

THE DRAFTING OF SECURITY COUNCIL RESOLUTION 242: THE ROLE OF THE NON-REGIONAL ACTORS*

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I.

This article is intended to take note of the fact that Security Council Resolution 242¹ is twenty-five years old. There seems to be a good deal of doubt in various capitals of the world about whether we should celebrate the anniversary or don mourning for the occasion. The Western nations doggedly repeat that peace negotiations between Israel and the Arab states must be based on Security Council Resolutions 242 of November 22, 1967, and 338, of October 22, 1973,² which made Resolution 242 legally binding under Article 25 of the United Nations Charter. Resolution 338 commands the parties to start negotiations "immediately, and concurrently with the cease-fire," in order to establish a just and durable peace in accordance with the terms of Resolution 242.

Representatives of the Western Allies do not always interpret Resolution 242 in exactly the same way, however. And the Arab nations, with the notable exception of Egypt, claim, somewhat inconsistently, that Resolution 242 is hopelessly ambiguous, and that it clearly means the opposite of what its language was universally understood to mean when it was debated, negotiated, and adopted. It is not yet clear

* Paper prepared for discussion at the Harris Symposium of the Washington Institute for Near Eastern Policy, Washington, D.C., November 23, 1992.

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1. S.C. Res. 242, U.N. SCOR, 22d Sess., 1382d mtg. at 8, U.N. Doc. S/INF/22/Rev.2 (1967).

2. S.C. Res. 338, U.N. SCOR, 28th Sess., 1747th mtg. at 10, U.N. Doc. S/INF/29 (1973).

whether Russia and the other successor states of the Soviet Union have abandoned the pre-Gorbachev Soviet position on Resolution 242, which was identical with that of the Arabs.

While most Israelis agree that Israel should continue to pursue the goal of formal peace with its neighbors, even at a comparatively high price in territorial concessions, an increasing number of Israelis doubt whether any Arabs are willing to follow President Sadat's example by making peace on terms compatible with the Security Council resolutions. They argue that Israel should be content with the status quo of the 1949 Armistice,³ as it has been modified by the Egyptian-Israeli Peace Treaty⁴ — that is, that Israel should continue to occupy the West Bank, the Gaza Strip, and the Golan Heights. As a result of the increasing slaughter of Arabs (and Jews) by Arabs in the West Bank and the Gaza Strip, there has also been an increase in the number of Israelis willing to consider massive expulsions of Palestinian Arabs from the occupied territories.

If the Middle East peace process survives the next few months, there is a further reason for the diplomats to stick closely to Resolutions 242 and 338: they are the only documents setting out principles for peacemaking on which Israel, its Arab neighbors, and the Security Council have formally agreed. They were the basis for the successful peace between Israel and Egypt in 1979. And there is little possibility that the parties and the Security Council could reach agreement on a substitute agenda.

I should make my own position clear. I remain of the opinion that Resolution 242 was a wise judgment when it was negotiated and adopted in 1967, and that it still provides a fair basis for a fair peace, if the parties apply the twin resolutions in strict conformity with their terms. Moreover, the conditions of world politics ought to favor a general peace between Israel and the Arab states. In the aftermath of the Soviet collapse, China, India, the East European states, Rus-

3. See General Armistice Agreement, Feb. 24, 1949, Egypt-Isr., 42 U.N.T.S. 251 [hereinafter Egyptian-Israeli General Armistice Agreement]; General Armistice Agreement, Mar. 23, 1949, Isr.-Leb., 42 U.N.T.S. 287; General Armistice Agreement, Isr.-Jordan, Apr. 3, 1949, 42 U.N.T.S. 302; General Armistice Agreement, July 20, 1949, Isr.-Syria, 42 U.N.T.S. 327.

4. Treaty of Peace, March 26, 1979, Egypt-Isr., 18 I.L.M. 362.

sia, and most of the successor states of the former Soviet Union have established diplomatic relations with Israel. Jordan has recently indicated it is seriously considering the same course, and even Syria seems to be moving in the same direction. This trend leaves the Arab population of the West Bank and the Gaza Strip (often wrongly called "the" Palestinians) more and more isolated politically. There never will be a more propitious time for them to make peace.

