

## **Resolution 242 After Twenty Years**

**Arthur J. Goldberg**

Twenty years have elapsed since the adoption of Resolution 242 by the United Nations Security Council. It is timely and appropriate therefore to reassess this resolution, which has been called one of the most important in the history of the United Nations, and to speculate about whether it can continue to serve as the basis for a comprehensive peace settlement in the Middle East. Such an analysis requires both a review of the events that led to the adoption of the resolution and an attempt to answer the question whether the resolution remains viable.

### **Background**

In May 1967 the late President Nasser of Egypt moved a substantial number of Egyptian armed forces into the Sinai, ejected the U.N. peacekeeping forces, reoccupied and remilitarized the strategically important Sharm-el-Sheik, and proclaimed the closing of the Straits of Tiran. In so doing, President Nasser shattered the status quo that had prevailed in the area since the 1956-1957 war.

These were ominous measures. Israel, which had responded to American pressure by withdrawing its forces from Sinai and Sharm-el-Sheik in 1957, had continued to assert that any action that prevented its ships and cargoes from passing through the Straits of Tiran would be considered an act of war. Moreover, faced with well-armed Egyptian forces on its borders and the provocative statements of Nasser and other Arab leaders, Israel had little choice other than to order the mobilization of its predominantly civilian army. Tension in the area became acute.

Justified concern prompted the Western powers, including the United States, to take the initiative in promptly convening the United Nations Security Council in order to attempt to avert a conflict by restoring the status quo ante. The attempts made in the Security Council and those made through private diplomatic channels failed because of Arab objections that were supported by the Soviet Union. Apparently, both the Arab states and the Soviet Union were willing to risk war.

When the war broke out on June 5, 1967, the Western powers renewed their attempts to bring about an effective cease-fire on the first day of battle, hoping to stabilize the situation before it could be radically altered. Because of faulty intelligence or an unwillingness to face the facts, the Arab states, supported by the Soviet Union, refused to permit a cease-fire resolution to be voted on that day even though the cessation of hostilities would have conduced to the advantage of the Arabs. It should be recalled that in the first few hours of the fighting, the Egyptian Air Force was effectively destroyed, thereby determining the outcome of the war.

Only on the second day of the war, after it became apparent to all objective observers and analysts that Israel had won the war, was agreement reached in the Security Council on a resolution calling for a cease-fire. Although Egypt accepted the resolution immediately, Jordan and Syria delayed their acceptance despite the fact that Israeli forces were advancing on all Arab fronts.

The cease-fire resolutions adopted during and after the Six Day War differed in substance from Security Council resolutions relating to the Israeli-Arab wars waged during the preceding nineteen years. In the earlier resolutions, calls for a cease-fire were invariably accompanied by demands for the withdrawal of troops to positions held before the conflicts erupted. In June 1967, however, provisions for withdrawal were not incorporated in the cease-fire resolutions. This provision was not omitted by accident. Instead, the omission reflected the reaction by a majority of the members of the Security Council to the events that led to the outbreak of war. As the debates revealed, the majority of the members of the Security Council were unwilling to vote for the unconditional withdrawal of Israeli forces because of their conviction that a return to the armistice regime would not serve the goal of securing a just and lasting peace between the parties.

This conviction was evidenced by the action that the Security Council took with respect to a resolution introduced by the Soviet Union. The Soviet resolution not only affirmed the Council's call for a cease-fire but also condemned Israel as the aggressor and demanded the withdrawal of its forces to positions held on June 5, 1967, before the conflict erupted. The Soviet resolution was supported by six of the fifteen members. (Nine are required to adopt a resolution.)

Israel was not condemned as the aggressor because of the widely shared conviction that President Nasser's actions—particularly the eviction of the U.N. peacekeeping forces, the movement of Egyptian troops into the Sinai, and the closing of the Straits of Tiran—provoked the war. Further, the unwillingness of a majority of the members of the Security Council to support the Soviet resolution for a withdrawal of Israeli forces to the positions they held before June 5, 1967, was based on the conviction that the withdrawal of troops should be made in the context of a peace settlement that would ensure secure boundaries for Israel, replacing the violated and provisional armistice lines.

The Soviet Union did not allow the matter to rest after its initial defeat in the Security Council. It called for an emergency special session of the General Assembly, which convened on June 17, 1967. The General Assembly failed to adopt by the requisite two-thirds majority a resolution (offered by Yugoslavia and several other members and supported by the Soviet Union and the Arab states) that differed in tone but not in substance from the Soviet resolution that was rejected by the Security Council.

