

The Territorial Clauses of Security Council Resolution 242

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Resolution 242 does *not* refer to a so-called right of return for the Palestinians, and nowhere does the phrase “land for peace” occur.

The frequent misinterpretation and distortion of UN Security Council Resolution 242 of November 22, 1967, over the past four decades have been an interpretational victory for the Arabs.¹ Yet in light of the legal and practical importance of the resolution, a correct understanding of its territorial and other provisions carries particular importance. Resolution 242 has been constantly referred to in official statements on the Middle East in something akin to a ritualistic incantation. It was also referred to in the two Camp David Framework Accords of 1978,² in the Israel-Egypt Peace Treaty of 1979, in the Israel-Jordan Peace Treaty of 1994 and even in the Israel-PLO Declaration of Principles of 1993, commonly known as the “Oslo Accord.”

It is important to note at the outset the elements that are *not* mentioned in Resolution 242. The resolution does *not* speak of a Palestinian people or a Palestinian state.³ Nor does it mention Jerusalem. The resolution does *not* refer to a so-called right of return for the Palestinians. It speaks of a “just settlement of the refugee problem,” without even characterizing it as a specifically *Palestinian* refugee problem.⁴ It does not refer to direct negotiations; that subject was taboo for the Arabs in 1967. Indeed, the resolution was adopted a few months after the three well-known Khartoum “no’s” were enunciated by the Arab heads of state in the aftermath of the Six-Day War: no recognition of Israel, no negotiations with Israel, no peace with Israel.⁵ As a result of this rejectionist Arab attitude, the resolution does not even mention the possibility of peace treaties. It speaks merely of the “termination of all claims and states of belligerency” and then makes a brief reference to the right of the states in the region to live in peace — peace *de facto*, not *de jure*.⁶

The central argument of Israel’s adversaries and their supporters has been that Resolution 242 calls for “land for peace” — for Israel’s total withdrawal from the territories captured by it in June 1967, in return for peace. This, in the present view and as will be demonstrated below, is a misconstruction of both the language and legislative history of the resolution.

To start with, nowhere in the resolution does the phrase “land for peace” occur. Moreover, nowhere does the resolution stipulate, as has been erroneously claimed, full Israeli withdrawal from the territories in return for a full peace.⁷

To be sure, it is not the merits of legal arguments that will determine the final settlement of the Arab-Israeli conflict (or, for that matter, of any other major international conflict), since international law has a rather limited impact on the course of diplomatic negotiations. Nevertheless, the distorted interpretation of Resolution 242 must not be allowed to persist.

The resolution has three territorial components: first, the right of every state in the region to live in peace within secure and recognized boundaries;⁸ second,

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withdrawal of Israel armed forces from territories captured in the 1967 war;⁹ and third — in the preamble, as distinct from the operative paragraphs — the inadmissibility of acquisition of territory by war.¹⁰ It is certainly impermissible, both from a logical and legal standpoint, to isolate one of these three provisions and focus on it, while disregarding the other two. Resolution 242 can only be correctly interpreted if these three components are read together with a view to reconciling them with one another.¹¹

With regard to the first of these components — namely, the right of every state in the region to live in peace within secure and recognized boundaries — it is clear that Israel's pre-1967 armistice demarcation lines met neither of these specifications; they were neither "secure," and "recognized," nor were they "boundaries."¹² The late Abba Eban, former Israeli foreign minister, characterized Israel's armistice demarcation lines with its neighbors of the 1949–67 period as the country's "Auschwitz borders that must not be restored."¹³ Indeed, in the area of Netanya, the armistice line with Jordan (Israel's "narrow waistline") left the country with a width of less than ten miles. The "Jerusalem corridor" (that linked the city with the rest of Israel until 1967) was no more than three miles wide on the outskirts of Israel's capital.¹⁴ The Egyptian air fields in the Sinai were only five flight minutes away from Tel Aviv.¹⁵ Undoubtedly, when the UN Security Council unanimously adopted Resolution 242, security considerations were uppermost in the minds of its drafters.¹⁶