In contrast with my view, Jon Kimche, a serious Israeli commentator, has concluded that the continuing presence of Resolution 242 as a source of reference has become a major obstacle to peace negotiations in the vastly changed political climate. He writes that:

[Resolution 242] was cobbled together in 1967 as a stop-gap to prevent the United Nations from doing something silly in the wake of the Six Day War. It served its purpose then. It has done its duty. It should now be allowed to rest in peace and obscurity like so many other resolutions. The prospect for peace in 1992 and 1993 is too real to allow it to be further blocked by the ghost of Resolution 242. There should now be an international ban on all further reference to this outdated symbol of U.N. indecision.⁵

This view is exemplified by the statement made earlier in the article that Resolution 242 "provides a convenient alibi for all who do not want peace."⁶

II.

Before addressing the role of the non-regional actors in the negotiations which led to Resolution 242, we should recall the circumstances which produced the Six Day War, for those circumstances profoundly affected the terms of the agreement embodied in Resolution 242.

It is often said that the Six Day War was brought about by accident or miscalculation, or by mutual misunderstanding. This is not the case. The Six Day War was a war of Arab

5. Jon Kimche, *Arab-Israeli Peace—The End of Resolution 242*, MIDSTREAM, Nov. 1992, at 2, 6.

6. *Id.*

and, particularly, of Syrian and Egyptian aggression deliberately incited by the Soviet Union. A CIA cable, recently declassified in sanitized form, sums up the situation as the United States and the Western Allies experienced it during the late spring of 1967. The cable reports a conversation between a CIA officer and a medium-level Soviet official (neither of whom is identified in the document):

1. The Soviet [official] told [his interlocutor] that there had been "miscalculations" by the Soviets and by the Arabs. The Soviets overestimated the Arabs' ability to employ their substantial military strength against the Israelis while the Arabs over-rated their own strength and underrated the Israeli military capability and determination to win. When [the] source asked if that meant that the Soviets had encouraged the Arabs in their hostile attitude towards Israel, the Soviet official replied affirmatively, stating that the USSR had wanted to create another trouble spot for the United States in addition to the one already existing in Vietnam. The Soviet aim was to create a situation in which the US would become seriously involved, economically, politically, and possibly even militarily, and in which the US would suffer serious political reverses as a result of its siding against the Arabs. This grand design, which envisaged a long war in the Middle East, misfired because the Arabs failed completely and the Israeli blitzkrieg was so decisive. Faced with this situation, the Soviets had no alternative but to back down as quickly and gracefully as possible so as not to appear the villains of the conflict.

2. The Soviet [official] thought that Nasser must go and that he would most probably be assassinated in the near future by his own disillusioned people. He said that Nasser's charge that US and British aircraft had aided the Israeli forces was a desperate attempt to save face in the Arab world after suffering a humiliating military defeat, and that no one, certainly not the USSR, believed the charge. In a final comment, the Soviet [official] said the war has shown that the Arabs are incapable of

unity even when their vital interests are at stake.⁷

Apart from supplying arms and military advisers to the Arabs on a large scale, the Soviet effort to incite the War consisted mainly of the deliberate dissemination of false intelligence. Given the emotional intensity of the Arab sense of grievance about the existence of Israel, the Soviet program of disinformation was the equivalent of throwing gasoline on a fire.

There had been active friction between Syria and Israel since September 1966, focussed largely on water rights and guerrilla activities. The United States was host to an international conference entitled "Water for Peace," scheduled to convene in Washington D.C. at the end of May 1967. In order to calm the situation and head off possible Israeli retaliation against Syria, the United States sought a Security Council resolution directed against Syria. Negotiations at the United Nations in New York produced what the United States thought was a Soviet-American agreement on a compromise resolution that was so watered down that criticism of Syria was almost invisible. The Soviet permanent representative at the Security Council then vetoed the resolution we believed he had promised to support.

I have often wondered in retrospect whether it was a mistake for the United States to have invested so much time and effort in the project of the Security Council resolution. A sharp Israeli attack on Syria in the fall of 1966 might well have been a more effective deterrent than the pitiful fiasco in the Security Council.

