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THE WAY AHEAD ? AN ANALYSIS  
OF THE CAMP DAVID ACCORDS AND  
THE EGYPTIAN-ISRAELI PEACE  
TREATY

MOSTAFA F. SALEM

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The inspiration of this work was provided by my late Mother and my father, my brother Ahmed, and my loving family, Sohair, Ahmed and Mohamad. To them all , but especially to Sohair, I respectfully dedicate this thesis.

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## ABSTRACT

In one sense, the Palestinian problem dates back to early history when the Canaanites, Israelites and Philistines contended for the territory and its resources. However, the modern Palestine problem dates only from the Balfour Declaration in 1917, and yet has proved to be more deadly, with six wars if one includes the Gulf War, and more intractable, with attempts to create a state of Palestine for nearly three-quarters of a century .

A recent attempt to solve the problem was the Egypt-Israel Peace Treaty of 1979. If that had been the only purpose of Presidents Carter and Sadat and Prime Minister Begin at Camp David and of the last two in signing the Treaty in Washington, their efforts could only be described as futile. But more was at stake: the ending of a state of war and the resolution of outstanding territorial claims. In that regard the "Camp David process" was successful - indeed successful to the extent that an issue not resolved during the process, the question of Taba, was amicably settled by Egypt and Israel through arbitration.

This thesis seeks to analyse the "Camp David process" and the terms of the Treaty in an attempt to answer the question of how the state of war, equally important for Egypt and Israel, could be satisfactorily ended for both parties, how the territorial claims, equally important for both Israel and Egypt, could be resolved, when the issue of Palestine, the source of virtually all the present conflicts in the Middle East and essential for the Egyptians as part of the Arab nation, should remain unresolved, despite the provisions of the Camp David Accords and the Treaty.

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## TABLE OF ABBREVIATIONS

AJIL	American Journal of International Law
BYIL	British Year Book of International Law.
Cmd. or Cmnd	United Kingdom Command Papers
DEP'T STATE BULL	United State Department of State Bulletin
G.A.O.R.	General Assembly Official Records
G.A. Res.	General Assembly Resolution
ICJ	International Court of Justice
I.C.L.Q.	International and Comparative Law Quarterly.
ILC	International Law Commission
ILM	International Legal Materials
ILR	International Law Reports
Int. Concil	International Conciliation.
Int. Org.	International Organisation
Keesing	Keesing's Contemporary Archive
L.N.T.S.	League of Nation Treaty Series.
N.Y.U.J.I.L.P.	New York University Journal of International law and politics.
Parl. Deb. H.L.	Parliamentary Debte, House of Lords
Parl. Deb. H.C.	Parliamentary Debte, House of Commons.
PCIJ	Permanent Court of International Justice
Proc. ASIL	Proceedings of Ameican Society of International Law.
R.I.A.A.	United Nations Reports of International Arbitral Awards
S.C.O.R.	Security Council Official Records
UNCLOS III	The Third United Nations Conference on the Law of the Sea
U.N.T.S.	United Nations Treaty Series
YBILC	Year Book of International Law Commission



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## PREFACE

The Arab-Israeli conflict is one that has defied solution since the commencement of the British Mandate for Palestine in 1922. Its origin goes back to early history when the Canaanites, Philistines and the Israelites contended for the land and its resources. Since the termination of the British Mandate and the establishment of the state of Israel in 1948, it has precipitated six wars, if one includes the Gulf War. A recent attempt to solve the problem was the Egypt-Israel Peace Treaty of 1979.

On April 25, 1979, the 31-year-old state of war between Egypt and Israel was formally ended when instruments of ratification of the 1979 Treaty were exchanged at the US surveillance post at Um-Khashiba in Sinai, thus beginning a new era in the relations between the two states. Certainly, the intention of the parties at Camp David, at least the Americans and the Egyptians, was not only to solve the Egyptian-Israeli conflict, but also to find a solution for the rest of the Arab-Israeli conflict, particularly, the Israeli-Palestinian dispute. In one sense, the 1979 Treaty was intended as a first step in that regard and a model for other peace treaties between Israel and other Arab states.

The Camp David Accords and the 1979 Treaty can be reduced to two elements, the territorial issues and the Palestinian clause. For a variety of reasons those parts of the Treaty dealing with the Egyptian-Israeli conflict were fully implemented, whereas the Palestinian clause was not. In fact, for the Palestinians the "Camp David process" was a failure. For Egypt and Israel, it was successful - indeed successful to the extent that an issue not resolved



during the process, the question of Taba was amicably settled by Egypt and Israel through arbitration.

This thesis seeks to analyse the "Camp David process" and the terms of the Treaty in an attempt to answer the question of how the state of war, equally important for Israel and Egypt, could be satisfactorily ended for both parties, how the territorial claims, more important for Israel than Egypt, could be resolved, when the issue of Palestine, the source of virtually all the present conflicts in the Middle East and essential for the Egyptians as part of the Arab nation, should remain unresolved, despite the provisions of the Camp David Accords and the 1979 Treaty.

The general framework of this study is as follows:

First, a general background has been provided of the origins and the evolution of the Arab-Israeli conflict. Part I of this thesis deals with the roots of the Palestinian problem ~~and~~ with an analysis of the modern Palestinian problem and its evolution from the Balfour Declaration in 1917 until the present time.

Consideration is given in Part II to the manner in which the 1979 Treaty has dealt with the outstanding territorial issues between Egypt and Israel. Although this part purports to give a comprehensive account of the major territorial claims between Israel and Egypt, certain particular issues, because of their importance, are dealt with in much greater detail - the withdrawal of Israeli forces, the dispute over Taba, the Israeli settlements in the Sinai and the problem of the Gulf of Aqaba. These problems are examined in Chapters Two and Three.

Part III examines the provisions relating to the Palestinian people and the question of East Jerusalem in two Chapters, Four and Five.

Some general conclusions on the Camp David process and the 1979 Treaty are drawn at the end of this work. The conclusions evaluate the 1979 Treaty in the light of the expectations of its drafters, exploring to what extent the Camp David process and the 1979 Treaty could be a model for future negotiations and treaties between other Arab states and Israel. We will also propose solutions to the problems caused by areas not covered in the Treaty, and by deficiencies in the wording and terminology used in the Treaty.

By presenting a legal analysis of the issues covered, without favouring either Egypt or Israel, it is hoped that this work will lead to a better understanding of the 1979 Treaty. It is also hoped that it will fill, at any rate in part, the gap caused by the fact that legal literature on the subject is scarce in both Arabic and English.

PART ONE  
INTRODUCTION

## CHAPTER ONE

### HISTORICAL BACKGROUND

#### PALESTINE : EARLY HISTORY

In its broadest definition, the Middle East extends throughout all the countries that border the southern and eastern coasts of the Mediterranean Sea, from Morocco to Turkey, the Red Sea and the Gulf of Aqaba and the Persian Gulf. The Middle East conflict refers to that portion of the region comprising the area most directly involved in the dispute over the lands of the former mandate of Palestine-Israel and its neighbours Egypt, Jordan, Syria, Lebanon, Saudi Arabia and the occupied territories encompassing the West Bank and Gaza Strip.<sup>1</sup>

The area known as Palestine is bordered by the Mediterranean Sea on the east, the Jordan River in the west, the Golan mountains and the Sea of Galilee on the north, and the Negev and Sinai Deserts on the south. There have been periodic crises in the Middle East since early recorded history, notably since the chosen people escaped Egyptian persecution by invading and/or infiltrating into the lands of the Canaanites.<sup>2</sup>

The Canaanites are the earliest known inhabitants of Palestine, and are thought to have settled there after 3000 B.C. Despite the fact that several peoples existed at one time or another in ancient Palestine, only three peoples played a leading role in that country and left a lasting impact on it. These peoples are the Canaanites, the Philistines, and the Israelites. The Palestinians are the descendants of the Canaanites and the Philistines.<sup>3</sup>



The first Jewish kingdom was established in Palestine in 1030 BC, when the twelve Israeli tribes united under Saul who became their first king. After he was slain by the Philistines, his son-in-law David succeeded him and expanded his kingdom by conquest. Around 1000 BC, David invaded Jerusalem and made the City the capital of his kingdom. He ruled for a period of 33 years and was succeeded by his son Solomon who in turn ruled the kingdom for 40 years.<sup>4</sup>

After Solomon's death, the unified kingdom, which lasted 73 years, was split into two kingdoms, the Kingdom of Israel in the north and, the Kingdom of Juda in the south. While the Kingdom of Israel did not remain in existence for long, being destroyed by the Asserians in 721 BC, the other Kingdom of Juda remained until 587 BC when it was destroyed by the Babylonians. The invaders burned Solomon's Temple and carried the Jews into captivity. With the exile of the Jews, the Hebrew language disappeared from Palestine and was replaced by Aramic and Arabic. For several centuries Aramic was the language of Christians.<sup>5</sup>

In 538 BC, the Persians invaded Palestine and put an end to Bablyonian rule. During the Persian era, which lasted two centuries, the Jews were allowed to return to Palestine. In 332 BC Alexander the Great invaded Palestine. In 166 BC another Jewish Kingdom, the Maccabian Kingdom, was established after the Jews revolted against the Greeks. In 134 BC, the Syrians besieged Jerusalem and levied a tribute upon the kingdom.<sup>6</sup>

In 63 BC the Romans occupied Palestine and put an end to the Maccabian Kingdom. During the Roman era, the Jews revolted twice against the Romans, in AD 66 to 70 and again in AD 132 to 135. As a result of their revolt, the Jews were either killed or dispersed to the four corners of the Roman Empire. From that time until the middle of the nineteenth

century there were practically no Jews in Jerusalem, and only a small number lived in Palestine. Also, during that era, one of the important events in the history of mankind occurred in Palestine. This was the birth of Christ at Bethlehem. From that time, Bethlehem, where Christ was born, Nazareth and Galilee where he lived, and Jerusalem where he was crucified and buried, became Christianity's holiest places and Palestine itself became the Holy Land of Christendom.<sup>7</sup>

Ever since 634, Semitic Arabs incorporated that region into the Islamic nation after defeating the Romans. When the Arabs drove the Romans out of Palestine, few Jews, following their expulsion by the Romans in AD 70, remained in Palestine. During this era, the Arabs rescinded the decree of banishment and allowed the Jews to return to Palestine. Few, however, returned.<sup>8</sup>

Palestine remained under Moslem Arab rule until 1099 when it was invaded by the Crusaders who occupied the country and established the Latin Kingdom of Jerusalem which lasted 88 years. In 1187, Palestine was reconquered by Saladin and was restored to Moslem Arab rule.<sup>9</sup>

In 1517 the Ottoman Turks conquered Palestine and ruled it until the outbreak of World War I. The British forces in Egypt which were supported by an Arab army, invaded Palestine and occupied Jerusalem on December 9, 1917. Turkish rule in Palestine came to an end shortly thereafter. It has been rightly observed that both the Moslem Arabs and the Turkish rulers, during their occupation of Palestine, did not make any alteration in the country's demographic structure, but only a change of rule and, to a large extent, a change of religion. Specifically, they brought no immigrants to the country.<sup>10</sup>



## THE BALFOUR DECLARATION AND THE MANDATE

There had been a long history of anti-Semitism in a number of European countries, and this became particularly intense in the 19th century. The Drefus affair in France is but one celebrated example.<sup>11</sup>

From 1815 Russian Jews suffered increasing restrictions. Around 1881, Russia's difficulties were attributed to Jewish corruption, and Jews were massacred in a series of attacks. In 1914 it was estimated that over 2 million Jews had fled from Russia.<sup>12</sup>

The 1819 "Hep Hep" riot started in Wurzburg and spread through the German states and into Austria, Hungary, Poland and Denmark. These states accused Jewish financiers and bankers of being responsible for economic difficulties, and some central European Jews emigrated to the United States.<sup>13</sup>

In 1860 some argued that an assimilation of Jews in the countries in which they were living was not possible because of the fact that their racial characteristics were unchangeable. In other words, "a Jew could not, for instance, become a German through baptism and a rejection of heritage."<sup>14</sup> Since that time, the word anti-Semitism came into general use, signifying that opposition to Jews was based on grounds of race not of creed. Since 1880, it was estimated that over 3 million Jews, due to the waves of anti-Semitism in Europe, fled over three decades settling in Britain, Canada, Australia and South Africa; but the vast majority found a new home in the United States. A few of them, it is worth mentioning, went to Palestine which was then part of the Ottoman Empire.<sup>15</sup> Aware of the problem of anti-Semitism and of the fact that the Jews suffered persecution in most European countries, particularly Eastern Europe, Theodor Herzl wrote to Baron Rothschild that: "for



nearly 2000 years Jews had been dispersed all over the world without a state of their own; if only the Jews had a political centre they could begin to solve the problem of anti-Semitism."<sup>16</sup>

With the publication of Der Judenstaat<sup>17</sup>, most accurately translated as "The State Of Jews", Herzl became the ambassador of the emerging Zionist movement, as well as the father of political Zionism. According to his ideas, the Jews must be granted sovereignty over territory adequate for their national requirements. Herzl had two possible regions in mind: Argentina and Palestine. Argentina was one of the most fertile countries, whereas Palestine was the unforgettable historic homeland, and the very name would, Herzl thought, be a good rallying point.<sup>18</sup>

In Basel, in August 1897, Herzl, having organized the Jewish masses behind his ideas, convened the first Zionist Congress which formulated the specific intent and purposes of political Zionism concluding that "Zionism aims to establish a publicly and legally assured home for the Jewish people". The major outcome of the Basel programme was the emergence of the World Zionist Organization, a national flag, a national anthem, "Hatikva", and the Jewish national fund.<sup>19</sup> It is worth mentioning that, at the end of the first Zionist Congress, Herzl noted in his diary that at Basel he founded the Jewish state; at that time such an idea was regarded with general incredulity.<sup>20</sup>

Several unsuccessful attempts were made in subsequent years to establish Jewish settlements in the Sinai Peninsula in Egypt, Cyprus, and Uganda. However, during this period, there emerged a few Jewish settlements in Palestine. The seventh Zionist Congress ruled that settlement should be confined to Palestine.<sup>21</sup> Herzl died in 1904, and his successor was Chaim Weizmann, a Russian immigrant, who was a

practical leader rather than a theorizer. The new Jewish leader was in favour of the idea that "saw Palestine as being the focus of the renaissance of Judaism based on the positive love of Zion."<sup>22</sup> While working to increase the number of Jewish settlements in Palestine from 1904, Weizmann sought to put pressure on European governments to support Zionism. Settling in Britain, he attempted to win, by all means, the support of the British government for the Jewish cause. By April 1919 Zionism had achieved a new status in British political thinking. For reasons which will be mentioned, some influential British officials held the opinion that an accomodation with the Zionists could help British interests in the Middle East and elsewhere. In the spring of 1916 some politicians had gone as far as to suggest that, not only Britain, but all the Allies should jointly issue a declaration pledging to take Zionist aspirations in Palestine into account in the postwar settlement.<sup>23</sup>

Undoubtedly, the present crisis of the Middle East, as Quincy Wright observed, began with the Balfour Declaration.<sup>24</sup> The British declaration of sympathy with Jewish Zionist aspiration was communicated to Lord Rothschild by Arthur James Balfour, in his capacity as Foreign Secretary, in a letter dated November 2, 1917, and made public a week later: "I have much pleasure in conveying to you, on behalf of His Majesty's Government the following declaration of sympathy with Jewish Zionist aspirations which has been submitted to and approved by the Cabinet. His Majesty's Government view with favour the establishment in Palestine of a national home for the Jewish people, and will use their best endeavours to facilitate the achievement of this object, it being clearly understood that nothing shall be done which may prejudice the



civil and religious rights of existing non-Jewish communities in Palestine or the<sup>v</sup> rights and political status by Jews in any other countries."<sup>25</sup>

In respect of the Declaration, Bassiouni and Fisher have pointed to two factors that must be carefully weighed and contrasted: first, the political promise clause, i.e., the establishment of a national home for the Jews; and secondly, the safeguard clause concerning the non-Jewish communities.<sup>26</sup> As far as the political clause is concerned, there is no consensus of opinion as to the exact meaning of the term "national home". Clearly, the term is vague, presumably deliberately so. Nevertheless, two conflicting views had been forwarded. The first claimed that the national home would involve the establishment of a Jewish state in Palestine. This view was, of course, held by many Zionists. On the other hand, the second view denied that such was its intention or meaning. In the words of Sir Herbert Samuel in the House of Lords in 1917, "If the Balfour Declaration had intended that,...it would have said so...there was no promise of a Jewish state.."<sup>27</sup>

It may be added that the British Government declared on several occasions that the Declaration must not dislodge or disturb the Arab population of Palestine since it did not involve the creation of a Jewish state, nor the subordination of the Palestinians to Jewish immigrants.<sup>28</sup> As to the safeguard clause, Bassiouni and Fisher pointed out: "In contrast, the safeguard clause seems clear and unequivocal. The words 'it being clearly understood' prove that however vague and ambiguous the political promise clause might be, it was subordinated to and conditioned upon the implementation of the safeguard clause which reassured the non-Jewish population of Palestine that there would be no

resulting injury to their rights from the political bargain struck between Britain and the Zionists." <sup>29</sup>

There has never been a consensus of opinion as to the legality of the Declaration. For instance, the Declaration, according to one view cannot be illegal since it was in the nature of a mere promise of sympathy lacking any legal effect. It follows that only after its inclusion in the Mandate provisions the Declaration possessed legal effect. On the other hand, some argued that the Declaration was void. An advocate of this view is Henry Cattan who wrote: "The Balfour Declaration is legally void, and morally wicked, and politically mischievous".<sup>30</sup> Cattan's argument is based on the premise that the Declaration denied the Palestinian people their natural right of self-determination, and therefore was in violation of international law. Other reasons have been given as a basis for the nullity of the Declaration. It has been rightly argued that the consent of the people of Palestine, who were the indigenous and sovereign inhabitants was never asked or obtained. The British government, a foreign power in regard to Palestine, did not possess, nor had it ever possessed, any sovereignty, right of disposition or jurisdiction over Palestine that enabled it to grant any rights, be they political or territorial, to an alien people over the territory of Palestine. Finally and most significantly, Turkey, as the legal sovereign over Palestine at the time of the issue of Balfour Declaration, did not consent to it.<sup>31</sup>

The question of the legitimacy of the Balfour Declaration has been deliberately overlooked by Britain and other major powers supporting it. In the words of Lord Balfour, "...The four great powers are committed to Zionism, and Zionism, be it right or wrong, good or bad, is rooted in



age-long tradition, in present needs, in future hopes, of far profounder import than the desire and prejudices of the 700,000 Arabs who now inhabit that ancient land."<sup>32</sup>

As far as the reasons for the Declaration are concerned, it is true that the influential pressure exerted on the British Government by the Jewish Zionists and their supporters in Britain had played an important role in obtaining that Declaration. Nevertheless, the Balfour Declaration had been approved by the British Cabinet for a number of other reasons. It had been believed by some British politicians that it was essential for Great Britain to establish a firm foothold in Palestine and that an understanding with the Zionists could help to strengthen Great Britain's position as a partner in the Anglo-French condominium envisaged by the Sykes-Picot Agreement of May 1916.<sup>33</sup>

It was also thought that Zionist sympathies for the Allied cause could help the war effort. Zionists in Russia could stop that country's drift out of the war, while Zionists in the US, due to their influential position in American politics, could speed up the American contribution following the US declaration of war.<sup>34</sup>

Finally and significantly, during this period there was increasing concern in Britain about the many Jews fleeing persecution in Russia and other Eastern European countries. The British Government was also concerned by the problem seen as being caused by Jewish immigrants in Britain. There is no better quotation in this respect than what had been written in "The Times" on May 1, 1905:

"The immigration of Russians and Poles, nearly all of whom are said to be Jews, amounted to 28,511 to 30,046 in 1903, and to 46,095 in 1904. It is at least probable that it will reach 50,000 in the year now

proceeding...Apart from the seething mass of poverty and of criminality which has thus been forced upon the attention of the public, it is well known to all who have inquired into the subject that the Russian and Polish immigrants as a rule consist of persons who are habituated to a lower standard of cleanliness and comfort than that which prevails among even the humblest of our own poor, and that they are content to work for wages upon which no industrious Englishman, however much he might be said to be sweated by an employer, could attempt to live...[The English inhabitants of the East End of London are becoming] more and more impatient of the presence of their unsavoury and unwelcome neighbours, and more and more anxious that the plague of their continual coming should be stayed."<sup>35</sup>

Turning now to what had happened in the aftermath of the Balfour Declaration, one must admit, at the outset, that Britain had to face the problem resulting from the fact that the Declaration contained contradictory promises. In the words of Foreign Secretary Ernest Bevin in the House of Commons:

"There is no denying the fact that the Mandate [which incorporated the Balfour Declaration] contained contradictory promises. In the first place it promised the Jews a national home and in the second place it declared that the rights and position of the Arabs must be protected. Therefore, it provided what was virtually an invasion of the country by thousands of immigrants and at the same time said that was not to disturb the people in possession."<sup>36</sup>

In the years 1918 and 1919, the British military administration, according to Jewish sources,<sup>37</sup> showed no sympathy with the Balfour Declaration. During these two years, the Declaration was not

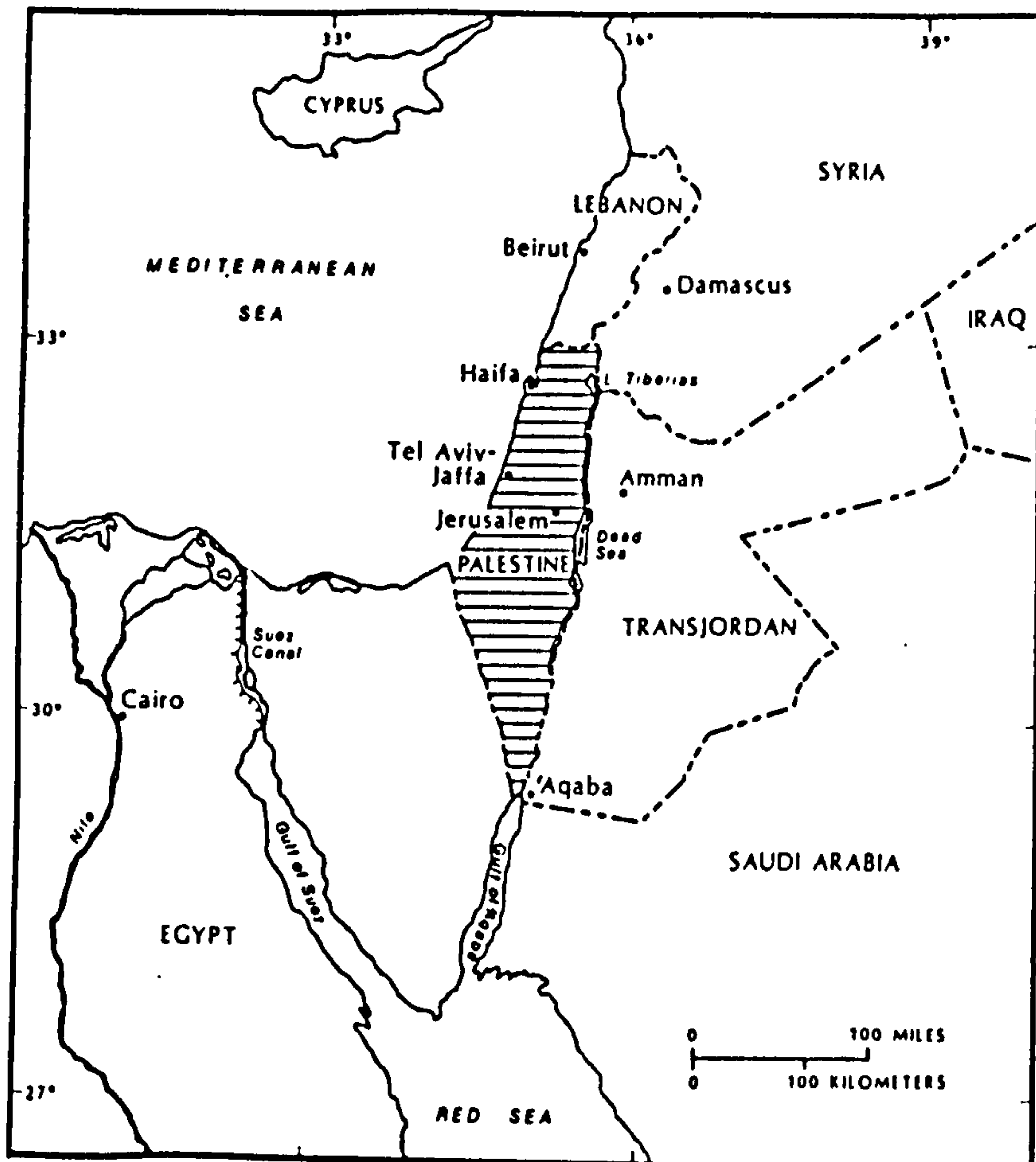


officially published or referred to in Palestine. This was mainly due to the hostile attitude to the Jews existing in Palestine. On January 3, 1919, an agreement was reached between Amir Faisal, then the leader of the Arab Awakening Movement and Chaim Weizmann, President of World Zionism.<sup>39</sup> The agreement recited that the "Surest means for the consummation of their [Arabs' and Zionists'] national aspiration is through...closest cooperation of the Arab State and Palestine...Arab and Jewish duly accredited agents shall be established and maintained in their respective territories...The definite boundaries between the Arab State and Palestine shall be determined by a commission to be agreed upon...The constitution and administration of Palestine shall afford the fullest guarantee for carrying into effect the [Balfour Declaration]...All necessary measures shall be taken to...stimulate immigration of Jews into Palestine on a large scale...In taking such measures the Arab peasants and farmers shall be guaranteed in their rights."<sup>39</sup>

On April 24, 1920, the Supreme Council of the Peace Conference at San Remo resolved that the Mandate over Palestine be conferred on Britain, charging her with the establishment of a national home for the Jewish people as laid down in the Balfour Declaration. This was in fact a turning point of the history of Palestine.<sup>40</sup> In the same year, Sir Herbert Samuel, a Jew and a Zionist, was appointed High Commissioner in Palestine. As soon as he arrived to Palestine in June 1920, he made Hebrew an official language in Palestine side by side with Arabic and English. He then helped to increase the number of Jewish immigrants by creating jobs for them in government road projects in the north. Also, as a concession to the Jews who wanted the country to be called by its



historic name, Erezt Israel, the Hebrew initials were added in parentheses to the Hebrew form of the name Palestine.<sup>41</sup>



Map 1. The Palestine Mandate, 1920 - 1948.