Nor were Israel's pre-1967 armistice lines "boundaries," within the accepted meaning of this term in international law but, as already indicated, merely armistice demarcation lines, as stipulated in Israel's armistice agreements made with its neighbors in 1949. The significance of this distinction is also shown by a statement made by Jordanian Ambassador El-Farra in the UN Security Council only a few days before the outbreak of the Six-Day War:

There is an Armistice Agreement. The agreement did not fix boundaries; [...] Thus I know of no boundary; *I know of a situation frozen by an Armistice Agreement.*¹⁷ [emphasis added]

Although Israel originally desired to convert these lines into recognized international boundaries, the Arabs opposed the idea. They were willing to sign the 1949 Armistice Agreements on the assumption that they had solely military significance; to underline the fact that these were not peace treaties, the heads of the Arab delegations to the signing ceremonies of those agreements were all uniformed military officials. The Arabs were adamant about the inclusion of certain provisions in each of these armistice agreements (among them, for example, the Israel-Jordan Armistice Agreement) to the effect that "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, the provisions of this Agreement being *dictated exclusively by military considerations*.”¹⁸ When the armistice regime collapsed with the outbreak of the Six-Day War, the armistice lines were replaced by cease-fire lines.¹⁹ Yet it is to this former (and long-defunct) armistice regime that Israel’s opponents, citing Resolution 242, have invited it to return, although under that regime the country had neither secure nor recognized boundaries.

In the Israeli-Egyptian sector those cease-fire lines have now been converted by Israel’s peace treaty with Egypt into an international boundary.²⁰ The same is true of Israel’s boundary with Jordan: under Article 3(a) of the Israel-Jordan Peace Treaty of 1994, “[t]he international boundary between Israel and Jordan is delimited with reference to the boundary definition under the [Palestine] Mandate.” Article 3(b) then adds that this boundary “is the permanent, secure and recognized international boundary between Israel and Jordan, without prejudice to the status of any territories that came under Israeli military government control in 1967.” However, Israel’s borders with Syria, on the Golan, as well as with Lebanon, are still merely cease-fire lines.²¹

Regarding the second component, it has been argued by Israel’s opponents, as already indicated, that Resolution 242 requires the total withdrawal of Israel from *all* the territories captured in June 1967. In actual fact, article 1(i) of the resolution calls for the “withdrawal of Israeli armed forces from territories occupied in the recent conflict.” The article was carefully drafted *in English* by its British sponsors, in consultation with the U.S. delegation. It deliberately omitted the definite article (the term used is “withdrawal from territories” rather than “withdrawal from *the* territories”).²² Due to the multilingual nature of UN documents, the absence of the definite article in the original English text has raised some questions. These are due primarily to the French version (“*retrait...des territoires*”) of the resolution.²³ Yet all the negotiations that led to the adoption of Resolution 242 were based on the English draft and were conducted in English. It is a well-established rule of international law that multilingual texts of equal authority in the various languages should be interpreted on the basis of what is said in the “basic language.” In any event, while French was admittedly a working language of the Security Council in 1967, having regard to the legislative history of the resolution and to the fact that the French version is ambiguous on this point, the original English version must be considered as the “basic language” of the resolution.

