

The Arab-Israeli Dispute: Legal Issues and Possible Solutions†

Introduction:

Our subject this morning will concern questions which are both familiar to the practitioner as news items, and perhaps less familiar as issues of public law.

The billing for this discussion is "The Arab-Israeli Dispute—Legal Issues and Possible Solutions." Last week a Middle East expert saw this and suggested an equally descriptive title: "Illegal Issues and Impossible Solutions." His remark reflects the view of a significant number of people who have studied the area—that all parties to the dispute are violating international law and applicable resolutions of the United Nations, and that none of the parties is genuinely interested in a political solution. This may seem to be a cynical point of view, but it may not be entirely unfounded.

Our purpose here is to consider events and issues in the Middle East, an area which has been described as less of a geographic region than a state of mind. We read daily about this area on the same front pages which tell us about man's incredible explorations into the solar system; and the contrast is both evident and striking.

As we read of continued and more serious exchanges of fire across the Suez Canal, of concentrations of troops along the ceasefire line and of aerial dog fights, we seem to be experiencing a *déjà vu*—we have seen it all

*Assistant Legal Adviser For Near Eastern and South Asian Affairs, U.S. Department of State.

†(Editor's Note: The following papers were presented at the meeting of the Section of International and Comparative Law at the annual meeting of the American Bar Association, held in Dallas, Texas on August 12, 1969. Mr. Neuman served as moderator of the panel which consisted of Professor Quincy Wright, Dr. Yoram Dinstein, and Professor M. Cherif Bassiouni; and their remarks are presented *seriatim* in the ensuing articles. The views expressed by the moderator and the members of the panel are their own and do not necessarily reflect the opinions or positions of the governments or institutions with which they are associated.) Several addresses on the subject of airplane hijacking delivered before a joint session of the International and Comparative Law Section and the ABA Standing Committee on Aeronautical Law at annual meeting of the American Bar Association held in Dallas, Texas, on August 13, 1969, will appear in a subsequent issue of THE INTERNATIONAL LAWYER.

before, and we know where it leads. Yet, we are compelled to question the inevitability of prolonged conflict, and a possible outbreak of general hostilities. Is there something in the inherent nature of the geography or of the human relations and history of the place which makes a peaceful settlement impossible? Surely, other peoples in other times, whose differences were at least as intense, have been able to arrange their affairs without resort to war. But historical regrets and recriminations will not produce peace; we are now looking to the future. The major powers cannot dissociate themselves from the search for a peaceful settlement, for in this case, a "plague on both their houses" might infect all of us.

The six-day war of June, 1967, left Israel in a position of military occupancy over substantial areas of Arab territory. It is the withdrawal of Israeli forces from this territory that is the primary goal of the Arab States. Israel, on the other hand, regards herself in a strategically advantageous position, and resists abandoning this forward position in exchange for the imperfect *status quo ante bellum*. Having fought three wars in 20 years, Israel seeks Arab commitment and guarantees as the price for withdrawal. The question then becomes, how far can the Arabs go to meet Israel's demands, and to what extent will Israel compromise her demands in order to achieve a political settlement?

In November, 1967, the Security Council adopted a unanimous resolution setting forth the framework of an agreed settlement. The unanimity of the vote suggests the ambiguous nature of that resolution. It is and has been subject to a wide latitude of interpretation. Among other things, the Resolution calls for "withdrawal of Israeli armed forces from territories occupied" in the June war, termination of claims or states of belligerency, and respect for and acknowledgment of the sovereignty, territorial integrity and political independence of every state in the area and of their right to live in peace within secure and recognized boundaries, free from threats or acts of force." It further affirms the necessity for guaranteeing freedom of navigation through international waterways in the area, for achieving a just settlement of the refugee problem, and for guaranteeing the territorial inviolability and political independence of every state in the area. The Resolution also emphasizes 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. Finally, the Resolution authorizes the Secretary-General to "designate a representative to establish and maintain contacts with the parties in order to promote agreement and assist sentimental efforts."

Looking at the frustrating history of the past two years, the first question is whether the Resolution in fact provides an adequate and effective basis

for a political settlement. If so, can a settlement based on the Resolution be achieved without direct negotiation, at some point, between the parties? Finally, if the parties fail to reach agreement, we must consider whether the terms of the Resolution require further definition, either by the Security Council or by countries other than the parties, before real movement toward a settlement can occur.

Most of the unresolved issues in the Middle East lend themselves to legal analysis. Applying principles of international law to these questions not only helps to sharpen the issues but also provides a source of new ideas which might, assuming the will on both sides to reach agreement, provide a basis for accommodation. Although many might express skepticism about either the existence or the importance of international law, all states readily declare their adherence to it, and seek to justify their activities in legal terms. Formulations and suggestions toward a settlement which are based on international law principles will be hard for the parties to reject out of hand; although, as in most legal controversies, the parties may differ in their interpretation of applicable legal principles. In any case, if international law is not relevant to this situation, our expectations about ordering and resolving international disputes will need revision.

The fundamental issue in the Arab-Israeli dispute is the nature of a "just and lasting peace" as that expression is used in the 1967 Resolution. Initially, the essential components of a juridical state of peace have to be analyzed. Is "peace" merely the absence of belligerency or does it involve more, particularly those positive relationships which traditionally characterize harmonious relations between countries? Certainly, a peaceful situation between states is different from a ceasefire or armistice régime. But does a Middle East settlement require undertakings and guarantees more extensive than those which normally define the obligations which countries owe to each other under the United Nations Charter?

More specifically, we have to analyze the objectives sought by the parties in terms of their conception of peace in the Middle East. Recognizing, as does the 1967 Resolution, the inadmissibility of the acquisition of territory by war, there remains the question of the negotiability of the occupied territory. If "secure and recognized boundaries" are to be negotiated and agreed, how can possible territorial adjustments be reconciled with the principle of non-acquisition of territory by conquest?

Other fundamental questions arise. Does the requirement that each state in the area acknowledges the sovereignty, territorial integrity and political independence of every other mean anything short of formal diplomatic recognition of Israel by the Arab States? What necessary consequences flow from termination of the state of belligerency; regarding, for example,

Arab reservations on the non-applicability of multilateral treaties to Israel, and obligations of the parties to prevent hostile acts by regular or irregular military forces against the territories or inhabitants of states in the area?

Beyond these fundamental issues, there are the specifics involving navigation through the Suez Canal and the Strait of Tiran, the future of Jerusalem, and the refugees.

There are other essential questions which appear procedural but are in fact of paramount substantive importance to the parties. There is the question of the form which an Arab-Israel agreement might assume, which would be both binding upon and acceptable to the parties. There are further questions involving methods of guaranteeing peace and security in the area, and for assuring that a remedy is provided in the event of breach of the agreement.

Our distinguished panelists will unquestionably explore these issues with great professional insight, and, at the outset, it would seem to be in order to express in advance the appreciation of all of us, as well as that of the Association and the Section, for their participation.