Security Council Resolution 242: An Analysis of its Main Provisions*

Prof. Ruth Lapidoth
Professor Emeritus of International Law, Hebrew University of Jerusalem

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Introduction

Hardly any UN resolution is quoted and referred to as much as Resolution 242. It has become the cornerstone for all stages in the settlement of the Arab-Israel conflict — amongst these the Peace Treaties between Israel and Egypt (1979) and Jordan (1994), as well as the 1993 and 1995 agreements with the Palestinians. There are several reasons for the considerable importance attached to Resolution 242: its unanimous adoption and, perhaps even more important, its acceptance by the parties to the conflict. However, as is well known, the resolution has been the object of differing, and in some respects conflicting, interpretations by the parties; therefore, an analysis of the resolution and its various interpretations may be helpful. A short survey of the origins of Resolution 242 will be followed by an examination of its legal effects. Following this, an analysis of its specific provisions will lead to the conclusion that it requires the parties to negotiate in good faith in order to reach agreement on the basis of several guidelines: an Israeli withdrawal to secure and recognized (i.e., agreed) boundaries; the termination of claims of belligerency by the Arab states and the recognition by all parties of each other's independence; guarantees of freedom of navigation in international waterways in the area; a just and agreed solution to the refugee problem; and the adoption of measures that guarantee the boundaries to be established by agreement.

The Origins of the Resolution

The Six-Day War of June 1967 ended with cease-fire resolutions adopted by the Security Council.[1] However, neither the Security Council nor the General Assembly, which met in an Emergency Special Session, called upon Israel to withdraw to the armistice lines established in 1949. Most likely, the reason for this was the conviction that a return to those lines would not guarantee peace in the area, as the 1957 precedent had proven.

In November 1967 the United Arab Republic (i.e., Egypt) urgently requested an early meeting of the Security Council "to consider the dangerous situation prevailing in the Middle East as a result of the persistence of Israel not to withdraw its armed forces from all the territories which it occupied as a result of the Israeli aggression committed on 5 June 1967 against the United Arab Republic, Jordan and Syria."[2] In answer to this request, the Security Council was duly convened and debated the crisis in its meetings of November 9, 13, 15, 16, 20, and 22.[3]

In its deliberations, two draft resolutions were presented: one was jointly submitted by India, Mali, and Nigeria,[4] the other by the U.S.[5] In the course of the deliberations, two further draft resolutions were submitted, one by Great

Britain (November 16)[6] and another by the U.S.S.R. (November 20).[7] Only the British draft was put to a vote and it was carried unanimously. The resolution as passed reads:

The Security Council

Expressing its continuing concern with the grave situation in the Middle East,

Emphasizing 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,

Emphasizing further that all Member States in their acceptance of the Charter of the United Nations have undertaken a commitment to act in accordance with Article 2 of the Charter,

1. *Affirms* that the fulfillment of Charter principles requires the establishment of a just and lasting peace in the Middle East which should include the application of both the following principles:

   (i) Withdrawal of Israel armed forces from territories occupied in the recent conflict;[8]

   (ii) Termination of all claims or states of belligerency and respect for and acknowledgement of the sovereignty, territorial integrity and political independence of every State in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force;

2. *Affirms further* the necessity

   (a) For guaranteeing freedom of navigation through international waterways in the area;

   (b) For achieving a just settlement of the refugee problem;

   (c) For guaranteeing the territorial inviolability and political independence of every State in the area, through measures including the establishment of demilitarized zones;

3. *Requests* the Secretary General to designate a Special Representative to proceed to the Middle East to establish and maintain contacts with the States concerned in order to promote agreement and assist efforts to achieve a peaceful and accepted settlement in accordance with the provisions and principles in this resolution;

4. *Requests* the Secretary General to report to the Security Council on the progress of the efforts of the Special Representative as soon as possible.

Had the intention been to impose a "binding decision," agreement between the parties would not have been one of the resolution's major preoccupations.

The Legal Effect of the Resolution

Although it is also authorized to adopt binding decisions, in particular when dealing with "threats to the peace, breaches of the peace, and acts of aggression" (under Chapter VII of the Charter), it is well known that in most cases the Security Council adopts resolutions in the nature of recommendations. The effect of this particular resolution was discussed by the Secretary General of the UN in a press conference given on March 19, 1992.[9] Replying to a question, the Secretary General said that "[a] resolution not based on Chapter VII is non-binding. For your information, Security Council Resolution 242 (1967) is not based on Chapter VII of the Charter." In a statement of clarification it was said that "the resolution is not enforceable since it was not adopted under Chapter VII."