In 1921 two important events occurred. First, Prince Abdullah, a son of King Hussain of Mecca, seized the area known as Trans-Jordan and was recognized by Britain on March 27, 1921, as emir with a British advisor and a subvention from Britain. Subsequently, Trans-Jordan was closed to Jewish settlement. Trans-Jordan, during this time, was part of the territories of the Palestine Mandate entrusted to Britain.<sup>42</sup> At this point, it is worth observing that, according to a prevailing view, the territories of Trans-Jordan never formed part of historical Palestine as some Israelis have claimed. As one writer indicates, "...The area lying

east of Jordan river...which was called Trans-Jordann had not formed part of historical Palestine. In Ottoman times, it had been administratively part of the Province of Syria and was called the district of Balqa."<sup>43</sup>

The second event in 1921 was the outbreak of violence, in Jaffa and other areas, between the Arabs and the Jews. The outcome was that a number of victims from both sides were killed during the riots.<sup>44</sup> As a result, Samuel ordered a temporary halt to immigration and entered into negotiations with the Arab Executive Committee. The outcome of these negotiations was a White Paper issued by Churchill on June 22, 1922. It gave a restrictive interpretation of the Balfour Declaration, indicating that "it did not contemplate that Palestine as a whole should be converted into a Jewish national home."<sup>45</sup> One month later the League of Nations Council confirmed the Palestine Mandate, citing the Balfour Declaration in the preamble and referring to the "historical connection of the Jewish people in Palestine" as a ground for reconstituting their national home in that country. It also provided for the recognition of the Zionist Organization as the Jewish Agency, to advise and cooperate with the administration "in such economic, social, and other matters as may affect the establishment of the Jewish National Home and the interests of the Jewish population in Palestine."<sup>46</sup>

On the other hand, the Mandate referred to the rights of the Arab Palestinians, then constituting the vast majority of the population of Palestine: "it being clearly understood that nothing should be done which might prejudice the civil and religious rights of existing non-Jewish communities in Palestine."<sup>47</sup>

*Comment*

The above provisions of the Mandate require some observations. In the first place, it imposed upon the mandatory two contradictory obligations. It provided that the mandatory would permit the arrival in the country by thousands of immigrants; at the same time the mandatory had to safeguard the civil and religious rights of all the inhabitants. Also, it is noteworthy that "although the Mandate speaks of Jews, the Jewish people and the Jewish population of Palestine, it does not once mention the Palestinians or the Palestinian Arabs who...then constituted 92 percent of the population."<sup>48</sup> Only the World Zionist Organization and its representatives were consulted about the terms of the Mandate, and they also participated in drafting it. The Arab Palestinians, on the other hand, were neither consulted about the Mandate, nor was their consent obtained as to its terms.

The arguments over the legitimacy of the Mandate, including its injustice under international law, its deprivation of the indigenous people of Palestine of their right of self-determination and its incompatibility with Article 22 of the Covenant, are well-known and do not need to be repeated here.<sup>49</sup>

Turning to the implementation of the Mandate, there is no doubt that the British policy did not achieve the basic purpose of Article 22 of the Covenant of the League of Nations to lead the people to full independence. British policy could not develop self-governing institutions, as stipulated by Article 2 of the Mandate. This is due partly to Arab opposition and partly to the fact that the Jews rejected any form of self-government in Palestine so long as they were a minority. An example is the unsuccessful attempt made in 1922 to grant some semblance of autonomy in the form of legislative council. Hence,



after almost three decades of the Mandate there was no sign of self-governing institutions.<sup>50</sup>

The main achievement of the Mandate was its authorization of a massive Jewish immigration into Palestine which resulted in the modification of the demographic structure in the country from a largely Palestinian Arab population to a mixed Arab-Jewish population. In fact, the Jewish population increased more than ten fold. According to a U.N. report,<sup>51</sup> the Jewish population increased from 56,000 in 1918 to 83,794 in the census of 1922, to 174,610 in the census of 1931, and to 608,230 in 1946 out of a total population of 1,972,560.

It may be significant here to indicate that this immigration and demographic change in the inhabitants of Palestine was achieved against the will of the indigenous population and in the face of their opposition.<sup>52</sup> The Palestinian opposition took the form of demonstrations, disturbances and an armed rebellion. An example is the Arab revolt that began in 1936. It started with a six-month general strike, guerilla activities and effective seizure of large areas of Palestine. This Arab resistance, however, was broken by the British and, by the spring of 1939, the revolt had come to an end.<sup>53</sup>

The main outcome of the three years of the Arab revolt was the White Paper of 1939, whereby the British Government announced its intention to limit Jewish immigration into Palestine to 10,000 a year for a period of five years, bringing the Jewish population to a third of the total, after which further immigration would depend upon Arab consent; the sale of land to Jews was to be severely restricted; finally, the White Paper provided for granting Palestine its independence within ten years.<sup>54</sup>



The White Paper of 1939 was followed by a British policy which sought Arab neutrality in the period 1939-1945 and which led Zionists to change their tactics. Instead of concentrating on the mandatory power, Britain, they focused on the United States. "They threatened electoral punishment through the Zionist vote if the American administration failed to support a Jewish state." They believed that the U.S. could hand Palestine over to Zionists.<sup>55</sup>

In the meantime, the Zionists used new methods in Palestine. A policy of attrition was waged against the administration. From the middle of World War II, two Jewish terrorist organizations, the Stern and the Irgun Zvdi Leumi, made a number of attacks on British forces in Palestine and on officials abroad (e.g., the assassination of Lord Moyne, the British Resident Minister in the Middle East in Cairo in 1944).<sup>56</sup>

In April 1947 the British Government decided to submit the Palestine problem to the UN. Behind this was the fact that the Palestine problem had become too complicated. As one writer pointed out, "Harassed by the Jewish campaign of violence and terror, unable to permit any further Jewish immigration against the wishes of the original inhabitants, subjected to pressure by American President Harry Truman to open the gates of Palestine to Jewish immigrants while the US Government closed to them its own doors, the British Government decided to refer...the question to the UN."<sup>57</sup>

#### THE UN PARTITION RESOLUTION OF 1947

On April 2, 1947, the British Government informed the Secretary-General of the UN that it wished that question of Palestine be placed on the agenda of the General Assembly at the next session. Britain intended to

ask the Assembly "to make a recommendation under Article 10 of the Charter concerning the future government of Palestine."<sup>58</sup>

The General Assembly held a special meeting on April 28, 1947 to consider the Palestine question. In the debate, the Jewish representatives and the Palestinian representatives were invited to submit their views. The Jews asked for the reconstitution of the Jewish national home in Palestine in accordance with the Balfour Declaration, whereas the Palestinian representative "opposed the plan to partition Palestine, and emphasized that the Palestinian Arabs were entitled to their independence on the basis of the Charter and their natural and inalienable rights."<sup>59</sup> The Arab states, during the same debate, expressed the view that the only course open to the UN was to recognize the termination of the Mandate and declare the independence of Palestine. When this Arab proposal was submitted to the vote, it failed to obtain the required majority.<sup>60</sup>

On May 15, 1947, the General Assembly appointed a special committee on Palestine (UNSCOP) to prepare a report on Palestine. Its terms of reference gave the committee "the widest powers to ascertain and record facts, and to investigate all questions and issues relevant to the problem of Palestine."<sup>61</sup> In its report, published on August 31, 1947, the committee recommended unanimously that the Mandate for Palestine should be terminated at the earliest possible date and that independence should be granted in Palestine at the earliest practical date. However, the committee could not agree on a unanimous opinion as regards the future of Palestine. It, therefore, proposed two plans, one agreed by the majority and other approved by a minority.<sup>62</sup>



The seven-member majority called for the partition of Palestine into an Arab state, a Jewish state, and a corpus separatum for the city of Jerusalem, which would be subjected to a special international regime to be administered by the UN. The Arab state was to comprise Western Gallilee, the hill country of the West Bank (excluding Jerusalem), and the coastal plain from Ashdod to the Sinai frontier; the Jewish state would include eastern Gallilee, the Jezreel valley, most of the coastal plain, and the Negev. On the other hand, the minority, consisting of representatives of India, Iran, and Yugoslavia, proposed the establishment of a bi-national federal state which would comprise an Arab and a Jewish state with Jerusalem as the capital of the federation.<sup>63</sup>

When the report of UNSCOP came up for discussion, Arab states rejected the partition proposals for two main reasons. First, the UN General Assembly was not competent, under the Charter, to recommend the partition of Palestine. Secondly and most significantly, they stressed that both the Balfour Declaration and the Mandate over Palestine were null and void.<sup>64</sup>

As a result, sub-committee 2 of the ad hoc committee on the Palestine question was asked to study the issues raised by the Arab states rejecting partition. In its report, the sub-committee recommended that these issues be referred to the International Court of Justice for an advisory opinion. In this context, it suggested a number of important questions to be submitted to the Court. It seems relevant and useful to quote these questions :

(a) Whether the indigenous population of Palestine has an inherent right to Palestine and to determine its future constitution and government;

(b) Whether the pledges and assurances given by Great Britain to the Arabs during the First World War (including the Anglo-French Declaration of 1918) concerning the independence and future of Arab countries at the end of the war <sup>did or</sup> did not, include Palestine;

(c) Whether the Balfour Declaration, which was made without the knowledge or consent of the indigenous population of Palestine, was valid and binding on the people of Palestine, or consistent with the earlier and subsequent pledges given to the Arabs;

(d) Whether the provisions of the Mandate for Palestine regarding the establishment of a Jewish national home in Palestine are in conformity or consistent with the provisions of the Covenant of the League of Nations (in particular Article 22), or are compatible with the provision of the Mandate relating to the development of self-government and the preservation of the rights of and position of the Arabs of Palestine;

(e) Whether the legal basis of the Mandate for Palestine has not disappeared with the dissolution of the League of Nations, and whether it is not the duty of the Mandatory Power to hand over powers and administration to a government of Palestine representing the rightful people of Palestine,

(f) Whether a plan to partition Palestine without the consent of the majority of its people is consistent with the objectives of the Covenant of the League of Nations, and with the provisions of the Mandate for Palestine;

(g) Whether the United Nations is competent to recommend either of the two plans and recommendations of the majority or minority of the United Nations Special Committee on Palestine, or any other solution involving partition of the territory of Palestine, or permanent trusteeship over



any city or part of Palestine, without the consent of the majority of the people of Palestine ,

(h)Whether the United Nations or any of its members is competent to enforce or recommend the enforcement of any proposal concerning the constitution and future goverment of Palestine, in particular any plan of partition which is contrary to the wishes,or adopted without the consent of the inhabitants of Palestine.<sup>65</sup>

Nevertheless, despite its importance, the recommendation to refer these questions to the International Court of Justice was rejected by the ad hoc committee on November,24,1947 by 25 votes to 18.<sup>66</sup>

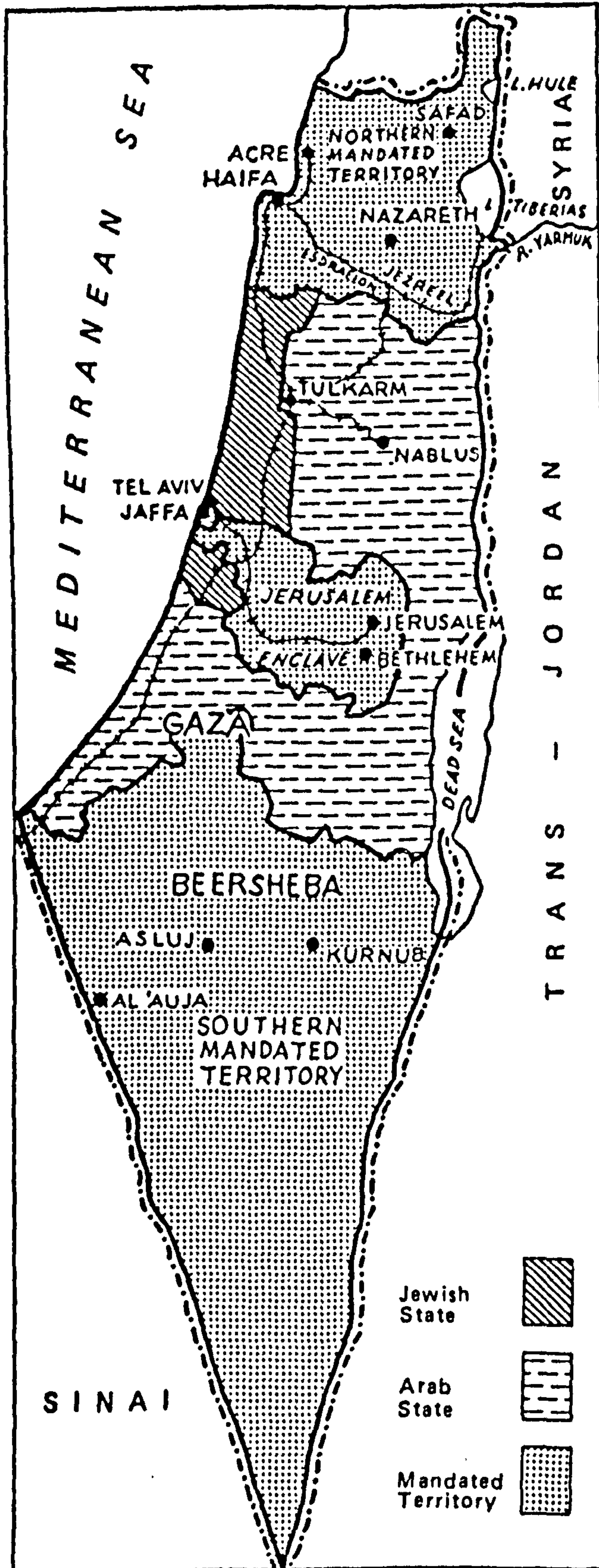
The General Assembly adopted, on November .29,1947, Resolution 181(II) for the partition of Palestine into an Arab and a Jewish state. The partition provided for the majority plan with slight territorial modifications. The Resolution was adopted by a vote of 33 to 13 with ten abstentions. The UK abstained.<sup>67</sup>

The outcome of the Partition Resolution was that the Jews, who constituted less than one-third of the population, who were largely foreigners and who owned less than 6 percent of the land, were given an area almost ten times greater than what they owned, namely, 57 percent of Palestine, while it left 43 percent of the land to the Palestinians. Thus, there is some reason in the observation of Cattan that:" This is not a partition but a spoliation."<sup>68</sup>

#### THE FOUR WARS

Two years before the declaration of the creation of Israel, Arab leaders were invited by the Arab League to meet in Bludan (Syria) in October 1946 to consider the possibility of an Arab military action or

Map 2 The United Nations Partition Plan, November 1947





intervention to prevent the establishment of a Jewish state in Palestine and to help the Arab Palestinians to defend themselves against the Jewish aggression launched by the "military Jewish gangs". During this meeting, the Egyptian representative expressed the view that it had been decided previously not to engage in military operations outside Egyptian territories.<sup>69</sup> Nevertheless, despite this decision, some Egyptian volunteers, who belonged to Egyptian Islamic movements, were sent the same year to take part in the Arab struggle in Palestine where there had been a state of a civil war between the Jewish immigrants and the Arab inhabitants since 1936.<sup>70</sup>

With the departure of the British High Commission on May 14, 1948, the state of Israel was proclaimed. Reacting to that Declaration, the Arab League adopted a resolution calling on Arab States to intervene to restore peace and safeguard Arab lives in the absence of any settled authority. In his cablegram to the Secretary-General of the United Nations, the Secretary-General of the League explained the reasons for this intervention as being "to restore law and order and to prevent disturbances prevailing in Palestine from spreading into their territories and check further bloodshed."<sup>71</sup>

According to the military plan approved by the Arab League, it was decided to enter Palestine using four Arab armies. The Syrian and Lebanese forces were to enter northern Palestine, the Iraqis and the Arab Legion to attack south of Lake Galilee towards Haifa and the Egyptian army to be essentially diversionary, pinning down Jewish forces south of Tel Aviv. However, it has been said that the Arab forces were generally restricted to the area allotted to Palestine Arabs in the Partition Resolution. The Egyptian force was about 10,000 soldiers



organized into two brigades. The fighting lasted from May 6 to June 11, 1948, when the first cease-fire came into effect in response to a Security Council resolution. At this time, the Egyptian forces had occupied some parts of south Palestine, including Negev. Fighting resumed after <sup>the</sup> Egyptian government refused to renew the truce. During this period, Israeli forces were able to defeat the Egyptian armies and enter some areas behind the Egyptian boundaries, namely the Rafah Heights.<sup>72</sup> The Egyptian Government invoked the Anglo-Egyptian Treaty of 1936, under which Britain was obliged to assist Egypt in the event of attack from an outside party.<sup>73</sup>

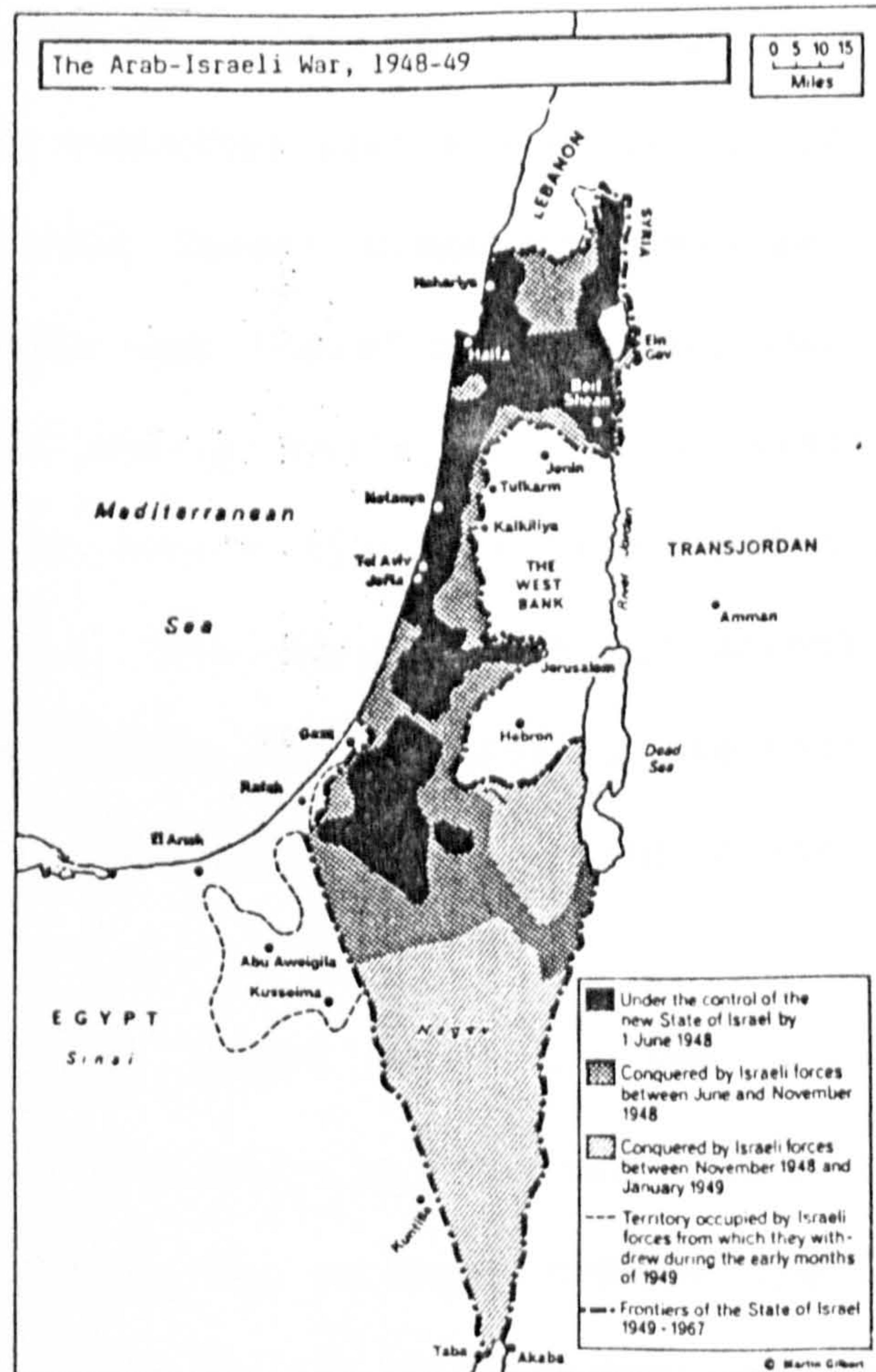
On December 29, the Security Council ordered an immediate cease-fire and Israeli withdrawal from Egypt. The British government declared that, unless Israel obeyed the Security Council resolution, Britain would employ its forces in accordance with the Anglo-Egyptian Treaty of 1936. The Egyptians declared that, unless Israel withdrew from their territory, they would not begin armistice negotiations. Israel responded by withdrawing from the Rafah Heights in the second week of January in order to begin peace negotiations with Egypt.<sup>74</sup> On January 13, 1949 the first peace negotiations between Egypt and Israel began under the supervision of the UN on the Island of Rhodes. Within ten days, the two states reached an agreement which was signed on February 25, 1949. Then followed the Armistice Agreement between Israel and Lebanon on March 23, 1949; then the Jordanian-Israeli Agreement on April 3, 1949; and the Syrian-Israeli Agreement on July 20, 1949.<sup>75</sup>

For Israel, the main outcome of the war was its seizure of 78 percent of the territories of the Mandate of Palestine. Bolstered by its decisive victory over four Arab armies, Israel refused to implement the



UN Partition Resolution of 1949. The Egyptians, who realized that the main reason behind the defeat was the fact that their army entered the war without the preparation required, began to wonder about the reason behind the government's decisions which brought this defeat to Egypt.

