradon came from a non-superpower state. Great Britain's association with the Middle East has been long and intimate, if not always satisfying. Peter Mansfield, an acute British observer of the area, has noted: "Britain cannot deny a heavy share of responsibility for the present condition of the Middle East. It was perhaps the least successful of all our overseas enterprises."<sup>105</sup> If this be so, then British policy toward what was termed the "Jewish" or "Palestine" question certainly ranked near the bottom of its Middle East enterprises. From the alternate and deliberately ambiguous promises held out to both Arabs (the Sherif-Husayn-McMahan Correspondence) and Zionists (the Balfour Declaration) in World War I to the admission of chaotic failure which attended the formal termination of the British Mandate over Palestine at midnight, May 14-15, 1948. British policy was

riddled with inconsistency and incompatibility. In the same postwar period major changes were occurring. Indian independence in 1947 marked the start of the process by which the Suez Canal was transformed from the lifeline of empire to an artery pulsing with petroleum.<sup>106</sup> The rise of nationalism in the area simultaneously deprived Britain of many of her land, sea and air bases while her economic weakness prevented her from exercising dominant power in the Middle East without bases--as the United States came to do through its Sixth Fleet.<sup>107</sup> The Tripartite Resolution of May 25, 1950 which sought to ensure the armistice lines of 1949 and to limit arms to both sides, and the Baghdad Pact of 1955 which was the Middle Eastern reflection of the American containment policy (after 1959 the Central Treaty Organization [CENTO] after Iraq's withdrawal) were at least symbols of a British presence. Whatever the reality of these moves, Britain's influence was dashed in the wreckage of the 1956 British-French-Israeli war against Egypt. Following this debacle and the assassination of the loyal Nuri es-Said and the royal family in Baghdad in July 1958, Britain's contracting strategic interests appeared limited to Cyprus, Aden, Bahram and Sharjah in the Persian Gulf and other sheikdoms and sultanates along the fringes of the Arabian Peninsula.<sup>108</sup> It was during this time that a Chatham House Study Group set down their analysis of Britain's interests in the area:

Britain's first and paramount interest in the area under study is to obtain oil under fair commercial conditions from the states which produce it; and to bring it to Europe by the cheapest and safest route.

Her second interest is to keep open trade and other communications to the lands east of Suez.

Her third interest is the encouragement of mutual friendliness and respect among the states of the area, and in general to welcome any developments which would make for social and political stability.

Her fourth interest is that the Middle East land bridge to Africa should not fall under the influence or possession of any Great Power hostile to Britain.<sup>109</sup>

C. M. Woodhouse, former Director-General of the Royal Institute of International Affairs refined and buttressed the points further:

Whereas up to a generation ago the importance of the Middle East was that it lay across the route to India, today its main importance lies in its oil resources. Its geographical position, at the crossroads of the east-west route between Europe and India and the north-south route between Russia and Africa, is still a matter of great importance, but not for the time being of primary importance. What is vital for the present is not where the Middle East is so much as what it has in it.<sup>110</sup>

Earlier Woodhouse made the useful distinction that while Washington tended to look upon the area more in the older British geostrategic view, to London the Middle East was vital as a source of oil and its impact upon England's economy.<sup>111</sup> Why was this so? A brief resumé will suffice.

In 1966 Britain imported 69 percent of its crude oil from the Middle East.<sup>112</sup> British oil investments in the Persian Gulf area alone were estimated to be in the vicinity of \$2.4 billion and provided a payments surplus of \$750 million. At the same time Britain enjoyed a favorable

balance of commercial trade with the area of \$277 million in 1967. In the mid-sixties Middle Eastern countries held about \$1.5 billion of Great Britain's total external liabilities of \$5.3 billion.<sup>113</sup> Finally Britain is a major weapons supplier to the area (though especially since the entry of the Russians and French, a proportionately declining one), supplying arms to both Jordan and Israel,<sup>114</sup> and having, for example, concluded a \$300 million arms deal with Saudi Arabia on December 7, 1965.<sup>115</sup>

A 1959 Memorandum submitted by the Minister of Supply to the Select Committee on Estimates listed six main reasons why the Government and private British manufacturers sell arms abroad.<sup>116</sup> Standardization of equipment of allied (especially Commonwealth) forces, additional recovery of research costs, more efficient use of armaments factories, and outlets for obsolete weapons were listed as four of such reasons. Foreign currency earnings certainly are another reason for such sales. During the nineteen-fifties, Britain's total arms exports averaged \$400 million annually (and were increasing) while on February 10, 1966 Denis Healy, Minister of Defense explained to Commons:

While the Government attaches the highest importance to making progress in the field of arms control and disarmament, we must also take what practical steps we can to ensure that this country does not fail to secure its rightful share of this valuable commercial market.<sup>117</sup>

The sixth and final point was that the "supply of arms



to overseas governments may help to strengthen political as well as military ties. Obviously Britain derives a great deal from and relies quite heavily upon the Middle East. Yet, despite its great investments, Britain's power and position have been contracting in the area, speeded along, of course, by the anti-imperialistic and nationalistic efforts of such Arab leaders as Gamal Abdul Nasser. It could be that in certain English policy-makers' eyes, Israel represented as much of a counterbalance to the forces Nasser symbolized as the conservative Arab regimes within whose borders British-owned oil installations were found. Arms shipments might indicate this. For as time passed British arms shipments increasingly went to the more traditional, conservative and often oil-rich monarchies such as Saudi Arabia, Kuwait and Jordan and, to a lesser degree, Israel and virtually ceased to the less pro-Western, republican-militarist states of the United Arab Republic and Syria with whom, presumably, the Anglo-Arab community of interest was smaller. Or Britain in its then junior-partner status, may have, in certain ways acted as an American proxy. We cannot pinpoint the perceptions which drive policy-makers to attempt to realize certain interests. We can only speculate in an inconclusive fashion until, perhaps, in future decades, British archives are opened.

What we can be sure of in an immediate sense is the gravity of the economic consequences for Britain of the

hostilities. Indeed, Harold Wilson, then Prime Minister affords us an insight.

The economic consequences of this June week were extremely serious for Britain. The closure of the Canal alone, it was authoritatively estimated was costing Britain £ 20 million a month on our balance of payments. No less serious was the loss of Middle East oil. We had to seek to replace this from other areas at a higher price and, in the main, at much higher freights. Supplies from Libya, the one source west of the Canal, were cut for a time. Nor could we make up a substantial part of the loss from Nigeria, our other short-haul source. Within weeks, the civil war there cut off all our Nigerian supplies too. We had to shop for supplies in the United States and Latin America, at high cost, high freights and in competition with other hard-hit countries. We had many anxieties for the following winter . . . [1967-1968]. . . . The crisis was a serious blow. By the early autumn with other difficulties arising, it seemed almost a fatal one to our economic recovery. . . . The Middle East crisis of June 1967 was the biggest contributing factor to the devaluation which came five months later. Confidence in sterling was eroded by the war and further weakened when the monthly figures reflecting its consequences were published. From a strong and improving balance of payments position, we had returned by the autumn once again to a vulnerable position and domestic events, notably two damaging dock strikes together with some manoeuvring on the Continent, were sufficient to bring sterling down. Without the impact and continuing effects of the Middle East crisis we could have weathered these disturbances without grave deterioration in the pound. It was to be two years more and at heavy cost --economic, social and political--before we were able to regain our surplus position.118

Great Britain was no disinterested spectator in the drive to bring peace to the Middle East in 1967. Indeed, her economic viability was gravely endangered by the consequences of the hostilities and their continuation.