### **The Adoption of Resolution 242**

When the special session of the General Assembly adjourned in September 1967, the matter reverted to the Security Council and again became the subject of further public debate as well as intensive private negotiations and finally culminated on November 22 in the adoption of Resolution 242.

The draft resolution was presented by the British ambassador, Lord Caradon, who was selected as a sponsor because of his acceptability to the Arab states. It was based on a resolution that had been offered by Latin American states to the special session of the General Assembly and a United States resolution that was introduced when the Security Council meeting was resumed.

The unanimous support garnered for Resolution 242 was the result of intensive diplomatic activity undertaken by the United States both at the United Nations and in foreign capitals throughout the world. This is not to say that Great Britain, Latin American countries, India, and other states were not actively engaged in negotiations and diplomatic activity; but the United States took the primary role in facilitating the adoption of the resolution. In fact, Resolution 242 parallels the U.S. draft resolution.

It should be noted that before the vote was taken, the Soviet Union offered another draft resolution that condemned Israel as the aggressor and called for the withdrawal of Israeli troops to the June 5 lines. The Soviets did not press this resolution to a vote because majority support was lacking. The United States followed a similar course of action not because its draft resolution lacked majority support but because it regarded Resolution 242 to be satisfactory.

Before the vote on Resolution 242 was taken, it was determined by an unofficial count that not only the members of the Security Council but also Israel, Egypt, and the other concerned Arab states did not object to the resolution. Resolution 242 was adopted unanimously after a minimum of speech making.

### **The Rationale Behind the Arab-Israeli Acceptance of Resolution 242**

Having been rebuffed both in the Security Council and in the General Assembly, the Arab states came to the conclusion that the language of Resolution 242 was the best that they could hope to obtain at the time. They obviously counted on its ambiguities to enable them to assert their own interpretations of the language. Further, they calculated that the passage of time would erode the support of the United States and like-minded states for Israel, and, of course, they did not foresee President Sadat's courageous initiative in going to Jerusalem and in participating in the negotiations that culminated in the peace treaty between Israel and Egypt.

To a certain extent, their calculations proved to be prescient. World opinion, overwhelmingly supportive of Israel as the "underdog" at the time of the 1967 war, has shifted to produce a measure of sympathy for the defeated and now "underdog" Arab states, and some Western countries have watered down their support for the principles embodied in the resolution.

The Israelis accepted Resolution 242 for some of the same reasons as those subscribed to by their Arab antagonists. It was the best resolution that Israel could hope to get from the United Nations under the circumstances. The Israelis were fearful that their diplomatic support would erode if they proved to be intransigent. Like the Arab states, Israel concluded that the ambiguities of the resolution would enable it to assert its own interpretation. Most important, Israel recognized the danger of an overly inflexible position in light of its need for American military hardware and economic assistance, which were provided.

### **The Provisions of Resolution 242**

Resolution 242 is a carefully—some would say artfully—drafted set of guidelines designed to promote agreement and to assist the parties to achieve a settlement. Certain key aspects were designed to be ambiguous in order to allow flexibility in negotiations.\*

The stated goal of the resolution is the establishment of a just and lasting peace that would enable every state in the area to live in security. In the resolution, the Security Council expressly repudiated the concept of an imposed peace and called for "agreement"—an "accepted settlement" by and between the parties. Thus the experience of the 1957 imposed settlement was to be avoided. The council supported instead a consensual peace agreement to be negotiated by the parties—an endorsement that was scarcely surprising in light of the collapse of the 1957 imposed settlement and the shattering of armistice agreements.

The resolution stipulates respect for and acknowledgement of the sovereignty of every state in the area. Because Israel has never denied the sovereignty of its neighbors, this provision obviously requires those countries to acknowledge the sovereignty of Israel and its right to exist. The negotiating history of Resolution 242, as reflected in the debates and votes in the Security Council and in the special session of the General Assembly that was held in 1967, shows that there was little support in the U.N. community for the view that after two decades, Israel's existence could still be denied by its Arab neighbors.