Thus it would seem that the resolution was a mere recommendation, especially since in the debate that preceded its adoption the delegates stressed that they were acting under Chapter VI of the Charter. They considered themselves to be dealing with the settlement of a dispute "the continuance of which is likely to endanger the maintenance of international peace and security."[10] There is no doubt that by referring to Chapter VI of the Charter, the speakers conveyed their intention that the resolution was recommendatory in nature.

The contents of the resolution also indicate that it was but a recommendation. The majority of its stipulations constitute a framework, a list of general principles, to become operative only after detailed and specific measures would be agreed upon: "It states general principles and envisions 'agreement' on specifics; the parties must put flesh on these bare bones," commented Ambassador Arthur Goldberg, the U.S. Representative.[11] The resolution explicitly entrusted a "Special Representative" with the task of assisting the parties concerned to reach agreement and arrive at a settlement in keeping with its conciliatory spirit.

Had the intention been to impose a "binding decision," agreement between the parties would not have been one of its major preoccupations. In particular, the provision on the establishment of "secure and recognized boundaries" proves that the implementation of the resolution required a prior agreement between the parties. In addition, the use of the term "should" in the first paragraph ("which should include the application of both the following principles") underlines the recommendatory character of the resolution.

However, the question arises as to whether the extent of Resolution 242's legal effect was affected by later developments. In this context one must remember that at a certain stage the parties to the conflict expressed their acceptance of the resolution.[12] This acceptance certainly enhanced its legal weight and constituted a commitment to negotiate in good faith. But due to the

fact that the contents of Resolution 242 were only guidelines for a settlement, as described above, the acceptance of the document did not commit the parties to a specific outcome.

It has been claimed that Resolution 338 (1973), which was adopted after the October 1973 war, added a binding effect to Resolution 242 (1967).[13] Indeed, there is little doubt that Resolution 338 reinforced 242 in various respects. First, it emphasized that the latter must be implemented "in all of its parts," thereby stressing that all of its provisions are of the same validity and effect. Also, while Resolution 242 spoke of an agreed settlement to be reached with the help of the UN Secretary General's Special Representative, Resolution 338 expressly called for negotiations between the parties.[14] There is no express statement in Resolution 338 that it was intended to be of a binding nature, but rather, it reinforced the call to negotiate in accordance with the general guidelines of Resolution 242.

It is generally recognized that occupation resulting from a lawful use of force (i.e., an act of self-defense) is legitimate.

The Contents of the Resolution

In the following analysis of the contents of Resolution 242, four of the five major issues addressed by the resolution will be dealt with (the question of the refugees is dealt with in a separate article in this volume): (1) the "inadmissibility of the acquisition of territory by war"; (2) the withdrawal clause; (3) "freedom of navigation through international waterways in the area"; and (4) demilitarized zones as a means to preserve the peace once it is established.

1. The "Inadmissibility of the Acquisition of Territory by War"

The exact meaning of Resolution 242's preamble is hotly debated: does the statement therein on "inadmissibility of the acquisition of territory by war" imply that, in the opinion of the Security Council, Israel's retention of the territories occupied in 1967 was, and is, illegal? To answer this question, it is necessary to draw attention to the fundamental difference between military occupation and the acquisition of territory. The former does not entail any change in a territory's national status, although it does give the occupier certain powers as well as the responsibilities and the right to stay in the territory until peace has been concluded. Mere military occupation of the land does not confer any legal title to sovereignty.

Due to the prohibition of the use of force under the UN Charter, the legality of military occupation has been the subject of differing opinions. It is generally recognized that occupation resulting from a lawful use of force (i.e., an act of self-defense) is legitimate. Thus, the 1970 UN General Assembly "Declaration on Principles of International Law concerning Friendly Relations and Cooperation

among States,"[15] and its 1974 "Definition of Aggression" Resolution,[16] upheld the legality of military occupation provided the force used to establish it was not in contravention of the UN Charter. These two resolutions are considered to be based on customary law or on UN Charter principles. In the words of Prof. Rosalyn Higgins, "[t]here is nothing in either the Charter or general international law which leads one to suppose that military occupation pending a peace treaty is illegal."[17]

The preamble of this Security Council resolution denounces "the acquisition of territory by war," but does not pronounce a verdict on the occupation under the circumstances of 1967.[18] It is revealing to compare the version finally adopted with the formula used in the draft submitted by India, Mali, and Nigeria: there the relevant passage read that "[o]ccupation or acquisition of territory by military conquest is inadmissible under the Charter of the United Nations."[19] It is, therefore, of some significance that the version of the preamble finally adopted, while reiterating the injunction against the acquisition of territory, offers no comment on military occupation. Consequently, it cannot be argued that the Security Council regarded Israel's presence in these territories as illegal. As an act of self-defense,[20] this military occupation was and continues to be legitimate, until a peace settlement can be reached and permanent borders defined and agreed upon.[21]

Other interpretations of the passage — suggesting, for example, that the passage was intended to denounce any military occupation — contradict not only its wording, but also the established rules of customary international law. Its form, its place in the preamble rather than in the body of the resolution,[22] and a comparison with the subsequent passages all clearly indicate its concern with the implementation of existing norms rather than an attempt to create new ones.