As often occurs, while the greater powers were wrapped up in defending the interests of those states whom they

represent, or in partisan or visionary proposals, it is the smaller states which, given the relaxation of the bipolar matrix, especially in the U.N., are able to jockey and negotiate the necessary compromises. Caradon was a superb man for the job he took on. He epitomized for this issue the best elements of statecraft. He appealed to transcendent law. He invoked members' higher responsibilities to this world organization and the peoples it represented. He knew when to threaten the ominous price of failure if international organization could not fulfill its purpose as his faith told him it could. But perhaps the basic point was that Caradon embodied the ancient art of statecraft whose tradition he carried on in the finest manner. Lord Caradon did not possess the coercive power of a major state, but he did utilize the "institutionalized moral pressure" provided by the principles and on which the very continued existence of the United Nations itself relied.<sup>119</sup> In the seventh decade of the twentieth century he used the advantages provided by the forum of international organization to breathe the breath of law and principle into this episode in a long-standing, tragic conflict. H. G. Nicholas has delineated the basic techniques of pacific settlement of disputes in the Security Council as investigation, interposition, conciliation, recommendation and appeal.<sup>120</sup>

Nicholas goes on to draw a parallel between pacific settlement by the Security Council and "government conciliation

machinery in a democratic state." This analogy limps as all analogies do. The chief deficiency lies in the deviant expectations which the national and international roles place upon Security Council representatives. But the analogy also is insightful. For both bodies do tend to restrict themselves to "fact-finding, conciliation . . . [and] . . . the making of recommendations"; while both bodies may "bring moral pressure to bear on one side or the other . . . it does not impose any settlement." Most importantly:

. . . just as the democratic state relies ultimately for the settlement of its industrial disputes upon the play of public opinion on the disputants, together with the disputants' own awareness of where their real interests lie, so the Security Council acts by mobilizing opinion and trying to get the disputants to see reason.<sup>121</sup>

There is a certain congruence here between Nicholas' perception of Security Council activity and our earlier-stated objective of international law: "to define the interests of the parties concerned in a controversy and then to provide adequate procedures for settlement on the basis of rational argument."<sup>122</sup>

But two points need to be made here. First, that according to these conceptions, much of international law and Security Council activity is voluntaristic on the part of the parties directly involved. Or, as Eugene Rostow put it: resolution 242 "is not self-executing."<sup>123</sup> In the last analysis it will be up to the parties themselves to make peace if peace is to be made. Moshe Dayan put it



succinctly not only for the Israelis, but for the Arabs as well: "We must learn to live with the Arabs," he said, "face-to-face, without the intermediary of even our best friends."<sup>124</sup> Second, both conceptions explicitly state that settlement would come only through the exercise of reason. Once again, while the world should hope for this if it wishes to avoid incineration, there has been too precious little of it demonstrated in the past.

The principles of international law found in Resolution 242 arrived at, as they were in an international organization, were a consequence of policy choices, jockeying and the perceived interests of states. Unsurprisingly, perhaps the greatest interest here operative was self-interest. The Christian Science Monitor reported on November 1, 1967 that the U.N. was then faced with the "gnawing belief that the seeds of another Arab-Israeli war are now taking root unless they can be dislodged by diplomacy."<sup>125</sup> An editorial in the Manchester Guardian published on November 22, clearly stated what was at stake and the almost negative motivation in the drive toward approval:

The British compromise plan for the Middle East has been attacked by both Israelis and Arabs. That in itself might be promising, for it was intended to stir a middle course between an Afro-Asian resolution which had been acceptable to the Arabs and a U.S. one which had been acceptable to the Israelis . . . no Security Council member wants to take the responsibility for precipitating a final breakdown. . . . True an agreed resolution in the U.N. will not pacify the Middle East. But it is the only chance

at present of keeping a dialogue going. The alternative is for Israel to consolidate her conquest for the Arabs to prepare for the next round, and for the refugees to rot in their camps.<sup>126</sup>

It is interesting to note that interpretations of Resolution 242 varied distinctly, and perhaps dangerously so, even before passage. The representative from Syria, Georges Tomeh, announced his country's "non-acceptance of the draft resolution" even before the vote on it.<sup>127</sup> Tomeh justified this action by saying that the resolution ignored the roots of the problem, the rights of the Palestinian refugees,<sup>128</sup> would reward the aggressor and thereby violate the basis of international law and order.<sup>129</sup> Ambassador Parthasarathi of India announced his Government's understanding that the British draft "if approved by the Council, will commit it to the application of the principle of total withdrawal of Israel forces from all the territories--I repeat, all the territories--occupied by Israel as a result of the conflict which began on 5 June 1967."<sup>130</sup> In light of this, India, Mali and Nigeria announced they would not press their draft to a vote then. Lord Caradon recognized these diversions of opinion when he stated: "All of us, no doubt, have our own views and interpretations and understandings. I explained my own when I spoke on Monday last. On these matters each delegation rightly speaks only for itself."<sup>131</sup> Ambassador Goldberg then stated: "We will vote for that . . . [British] . . . draft resolution. We do so in the context of, and

because we believe to be consistent with, United States policy as expressed by President Johnson on 19 June and as subsequently reaffirmed in statements made by me to the Security Council."<sup>132</sup> Abba Eban made it clear that Israel's position remained unchanged: That Israel would stay where it was until a permanent peace directly negotiated and contractually binding was arrived at which provides guarantees in the areas of boundaries, free passage, and others of interest to Israel. Eban also, as will be recalled, sent only the English text of Resolution 242 to his Government.<sup>133</sup> We have earlier reviewed the position of France and here note only the emphasis placed upon withdrawal from all the territories.<sup>134</sup> The stand of the U.S.S.R. here reflected its concern for an Israeli withdrawal and "to implement without delay the decision which has been taken."<sup>135</sup> The delegates both from the U.A.R. and Jordan emphatically reiterated the points of withdrawal of Israeli troops and the restoration of Palestinian rights.<sup>136</sup> But while bargaining, adjustment, pressures and compromise were realistically reflected, the net content of the resolution appealed to the most basic norms of contemporary international law. The "inadmissibility of the acquisition of territory by war," the "termination of all claims or states of belligerency," the "acknowledgement of the sovereignty, territorial integrity and political independence" of states and their "right" to live "free from threats or acts of force," the "freedom of

navigation through international waterways," and, "a just settlement of the refugee problem" all reflect such basic norms. As the actual hostilities and the passions aroused by war receded in time, the structure of international organization which encourages constant, close and confidential consultations merged with the essential purpose of the United Nations expressed in Article I and began more to live up to its responsibilities:

To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring out by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace.

The legal approach taken by the Latin American countries lifted the dialogue from the plane of a dispute between parties, rancorous and long-lasting, to a plane of principle and law in which the essential question to be answered concerned principle and right. As time passed law reasserted itself as a factor in the conflict. Basic conduct norms were reaffirmed: Charter article II(4) "all members shall refrain from the threat or use of force," article II(3) "all members shall settle their international disputes by peaceful means," and article II(1) states the United Nations "is based on the principle of the sovereign equality of all its Members" were among them. The basic legal principles of free passage and the "inadmissibility of the acquisition of territory



by war" were also notable. Whereas the neglect of law was one of the chief reasons for the acceleration of the crisis into conflict, its reaffirmation in Resolution 242 which provided the parties with "collectively legitimized"<sup>137</sup> guidelines for settlement assisted in passage of the resolution.

The beginnings of the crisis and the hostilities themselves illustrated the dependence of the international organization upon the agreement of the superpowers in times of crisis. The purposes of this world body were ignored and the actions of the area states, fettered only by the perceived interest and pressures of the superpowers, were followed. During the fighting and most of the emergency special session of the General Assembly, parallelism of policy in the United Nations was between area client states and superpower protectors, as U.S. and U.S.S.R. positions rigidified. But there prevailed the fundamental reason for cooperation between the superpowers--the avoidance of nuclear holocaust--which was coupled with the U.S. policy of judiciously providing the means for resolving the conflict without prejudicing the positions of the direct participants who, themselves, must ultimately find peace. Of utmost importance, the United States respected the position of Israel on withdrawal against those advocating a return to the old status quo perhaps less to protect Israeli gains than to promote a

more durable peace.<sup>138</sup> The attempt by both the Soviet Union and the United States to produce an agreement on July 18-19 points in this direction.

As the superpowers came closer to cooperation on this point, a more dynamic, viable role for the United Nations became more possible. The vital role of the smaller states in negotiating a compromise, encouraged but limited by the big powers, cannot be overlooked. The acceptance by the three-Power draft of the legal, principled approach of the Latin American states was crucial and contributed greatly to the final resolution. The general intent of the United States Security Council draft indicated the desire for agreement by the superpower trying to represent its own and Israel's interests. The very structure of organization, the proximity and opportunity it provides states for intimate, quiet and continuous contact coupled with the fact that in a large sense, the future of the United Nations was involved, provided the means and a vehicular motivation for effort. The fact that the United Nations was the vessel here more than symbolized what was at stake. For a failure by this world body could only presage a failure and worse for all the states and peoples of the globe. This historical accident of Lord Caradon's presence was of inestimable good fortune. Men, not organizational purpose or legal principles,

populate this planet. And it took someone pragmatically aware of politics, but possessed of ideals and contagious faith to make the resolution become a reality.

Amidst all the considerations of geopolitics, balances of power, penetrations and "local wars," amidst the issues of free passage through international waterways, states of war and recognition, the danger is consistently run that the direct parties to the dispute, the Israeli Jews and Palestinian Arabs--both seeking political community and national life on the same land--will be forgotten. We have reviewed in Chapter II the legal positions of the parties to this question. Beyond the legal claims and the charge and countercharge of irresponsibility and lack of good faith, there rests a question of humanity and morality for both sides. In the introduction to his fine book, The United States and Israel, Nadav Safran wrote:

Of course, one cannot write about Israel, and accept her as an established fact--which is what I do--without thereby taking an implicit stand on the Palestine issue. If a reader wishes to interpret such a stand as placing the author morally on the side of Israel against the Arabs, he is of course free to do so. For my part, I believe that fundamentally both Arabs and Jews have an unassailable moral argument. A person who cannot see how this is possible does not understand the essence of tragedy; much less does he realize that his position serves only to assure that the Palestine question should have another sequel, and yet another.<sup>139</sup>

To ignore this problem--one at the root of the conflict --is to embark knowingly upon a dangerous course, one of whose sequels may bring great tragedy to us all. The events of late

May and early June 1967, are frightening reminders of why the, in one sense, misnomered Arab-Israeli dispute is perhaps the most persistent and dangerous flashpoint in the world.

