



Case Western Reserve Journal of International Law

Volume 12 | Issue 1

1980

Introduction

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Recommended Citation

Allan Gerson, *Introduction*, 12 Case W. Res. J. Int'l L. 1 (1980)

Available at: <https://scholarlycommons.law.case.edu/jil/vol12/iss1/1>

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Introduction

by Allan Gerson*

The 1980's have begun on an ominous note. Oil is scarcer, demand is higher, our lifeline to it is threatened, and never since World War II, we are told, have we been in a greater state of crisis. The center of the storm is the Middle East and, in many respects, its eye is the still unresolved Arab-Israeli crisis. Great, momentous strides toward its resolution have been made by the conclusion of the Camp David Accords and the Egypt-Israel Peace Treaty. Yet the issue of Palestinian rights in the West Bank and Gaza Strip remains outstanding. Without movement on this matter, the whole delicate fabric of East-West relations which is dependent on Middle East stability is threatened.

In this regard, Professor Cherif Bassiouni's illuminating essay, *An Analysis of Egyptian Peace Policy Toward Israel: From Resolution 242 (1967) to the 1979 Peace Treaty* contributes importantly to our understanding of the current peace effort. Professor Bassiouni examines how, and the extent to which, Egypt's post-1967 national policy objectives have been altered by the Egypt-Israel Peace Treaty. His conclusions are sobering. He outlines three objectives as the keystone of Egypt's pre-Treaty policy — (1) complete Israeli withdrawal from all Arab territory occupied since the 1967 war, (2) recognition of the Palestinians' right to self-determination including the establishment of a Palestinian state on the West Bank and the Gaza Strip, and (3) support for the PLO as the representative of the Palestinian people. Professor Bassiouni suggests that while Egypt may have yielded on Point (3), which was relatively important, it has stood its ground on Points (1) and (2).

If this is indeed the case, we are left with a disturbing sense of slight accomplishment, at least as far as the Palestinian issue is concerned, for Israel's pre-Treaty objectives were the inverse of those of Egypt, and Israel presently insists that it too has not yielded any ground. Obviously, a treaty, in which the parties insist that the major issues which divided them before the agreement have still not been resolved by it, is not much of an agreement at all. And this is exactly the conclusion we are drawn to by Professor Bassiouni's analysis of the Egypt-Israel Treaty. Yet I wonder if Professor Bassiouni does not make too light of the importance of an

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agreement to agree in resolving hostility generated by a thirty years war. True, areas of disagreement were papered over for the sake of producing a formal treaty, but is that not the inevitable route in cases of this kind?

Given a treaty then, with major executory features, what can international lawyers do to preserve the Treaty's integrity? Should we strive to apply the same rules of interpretation which apply to commercial treaties? Is the Egypt-Israel Peace Treaty subject to the same remedies as ordinary commercial treaties? If so, the treaty would be riddled with loopholes for escape. Obviously that would follow if international lawyers are prepared to say that disagreement over the withdrawal issue could sanction a claim of breach thus giving rise to the remedies of repudiation or rescission. Or are Israel's commitments relative to the future of the West Bank and Gaza to be treated, as the Treaty indicates, as independent of Egypt's obligation to make peace? This is illustrative of some of the problems inherent in the nature of the Egypt-Israel Treaty.

The time is past for reargument of all of the various interpretations of Security Council Resolution 242 which support the position of one side or the other. Both Egypt and Israel are now committed to peace. The task of the international lawyer must advance from that of artfully restating belligerent claims to creating a climate in which agreements reached, tenuous and fragile though they may be, be observed in spirit and deed regardless of disagreements which are bound to arise. At stake in this endeavor is not merely Arab-Israeli relations but world peace itself.