One of the most important factors in the coming of the War was the development of a feverish conviction among the Arab masses that their armies could defeat the Israelis and thus avenge their earlier defeats. They excused their defeats in 1948 and 1949 because of their faulty intelligence about Israeli capabilities, and attributed their defeat in 1956 to British and French participation in the War.⁸

From September 1966 until the outbreak of war in June

7. Cable from CIA to White House Situation Room (June 1967) (on file at LBJ Library, Austin, Texas, Doc. No. 84 li, Case No. 82-156).

8. *See, e.g.*, Speech by President Nasser on Closing of the Gulf of Aqaba (May 22, 1967), in 3 *THE ARAB-ISRAELI CONFLICT* 723-29 (John Norton Moore ed., 1974).

1967, the situation became more and more threatening, as attacks on Israel, largely from Syria and Jordan, increased in number and severity, and Israeli counter-moves against those attacks increased correspondingly. During the spring of 1967, the Soviet Union began to spread false reports that Israel was planning to attack Syria, and that it had mobilized twelve or fourteen brigades near the Golan Heights for the purpose. There was no truth in these reports, as we knew from our own military attachés and the reports of the U.N. forces in Israel. But the Soviets kept repeating these charges with emphasis and urgency, not simply as rumors to be spread in bazaars, but as formal diplomatic demarches to Egypt and the other Arab countries, and to Israel. The Israelis offered to take the Soviet Ambassador to Israel on an inspection trip of the area, but he refused.⁹

The Soviet program of disinformation began to have far-reaching effects. Arab radio stations and newspapers taunted President Nasser, saying that although he claimed to be the big brother of the Arab people, Israel was about to bash Syria, and he was doing nothing.¹⁰ Sensitive to criticism that touched his pan-Arab nerve, Nasser responded with great rhetorical vigor, and then with what soon became a mobilization. First, he promised to fight if Syria were attacked. These cries merged, however, with the broader promises to lead a holy war against Israel and throw the Jews into the sea. Soon Arab troops from Algeria and Iraq joined Egyptian, Syrian, Saudi, and Jordanian forces in a ring around Israel.¹¹

As the threat of another Arab war against Israel became obvious during the early spring of 1967, the United States, Great Britain, and their allies undertook active diplomatic steps to resolve what was more and more visibly a crisis. The American reaction to the course of events was a classic demonstration of the diplomatic style of President Johnson and

9. See SYDNEY D. BAILEY, *FOUR ARAB-ISRAELI WARS AND THE PEACE PROCESS* 190 (3d ed. 1990).

10. See EUGENE V. ROSTOW, *LAW, POWER, AND THE PURSUIT OF PEACE* 77 (1968).

11. Eugene V. Rostow, *The Perils of Positivism: A Response to Professor Quigley*, 2 *DUKE J. COMP. & INT'L L.* 229, 232 (1992). See also *Report of the Secretary-General on the Situation in the Near East*, U.N. SCOR, 22d Sess., Supp. for Apr.-June 1967, at 109, U.N. Doc. S/7896 (1967).

Secretary of State Rusk. That style was characterized by careful preparation and a long-term perspective, and involved sustained and energetic consultations with everyone affected or involved. It was common for President Johnson, discussing a proposal from the bureaucracy, to ask: "If we do what you recommend, where will we be in twenty years? Let's think it over, and meet again on Friday." Both Rusk and Johnson had a great deal of experience with Middle Eastern questions, Rusk as an Assistant Secretary of State in the Truman administration, Johnson as Democratic Majority Leader and Chairman of the Senate Armed Services Committee during the Eisenhower years. Johnson had played an active and important role in the diplomatic settlement after the Suez War of 1956.

A high-level control committee was set up within the United States Government at the under secretary level to consider, prepare, and propose policies the United States and its allies might pursue in concert, both in the United Nations forum and independently as well. A special committee was appointed under the chairmanship of Ambassador Julius Holmes to appraise Soviet Middle East policy. The committee concluded that the purpose of the Soviet drive in the Middle East was to exploit Arab hostility to the existence of Israel as a weapon which could enable them not only to gain control of the oil reserves of the area, but also to outflank NATO from the south, and thus neutralize Western Europe. To check and defeat the Soviet goal in the Middle East would require a vigorous American and allied diplomacy, a military presence, and support for Israel, Iran, and Saudi Arabia.