The readmission of the Palestine refugees, Israel says, poses grave problems. There is the security risk and the tension of a larger non-Jewish minority in a Jewish state. Palestinians invoke the uncompromising right to return to what they claim is their land, property, and their own national and political community. An Israeli, Amos Oz, has written: "This is our country; it is their country. Right clashes with right. 'To be a free people in our own land' is a right that is universally valid or not valid at all."<sup>140</sup> It is platitudinous but necessary to state in view of this that the problem is indeed complex. Simple solutions appear either ruthless or naive. The tension is acute: The Arabs cannot defeat Israel; Israel cannot remove itself from the presence of her Arab neighbors.

We have no great store of instant solutions to bestow upon the world concerning this problem. We agree with Don Peretz that: "If the key issues between Israel and the Palestine Arabs can be resolved then points of dispute with the neighboring countries can be settled."<sup>141</sup> But the super-powers have been woefully inadequate in moving toward such a goal. Until 1967 the Soviet Union had not contributed one ruble to help the refugees and "frequently opposed Arab



attempts to have the U.N. General Assembly order the Conciliation Commission to enforce U.N. resolutions dealing with refugee repatriation and compensation."<sup>142</sup> President Harry S. Truman attempted to alleviate the refugee problem in 1949, President Dwight D. Eisenhower and Secretary of State John Foster Dulles in 1955, and President John F. Kennedy in the early 1960's with the aid of special representative Joseph E. Johnson, President of the Carnegie Endowment for International Peace.<sup>143</sup> But all these efforts foundered, generally because they involved compromise on an issue looked upon as uncompromisable by one party or the other. Obviously the problem of the refugees is difficult. We can only endorse the general outline of the principles of a settlement on this point sketched by Quincy Wright:

Israel should permit as many refugees as she deems possible to return to their homes over a period of time to permit returning groups to accommodate themselves to Israeli citizenship before the number becomes so large as to endanger Israel's security. Full compensation should be given to those not permitted to return, the amount to be determined by the International Court of Justice or an arbitral tribunal.<sup>144</sup>

Obviously in its assumptions and manifest form such a sketch of principles satisfies neither side. And it would require hard negotiating and good faith by the parties to go beyond principle to implementation. But in the safeguard allotted to Israel and the alleviation afforded the refugees, such a settlement might open a new psychological stage for the future development of more normal relations between

states and peoples of the area. Granted this involves concessions which both sides find distasteful. But if Israel is not to become overwhelmed by the economic and spiritual costs of a heavy military establishment, if the plight of the Palestinian is to begin to be alleviated, if the Arab states are to perceive Israel as a state with whom normal relations are possible, and if the world is to be spared another dangerous war, the issue of the Palestinian refugees must enter a new era, however small and faltering that first step may be.

In this episode the United Nations, while it could not prevent the fighting, provided a means to halt it and put some limit on its spread. That four cease-fire resolutions were necessary was a sign of the U.N.'s weakness, however. After the fighting ceased the U.N. provided a forum where the Arabs feeling aggrieved could make their case without resort to direct negotiations, while it enabled Israel to justify its actions in the matrix of undeniable past threats and provocations while laying out its own proposals for future peace.

It is difficult to conceive a document such as Resolution 242 emerging from any source except the United Nations. While it is more than symbolic that it came out of the big power-dominated Security Council, the resolution involves elements of principle in state interplay in a balance that

direct negotiations, four-power talks, or a judgment by the International Court of Justice probably could not have equaled. The Court might have provided the legal principle, but not the state interplay in quite the same fashion. Direct or four-power talks ipso facto formally exclude one or the other of these parties, as well as the other members of the international community. Plenty of state interplay certainly would have occurred, but one wonders if there could have been such an appeal to the principles of international law, had not the vehicular balance-wheel of the Latin American states for example, been present. Only in the institutional matrix of the United Nations, then, were all these actors and elements present.

But while it is necessary to extol the virtues of an organization or action, it is also important to realize its limits. U.N. usage and resolutions become effective only "at that point at which states regarded themselves as legally bound by the practice."<sup>145</sup> And since international law is at base a weak law for its placement in a "fragmented competitive coexistence of rival societies,"<sup>146</sup> both law and U.N. resolutions rely upon the voluntarism and reason which affected parties choose to exercise. On the other hand, within the definitions both of international law and organization cited above, Resolution 242 was a success: it defined the interests of the parties to a conflict, provided them

with procedures for a rational settlement and reaffirmed the transcendence of norms which had been violated. It reflected greater common agreement on norms and issues than had been ever before realized since the beginning of the 19-year-old conflict. But because of the passions, psychological, strategic and negotiating elements involved, its promise remains yet unfulfilled.

On the other hand, until the parties choose in a voluntary and rational fashion to mutually realize the means and ends of international law and organization made available to them and isolated by Resolution 242, the approach to peace may not be near. Lieutenant-General E. L. M. Burns, former Chief of Staff, UNTSO and Commander, UNEF, has made this clear on the basis of his earlier experiences:

Mr. Hammarskjold and his envoys could appeal to reason, point out that certain courses of action would probably lead to unfortunate results, and advise that more conciliatory lines should be followed. But it seemed to me that eventually the U.N. negotiators were reduced to trying to produce a protocol, a form of words to which both sides could agree. However, when the objections of both sides had been circumvented, these protocols usually turned out to be so vague that each side could later adopt the interpretation which suited them, and the interpretations of the two sides would of course be conflicting. There was no provision that either side would accept an independent interpretation (by U.N. or other arbiters) if they felt it to be to their disadvantage.<sup>147</sup>

In a very realistic sense Burns' words do no more than to describe a very natural phase of the negotiating process. But unless parties go beyond the stage, only sterility can result.



The chief operational failing of Resolution 242 is that it remains ambiguous on the question of the precedence of withdrawal or termination of belligerency and recognition. While it is unequivocal that the occupied territories should be returned as a matter of principle, the resolution has left this question of precedence to discussions which have experienced unfortunate deadlock. Abba Eban was careful not to jeopardize Israel's position in future negotiations on borders by publicly announcing the transmission of the English rather than the linguistically stronger French version of the text to his Government. The dropping of the word "occupation" coupled to "acquisition of territory" in the Latin American text--provides Israel with stronger legal grounds to occupy territory taken in 1967 until a formal peace treaty is signed, much like the case of Berlin.

Substantively, the absolute nature of the "inadmissibility of the acquisition of territory by war" was weakened by the ambiguity introduced by the textual elimination of the word "the" before "territories." Arabs claim that absolutely all occupied territories must be returned, while Israel claims otherwise. Nor did the resolution deal in a substantive sense with the question of aggression or self-defense in relation to the competing claims to the land. Israel claims self-defense in the face of Arab aggression, and therefore legitimate occupation of the territory.

Israel insists on conditional withdrawal from justifiably occupied territory to help protect Israel from future such similar acts by Arabs which precipitated Israel's original self-defense. Arabs claim self-defense in the face of Israeli aggression. The illegitimate occupation of Arab territory cannot permit preconditions to its return. Only its unconditional return to help protect Arab states from the persistence of Israeli aggression into the final settlement. Possible future resort to Arab claims of duress and the argument rebus sic stantibus may be used to challenge the validity of any future settlement. Procedurally, Resolution 242 did not specify the method of settlement. This was cause for delay. Moreover, the resolution's absence of a "tiered approach" to settlement, the call instead by Israel for a "total" agreement, and by the Arabs for a "total" withdrawal has served only the cause of delay.<sup>148</sup>

The clear intent of the resolution, that Israel withdraw, was balanced with a detectable feeling on the part of the U.N. membership that Israel is entitled to peace and security as a state--just as much a bulwark of the international order as the return of conquered land. The basic freedom of navigation in international waters is undiluted and the recognition of the territorial integrity and inviolability of states is clear. While Israel's

boundaries would be "secure" from Arab commando raids, Arabs could feel secure from the Israeli expansionism they fear. Israel finally would be recognized and the "recognized boundaries" it has sought would replace the cease-fire lines. There is no implicit undertow toward direct negotiations which the Arab states rejected; rather, a Special Representative of the Secretary-General is specified.