Map 3 The State of Israel, 1949-1967



The outcome for the Arab League was its total failure to face the first challenge to Arab security. Its failure resulted in the loss of most of Palestine. The main reason for the failure was the lack of coordination among the Arab armies. In fact, the League failed to appoint an overall Arab military commander because of internal Arab differences. While, for instance, the Jordanian army accepted a cease-fire, the Egyptian army, due to this lack of coordination, was still fighting.<sup>76</sup>



One of the most notable outcomes of the 1948 war was the existence of a state of war between the Arab states and Israel. From 1948, the Arabs considered themselves at war with Israel. The resolution and procedures adopted by the League since 1948 have emphasized this state. The economic boycott initiated by the League relied partly on the state of war doctrine, as did the political boycott of Israel by the Arabs<sup>77</sup>.

From 1948, Egypt announced that she still regarded herself as being in a state of war with Israel since that status continued despite the Armistice Agreements and, therefore, she reserved to herself for her own protection certain belligerent's rights of visit, search and seizure. As a result, Egypt barred the Suez Canal and the Gulf of Aqaba from Israeli navigation. The Israelis did not accept Egypt's argument and practices and questioned the legality of the existence of the state of war with Egypt<sup>78</sup>. Reasons in support of these two views need to be outlined.

In support of the first view, it has been argued that, under international law, the rule is that an armistice agreement does not terminate the state of war existing between the belligerents, and that the rights and duties of the belligerents and of neutrals remain in being.<sup>79</sup> According to some scholars who support this view, the Arab-Israeli Armistice Agreements do not derogate from the general rule applicable to all armistices, i.e., that they provide for a complete cessation of all hostilities, for a specified or indeterminate period, but do not bring about peace in the legal sense or proscribe the exercise of belligerent rights, save those for the conduct of hostilities, under the law of war.<sup>80</sup> This view is supported by many writers and has received judicial approval on a number of occasions.<sup>81</sup>



State practice reveals that the traditional concepts relating to the state of war doctrine still form a significant part of international law. For example, when Siam applied for admission to the UN, France's objections thereto were based upon the continuation of a state of war between the two countries resulting from Siam's aggression in Indo-China<sup>22</sup>. Furthermore, at one stage Greece considered itself technically in a state of war with Albania, a ground which was accepted by the International Court in the Corfu Channel Case as justifying certain measures Albania could have taken in respect of the passage through the Channel <sup>23</sup>. Some Allied Powers considered themselves in a state of war with Japan for a number of years after its surrender.<sup>24</sup>

Also, this view was held by national courts. The United Arab Republics Prize Court affirmed the existence of a state of war despite the armistice agreement as long as there existed "the need to be in a permanent defensive position so that the Arab states can preserve their existence, independence and security."<sup>25</sup>

On the other hand, some scholars support Israel in holding that the belligerency between the parties concerned was terminated by the conclusion of the Armistice Agreement of 1949. The following reasons have been advanced.

First, the question of the nature of the Armistice Agreements and their effect upon the state of war between Israel and the Arab States was debated before the Security Council in 1951 when Israel complained to the Security Council against the restrictions imposed by Egypt upon the passage of Israeli ships in the Suez Canal. Both Egypt and Israel expressed their own view on the issue. On September 1, 1951 the Security Council adopted a resolution which provided inter alia:

"that since the armistice regime, which has been in existence for nearly two and a half years, is of a permanent character, neither party can reasonably assert that it is actively a belligerent or requires that to exercise the right of visit, search and seizure for any legitimate purpose of self-defence."<sup>96</sup>

Thus, by rejecting the Egyptian claim of belligerent rights, the resolution has been construed by some authors as an authority for the legal proposition that the Armistice Agreements were a de facto termination of war and that belligerent rights were no longer available.<sup>97</sup> In contemporary practice, an armistice agreement may have the effect of terminating the legal status of war, particularly if the agreement was concluded for an indefinite duration. As is well-known, the Armistice Agreements between the Arabs and Israel were concluded for an indefinite duration, thus leading to a de facto state of peace<sup>98</sup>.

Moreover, it has been argued that the existence of a state of war can in no way be reconciled with the provisions of the Charter of the UN. In this respect Feinberg argued that "The provisions of Article 2, paragraph 4, prohibiting the use, or the threat, of force, are, of course, no guarantee against developments which might, in consequence of a breach of them, lead to hostilities between member states of the Organization, and even to military operations on a very wide scale. But it is impossible to maintain that, on the cessation of such hostilities (generally, by a cease-fire order of the Security Council), a State can lawfully argue that it is at war with the State with which it has been in conflict...The authors draw a distinction between a "state of war" accompanied by hostilities and one not so accompanied: the former, in



their opinion, is forbidden, the latter, permissible, under the Charter."<sup>29</sup>. Lastly, the Tel Aviv District Court declared that the war between Israel and Lebanon had been terminated not later than March 23, 1949<sup>30</sup>.

Another outcome of the 1948 War concerned the 1950 Arab Defence Pact. By 1950, the lessons learned from the Arab defeat in the 1948 war brought about the conclusion of the Arab Joint Defence and Economic Cooperation Treaty. The Treaty established an Arab system for collective self defence to replace the system provided by Article 6 of the League's Charter.<sup>31</sup>

The final outcome was the Arab economic boycott. In 1951, a central boycott office, with headquarters in Damascus, was established to implement the League's policy and the boycott programme. The boycott principles and detailed regulations, which were drafted by the directors of regional offices and members of the central boycott office, were approved by the League's Council. It was called "the unified law" and was subsequently approved by the legislative authorities in each Arab State. The boycott legislation provided a number of principles: all natural and legal persons were prevented from entering into transactions with any persons or firms resident in Israel, or of Israeli nationality, or acting on behalf of or in the interest of Israel, if the object of these transactions was commercial, financial or any other kind of dealings. The entry or exchange of, or commerce in any goods, products or intangible property of Israel was prohibited. Any person who was proved to be dealing with Israel and violating these rules would be punished. The penalties ranged from a fine to imprisonment.



Transaction<sup>S</sup> with the foreign companies dealing with Israel would be banned in certain circumstances.<sup>92</sup>

In relation to foreign banks, they would be banned if they give loans to Israeli firms or institutions in a way that enabled them to carry out major projects. Moreover, they were not allowed to establish firms or companies in Israel. The principles of the boycott may be changed and altered to coincide with the interests of the Arab cause. The regulations of the boycott cannot be applied unless an approach is made to the companies — to enquire about their relations with Israel, and to allow them to comply with the boycott regulations.

On July 23, 1952, Gamal Abdel-Nasser, seized control of the Egyptian government in a bloodless military coup. His hatred for the British was announced in his speeches, as he regarded Britain<sup>AS</sup> responsible for the establishment of the Jewish state in Palestine and for occupying Egyptian territories for seventy-two years.<sup>93</sup>

After seizing power, Nasser's aim was to liquidate the British occupation in and outside Egypt. The Egyptian government encouraged liberation movements against the British in the Arabian Gulf and Africa. Nasser rejected the idea of linking the Middle East with Western defensive organizations, such as the organization of <sup>the</sup> Baghdad Pact which was sponsored by the British. He nationalized the Suez Canal Company. The British government owned a controlling interest in the company's shares, a quarter of British imports passed through the Canal, and a third of the ships using the waterway were British.

France had its own reasons for disliking the new government in Egypt. All the liberation movements against France in North Africa had been encouraged by Nasser. He was the main supplier of weapons to the

Algerian revolutionary movement. During a meeting in Cairo, on March 14, 1956, Nasser assured <sup>fr</sup> French Foreign Minister that Egypt would refrain from supporting Algerian independence but <sup>it</sup> he did not. The second state after Britain to be affected by the Suez Canal nationalization was France. For Nasser, France had been regarded as an enemy since it occupied Arab territories and supplied Israel with modern weapons.

As for Israel, Israeli territory was subject to guerrilla raids by the "fedaiyen" movement, organised by the Egyptian government. It has been said that there was no specific provision in the Armistice Agreement of 1949 between Egypt and Israel committing Egypt to prevent such raids. Moreover, the Gulf of Aqaba had been blocked to Israeli navigation in the Red Sea, and no goods for Israel were allowed to pass through the Suez Canal. Israel was also worried about the growing influence of Nasser's policy in the Arab world, as the leadership of the Arab world was clearly shifting to him. On February, 28, 1955, Israel launched an attack on Gaza that led to the killing of thirty eight Egyptian officers and men. Egypt retaliated with guerrilla raids. Nasser turned to the Eastern bloc for weapons, since he considered that attack as the turning point in his policy toward Israel.

In order to finance his great economic project, the Aswan High Dam, Nasser nationalized the Suez Canal on July 26, 1956 to use its revenues to finance the dam project. The British government, in response, decided to take military action against Egypt to seize the Suez Canal. France and Israel had agreed to take part in that action.

At this point, it is worth mentioning that the decision of the British and French governments to intervene militarily in Egypt was not justified under international law. According to Henkin, lawyers told



Eden that force would be illegal even as a last resort.<sup>94</sup> In the House of Lords, on September 12, 1956, Lord MacNair, a leading British international lawyer, said that "as far as the events in the present controversy up to date are known to us, I am unable to see the legal justification of the threat or use of armed forces against Egypt in order to impose a solution of this dispute."<sup>95</sup>

The war plan agreed by the three was that Israel would attack the Egyptian boundaries in Sinai Peninsula, then a joint British and French military force would invade Egypt and seize the area of Suez Canal to guarantee international navigation. The military intervention had several aims: to control the Suez Canal navigation by the British so they could regain their prestige in the Arab world; to destroy the leadership of Nasser who helped liberation movements against the British and French; to link the new Egyptian government which would replace Nasser with Western collective defence, an idea that was rejected by Nasser.

On October 29, 1956, Israel, supported by a modern French army attacked Sinai. According to Defence Minister Dayan, "the purpose of the campaign was to wipe out the Egyptian army in Sinai, to destroy the "Fedaielen" bases in Gaza and to open up the Straits of Tiran."<sup>96</sup> Yet, when Israeli forces occupied Sinai, after the withdrawal of the Egyptian army to counter the Anglo-French attack, Ben Gurion, Israel's premier, said that "Sinai has been liberated by the Israeli army", and he regarded Sinai as a part of the homeland which had been occupied by the invader.<sup>97</sup>

On the day after the Israeli attack, the Anglo-French military invasion started. The city of Port Said was occupied and the forces



began marching in order to seize all the Canal area. All Egyptian airfields were bombed, the Egyptian army could not sustain fighting against the forces of two major powers, and it was reduced to launching guerilla attacks.

On November 2, 1956, the UN General Assembly adopted Resolution 997 whereby it called for an immediate cease-fire and withdrawal of all occupying forces from Egyptian territory. On November 4, a resolution to create a United Nations Emergency Force, which would separate the combatants along the Suez Canal and elsewhere in Sinai, was adopted by the General Assembly.<sup>99</sup> Eventually, the British and the French forces withdrew from Egypt under the pressure of the two superpowers, particularly the direct pressure exerted by the US on the British government and Israel, whose forces had evacuated Sinai after the agreement that the UN forces would stay in Sharm-El-Sheikh to guarantee Israeli navigation in the Red Sea. Moreover, Egypt undertook to prevent guerilla actions against Israel from Egyptian territories and the Gaza strip.

The outcome of the 1956 war was that Israel at the cost of 180 killed and 4 captured had succeeded in opening the Aqaba Gulf for Israeli navigation and preventing guerrilla raids from Egyptian territory. It failed to destroy the whole of the Egyptian army, and did not topple the Nasser government. Moreover, the Suez Canal was still blocked to Israeli navigation or cargo. On the Egyptian side, 2000 soldiers were killed and 6000 were captured. Although defeated in battle, it was widely recognized that Nasser had won the war politically. His struggle during the Suez crisis made him a hero before his nation and his leadership in the Arab world was enhanced.

Another outcome of this war was that the episode served to push Egypt further into the adoption of an extreme hardline policy against Israel. Under any criterion, the Israeli aggression was regarded as a violation of the provisions of the 1949 Armistice Agreement. It was also contrary to international law and the Israeli obligations as a member of the United Nations. Consequently, Egypt expanded its economic war against Israel through the policy of economic sanctions imposed by the Arab League.

Another notable outcome was the failure of the Arab League and its Defence Pact vis-a-vis the attack on Egypt, and the League's role during the Suez War was of mere political nature. Despite the fact that the League's Council adopted several resolutions whereby it announced its full support for Egypt's struggle, nevertheless the League's role was neither decisive nor influential. In fact, it was undermined by the lack of any form of Arab military support for Egypt and the lack of a unified and strong Arab political stand alongside Egypt. One must admit that the Arab League system for collective self-defence failed for the second time to repel Israeli aggression. At this point, it is worth mentioning that the main factor behind the failure of the League during this period was internal differences within the League.<sup>99</sup>

The period following the 1956 war was one of comparative quiet in the Israeli-Egyptian borders both along the Gaza Strip and in Sinai. This was largely due to the presence of UN forces (UNEF) in the area. In the meantime, Arab states were preoccupied with internal local crises, e.g., the crisis in Lebanon in 1958, the Syrian-Jordanian crisis in the 1960s, and the Yemen crisis since 1961. 100



Nevertheless, an examination of Arab League policy during the period 1964-1967 would suggest that the strategy adopted by the League had opened the door to Israel to initiate her aggression on June 5, 1967. On the political side, the Arab League's first summit (1964), in reaction to the Israeli project to divert the River Jordan, established an authority for the implementation of an Arab counter-project for the exploitation of the Jordan's waters.<sup>101</sup> They regarded Israel as the most dangerous threat to Arab security. This attitude was confirmed by the resolutions of the second summit which was held also in Egypt (Alexandria) in the same year (1964).<sup>102</sup> During their third summit (1965) in Morocco, the Arab heads of states decided upon a specific plan to liberate Palestine and it had also been agreed to use diplomatic strategy to raise the Palestinian question in the United Nations.<sup>103</sup> In sum, the League's political strategy was characterized by its severe hostility towards Israel. On the military side, the first summit meeting decided to establish a unified Arab military command to defend Arab territories against any threat by Israel, and earmarked £154 million for this purpose. In his speech before the second summit (1964), the commander of the unified Arab force stated that the eastern front comprising Syria, Jordan, and Lebanon could not in its present condition stand up to an Israeli attack, and should be furnished with armies and facilities. The build-up of that front, it was estimated, needed a period of at least three years. At the end of the meeting, he was requested to prepare an Arab military plan to face Israel.<sup>104</sup>

By June, 1, 1967, two military joint-defence agreements were signed between Egypt and both Syria and Jordan. An Egyptian military officer was sent to Jordan as the commander of the Arab eastern front. Some



Arab states sent military forces to Egypt (e.g., Algeria and Kuwait). There was also full collaboration between Egypt and the Arab states within the framework of the Arab League. <sup>105</sup>

The 1967 War had several causes. In reaction to an Israeli irrigation project that would affect the water reaching Jordan, the Arab League decided to finance a project to divert the course of the Rivers Letani and Banias to prevent their waters from reaching Israel. Israel attacked the engineers working in the Arab project and their equipment was destroyed. <sup>106</sup>

At that time, the military wing of the PLO was launching intensive guerilla attacks on Israel from Syrian territory. Israel claimed that Syrian soldiers took part in this military action. Its aeroplanes retaliated by attacking Syrian territory and Israeli military forces gathered at the Syrian border. <sup>107</sup> The leaders of Israel threatened to launch preemptive attacks to prevent guerilla raids and to secure its borders. <sup>108</sup>

Egypt, [on the other hand], which had a mutual defence agreement with Syria, threatened that it was going to intervene under this agreement if Israel launched attacks on Syria. Both Egypt and Syria were also parties to the Arab Defence Pact. <sup>109</sup> In May 1967, Egypt took three steps which were regarded as the direct reason for the war: the blocking of the Aqaba Gulf to Israeli navigation, the removal of UNEF from Egypt at its request and the deployment of large numbers of Egypt forces in Sinai. <sup>110</sup> From an Israeli official viewpoint, these Egyptian measures, as well as the Arab leaders' threats to destroy Israel, were regarded as legal justification giving Israel the right to exercise anticipatory self-defence under Article 51 of the Charter. <sup>111</sup>

On the morning of June 5, 1967, Israeli bombers began to attack Egyptian airfields, destroying aircraft on the ground and putting runways out of action. In less than three hours 300 out of 340 Egyptian aircraft, representing almost all of the Egyptian air force were destroyed, mostly on the ground. Within half an hour of the beginning of the airstrikes, Israeli ground forces launched an offensive against Egyptian positions in the Gaza Strip and the Sinai Peninsula, and within days reached the eastern bank of the Suez Canal.

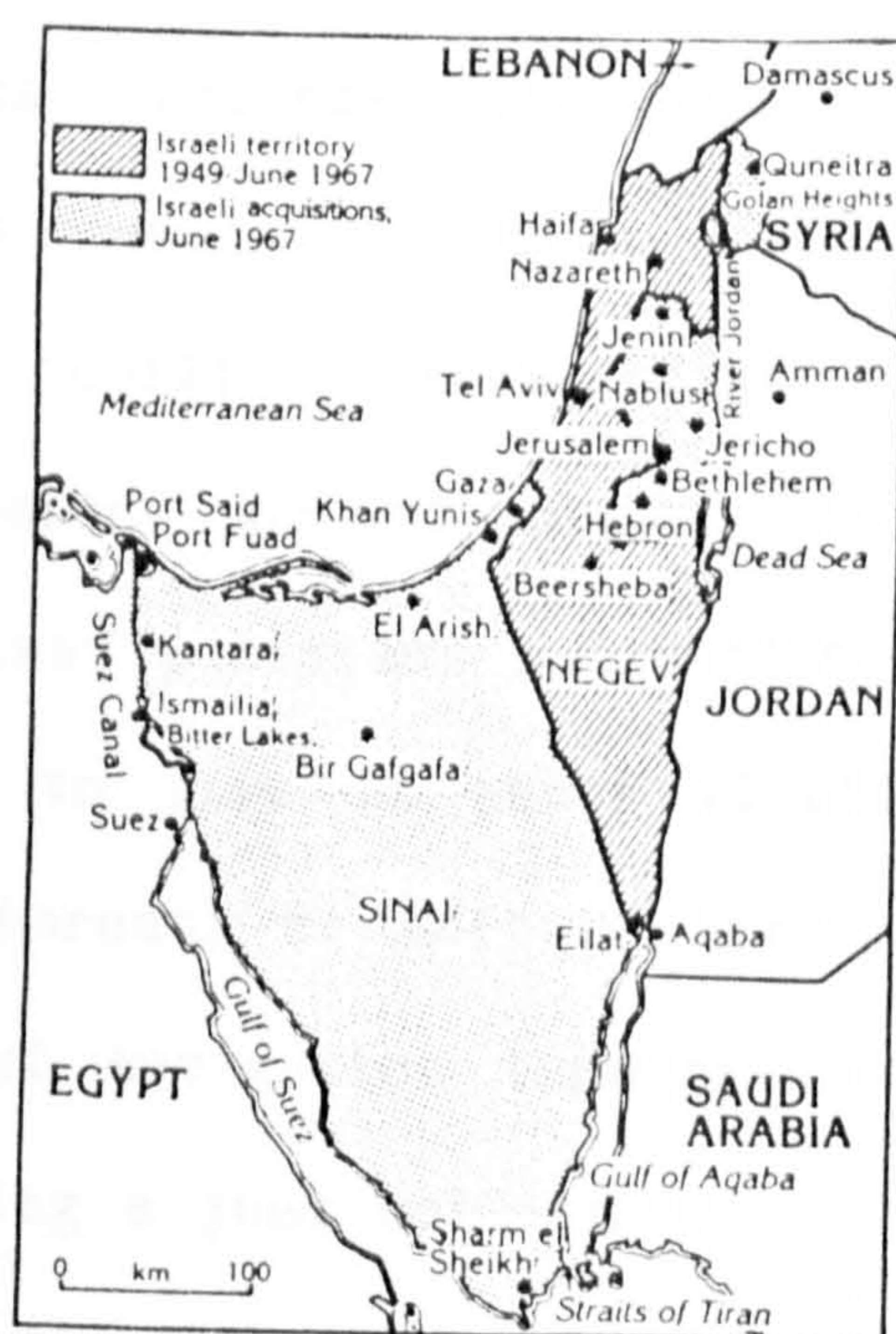
The Israeli airstrike on June 5 was not confined to Egypt. Having destroyed the Egyptian air force, the Israeli aircraft attacked Syrian and Jordanian airfields before noon and a number of aircraft on the ground. At the same time Israeli ground forces invaded Syria and Jordan. Within six days Israel occupied the whole of the Sinai Peninsula, the Old City of Jerusalem, the West Bank, the Gaza Strip, and the Golan Heights.<sup>112</sup>

So far as the legality of this war is concerned, there has never been a consensus of opinion as to whether or not Israel was legally permitted under international law to launch such an attack. Israel and its supporters claimed that, in the circumstances, the attack was in accordance with the right to exercise anticipatory self-defense. Egypt, supported by many states, held that the Israeli attack was a deliberate aggression. In Egypt's view, its measures taken in Sinai were to reinforce its defensive position against, rather than to attack, Israel. Moreover, Egypt had informed the UN that it would not launch any attack against Israel.<sup>113</sup>

From the Israeli perspective, the outcome of the war was amazing. By the end of the war it was in control of the whole of the former



territory of Palestine under the Mandate, the Golan Heights in Syria and the Sinai. The Gulf of Aqaba was opened for Israeli navigation. For the first time in history, Israel achieved a decisive victory against Egypt as well as other Arab states. Israeli writers began to write of Israel as an empire. In fact, the real outcome for Israel in this war was that the priorities for Arab countries had changed, the liberation of all Palestine being replaced by the liberation of the occupied territories.



Map 4 The Arab-Israeli boundaries after 1967

From 1967 onward the Arabs had to forget about the 1949 Armistice borders and the UN partition resolution of 1947, and to concentrate on the restoration of the lands occupied in 1967.<sup>114</sup> For the Egyptians, the war ended in tragedy. One result of the fighting was the death of 20,000 men, as well as thousands of wounded. President Nasser resigned, and Marshal Amer, the higher military commander, committed suicide. Nasser, however, reconsidered his resignation under public pressure.