In order to understand the political context of Resolution 242, it is necessary to recall the international atmosphere of the times. The Vietnam War was at a dismal point militarily, and was beginning to poison American domestic politics and the relationship of the United States with its European allies as well. In addition, the relationship among the NATO allies was still bleeding from the wounds inflicted by United States policy during the Suez Crisis of 1956. General de Gaulle was President of France, and was pursuing a policy of pique towards the United States as he struggled to restore the pride of France in the aftermath of Algeria, Suez, and Indo-China. The Six Day War crisis of 1967 occurred less than a year after General de Gaulle ordered the NATO

forces out of France, and Belgium stepped forward to receive NATO Headquarters on Belgian soil.

Nonetheless, President Johnson and Secretary Rusk launched an extremely active and far-reaching Middle Eastern policy initiative based on the assumption that NATO solidarity could be achieved and maintained as the solid nucleus of a much larger coalition extending around the world. In the period before the Six Day War broke out, high level officials from Washington frequently supplemented the work of American ambassadors, and visited the capitals of key countries and the North Atlantic Council in order to pursue extended consultations. The British and American Middle East teams met regularly in London and Washington to examine the available policy alternatives and to recommend policy goals that would command general support outside of what was then still the Soviet bloc and the Arab world. And the United States was in nearly constant communication with the governments of Israel, Egypt, and the Soviet Union as well.

The objective of these exhaustive consultations was to explore every possible way to de-escalate the growing crisis and to prevent a war in which the Soviet Union might decide to intervene, to clarify the goals of American policy, and to reach agreement on a policy for the future of the Middle East that could be supported by as large a majority as possible in the United Nations. In President Johnson's view, America's first goal in the area was to prevent what became the Six Day War, to face down possible Soviet intervention without provoking it, to promote NATO solidarity in every possible way, and to push the Arabs towards peace after twenty years of intransigent resistance to the idea of peace with Israel. I believe that these consultations, coupled with the universal perceptions of Soviet, Syrian, and Egyptian aggression, permitted the United States and Great Britain, acting together, to achieve something close to unanimity among the Western allies, and to obtain the passage of Resolution 242. This was the only time since 1947 that the Western bloc had agreed about how to handle an episode in the long Arab war against Israel.

III.

While these efforts were being pursued, Nasser re-

requested that the U.N. peacekeeping force withdraw from the frontier between Israel and Egypt, including Sharm-el-Sheikh, at the mouth of the Straits of Tiran.¹² U Thant, the Secretary-General of the United Nations, replied that if Nasser wished the U.N. peacekeeping forces to withdraw from part of the area they were patrolling, he would have to ask those troops to withdraw from the entire frontier.¹³ By prior agreement with Nasser, the Indian and Yugoslav troops which were part of the U.N. force withdrew immediately,¹⁴ thus destroying the force as any kind of obstacle to war, however fragile.

President Johnson forcefully denounced the Egyptian move for two reasons. Manifestly, the withdrawal of the U.N. forces greatly increased the risk of war. In addition, it had been agreed by the parties in 1957, as part of the price for Israeli withdrawal from the Sinai, that any use of force by Egypt to close the Straits of Tiran would be treated as an armed attack not only by the Israelis, but also by Great Britain and the United States, who had negotiated the agreement between Israel and Egypt, and guaranteed the Straits as an international waterway.¹⁵ That agreement provided for a special procedure of delay to be followed if Egypt ever did try to close the Straits of Tiran.¹⁶

When the Egyptian troops manned the guns controlling the Straits and announced that the waterway was closed to Israeli shipping, the first shot in the Six Day War was effectively fired. It is no wonder that in a major speech on June 19, 1967, President Johnson said: "If a single act of folly was more responsible for this explosion than any other, I think it was the arbitrary and dangerous announced decision that the Straits of Tiran would be closed. The right of innocent mari-

12. See *Report of the Secretary-General on the Withdrawal of the United Nations Emergency Force*, U.N. GAOR, 5th Emergency Special Sess., Annex, Agenda Item 5, at 5, U.N. Doc. A/6730 (1967).