It is regrettable that the provisions concerning area arms limitations, perhaps the one best way the superpowers can control the level of conflict, was dropped at the insistence of a Soviet Union intent upon rearming the Arab states. Resolution 242 points in many directions to a just peace, one lasting, strong and juridically defined. But it touched only most fleetingly on a basic, underlying and fundamental issue: The Palestinian refugees who have not yet been allowed to return to their homes, or receive compensation for their property. Israel's security will always be subjected to raids, and incessant deaths and destructions will continue to plague the citizens of Israel until the Palestinian refugees can feel that they have received justice. A settlement more specific than the norm of Resolution 242, "a just solution to the refugee problem" is necessary. But if any single provision of Resolution 242 awaits final and precise agreement between the aggrieved

parties themselves, it is this vital and emotional issue.

While Resolution 242 is promising, it remains unfulfilled. The many reasons for this are cited above. But law and organization while normative and purposeful, cannot be divorced from their political context as the genesis of this resolution has demonstrated. The path of the past must be the path of the future. It will take the same sort of political dynamic to realize this promise if law is to prevail.



## NOTES

1. Steven Goodspeed, The Nature and Function of International Organization (2d ed.; New York: Oxford, 1967), p. 18.
2. Ibid., p. 4.
3. Oran Young, "Political Discontinuities in the International System," World Politics (April, 1968), p. 370.
4. Inis L. Claude, Jr., The Changing United Nations (New York: Random House, 1967), pp. 73-103.
5. See Le Monde, December 27, 1967.
6. See statement by General Hod, The Sunday Times (London), July 16, 1967, cited in "The Real Significance of the Four-Power Conference," Position Paper Number Three, May 24, 1969, published by The American Committee for Justice in the Middle East, Boulder, Colorado, p. 1.
7. See the statement by Israeli Chief of Staff Rav-Aluf Yitzhak Rabin, "The Middle East balance of power will remain unchanged and may even tilt further to Israel's advantage in the next three or four years. . . . Israel has the ability to deter the Arab countries from war. In the eventuality of war, however, the defense forces will win." Jerusalem Post Weekly, March 27, 1967.
8. Life, June 23, 1967, p. 32b.
9. See "Nasser's Resignation Broadcast, June 19, 1967," in Walter Laqueur, The Israel-Arab Reader (New York: Citadel Press, 1969), p. 189.
10. Walter Laqueur, The Road to War, 1967 (London: Weidenfeld & Nicolson, 1968), pp. 138-39.
11. Charles Burton Marshall, "Reflections on the Middle East," Orbis (Summer, 1967), pp. 347-48.
12. V. Aspaturian, "Soviet Foreign Policy at the Crossroads: Conflict and/or Cooperation," International Organization (Summer, 1969).

13. See John C. Campbell, "The Arab-Israeli Conflict: An American Policy," Foreign Affairs (October, 1970); and Thomas W. Wolfe, "The Projection of Soviet Power," Survival (May, 1968), reprinted from Interplay (March, 1968).
14. Walter Laqueur, The Struggle for the Middle East: The Soviet Union in the Mediterranean, 1958-1968 (New York: Macmillan, 1969), p. 181.
15. Walter Laqueur, "Russia Enters the Middle East," Foreign Affairs (January, 1969), pp. 306-7.
16. Policy Background: Basic Soviet Strategy in the Middle East--An Analysis of Two Fundamental Statements of Policy, Embassy of Israel, Washington, D.C., July 21, 1970.
17. Curt Gasteyger, "Moscow and the Mediterranean," Foreign Affairs (July, 1968), p. 683.
18. See Cecil Hourani, "The Arab World and the Big Powers," in The Big Powers and the Present Crisis in the Middle East, ed. by Samuel Merlin (Rutherford: Fairleigh Dickenson University Press, 1968), pp. 47-51.
19. See for example, The Current Digest of the Soviet Press, August 9, 1967, p. 11 (Pravda); August 23, 1967, pp. 6-7 (Pravda); September 6, 1967, p. 13 (Izvestia); September 20, 1967, pp. 18-19 (Izvestia).
20. V. Kurdryavtsev, "The Middle East Knot," International Affairs (Moscow) (September, 1967), p. 29.
21. Foreign Broadcast Information Service, Daily Report, No. 142, July 24, 1967, pp. B1-20. Hereafter cited as FBIS.
22. Kurdryavtsev, op. cit., p. 29.
23. Ibid., p. 31. Note very carefully that Bernard Lewis, "The Great Powers, the Arabs and the Israelis," Foreign Affairs (July, 1969), pp. 644-47 believes that "additional pressure on Turkey and Iran, which now can be threatened from the south as well as the north . . . may well have been the original purpose of the whole Soviet operation in the Arab lands; it is still a major objective of Soviet policy." Lewis also points out that "in May 1967, the prospect for a southward

expansion of Soviet influence seemed excellent." Somali irridentists were being supported by Moscow in their operations in Ethiopia and Kenya. The British were withdrawing from southern Arabia and both Yemen and prospectively independent Aden seemed headed toward Cairene and Muscovite linkages. With passage open through the Suez Canal, Soviet paramountcy in the Red Sea and along its shores seemed likely. Further pressure could be raised against the Arabian sub-continent and Iran could be threatened. "All this was stopped by the June War. With the closure of the Canal Soviet naval activity east of Suez was severely limited; the Egyptians withdrew from the Yemen, and the ripe plumb of Aden fell to the ground and was not picked. The Somalis, deeply discouraged by the Soviet failure to help the Arabs, decided that irridentism with Soviet support was unsafe, and since war was not practicable, they proceeded with unusual logic to make peace. In the Gulf, in Arabia and in North Africa, the conservative forces rallied, and the Arab monarchs were even able to impose a halt in subversion on an Egyptian Government that was now financially dependent on them."

24. FBIS, op. cit., p. 13.
25. The New York Times, June 23, 1967. See also Joseph E. Khalili, "Sino-Arab Relations," Asian Survey (August, 1968), especially pp. 689-90.
26. The New York Times, June 8, 1967.
27. See note 85 below for complete text.
28. Aspaturian, op. cit., p. 618.
29. SCOR 1382, November 22, 1967, p. 13.
30. See Miles Copland, The Game of Nations: The Amorality of Power Politics (London: Widenfeld & Nicolson, 1969).
31. Kennett Love, Suez: The Twice Fought War (New York: McGraw-Hill, 1969), pp. 280-89.
32. John S. Badeau, The American Approach to the Arab World (New York: Harper & Row, 1968), pp. 136, 147. See also Hisham Sharabi, Palestine and Israel: The Lethal Dilemma (New York: Pegasus, 1969), pp. 13-82, for a view of U.S. policy by all Presidents since Truman from an Arab viewpoint. An excellent, but now somewhat dated



study of U.S.-Israel relations from a viewpoint sympathetic to Israel may be found in Nadav Safran, The United States and Israel (Cambridge: Harvard University Press, 1963), passim. See also John C. Campbell, Defense of the Middle East (Rev. ed.; New York: Frederick A. Praeger, 1960), passim, for an as yet unsurpassed study of U.S. Middle East policy through the 1950's.

33. David G. Nes, "The June War in the Middle East," A speech delivered at the University of Colorado, Boulder, April 1968 and reprinted by The American Committee for Justice in the Middle East, Boulder, Colorado.
34. See, for example, Dulles' address before the Council on Foreign Relations, New York, August 26, 1955, found in Staff of the Senate Committee on Foreign Relations, A Select Chronology and Background Documents Relating to the Middle East (1st rev. ed.; Washington: Government Printing Office, 1969), pp. 135-38.
35. See Fred J. Khouri, The Arab-Israel Dilemma (Syracuse: Syracuse University Press, 1968), pp. 216-18, 225.
36. Love, op. cit., p. 63.
37. Laqueur, Road to War, p. 137.
38. Ibid., pp. 137-38.
39. Ibid., pp. 140-43.
40. See "Aide Memoire from Secretary of State Dulles to Israeli Ambassador to the United States Abba Eban, February 11, 1967," in Staff of the Senate Committee on Foreign Relations, A Select Chronology . . ., pp. 155-58. See also U.S. Dept. of State Bulletin No. 36 (Washington: Government Printing Office, 1957), p. 393. For President Eisenhower's verbal remarks, see ibid., pp. 387-90.
41. See the two articles by Michael W. Suleiman, "American Mass Media and the June Conflict," and Abdeen Jabara, "The American Left and the June Conflict," in Ibrahim Abu-Lughod, ed., The Arab-Israel Confrontation of June 1967: An Arab Perspective (Evanston: Northwestern University Press, 1970).
42. See, for example, one reaction by Michael Walzer and Martin Peretz, "Israel Is Not Viet Nam," Ramparts (July, 1967), pp. 11-14.



