

The Arab-Israeli Crisis: Legal Issues and Possible Solutions

Discussions—like the present one—pertaining to the legal issues underlying the Arab-Israeli crisis, apparently have a built-in tendency to be relegated to unrelated homiletic expositions of outdated texts. As such, they contrive to give international law the bad name that, in the view of the uninitiated, it so richly deserves. References to esoteric declarations and resolutions of yester-year are so blatantly beside the point, as far as the current scene in the Middle East is concerned, that the layman can only gasp in incredulity when he hears them again and again. Of late a more recent text has come to the fore of these discussions, and, with the cumulative effect of repetitive though conflicting exegeses, is threatening to acquire the force of Scripture: the famous Security Council Resolution No. 242 of November 22, 1967. Now, there is no attempt to deny to this particular resolution the significance of an important milestone along the long and arduous road of attempts to resolve the Arab-Israeli conflict. But it does seem to be necessary to point out, at the outset, that

(a) Theoretically, Resolution 242 is not binding—in a legal sense—on the parties to the dispute, inasmuch as it was adopted within the scope of Chapter VI of the Charter of the United Nations. Chapter VI—in contradistinction to Chapter VII of the Charter—does not empower the Security Council to render decisions which impose legal obligations on United Nations members.

(b) In practical terms, Resolution 242 is gradually—imperceptibly but perhaps inexorably—losing its basic relevance. Let us face it. Anyone who reads the papers knows that the most immediate, the most crucial, problem in the Middle East today is that hardly a day goes by without real hostilities—actual fighting—taking place. All along the cease-fire borders of the State of Israel, fire practically never ceases. The regular Arab armies constantly endeavor to dislodge Israel by force from its post-Six-Day-War positions, and marauders, aided and abetted by the Arab Governments, are

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continuously trying to disrupt life within the State. President Nasser even had the audacity, a short while ago, to state in public that the cease-fire is no longer in effect. Now the cease-fire that brought the June 1967 war to an end came about as a result of a series of directives emanating from the Security Council. The Council's call for a cease-fire is certainly to be considered as the most preeminent and momentous step taken by the United Nations since the outbreak of the war. The later step, that is, the November resolution, is complementary in character. Resolution 242 is propped on the pre-existing, short-lived cease-fire, and makes sense only in the light of the minimal tranquility prevailing in the Middle East in November, 1967. Since the underpinning of tranquility has in the meantime been shattered—due to deliberate Arab resolve no longer to observe the cease-fire—the position of Resolution 242 becomes ever more precarious. Hence, unless the barometer of belligerency in the Middle East, shows a remarkable change for the better, the resolution may in time simply join the ranks of many previous dinosaur-like enunciations of the United Nations: interesting, impressive, but irrelevant.

Be the fate of the resolution as a whole what it may, one salient point in it which transcends the details of the text is the emphasis (in the heading of article 1) on the need for “a just and lasting peace in the Middle East.” Peace between Israel and the Arab countries is incontrovertibly the crux of the issue in the Middle East, and unless we come to grips with it our whole discussion will become an exercise in futility.

What counts in the final analysis is not resolutions but solutions, not a piece of paper but peace. Peace in what sense? To rephrase what President Franklin Roosevelt once said, peace should be regarded not as an end to the last war, but as an end to the beginning of the next one. Surely so much blood has been shed between Arab and Jew in half a century, that no half measures can conceivably be expected to stop the chain reaction of force and counter-force, attack and counter-attack. Mutual distrust, after decades of fighting, has reached such proportions that fragmentary agreements to suspend hostilities are doomed to become just another step in an on-going process of escalation.

If experience is the name we give to our mistakes, consider the experience of the last twenty years. The 1948 armistice arrangement broke down; the 1956 United Nations guarantees system failed; the 1967 cease-fire structure is disintegrating before our eyes. Only a fresh beginning, a totally new framework, a new frame of mind, can possibly create new opportunities. Peace is not necessarily the only option that is open to the antagonists in the Middle East, but all other alternatives have been tried and found wanting.

The message sought to be conveyed is that durable peace cannot be capsulated in a mere document about cessation of hostilities. A real peace treaty, in the meaning of orthodox international law, is needed. And the treaty, to be successful, must be accompanied by the proper state of mind. Going through the motions will not suffice; attitudinizing will be fatal. Thus, maintaining a technical-legal state of belligerency is irreconcilable with peace. *A fortiori*, actual measures in support of terrorist activities; interference with navigation in international waterways; and, for that matter, even economic warfare, are anathema to peace. Warlike peace is a guarantee of war. To guarantee peace is more difficult, but in the final analysis it is impossible for neighboring countries to live in peace without an open frontier. An open frontier means daily contact; it means mutual susceptibility to cross-currents of thought; it means reciprocal respect for each other's point of view.

Still, how to bring about peace in the Middle East? Much has been said in this context about modality. All that really can be said now is that modality must be considered in terms of the famous categories laid down by Kant: peace is non-existent at the moment rather than existent; it is possible rather than impossible; and it is necessary rather than contingent. The methodology is secondary in importance. Israel has always insisted on direct negotiations as the best course of action, and yet has fully supported the Jarring mission (established in article 3 of Resolution 242). It is perhaps arguable that direct negotiations are not necessarily the most effective first step toward a detente between hostile States. But the total and adamant refusal on the part of the Arab Governments to entertain even the thought of ultimately having a face-to-face peaceful confrontation with Israel shows that they do not seriously contemplate peace.