13. See *id.* at 6.

14. See BAILEY, *supra* note 9, at 199.

15. See Eugene V. Rostow, *Legal Aspects of the Search for Peace in the Middle East*, 64 PROC. AM. SOC. INT'L L. 64, 67 (1970). See also Aide Mémoire Handed to Israeli Ambassador Abba Eban on Feb. 11, 1957, by Secretary of State Dulles, in 3 THE ARAB-ISRAELI CONFLICT, *supra* note 8, at 637.

16. See, e.g., Aide Mémoire by Secretary-General Dag Hammarskjöld on Conditions Governing Withdrawal of U.N.E.F. (Aug. 5, 1957), in 6 I.L.M. 593-602 (1967).

time passage must be preserved for all nations.”¹⁷

The period between May 23 and June 5 was one of frantic diplomatic effort by the United States, its allies, and many other friendly countries around the world to defuse the crisis by persuading Nasser to restore the situation in the Sinai as it had been before the dissolution of the U.N. peacekeeping force. That campaign was supplemented by a determined effort to organize an allied naval force to convoy Israeli and other vessels through the Straits of Tiran. The idea was suggested by the British Government, and was embraced as a matter of extreme urgency by Johnson and Rusk. Former President Eisenhower confirmed that he had indeed guaranteed the Straits of Tiran, and assured President Johnson of his full support, as a matter of national honor, if Johnson decided to use force.¹⁸

In view of the controversy then raging in Congress about the war in Vietnam, it was deemed politic to obtain a Congressional resolution specifically supporting military action to break the blockade of the Straits of Tiran. Britain, the United States, the Netherlands, Canada, and Australia quickly sent vessels to the Canal prepared to carry out the task. When Secretaries Rusk and McNamara consulted Congressional leaders on the subject, however, they found great reluctance to authorize “another Vietnam,” and a decided preference for supporting an Israeli action in self-defense. When Jordan put its armed forces under Egyptian control, President Johnson concluded that war was inevitable. It would have been unconscionable for the United States to press the Israelis further to delay recourse to their legal right of self-defense.

The difference between Congressional opinion and the President’s was never resolved. As the Arab mobilization reached a climax, the war exploded. The Soviet Union, which had resisted American proposals for a cease-fire for days, suddenly changed its mind as the Arab armies surrendered and the Israelis reached the Suez Canal.

17. President Lyndon B. Johnson, Principles for Peace in the Middle East, Address Before the Department of State Foreign Policy Conference for Educators (June 19, 1967), in DEP’T ST. BULL., July 10, 1967, at 33 [hereinafter Johnson on Middle East].

18. See Rostow, *The Perils of Positivism*, *supra* note 11, at 233.

IV.

The long months of study and diplomacy devoted to the Middle Eastern crisis of 1966-67 incited a prompt articulation of Anglo-American policy after the Six Day War. President Johnson's speech of June 19, 1967 announced the ideas which became Resolution 242 after four more months of heated debate in the Security Council, the General Assembly, and then the Security Council again. Johnson's statement of June 19 had several key points:

(1) It rejected proposals that Israel withdraw its forces to the Armistice Lines as they stood on June 4. "This is not a prescription for peace," the President said, quoting Ambassador Arthur Goldberg, "but for a renewal of hostilities."¹⁹

(2) There needed to be peace between the parties, real peace, before there could be any troop withdrawal.²⁰ This principle, not spelled out in detail in the June 19th speech, was fully discussed before the United Nations. It reflected the history of the 1957 agreement which settled the Suez War of 1956. That settlement required Israel to withdraw from the Sinai in exchange for a series of promises by Egypt, all of which were broken: to respect Israel's borders, to allow Israel free passage on the international waterways of the region, and to make peace. More than any other factor, the Egyptian breach of the 1957 agreement led to the basic requirement of Resolution 242 that Israel could remain in the occupied territories until the parties establish "a just and lasting peace in the Middle East."²¹ Secretary Rusk was a particularly strong advocate of this position because of Egypt's violation of the 1957 agreement. The correlative principle of the Resolution, that the new and secure boundaries of Israel did not need to be the same as the Armistice Demarcation Lines of 1949, simply echoed the terms of the Armistice Agreements of 1949. These provided that the Armistice Lines were not to be considered political boundaries but could be changed when the parties moved from armistice to peace.