Indeed, it was due to this omission of the definite article from the English draft that the Arabs, the Soviets, and their supporters initially opposed Resolution 242.²⁴ In the days before the adoption of the resolution, the Arabs and Soviets constantly remonstrated with the British Ambassador to the UN, Lord Caradon, demanding that the resolution call upon Israel to withdraw from *all the* territories, or, alternatively, that “all sides are required to return to their

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initial June 4, 1967 lines.”²⁵ They were rebuffed. The Soviet Union, India, and other Security Council members tried to interpret the resolution as calling for Israel’s total withdrawal, but both Lord Caradon and U.S. Ambassador Arthur Goldberg responded that this was not the purpose of Resolution 242.²⁶ In fact, as late as November 21, 1967, less than twenty-four hours before the resolution was adopted, Soviet Premier Alexei Kosygin sent a letter to U.S. President Lyndon Johnson demanding that the resolution explicitly state that Israel be called upon to withdraw to its pre-war positions. Johnson replied that the text was balanced and no changes could be introduced at that stage.²⁷

Two years later, in 1969, an exchange took place in the British House of Commons which reinforced the plain meaning of the text. British Foreign Secretary Michael Stewart was asked if the resolution called upon Israel to withdraw from all the territories. He replied to the questioner: “No Sir, this is not the phrase used in the resolution. The resolution speaks of secure and recognized boundaries. Those words must be read concurrently with the statement on withdrawal.”²⁸

Indeed, the two provisions discussed above must be read concurrently. The recommendation for withdrawal does not stand alone but rather in conjunction with the “secure and recognized boundaries” clause. The provision calling for the establishment of secure boundaries in the resolution would have been meaningless had there been an obligation to withdraw Israel’s armed forces from all the territories captured by it in 1967.

The last territorial component emphasized by some of Israel’s adversaries is the provision on “the inadmissibility of the acquisition of territory by war.” This phrase is found in the preamble, which, from a legal standpoint, is even less binding than the operative paragraphs of the resolution, given that Resolution 242 itself, in the view of the vast majority of commentators, is in the nature of a recommendatory resolution adopted under Chapter VI of the UN Charter.²⁹ However, more significant than this formal aspect is the substantive meaning of the phrase. In the first place, the fact that “acquisition of territory by war” is inadmissible does not mean that the presence of Israeli forces in Judea and Samaria is by itself presently illegal. The former president of the International Court of Justice (ICJ), Dame Rosalyn Higgins, made a point relevant to this question in an article published in 1970. She mentioned that there was confusion, particularly disturbing to lawyers, between the notion of *territorial acquisition* and that of *military occupation*. According to Higgins, “even those nations which most pride themselves on respect for, and knowledge of, international law can be party to this [misunderstanding].”³⁰ Higgins then pointed to “the general failure in debate, and in the text of Security Council resolutions, to distinguish between claiming title to territory and legitimate military occupation of it...there is nothing either in the UN Charter or general

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international law which leads one to suppose that military occupation, pending a peace treaty, is illegal....The law of military occupation, with its complicated web of rights and duties, remains entirely relevant, and until such time as the Arab nations agree to negotiate a peace treaty, Israel is in legal terms entitled to remain in the territories that she now holds.”³¹

Moreover, regarding the areas that formerly belonged to the Palestine Mandate (for example, Judea and Samaria), Israel’s rights there exceed those of a mere military occupant. It will be recalled that the Arab armies in 1948 entered Palestine — upon the termination of the British Mandate on 15 May of that year — with the declared purpose of crushing by military force the new State of Israel, which had been proclaimed on the day before, in pursuance of UN General Assembly Resolution 181(II) of November 29, 1947. Their military intervention with a view to frustrating that resolution — and indeed, their very presence on Palestinian soil — constituted a use of force in violation of Article 2(4) of the UN Charter.³² According to Schwebel (a former judge and president of the ICJ), in an article published in 1970:

[T]he facts of the 1948 hostilities between the Arab invaders of Palestine and the nascent State of Israel...demonstrate that Egypt’s seizure of the Gaza Strip, and Jordan’s seizure and subsequent annexation of the West Bank and the Old City of Jerusalem, were unlawful....The Arabs of Palestine and of neighboring Arab states rejected...the [UN General Assembly partition] resolution. But that rejection was no warrant for the invasion by those Arab states of Palestine....It follows that the Egyptian occupation of Gaza, and the Jordanian annexation of the West Bank and [the Old City of] Jerusalem, could not vest in Egypt and Jordan lawful control, whether as Occupying Power or sovereign.³³

Since the use of force by the Arab states was illegal, it could not give rise to any valid legal claims. *Ex injuria non oritur jus*. On the interpretation most favorable to them — and even this is challenged by Schwebel — their rights could not exceed those of a belligerent occupant.