The resolution does not explicitly require that Israel withdraw to the lines that it occupied on June 5, 1967, before the outbreak of the war. The Arab states urged such language; the Soviet Union proposed such a resolution to the Security Council in June 1967, and Yugoslavia and other nations made a similar proposal to the special session of the General Assembly that followed the adjournment of the Security Council. But those views were rejected. Instead, Resolution 242 endorses the principle of the "withdrawal of Israeli armed forces from territories occupied in the recent conflict" and juxtaposes the principle that every state in the area is entitled to live in peace within "secure and recognized boundaries." In light of Arab unwillingness to acknowledge Israel's right to exist, this language, thought applicable to all states, was designed primarily to ensure Israel's right to existence within secure boundaries recognized by its Arab neighbors.

The notable omissions in language used to refer to withdrawal are the words *the, all,* and the *June 5, 1967, lines.* I refer to the English text of the resolution. The French and Soviet texts differ from the English in this respect, but the English text was voted on by the Security Council, and thus it is determinative. In other words, there is lacking a declaration requiring Israel to withdraw from the (or all the) territories occupied by it on and after June 5, 1967. Instead, the resolution stipulates withdrawal from occupied territories without defining the extent of withdrawal. And it can be inferred from the incorporation of the words *secure and recognized boundaries* that the territorial adjustments to be made by the parties in their peace settlements could encompass less than a complete withdrawal of Israeli forces from occupied territories.

To buttress their claim that the resolution calls for a complete Israeli withdrawal, the Arab states contend that this interpretation is overly restrictive. They point to such language as "the inadmissibility of the acquisition of territory by war." This language, the Arab states argue, calls for the complete withdrawal of Israeli forces from all of the territories occupied by them in the Six Day War. Further, the Arab states contend that the U.N. Charter supports their contention that the military conquest of territory is inadmissible. It is arguable whether under international law this argument applies to the Israeli occupation of the West Bank. It seems clear that under the circumstances, Israel exercised the right of self-defense in the 1967 war. It should be noted

that Jordan occupied the West Bank by war in 1946, contrary to the United Nations partition resolution. (Only two states recognized this annexation: Great Britain and Pakistan.) On the other hand, Israel has occupied the West Bank by war since 1968. By principles of prescription, Israel has occupied the West Bank for approximately the same period as Jordan. Thus the status of the West Bank under international law is questionable, although in realistic and demographic terms, the rights of Palestinians must be resolved short of Israeli annexation. The most that can be said of the withdrawal and related language of Resolution 242 in light of this negotiating history is that it neither commands nor prohibits territorial adjustments in the peace agreements contemplated in the resolution.

As recognized in the Camp David Accords, there is a difference between international boundaries, presumably intended to be permanent, and provisional armistice lines. Furthermore, the withdrawal language of the resolution seems to indicate that its patent ambiguities and the differing interpretations of the parties only can be resolved by settlements concluded after negotiations between the parties.

On certain aspects the resolution is less ambiguous than the language pertaining to withdrawal. Resolution 242 specifically deals with free passage through international waterways. In precise language it affirms "the necessity for guaranteeing freedom of navigation through international waterways," which include the Gulf of Aqaba. This language underscores the fact that blocking Bab el Mandeb and other points of access to the Red Sea is prohibited. The principle of international law that governs free passage through international waters was also acknowledged in the Camp David Accords.

Resolution 242 contains the phrase "respect and acknowledgment of ... the territorial integrity of every state in the area." This language has been cited in support of the demand for the complete withdrawal of Israeli forces from all of the occupied territories. That demand overlooks the fact that for many years the Israelis have sought respect for their territorial integrity, which has been withheld from them by the Arab states and the PLO.

The resolution refers to the utility of the establishment of demilitarized zones in ensuring peace and guaranteeing territorial inviolability. The location of the demilitarized zones was left to the parties to negotiate, as was done at Camp David between Egypt and Israel.

Resolution 242 strongly supports the view that a peace settlement is not to be imposed and that the resolution is not to be self-implementing. Instead, it stipulates that third-party assistance, the parties are to negotiate with third and to agree to an acceptable settlement. (This provision was confirmed by U.N. Resolution 338, which was unanimously adopted on October 22, 1973, during the Yom Kippur War. This resolution "decides that negotiations start between the parties concerned under appropriate auspices, aimed at establishing a just and durable peace in the Middle East.")

A notable omission in 242 is any reference to Palestinians, a Palestinian state on the West Bank or the PLO. The resolution addresses the objective of "achieving a just settlement of the refugee problem." This language presumably refers both to Arab and Jewish refugees, for about an equal

number of each abandoned their homes as a result of the several wars. Of course, time works changes, and the Camp David Accords recognize that the rights of Palestinians will have to be recognized in a comprehensive peace settlement.