43. Alastair Buchan, "Great Contingency," Encounter (August 29, 1967), p. 4.
44. Dan Cordtz, "But What Do We Do About The Arabs?" Fortune (September 1, 1967), p. 75. See also Majdla Khadduri, ed., The Arab-Israeli Impasse (Washington: Robert B. Luce, 1968), pp. 117-35.
45. Eugene V. Rostow, "The Middle East Crisis in the Perspective of World Politics," International Affairs (London) (April, 1971), p. 280. Note that Mr. Rostow does not give content to the term "Nasserization" which he used except to appear to link it with "the rising tide of Soviet penetration, and the trends in Arab politics which that penetration encouraged and fortified." He describes these "trends" only as the phenomenon of "'ultra-extremism' in Arab politics."
46. Staff of the Senate Committee on Foreign Relations, A Select Chronology . . ., p. 131. See also Dept. of State Bulletin (June 8, 1950), p. 886.
47. For this list, often with relevant texts, see Subcommittee on the Near East of the House Committee on Foreign Affairs, Hearings, The Near East Conflict, 91st Cong., 2d Sess., 1970, pp. 85-88.
48. See The New York Times, June 8, 1967.
49. Ibid.
50. Ibid., June 6, 20, 1967.
51. John C. Campbell, "American Search for Partners," in Soviet-American Rivalry in the Middle East, ed. by J. C. Hurwitz (New York: Frederick A. Praeger, 1969), pp. 201-2.
52. Ibid., p. 202.
53. See Eugene V. Rostow, "NATO-Soviet Confrontation in the Middle East," Subcommittee on the Near East of the House Committee on Foreign Affairs, Hearings . . ., pp. 312-23. The article was submitted on behalf of American Professors for Peace in the Middle East. A footnote to the text of the article states: "The article contains hitherto unpublished information about American policy in that period" (1966-1969), p. 312.

54. Ibid., p. 313.
55. Ibid., p. 315.
56. Ibid.
57. Ibid., p. 317.
58. Ibid.
59. Ibid.
60. Ibid.
61. Ibid., p. 318.
62. Ibid. (Emphasis mine.)
63. Ibid.
64. Ibid., p. 319.
65. Ibid., pp. 321-23. (Emphasis mine.)
66. Ibid., p. 318.
67. Eugene V. Rostow, "The Search for Peace in the Middle East," Proceedings, American Society of International Law, 1970, p. 65.
68. Ibid., p. 67.
69. John Stoessinger, The United Nations and the Superpowers (New York: Random House, 1965). See also Alexander Dallin, The Soviet Union at the United Nations (New York: Frederick A. Praeger, 1962).
70. Lyndon Baines Johnson, The Vantage Point: Perspectives of the Presidency (New York: Holt, Rinehart and Winston, 1971), p. 287.
71. See above, notes 46 and 47.
72. Johnson, op. cit., p. 288.
73. Ibid., p. 304.
74. Oran Young, "Intermediaries and Interventionists: Third Parties in the Middle East Crisis," International Journal (Winter, 1967-68), p. 56.

75. Laqueur, Road to War . . ., p. 160.
76. Buchan, op. cit., p. 4.
77. Y. Tandon, "UNEF, The Secretary General and International Diplomacy in the Third Arab-Israeli War," International Organization (Spring, 1968), pp. 529-56.
78. U.N. Document A/3563, February 26, 1967, in Annexes, 11th Sess., p. 71.
79. Derek Bowett, United Nations Forces: A Legal Study (London: Stevens, 1964), p. 421.
80. Andrew Boyd, United Nations: Piety, Myth and Truth (Rev. ed.; Baltimore: Penguin, 1964), p. 13.
81. Young, op. cit., p. 64.
82. Ibid., pp. 64-65.
83. S/PV. 1352, June 9, 1967, p. 27.
84. S/PV. 1353, June 9, 1967, p. 46.
85. Because of the significance and novelty of this information we wish to quote extensively from: Transcript, 60 MINUTES, VOLUME III, NUMBER 17, as broadcast over the CBS TELEVISION NETWORK, Tuesday, May 11, 1971, 10:00-11:00 P.M., EDT.  
 MIKE WALLACE: ". . . Then the President told for the first time the frightening details of a hot line message from Soviet Premier Kosygin during the Six-Day War in the Middle East in 1967. You were awakened with a telephone report that war had broken out between Israel and the Arab States, and that must have been the beginning of one of your toughest weeks in the White House.  
  
 MR. JOHNSON: Yes, that's true, Mike. When I hung up the phone after being told by Mr. Rostow what had happened - Mrs. Johnson had awakened and asked me, said what was that message about? And I said, "It looks like that we have a war on our hands." You see in the picture here meeting in the Situation Room after the hot line was first activated. The hot line had been used before for transmitting messages at Christmastime or something; but this is the first time it had actually been activated in a serious international situation. Here on June the 10th, early in the morning at eight o'clock, I received a message that "Mr. Kosygin desires the President to come

to the equipment," that was the Russian way of saying that the hot line was being reinstituted. So I hurried to the Situation room as quickly as I could and the message came across shortly thereafter in which Mr. Kosygin said that they had reached a very crucial decision, that they were prepared to do what was necessary, including using the military, that it--he mentioned the words "grave catastrophe." He mentioned the words "independent decision." He mentioned the word "military," and Secretary Rusk said, "Reread that message, Ambassador Thompson, and be sure that the word 'military' is used." "So, Mike, when the leader of another state talks about a very crucial moment, and he foresees the risk of, quote, a "grave catastrophe," and he states that unless Israel unconditionally halts operations within the next few hours that the Soviet Union will take necessary, quote, "necessary actions including military," that's pretty serious business.

While Secretary Rusk had Ambassador Thompson reviewing the message to be sure the translation was accurate, I spoke to--on the side of Secretary McNamara and asked him where the Sixth Fleet was then located. He checked with the Joint Chiefs and said--I knew it was in the general area it was in but I didn't know exactly its specific location--and he said about three hundred miles off the Syrian coast. They were under orders to stay at least a hundred miles from the Syrian coast. I asked him how fast the fleet traveled if it changed directions and were turned around. He said about twenty-five knots. I then said to Secretary McNamara, "Let's modify the fleet's orders. Let's change it from a hundred miles off the Syrian coast to fifty miles off the Syrian coast." Of course, every man in that room knew, and all the leaders of the Soviet Union knew that every movement of that fleet was being monitored by the Soviet Union; and any change in a direction would immediately be intercepted by the Soviet Union and be known to them.

WALLACE: So that was in a sense a signal to the Soviet Union from the United States that if they intended military action they were going to have to deal with you?

MR. JOHNSON: That was a signal that the United States of America and its Government was prepared for the situation that would confront it if it were confronted.



WALLACE: In a sense, I suppose, the story that you have told here, and I have not heard that story in this detail before, was the Cuban missile crisis of the Johnson administration.

MR. JOHNSON: Well, this was a very tense moment. I am glad to say that after the orders were given, Secretary McNamara went to the direct line that led to the Joint Chiefs and gave them the Presidential order. They came back a little later that morning, tension eased, considerably, and we--the day ended with a cease-fire taking effect and the military action ending."

For another account of use of the hot line during the entire crisis, see Lester Velie, Countdown in the Holy Land (New York: Funk & Wagnalls, 1969), especially pp. 1-17. See also Johnson's Account in Johnson, op. cit., pp. 301-3.

86. The New York Times, June 19, 1967.
87. Laqueur, op. cit., p. 133.
88. The New York Times, May 31, 1967.
89. Ibid., July 9, 1967.
90. Ibid., June 16, 1967.
91. Ibid., May 26, 1967.
92. Ibid., June 6, 1967.
93. Laqueur, op. cit., p. 133.
94. The New York Times, June 4, 1967.
95. Ibid., June 16, 1967.
96. C. Sulzberger in ibid., June 7, 1967.
97. SCOR. 1348, June 6, 1967, p. 4.
98. The New York Times, September 1, 1967.
99. SCOR. 1382, November 22, 1967, p. 12.
100. Ibid.

