

The Middle East In Transition: From War To War, A Proposed Solution

The Framework of Resolution 242, the United Nations and International Law

The night of November 22, 1967, witnessed the relief of those who in New York had diligently worked out the drafting and adoption of U.N. Res. 242. It was theoretically the beginning of peace; in fact it marked the transition between blitzkrieg-like war and war of attrition. It was thought of by its framers as a cut-off point so as to serve as a new plateau from which to start substantive peaceful settlement. It was indeed a new departure point; but like many paradoxes in history, it was the start of something wholly different from its originally intended purpose.

As most U.N. products, this one was the off-spring of political compromise hammered out by multiple parties who pursued varying purposes. As such, it fed with a measured dose of equanimity the opposing contentions it was to resolve. Unavoidably, it enunciated irreconcilable propositions and, thus, bore the seeds of its own ill fate.

The value-oriented goal which characterized this crisis-product is two-fold:

1. It was designed to demonstrate the role and ability of the U.N. in peacekeeping.
2. It was aimed at creating a spirit of world moral sanction which through the marshalling of world public opinion would lead to a world societal pressure on the parties concerned to achieve a peaceful settlement.

This approach has also characterized many a similar product of world political compromise. The discerning reader of the 1954 Geneva Accords could see that it was a "rain check" and foresee that it was not an end but a transition to the Viet Nam of today, which found its new plateau in the

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terms of the Geneva Accords; that much is true about Resolution 242. If we examine the resumption of military activities in the Middle East, we can observe the correlation between the ever-increasing tempo of hostilities and the gradual realization by the parties of the failure of Resolution 242. On both sides hostilities are not yet in the nature of all-out war, but they pursue a strategy of attrition which will last and escalate until full-fledged warring operations resume more decisively. Interestingly enough, neither Viet Nam nor the Middle East has reverted to nonpeaceful means on the basis of their historical arguments, but on the grounds that the conditions or terms of the "new plateau," i.e., the Geneva Accords in one case and Resolution 242 in the other, have not been complied with or have been violated. Each side, of course, accusing the other of the same and traditional arguments fade away in light of the new declarations.

Conflicts are not resolved by emphasizing the rights or righteousness of the opposing parties, but by drawing distinctions between them. Furthermore, those distinctions must rest on the relatively impartial and objective Rule of Law. Political compromises are only a substitute for a legally based determination of the respective rights and duties of any opposing parties when they themselves are parties to the compromising process and their acceptance thereof takes the place of the legal determination. Where mutual consent and voluntariness lacks, there is no substitute for the Rule of Law. The remaining alternative is the Rule of Force. Failure to accept this premise will further the perpetuation of such pronouncements as Resolution 242, which in seeking to declare has avoided to resolve, and in arriving at its compromise has evaded to determine the respective rights and duties of all the parties concerned. At best it has armed them with renewed justification while putting another nail to the coffin of the peaceful resolution of this conflict.

What is maybe so disconcerting in the development of this conflict is that almost all of its ingredients are predicated on legal questions which are indeed resolvable in their entirety by international law. The seeming inability to reach a juridical solution is symptomatic of the dichotomy between law in theory and practice. To the non-Western world which has adhered to international law and which rightfully regards it as the produce of Western thought, it is inconceivable why that which is considered as the foundation of world order is relegated behind a wall of self-imposed undiscerning political pragmatism. It is not of legal realism that I speak, but of the dual standards of application of international law which manifest the unabashed hypocrisy of its Western framers. Those familiar with the legal issues of this conflict will readily recognize this unfortunate fact, and Resolution 242 leaves no doubt about it, as I hope to show later. Prior to

that, an examination of the inarticulated premise of the “resolution” will reveal the extent to which the above statements are believed to be true by the non-Western world in general and the Arab world in particular.

Aligning the Parties

This premise is predicted on some basic misconceptions which the U.N. and the U.S. have, for known political reasons, assumed or accepted as valid. They are primarily in an area which this distinguished group will not fail to see as being the outcome determinative factor which shaped the framing of the “resolution” and, in general, U.S. policy. It starts with the caption of the case, the proper relationship of the parties and the framing of the issues.

So far, the case has been captioned as:

The case of righteous and valiant David struggling
— versus —
The aggressive, hate-ridden, destruction-bent Goliath.

The parties have been:

The Arabs on one side — the Jews on the other

The issue has been framed as such:

Should the world stand still before the avowed intentions of 100 million primitive aggressors bent on the barbarous annihilation of the peaceable peace-loving, many times victimized, two and a half million people of Israel?