Another notable and purposeful omission from Resolution 242 is any specific reference to the status of Jerusalem and the reaffirmation of past U.N. resolutions calling for the internationalization of the city. Resolution 242 thus realistically recognizes the desuetude of the internationalization resolutions and leaves open the possibility of an agreement for a unitary Jerusalem under Israeli sovereignty that would provide appropriate safeguards for Muslim and Christian holy places and possible Vatican-type enclaves or boroughs for the Arab population of Jerusalem. No Israeli, dove or hawk, will ever surrender any part of Jerusalem.

### **Resolution 242 and Camp David**

In the peace treaty between Israel and Egypt, the product of Camp David, Resolution 242 was acknowledged to be the basis for the settlement. It should be recognized, however, that the boundaries between Israel and Egypt before the 1967 war were internationally recognized boundaries, not provisional armistice lines. Those boundaries were recognized in the Camp David Accords and served as the rationale for Prime Minister Begin's agreement to remove all Jewish settlements from the Sinai. Since then, the United States has made several attempts to mediate a comprehensive peace settlement based on Resolution 242 and the Camp David Accords. They have all failed.

### **Resolution 242 in the Context of an International Peace Conference**

Recently King Hussein of Jordan proposed an international peace conference to be composed of the concerned parties and the five permanent members of the United Nations Security Council: China, France, Great Britain, the Soviet Union, and the United States. The terms of reference presumably would be **Resolution 242**. It is not clear whether King Hussein visualizes the international conference to be a shield for direct negotiations with Israel or a conference in which the permanent members would play a substantive role. It is also not clear in what manner the PLO would participate and the extent of its participation.

The United States and Prime Minister Shamir of Israel first joined in opposing such a conference because of their belief that it would open the door to the Soviet Union to play a significant role in the area. Prime Minister Shamir and his Likud party still firmly oppose any international conference, and Secretary Shultz said recently that "an international conference in and by itself is of no interest to the United States. The way to go is through direct negotiations. If there is some way to construct an international conference that meets the results we are seeking, we are willing to examine that possibility."

After King Hussein, the most ardent proponent of an international conference is Shimon Peres, deputy prime minister of Israel. He has thus far avoided the dissolution of the coalition government over this issue by stating that his support is subject to several conditions: The participation in the conference of the permanent members of the Security Council will be symbolic; direct negotiations will take place between the concerned parties; the PLO will have to accept Resolution 242 in order to participate; its representatives cannot be members of the PLO

hierarchy; they must be members of the Jordanian delegation; the status of Jerusalem as an undivided city under Israeli sovereignty is not negotiable, although agreement can be reached on appropriate measures to safeguard the security and autonomy of Muslim and Christian holy places; and the Soviet Union will have to agree to reestablish diplomatic relations with Israel.

Peres is an astute politician who knows that these conditions are not acceptable to the Arab states, the Soviet Union, and the PLO. He is apparently willing to assume the risk that if an international conference were to be convened and negotiations ensued, the deep yearning of the people of Israel for peace would impel Shamir to support a reasonable compromise. But it is questionable whether Peres and his Labor party will win the next election, which would alone empower Peres as prime minister to attend an international conference and conduct negotiations.

### **The Uncertain Future of Resolution 242**

The ultimate questions are whether the United States is prepared to exercise to the fullest extent its great influence to facilitate the peace process; whether the PLO will continue its fruitless role of rejection and terror or agree to a sensible compromise; and whether the leaders of Israel and its neighboring Arab states are mere politicians or statesmen who possess vision and courage.

Two things are certain in this volatile and dangerous matter. The United States must take the lead rather than play a passive role in pursuing the difficult objective of a comprehensive peace in the Middle East, and if a settlement is negotiated, it will be based on Resolution 242.

### **Note**

\*Resolution 242 of 22 November 1967

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 of the following principles:
  - I. Withdrawal of Israeli armed forces from territories occupied in the recent conflict;
  - II. (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.

### **About the Author**

The late Arthur J. Goldberg was a justice of the Supreme Court of the United States, U.S. ambassador to the United Nations (1965-1968), and ambassador-at-large and chairman of the United States delegation to the Belgrade follow-up conference (1977-1978).

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