By contrast, the legal standing of Israel in these territories is therefore that of a state which, as a result of measures of self-defense taken against forces that had unlawfully entered Palestinian territory with a view to crushing it, is lawfully in control of territories in respect of which no other state can show better title. To quote again Schwebel:

[H]aving regard to the consideration that, as between Israel, acting defensively in 1948 and 1967, on the one hand, and its Arab neighbors,



**With Israel acting defensively and its neighbors acting aggressively in 1948 and 1967, “Israel has *better title* on the territory of what was Palestine, including the whole of Jerusalem, than do Jordan and Egypt.”
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acting aggressively in 1948 and 1967, on the other, Israel has *better title* on the territory of what was Palestine, including the whole of Jerusalem, than do Jordan and Egypt.³⁴ [emphasis added]

Schwebel’s justification of any modification of the former armistice demarcation lines in favor of Israel, *within former Mandate Palestinian territory*, on the grounds that Israel can show *better title* than Jordan and Egypt respectively, rests on solid legal foundations. Title to territory is normally based not on a claim of *absolute* validity (few such claims could be substantiated), but rather on one of *relative* validity.³⁵

It was by virtue of this conception that the law and jurisdiction of Israel were extended *beyond* the areas originally allocated to the Jewish state under the UN General Assembly partition resolution of 1947 to all those parts of the former Palestine Mandate held by Israel in the course of the 1948-9 hostilities.³⁶ It was in this manner that Israeli law and jurisdiction were extended to Western Galilee (including Nazareth), Jaffa, Ashdod, Ashkelon, Beer Sheva, the “Jerusalem corridor,” and the western part of Jerusalem itself. This conception was articulated in the Knesset in June 1967 by the then Minister of Justice, Ya’acov Shimshon Shapira, when, in submitting the bill that was to become the law of June 27, 1967 (commonly known as the “Jerusalem Law”), he stated:

The legal conception of the State of Israel — an organic conception adjusted to the practical political realities — has always been based on the principle that the law, jurisdiction and administration of the state apply to all those parts of Eretz Israel [the Hebrew name of Mandate Palestine] which are *de facto* under the state’s control... in addition to Israel Defense Forces’ control of these territories, an open act of sovereignty on the part of Israel to make Israel law applicable to them is also required....It is for this reason that the government has seen fit to introduce the bill which I now submit to the Knesset.³⁷ [emphasis added]

Over the past four decades many distortions have accumulated with regard to the interpretation of the territorial provisions of Resolution 242. Only a clear understanding of the resolution as a unified and integrated text may enable us to understand its true meaning and intentions. The resolution creates a blueprint for peace in the Middle East — a peace to be based on a partial Israeli withdrawal from territories captured in 1967 to secure and recognized boundaries and on Arab acceptance and recognition of the right of the Jewish people to re-establish in Israel its historic homeland.