Every day mortal, face-to-face confrontation between the parties takes place at the front-line, and it is not easy to envisage an about-face by remote control. Whether or not direct negotiations are essential at this stage, eventually the parties will have to solve their problems eyeball to eyeball. In fact, direct negotiations between Israel and various Arab States have already taken place—both in 1948 and later—on the technical as well as the political level. And it appears that when they have to, and want to, the Arabs can face Israelis elsewhere than in combat.

Four-Power conferences, Two-Power conferences, and the like—as long as they exclude the parties to the dispute—are historical anachronisms, destined to failure in our day and time. The days of the Concert of Europe, of Super-Power Gun-boat Diplomacy, and of determining the fortunes of the world in the inner councils of benevolent overlords are over. Peace between Israel and the Arab countries will be reached not when a button is

pressed in Washington or in Moscow, but only when both parties to the conflict realize that the buck stops with them. When they are disillusioned sufficiently with outside attempts at peace-making, peace may cease to be an illusion.

The issue of peace in the Middle East is closely linked to the question of re-demarcation of the boundaries between Israel and the Arab States. Here is one of the best illustrations of the vicious circle in which hostile States always find themselves after a long period of mutual lack of trust. In a reign of peace, real estate is not of paramount importance. But peace does not come with the speed of lightening. Until each side is completely assured that the conflict is over, it likes to hedge its bets by insisting on the control of certain strategic positions regarded as essential to its security in case of resumption of warfare.

When these security demands are not met, the apprehension only increases, and the need for retaining the vantage points looms larger. In the case of the Middle East, the Arab Governments at times seem to wish the wheels of history to revolve back to conditions prevailing on the eve of the Six-Day War. But Israel looks upon these very conditions as the cause of the war, and by avoiding future vulnerability hopes to prevent another round. In fact, after every major war in the Middle East, the Arabs tend to demand the restoration of the *status quo ante* the last *bellum*, fully preparing for the next one.

As long, however, as the Arabs dream of totally eliminating Israel from the map of the Middle East, Israel feels that it has certain indispensable security needs, and it does not relish the idea of forgoing strategic gains—hard won in a war not of Israel's choosing—unless and until a new era of peace dawns. In peace talks—but only in peace talks—Israel is prepared to negotiate the future of all of the newly acquired territories. Even in the reunified capital of Jerusalem—devastated by an unnatural division into two cities between 1948 and 1967—Israel does not seek to exercise unilateral jurisdiction in the Holy Places of Islam and Christianity, and is willing to discuss workable arrangements.

From the peace talks will emerge the agreed delineation of what Resolution 242 calls "secure and recognized boundaries." Such boundaries are not necessarily the cease-fire borders, but evidently they do not also overlap the pre-June 1967 demarcation lines, which—as demonstrated by the war itself—were neither secure nor recognized. It is true that the preamble of the resolution pays some lip-service to the concept of "the inadmissibility of acquisition of territory by war." But this high-sounding principle collides head-on with the historical record sanctioned by international law. If every State today were to abandon those portions of its

territory that were acquired as a result of war, half of the globe would change hands, including in all likelihood this very city of Dallas where we happen to be convened. Besides, if acquisition by war is inadmissible, what right did the Kingdom of Jordan have in the West Bank, and what right did Egypt have in the Gaza Strip? What has been gained by the sword can be lost by the sword.

It would seem appropriate to add here a word of caution with regard to the future of the territories under discussion. Large geographical areas cannot be put into a deep freeze; life goes on; and while hostilities continue—and negotiations fail to materialize—numerous *faits accomplis* take place almost as a matter of course. Fortifications are constructed, roads are built, para-military settlements are established, interests become vested. The victor, in the words of Scott Fitzgerald, belongs to the spoils. What was reversible in August 1967 may prove difficult to reverse in August 1969, and may well become entirely irreversible in August 1971. Consequently, if the Arabs are sincerely interested in salvaging most of their territorial losses—and not merely in uttering self-fulfilling prophecies about Israeli expansion—they had better start negotiating sooner rather than later.

It goes without saying almost, that earnest negotiations between Israel and the Arab States—once they start—can and should encompass all outstanding issues. The whole spectrum of relations in the Middle East will be subjected to close scrutiny, and thus for the first time there will be a chance to heal some festering wounds. High on the list of priorities will unquestionably be the plight of the Arab refugees and displaced persons. This is a humanitarian problem that has not been solved over the years, simply because of overriding political considerations. Once the deck is cleared, there should be no major difficulty in finding an acceptable formula for bringing about the integration of the refugees into productive life in the Middle East.

The main objective is for the Arabs to awaken from their daydreams, and to correct their optical illusion that Israel does not exist. They must realize that sometimes the faculty of judgment is misled by the influence of imagination. They must learn to accept reality. With less emotion, there is a good chance for motion toward a viable peace.