2. The Withdrawal Clause

There is a serious contradiction between the attitude of the Arab states and that of Israel regarding the extent of the withdrawal required by Resolution 242. While the Arabs insist on complete Israeli withdrawal from all the territories occupied by Israel in 1967,[23] Israel is of the opinion that the call for withdrawal is applicable in conjunction with the call for the establishment of secure and recognized boundaries by agreement.[24]

The Arab states base their claim on a combination of the above-mentioned provision in the preamble on "the inadmissibility of the acquisition of territory by war" and the French version of the sentence which calls for "withdrawal of Israel armed forces from territories occupied in the recent conflict" (paragraph 1.i), namely *"retrait des forces armées israéliennes des territoires occupés lors*

du récent conflit." On the other hand, Israel's interpretation is based on the plain meaning of the English text of the withdrawal clause, which is identical with the wording presented by the British delegation. It is also supported by the rejection of proposals to add the words "all" or "the" before "territories." Moreover, in interpreting the withdrawal clause, one must take into consideration the other provisions of the resolution, including that on the establishment of "secure and recognized boundaries."

It seems that the resolution does not require total withdrawal for a number of reasons:

a. As has already been discussed, the phrase in the preamble ("the inadmissibility of the acquisition of territory by war") merely reiterates the principle that military occupation, although lawful if it is the result of an act of self-defense, does not by itself justify annexation and acquisition of title to territory.

b. The English version of the withdrawal clause requires only "withdrawal from territories," not from "all" territories, nor from "the" territories. This provision is clear and unambiguous. As Lord Caradon, the Representative of Great Britain, stated in the Security Council on November 22, 1967: "I am sure that it will be recognized by us all that it is only the resolution that will bind us, and we regard its wording as clear."[25] According to Prof. Eugene Rostow, who was at the time Undersecretary of State for Political Affairs in the U.S. Department of State: "for twenty-four years, the Arabs have pretended that the two Resolutions are ambiguous....Nothing could be further from the truth."[26]

c. The French version, which allegedly supports the request for full withdrawal, can perhaps be considered ambiguous, since the word *"des"* can be either the plural of *"de"* (*article indéfini*) or a contraction of *"de les"* (*article défini*). It seems, however, that the French translation is an idiomatic rendering of the original English text, and possibly the only acceptable rendering into French.[27] Moreover, even Ambassador Bernard, the Representative of France in the Security Council at the time, said that *"des territoires occupés"* indisputably corresponds to the expression "occupied territories."[28]

   If, however, the French version were ambiguous, it should be interpreted in conformity with the English text. Since the two versions are presumed to have the same meaning,[29] one clear and the other ambiguous, the latter should be interpreted in conformity with the former.[30]

Likewise, the English version should be preferred, since it is identical to the original version of the British draft on which the resolution is based.[31] It is a well-established rule in international law that multilingual texts of equal authority in various languages should be interpreted by *"accordant la primauté au texte original"*[32] or the "basic language."[33] Various authorities deal with this question in the context of treaty interpretation. By analogy, the relevant rules may also be applied to the interpretation of other document categories. English was not only officially a "working language," but also, in practice, the language of most of the deliberations. Indeed, English was used by ten members of the Security Council, French by three, and Russian and Spanish by one each.

The provision on the establishment of "secure and recognized boundaries" would have been meaningless if there had been an obligation to withdraw from all the territories.

d. In interpreting Resolution 242, and investigating the intentions of the Security Council, one should also take into account all the antecedent discussions in the Security Council (from the beginning of the crisis in May 1967) and in the Fifth Emergency Special Session of the General Assembly which convened after the Six-Day War.[34] This "legislative history" shows that draft resolutions calling for the complete withdrawal of Israeli armed forces from all the territories occupied in 1967 were rejected. It also demonstrates the predominance of the English language in all the deliberations.

e. The preferred status of the English language has been recognized by implication by Egypt, since the English version was annexed to the 1978 Framework for Peace in the Middle East, agreed at Camp David by Egypt and Israel. Moreover, in this framework, the parties agreed that the negotiations on the "final status" of the West Bank and Gaza will also "resolve...the location of the boundaries," thus indicating that a return to the 1949 lines was not envisaged.[35]

f. The provision on the establishment of "secure and recognized boundaries" included in paragraph 1.ii of the resolution would have been meaningless if there had been an obligation to withdraw Israel's armed forces from all the territories occupied in 1967.