Now Egypt's main concern was to liberate Sinai, either by peace or by war.<sup>115</sup>

At the UN, the Security Council, four months from the conclusion of the June war, agreed on a peace formula based on the idea of "land for peace", i.e., the Arabs would exchange their lands occupied in 1967 in return for peace with Israel. This formula was included in Security Council Resolution 242 adopted on November 22, 1967. The operative paragraph of the resolution called for the establishment of a just and lasting peace which requires the application of the following principles: (1) Withdrawal of Israeli armed forces from territories occupied in the recent conflict; (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. The necessity for guaranteeing freedom of navigation through international waterways in the area, for achieving a just settlement for the refugee problem and for guaranteeing the territorial inviolability and political independence of every state in the area, through measures including the establishment of demilitarized zones."<sup>116</sup>

In spite of much criticism directed at Resolution 242, both on political and legal grounds, it has not been improved upon <sup>by</sup> any later Security Council resolutions. It represented, and still represents, the only resolution accepted by nearly all the parties in the Middle East, including the PLO which accepted it in 1988,<sup>117</sup> as well as the superpowers. The resolution was reaffirmed in Security Council Resolution 338 of 1973. It is widely recognized that "The principles

formulated in the resolution are legally sound and have a permanent value and relevance to the Near East situation."<sup>118</sup>

In the wake of the 1967 War, the role played by the Arab League was of great significance as it sought to deprive Israel of gaining an overwhelming victory. On August 29, 1967, the Arab heads of governments held their fourth meeting in Khartoum to consider the consequences of the defeat and to lay down the League's strategy to face the situation. The League's policy, as laid by the Khartoum conference can be described along the following main lines:

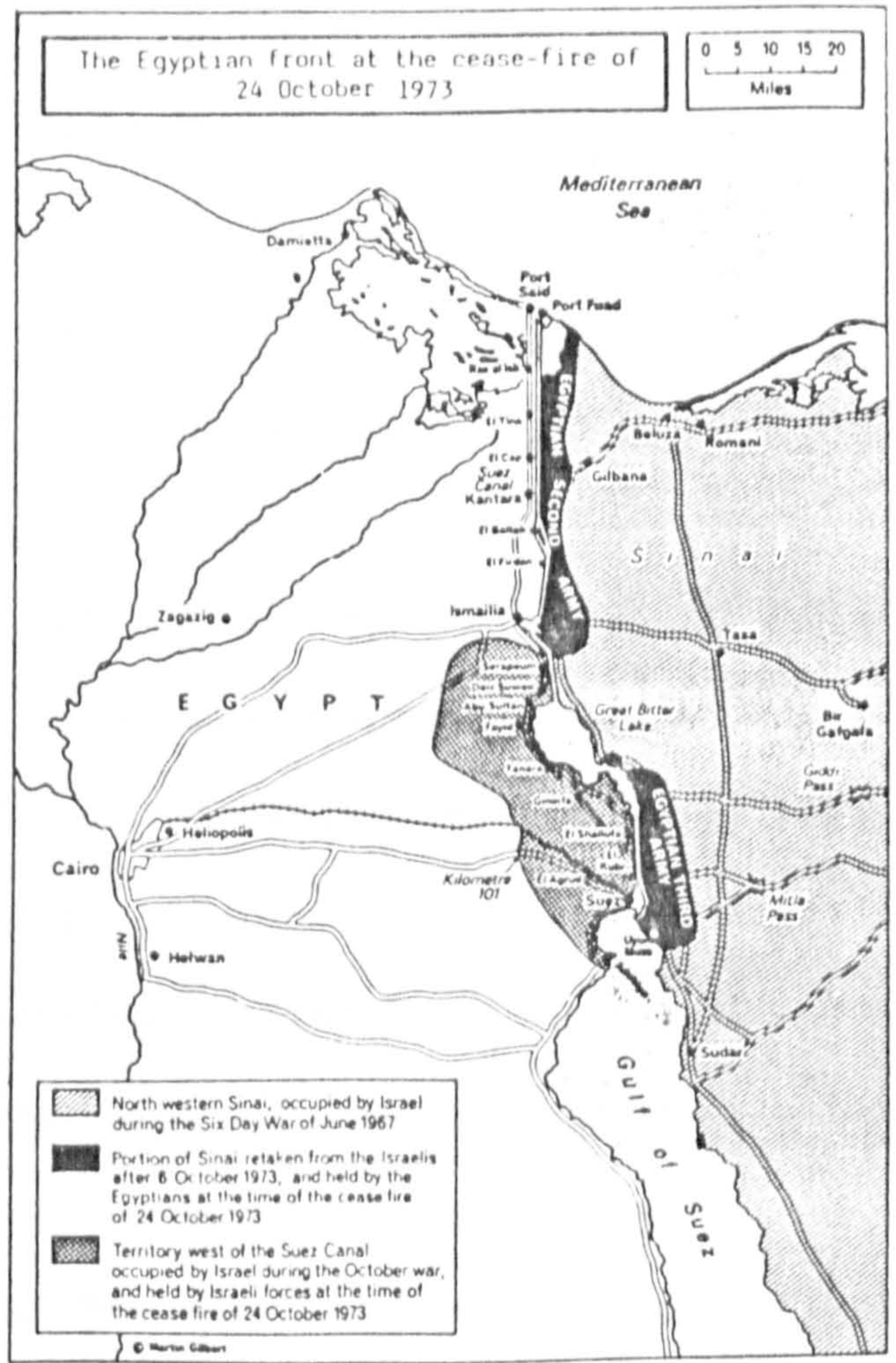
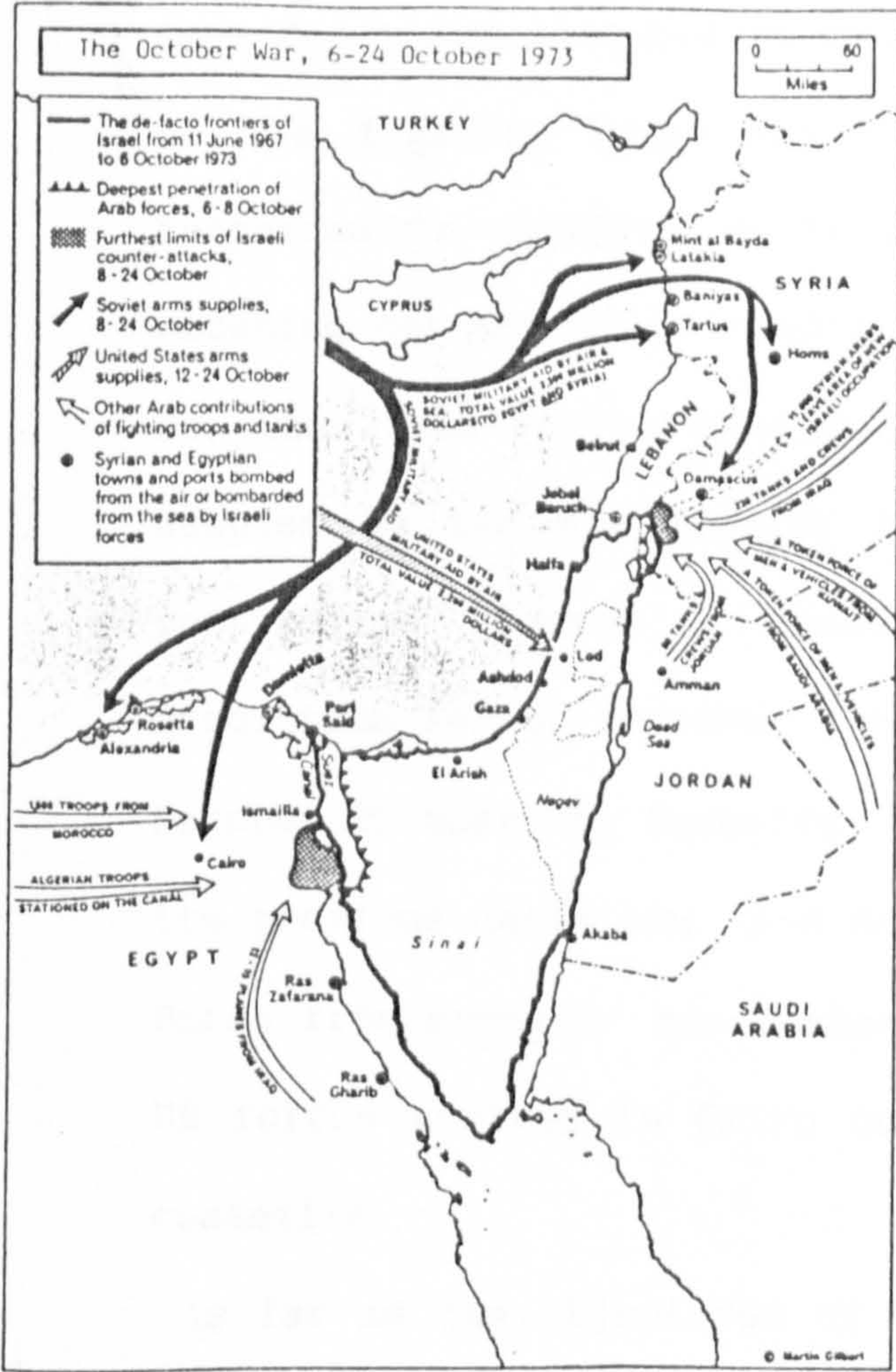
- The frontline states were to obtain regular financial support to continue the struggle against Israel;
- There would be no recognition of Israel, no negotiations, and no peace with Israel until its withdrawal from the Arab occupied lands;
- The Arab oil states were to consider an oil embargo on the states supporting Israel."<sup>119</sup>

The main outcome of this policy was that Egypt was compensated for its heavy losses and was able to rebuild its military forces. Further, according to an Israeli historian, "...the Khartoum Declaration was the first serious warning to the Israelis that their expectation of an imminent phone call from the Arab world (declaring surrender) might be a pipe dream."<sup>120</sup>

After six years of uneasy peace the fourth Arab Israeli war broke out on October 6, 1973, when Egyptian and Syrian forces launched major offensives across the Suez and the Golan front respectively, choosing the day of atonement (Yom Kippur), the holiest day in the Jewish year, to do so and thereby taking the Israeli forces by surprise.



# Cease Fire of 24 October 1973





The first days of the war witnessed Egyptian victories when the Egyptians destroyed all the Israeli positions on the other side of the Suez Canal and occupied 10 miles of the west bank. However, by the end of the fighting Egypt had large casualties when the Israeli forces succeeded in penetrating through to the east bank of the canal and occupying certain areas there.<sup>121</sup> The war lasted from October 6 until 22, when both the parties announced their acceptance of Resolution 338, adopted by the UN Security Council. The resolution invited all the parties to observe a ceasefire and called on them to implement Resolution 242 of November 1967.<sup>122</sup> The ceasefire came into effect on October 25 when the Security Council adopted Resolution 340, reiterating its previous decisions and deciding on the formation of a UN Emergency Force from amongst non-members countries of the Security Council. The UN forces arrived in Cairo on October 27, and helped to establish the ceasefire.

As far as the objectives of the war are is concerned, it is important to emphasize that the war launched by the Egyptians did not aim to gain territory. According to Egyptian sources, the main aim of the operation was to restore the Egyptian army's confidence and to destroy the concept of Israeli security by launching a limited, but successful, military operation.<sup>123</sup> Another objective was to reactivate the issue politically, by showing that the entry of both Egypt and Syria in the war after more than six years of Israeli occupation was ample proof that the Arab countries would not accept the fait accompli that Israel wanted to impose.<sup>124</sup>

From Egypt's perspective, the outcome of the war was successful. By the end of the war the Egyptian army had established itself along much of

the eastern bank of the Canal north of Ismailia, and had liberated a narrow strip of Sinai varying from three to ten miles in width in different sectors and amounting to some 500 square miles of territory. For the first time in the Egyptian-Israeli wars, the Israelis suffered heavy casualties at the hands of the Egyptians. This military success, though eventually negated by the Israeli achievements by the end of the war, has been recognized by several military experts, including Israelis.<sup>125</sup>

As regards the Israelis, despite their successful counter-offensives across the Suez Canal giving them control of about 500 square miles of Egyptian territory west of the Suez Canal, they lost more than two thousand dead and over three thousand wounded with a high portion of officers among the casualties. This was a painful attrition for them. Besides, the Israeli army lost its reputation as being invincible, and a number of its military leaders were dismissed or suspended after the war.<sup>126</sup>

Neither the United States nor the Soviet Union would allow the complete defeat of its allies in the war. As Kissinger said, : "we can't allow a Soviet-supported operation to succeed against an American-supported operation. If it does, our credibility everywhere is severely shaken."<sup>127</sup> A survey of the course of events during the war reveals that the US policy was in line with this view. After the success of the Egyptian military operations for a ten-day period, the US threw its weight behind Israel behind Israel by its airlift and military pictures by satellites in order to defeat the Egyptians. Similarly, the Soviets made clear that they would no longer permit the Arabs to suffer a decisive defeat on the battlefield. By the end of the war



the Soviet Union interfered and put all its weight in imposing a ceasefire to stop a victory by Israel. It was ready to send Soviet troops to fight in the Middle East to impose the Security Council decision.<sup>129</sup>

Thus, bearing in mind the fact that warfare had failed to bring a settlement or to guarantee Israeli security, and the fact that the States involved could not conduct their preferred foreign policy because of the superpowers' desire to maintain their policy of detente, both Egypt and Israel had realized that a new era had begun, an era during which all problems had to be resolved by negotiation rather than war.

This realisation opened the way for the Geneva Peace Conference of December 1973,<sup>129</sup> and later for the conclusion of two agreements for disengagement of forces between Egypt and Israel. The first was signed on January 18, 1974 and provided only for limitation of forces and the establishment of buffer-zones. On September 4, 1975, after intensive US peace efforts, Egypt and Israel concluded a second agreement providing for a limited Israeli withdrawal from Sinai.<sup>130</sup>

The success of the League in influencing the attitude of Western policy-makers towards the Arabs was the result of two important factors. The Arab oil embargo threatened the European economy which imported 90 percent of its oil needs from the Middle East. European economic interests in the Arab world led to the establishment of an Euro-Arab Committee in 1974 to negotiate cooperation between the Arab League states and the EEC states.<sup>131</sup>

The Arab Oil Embargo During And After The War Of 1973

This policy was one of the important components and features of the League's policy during this period, and it gave rise to a lot of controversy. Using Arab oil as a political weapon in the pursuit of the Arab states' interests had been considered shortly before the outbreak of the 1973 War, when officials of Saudi Arabia revealed plans to check the increase of their crude oil production if the United States did not take a more impartial position in the Middle East.<sup>132</sup> The general objective of Arab oil policy was to gain the world's attention for the justice of the Arab cause. Among the objectives of this policy were to encourage the majority of world states to sever diplomatic relations with Israel in order to isolate her in international society; to put pressure on the United States to reduce her support for Israel; and to influence Israel to withdraw from the Arab occupied territories.<sup>133</sup>

In applying this policy, the Arab states, as a point of departure, considered the United States <sup>as</sup> the principal and foremost source of Israeli power. Because of the fact that the production of oil beyond certain limits did not make economic sense for many Arab states, unchecked production was therefore an economic sacrifice that could be interpreted as a political favour to the consuming countries. The latter, instead of responding positively to such a favour, tended to support Israel or at least ignore Arab legal rights. Consequently, the consuming countries were classified into three categories: friendly, neutral and "supporting the enemy." Any state that supported or took some measures to support Arab rights was to be treated as a friendly state that should receive the same oil supply as prior to the embargo. Neutral states would be subject to the increasing cutback in oil



supplies. Those states supporting Israel would be subject to a total oil embargo. The decrease of the supplies provided to the various consuming states, and the embargo imposed on other states, may be altered proportionately to their support for, and cooperation with, Israel. This meant that a state classified as supporting the enemy may be classified as a friendly state if it changed its foreign policy.<sup>134</sup>

The reasons for the importance of Arab oil resources to the world economy are well known. Saudi Arabia alone is thought to possess one quarter of the world's known oil resources and is the world's largest exporter. Numerous big industrial countries are dependent upon oil. Japan, which is nearly 100 percent dependent upon oil imports, obtains some 88 percent of its oil from the Arab states and Iran. Western European states depend on the Middle East for some 73 percent of their oil imports.<sup>135</sup> It is widely recognized that the maintenance of stable trade relations in Western countries for wealth, well-being, and overall power, including the power to maintain their national defences and security, rely on the imported oil.<sup>136</sup>

Turning to the outcome of this policy, it is widely recognized that it achieved considerable success. Perhaps it was the main factor behind the change of the United States peace strategy in the Middle East. President Carter admitted that the oil crisis in the USA in 1973 was behind his efforts that led to the Peace Treaty between Egypt and Israel in 1979.<sup>137</sup> Arab diplomatic efforts to isolate Israel and to obtain the support of international society were enhanced by this policy. The increase of the oil prices doubled the national incomes of the Arab oil

countries, which enabled them to support the economies of the confronting states.<sup>138</sup>

It has been argued that the Arab League oil policy was illegal under the rules of international law and the UN Charter. This policy, in the view of some writers, was a weapon for blackmailing the West and a threat to international peace.<sup>139</sup> Yet, from an Arab standpoint, this was not true. According to Arab writers, the policy was employed as an instrument for the respect and promotion of the rule of law in an area of international relations where such a rule has long been ignored for the rule of superior military force.<sup>140</sup> Consequently, the measures were not taken to weaken unfriendly countries, but merely to dissuade them from continuing their encouragement of an illegal situation. And the Arab states have the legal right, under the rules of international law, to use their natural sources in a manner which suits their legitimate rights.<sup>141</sup>

#### SADAT'S VISIT TO JERUSALEM

On November 9, 1977, Sadat declared in a speech at the People's Assembly in Cairo that for the sake of peace he was ready to go to Jerusalem. In his words, "I am willing to go to Geneva, nay to the end of the world. In fact I know that Israel will be astounded when I say that I am to go to their very home, to the Knesset, to debate with them."<sup>142</sup>

An invitation from Begin arrived on November 9, and an official spokesman in Cairo announced that Sadat accepted the invitation and would proceed to Israel on November 19 in accordance with the invitation which he received from Begin through the US embassy.<sup>143</sup>



In his speech to the Knesset on November 19, Sadat spelled out in very blunt terms what the Arabs considered the fundamental requirements for a just and durable peace in the Middle East. He made it abundantly clear that he was seeking a comprehensive peace and not a separate peace with Israel. He presented the elements of Egypt's peace plan in the following terms:

- the termination of the Israeli occupation of the Arab territories occupied since 1967, including Jerusalem;
- the realization of the inalienable rights of the Palestinian people and their right to self determination including the right to establish their own state;
- the right of all states in the area to live within secure boundaries, based on the security of international borders established through agreed-upon arrangements and international guarantees;
- the commitment by all states in the area to conduct their relations among themselves according to the purposes and principles of the UN Charter, in particular the peaceful settlement of disputes and the abstention from the threat or use of force;
- the termination of all states of belligerency in the area.<sup>144</sup>

Reaction to the visit varied. While the Americans and most of the Western World welcomed this visit and considered it as one of the most dramatic events in modern history, in parts of the Middle East the reaction was just the opposite. Syria denounced the visit and considered it as a violation of all previous Arab agreements; it also broke its diplomatic relations with Egypt. Some officials in the Syrian, Libyan and Iraqi governments called for Sadat's assassination. Iraq proposed an Arab mini-summit composed of the presidents of Syria,

Algeria, Libya, South Yemen and the PLO to form a rejectionist front against the Sadat initiative.<sup>145</sup>

Turning to the outcome of the visit, it is clear that it ended without achieving any agreement on the crucial issues of the Arab-Israeli conflict. On the other hand, the visit made Sadat very vulnerable because of Arab accusations that he would seek only a bilateral agreement with Israel, thus abandoning the Palestinian cause merely to get back the Sinai.<sup>146</sup>

On December 24, 1977, Begin arrived in Ismaelia, Egypt, with a peace project which included a proposal for an agreement on Sinai and another for establishing self-rule (autonomy) in the West Bank and Gaza. So far as the proposal on Sinai is concerned, its main outlines were described by Dayan in the following terms:

"On demilitarization, Egyptian forces were not to move beyond the Milla-Gidi line, and the strip of territory between that line and the Canal was to continue to be subject to the existing Reduction of Forces Agreement reached after the Yom Kippur War. Israeli civilian settlements were to remain, and to be under Israeli administration and jurisdiction. Israeli forces would be responsible for their defence. There was to be a transitional period of several years during which Israeli forces would fall back to a line in central Sinai, and maintain their air bases and early warning installations until their final withdrawal to the international frontier. Freedom of shipping through the Straits of Tiran would be ensured and supervised, either by a UN force, or by joint Egypt-Israel units- if by a UN force, it could not be removed except by agreement of the two parties and a unanimous Security Council decision. The Straits of Tiran and the Gulf of Eilat, to which



it gives entry, should be recognized by the two countries, in a special declaration, as an international waterway open to all vessels under all flags."<sup>147</sup>

As to the Palestinianians, Begin submitted a plan for the West Bank and Gaza which he described in biblical language as Judea and Samaria. The plan envisaged limited autonomy for Arab residents without statehood. Security and maintenance of public order would remain in Israel's hands. Also, the Israelis would have power to buy and to settle in the occupied territories. As to the future of the area, the plan indicated that Israel maintained its right and its claim of sovereignty over the area, but in view of the existence of other claims, it proposed that the question of sovereignty remain open.<sup>148</sup>

After the talks, at the press conference held on December 26, Begin declared that Resolution 242 did not require a total Israeli withdrawal from the occupied territories. Thus, no successful outcome resulted from the meeting. As Riad observed, "The meeting ended without achieving anything beside the formation of two committees: one political, at the level of Ministers of Foreign Affairs in the two countries, and the other military, at the level of the Ministers of Defence. The possibility of a Geneva conference was therefore completely undermined."<sup>149</sup>

In 1978, the Joint Israeli-Egyptian Committees convened several times but they failed to achieve agreement.<sup>150</sup> When Carter became aware of the failure of these Committees, he decided that the Americans had to play a leading role in the peace negotiations. He wrote:

"Sadat's visit to Jerusalem had broken the Arab shell which had been built to isolate Israel, and there were a few exploratory talks between

the Israelis and Egyptians. However, it was becoming obvious that Sadat and Begin alone could not go very far in resolving the basic problems that had not been touched—the Palestinian issue, the withdrawal of Israeli forces from occupied territory, Israeli security, or the definition of a real peace...the process was breaking down again, and both Sadat and other Arab leaders, even including Assad, informed me that it remained necessary for the United States to continue playing a leading role in resolving the basic Middle East questions."<sup>151</sup>

On January 3, 1978, President Carter, upon his arrival in Aswan for a short visit, issued a statement indicating the US position on the principles upon which an ultimate agreement would be based. The statement included some carefully crafted phrases about the Palestinian question:

"First, true peace must be based on normal relations among the parties to the peace. Peace means more than just an end to belligerency.

Second, there must be withdrawal by Israel from territories occupied in 1967 and agreement on secure and recognized borders for all parties in the context of normal and peaceful relations.