But let the caption be:

The case of forcefully displaced Palestinian people, et. al.
— versus —
The foreign invaders and occupiers of their homeland.

Frame the issue in terms of:

Should two million Europeans from various nationality origins, who having suffered at the hands of other Europeans, be allowed to take over the land of Palestine, destroy the existing state, occupy the property of the inhabitants and deny them the right to nationhood, while flouting U.N. resolutions and ever-expanding territorially by use of force at the neighboring states.

In the captioning of the case, I referred to *Palestinian people, et. al.* as

the real Party-Plaintiffs. Indeed a distinction exists between the Palestinian people and some directly interested Arab states, one that is invariably blurred by the news media of this country which is all too often one-sided and superficial. To the media, it is the "Arabs." No distinctions drawn—no definitions given—no issues segregated—no interests isolated. One advantage I suppose is the creation of a new stereotype image of the enrobed, veiled, shadowy bad-guy, ready to steal away in the night after treacherously stabbing someone in the back. After all, Indians and Blacks are out; maybe it is time for a change of scene and the "Arab" can be it. Soon, we may even see on the late show how the uprising on the desert reservation of the unruly refugees is crushed by the mystical pioneer one-eyed hero.

To isolate the parties and issues is a foremost consideration without which we cannot understand let alone resolve the problem.

The primary parties are the Palestinian people who have been denied nationhood, stripped of human rights and dignity and denied their property—all in violation of international law, world human rights and several specific U.N. resolutions. Theirs' is a quest for nationhood which is confronted by a unique and dangerous political dogma—Zionism—Zionism which occupied their homeland under the guise that "Palestine was a country without people" and that it was befitting that it be occupied "by a people without a country." In 1948, close to 700,000 and by 1967 1,350,000 refugees attested to the fact that they had become a people without a country. With respect to that issue, Arab states are only third-party intervenors even though with respect to their territorial boundaries dispute with Israel they are primary parties.

The Territorial Issue and Resolution 242

Since a starting point is necessary for a logical chronology of the interplay of events and the respective rights and duties of the parties, I will *arguendo* elect the 1947 U.N. partition plan which created a Jewish and an Arab state of Palestine. I said *arguendo* because there is much doubt about the legitimacy of this U.N. Salomonian justice of splitting in halves a "provisionally independent state" under the League of Nations' Mandate and its successor trusteeship Articles of the United Nations' Charter without regard to the principle of national self-determination (since the decision was arrived at by the General Assembly of the U.N. in New York and not by the choice of the people of Palestine). Assuming, however, the validity of this decision, then any and all territory exceeding the allotted territory of the U.N. partition which was acquired by Israel through military conquest is in direct violation of international law and must be relinquished by Israel. This would apply to territory which under the Partition

Plan belongs to the then proposed Arab state of Palestine and, subsequently (as of 1967) to territory belonging to the surrounding Arab states.

Indeed, Resolution 242 emphatically states:

“Emphasizing:

“The inadmissibility of the acquisition of territory by war . . .”

“1. Affirms:

(i) Withdrawal of Israeli forces from territories occupied in the recent conflict . . .”

The first quoted part which refers to the inadmissibility of territorial acquisition by war is a well-established principle of international law over which this country went to war in the two World Wars, in Korea and nowadays in Viet Nam. The second quotation affirms the need for withdrawal but limits it to territory occupied in the “recent conflicts” while in the same Paragraph 1 under (ii) it affirms the right of all states to live “within secure and recognized borders.” If the first principle of illegitimacy and invalidity of forceful acquisition of territory is applied, then no negotiated or agreed boundaries are necessary since a return to the U.N. established boundaries of 1947 would do. The 1967 Resolution, however, speaks rather clearly of the pre-1967 boundaries and, thus, implicitly of the post-armistice lines of 1948-49 and not of the same U.N. established 1947 boundaries.

Thus, it latently condones by specific and intentional omission post-1947 expansions, while rejecting post-1967 expansions subject to the irreconcilable *caveat* of “secure and recognized boundaries” which by obvious implication are to be agreed upon and subject to territorial withholdings from that same territory which, it is emphasized, cannot be acquired by force.