Notes

- 1 See for example R.A. Falk, "The Beirut Raid and the International Law of Retaliation," *American Journal of International Law* (*Am. J. Int'l L.*) 63 (1969), 415; Q. Wright, "The Middle East Problem," *Am. J. Int'l L.* 64 (1970), 270.
- 2 Framework for Peace in the Middle East and Framework for the Conclusion of a Peace Treaty between Egypt and Israel.
- 3 The resolution refers several times to the rights of "every State in the area." See, for example, articles 1(ii) and 2(c).
- 4 See article 2(b) of the resolution. See also S.D. Bailey, *The Making of Resolution 242* (The Hague; Boston: M. Nijhoff, 1985), 151. Thus, it conceivably applies equally to the Jewish refugees of the 1948 hostilities in the territory of the former Palestine Mandate, as well as to the hundreds of thousands of Jewish refugees from Arab lands who came to Israel after 1949.
- 5 *Ibid.*, 130.
- 6 Articles 1 and 2 studiously avoid mentioning a peace treaty. However, the second preambular paragraph of the resolution does speak of "the need to work for a just and lasting peace." Likewise, article 3 entrusts the Secretary General's Special Representative, *inter alia*, with the task of "...assist[ing] efforts to achieve a peaceful and accepted settlement" of the Arab-Israel conflict. It is evident that even there the resolution refrains from mentioning formal peace *treaties*.
- 7 This false interpretation has been espoused for instance by Falk, 415, 435 n. 55 and Wright, 270, 274–5 (note 1 above). It has even been suggested that such a full withdrawal must precede any peace negotiations.
- 8 Article 1(i).
- 9 Article 1(ii).
- 10 See the second paragraph of the preamble.
- 11 On the requirement to interpret legal documents in their entirety with a view to reconciling their various provisions, see L.H. Tribe and M.C. Dorf, *On Reading the Constitution* (Cambridge, M.A.: Harvard University Press, 1991), Chapter 1.
- 12 Yehuda Z. Blum, *Secure Boundaries and Middle East Peace in the Light of International Law and Practice* (Jerusalem: Institute for Legislative Research and Comparative Law, 1971), Chap. 1, 63–70.
- 13 Interview with *Der Spiegel* magazine, November 5, 1969.
- 14 For a detailed account see Blum (note 12 above), 63–70.
- 15 *Ibid.*, 69. Israel's security concerns in the Sinai Peninsula were addressed in Article IV of the treaty of peace between Egypt and Israel of 1979 and its Annex I (Protocol Concerning Israeli Withdrawal and Security Arrangements), amounting to a virtual demilitarization of the Sinai. It may be mentioned in this context that Article 2(c) of Security Council resolution provides "for guaranteeing the territorial inviolability and political independence of every state in the area, through measures including the establishment of demilitarized zones."

- 16 Ibid., 77. For instance, when British Foreign Secretary Michael Stewart was asked in the House of Commons in 1969 (two years after the adoption of the resolution) whether Resolution 242 meant that the Israelis should withdraw from all the territories taken in the 1967 war, he responded that “the resolution speaks of secure and recognized boundaries. Those words must be read concurrently with the statement on withdrawal.” See Hansard (Commons), 5th Series, vol. 791, cols. 844, 845.
- 17 UN Doc. S/PV.1345 of May 31, 1967, 47.
- 18 Article 2(2) of the Israel-Jordan General Armistice Agreement of April 3, 1949; emphasis added.
- 19 See Security Council resolutions 233 (June 6, 1967), 234 (June 7, 1967), 235 (June 9, 1967), and 236 (June 11, 1967).
- 20 The Israel-Egyptian armistice demarcation line followed the previous boundary between Egypt and Mandate Palestine. Under Article II of the Israel-Egypt peace treaty of 1979, “[t]he permanent boundary between Egypt and Israel is the recognized international boundary between Egypt and the former mandated territory of Palestine...without prejudice to the issue of the status of the Gaza Strip.”
- 21 The current cease-fire line with Lebanon essentially follows the former Mandate boundary between Palestine and Lebanon.
- 22 Although the official sponsors of Resolution 242 were the British, the U.S. State Department played a vital role in formulating the drafts of the resolution.
- 23 French was the only other working language of the Security Council in 1967, aside from English. See Bailey, 152; Shabtai Rosenne, “On Multilingual Interpretation,” *Israel Law Review (Is.L.R.)* 6 (1971), 363. Thus, the Spanish, Russian, and Chinese versions of the resolution actually only amount to translations, as distinct from official versions of the resolution (under Article 111 of the UN Charter, the UN has five official languages: Chinese, English, French, Russian and Spanish). In any event, Russian and Chinese have no definite article. The Spanish version (“retiro...de los territories”) is clearly an inaccurate translation of the official English version.
- 24 Blum, 72.
- 25 See, for example, A Lall, *The United Nations and the Middle East Crisis, 1967* (New York: Columbia University, 1968), 253–4, noting that on November 17, 1967, several Arab representatives “discussed matters with Caradon. Could he not use the formulation ‘all the territories’ instead of ‘territories’ in relation to the clause requiring Israeli withdrawal? Caradon’s response was that his draft represented a delicate balance which would be upset by any changes.”
- 26 See, for example, Doc. S/PV.1382, 28: Mr. Parthasarathi of India told the Council on November 22, 1967, that it was his understanding that “the draft resolution, if approved by the Council, will commit it to the application of the principle of total withdrawal of Israeli forces from all the territories — ‘I repeat all the territories’ — occupied by Israel as a result of the conflict which began on June 5 1967.” Lord Caradon, the British sponsor of