This interpretation of the resolution, i.e., that it does not call for a full withdrawal of Israeli forces from all the territories occupied in 1967, is also in line with pronouncements made by various diplomats who were involved in the adoption of the resolution and its interpretation.[36] The gist of the withdrawal clause is that "[w]hen peace is made, the resolution calls for Israeli withdrawal to 'secure and recognized' boundaries."[37]

The question of the extent of the withdrawal foreseen by Resolution 242 has been the main bone of contention in the negotiations between Israel and its neighbors.

Many varied opinions have been expressed on the subject. Some consider that the full withdrawal from the Sinai in pursuance of the 1979 peace treaty between Egypt and Israel should serve as a precedent that requires full withdrawal from further regions. Others have reached the opposite conclusion — namely, that by carrying out the considerable withdrawal from the Sinai, Israel already fulfilled any withdrawal requirement. Some have claimed that the lack of a requirement for full withdrawal under the resolution allows Israel to carry out only minor border rectifications, whilst others have coined the slogan "land for peace." None of these attitudes can claim to represent the proper interpretation of Resolution 242. As mentioned, the resolution calls upon the parties to negotiate and reach agreement on withdrawal and agreed boundaries, without indicating the extent and the location of the recommended withdrawal.

3. "Freedom of Navigation through International Waterways in the Area"

Since navigation of waterways was the cause of tension and several wars, it is understandable that Resolution 242 mentions the need to guarantee this right. It should be emphasized that the resolution foresees "freedom of navigation" and not merely a "right of passage."[38] To which international waterways this provision applies is not specified — most probably the drafters had in mind the Suez Canal, the Gulf of Suez, the Strait of Tiran, the Gulf of Aqaba, and the Strait of Bab el-Mandeb. The right of passage "through the Suez Canal and its approaches through the Gulf of Suez and the Mediterranean Sea on the basis of the Constantinople Convention of 1888, applying to all nations," as well as "unimpeded and non-suspendable freedom of navigation and overflight" in the Strait of Tiran and the Gulf of Aqaba, have been promised by Egypt and Israel in their 1979 treaty of peace, and a similar provision on the Strait of Tiran was included in the Israel-Jordan peace treaty (1994).[39] However, these arrangements are not binding on the other Arab states. Since Egypt is the sole coastal state of the Suez Canal and the Gulf of Suez, there seems to be no need to negotiate on passage through these waterways with other states. The Gulf of Aqaba has four riparian states — Egypt, Jordan, Israel, and Saudia Arabia. The first three have agreed on a liberal regime for the Strait of Tiran and the Gulf of Aqaba. Future negotiations with Saudi Arabia should ensure its consent to that regime as a riparian of the Strait.

4. Means such as Demilitarized Zones to Ensure Safe Borders

The means to guarantee peace once it is established include demilitarized zones with an appropriate monitoring system. A demilitarized zone is an area in which a territorial state has agreed not to have military units, arms, and fortifications. An area can also be partially demilitarized, i.e., military units and

arms would not exceed a certain agreed level. Since demilitarization is based on an agreement, it does not constitute an infringement on the sovereignty of the state. However, those states that fear any real or perceived danger to their sovereignty may prefer to use different terminology, such as a defensive area, buffer zone, or limitation of forces zone. Resolution 242 recommends the use of means including the establishment of demilitarized zones by agreement in order to guarantee the peace between the parties. However, since the demilitarized zones established by the 1949 Armistice Agreements were a source of friction and conflict between Israel and its neighbors,[40] any provisions on demilitarized zones must take into consideration that experience and avoid a recurrence of those difficulties. The 1949 Armistice Agreements also established "areas in which defensive forces only" were permitted.

The 1974 Egyptian-Israeli Agreement on Disengagement of Forces, in pursuance of the 1973 Geneva Peace Conference, established "a zone of disengagement" in which the UN Emergency Force (UNEF) was stationed, and from which forces of the signatories were excluded. The areas east and west of this zone were to "be limited in armament and forces." The 1974 Agreement on Disengagement between Israel and Syria similarly established "an area of separation" and "areas of limitation of armament and forces" (monitored by the UN Disengagement Observer Force — UNDOF), as did the agreement made in the following year between Egypt and Israel using the terminology "buffer zones" and "areas of limited forces and armaments." In the northernmost of these buffer zones no forces of either party were permitted, only UN forces. Three early warning stations were established (Egyptian, Israeli, and one manned by U.S. civilians). The 1979 Egypt-Israel Peace Treaty established "limited force zones" in the Sinai and the southern Negev, the degree of limitation in the Sinai increasing from west to east. The maximum limitation was to be found along the international boundary and all along the shore of the Gulf of Aqaba. This regime is monitored by the Multinational Force and Observers — an international force established in 1981 by Egypt and Israel with the support of the U.S.