Third, there must be a resolution of the Palestinian problem in all its aspects. The solution must recognize the legitimate rights of the Palestinian people and enable the Palestinians to participate in the determination of their own future."<sup>152</sup>

On August 6 and 7, Secretary Vance went to Jerusalem and Alexandria to deliver the handwritten letters from Carter to Begin and Sadat inviting them to meet the President at Camp David, beginning on September 5, to negotiate a framework for peace in the Middle East. The two leaders accepted Carter's invitation.<sup>153</sup>



THE CAMP DAVID ACCORDS AND THE EGYPTIAN-ISRAELI PEACE TREATY

At Camp David, the delegations took some two weeks of intensive discussion from September 6 to arrive at an agreed peace formula which was mainly based on the Security Council Resolution 242. These talks resulted in the signature in Washington on September 17 of two framework agreements, one on an overall Middle East settlement and the other specifically on the conclusion of a peace treaty between Egypt and Israel within three months.

The first of the Camp David Agreements (or Accords) dealt in particular with the granting of what was termed "full autonomy" to the Palestinian Arab inhabitants in the West Bank and Gaza. The second of the Camp David Agreements provided for agreed principles to resolve the main issues of the Egyptian-Israeli conflict. It also provided that Egypt and Israel would seek to conclude, within three months, a full peace treaty.<sup>154</sup>

~~As a matter of fact,~~ the target date for an Egyptian-Israeli peace treaty could not be met because of disputes over some crucial issues. However, further US mediation efforts culminating in some Middle East shuttle diplomacy by President Carter on March 8 to 13, resulted in the signing of the first ever Arab-Israeli Peace Treaty in Washington on March 26, 1979.<sup>155</sup>

The Peace Treaty and its associated documents had been approved by the Knesset on March 22 by 95 to 11 (with two absentions, three not participating in the vote, and two absent).<sup>156</sup> In Egypt, the People's Assembly approved it on April 10 by 328 votes to 15 (with one absention and 16 absent). Also, it was approved by the electorate as a whole in a national referendum on April 19, 1979.<sup>157</sup>

The main provisions of the Camp David Accords and the 1979 Treaty will be extensively analysed in the following chapters. Suffice it at this stage to say that, while the Accords and the Treaty have satisfactorily resolved the main issues of the conflict between Egypt and Israel, they failed, however, to resolve the issues of Israeli withdrawal from the West Bank and Gaza, Palestinian self-determination and the future of East-Jerusalem.

Undoubtedly, the failure to resolve the main issues of the Palestinian problem was the principal reason for Arab condemnation of the Camp David Agreements. Even Arab moderate states, such as Saudi Arabia and Jordan, were disappointed by the Agreements. "To the Saudis and other moderate Arabs, the general framework document that emerged from the summit deliberations was at best a repackaged version of Begin's limited autonomy plan, with no promise of any fair expression of self-determination for the inhabitants of the conquered territories. Begin confirmed their suspicions in a speech in New York City immediately after Camp David that seemed to rule out any meaningful exercise of self-determination at the end of the agreed upon five-year transition period between the establishment of autonomy and the negotiation of a permanent status for the West Bank and Gaza."<sup>158</sup>

#### ARAB SANCTIONS AGAINST EGYPT

In response to the Camp David Accords, the Arab heads of state held a summit meeting in Baghdad (1978) to consider the results of the Accords. They announced that they rejected the Egyptian-Israeli plans for peace because they provided only for a partial settlement and not a comprehensive settlement. During this meeting the principles of the



League's policy towards the conflict, for nearly a decade, were restated.<sup>159</sup>

Among the resolutions of the Baghdad Summit, it had been agreed to warn Egypt not to sign a peace treaty with Israel. If it did so, it would be isolated in the Arab world, and several Arab sanctions would be imposed on it. However, on March 19, 1979 Egypt ignored this warning, and signed a Peace Treaty with Israel. Consequently, the League's Council held another emergency meeting on March 31, 1979 in Baghdad where it adopted resolutions which included a commitment to cut off all forms of economic and military assistance, both multilateral and bilateral. They also included diplomatic and political sanctions on Egypt.<sup>160</sup>

Among the political and diplomatic sanctions were: to withdraw Arab ambassadors from Egypt immediately and sever diplomatic ties within one month; to regard Egypt's membership in the League as suspended ; to suspend Egypt's membership in all other Arab specialist organizations; to transfer the League's seat from Cairo to Tunis ; and to work towards suspending Egypt's membership in the Islamic Conference Organization and in the Non-Aligned Countries Conference.<sup>161</sup>

Among the economic sanctions were to halt the granting of any loans, banking facilities or any kind of aid by Arab governments or their institutions to Egypt; to prohibit the granting of economic aid from all Arab institutions operating within the framework of the League; to impose an Arab oil embargo on Egypt ; and to apply the regulations of the boycott office in respect of any Egyptian firm or company dealing directly or indirectly with Israel.<sup>162</sup> Further, the resolutions called on the Arab governments to apply more economic measures against Egypt

since the measures resolved were regarded as "the minimum actions required for the confrontation of the Treaty." With regard to military measures, the Arabs ended their financing of Egypt's military purchases. Moreover, the military cooperation between Egypt and the Arab states was stopped since it was no longer in the Arab Defence Council and the Arab League. Furthermore, the Arab Organization for Industrialization (which was important to Egypt's military industry) was dissolved as Saudi Arabia and the United Arab Emirate withdrew from it.<sup>163</sup>

These measures were carried out by all the Arab states with the exception of three, Sudan, Oman and Somalia. Also, some Arab states had taken additional measures against Egypt which were not ordered by the League.<sup>164</sup>

A great deal of controversy has surrounded the question of the legality of the sanctions imposed by the League on Egypt. The Egyptian position has been that these sanctions are illegal. This viewpoint rests mainly upon the basis that the sanctions are inconsistent with the Pact of the Arab League. No mention whatsoever was made in the Pact of the League's right to impose sanctions of this nature, nor it could it be interpreted as allowing such sanctions by inference. On the other hand, it seems that the League's decision to impose sanctions on Egypt was based on the assumption that regional organizations are authorized under Article 53 of the Charter to impose sanctions, and that such a right was exercised by international organizations on several occasions. A detailed examination of the legality of the sanctions, and whether resolution on the sanctions was ultra vires in the light of the League Pact and general principles of international law, is outside the scope of this



work. Yet, a brief mention of arguments for and against the legality of the sanctions could be useful and relevant.

In favour of the legality of this type of measures, it may be argued that Article 53 of the United Nations Charter stipulates that "no enforcement action shall be taken under regional arrangements or by regional agencies without the authorisation of the Security Council."<sup>166</sup> The interpretation given to the term "enforcement action," and whether it includes measures of a non-military nature, has mainly been dealt with before the UN in connection with the issue of imposition of sanctions by the OAS.<sup>166</sup>

The question was first raised in 1960 in the Dominican Case. Following a resolution by the OAS to apply diplomatic and economic sanctions against the Dominican Republic for its acts of intervention against Venezuela, the USSR requested a meeting of the Security Council to consider the question of authorising these measures taken by the OAS under Article 53. Its representative before the Council took the view that the Security Council was "the only organ empowered to authorise the application of enforcement action by regional organisation against any state."<sup>167</sup> The US representative, however, argued that the Security Council's authorisation was only required for the imposition of forcible measures, not for those of a mere diplomatic and economic nature. Since this latter kind of action could legitimately be taken by any state in exercise of its sovereignty, therefore Article 53 could be regarded as permitting the right of regional organisations to apply such measures.<sup>168</sup> Eventually, the Council seems to have accepted the US interpretation when it adopted a resolution whereby it "took note" that the sanctions were being employed on a regional basis.<sup>169</sup>

Again, in the Cuban Case of 1962, the question of the right of regional organisation to apply economic sanctions was debated before the Security Council. The OAS had expelled the Cuban Government from the regional system and imposed economic sanctions on it. Cuba thereupon requested the Council to seek an advisory opinion from the International Court of Justice on whether these sanctions were subject to Council approval.<sup>170</sup> In the debate, most of the members supported the opinion, based on the resolution on the Dominican Case, that non-military sanctions were permitted without authorisation of the Security Council. Eventually, the Council voted against submitting the question to the ICJ.<sup>171</sup>

The Dominican and Cuban cases suggest that the Arab League sanctions imposed against Egypt were permissible, and find a basis under the Charter provisions relating to regional arrangements as construed by the Security Council.

It may also be argued that the imposition of economic sanctions is not a new phenomenon in international relations. Apart from resorting to economic warfare in time of war, which has been widespread, it had been resorted to by states on various occasions since the beginning of this century, even in peacetime conditions. In 1909 Turkey imposed economic sanctions against the Greek Government by organizing a boycott of Greek goods. In China, the practice of economic boycott has almost been a national institution. In 1925, for example, as a result of disturbances in Shanghai in which a number of Chinese were killed, a boycott of British goods was initiated in China.<sup>172</sup> In the Netherlands, the embargo of strategic goods to such destinations as the Sino-Soviet was executed under an export prohibition law issued in 1935.<sup>173</sup> The practice



of states in this respect reflected a customary rule under which the institution of such measures has been accepted in international relations.

In contemporary inter-state relations the most obvious examples of regional sanctions, besides the sanctions authorized by the OAS which we mentioned above, are those carried out by the OAU against South Africa, Portugal, Rhodesia, and Israel. For instance, at the 1963 Addis Ababa Summit Conference the Organization of African Unity member states decided on the boycott of trade with Portugal and South Africa, the closure of African ports and airports to their shipping and aircraft, and the prohibition of the right of their aircraft to overfly the territories of African states.<sup>174</sup>

On the other hand, the viewpoint of the Egyptians was that the sanctions constituted an illegal act for a number of considerations. In the first place, it is well established that the League is a loose confederation in which the sovereignty of each state would be retained and no encroachment on the sovereignty of the members permitted<sup>175</sup>.

A review of the travaux préparatoires reveals that the question of the degree of sovereignty the states were prepared to surrender was among the main questions discussed by the Preparatory Committee. While only one state, Syria, was prepared to surrender its sovereignty, most Arab States preferred a formula whereby the complete sovereignty of each state would be retained. Eventually, the form of organization on which consensus could be reached was in the nature of a loose confederation that would not affect the sovereignty and independence of the member states.<sup>176</sup> Thus, it is not surprising that the provisions of the League's Pact included no explicit or implicit reference restricting

the conduct of the foreign policy of the members. Moreover, under Article 8 of the Pact, the members undertook to respect the system and policy of other governments and "pledge to abstain from any action calculated to change established systems of government." Article 9 of the Pact provides for the right of the members to conclude treaties with other states without any restriction.<sup>177</sup>

Finally, it may be argued that the question of the legality of the sanctions in the light of the principles of international law and the provisions of the UN Charter is controversial. According to one trend of opinion, "unless carried out as a sanction either imposed by the world organization or by the state itself as a reprisal against a prior illegal act, a boycott initiated by the state constitutes a weapon designed to damage the trade of another state for which the latter as subject to that damage may seek redress for legal injury."<sup>178</sup>

Apart from the problem of the legality of these sanctions, which is no longer of particular importance after Egypt's readmission to the Arab League in May 1988, it may be observed that perhaps the failure of Egypt to implement the "autonomy plan" or at least to gain concessions for the Palestinians during the autonomy negotiations with Israel could be mainly attributed to the weakness of Egypt's bargaining position after being banned in the Arab World.

### 1982-91

In April 25, 1982 Israel's withdrawal from all Egypt's occupied territories was completed in accordance with the 1979 Treaty. Israel returned the remainder of the Sinai Peninsula, including the oil fields and air bases, and dismantled its settlements. The year of 1982 marks a



turning point in the history of the Egyptian-Israeli conflict, not only because of Egypt's recovery of its territory, but because such withdrawal confirms Israel's intention as having no ambitions to remain or to annex Egypt's territory.

Moreover, the way in which the Taba dispute had been resolved is another clear example showing how Egypt and Israel implemented the Treaty in good faith. Taba is a small area in the boundaries which Israel refused to return to Egypt on the ground that it is not Egyptian land. Having failed to resolve the dispute by negotiation, Egypt notified the government of Israel of its request for international arbitration, and Israel agreed. Later, on September 29, 1988, the Award of the Egypt-Israel Arbitral tribunal declared its acceptance of Egypt's claim to the area. Consequently, the disputed area was returned to Egypt on March 15, 1989.<sup>179</sup>

On February 15, 1989 an "Agreement Regarding the Permanent Boundaries between Egypt and Israel" was signed.<sup>180</sup> The value of this Agreement cannot be underestimated. For the first time in Israel's history it has a defined and permanent international boundary with an Arab state. Moreover, by the conclusion of this agreement, the final territorial dispute between Egypt and Israel was satisfactorily resolved. Thus, one may be entitled to suppose that no more war is likely to occur between the two states, at least over territorial issues.

As to the Palestinian-Israeli conflict during this period, several writers believed that the 1979 Treaty changed the character of the conflict as well as the course of events in the area. According to William Quandt, "What<sup>ever</sup> one may think of the Camp David Accords and the Egyptian Israeli Peace Treaty, few would deny that they changed the

course of events in the Middle East. With Israel and the largest and most powerful Arab country at peace, the Arab-Israeli conflict and the Palestinian issue took on a fundamentally different character."<sup>101</sup> During this period, as President Carter observed, the Arabs, without Egypt, have been and are unlikely to initiate either "an effective peace or war with Israel."<sup>102</sup>

Turning to the important events during this period, one can cite, for example, the bombardment of an Iraqi nuclear reactor in June 1981; the application of Israeli law to the Golan Heights in December 1981; the Israeli invasion of Lebanon in June 1982 and the expulsion of the PLO from Lebanon during the invasion; the uprising of the Palestinian people in the West Bank and Gaza since 1987 (Intefada); the Declaration of the Palestinian state in November 1988 which was accompanied by the PLO's acceptance of Resolution 242; the return of Egypt to the Arab League in May 1989; and recently the Iraqi missiles attack on Israeli cities during the Gulf War of 1991.

By and large, these events are beyond the scope of this study. However, a brief mention must be made of three events that bear upon the Camp David process. The first of these is the expulsion of the PLO from Lebanon. In June 6, 1982, less than two months after its final withdrawal from Sinai, Israeli ground forces invaded Lebanon. It is widely recognized that the Israeli invasion had two main purposes, to destroy the PLO bases, and to establish a friendly regime in Lebanon. Within a few days Beirut was surrounded and, in the ten-week siege and bombardment, thousands were reported dead. Israel demanded the evacuation of the PLO forces. Because of the huge civilian losses, and the scale of destruction by Israeli forces surrounding Beirut, the PLO



agreed with the Lebanese government to pull out of Beirut subject to agreement on the conditions of withdrawal. Accordingly, after the arrival of the multinational force, the PLO withdrew its combatants to various Arab countries between August 21 and September 1, 1982. Eventually, Israel withdrew most of its armed forces from Lebanon on June 6, 1985, but retained what it described as a security zone all along its northern border which was twelve miles deep.<sup>183</sup> Before its withdrawal Israel concluded a Peace Agreement with Lebanon on May 17, 1983. However, in March 1984, the President of Lebanon announced the revocation of the Agreement.<sup>184</sup> The main outcome of the war was that by forcing the PLO forces out of Lebanon Palestinian military options had been significantly reduced, thus paving the way for the 1988 Declaration.

On November 12 to 15, 1988, in its 19th meeting in Algeria, the Palestinian National Council, acting as a parliament in exile for the Palestinians, proclaimed at the Council's final session on November 15 " the establishment of the State of Palestine on our Palestinian land."<sup>185</sup> Arafat's unilateral declaration of statehood followed a vote by the PNC for a new moderate political programme, endorsing, for the first time, UN Security Resolution 242 as a basis for a Middle East peace settlement. By December 1989 some 117 countries had recognized the new Palestinian State.<sup>186</sup> The Israeli government rejected the declaration of statehood claiming that the PLO continued to be committed to the destruction of Israel. From a legal perspective, the PLO's acceptance of Resolution 242 had removed the main obstacle preventing it from taking part in the Camp David peace process which is based on Resolution 242, particularly in the light of the fact that the new

political programme fulfilled the American conditions stipulated for holding talks with the PLO.<sup>187</sup>

It was not surprising that by 1989 most Arab states, for reasons related to the chain of events discussed earlier, as well as strategic and historic ones, had become convinced that the isolation of Egypt in the Arab World must be brought to an end. In fact, the process of Egypt's return to the Arab nation began early in 1984 when Jordan decided to resume full diplomatic ties with Egypt regardless of the Baghdad resolutions of 1977.<sup>188</sup> On November 12, 1987, the Arab League summit conference, held in Amman, passed a resolution whereby Arab League states were allowed to resume diplomatic relations with Egypt.<sup>189</sup> This gradual process of return was completed in 1989 when Egypt was formally invited to attend the Arab League Summit Conference held in Morocco in May 1989.<sup>190</sup> In this meeting President Mubarak reaffirmed Egypt's commitment to its peace strategy and obligations, thus leaving the impression that Egypt's readmission would not be at the expense of its relations with Israel. No specific or formal procedures were adopted to readmit Egypt which resumed its membership by a simple invitation from King Hassan to attend the Arab League heads of state summit meeting<sup>191</sup>

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## NOTES

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- 13 Id.
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- 15 Ibid, pp.2-5.
- 16 Ovendale, op.cit, p.2.
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- 20 Ovendale, op.cit, p.7.
- 21 .The Vith Zionist Congress adopted in 1903 the following resolution:"The Zionist Organisation stands firmly by the fundamental principle of the



Basle Programme, namely, the "creation of a homeland guaranteed by public law for the Jewish people in Palestine, and rejects both as an aim and as a means, every colonising action outside Palestine and the neighbouring countries." Quoted in, *The Palestine Question, Seminar of Arab Jurists on Palestine, Algiers, July 22-27, 1967*, in J.Moore (ed), *op.cit*, p. 276.

22 Owendale, *op.cit*, p. 7.

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24 Wright, Quincy, *The Middle Eastern Crisis, ASIL Proc*, Vol.64, 1970, p.71.

25 Leonard, L., *The United Nations and Palestine*, 41 *Int. Concl.*, Appendix A, 1949, p. 744.

26 Bassiouni, M. Cherif, and Eugene M. Fisher, *The Arab-Israeli Conflict-real and apparant issues: an insight into its future from the lessons of the past*, 44 *St. John's Law Review*, 1970, p. 399.

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28 In several occasions the British Government formally expressed the view that the Balfour Declaration was not intended to establish a Jewish state in Palestine. As for example the Churchill White Paper of June 3, 1922 which said in part: "Unauthorized statements have been made to the effect that the purpose in view is to create a wholly Jewish Palestine...that Palestine is to become "as Jewish as England is English."His Majesty's Government...have no such aim in view." See, *The Churchill White Paper*, 1922, Cmd.1700.

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- 35 The Times, May 1, 1905.
- 36 Quoted in, Tannous, I., The Emerging Story of Palestine and its People, Palestine Liberation Organization Publications, Beirut, 1965.
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- 38 The Faisal-Weizman Agreement was not recognized by Arab writers who claimed that it was a false document since Prince Faisal, who signed the Agreement in English, could not speak or write in English. The Israelis, however, insisted that the document was signed by Faisal. In any event an unbiased historian, Weinberg, agrees that this Agreement was never made effective. See for example, Abo-Yassier, op.cit, pp. 238-243.
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- 40 Israel Pocket Library, op.cit, p. 43.
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- 42 Ibid, p. 49.
- 43 Cattan, H., op.cit, ref.2, p. 23.
- 44 Abo-Yassier, op.cit, pp. 137-152.
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- 56 Rowley, op.cit, p.26.
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- 66 For the several denials in 1947 by the General Assembly of requests for an advisory opinion on the Palestinian Question, see UN Documents A/AC/14/21, 14 October 1947; A/AC 14/24, 16 October 1947; A/AC 14/25, 16 October 1947; A/AC 14/32, 11 November 1947.
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- 146 Carter, op.cit., p.296.
- 147 Dayan, op.cit., p.105.
- 148 For the text of Begin's Autonomy Plan submitted in Ismailia, in December 1977, see Lukacs, Y., op.cit., p.61.
- 149 Riad, op.cit., p.308.



- 150 Ibid, pp.308-309.
- 151 Carter, op.cit, p.298.
- 152 Ibid p.303.
- 153 Vance, Cyrus, Hard Choices, Simon & Shuster, New York, 1983, p.217.
- 155 It appears likely from the description of events provided by Vance Brzezinski, and Carter himself that the reconciliation process would have not continued without Carter's visit to the Middle East on March 7-13, 1979. See for example, Vance, op.cit, pp.249-250.
- 156 Maarif, Tel Aviv, March 22, 1979. The same paper reported the following day that the Knesset had ratified the Treaty with a majority of 95 votes, 18 against, 2 abstentions and 3 absences.
- 157 See Al Ahram, April 11 and 20, 1979.
- 158 Elits, Hermann, Saving Camp David (1) Improve the Framework, Foreign Policy, Winter 1980-81, pp.9-10.
- 159 Resolutions of the Ninth Arab Summit Conference, 1978 and the Conference of Arab League Foreign Ministers, 1979, Arab League Publications, Tunisia.
- 160 Ibid.
- 161 See ref.159, op.cit.
- 162 Id.
- 163 Id.
- 164 Keesing, 1985, p.33566.
- 165 See Article 53 of the Charter.
- 166 Claud, Inis, The O.A.S., the UN and the united states, Int. Concl.pp.3-63.
- 167 S.C.O.R. 15th year, 893rd meeting, September 8, 1960, p.4.
- 168 Ibid, pp.8-9.

- 169 S/4491.
- 170 S.C.Q.R., 17th year, 991st meeting, February 27, 1962, pp.17-19.
- 171 Ibid, 17th year, March 23, 1962, pp.14-17.
- 172 Lauterpacht, H., Boycott in International Relations, BYIL, 1933, p.127.
- 173 Shihata, op.cit., p.613.
- 174 Organization of African Unity, Basic Documents and Resolutions, 1964, p.18.
- 175 Khadduri, Majid, The Arab League as a Regional Arrangement, A.J.I.L., 1946, pp.763-764.
- 176 Gomaa, A., The Foundation of the League of Arab States, Longman press, London, 1977, p. 249; also see Minutes of the meetings of the political Subsidiary Committee in charge of preparing the draft pact of the League of Arab States, Records of the A.L., unpublished document.
- 177 Articles 8 and 9 of the Arab League Pact read respectively as follows:  
 Each member state shall respect the systems of government established in the other member states and regard them as exclusive concerns of those states. Each shall pledge to abstain from any action calculated to change established systems of government." Article(9): "States of the League which desire to establish closer co-operation and stronger bonds than are provided by this Pact may conclude agreements to that end. Treaties and agreements already concluded or to be concluded in the future between a member state and another state shall not be binding or restrictive upon other members."
- 178 Hassouna, op.cit., p.319.
- 179 For more details on the dispute over Taba and Award of September 1988 see Chapter Two of this work.



- 180 For the text of this Agreement, see Appendix VIII.
- 181 Quandt, op.cit, p. 329.
- 182 Carter, op.cit, ref.43, p. 170.
- 183 For more details on the Israeli Invasion of Lebanon see in general, Frankline lamp(ed), Report of the International Commission, Israel in Lebanon, Ithace Press, London, 1983; Also, vols.44/45 Journal of Palestinian Studies, 1982; Michael Jansen, why Israel invaded Lebanon, Zed press, London, 1982.
- 184 On May 17, 1983 Israel and Lebanon signed a peace Agreement whereby Israel agreed to withdraw from Lebanon. The parties agreed to put an end to the state of war that had existed for thirty-five years between them. Israel was given the right of intervention and flight over Lebanese territory.. Some writers hold that this Agreement gave additional Arab recognition and legitimacy to Israel as had the Camp David Accords. Later, in March 1984, under pressure from Syria, the Lebanese abrogate the May 1983 Agreement. For the Text of the Agreement see Journal of Palestinian Studies, Summer 1983, p.98; Also, Jimmy Carter, The Blood of Abraham, Houghton Mifflin Company, Boston, 1985. pp.99-101.
- 185 For the Text of the Algeria Declaration, See, Arab Politics(EL-Siassa El-Dawlya), December 1988.
- 186 See interview with the PLO leader Yasser Arafat, Palestine Affairs(Shu'un Filastiniyah), no.201, December 1989, p.146.
- 187 The three conditions stipulated the Americans for holding talks with the PLO were to acknowledge the right of Israel to live in peace and Security, to confirm the Security Council Resolution 242 and to renounce terrorism.