101. The New York Times, April 21, 1968, December 19, 1969.
102. Ibid., June 17, 1967.
103. Raymond Aron, De Gaulle, Israel and the Jews, Translated by John Sturrock (New York: Frederick A. Praeger, 1969), pp. 9, 16.
104. For a concise summary of activities since November 22, 1967 see John Norton Moore, "The Arab-Israeli Conflict and the Obligation to Pursue Peaceful Settlement of International Disputes," The University of Kansas Law Review (Spring, 1970), pp. 408-13.
105. Peter Mansfield, "A Middle East Policy," in Britain and the World in the Seventies: A Collection of Fabian Essays, ed. by George Cunningham (London: Weidenfeld and Nicolson, 1970), p. 170.
106. Sir Reader Bullard, Britain and the Middle East: From the Earliest Times to 1950 (London: Hutchinson's University Library, 1951), p. 163.
107. Halford L. Hoskins, "Changing of the Guard in the Middle East," Current History (February, 1967), p. 68.
108. See Martin Page, "Middle East II: Persian Gulf," Atlantic (April, 1967), pp. 38-43 for a critical insight into Britain's role in this area.
109. Chatham House Study Group, British Interests in the Mediterranean and Middle East (London: Oxford University Press, 1958), p. 35.
110. C. M. Woodhouse, British Foreign Policy Since the Second World War (New York: Frederick A. Praeger, 1962), p. 171.
111. Ibid., pp. 133-34.
112. See Hisham Sharabi, Palestine and Israel: The Lethal Dilemma (New York: Pegasus, 1969), p. 18, citing data found in Petroleum Intelligence Weekly (June 19, 1967).
113. George Lenczowski, ed., United States Interests in the Middle East (Washington: American Enterprise Institute for Public Policy Research, 1968), pp. 44-45, citing data found in The Arabian Peninsula and Jordan, EIU, London, #1, 1968, and United Kingdom Central Statistical Office, Annual Abstract of Statistics, No. 104, 1967 and

- United Kingdom Balance of Payments, 1966, Her Majesty's Stationery Office, London. For British ownership of major oil concessions see Zuhayr Mikdashi, A Financial Analysis of Middle Eastern Oil Concessions: 1901-1965 (New York: Frederick A. Praeger, 1966), p. 320.
114. Geoffrey Kemp, "Strategy and Arms Levels, 1945-1967," in J. C. Hurewitz, ed., Soviet-American Rivalry in the Middle East (New York: Frederick A. Praeger, 1969), p. 24.
115. The New York Times, December 8, 1965. Included was a complete air defense system including radar and supersonic aircraft to be purchased from Great Britain. For an authoritative analysis broken down by weapon system, country of export and import, 1945-1965 see John L. Sutton and Geoffrey Kemp, Arms to Developing Countries: 1945-1965 (Adelphi Papers, No. 28) (London: Institute for Strategic Studies, 1966), especially p. 23, pp. 35-45. See also Stockholm International Peace Research (SIPRI) Yearbook of World Armaments and Disarmament 1968/69 (Stockholm: Almqvist & Wiksell, 1970), especially pp. 60-67 for a review of the Middle East weapons trade since the late forties and pp. 230-32 for a more detailed year-by-year register of weapons transfers to the Middle East.
116. See Sutton and Kemp, op. cit., p. 7.
117. Ibid., p. 31.
118. Harold Wilson, A Personal Record: the Labour Government 1964-1970 (Boston: Little, Brown, 1971), pp. 400-1
119. H. G. Nicholas, The United Nations as a Political Institution (3d ed.; New York: Oxford, 1967), p. 84.
120. Ibid., pp. 85-88.
121. Ibid., pp. 88-89.
122. Goodspeed, op. cit., p. 18.
123. Eugene V. Rostow, Law, Power and the Pursuit of Peace (Lincoln: University of Nebraska Press, 1968), p. 82.
124. Jerusalem Post Weekly, February 12, 1965.

125. The Christian Science Monitor, November 1, 1967.
126. The Manchester Guardian, November 22, 1967.
127. SCOR. 1382, November 22, 1967, p. 4.
128. Ibid., p. 2.
129. Ibid., p. 4.
130. Ibid., pp. 6-7.
131. Ibid., p. 7.
132. Ibid.
133. Ibid., p. 19.
134. Ibid., p. 12.
135. Ibid., p. 13.
136. Ibid., p. 15.
137. Claude, op. cit., pp. 73-103.
138. Campbell, op. cit., p. 64.
139. Safran, op. cit., p. XVI.
140. Amos Oz, "Meaning of Homeland," New Outlook: Middle East Monthly (December, 1967), p. 16.
141. Don Peretz, "Getting to the Heart of the Matter," Mid-East: A Middle East-North African Review (June, 1970), p. 18.
142. Khouri, op. cit., p. 140.
143. Ibid., pp. 127-29, 143-46.
144. Quincy Wright, "The Middle East Crisis," American Journal of International Law (September, 1970), pp. 279-80.
145. Rosalyn Higgins, The Development of International Law Through the Political Organs of the United Nations (London: Oxford University Press, 1963), p. 6.



146. Stanley Hoffman, "International Law and the Control of Force," in Karl W. Deutsch and Stanley Hoffman, eds., The Relevance of International Law (Cambridge: Schenkman Publishing Company, 1968), p. 23.
147. Lieutenant-General E. L. M. Burns, Between Arab and Israeli (New York: Ivan Obolensky, 1962), pp. 279-80. For evidence of this point in print see A. Shapira, "The Security Council Resolution of November 22, 1967, Its Legal Nature and Its Implications," Israel Law Review (April, 1969), pp. 229-41, and M. Cherif Bassiouni, "The 'Middle East': The Misunderstood Conflict," The University of Kansas Law Review (Spring, 1971), pp. 373-402.
148. Ibid., p. 397.

## BIBLIOGRAPHY

## Books

- Abu-Lughod, Ibrahim, ed. The Arab-Israeli Confrontation of June 1967: An Arab Perspective. Evanston: Northwestern University Press, 1970.
- Allon, Yigal. The Making of Israel's Army. London: Vallentine, Mitchell & Co., 1970.
- Aron, Raymond. De Gaulle, Israel and the Jews. Translated by John Sturrock. New York: Frederick A. Praeger, 1969.
- Avram, Benno. The Evolution of the Suez Canal Status from 1869 up to 1956. Geneva and Paris: Libraries Droz and Minard, 1958.
- Badeau, John. The American Approach to the Arab World. New York: Harper & Row, 1968.
- Barbour, Nevill. Nisi Dominus. Beirut: Institute for Palestine Studies, 1969.
- Bar-Yaacov, N. The Israel-Syrian Armistice. Jerusalem: Magnes Press, Hebrew University, 1967.
- Bar-Zohar, Michel. Ben-Gurion: The Armed Prophet. Translated by Len Ortzen. Englewood Cliffs: Prentice-Hall, 1966.
- Baxter, R. R. The Law of International Waterways. Cambridge: Harvard University Press, 1964.
- Begin, Menachem. The Revolt, Story of the Irgun. Translated by Schmuel Katz. New York: Schuman, 1951.
- Ben Gurion, David. Israel: Years of Challenge. New York: Holt, Rinehart and Winston, 1963.
- Bowett, Derek. United Nations Forces: A Legal Study. London: Stevens, 1964.

- Boyd, Andrew. United Nations: Piety, Myth and Truth. Rev. ed. Baltimore: Penguin Books, 1964.
- Bullard, Sir Reader. Britain and the Middle East: From the Earliest Times to 1950. London: Hutchinson's University Library, 1951.
- Burdett, Winston. Encounter with the Middle East. New York: Atheneum, 1969.
- Burns, E. L. M. Between Arab and Israeli. New York: Ivan Obolensky, 1962.
- Campbell, John. Defense of the Middle East. Rev. ed. New York: Frederick A. Praeger, 1960.
- Cattan, Henry. Palestine, the Arabs and Israel. London: Longmans Green, 1969.
- Chatham House Study Group. Britain Interests in the Mediterranean and Middle East. London: Oxford University Press, 1958.
- Christman, Henry, ed. The State Papers of Levi Eshkol. New York: Funk and Wagnalls, 1969.
- Churchill, Randolph and Winston. The Six-Day War. Boston: Houghton Mifflin, 1967.
- Claude, Inis. The Changing United Nations. New York: Random House, 1967.
- Copeland, Miles. The Game of Nations: The Amorality of Power Politics. London: Weidenfeld and Nicholson, 1969.
- Cunningham, George, ed. Britain and the World in the Seventies: A Collection of Fabian Essays. London: Weidenfeld and Nicolson, 1970.
- Dallin, Alexander. The Soviet Union at the United Nations. New York: Frederick A. Praeger, 1962.
- Davis, John H. The Evasive Peace. London: John Murray, 1968.
- Dayan, Moshe. Diary of the Sinai Campaign. New York: Harper & Row, 1965.

Dennett, Raymond, and Turner, Robert, eds. Documents on American Foreign Affairs. Vol. X. Boston: World Peace Federation, 1948.

Deutsch, Karl, and Hoffman, Stanley, eds. The Relevance of International Law. Cambridge: Schenkman Publishing Company, 1968.

Draper, Theodore. Israel and World Politics. New York: Viking Press, 1968.

Eytan, Walter. The First Ten Years. New York: Simon and Schuster, 1958.

Glubb, Sir John Bagot. A Soldier with the Arabs. London: Hodder and Stoughton, 1957.

Goodspeed, Stephen. The Nature and Function of International Organization. 2d ed. New York: Oxford University Press, 1967.