Concluding Remarks

It may be concluded from the above survey that Resolution 242 requires the parties to negotiate in good faith in order to reach agreement on the basis of a withdrawal of Israeli forces, the establishment by agreement of secure and recognized boundaries, the termination of any state of belligerency, and the recognition by all parties of each other's independence and sovereignty. The forces of Israel's neighbors do not necessarily have the right to advance into the areas from which Israeli forces withdraw, since the parties may agree

on the demilitarization of certain regions. The resolution also requires the parties to negotiate on guaranteeing freedom of navigation in international waterways in the area, on the search for a just settlement of the refugee problem, and on the adoption of measures to guarantee the boundaries to be established by agreement. These guidelines appear to be chapter headings for peace treaties.

Resolution 242 is an indivisible whole, a "package" or *"un ensemble de principes dont la mise en œuvre simultanée est recommandée aux Etats parties au conflit pour qu'ils mettent fin à celui-ci par voie d'accords internationaux."*[41] However, in their negotiations the parties are not limited or restricted by the guidelines included in the resolution, which is, after all, forty-one years old, and cannot be expected to cover all the questions and alternatives current in 2009. Thus, the parties may also deal with matters not mentioned in the resolution, such as cooperation in the fight against terrorism and environmental problems. Moreover, they may also agree on solutions of a functional nature, in line with recent trends in international relations that tend to be more functionally than territorially oriented. In the words of Prof. George Shultz,

> Today, the meaning of borders is changing, and so is the notion of sovereignty....In these [i.e., the Middle East] territories a vision is needed that transcends the boundaries of traditional nation-states and addresses the clear requirements for the parties' security, political voice, economic opportunity and community life on an equal basis.
>
> Constructs based on absolute sovereignty and rigid borders cannot provide this vision....Thinking must increasingly be on a region-wide scale. A little creativity about new mixes of sovereignty might help move the peace process forward right now. The juxtaposition of territory for peace need not be a matter of where to draw lines, but how to divide responsibilities.[42]

Notes

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** The author has discussed the subject with a great number of experts, and the list is too long to be fully reproduced. Special thanks are due to Prof. Eugene V. Rostow, Ambassador Joseph Sisco, Prof. William V. O'Brien, Mr. Herbert Hansell, Dr. Shavit Matias, Brig. Gen. Ilan Shiff, Ambassador Dr. Robbie Sabel, Justice Elyakim Rubinstein, Messers. Daniel Taub, David Kornbluth, Benjamin Rubin, and Joseph Ben Aharon. Needless to say, the responsibility for the contents is the author's.

1 Resolutions 233 (1967), 234 (1967), 235 (1967).

2 UN Doc. S/8226 of November 7, 1967.

3 Security Council Official Records, (SCOR), 22nd year, 1373rd, 1375th, 1377th, 1379th, 1380th, 1381st and 1382nd meetings. For the legislative history of the resolution see Arthur Lall, *The UN and the Middle East Crisis, 1967* (New York and London: Columbia University, 1968); Sydney D. Bailey, *The Making of Resolution 242* (Dordrecht: Martinus Nijhoff, 1985); Gideon Rafael, "Resolution 242 is Five Years Old," *Ma'ariv*, November 24, 1972 [Hebrew]; Lord Caradon, Arthur J. Goldberg, Mohamed H. El-Zayyat and Abba Eban, *UN Security Council Resolution 242: A Case Study in Diplomatic Ambiguity*, Introduction by Joseph J. Sisko (Washington D.C.: Institute for the Study of Democracy, Georgetown University, 1981).

4 UN Doc. S/8227 of November 7, 1967.

5 UN Doc. S/8229 of November 7, 1967.

6 UN Doc. S/8247 of November 16, 1967.

7 UN Doc. S/8253 of November 20, 1967.

8 The French version reads: *"Retrait des forces armées israéliennes des territoires occupés lors du récent conflit."*

9 UN Press Release SG/SM/4718 of March 19, 1992, 11, and the clarification DPI of March 20, 1992.

10 Lord Caradon, the Representative of Great Britain, SCOR, 22nd year, 1373rd meeting, November 9, 1967, 18, section 164; U.S. Ambassador A. Goldberg, ibid., 1377th meeting, November 15, 1967, 6, section 54; the Representative of Denmark, Mr. Borch, 1373rd meeting, November 9/10, 1967, 24, section 235; the Representative of Canada, Mr. Ignatieff, 1373rd meeting, 22, section 212, and 1377th meeting, 9, section 86; Mr. Adebe, the Representative of Nigeria, 1373rd meeting, November 9/10, 1967, 12, section 107.