The rather disconcerting effort by the U.N. of paying lip service to a fundamental principle of law while underhandedly encouraging and even justifying Israel to hold out until it can “agree” to carve out a “secure and recognized” share is the surest way of pitting opposing sides more drastically against each other. There is no alternative to this dilemma in which the Arab states can legitimately claim unconditional return of their territory and the claim of Israel to “secure and recognized borders” extending beyond the pre-1967 boundaries or for that matter to any territory exceeding the 1947 U.N. established ones. The outcome of the dilemma is the intransigent entrenchment of each side behind a portion of the resolution ignoring the others for obvious reasons. Meanwhile the tempo of hostilities is climbing back to the crisis proportion which would again make

it U.N. noteworthy. To ask which of the two conflicting aspects of the resolution shall be obeyed first or which shall be complied with before the other (or not withstanding the other) is also to ask whether Resolution 242 is *recommandatory* or *resolatory*. With respect to peacekeeping, U.N. resolutions are *resolatory*. What then of a resolution phrased in the contradictory meaning described? Is it to be considered *recommandatory*, in which case no sanctions under the United Nations' Charter can ensue from its flouting. To that extent the "resolution" stands out as a sacrificial offering to political hypocrisy on the altar of effective peaceful resolution of world conflicts.

The Palestinian People Issue and Resolution 242

As early as 1948, the U.N. in another unfulfilled resolution (Res. 194-1948), declared the Palestinian people's right to return to their homeland. As their state was destroyed and their right to return abridged, they were the object of what Aba Eban in the opposite context once aptly dubbed "politicide."

Since 1948, it is a harsh realization to recall that such world human rights as expressed in the Universal Declaration, the Civil and Political Rights Covenant and the United Nations' Charter trusteeship obligations have yet to be even considered for application to the Palestinians—the people without a country and without remedy to otherwise theoretically existing rights which remain wronged without apparent redress.

To their claim of nationhood, Resolution 242 answers in its second operative paragraph:

"Affirms further, the necessity . . .

"(c) For achieving a just settlement of the refugee problem . . ."

(Emphasis)

Constitutionally, this obscure pronouncement signifies the death certificate of Palestinian national claims as a separate national entity or as a bi-nationhood claim for a bi-national state as originally designed by the same U.N. in 1947. It does not even contemplate a secular Israeli state as a successor state to Palestine with a bi-ethnic composition. Indeed it has reduced a once proud people and a nation to a tent dwelling and exiled people whose only recognized claim is to refugeeism and statelessness deserving only the fate of the least recognized elementary humane considerations.

Little wonder that the Palestinians who had entrusted themselves to the fairness of the U.N. at first, then to the benevolent but unsuccessful assistance of their Arab brethren have no other alternative but to assert

their presence and press their claims by guerrilla-like liberation tactics. To that extent, Resolution 242 not only failed to see that the primary party and the primary issue is the Palestinian people's claim to nationhood; but it reduced that claim to a mere refugee question without regard to prior U.N. resolutions and in effect drove the Palestinians to an awakening war of liberation. What may have been intended to be their epitaph has sounded their revival.

The Political Issue

Politically, the issue is Zionism versus Arab national secularism. The exclusion of Palestinians from that which is now Israel is a direct consequence of the "in-gathering" policy of that State. The need and rationalization for territorial expansion are derivative from the same in-gathering policy, while the desire not to assimilate within the Arab world is to maintain the racist characteristic which is indispensable for the attraction of Jewish immigrants. Unfortunately, time does not permit a discussion of Zionism and its application in Israel and *vis á vis* the Palestinians and neighboring Arab states. Essentially, we are dealing with a racist manifestation predicated on a political dogma labelled "the Jewish People" which seeks to impose itself on all Jews of the world and claims their allegiance to the political State of Israel in exchange for their "right to return" to it. Aside from its difficulties with nationality law, the concept is theoretically irreconcilable with Arab national secularism. This latter is marching at a rapid pace toward the establishment of an Arab nation which is representative of the trend in world regionalism. A Zionist Israel is geographically and politically disruptive of this regional goal which is as natural as is a European community and American federalism.

The failure to understand this natural and historical process will dim the perception of the significance of any impediments to its attainment. Erecting any barriers to its ultimate achievement, even though it now appears remote, will cause in the present disruptions of the peace and tranquility of the area. In this context, two factors are most relevant:

1. The gradual de-Zionisation of Israel, and
2. The Arab revolution.

The first is a characteristic that depends on the demographic change that is taking place in Israel. As the number of Israelis from Arab origin increases and the second generation Israelis become more removed from their European origins, a national sentiment will develop which will link Israel to its natural and geographic setting and gradually effect its re-entry in the Arab orbit. As Israel breaks its bonds with American and European

Zionism, it will establish its natural and historical ties with the Arab world of which it is, as it has always been, an integral part thereof. This is not to say that local characteristics are not to continue to prevail but that will be the same as exists in any other region of the Arab world and will not hamper the overall regional attachment. The Arabization of Israel does not mean its cultural, spiritual or religious extinction but its political assimilation in the regional framework.