For more details on this point, see, Yezid Sayigh, Struggle Within, Struggle without: the Transformation of PLO politics Since 1982, 65International Affairs, 1989, p.247.

188 Keesing, 1985, pp.33562-33563.

189 See resolution passed by the Arab League Meeting, Amman, November 1987, Arab League publications, London Office.

190 Keesing, 1989, p.36695

191 For more details on Egypt's readmission to the Arab League, see, for example, Mohammed Hiakal, "Is there a future for Egypt?", Al Ahram, July 5, 1989, also Zakaria Neil, "What Happend In Casablanca?", Al Ahram, June 3, 1989.



## PART TWO

### The Treaty And Territorial Issues.

The term "territorial issues" refers here to the territorial clauses of the 1979 Treaty of Peace. Territorial clauses under international practice constitute an essential section of the structure of a normal peace treaty. Territorial clauses, for instance, can be found in all the peace treaties signed in Paris on February 10, 1947 between the Allied and Associated Powers on one hand and Germany 's former wartime allies Bulgaria, Finland, Hungary, Italy and Romania on the other.' These peace treaties, it is worth mentioning, were intended to realize a general system and a model of peace treaties.

Generally speaking, the sections of the peace treaties appearing under this heading contain a wide variety of issues. Among these issues are the withdrawal of the occupying forces, e.g., Arts. 14 and 73 of the Treaty with Italy provided for the withdrawal of allied forces from Italian territory within a period of 90 days after the coming into force of the Treaty.<sup>2</sup>

Another example of territorial issues is the determination of boundaries, e.g., Article 1 of the Treaty with Bulgaria provided that the frontiers were to be those which existed on January 1, 1941.

Also, annexation or cession of certain parts or regions from one state to another are among the territorial issues, e.g., various Alpine regions were to be ceded to France by Article 2 and Annex II and III of the Treaty with Italy.

Similarly, claims of sovereignty and the establishment of free zones or cities may be dealt under the sections dealing with the territorial issues. For

example, Italy renounced all claims to territorial sovereignty over her former colonies in Africa.<sup>3</sup> Articles 21 and 22 of the Treaty with Italy, for example, provide for the establishment of the free territory of Trieste.<sup>4</sup>

Quite clearly, despite the fact that some issues such as Israel's exploitation of Egypt's natural resources in Sinai are overlooked<sup>5</sup>, the Peace Treaty addressed a variety of significant territorial issues.

In the first place, it deals with the problem of the withdrawal of the Israeli forces from Egypt's territory.<sup>6</sup> Secondly, Article 1 (2) deals with the problem of the Israeli settlements in Sinai.<sup>7</sup> Thirdly, Article V(2) provides for a new legal system to govern navigation in the Gulf of Aqaba and the Straits of Tiran.<sup>8</sup>

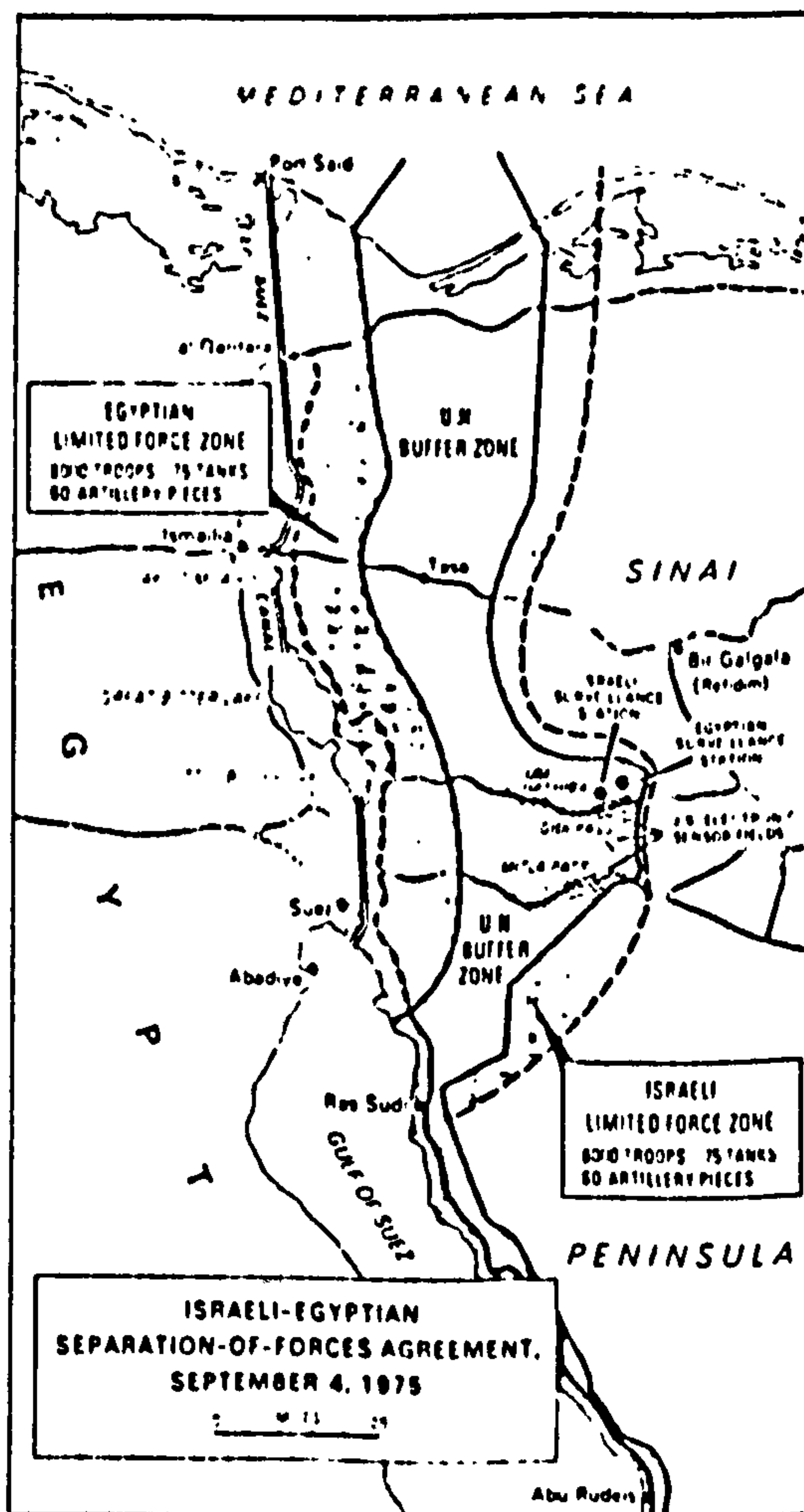
An examination of the position of the 1979 Treaty in relation to the above-mentioned issues will be our concern in the following two Chapters.

Before embarking on an analysis of these issues, it might be appropriate to recall that in doing so we shall rely on the provisions of the 1979 Treaty as well as the Camp David Accords. The contents of both show that the Peace Treaty was not intended to replace the Camp David Framework, but to supplement it.<sup>9</sup>

CHAPTER TWOTHE ISRAELI WITHDRAWAL FROM SINAIGeneral

On June 5, 1967 Israel, claiming the right to exercise self-defence under Article 51 of the Charter, launched an offensive against Egyptian positions in the Gaza Strip and Sinai Peninsula using its air and ground forces. Within six days Israel had occupied the whole of the Sinai as well as Gaza Strip.<sup>10</sup>

Ever since the War of 1967, several peace efforts had been made to secure the withdrawal of the Israeli forces, including attempts to implement Security Council Resolution 242 which calls for that withdrawal. Nevertheless, apart from partial withdrawal from a small area under the 1975 Separation-of-Forces Agreement, such efforts failed and most of Sinai remained under occupation until the conclusion of the 1979 Treaty.



Map 6 The Egyptian-Israeli front after the Separation-of-Forces Agreement,  
September 4, 1975.



The object of this chapter is to examine how the 1979 Treaty approached the problem of the military withdrawal of the Israeli forces from Sinai. This problem has been chiefly dealt under the Treaty in paragraph 2 of Article 1 which reads as follows: "Israel will withdraw all its armed forces and civilians from the Sinai behind the international boundary between Egypt and mandated Palestine, as provided in the annexed protocol (Annex 1), and Egypt will resume the exercise of its full sovereignty over the Sinai"

More provisions dealing with the details of the Israeli withdrawal can be found in other parts of the Treaty. They will be referred to and examined later. Suffice it to say at this stage that the provisions on the withdrawal as provided by the Treaty are of special importance because they provide a satisfactory resolution of the most notable issue of the Egyptian-Israeli conflict, viz. the complete Israeli withdrawal from Sinai because they provide explicitly for a clear application of the ambiguous language of Resolution 242 regarding the extent of the Israeli withdrawal from the Arab territories occupied in 1967. Such an application of Resolution 242 constitutes a legal precedent for a total Israeli withdrawal which is of great importance to any future comprehensive settlement in the Middle East. To understand these provisions fully it is necessary to place them within the context of both the 1979 Treaty and the Framework Treaty as a whole. With the assistance of a brief enquiry into the history of the diverse positions adopted by the parties and the UN resolutions dealing with Israel's occupation of Egypt's territory since 1967, an examination and evaluation of the relevant provisions will be offered.

A Review Of The Settlement Positions Of Egypt, Isreal and The UN  
Regarding The Withdrawal Issue Between 1967-1978

In 1967 one writer observed that "the Arab-Israeli conflict is a tragedy in the classic sense; that is, it involves a struggle of right against right"<sup>2</sup>. This phrase is illustrative of the atmosphere pervading the discussion in the aftermath of the 1967 war on the question of the Israeli withdrawal.

For example, while Israel invoked its right to exercise self-defence under Article 51 of the Charter to justify its attack on Egypt and the right to live in peace with its neighbours in order to remain in the territories it occupied until concluding that peace<sup>3</sup>. Egypt, on the other hand, rejected Israel's "aggression" and occupation on the ground that it violated the principles of international law, in particular, the principles of sovereignty and territorial integrity of states, and inadmissibility of the acquisition of territory by war<sup>4</sup>.

It would be difficult in this review to give a comprehensive account of all the relevant positions taken and the views adopted by the parties, and to provide an account of all the UN resolutions dealing with the question during the above-mentioned period. Therefore, our review of the positions concerned will be on selective rather than a comprehensive basis.

The starting point for review of post-Six Day War settlements is Security Council Resolution 242 of November 22, 1967. However, before doing so, a mention of the positions taken by Egypt and Israel in the wake of the Six Day War ought to be made.



### The Positions In The Aftermath Of The Six Day War

After its decisive military victory in the June-War, Israel offered to withdraw from Sinai provided that certain conditions were fulfilled. In the first place, it declared that it would not withdraw from Egypt's territory unless the latter terminated any claim to right of belligerency, recognized the state of Israel and signed a peace treaty with it.<sup>15</sup> Israel also held that "The June War ceasefire lines will not change except for secure borders and peace treaties which would terminate war with the Arab countries".<sup>16</sup>

In this connection, Israel revealed its intention to hold certain parts of Egypt's territory as part of its proposed secure boundary; for example, according to the "Allon Plan" announced in July 1967, Israel demanded to remain in occupation of the Sharm El-Sheikh area and certain other parts of Sinai for security reasons.<sup>17</sup>

Israel insisted that its withdrawal was conditional on Egypt's acceptance of direct negotiations with the Israelis. In the words of Abba Eban, then Israeli foreign minister, "it is unrealistic to believe that the withdrawal is possible without negotiation."<sup>18</sup>

The above position adopted by Israel in the wake of the June War had been based on a number of considerations which can be summarized as follows:

Israel, it is submitted, obtained Egypt's land in a defensive war permitted under Article 51 of the Charter. It follows therefore that it is legally permitted under international law to remain in the territories until the conclusion of a peace treaty. Professor Higgins, a holder of this view, explained the legality of Israel's right to remain in Sinai in the following words:



11

There is nothing in either the Charter or general international law which leads one to suppose that military occupation, pending a peace treaty is illegal. The Allies, it will be recalled, did not claim title to Berlin in 1945; but neither did they withdraw immediately they had entered it. The law of military occupation, with its complicated web of rights and duties, remains entirely relevant, and until such time as the Arab nations agree to negotiate a peace treaty, Israel is in legal terms entitled to remain in the territories she now holds.<sup>19</sup>

To justify its right to launch a defensive war, Israel advanced three main reasons: the deployment of a large Egyptian forces along the Israeli borders;<sup>20</sup> the evacuation of UNEF forces from Sinai at the request of Egypt;<sup>21</sup> and Egypt's blockade of the Gulf of Aqaba and the Straits of Tiran in May 1967, which was regarded as a casus belli<sup>22</sup>. This blockade was illegal, it is submitted, because it violated Article 16 (4) of the Geneva Convention of 1958<sup>23</sup> and because Egypt failed to observe the conditions which it had agreed to in connection with Israel's withdrawal from Sharm al-Shaykh in 1957<sup>24</sup>. Moreover, it was argued, if one applies both the Soviet draft definition of aggression formulated in 1956, and the General Assembly Resolution on the Definition of Aggression, formulated in 1974, Egypt's blockade qualified as an act of aggression<sup>25</sup>. Further, it had been argued that the blockade prevented Israel from receiving about 80% of its normal oil and other vital imports.<sup>26</sup>

In addition, Israel's demand for secure boundaries is based on the contention that the 1949 Armistice Agreement determining the pre-June 1967 boundary was invalid because of Egypt's violation of the provisions of that Agreement. It follows, therefore, that under the rules of international law governing the

suspension and termination of treaties, Israel was no longer bound by its obligation, including the 1949 demarcation lines.<sup>27</sup>

Also, it was argued that even if the 1949 Agreement between Egypt and Israel was effective, Article V of that Agreement stipulated that the line defined "shall be designated as the Armistice demarcation line" ; it "is not to be construed in any sense as a political or territorial boundary, and is delineated without prejudice to rights, claims and positions of either party to the Armistice as regards ultimate settlement of the Palestine question"<sup>28</sup>. Moreover Article XII specified that the Armistice was established in order to facilitate the transition from the present truce to permanent peace in Palestine<sup>29</sup>. Thus, Israel has the right to negotiate secure and final boundaries. At this point, it may be worth recalling that the US adopted a line in support of Israel's demand for secure and recognized boundaries, e.g., President Johnson's statement on June 19, 1967 in which he stated that " the nations of the (Middle East) region have had only fragile and violated truce lines for twenty years. what they now need are recognized boundaries."<sup>30</sup>

A further justification for Israel's demand for secure and recognized boundaries was the argument that the establishment of such boundaries would bring peace to the Middle East.

A full assessment of the Israeli position is not our concern here. Suffice it to emphasize at this stage that such position had left much room for dispute since Israel, as it has been rightly observed, under the label of secure borders, would be able to keep any territory it wished under the pretext of protecting its security<sup>31</sup>. Quite clearly this would constitute a violation of several international norms, in particular the principles of territorial



integrity and sovereignty of states, the principle of inadmissibility of acquisition of territory by force and the principle of self-determination.

In turning to Egypt's position, it may be observed at the outset that, since the end of the June War, Egypt stuck to the position that Israel must withdraw from all the occupied territories and that withdrawal must be immediate and unconditional<sup>32</sup>. Also Egypt rejected Israel's notions of keeping parts of Sinai in the final settlement for security reasons<sup>33</sup>. Further, it also rejected Israel's argument that it is entitled to remain in Egypt's territory until the conclusion of a peace treaty.<sup>34</sup>

From a legal standpoint, Egypt's position was based upon several grounds. First, Israel was obliged by the rules of international law to withdraw from occupied Egyptian territory. This obligation derived in particular from the following fundamental legal principles:

- The general principle of non-use of force prescribed by the U.N. Charter in Article 2(4), stipulating that all members shall refrain from the threat or use of force against the territorial integrity or political independence of any state, an obligation which under paragraph 2 of the same Article should be fulfilled in good faith; <sup>35</sup>
- The principle of the illegality of the occupation of the territory of another state by force. Even according to Article 51 of the UN Charter, force may only be used by a state in the exercise of its inherent right of self-defence "if an armed attack occurs" and only "until the Security Council has taken measures necessary to maintain international peace and security"<sup>36</sup>;
- The principle of inadmissibility of acquisition of territory by force. This principle is in fact well established. It is inherent in the rules of customary



international law developed by state practice during the nineteenth century. It is sanctioned by general international treaties such as the Covenant of the League of Nations, the Kellogg-Briand Pact of 1928 and the UN Charter, under which it has been considered a necessary implication of the obligation in Article 2, to refrain from the use of force against any state. The principle was also insisted upon in the Stimson Doctrine, whereby the U.S. refused to recognize any Japanese acquisition resulting from Japan's invasion of Manchuria in 1931. It was also accepted in the form "no title by conquest" as a principle of American international law<sup>37</sup>. Further, it was explicitly reaffirmed in Article 17 of the 1948 Bogata Charter which states that no territorial acquisition or special advantage obtained by force shall be recognized.<sup>38</sup>

The second ground in support of Egypt's position is that Israel could not invoke Article 51 of the Charter to justify a pre-emptive strike. While the Charter recognizes the right of self-defence against an armed attack, it does not permit a pre-emptive strike in advance of any attack. This view has been adopted by the majority of states and recognized by international lawyers<sup>39</sup>. For example, Philip Jessup observed that Article 51 suggested a limitation on the right of self-defence provided by customary international law, and that "it may be exercised only if an armed attack occurs. This restriction in Article 51 very definitely narrows the freedom of action which states had under traditional law. A case could be made out for self-defence under the traditional law where the injury was threatened but no attack had yet taken place. Under the Charter, alarming military preparations by a neighbouring state would justify a resort to the Security Council, but would not justify resort to anticipatory force by the state which believed itself threatened."<sup>40</sup>

Along the same line, Georg Schwarzenberger argued that the right of self-defence is not preventive and therefore "it does not cover preventive measures against remote future contingencies."<sup>41</sup>

Another ground supporting Egypt's view is the argument submitted by the representative of Egypt in Security Council meeting of May, 29, 1967:

"The Gulf of Aqaba has always been a national inland waterway subject to absolute Arab sovereignty...by its configuration it has a nature of a mare clausum which does not belong to the class of international waterway...there is no shade of a doubt as to the continued existence of the state of war between the Israelis and the Arabs...My Government has the legitimate right, in accordance with international law, to impose restriction on navigation in the Strait of Tiran with respect to shipping to an enemy."<sup>42</sup>

Thus, the blockade was a legal exercise by Egypt of its right of sovereignty over its internal waters and an assertion of a right of belligerency recognized by international law. On <sup>the</sup> one hand, the Armistice Agreement between Egypt and Israel did not terminate the state of war legally existing between them. It followed that the right to enforce a blockade was not affected by the armistice<sup>43</sup>. Further, Article II of the Armistice Agreement between Egypt and Israel provided that "no element of forces of one party shall enter or pass through waters within three miles of the coast-line of the other party."<sup>44</sup>

In addition, even if Israel possessed the right of innocent passage in the Straits of Tiran under Article 16 (4) of the Convention on the Territorial Sea of 1958, the relevant provision was not binding on Egypt because Egypt did not ratify that Treaty and because Article 16 (4), as rightly observed by the U.S. representatives, established a new rule rather than codified a customary one.<sup>45</sup>



Before leaving this point, it is worthwhile to refer to the position adopted by the Arab League in the wake of the Six Day War. In the Arab League Summit Conference held in Khartoum in August in 1967, Arab Leaders agreed to seek a peaceful settlement to secure the withdrawal of the Israeli forces, but in the framework of the three criteria: no peace with Israel, no recognition of Israel and no negotiation with Israel. In other words, the Arab leaders, while agreeing to seek a peaceful settlement, rejected, the three conditions stipulated by Israel in return for its withdrawal, i.e., the termination of the state of war, the recognition of Israel and direct negotiations with Israel.<sup>46</sup>

#### Resolution 242 And The Withdrawal Of Israeli Forces From Egypt's Territory

With all its defects and uncertainties, Resolution 242 remains the only internationally-agreed framework for peace in the Middle East. It may be said that it is one of the exceptional resolutions in which, contrary to its usual practices of not going beyond calling for an end of hostilities, the Security Council recommended in some detail a long term solution to a dispute.

The Resolution is of general importance once it had been accepted by most states involved in the peace process and by the PLO<sup>47</sup> in 1988 as constituting the agreed basis for any future comprehensive settlement of the Arab-Israeli conflict. Also, it is of particular importance to any examination of the texts of the 1979 Treaty and the Framework Treaty because it was intended to constitute the legal basis of the principles included in both of them. This can be inferred from the first preambular paragraph of the Framework Treaty which reads in part as follows:



"The agreed basis for a peaceful settlement of the conflict between Israel and its neighbours is the Security Council Resolution 242 in all its parts."<sup>48</sup>

Along the same lines, the first preambular paragraph of the 1979 Treaty states that it is founded on:

"The urgent necessity of the establishment of a just, comprehensive and lasting peace in the Middle East in accordance with Security Council Resolution 242 and 338".<sup>49</sup>

After this brief clarification of the importance of Resolution 242, we turn now to consider its position with regard to the withdrawal of the Israeli forces from Egypt's occupied territory.

Although the Resolution provides explicitly for the withdrawal of Israeli forces, it either overlooks or advances uncertain answers to some important questions raised regarding that withdrawal. The conditions of that withdrawal and the extent of the withdrawal, as well as the binding nature of the Resolution, are among these questions.