It is true that in 1971 the International Court of Justice (ICJ) decided that a resolution taken in accordance with Chapter VI can also be a binding decision (Legal Consequences for States of the Continued Presence of South Africa in Namibia [South West Africa] Notwithstanding Security Council Resolution 276 [1970], ICJ Reports 1971, 16, sections 113 and 114), but this was not the prevalent view in 1967, when the discussions on

Resolution 242 took place in the Council. See John W. Halderman, *The United Nations and the Rule of Law* (Dobbs Ferry, N.Y.: Oceania, 1967), 65–89. See also: Julius Stone, *No Peace — No War in the Middle East* (Sydney: Maitland Publications for the International Law Association, 1969), 23–24; J. Dehaussy, "La crise du Moyen-Orient et l'O.N.U.," *Journal du Droit International* 95 (1968): 853–88 [French]; Shabtai Rosenne, "Directions for a Middle East Settlement — Some Underlying Legal Problems," *Law and Contemporary Problems* 33 (1968): 44–67, at 57; Yehuda Z. Blum, *Secure Boundaries and Middle East Peace in the Light of International Law and Practice* (Jerusalem: Hebrew University, 1971), 63–64, n.127; Yoram Dinstein, "The Legal Issues of 'Para-War' and Peace in the Middle East," *St. John's Law Review* 44 (1970): 477; Amos Shapira, "The Security Council Resolution of November 1967 — Its Legal Nature and Implications," *Is.L.R.* 4 (1969): 229–41; Ph. Manin, "Les efforts de l'Organisation des Nations Unies et des Grandes Puissances en Vue d'un Règlement de la Crise au Moyen-Orient," *Annuaire Français de Droit International* 15 (1969): 154–82, at 158–59 [French]; Pierre-Marie Martin, *Le Conflit Israélo-Arabe: Recherches sur l'Emploi de la Force en Droit International Public Positif* (Paris: L.G.D.J., 1973), 232–34 [French].

11 Arthur J. Goldberg, "A Basic Mideast Document: Its Meaning Today," address delivered at the Annual Meeting of the American Jewish Committee, May 15, 1969.

12 Sydney D. Bailey, *The Making of Resolution 242* (Dordrecht: Martinus Nijhoff, 1985), at 178–179.

13 E.V. Rostow, "The Illegality of the Arab Attack on Israel of October 1973," 6, *American Journal of International Law* (*Am. J. Int'l L.*) 69 (1975): 272–289, at 275. Resolution 338 states:

The Security Council

1. *Calls upon* all parties to the present fighting to cease all firing and terminate all military activity immediately, no later than 12 hours after the moment of the adoption of this decision, in the positions they now occupy;
2. *Calls upon* the parties concerned to start immediately after the cease-fire the implementation of Security Council Resolution 242 (1967) in all of its parts;
3. *Decides* that, immediately and concurrently with the cease-fire, negotiations start between the parties concerned under appropriate auspices aimed at establishing a just and durable peace in the Middle East.

14 The author wishes to express her thanks to Ambassador J. Sisco for having drawn her attention to this fact.

15 General Assembly Resolution 2625 (XXV) of October 24, 1970.

16 General Assembly Resolution 3314 (XXIX) of December 14, 1974.

17 Rosalyn Higgins, "The Place of International Law in the Settlement of Disputes by the Security Council," *Am. J. Int'l L.* 64 (1970): 1–18, at 8.

18 See Stone, at 33; Rosenne, 59; Martin, at 258–65; Higgins, at 7–8; Blum, at 80–91.

19 UN Doc. S/8227 of November 7, 1967.

20 See Stone, 6ff; Quincy Wright, "Legal Aspects of the Middle East Situation," *Law and Contemporary Problems* 33 (1968): 5–31, at 27; William V. O'Brien, "International Law and the Outbreak of War in the Middle East," *Orbis* 11 (1967): 692–723, at 722–23; Nathan