(3) The agreements of peace needed to be negotiated by the parties. "It is hard to see how it is possible for nations

19. Johnson on Middle East, *supra* note 17, at 34.

20. *See id.*

21. S.C. Res. 242, *supra* note 1, at 8.

to live together in peace if they cannot learn to reason together," said President Johnson, expanding on an earlier statement that "[t]he nations of the region have had only fragile and violated truce lines for 20 years. What they need now are recognized boundaries and other arrangements that will give them security against terror, destruction, and war."²²

(4) All the states in the region had the same right to have their territorial integrity and political independence respected; threats to end the life of any nation had become a burden to the peace.²³

(5) There needed to be justice for the refugees.²⁴

(6) Maritime rights through the international waterways of the area needed to be respected.²⁵

(7) The special interest of the three great religions represented in Jerusalem needed also to be assured.²⁶

Two of these issues proved to be especially critical in the diplomacy of obtaining the passage of the Resolution in 1967, and in the subsequent struggle to implement it: first, the issue of coupling Israeli withdrawals and agreements on a state of peace; and second, the question of how much withdrawal, i.e., whether Israel is required by Resolution 242 to withdraw to the Armistice Demarcation Lines of 1949. Since Resolution 242 calls on Israel to withdraw only from "territories occupied" in the course of the Six Day War, that is, not from *all the* territories or from *the* territories it occupied in the course of the War, and since most of the boundaries in question are no more than armistice lines specifically designated as *not* being political boundaries,²⁷ it is hard to believe that professional diplomats seriously claim in 1993 that Security Council Resolution 242 requires that Israel must return to the 1967 armistice lines. This Arab position is particularly bizarre applied to the West Bank and the Gaza Strip, where the Jewish people have an incontestably valid claim

22. Johnson on Middle East, *supra* note 17, at 33-34.

23. *See id.*

24. *See id.*

25. *See id.*

26. *See id.*

27. *See, e.g.,* Egyptian-Israeli General Armistice Agreement, *supra* note 3, art. V, para. 2, 42 U.N.T.S. at 256.

under the original mandate²⁸ and Article 80 of the U.N. Charter²⁹ to make close settlements on the land.

Five and one half months of vehement public and private diplomacy in 1967 made it perfectly clear what the missing definite article in Resolution 242 means. Ingeniously drafted resolutions calling for withdrawal from *all* the territories were defeated in the Security Council and the General Assembly, one after another. Speaker after speaker made it explicit that Israel was not to be forced back to the fragile and vulnerable Armistice Demarcation Lines, but should retire once peace was made to what Resolution 242 called "secure and recognized" boundaries, agreed on by the parties. In negotiating such agreements, the parties should take into account, among other factors, security considerations, assured access to the international waterways of the region, a just settlement of the refugee problem, and, of course, their respective legal claims. In 1967, J. Lawrence Hargrove, the Director of the American Society of International Law, was Senior Adviser on International Law to the United States Mission to the United Nations. In testimony before a subcommittee of the House Committee on Foreign Affairs in 1971, he said:

The language "from territories" was regarded at the time of the adoption of the resolution as of high consequence because the proposal put forward by those espousing the Egyptian cause was withdrawal from "the territories." In the somewhat minute debate which frequently characterizes the period before the adoption of a United Nations resolution, the article "the" was regarded of considerable significance because its inclusion would seem to imply withdrawal from all territories which Israel had not occupied prior to the June war, but was at the present time occupying.