The second factor, or the Arab revolution, is one that deals with the rising expectations of Arab peoples throughout the Arab world. These peoples are the subject in varying degrees to the same modern nationalistic progressive tendencies which have characterized many a country that has emerged into the modern industrialized and developed stage. This process by its very nature is painful and uneven; but soon it will envelop the whole of the Arab world. Already we can see its path laid out as millions of Arabs cast away old ways and traditions—some inherited and some inculcated by foreign influences—to acquire the new characteristics of politically emerging, economically developing, eager to acquire their place as full-fledged members of the world community. More significant, however, are the socio-political changes which are occurring within the Arab states. Indeed Israel's shifting Zionist philosophy and Arab revolutionarism are internal processes and they will not be without their growing pains, but both are part of the inevitable historical course and destiny of that area. If and when time will have been permitted to allow these processes to take their courses, they will level off and reach a certain plateau from where ideological barriers will fade while differences will wither away.

Proposal For The Peaceful Resolution of the Conflict.

Most issues which confront Israel and some Arab states are either derivative of the Palestinian question or flow from the ideological confrontation of the vestiges of open-ended Zionism versus Arab national secularism. This latter factor will, in time, wither away; and time is, therefore, of the essence. In the history of world conflicts, ideologies alone never produced violent confrontations without the existence of situational factors to trigger them off. Opposing ideologies may be explosive but they cannot blast without detonators. To eliminate the situational factors of this conflict would require a time sequence which I suggest to be as follows:

1. The evacuation by Israel of all the 1967 occupied territories, subject only to the condition of U.N. peacekeeping forces to supervise and guard the 1948-49 armistice lines with potentially U.N. negotiated demilitarized areas.
2. The recognition of the Right of the Palestinian people to nationhood

which, in a second phase, would require negotiations by the representatives of the Palestinian people, Israel and interested Arab governments to implement such a Right.

3. The submission of all pending issues to the International Court of Justice.

In accordance with this paragraph an *Ad Hoc Rule of Law Commission for Permanent Arab-Israeli Peace* was formed in 1968 which submitted the following proposal to the Secretary-General of the U.N. who has circulated it to the Security Council as Doc. 5/NC/188, July 17, 1968. The same document was sent to all heads of State of interested nations. It states: "The mandate granted by the League of Nations to Great Britain over the 'Provisionally Independent State of Palestine' to oversee its acceding to full independence ended when the mandator offered to terminate the mandate and submitted the question to the United Nations in 1947. To provide a solution for the troubled area, the United Nations decided to partition Palestine into an Arab and a Jewish State. The Arab population rejected the decision and an armed dispute ensued which subsequently caused other Arab States to enter the arena.

Between 1948 and 1949, armistice agreements, establishing cease-fire lines between the disputants, were entered into by and between Israel, Egypt, Jordan, Syria and Lebanon. Israel's independence was proclaimed in 1948 and subsequently Israel was admitted to the United Nations. The Arab States disclaimed the international status of Israel.

The problems of the Palestinian Arabs and particularly their return or re-settlement and compensation for their property, remain unsolved. Israeli ships have been denied access through the Suez Canal and sporadically through the Gulf of Aquaba on grounds of a continued 'state of war.' The tension between Arab States and the State of Israel continued to grow culminating in the 1956 Israeli attack on Egypt and the 1967 hostilities between Israel, Egypt, Jordan, Syria and Iraq. This resulted in additionally lost Arab territory and more Arab refugees without fulfilling Israel's need for national security.

From June 1967 to this date, no sign of peaceful resolution emerged, and the November 22nd United Nations Security Council Resolution 242 failed in its purpose. The present situation may lead to further hostilities. The undersigned, in the belief that peace can be attained only if it is based on the supremacy of the Rule of Law displacing the threat of force, submit the following:

Resolution

WHEREAS the dispute between Arab States and the State of Israel
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has continued to pose a threat to those nations' peace and tranquility and to the world; and

WHEREAS no peace efforts have brought the parties any closer to a permanent and just solution;

THEREFORE, BE IT RESOLVED:

1. To urge the parties and the international community to consider this question as a challenge to their ability to achieve peaceful solution of the world problems under the *Rule of Law* and to seize upon this opportunity to implement the *Rule of Law* by peaceful procedures.

2. To request the parties to submit their dispute, which has many legal aspects requiring judicial determination before any political adjustments can be made between them, to the worldwide impartial legal organ the world community has so far devised: *The International Court of Justice*.