the draft resolution replied: “I am sure that it will be recognized by us all that it is only the resolution that will bind us.” Similarly, Ambassador Goldberg, on behalf of the U.S., stated that “the voting of course takes place not on the individual discrete views and policies of various members but on the draft resolution.” Blum, 75.

27 In his well-known speech of June 19, 1967, President Johnson stated that “[t]he nations of the [Middle East] region have had only fragile and violated truce lines for twenty years. What they now need are recognized boundaries that will give them security against terror, destruction and war.”

28 Hansard (Commons), 5th series, vol. 791, cols. 844, 845.

29 See, for example, E.V. Rostow, “The Illegality of the Arab Attack on Israel of October 6, 1973,” *Am. J. Int’l. L.* 69 (1975), 272, 276.

30 Rosalyn Higgins, “The Place of International Law in the Settlement of Disputes by the Security Council,” *Am. J. Int’l L.* (1964), 1, 7-8.

31 *Ibid.*, 8. See also J. Stone, *No Peace — No War in the Middle East* (Sydney: Maitland Publications for the International Law Association, 1969), 33; Elihu Lauterpacht, *Jerusalem and the Holy Places* (London: Anglo-Israel Association, 1968), 52.

32 See Yehuda Z. Blum, “The Missing Reversioner: Reflections on the Status of Judea and Samaria,” *Is. L. R.* 3 (1968), 279, at 283. See also, E. Lauterpacht, 43; Stephen M. Schwebel, “What Weight to Conquest?” *Am. J. Int’l L.* 64 (1970).

33 Schwebel, *ibid.*

34 *Ibid.*

35 See, for example, the *Minquiers and Ecrehos* (United Kingdom v. France) case, *International Court of Justice, Reports of Judgments 1953*, 67. Israel’s current legal status within any territory of the former Palestine Mandate has not been affected by the Oslo Accord of 1993 and its follow-up agreements. That accord (the Israel-PLO Declaration of Principles of September 13, 1993) stated that its aim is to lead “to a permanent settlement based on Security Council Resolutions 242 and 338” (Article I), and that the permanent status negotiations between the parties shall cover, *inter alia*, the issue of borders (Article V(3)). Thus any future border settlement between Israel and the Palestinian Authority will also be subject to the provisions of Security Council Resolution 242, as analyzed in the present article.

36 Under Section 1 of the Area of Jurisdiction and Powers Ordinance, 5708–1948, passed by the Provisional Council of State (the forerunner of the Knesset) on September 22, 1948, “any law applying to the whole of the State of Israel shall be deemed to apply to the whole of the area including both the area of the State of Israel and *any part of Palestine* which the Minister of Defense has defined by proclamation as being held by the Defense Army of Israel...” (1 *Laws of the State of Israel*, 64, emphasis added).

37 *Divrei Haknesset* (Parliamentary Records), vol. 49, col. 2420 [Hebrew, translated by the author].