Consequently, the omission of "the" was in-

28. See *British Mandate for Palestine*, 8 LEAGUE OF NATIONS O.J. 1007, 1008-12 (1922).

29. See U.N. CHARTER art. 80, para. 1 ("nothing in this Charter shall be construed in or of itself to alter in any manner the rights whatsoever of any states or any peoples or the terms of existing international instruments . . .").

tended on our part, as I understood it at the time, and was understood on all sides, to leave open the possibility of modifications in the lines which were occupied as of June 4, 1967, in the final settlement.³⁰

In the case of Egypt, Israel accepted an agreement without territorial change as sufficient to satisfy Resolution 242. This agreement provided, inter alia, for the demilitarization and international protection of the Sinai Desert. The Sinai Desert, occupied by Israel between 1967 and 1979, had been Egyptian territory, and was never part of the mandate. The Egyptian model fits neither the Jordanian nor the Syrian case, however. Israel has a better legal claim to the West Bank than Jordan, and every military group which has studied the problem agrees that Israeli security requires control of the high places of the West Bank of the Jordan River, at the very least. And in the case of the Golan Heights, I have heard former Secretary of Defense McNamara say that if he were the Israeli Minister of Defense, he could never agree to giving them up. In short, what Resolution 242 does is to authorize the parties to make whatever territorial changes the situation requires. It does not require the Israelis to transfer to the Arabs all, most, or indeed any of the occupied territories. The Egyptian-Israeli Peace Treaty awards to an Arab state more than 90% of the territory Israel captured in the Six Day War. Can anyone say with a straight face that the Resolution requires the transfer of occupied territory in the West Bank and the Golan Heights as well? It surely permits such a transfer if the parties accept it. But it does not require it.

It is quite true that during the negotiations leading to the adoption of Resolution 242, some American representatives said that the Resolution contemplated only minor changes in the Armistice Demarcation Lines between Israel and Jordan as the parties drew a permanent boundary. In a mood of post-war hope and euphoria, Israel had just offered the Arabs a return to the Armistice Lines, with minor

30. *Middle East, 1971: The Need to Strengthen the Peace: Hearings Before the Subcomm. on Near East of the House Comm. on Foreign Affairs, 92d Cong., 1st Sess. 187 (1971)* (statement of J. Lawrence Hargrove, Director of Studies, American Society of International Law).

changes only for Jordan, in exchange for peace. The Arabs spurned that offer and announced instead a policy of "no negotiations, no recognition, no peace."³¹ At one point, Soviet Ambassador Dobrynin asked whether Resolution 242 meant only minor changes in the Armistice Lines for Jordan. He was told that so far as the United States was concerned that was the present position, but that if the Arabs persisted in their rejectionist policy, the American view of the territorial question might well change. Resolution 242 permitted very different outcomes, and security considerations were serious. Ambassador Dobrynin said that on that basis the Soviet Union could agree to this interpretation.³² The next day he telephoned to report that he would have to withdraw his approval. Evidently, his government had decided to have its cake and eat it too, if it could. The Soviet Union repeated the Arab line until it expired, and the Russian government since Gorbachev has not disclosed its hand.

Thus Resolution 242 leaves the issue of territorial settlement to the agreement of the parties. It was, however, negotiated with the boundary between Israel and Jordan in the foreground. The United States has remained firmly opposed to the creation of a third Palestinian state on the territory of the Palestine mandate. An independent Jordan or a Jordan linked in an economic union with Israel is desirable from the point of view of everybody's security and prosperity. And a predominantly Jewish Israel is one of the fundamental goals of Israeli policy. There is therefore no objective reason why these conflicting claims cannot be reconciled at the negotiations now being held. On the other hand, the risk that Arab negotiators might be murdered if they signed such agreements is a factor they can never ignore.

Resolution 242 was distilled with great pain from the agony of the prolonged Arab war against Jewish settlement in Palestine. It is a fair compromise and offers a fair foundation for a just and lasting peace.

31. See, e.g., Summary of Resolution of Arab Summit Conference, Khartoum, Sudan (Sept. 1, 1967), reprinted in 2 N.Y.U. J. INT'L L. & POL. 209 (1969).

32. See Rostow, *The Perils of Positivism*, supra note 11, at 242.