In relation to the conditions of the withdrawal, we may recall at the outset that the Resolution was a package deal based on certain basic principles. While it called for the withdrawal of Israel from Egypt's territory, it provided that this withdrawal was conditional on the application of the other principles<sup>50</sup>. That is to say, Egypt was obliged, in return for that Israeli withdrawal, to terminate the state of belligerency with Israel<sup>51</sup>, to recognize the state of Israel and its right to live within secure and recognized boundaries<sup>52</sup>, to respect the sovereignty and territorial integrity of Israel<sup>53</sup> and finally to establish peace with Israel.<sup>54</sup>

In considering the above conditions in the Resolution, in the light of the positions taken by both Egypt and Israel in the wake of the June War, we may state the following:

Quite clearly, Egypt's demand for unconditional Israeli withdrawal from its territory had been rejected<sup>55</sup>. On the other hand, Israel's conditions for the withdrawal were largely supported by the Resolution. The Resolution accepted the Israeli conditions regarding the termination of the state of war, the right to be recognized by Egypt, the right to have secure boundaries and the right to establish peace with Egypt. However, Israel's demand for direct negotiations seems to have been rejected.<sup>56</sup>

As to the question of timing, it is clear that the Resolution totally overlooked it. For example, no mention was made of the period during which the withdrawal was to be completed, nor the date of its beginning. Further, assuming that Israel agreed to withdraw, there still remained an intractable problem : which should come first in time, Israeli withdrawal from the territories which she was holding, or Egypt's acceptance of peace and recognition of Israel. According to the Arab interpretation, Egypt would only terminate the state of war with Israel once Israel had first withdrawn its forces from Sinai. This was based on the premise that the term "withdrawal" was placed physically first in the body of Resolution 242.<sup>57</sup>

Also, Egypt would be put at a disadvantage in negotiations by virtue of Israel's continued occupation of its territories<sup>58</sup>. Further, it was argued that there was a recognized principle of international law that a treaty secured by force or under the pressure of military occupation was null and void. As Oppenheim pointed out, a peace treaty imposed by a victorious aggressor has no



legal validity<sup>60</sup>. In support of this argument, it referred to Lauterpacht's Report of 1953 on the law of treaties to the International Law Commission:

"A treaty imposed by or as result of force or threat of force... is invalid by virtue of the operation of the general principle of law which postulates freedom of consent as an essential condition of the validity of consensual undertaking."<sup>61</sup>

The same view was adopted by Brownlie<sup>62</sup> and by Quincy Wright who condemned Israel's claim to remain in occupation of Arab territories until it secured a peace treaty:

"One cannot say that negotiations over territories are fair where one or the other parties occupies most of it...Modern international law affirmed by the Stimson Doctrine holds that a treaty made by duress against the state is invalid."<sup>63</sup>

On the other hand, Israel held the view that, as the Resolution was a framework for an agreement, it followed therefore that the withdrawal should follow rather than precede it. If Israel were to withdraw before negotiations and Arab states then refused to terminate belligerency, Israel's security might be seriously impaired with no way of rectifying the situation, short of another war<sup>64</sup>. Israel's argument was supported by the view - referred to earlier - that there is nothing in either the Charter or general international law which leads one to suppose that military occupation pending a peace treaty is illegal.<sup>65</sup>

Before leaving this point, it may be worth mentioning that the US adopted the position that the provisions on Israel's withdrawal from the occupied territories were contingent upon the conclusion of peace between the Arab



states and Israel. In this connection William Rogers, US Secretary of State, declared:

"To call for Israeli withdrawal as envisaged in the UN Resolution without achieving agreement on peace would be partisan toward the Arabs. To call on the Arabs to accept peace without Israeli withdrawal would be partisan toward Israel. Therefore, our policy is to encourage the Arabs to accept a permanent peace based on a binding agreement and to urge the Israelis to withdraw from occupied territory when their territorial integrity is assured as envisaged by the Security Council Resolution".<sup>66</sup>

This view seems to be the one adopted by the 1979 Treaty, as we shall see later.

In relation to the legal nature and the binding effect of the resolution, it may be observed that the Security Council did not specify under what article or chapter of the Charter it acted when adopting the Resolution of November 22, 1967<sup>67</sup>. It follows that the legal character of the Resolution is, therefore, a matter for interpretation. In this respect, we can find two conflicting views:<sup>68</sup>

The first view holds that the Resolution is of a binding nature and therefore it should be implemented in all its parts. This view has been expressed by the Soviet Union. In presenting this view, two Soviet jurists state the following: "The Security Council is authorized, under the United Nations Charter, to take all necessary steps, including the use of armed force, against a state refusing to implement its resolution. The Security Council Resolution of November 22, 1967 is a juridical deed which ought to be executed in full detail, and

particularly as regards the withdrawal of the Israeli forces to the lines prior to June 5."<sup>69</sup>

Quite clearly the above passage implies that the Resolution was adopted by the Security Council within the framework of Chapter VII which deals with "Action with respect to threats to the peace, breaches of the peace, and acts of aggression", in particular, Article 39, the key provision in this chapter<sup>70</sup>, which reads as follows:

"The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security."<sup>71</sup>

On the other hand, the view ~~is~~ that the resolution is in the nature of <sup>a</sup> mere recommendation taken by the Security Council under Chapter VI<sup>72</sup> which provides that the Security Council may recommend procedures or methods of adjustment in cases of dispute or similar situations<sup>73</sup> or may itself recommend terms of settlement in defined circumstances<sup>74</sup>. The grounds advanced in support of this view can be summarized as follows: the language used by the Resolution did not mention the terms "threat to peace, breach of peace, or act of aggression" whose invocation may perhaps prima facie indicate an intention to take enforcement action upon non-compliance. Thus confirming that it was not taken within the framework of Article VII<sup>75</sup>; during the debate in the Security Council, several representatives said or implied that the Security Council should merely make recommendations on the Middle East under the peaceful settlement provisions of the Charter<sup>76</sup> and; the official Security Council repertoire deals with the British draft as in part an application of Chapter VI of the UN Charter.<sup>77</sup>



Apart from the dispute over its binding nature, it had been rightly observed, that Resolution 242 has been so widely accepted<sup>78</sup> and referred to that one may well conclude that it has been treated as having a mandatory effect, in particular after it had been emphasized in Security Council Resolution 338 on October 1973 adopted towards the end of the 1973 October War.<sup>79</sup>

It remains now to consider the most significant question raised with regard to the withdrawal issue under the Resolution, namely the extent of the final line of Israeli withdrawal. There can be no doubt that the uncertainty resulting from the vague language used in dealing with such an essential issue made it a complex one. Several reasons may be mentioned as having accounted for such complexity.

The English text of the Resolution deals with the extent of the Israeli withdrawal in vague language: Article 1 speaks of withdrawal of Israeli forces "from territories occupied in the recent conflict", and not "from all the territories" occupied. Accordingly, the absence of the definite article "the" before the word "territory" has left the door open to the argument that the Resolution did not require withdrawal from all the territories<sup>80</sup>. Notwithstanding the absence of the word "the" in the English text, the French text of the Resolution speaks about withdrawal from the territories occupied: it speaks about "retrait des forces armees Israeliennes des territoires occupes lors du recent"<sup>81</sup>. The text of the Resolution contains no reference whatsoever of the pre-5 June boundaries.

The Resolution refers to the right of every state in the area to live "within secure and recognized boundaries free from threats or acts of force"<sup>82</sup>. Thus,



according to a reasonable interpretation, it negates the necessity of a return to the lines existing prior to the hostilities of June 1967.<sup>33</sup>

For the above reasons, a great deal of controversy has arisen over the extent of the Israeli withdrawal. For example, Israel and its supporters argued that the extent of its withdrawal could not be the 4 June lines since the omission of the word "the" was deliberately made. It follows, therefore, that Israel was entitled to negotiate new boundaries which may include parts of Egypt's territory. On the other hand, Egypt and its supporters insisted on an opposing view that the Resolution undoubtedly required a total Israeli withdrawal from all occupied Egyptian Territory.

#### Reasons in Support of Non-total Israeli Withdrawal

The meaning attributed to Resolution 242 in the argument advanced by Israel and its supporters is that it did not require withdrawal of Israeli forces from all the lands occupied in the Six-Day War, but required only the withdrawal to such lines as would constitute "secure boundaries" for Israel.

Article 1(1) of the Resolution speaks of territory occupied in the recent conflict but not "all the territories". Moreover, that paragraph on withdrawal does not say to where the Israeli forces are to withdraw, nor does it say what is to be withdrawn; also it does not say when they are to withdraw. According to the argument, this is not accident and such omission is deliberate.<sup>34</sup>

Proof of this is the fact that the Security Council and the General Assembly had rejected all draft resolutions in which the intent was to

require the withdrawal, immediate or otherwise, of all Israeli forces back to the lines they occupied on June 5, 1967.<sup>65</sup> Having in mind the fact that every word in the adopted clause was carefully weighed, they came to the conclusion that the language used by that paragraph does not require a total withdrawal<sup>66</sup>.

As regards the French text of the Resolution which speaks of Israeli withdrawal from the territories "des territoires" and not from "territories", the Israelis held that in the case of divergence between two equally valid versions of a legal text, an important place, according to international law, is accorded to the language in which the text was originally drafted<sup>67</sup>.

Thus, in the light of the fact that the British proposal (S/8247) which became Resolution 242 after its adoption by the Security Council, carried the notation "Original English"<sup>68</sup>, it would be unjustified to disregard the English text in favour of the French text.

Also Article 1(2) of the Resolution provides for the right of every state in the area "to live in peace within secure and recognized boundaries free from threats or acts of force", a description which could not be applied to the pre-June 5, 1967 lines<sup>69</sup>.

Consideration must also be given to the meaning of the principle of "inadmissibility of the acquisition of territory by war" referred to in the second paragraph of the preamble of the Resolution. According to Shabtai Rosenne, the meaning of the principle is nothing more than the established rule of international law that only a formal agreement, and more particularly after a war, usually a treaty of peace, is competent to transfer territory from one country to another. To justify his opinion, he held that the words of this principle are formulated in the



Spanish expression which has become almost epigrammatic in U.N. circles, namely "La victoria no da derechos". This notion, appears in a number of important treaties concerning Latin America, and it lies behind the so called "Stimson Doctrine." The expression was first used, he continued, by the Minister of Foreign Affairs of Argentina in December 1869 in his note regarding the war between certain Latin American states in which he argued that military victory by itself did not give rights to territory, and that the disposition of territory could only follow from an international agreement between the parties concerned<sup>90</sup>.

From the above explanation, Rosenne draws the conclusion that the inadmissibility of the acquisition of territory by war as a general proposition cannot be accepted, and that a correct understanding of this principle suggests that there should be an agreement between the parties, after the war, to establish definitive territorial limits<sup>91</sup>.

Also, he added if this principle reads, in conjunction with the final clause on territorial arrangements which speaks of "secure and recognized boundaries", the meaning he attributes to that principle is confirmed.<sup>92</sup>

Additional ground in support of this view is the argument that the pre-June 5, 1967 lines, under Article IV(3) of the Armistice Agreement between Egypt and Israel, were provisional in character and did not prejudice the rights of the parties in respect of the final boundaries. This argument has been discussed earlier.<sup>93</sup>

#### Reasons in Support of Total Israeli Withdrawal

Egypt and its supporters insist that the Resolution called for a total Israeli withdrawal from all the Arab occupied territories<sup>94</sup>. According

to them, withdrawal from territories occupied in the recent conflict can only mean withdrawal from all the territories occupied in June 1967. The question is not one of semantics, but is a question of law. Under international law and the principles of the Charter as well as Resolution 242, Israel is bound to withdraw from all territories it occupied, since the Resolution should not be construed in a manner that implies that the Security Council was acting against the Charter and against accepted principles of law by allowing Israel to retain some of the territories it seized in the war.

This view is supported by the Arab understanding of certain paragraphs of the Resolution. In the first place, the reference to the principle of the inadmissibility of the acquisition of territory by war means, as Lord Caradon indicated to the Arab Foreign Ministers, that Israel has to withdraw from all the occupied territories<sup>95</sup>.

Moreover, the Resolution clearly required withdrawal from occupied territories and not to "secure boundaries". As a result, withdrawal from occupied territories should not at any rate be confused with the establishment of secure boundaries.<sup>96</sup>

As regards the absence of the definite article before the word "territory" in Article 1(1) in the English text, Shihata points out that while the Resolution does not use the definite article in the withdrawal paragraph, it amply describes the territories from which withdrawal is required as being "those occupied in the recent conflict" without any exception. Insistence on the relevance of the absence of the definite article, he continues, would lead to the absurd conclusion that some Israeli forces could be maintained in any territories from which



withdrawal is accomplished, as the Resolution fails also to provide for withdrawal of all the Israeli forces from such territories.<sup>97</sup>

Furthermore, the above argument may be enhanced by the fact that the text of the Resolution in the four other official languages (French, Spanish, Russian and Chinese) used the term "the territories" and not "territories" in the paragraph on withdrawal. For example, the French text refers to "[r]etrait des forces armées Israéliennes des territoires occupés lors du récent..."<sup>98</sup>. It is well known that English and French enjoy equal status as official and working languages of the Security Council<sup>99</sup>.

A total withdrawal is also consistent with the principles referred to in the operative paragraph which calls for "the respect for and acknowledgement of the sovereignty, territorial integrity and political independence of every state in the area"; and it further affirms the necessity for guaranteeing "the territorial inviolability" of every state in the area.<sup>100</sup>

Apart from reasons based on the text of the Resolution, additional reasons in support of a total Israeli withdrawal have been advanced.

For example, in the course of the 138 2nd Session of the Council during which the Resolution was adopted, the great majority of the representatives voting for the Resolution understood that it means total Israeli withdrawal. For instance, the Indian representative stated: "It is our understanding that the draft resolution, if approved by the Council, will commit it to application of the principle of total withdrawal of Israeli forces from all the territories- I repeat all territories- occupied by Israel as a result of the conflict".<sup>101</sup>

In this connection, several delegations, including India, Mali, Niger, Bulgaria and the U.S.S.R. expressed the view that ~~they~~ had voted for the Resolution precisely as India interpreted it.<sup>102</sup>

A total Israeli withdrawal is also consistent with the subsequently-adopted Resolutions of the General Assembly on the Middle East situation at its 25th, 26th, and 27th sessions.<sup>103</sup>

Along the same lines, several resolutions adopted by international organizations have amply stated that Resolution 242 requires a total Israeli withdrawal from all the territories occupied in 1967. For example, the African Summit Conference held in Algeria in September 1968 issued a resolution calling for Israel's withdrawal to the 4 June positions in accordance with Resolution 242<sup>104</sup>. Also 35 members of the U.N. severed their relations with Israel because of its failure to conform to that understanding.<sup>105</sup>

Another important reason in support of a total Israeli withdrawal from Egypt's territory is the argument that the 1967 lines between Egypt and Israel were not provisional. According to this view, the 1949 Armistice Agreement, under which the pre-June boundary was established, made a distinction between two types of lines, firstly permanent armistice lines which coincided with the previously-established international boundaries between mandated Palestine and Egypt, and secondly other demarcation lines which separated the Gaza Strip from the Israeli-held territory. The latter lines were intended to be provisional and therefore could be changed in the ultimate settlement according to Article IV (3) of the Agreement. Thus, Israel's claim that its pre-June boundaries with Egypt are provisional is groundless.<sup>106</sup>



The final reasons offered by this view is based on the assertion that Israel's continuous occupation is in conflict with the principles of international law and the U.N. Charter<sup>107</sup>. It follows, therefore, that it is obliged to withdraw from Egypt's territory. The argument regarding the illegality of Israel's occupation has been pointed out earlier.

In considering these two conflicting interpretations, we are forced to agree with the view that the Resolution requires a total Israeli withdrawal from all the Arab territories seized in 1967. We cannot accept Israel's view that it does not recognize documents of the Security Council unless they are written in English, thus, removing at stroke four of the five official languages of the UN.<sup>108</sup>

Also, we cannot accept Israel's insistence, against the consensus of the international community, on tying the destiny of sovereign states, their history and geography, to the absence of a definite article which is not even needed grammatically to convey the required comprehensive meaning<sup>109</sup>.

In any event, the ambiguity surrounding the extent of the Israeli withdrawal as provided by Resolution 242 seems to be resolved, as we shall see, by the Peace Treaty which clearly interprets it as requiring total Israeli withdrawal and consequently applied such interpretation to Egypt's territory.<sup>110</sup>

#### The Position on the Withdrawal During Sadat's Visit to Jerusalem in 1977

It must be conceded that the starting point of the peace process which resulted in the 1979 Treaty was undoubtedly the historic and unexpected visit of President Sadat to Jerusalem. Admittedly, matters took a new turn on 20th of November, 1977 when Sadat delivered his statement before

the Israeli Knesset declaring, for the first time during the Arab-Israeli conflict, Egypt's readiness to accept the existence of, and to conclude peace with, the state of Israel.'''

Sadat's visit is of particular importance, not only because without it, as is widely recognized, there would have been no peace treaty, but also because it represented a historic turning point in Egypt's settlement position after which several dramatic changes regarding some important issues of the Arab-Israeli conflict occurred'''. It is relevant and important therefore to examine Egypt's position on the question of withdrawal during that period.

In relation to the conditions of the withdrawal, it may be stated that Sadat's statement included certain changes in Egypt's previous position. In the first place, no mention of an immediate and unconditional withdrawal was made in the statement. This left the door open for the argument that Egypt had implicitly acknowledged the legal argument advanced by Israel that, once a state has entered the territory of another in a legally justified use of force in self-defence, it is entitled to remain there until the conclusion of a peace treaty. Such a view, however, is not widely accepted'''.<sup>3</sup>

Also, it could mean that Egypt was no longer insisting on its interpretation that Resolution 242 required Israel's withdrawal before the establishment of peace with it.

Yet, on the other hand, Egypt's agreement to negotiate for peace while Israel occupied its lands was rather a political decision dictated by certain political circumstances and, therefore, no legal conclusion should be drawn from it. In any event, whatever the legal consequences which may be drawn from such a position, Egypt's agreement to give up



its firm demand for unconditional and immediate withdrawal was a concession in favour of Israel.

In assessing this change in Egypt's position, several comments require to be made. The change is consistent with the reasonable understanding of Resolution 242 which in fact does not require immediate and unconditional withdrawal. Moreover, the legal basis of this view can be found in the argument referred to earlier that Israel was legally permitted to wait until the conclusion of peace<sup>114</sup>.

In addition, this change is inconsistent with the legal view that Israel's continuous military occupation of Egypt's territory was violating the rules of international law and the principles of the Charter which we discussed earlier.

In turning to the position of the statement vis a vis the conditions stipulated by Israel in return of its withdrawal, Sadat declared Egypt's full acceptance of all the peace guarantees required by Israel. In his words:

"...we declare that we accept all the international guarantees you envisage and accept. We declare that we accept all the guarantees you want from the two superpowers or from either of them, or from the Big Five, or some of them."<sup>115</sup>

A detailed examination of the peace guarantees is not our concern here. Suffice it to recall *at* this stage that Sadat's acceptance of peace guarantees is also consistent with Resolution 242, namely, Article 2(c).<sup>116</sup>

As to the direct negotiations stipulated by Israel, Sadat implied in his statement that peace will be concluded within an international conference in Geneva<sup>117</sup>. This was an implicit rejection of the Israeli

demand for direct negotiations. Again it may be recalled that Resolution 242 did not require direct negotiations.<sup>119</sup>

With regard to the second issue, namely the timing of the Israeli withdrawal, no mention whatsoever is made of such issue. For example, the questions of when Israel is to begin its withdrawal or the period during which this withdrawal is to be completed, were not addressed. It is clear that these questions had been deliberately left to be decided during the peace negotiations.

With regard to the third issue, namely the extent of the Israeli withdrawal from Egypt's territory, Sadat adhered to the principle of a total Israeli withdrawal not only from Egypt's territory, but also from all the Arab occupied territories. His demand for a total Israeli withdrawal was pointed out explicitly and implicitly in several parts of the statement. In his words:

" There are Arab territories which Israel has occupied by armed forces- we insist on complete withdrawal from these territories." <sup>119</sup>

Also he stated in other part:

"To us, the national soil is equal to the holy valley...none of us can, or accept, to cede one inch of it or accept the principle of debating or bargaining over it."<sup>120</sup>

Quite clearly, Egypt's insistence on complete Israeli withdrawal is consistent with the Arab interpretation of Resolution 242 and the understanding expressed on many occasions by various states and international organizations that Israel should withdraw from all the occupied territories.<sup>121</sup>

Turning to the final issue, namely Israel's understanding of the term "secure and recognized boundaries", referred to in Article 1(ii) of



Resolution 242, we may observe that Sadat adopted the view that this term should not be understood as providing an excuse for geographical expansion; instead it should mean proper security arrangements and more peace guarantees for Israel. In presenting his view on the meaning of the term "secure boundaries", he stated:

"It means that Israel lives within her borders, secure against any aggression...It means that Israel obtains all kinds of guarantees that ensure those two factors."<sup>122</sup>

Egypt's position in this respect meant that it rejected Israel's demand, proposed by several Israeli officials, that it must have a permanent presence at Sharm-el-Sheikh<sup>123</sup>. From a legal standpoint, Egypt's understanding of the term "secure boundaries" was based on several international law principles, such as the principle of inadmissibility of the acquisition of territory by force, the principle of respect of territorial integrity and sovereignty of states, and the principle of self-determination, as developed under the U.N.<sup>124</sup>

Moreover, this understanding can be supported by the fact that the term "secure and recognized boundaries" in the British draft (which became Resolution 242) was taken from the earlier US draft submitted to the Security Council on November 7, 1967. Secure boundaries were envisaged by the sponsors of the latter draft as a condition in the arrangements to be adopted and not in the geographic location<sup>125</sup>.

Before leaving this point, it may be worthwhile to point out that no change in the Israeli position during this period can be traced. In his statement followed Sadat's speech, Begin indicated that the Israelis "have a different position...with regard to the permanent borders". Nevertheless, he confirmed that the approach of the Israeli government

was that it was ready to negotiate peace on the basis of the Security Council Resolutions 242 and 338, without any prior condition.<sup>127</sup>

### I. The Drafting History of the Withdrawal Clause

It is necessary at the outset to indicate that it is not our intention here to analyze the proposals and the drafts submitted by the parties during <sup>the</sup> Camp David negotiations as they will be examined later in our analysis of the relevant provisions of the Peace Treaty. The following discussion, therefore, will be confined to a brief exposition of these drafts as submitted during the negotiations.

The Camp David talks opened on September 5, 1978 (and lasted for thirteen days)<sup>128</sup>. On the next day, on September 6, Sadat submitted a plan which called, *inter alia*, for the withdrawal of Israeli forces from all the Arab occupied territories. The question of the Israeli withdrawal was chiefly dealt in Article 2 of the text of the Egyptian proposal. It reads as follows:

"The parties agree that the establishment of a just and lasting peace among them requires the fulfillment of the following: first, withdrawal of Israel from the occupied territories in accordance with the principle of inadmissibility of the acquisition of territory by war. In Sinai and the Golan, withdrawal shall take place to the international boundaries between mandated Palestine and Egypt and Syria respectively<sup>129</sup>."

The Egyptian draft was quite unacceptable to the Israeli negotiators for several reasons. In the first place, the language on the inadmissibility of acquisition of territory by war was rejected by Begin on the ground that Israel had occupied the Arab lands in a "defensive act" rather than by a war. <sup>130</sup>



Moreover, Israel's initial position was that it would not give up the Israeli military airfields in Sinai<sup>131</sup>. Also, Dayan suggested an adjustment in the international boundaries between Egypt and Israel in return of the latter's agreement to remove its settlements in Sinai<sup>132</sup>.

Further, if Egypt's draft was to be accepted, then the scope of the Israeli withdrawal, which would be based on the principle of the inadmissibility of acquisition of territory by war, would extend in legal terms to all the Arab occupied territories.<sup>133</sup>

In an attempt to bridge the gap between Egypt's position and the Israeli reaction, the US submitted on September 10 its first draft.<sup>134</sup> The relevant portion dealing with the question of the withdrawal reads as follows:

"Israel has agreed to the restoration of the exercise of full Egyptian sovereignty in the Sinai up to the internationally recognized border between Egypt and Israel, and Egypt has agreed to establish full peace and normal relations with Israel."<sup>135</sup>

A quick look at the Egyptian and American draft reveals two main differences. First, while the legal basis of Egypt's draft was the principle of inadmissibility of the acquisition of territory by war, the American draft instead referred to the principle of respect of state sovereignty and territorial integrity. Also, the US draft contained no mention of other Arab occupied territories, while Egypt's draft provided explicitly for Israeli withdrawal from all the Arab territories. Moreover, contrary to Egypt's draft, the Americans used a language which referred implicitly rather than explicitly to the Israeli withdrawal from Egypt's territory.