Halderman, John W., ed. The Middle East Crisis: Test of International Law. Dobbs Ferry, N.Y.: Oceana Press, 1969.

Higgins, Rosalyn. The Development of International Law Through the Political Organs of the United Nations. London: Oxford University Press, 1963.

Howard, Michael, and Hunter, Robert. Israel and the Arab World: The Crisis of 1967. Adelphi Papers No. 41. London: Institute for Strategic Studies, 1967.

Hurewitz, J. C., ed. Diplomacy in the Near and Middle East. Vol. II. Princeton: D. Van Nostrand, 1956.

\_\_\_\_\_. Soviet-American Rivalry in the Middle East. New York: Frederick A. Praeger, 1969.

Hutchison, E. H. Violent Truce. New York: Devin-Adair Co., 1956.

Johnson, Lyndon Baines. The Vantage Point: Perspectives of the Presidency. New York: Holt, Rinehart and Winston, 1971.

Keesing's Research Report. The Arab-Israeli Conflict: The 1967 Campaign. London: Keesing's Publications Limited, 1968.



- Kemp, Geoffrey. Arms and Security: The Egypt-Israel Case. Adelphi Papers No. 52. London: Institute for Strategic Studies, 1968.
- Khadduri, Majdia, ed. The Arab-Israeli Impasse. Washington: Robert B. Luce, Inc., 1968.
- Khoury, Fred J. The Arab-Israeli Dilemma. Syracuse: Syracuse University Press, 1968.
- Kimche, David, and Bawly, Dan. The Sandstorm. London: Secker and Warburg, 1968.
- Kirk, George. The Middle East, 1945-1950. London: Oxford University Press, 1954.
- Lall, Arthur. The United Nations and the Middle East Crisis, 1967. New York: Columbia University Press, 1968.
- Laqueur, Walter Z. The Road to War, 1967. London: Weidenfeld and Nicolson, 1968.
- \_\_\_\_\_. The Struggle for the Middle East: The Soviet Union in the Mediterranean, 1958-1968. New York: Macmillan and Co., 1969.
- \_\_\_\_\_, ed. The Israel-Arab Reader. New York: The Citadel Press, 1969.
- Lenczowski, George, ed. United States Interests in the Middle East. Washington: American Enterprise Institute for Public Policy Research, 1968.
- Love, Kennett. Suez: The Twice-Fought War. New York: McGraw-Hill Book Co., 1969.
- Marshall, S. L. A. Swift Sword: The Historical Record of Israel's Victory, June 1967. New York: American Heritage Publishing Co., 1967.
- Merlin, Samuel, ed. The Big Powers and the Present Crisis in the Middle East. Rutherford: Fairleigh Dickenson University Press, 1968.
- Mikdashy, Zuhayr. Financial Analysis of Middle Eastern Oil Concessions, 1901-1965. New York: Frederick Praeger, 1966.

- Nicholas, H. G. The United Nations as a Political Institution.  
3d ed. New York: Oxford University Press, 1967.
- Obieta, Joseph. The International Status of the Suez Canal.  
The Hague: Martinus Nijhoff, 1960.
- Oppenheim, L. International Law: Disputes, War and Neutrality.  
Edited by H. Lauterpacht. 7th ed. London: Longmans  
Green, 1952.
- \_\_\_\_\_. International Law: Peace. Edited by H. Lauterpacht.  
8th ed. New York: David McKay, 1955.
- Peretz, Don. Israel and the Palestine Arabs. Washington:  
The Middle East Institute, 1958.
- Polk, William. The United States and the Arab World. 1st ed.  
rev. Cambridge: Harvard University Press, 1969.
- Rodinson, Maxime. Israel and the Arabs. Harmondsworth:  
Penguin Books Ltd., 1968.
- Rostow, Eugene V. Law, Power and the Pursuit of Peace.  
Lincoln: University of Nebraska Press, 1968.
- Safran, Nadav. The United States and Israel. Cambridge:  
Harvard University Press, 1963.
- \_\_\_\_\_. From War to War: The Arab-Israeli Confrontation  
1948-1967. New York: Pegasus Books, 1967.
- Schechtman, Joseph. The Arab Refugee Problem. New York:  
Philosophical Library, 1952.
- Sharabi, Hisham. Palestine and Israel: The Lethal Dilemma.  
New York: Pegasus, 1969.
- Stockholm International Peace Research Institute (SIPRI).  
Yearbook of World Armaments and Disarmament 1968/69.  
Stockholm: Almqvist and Wiksell, 1970.
- Stoessinger, John. The United Nations and the Superpowers.  
New York: Random House, 1965.
- Study Group set up by the Hebrew University of Jerusalem.  
Israel and the United Nations. New York: Manhattan  
Publishing Co., 1956.

- Sutton, John L., and Kemp, Geoffrey. Arms to Developing Countries: 1945-1965. Adelphi Papers No. 28. London: Institute for Strategic Studies, 1966.
- Sykes, Christopher. Cross Roads to Israel. London: Collins, 1965.
- Thomas, Ann Van Wynn, and A. J. Non-Intervention: The Law and Its Import in the Americas. Dallas: Southern Methodist University Press, 1956.
- U.S. President. Public Papers of the Presidents of the United States. Washington: General Services Administration, Dwight D. Eisenhower, 1958.
- Velie, Lester. Countdown in the Holy Land. New York: Funk & Wagnalls, 1969.
- Whiteman, Marjorie. Digest of International Law. Vol. V. Washington: Department of State Publication 7873, 1965.
- Wilson, Evan. Jerusalem, Key to Peace. Washington: Middle East Institute, 1970.
- Wilson, Harold. A Personal Record: The Labour Government 1964-1970. Boston: Little, Brown & Co., 1971.
- Woodhouse, C. M. British Foreign Policy Since the Second World War. New York: Frederick Praeger, 1962.

#### Articles and Periodicals

- Alroy, Gil Carl. "Dynamics of Violence in the Middle East." The Reporter, XXXVIII, 10 (May 16, 1968), 23-25.
- Aspaturian, V. "Soviet Foreign Policy at the Crossroads: Conflict and/or Cooperation." International Organization, XXIII, 3 (Summer, 1969), 589-620.
- Badeau, John S. "The Arabs, 1967." The Atlantic Monthly, CCXX, 6 (December, 1967), 102-10.
- Bassiouni, M. Cherif. "The Middle East: The Misunderstood Conflict." The University of Kansas Law Review, IXX, 3 (Spring, 1971), 373-402.

Bayne, E. A. "Israel's Decision-Makers." American Universities Field Staff Reports Service: Southwest Asia Series, XVI, 3 (Israel), 1-18.

Binder, Leonard. "The Middle East Crisis: A Trial Balance." Bulletin of the Atomic Scientist, XXIII, 7 (September, 1967), 2-7.

Buchan, Alastair. "The Great Contingency." Encounter, XXIX, 2 (August, 1967), 3-7.

Burns, E. L. M. "The Withdrawal of U.N.E.F. and the Future of Peacemaking." International Journal, XXIII, 1 (Winter, 1967-68), 1-17.

Campbell, John C. "The Arab-Israeli Conflict: An American Policy." Foreign Affairs, XLIX, 1 (October, 1970), 51-69.

Childers, Erskine. "The Other Exodus." The Spectator (London), No. 6933 (May 12, 1961), pp. 672-75.

Christian Science Monitor.

Cohen, Maxwell. "The Demise of U.N.E.F." International Journal, XXIII, 1 (Winter, 1967-68), 18-51.

Cordtz, Dan. "But What Do We Do About the Arabs?" Fortune, LXXVI, 3 (September 1, 1967), 75-79.

Current Digest of the Soviet Press.

The Economist (London).

Foreign Broadcast Information Service.

Forsyth, David P. "The UNRWA, the Palestine Refugees and World Politics: 1949-1969." International Organization, XXV, 1 (Winter, 1971), 26-45.

Forward, Robert; Jay, Laurence; Koslowe, Neil; Linsider, Joel; and Mezan, Richard. "The Arab-Israeli War and International Law." The Harvard International Law Journal, IX, 2 (Spring, 1968), 232-76.

Gasteyger, Curt. "Moscow and the Mediterranean." Foreign Affairs, XLVI, 4 (July, 1968), 676-87.



Hargrove, John. "Abating the Middle East Crisis Through the United Nations (and vice versa)." The University of Kansas Law Review, IXX, 3 (Spring, 1971), 365-72.

Hoskins, Halford L. "Changing the Guard in the Middle East." Current History, LII, 306 (February, 1967), 65-71.

Jerusalem Post Weekly.

Khalili, Joseph. "Sino-Arab Relations." Asian Survey, VIII, (August, 1968), 678-90.

Khoury, Fred. "The Policy of Retaliation in Arab-Israeli Relations." Middle East Journal, XX, 4 (Autumn, 1966), 435-55.