Feinberg, *The Arab-Israel Conflict in International Law: A Critical Analysis of the Colloquium of Arab Jurists in Algiers* (Jerusalem: Magnes, 1970), 114–115; Stephen M. Schwebel, "What Weight to Conquest?" *Am. J. Intl L.* 64 (1970): 344–347, at 346; E.V. Rostow, "Legal Aspects of the Search for Peace in the Middle East," *Proceedings of the American Society of International Law* 80 (1970); A.A. Cocatre-Zilgien, "L'Imbroglio Moyen-Oriental et le Droit," *Revue Génrale de Droit International Public* 73 (1969):52–61, at 59 [French]; John Norton Moore, "The Arab-Israeli Conflict and the Obligation to Pursue Peaceful Settlement of International Disputes," *Kansas Law Review* (*Kansas L.R.*) 19 (1971): 403–40, at 425; S.M. Berman, "Recrudescence of the *Bellum justum et pium* Controversy and Israel's Conquest and Integration of Jerusalem," *Revue de Droit International* (1968): 359–74, at 367ff; B. Döll, "Die Rechtslage des Golfes von Akaba," *Jahrbuch fur Internationales Recht* 14 (1969): 225–59, at 258 [German]; Martin, at 153–73; Amos Shapira, "The Six-Day War and the Right of Self Defense," *Is.L.R.* 6 (1971): 65–80; Allan Gerson, "Trustee-Occupant: The Legal Status of Israel's Presence in the West Bank," *Harvard International Law Journal* 14 (1973): 1–49, at 14–22; Th. M. Franck, "Who Killed Article 2(4)," *Am. J. Int'l L.* 64 (1970): 809–837, at 821; Dinstein, 466 et seq.; Yoram Dinstein, *War, Aggression and Self-Defense* (Cambridge, 3rd edition, 2007); Barry Feinstein, "Self-Defence and Israel in International Law: A Reappraisal," *Is.L.R.* 11 (1976): 516–562; Edward Miller, "Self-Defence, International Law and the Six Day War," *Is.L.R.* 20 (1985): 49–73. Cf., however, J.L. Hargrove, "Abating the Middle East Crisis through the United Nations (and Vice Versa)," *Kansas L.R* 19 (1971): 365–72, at 367; M. Ch. Bassiouni, "The 'Middle East': The Misunderstood Conflict," *Kansas L.R* 19 (1971): 373–402, at 395; J. Quigley, quoted in E.V. Rostow, "The Perils of Positivism: A Response to Professor Quigley," *Duke Journal of Comparative and International Law* 2 (1992): 229–246, at 229.

21 See, for example, John Norton Moore, "The Arab-Israeli Conflict and the Obligation to Pursue Peaceful Settlement of International Disputes," *Kansas L.R.* 19 (1971): 425; Schwebel, 344; Rostow, "The Illegality of the Arab Attack," 276. It should be mentioned, however, that according to various authors, Israel's rights in part of the occupied territories exceed those of a military occupant because of the defectiveness of the title of the authorities who had been in control of those territories prior to the Israel occupation; the principle has been maintained mainly with regard to the West Bank (Judea and Samaria) and the Gaza Strip: see Schwebel, 345–46; Stone, at 39–40; Elihu Lauterpacht, *Jerusalem and the Holy Places* (London: Anglo-Israel Association, 1968), 46ff; Cocatre-Zilgien, 60; Yehuda Z. Blum, "The Missing Reversioner: Reflections on the Status of Judea and Samaria," *Is.L.R.* 3 (1968): 270–301; Martin, at 265–79.

22 Irrespective of the rules that apply to international treaties, it is well known that preambles to Security Council resolutions carry much less weight than the operative part.

23 See, for example, replies by Jordan (March 23, 1969) and by Lebanon (April 21, 1969) to questions submitted by Ambassador Gunnar Jarring, in the Report by UN Secretary General U. Thant, UN Doc. S/10070 of January 4, 1971. See also Talcott W. Seelye, "Meaning of '67 Israel Resolution Disputed," *The New York Times*, April 1, 1988 (the writer was U.S. Ambassador to Tunisia and Syria).

24 Statement by Ambassador Abba Eban, UN General Assembly, Official Records, 23rd session, 1686th Plenary Meeting, October 8, 1968, 9–13, at 9 (section 92), 11 (section 110).

25 SCOR, 22nd year, 1382nd meeting, 7, section 61 of November 22, 1967. See also Cyrus R. Vance and Joseph J. Sisco, "Resolution 242, Crystal Clear," *The New York Times*, March 20, 1988. See, however, Yehuda Z. Blum, "Controversial UN Resolution 242, a Quarter-Century After," *The Jerusalem Post*, November 20, 1992.

26 Rostow, "The Perils of Positivism," 241–242.

27 It seems that there was no other way to translate that provision into French: "When the French text appeared, the British and American governments raised the matter at once with the United Nations Secretariat, and with the French government, to be told that the French language offered no other solution for the problem....[N]one of the people involved could think of a more accurate French translation." See Rostow, "The Illegality of the Arab Attack," 285. See also Rosenne, 360–365, at 363.