3. To appeal to the United States and to their international community of nations to use their good offices directly and through the United Nations to bring about an agreement of the parties to submit to the Court's jurisdiction; to ask the United Nations to exert pressure on the parties in order to make them sign a protocol submitting all legal issues pending between them to the Court's determination before any further steps to settle the problem are taken. The suggested protocol of issues to be submitted to the Court should include, but should not be limited to, the following:

A. The principle of sovereignty, independence and integrity of all parties involved as the basis for any settlement, legal or political, and the termination *de jure* of the "state of belligerency."

B. The determination under the principles of International Law, the United Nations' Charter and the United Nations' resolutions of the permanent borders of Israel as international borders entitled to the safety and security guaranteed by the United Nations' Charter and International Law (inviting pre-trial conferences between the parties for mutually agreed border adjustments basically serving the national interests of the parties involved).

C. The refugees' problem of returning and of obtaining adequate compensation must be established on the basis of the United Nations' resolutions and equitable stipulations by and between the parties under the auspices of the Court.

D. The right of the State of Israel to free and innocent passage through the Suez Canal and the Gulf of Aquaba.

E. The establishment of a "Commission" acting as an arm of the Court and appointed by the Court to hold pre-trial conferences with all parties to narrow the issues and organize the presentation of the case so as to avoid duplication and spurious arguments.

The said "Commission" should be empowered to act as an independent fact finder for the Court to settle disputed questions of fact. The "Commission" should continue after the Court's decision is rendered to oversee the implementation of the Court's Orders as part of the Secretary General's staff.

The parties should agree to submit any differences between them arising out of the work of the said "Commission" first to the "Commission" itself and, in the second instance, to raise them before the Court.

F. The imposition on all parties of a permanent injunction not to threaten the sovereignty and territorial and political integrity of any party.

4. To call all interested parties to submit to the Court; and to encourage other nations to submit *Amicus Curiae* positions even though they will not be deemed interested parties.

5. To ask the United Nations to promptly extend financial support to the Court's "Commission," so that the determination by the Court may be reached without unnecessary delay.

The signatories of this resolution express their belief that a legal process is possible in this case and their hope that the parties and the international community will elect to avail themselves of it.

The undersigned submit this resolution to the President of the United States and the Secretary General of the United Nations urging them to exercise every possible effort to bring about a peaceful settlement of the dispute by procedures in conformity with the Rule of Law, thus removing the decision-making process from the parties and placing it in the hands of the impartial and unimpeachable international forum. In addition, these procedures would afford the disputants the invaluable opportunity of meeting on neutral grounds to discuss their grievances, dispel doubts and stipulate to agreed questions without any one party feeling that it was forced into submission by the opposing State. All political issues thereafter still pending will, we hope, find a better climate of understanding and cooperation and their solution more probable."

The document was signed by this author as Chairman Pro-Tem and was endorsed by the following Professors of Law: Samuel Bleicher (Toledo), Brendan Brown (Loyola, New Orleans), William Cunningham (Loyola, Chicago), Peter Donnici (San Francisco), George Garbesi (Loyola, L.A.) Luis Kutner, Kenneth Levan (Indianapolis), Marcellus Meek (John Marshall), Cornelius Murphy (Duquesne), John Murray (Georgia), Ved Nanda (Denver), Oliver Schroeder (Case Western Reserve), Prakash Sinha (South Dakota, Jerome Sloan (Temple), John Stoeppler (Toledo) and Wence Wagner (Indiana). It was also endorsed in spirit by Neill Alford (Virginia) and Charles Kelso (then Miami, presently Indianapolis).

This author wishes to express his gratitude to all those named above and emphasize that this article in no way represents their views but exclusively his own. The responses received were from then Ambassador Arthur Goldberg and Assistant Secretary of State Lucius Battle for the United States and H. M. King Hussein of Jordan. Only this latter was in any way encouraging.

In order to start implementing this proposal, it is further suggested that the President of the United States offer his good offices to all parties concerned so as to clear the path of all practical, diplomatic and protocol matters preceding the acceptance of this proposal and its actual initiation.

Conclusion

A revealing historical paradox deserves thoughtful consideration. For years in the pogroms and ghettos of Europe, helpless Jews kept the spark of hope by wishing each other: "Next year in Jerusalem." It was indeed a sign of hope evoking the image of a peaceful heaven from European persecution. Today, the very same words are the rallying cry of dispossessed and hopeless camp-dwelling Palestinian refugees and exiles.

So far the fate of Jerusalem—this heaven of peace—this cradle of civilization which harbored the origin of the three major religions of man—has been decided by the force of arms.

Should it continue to see its fate determined by the Rule of Might or by the Rule of Law?

This is the unanswered question and so far the challenge which mankind continues to ignore with frightening indifference.