Kurdryavtsev, V. "The Middle East Knot." International Affairs (Moscow) (September, 1967), pp. 29-34.

Laqueur, Walter. "Russia Enters the Middle East." Foreign Affairs, XLVII, 2 (January, 1969), 296-308.

Le Monde.

Lewis, Bernard. "The Great Powers, the Arabs and the Israelis." Foreign Affairs, XLVII, 4 (July, 1969), 642-52.

Life.

Linowitz, Sol M. "Analysis of a Tinderbox: Legal Basis for the State of Israel." American Bar Association Journal, XLIII, 6 (June, 1957), 522-25.

The Manchester Guardian.

Marshall, Charles Burton. "Reflections on the Middle East." Orbis, IX, 2 (Summer, 1967), 343-59.

Moore, John Norton. "The Arab-Israeli Conflict and the Obligation to Pursue Peaceful Settlement of International Disputes." The University of Kansas Law Review, IXX, 3 (Spring, 1971), 403-40.

Nes, David G. "Interview." The Arab World (March-April, 1970).

\_\_\_\_\_. "Our Middle Eastern Involvement." Middle East Forum, XLV, 3 (1969), 15-27.

The New York Times.

Oz, Amos. "Meaning of Homeland." New Outlook: Middle East Monthly, X, 9 (December, 1967), 9-20.

Page, Martin. "Middle East II: Persian Gulf." The Atlantic Monthly, CCXIX, 4 (April, 1967), 38-43.

Peretz, Don. "Getting to the Heart of the Matter." Mid-East: A Middle East-North African Review, X, 3 (June, 1970), 11-14.

Rostow, Eugene V. "The Middle East Crisis in the Perspective of World Politics." International Affairs (London), XLVII, 2 (April, 1971), p. 280.

\_\_\_\_\_. "Legal Aspects of the Search for Peace in the Middle East." Proceedings, American Society of International Law, 1970, LXIV, 4, 64-70.

Shapira, A. "The Security Council Resolution of November 22, 1967. Its Legal Nature and Its Implications." Israel Law Review, IV, 2 (April, 1969), 229-41.

Stone, I. F. "For a New Approach to the Israeli-Arab Conflict." New York Review of Books, IX, 2 (August 3, 1967), 6-14.

Tandon, Y. "U.N.E.F., the Secretary-General and International Diplomacy in the Third Arab-Israeli War." International Organization, XXII, 2 (Spring, 1968), 529-56.

The Times (London).

Transcript. 60 Minutes. Volume III, Number 17 as broadcast over the CBS Television Network, Tuesday, May 11, 1971, 10:00-11:00 P.M. EDT.

Walzer, Michael, and Peretz, Martin. "Israel Is Not Vietnam." Ramparts, VI, 1 (July, 1967), 11-14.

Wolfe, Thomas W. "The Projection of Soviet Power." Survival, X, 5 (May, 1968), 159-65.

Wright, Quincy. "The Middle East Crisis." American Journal of International Law, LXIV, 4 (September, 1970), 71-77.

\_\_\_\_\_. "The Stimson Note of January 7, 1932." American Journal of International Law, XXVI (April, 1932), 342-48.

Yost, Charles. "The Arab-Israeli War: How It Began." Foreign Affairs, XLVI, 2 (January, 1968), 304-20.

Young, Ovan. "Intermediaries and Interventionists: Third Parties in the Middle East Crisis." International Journal, XXIII, 1 (Winter, 1967-68), 52-73.

\_\_\_\_\_. "Political Discontinuities in the International System." World Politics, XX, 3 (April, 1968), 369-92.

### Public Documents

Embassy of Israel. Policy Background: Basic Soviet Strategy in the Middle East--An Analysis of Two Fundamental Statements of Policy, Washington, D.C., July 21, 1970.

United Nations. Conference on the Law of the Sea. Plenary Meetings: Summary Records of Meetings and Annexes, 24 February-27 April, 1958, Vol. II, A/CONF.7/13 38.

\_\_\_\_\_. General Assembly. Ad Hoc Committee on the Palestinian Refugee Question: Summary Records of Meetings 25 September-25 November 1947.

\_\_\_\_\_. General Assembly. 5th Emergency Special Session. Annexes: 21 April-13 June 1967.

\_\_\_\_\_. General Assembly. 2d Session, Vol. I. United Nations Special Committee on Palestine: Report to the General Assembly, Supplement No. 11.

\_\_\_\_\_. General Assembly. 3d Session, Part I. Resolutions, 21 September-12 December, 1948, A/810, December, 1948.

\_\_\_\_\_. General Assembly. 3d Session, Part II. Resolutions: 5 April-18 May 1949, A/900, 31 May 1949.

\_\_\_\_\_. General Assembly. 4th Session. Resolutions: 20 September-10 December, 1949, A/1251, 28 December 1951.

\_\_\_\_\_. General Assembly. 5th Emergency Special Session. Annexes: 17 June-18 September 1967.

\_\_\_\_\_. General Assembly. Fifth Emergency Special Session. Provisional Verbatim Records.

\_\_\_\_\_. General Assembly. 5th Emergency Special Session. Resolutions Adopted by the General Assembly during its Fifth Emergency Special Session 17 June-18 September 1967, Supplement No. 1, A/6798.

\_\_\_\_\_. General Assembly. 5th Session. Question of an International Regime for the Jerusalem Area and Protection of the Holy Places: Special Report of the Trusteeship Council, Supplement No. 9, A/1286, 1950.

\_\_\_\_\_. General Assembly. 20th Session. Report of the Commissioner-General of United Nations Relief and Works Agency for Palestine Refugees in the Near East: 1 July 1964-30 June 1965, Supplement No. 13, A/6013.

\_\_\_\_\_. General Assembly. 22d Session. Annual Report of the Secretary General on the Work of the Organization: 16 June 1966-15 June 1967, Supplement No. 1, A/6701.

\_\_\_\_\_. General Assembly. 22d Session. Report of the Commissioner-General of United Nations Relief and Works Agency for Palestine Refugees in the Near East: 1 July 1966-30 June 1967, Supplement No. 13, A/6713.

\_\_\_\_\_. Security Council. 4th Year. Special Supplement No. 1, S/1302/Rev. 1, 20 June 1949.

\_\_\_\_\_. Security Council. 4th Year. Special Supplement No. 2, S/1353/Rev. 1.

\_\_\_\_\_. Security Council. 4th Year. Special Supplement No. 3, S/1264/Rev. 1, 13 December 1949.

\_\_\_\_\_. Security Council. 5th Year. Resolutions and Decisions of the Security Council, S/INF/5/Rev. 1.

\_\_\_\_\_. Security Council. 6th Year. Resolutions and Decisions of the Security Council 1951, S/INF/6/Rev. 1.

\_\_\_\_\_. Security Council. 6th Year. Supplement for 1 April Through 30 June 1951.

\_\_\_\_\_. Security Council. 8th Year. Supplement for April, May and June 1953.

\_\_\_\_\_. Security Council. 8th Year. Supplement for October, November and December 1953.



- \_\_\_\_\_. Security Council. 11th Year. Resolutions and Decisions of the Security Council 1956, S/INF/11/Rev. 1.
- \_\_\_\_\_. Security Council. 11th Year. Supplement for April, May and June 1956.
- \_\_\_\_\_. Security Council. 13th Year. Resolutions and Decisions of the Security Council 1958, S/INF/13/Rev. 1.
- \_\_\_\_\_. Security Council. 13th Year. Supplement for April, May and June 1958.
- \_\_\_\_\_. Security Council. 21st Year. Supplement for July, August and September 1966.
- \_\_\_\_\_. Security Council. 21st Year. Supplement for October, November and December 1966.
- \_\_\_\_\_. Security Council. 22nd Year. Provisional Verbatim Records.
- \_\_\_\_\_. Security Council. 22nd Year. Resolutions and Decisions of the Security Council 1967, S/INF/22/Rev. 2.
- \_\_\_\_\_. Security Council. 22nd Year. Supplement for January, February and March 1967.
- \_\_\_\_\_. Security Council. 22nd Year. Supplement for April, May and June 1967.
- \_\_\_\_\_. Security Council. 22nd Year. Supplement for July, August and September, 1967.
- U.S. Department of State. The Suez Canal Problem. Publication No. 6392, 1956.
- \_\_\_\_\_. United States Policy in the Middle East. Publication No. 8269, 1967.
- U.S. House of Representatives. Subcommittee on the Near East of the House Committee on Foreign Affairs, Hearings, the Near East Conflict. 91st Cong., 2d Sess., 1970.
- U.S. Senate. Staff of the Committee on Foreign Relations. A Select Chronology and Background Documents Relating to the Middle East. 1st ed. revised. 90th Cong., 1st Sess., 1969.
- Yearbook of the United Nations, 1967. United Nations, New York: Office of Public Information, 1969.