28 SCOR, 1382nd meeting of November 22, 1967, 12, section 111.

29 Vienna Convention on the Law of Treaties, 1969, Article 33.

30 Charles Rousseau, *Droit International Public*, vol. I (Paris: Pedone, 1970), at 289–290 [French].

31 UN Doc. S/8247 of November 16, 1967.

32 Rousseau, at 290.

33 Sir Arnold Duncan McNair, *The Law of Treaties* (London: Oxford University, 1961), 434: "Tribunals dealing with a treaty written in two or more languages of equal authority will sometimes seek to ascertain the 'basic language,' that is, the working language in which the treaty was negotiated and drafted and regard that as the more important." The question of the interpretation of international documents of equal authority in two or more languages in case of a discrepancy between the different texts has been dealt with chiefly with regard to treaties. Thus the Permanent Court of International Justice (P.C.I.J.) has favored the language in which a treaty had initially been drawn up: "[Since] the Convention was drawn up in French...regard must be had to the meaning of the disputed term in that language" (Advisory Opinion on the Exchange of Greek and Turkish Populations, 1925, P.C.I.J., Series B, No. 10, 18). For other examples, see Rousseau, at 290; McNair, n. 2. The 1969 Vienna Convention on the Law of Treaties also implicitly refers to the original text of the document since it recommends having recourse to the preparatory work of the treaty and the circumstances of its conclusion (Article 33, section 4). This provision is based on Article 29, section 3 (formerly Article 73, section 2) of the draft prepared by the International Law Commission. Actually, Prof. Alfred Verdross had proposed inclusion of an explicit provision in favor of the text in which the treaty had initially been drawn up (see Summary Records of the 874th meeting, section 5, and 884th meeting, section 44, *Yearbook of the International Law Commission*, [1966] vol. I, part 2, 208 and 271). But the Commission preferred not to adopt a strict rule on the subject in order not to avoid taking into consideration the circumstances of each case (see "Report of the International Law Commission on the Work of its 18th Session," *Yearbook of the International Law Commission*

[1966], vol. II, 169–367, section 9 of the commentaries to Article 29, 226). However, Prof. Roberto Ago has rightly pointed out that reference to the preparatory work of the treaty and the circumstances of its conclusion inevitably lead to the language in which the treaty has initially been drawn up (see Summary Records of the 874th meeting, section 22, vol. I, part 2, 210). See also J. Hardy, "The Interpretation of Plurilingual Treaties by International Courts and Tribunals," *British Year Book of International Law* 37 (1961): 72–155, at 98ff; M. Tabory, *Multilingualism in International Law and Institutions* (Alphen aan den Rijn: Sijthoff and Noordhoff, 1980), 211; Sir Ian Sinclair, *The Vienna Convention on the Law of Treaties (*Manchester: Manchester University, 2nd edition, 1984), 152; Prosper Weil, "Le Règlement Territorial dans la Résolution du 22 Novembre 1967," *Nouveaux Cahiers* 23 (Winter 1970) [French]. For a different opinion, see the majority decision in the "Young Loan Arbitration," *International Law Reports* 59 (1980): 495.

34 Rosenne, 365.

35 Chapter A, Section C of the Framework. The author wishes to express her thanks to Brig. Gen. Ilan Shiff for having drawn her attention to this aspect. In the agreements between Israel and the Palestinians (1993 and 1995) as well negotiations on the future borders are foreseen.

36 Vance and Sisco; Mr. Michael Stewart, Britain's Secretary of State for Foreign and Commonwealth Affairs, Hansard, Parliamentary Debates (Commons), 5th Series, Vol. 791, Col. 844–5, and 261; Mr. George Brown, Britain's Foreign Secretary in 1967, *The Jerusalem Post*, January 20, 1970.

37 Rostow, "The Illegality of the Arab Attack," 242.

38 R. Lapidoth, "The Strait of Tiran, the Gulf of Aqaba and the 1979 Treaty of Peace between Egypt and Israel," *Am.J.Intl L.* 77 (1983): 100.

39 See M. El-Baradei, "The Egyptian-Israeli Peace Treaty and Access to the Gulf of Aqaba: A New Legal Regime," *Am.J.Int'l L.* 76 (1982): 532–554; Lapidoth, "The Strait of Tiran,"; R. Lapidoth, "The Suez Canal, the Gulf of Suez, and the 1979 Treaty of Peace between Egypt and Israel," in *Festschrift für Rudolf Bindschedler* (Bern: Staempfli, 1980), 617–633.

40 Nissim Bar-Yaacov, *The Israel-Syrian Armistice: Problems of Implementation (1949–1966)* (Jerusalem: Magnes Press, 1967); Blum, *Secure Boundaries*, at 92–101.

41 See J. Dehaussy, "La crise du Moyen-Orient et l'O.N.U." *Journal du Droit International* 95 (1968): 884 [French]; Wright, 24; Stone, at 35; E.V. Rostow, "The Middle East Conflict in Perspective," *Vital Speeches* 40/4 (December 1973): 103–107, at 105; John Norton Moore, "The Arab-Israeli Conflict and the Obligation to Pursue Peaceful Settlement of International Disputes," *Kansas L.R.* 19 (1971): 433; T. Draper, "The Road to Geneva," *Commentary* (February 1974): 23–39, at 27–28; Report by the Secretary General under Security Council Resolution 331 (1973) of April 20, 1973, UN Doc. S/10929, May 18, 1973, Annex 1, 1.

42 George P. Shultz, "A Chance for Some Serious Diplomacy in the Middle East," *The Washington Post*, March 6, 1990.