As to the reaction of Egypt, it seems that the Egyptians found it acceptable provided that it was amended to refer explicitly to the Israeli withdrawal<sup>136</sup>.

In response to Egypt's view, the US amended its draft on the withdrawal to provide explicitly for the Israeli withdrawal. On September 12, the second American draft was submitted<sup>137</sup>. The relevant portion on the withdrawal ran as follows:

"Egypt and Israel agreed to negotiate on:...

a) The full exercise of Egyptian sovereignty up to the international recognized borders between Egypt and mandated Palestine,

b)...withdrawal of Israeli personnel from Sinai."<sup>138</sup>

This version suggests that the expression "withdrawal of Israeli personnel from Sinai" was inserted to meet the Egyptian demand for clearer language. The term "Israeli personnel" is somewhat unclear and can be taken as a reference both to Israeli military forces and perhaps also to the settlers. At this time, it may be observed, the Israelis had not been yet agreed on the withdrawal of the settlers.

Also, the above version refers to the final line of the withdrawal in terms of the international borders between Egypt and mandated Palestine, instead of the expression "internationally recognized border between Egypt and Israel" used in the first draft. The former expression which was taken from the Egyptian draft is more accurate as we shall indicate later.

In turning now to the Israeli position, a distinction ought to be made between its initial position taken in the first days of the negotiations and the final position. In the first stage Israel declared that it was ready to withdraw its military forces from Sinai provided that it could



keep control over the airfields in Sinai<sup>139</sup>. These airfields were built by Israel during its military occupation of Sinai. Of course, such a demand was rejected by Egypt, since it would involve violation of Egypt's sovereignty and territorial integrity.<sup>140</sup>

Alternatively, the Israelis proposed that the airfield near Sharm el-Sheikh could be turned over to the UN peace-keeping forces, the one near El-Arish to the Americans, and the one near Etzion retained by the Israelis for some time. Again, Egypt rejected these proposals.<sup>141</sup>

Eventually, after the Americans accepted a proposal that the US government would pay the costs of, and help in, building three airfields in Israel in return for Israel's abandonment of the Sinai's airfields, Israel agreed to give up the three airfields, providing that Egypt would use only them for civilian purposes<sup>142</sup>

Thus, the relevant paragraph of the Camp David Accords dealing with the airfields problem provides for:

"...the use of airfields left by the Israelis near El-Arish, Rafah, Ras-en-Naqb, and Sharm el Sheikh for civilian purposes only, including possible commercial use by all nations."<sup>143</sup>

Another relevant problem which arose during the negotiation was the timing of the Israeli withdrawal from Egypt's territory. Under Articles 2 and 6 of the Egyptian draft, the Israeli withdrawal was to be completed "within three months" from the signing of the the framework treaty.<sup>144</sup> This period was rejected by the Israelis, yet, by the end of the negotiations , it had been agreed that Israel would evacuate a substantial area within nine months from the signing of the peace treaty ;thereafter its withdrawal would be completed within three years.

Israeli security reasons were behind extending the period from three months to three years<sup>145</sup>

On summing up the position of the three participants, we may conclude that the extent, the timing, and the conditions of the Israeli withdrawal from Egypt's territory did not constitute a serious problem during the negotiations. However, while the US and Egypt demanded complete withdrawal, Israel, under the pretext of the right to secure boundaries, insisted on its demand to remain in occupation of the airfield. It did not give up this demand until the final hours of the negotiation.

While Egypt demanded that the scope of the withdrawal must include all the territories seized in 1967, Israel and the US preferred a language calling for withdrawal from Egypt's territory only.

The text of the Camp David Agreements referred to the Question of the Israeli withdrawal in the second part of the Agreement entitled "Framework For The Conclusion Of A Peace Treaty Between Egypt and Israel". In this connection two main provisions dealing with the withdrawal can be found:

"a. The full exercise of Egyptian sovereignty up to the internationally recognized border between Egypt and mandated Palestine;

b. The withdrawal of Israeli armed forces from the Sinai."<sup>146</sup>

Another paragraph dealing with the period during which the Israeli withdrawal was to be completed was the final paragraph entitled Interim Withdrawal:

"Between three months and nine months after the signing of the Peace Treaty, all Israeli forces will withdraw east of a line extending from a



point east of ElArish to RasMuhammed, the exact location of this line to be determined by mutual agreement."<sup>147</sup>

As regards the conditions stipulated by Israel in return for its withdrawal, such as the peace guarantees, the stationing of U.N. forces and Israel's freedom of passage through the Straits of Tiran, several provisions can be found. Yet, these conditions are not our concern at this stage since they will be examined at length in other parts.

We proceed now to examine the relevant parts of the Camp David Accords and the 1979 Peace Treaty.

### An analysis of the Treaty's Provisions

#### (1) A Textual Analysis

The main provisions dealing with Israel's withdrawal are included in Article 1(2) of the Treaty. For the purposes of the present analysis, it will be quoted again:

"Israel will withdraw all its armed forces and civilians from the Sinai behind the international boundary between Egypt and mandated Palestine as provided in the annexed protocol (Annex 1), and Egypt will resume the exercise of its full sovereignty over Sinai". A textual interpretation of the above paragraph suggests several observations. The term "armed forces" is derived from the language of Resolution 242, in Article 1(1). This could be interpreted as being based, in the first place, on Israel's acceptance of and obligations under the Resolution.

The term "the Sinai" refers obviously to all Egypt's occupied territories. In referring to Sinai, the framers clearly avoided the use of the term "occupied territories" which was used in Resolution 242. Having in mind the fact that all Arab occupied territories are within

the scope of the withdrawal required by Resolution 242, it seems that the Israeli lawyers insisted on the use of the term "Sinai" instead of the term "Egyptian occupied territories", as proposed in the Egyptian draft. They believed that such a language would exclude the possibility of the application of the provisions to other Arab occupied territories.<sup>148</sup>

Moreover, the phrase "international boundary between Egypt and mandated Palestine" is similar to the language used in Article VIII (2) of the Egyptian-Israeli Armistice Agreement of 1949, which determined the pre-June armistice lines. This could mean that the authors of the Treaty are in line with Egypt's view that its pre-June Armistice lines<sup>149</sup>, with the exception of Gaza, was in accordance with the international permanent boundary. Thus, if this is true, it means that the authors denounced the Israeli claim to adjust its boundary with Egypt based on the premise that the pre-June line was provisional.

The phrase "international boundary" appears for the first time in the Egyptian draft submitted at Camp David. Later it was used by the Americans in their second draft instead of the phrase "the internationally recognized border between Egypt and Israel." Clearly, the former phrase is more accurate than the latter. In fact, while there was an international, permanent and recognized boundary between Egypt and mandated Palestine, there had never been a recognized boundary between Egypt and Israel until the conclusion of the 1979 Treaty.<sup>150</sup>

Also, the use of this phrase, in particular the term "mandated Palestine" to refer to the final line of the withdrawal could mean that Egypt implicitly recognizes the state of Israel as encompassing the territory of mandated Palestine with the exception of Gaza and the West



Bank. In other words, it could mean that Egypt had accepted Israel's acquisition of that substantial part of the territory- allocated to the Palestinian State in the U.N. partition Resolution- and which it seized in 1948 and 1949. <sup>151</sup>

The word "resume" used in the sentence, "Egypt will resume the exercise of its full sovereignty over the Sinai" suggests that this phrase is declaratory in character as it confirmed Egypt's previous sovereignty over Sinai, thus rejecting Israeli claims questioning Egypt's sovereignty over Sinai. <sup>152</sup>

The expression "exercise its full sovereignty" refers clearly to the principle of respect for sovereignty and territorial integrity of states. This is one of the fundamental principles of the Law of Nations by which a sovereign state is supreme within its territorial domain. <sup>153</sup> This right imposes the duty on every state to refrain and to prevent its agents and subjects from committing any act which constitute a violation of another state's sovereignty and territorial integrity. It is also one of the fundamental principles of the U.N. Charter as enshrined in Article 2(4) of the U.N. Charter <sup>154</sup>. The principle was also included in the constitution of several international organizations, e.g., Article 3(3) of the Charter of the OAU. <sup>155</sup>

A glance at Article 1(2) suggests that, in practice, the injection of that principle into the last sentence of the paragraph adds nothing to its general meaning, that is to say, assuming that such a reference to the principle was omitted, Israel would have to withdraw from all Egypt's territory under the clear meaning of the rest of the paragraph. Thus, we may ask, what are the reasons for the reference to that principle ?

A careful reading of the paragraph suggests that the reference to that principle could be construed as follows:

- From the Israeli perspective such reference may be understood to mean that Israel's withdrawal from Egypt's territory was legally based on the principle of respect of Egypt's sovereignty and territorial integrity, rather on the principle of inadmissibility of the acquisition of territory by war proposed by the Egyptian draft. As referred <sup>to</sup> earlier, the reference to the latter principle might be understood as broadening the scope of the paragraph to embrace the rest of the Arab occupied territories. In other words, the target of this phrase was the occupied territory of the West Bank and Gaza, which do not belong to any sovereign state, and consequently, Israeli presence there is not in violation of sovereignty and territorial integrity of states.

In sum, we may conclude that by the inclusion of that expression, Israel not only avoided the reference to the principle of inadmissibility of the acquisition of territory by war, but also excluded the West Bank and Gaza from the scope of the withdrawal clause.

On the other hand, from the Egyptian perspective, the objective of the reference to the principle is two-fold. First, the reference that Egypt will resume the exercise of its full sovereignty over Sinai could be interpreted to mean that Israel denounces its previous claims that Egypt possesses no title over Sinai. To understand the importance of this point, we may refer in brief to the legal argument against Egypt's sovereignty over Sinai (one third of Egypt's territory). In this connection Stone wrote:

" As to Sinai, this remained under the sovereignty of Turkey right until the Treaty of Lausanne, 1923, Article 16, by which Turkey



renounced all titles thereto without however disposing of the sovereignty in favor of Egypt or any other particular State. What lay in Egypt after that time would appear to have been merely what was first accorded to the Khedivate of Egypt in 1892, and continued under the British protectorate until after World War 1, namely, a grant of "administration". After 1923, and even after Egypt became independent, no other disposition, nor any new act of annexation by Egypt, is to be found. The only possible grounds for suggesting that Egypt had sovereignty over Sinai in 1967 would therefore have to be that her subsequent activities there sufficed for acquisitive prescription whether they sufficed to enlarge her "administration" into sovereignty, and whether indeed they were not all sufficiently explained in terms of "administration" remained a debatable question in 1967."<sup>156</sup>

Secondly, the reference to the principle of sovereignty and territorial integrity of states would affirm the necessity of a complete Israeli withdrawal from Sinai and would close the door to any unexpected Israeli claim or interpretation under which it may not complete its total withdrawal. An example of such <sup>an</sup> unexpected claim or interpretation is the Israeli claim with regard to Taba. An examination of the Taba Award will be made later.<sup>157</sup>

## (2) A Contextual Analysis

The first issue which needs to be examined in relation to the Israeli withdrawal as provided by the 1979 Treaty was the timing of the Israeli withdrawal.

Article 1(I) of Annex one to the Treaty, indicated that "Israel will complete withdrawal of all its armed forces...from the Sinai not later than three years..."<sup>159</sup>

Also, withdrawal during this period would be accomplished in two phases, interim and final withdrawal. The interim withdrawal, under Article 1(3) of Annex one, was to be completed within 9 months from the date of exchange of instruments of ratification. The line of this interim withdrawal will be "behind the line from east of El-Arish to Ras Muhammed as delineated on Map 2."<sup>160</sup>

The final withdrawal from the rest of Sinai to the international boundaries was to be completed "not later than three years." More details about the subphases of the Israeli withdrawal are provided in Article II of Appendix 2 Annex 1.<sup>160</sup>

The stipulation of three years to complete the Israeli withdrawal is a long period compared to the three months period envisaged by the Egyptian draft. The U.S. draft submitted on 10 September did not suggest any period and stated that "the timing of the withdrawal of all Israeli forces from Sinai... will be defined in the Peace Treaty."<sup>161</sup>

In comparing this period to many international peace treaties, the three years period was a long one. For example, Article 20 of the Peace Treaty between the Allied Forces on one hand and Bulgaria on the other hand in 1947 provided for the withdrawal of Allied Forces from Bulgarian territory within a period of 90 days after the coming into force of the Treaty<sup>162</sup>. A similar period can be found in the Treaty between the Allies and Italy which provided in Articles 14 and 73 for the withdrawal of the Allied forces from the territory of Italy within 90 days.<sup>163</sup>



In any event, the stipulation of this long period for the Israeli withdrawal had been affected by the view that Israel must have time to prepare itself for the withdrawal, particularly, complete its security arrangements inside its final borders<sup>164</sup>.

Moreover, as Saunders observes, the process of achieving peace in the Middle East needs time to allow the political conditions for peace to grow as they "cannot be decreed"<sup>165</sup>. In other words, such time would create a political environment that would encourage and ensure a permanent peace.<sup>166</sup>

With regard to the time as from which Israel was to begin its withdrawal, Article 1(1) indicated that the withdrawal would begin as "from the date of exchange of instruments of ratification of this Treaty".

The framers at this point are in line with Article 2 of the Egyptian Proposal at Camp David that "Israeli withdrawal shall commence immediately after the signing of the peace treaties"<sup>167</sup>. However, the Treaty indicates that the withdrawal begins "from the date of the exchange of instruments of ratification"<sup>168</sup> and not from the signing of the Treaty, as Egypt proposed. At this point, we may recall that the Camp David Accords provided that the Israeli withdrawal was to begin as from the signing, and not from the ratification, of the Peace Treaty.<sup>169</sup>

Notwithstanding this, the timing of the withdrawal as defined by the Treaty settled the dilemma raised with regard to the implementation of Resolution 242, namely what must come first in time, Israeli withdrawal or Egypt's acceptance of peace and recognition of Israel. It is clear that the Treaty adopted the view that peace with, and recognition of,

Israel must precede withdrawal. Thus, it goes beyond what had been envisaged by the Resolution.

At this point, it may be well to recall that the paragraph on the establishment of peace was placed, physically, in the Peace Treaty before the paragraph on the withdrawal of Israeli forces from Sinai. This may be compared with Resolution 242, where the paragraph on the withdrawal precedes the establishment of peace; and therefore the Arabs called for the Israeli withdrawal before concluding peace with Israel.

As to the implementation of the provisions on the timing of the withdrawal, Israel, with the exception of Taba, had completed its withdrawal in the time defined, i.e., by April 1982.<sup>170</sup> Taba is the site of a hotel that the Israelis built near Eilat on land that, according to Egypt, belonged on the Egyptian side of the boundary after Israel's final withdrawal from the Sinai under the terms of the Peace Treaty. Israel asserted its claim to remain there. The dispute over this area was referred to international arbitration. In 1989, abiding by the award, Israel withdrew finally from the disputed area.<sup>171</sup> A more detailed analysis of the problem appears later in this chapter.

The second issue arising in connection with the withdrawal of Israeli forces under the Treaty is the extent of that withdrawal. Article 1(2) made it clear that Israel would withdraw to the international boundaries between Egypt and mandated Palestine. For a better understanding of the final line of the withdrawal defined by the Treaty, it may be useful to refer to the three other possible lines of withdrawal which might have been chosen.

The first possibility is the pre-June line. This line was established under the 1949 Armistice Agreement between Egypt and Israel, and was of



two types. One is the permanent line marking the international recognized boundaries between Egypt and mandated Palestine which<sup>was</sup> referred to in the Armistice Agreement as "the Egypt-Palestine frontiers"; and the temporary line separating "the Gaza Strip from the Israeli-held territories".<sup>172</sup>

From a legal standpoint, the pre-June line is consistent with the extent of the withdrawal clause of the Security Council Resolution. Further, it is consistent with the overwhelming view that the Israeli occupation of the Arab territories seized in 1967 is illegal under fundamental Charter principles and U.N. resolutions.<sup>173</sup> The Egyptian draft envisaged an Israeli withdrawal to the pre-June line.

The second possible line is the one determining the Jewish state as proposed by and defined in Resolution 181(11) adopted by the General Assembly on 29 November 1947.<sup>174</sup> This is the line according to which Israel was accepted and recognized.<sup>175</sup> In a letter addressed on 14 May 1948 by Eliahu Epstein, Agent of the Provisional Government of Israel, to President Truman requesting recognition of Israel, the President was informed that: "The State of Israel has been proclaimed as an independent republic within frontier approved by the General Assembly of the United Nations..."<sup>176</sup> In support of this line, we may recall that the Israeli government also accepted in the Protocol of Lausanne of 12 May 1949, the use of a map of Palestine identical to the UN partition plan as a basis for discussion of the ultimate settlement.<sup>177</sup>

An advocate of this view could also argue that Israel's annexation of the territories it occupied in 1949 in excess of the partition resolution was illegal under the principle of inadmissibility of the

acquisition of territory by force and the principle of self determination.

Notwithstanding the above, this line was not proposed during the negotiations. This was due to the fact that both Egypt and Israel agreed before the negotiation that the principles included in Resolution 242 should be the basis of the settlement. As is well known, the resolution overlooked the problem of the territories siezed by Israel in 1948 and 1949. In the words of Quincy Wright," The resolution of November 22 nd is advantegeous to Israel in requiring withdrawal only from territories occupied in 1967. The territories occupied by Israel under the 1949 Armistice beyond the UN partition line of the 1947 might have been added."<sup>178</sup>

The third possible line is the international recognized boundary between Egypt and mandated Palestine. For a better understanding of this line, we have to go back to 1906 when Turkey was the ruler of Palestine and the nominal ruler of Egypt. During that time, the boundary between the two countries was uncertain. In 1906, it was agreed between Britain, then the actual ruler of Egypt, and Turkey that the boundary of the two territories should be definitively established.<sup>179</sup> Thus, on October 1st, 1906 an agreement was concluded between the Turkish Sultante and the Egyptian Khediviate.<sup>180</sup> Under this agreement the boundary between Egypt and Palestine was laid down and boundary pillars were erected along the separating line.<sup>181</sup>

This was the line suggested by the first US draft to be the final line of the Israeli withdrawal. It was, however, referred to in terms of the "internationally recognized border" between Egypt and Israel. Then later, in the second draft, it was referred to in terms of the



internationally recognized boundary between Egypt and mandated Palestine. Of course, this was the line adopted by the Camp David Accords and the 1979 Treaty.

We have mentioned earlier, in dealing with the meaning attributed to the term "mandated Palestine", that the language of the final line of the withdrawal suggests that Egypt recognized Israel as a sovereign state, not only over the territories allotted to the Jewish state, but also over that substantial part of the territory allotted to the Arab state in the Partition Plan and seized by Israel in 1948 and 1949.

#### The Conditions for the Israeli Withdrawal under the Treaty

While there has never been a consensus of opinion as to the question whether or not Resolution 242 required unconditional Israeli withdrawal, it is clear that the framers of the 1979 Treaty envisaged a conditional withdrawal. The Treaty, like Resolution 242, was a package-deal based on certain basic principles: Israel, on one hand, agreed to withdraw from all the Sinai, to dismantle its settlements, and to give up all the oil fields. Egypt agreed, in return, to conclude full peace with Israel which entailed full recognition, the termination of the state of belligerency, free passage for Israeli shipping through Egypt's waterways, the establishment of full diplomatic relations and the end of the boycott of Israel.<sup>182</sup> Also, Egypt agreed on several peace guarantees required for the security of Israel.

Apart from these general conditions, review of the provisions dealing specifically with military withdrawal show that the phases of the withdrawal should be accompanied by certain conditions. These can be classified into two types: conditions regarding security and peace

guarantees, and conditions regarding the normalization of, and future relations between, Egypt and Israel.

The security arrangements, military measures, and the peace guarantees under the Treaty will be examined in detail in another part of this work.<sup>183</sup> Suffice it to emphasize at this stage that Israel had obtained sufficient and effective guarantees. For example, Article 2 of Annex 1 indicated that the withdrawal was to be accompanied by the establishment of demilitarized zones and some military measures. Also, Article 3 of the Appendix to Annex 1 provided for the stationing of U.N. forces to supervise the implementation of certain terms of the Treaty. In addition, Article V of that Appendix provided for interim buffer zones in Egypt where no military forces were to be permitted. Finally, Article II of the same Appendix provided for certain limitations upon Egypt's military forces and equipment.

With regard to the second type of conditions, namely those relating to the normalization of relations between the parties, Article 1 of the Treaty provided for a linkage between the Israeli withdrawal on one hand and the normalization of relations and the termination of the economic boycott on the other hand. It reads as follows:

" upon completion of the interim withdrawal provided for in Annex 1, the Parties will establish normal and friendly relations in accordance with Article III(3)."<sup>184</sup>

Fortunately, the Treaty provided an additional paragraph to explain the meaning of the term "normal and friendly relations". It is clear that the framers favoured a broad meaning for this term. Article 3(3) indicated that "The normal relationship will include full recognition of Israel; Diplomatic relations; Economic and cultural relations;



Termination of boycotts and discriminatory barriers to the free movement of people and goods and; The mutual enjoyment by citizens of the due process of law".<sup>185</sup>

In comparing the above paragraph with other meanings attributed to the same term during the peace negotiations, the following observations require to be made.

This paragraph was originally taken from the first American draft submitted at Camp David, which referred to the normal relations in the following terms:

"Signatories shall proceed to establish among themselves relationships normal to states at peace with one another. To this end, they should undertake to abide by all the provisions of the Charter of the United Nations. Steps to be taken in this respect include: a) full recognition, including diplomatic, economic and cultural relations; b) abolishing economic boycotts and barriers to the free movement of goods and people; c) guaranteeing that under their jurisdiction the citizens of the other parties shall enjoy the protection of the due process of law".<sup>186</sup>

This quotation was finally approved and became paragraph 2 of Section C of the Camp David Accords.

However, the above broad meaning of the term "normal relations" runs contrary to the narrow meaning suggested in the Egyptian draft of September 6, 1978. Article 2(7) of this draft understood the normal relations in terms of "full recognition and abolishing the economic boycott".<sup>187</sup>

This wide meaning went beyond what had been suggested in Resolution 242. The Resolution referred to the termination of all states of belligerency and respect for the sovereignty, territorial integrity and

political independence of every state in the area. Obviously, neither diplomatic relations nor economic ties had been envisaged.

In conjunction with the establishment of normal relations as a condition of the Israeli withdrawal, the Treaty provided also for two additional conditions which should be fulfilled after the first phase of the Israeli withdrawal. The first was the exchange of ambassadors. Under Article 1 of Annex 3," the Parties agree to establish diplomatic and consular relations and to exchange ambassadors upon completion of the interim withdrawal"<sup>129</sup>. Obviously, the term "diplomatic relations" seems also to have a specific meaning under this Article. Generally, the establishment of diplomatic relations is not an international obligation under the rules of international law<sup>130</sup>. Article 2 of the Vienna Convention on Diplomatic Relations 1961 provides that the establishment of diplomatic relations between states, and of permanent diplomatic missions, takes place by mutual consent."<sup>130</sup>

Thus, in spite of the fact that the establishment of diplomatic relations is not an international obligation, and the fact that even if such relations exist, it does not necessarily entail the exchange of ambassadors, Egypt, however, agreed to exchange ambassadors with Israel while the latter was occupying its territory.

Another condition in return of the Israeli withdrawal was that Egypt was obliged, under Annex III of the Agreed Minutes of the Treaty, to fulfill Israeli oil needs from its oil exports. The relevant provision reads in part as follows:

"...[S]uch relations will include normal commercial sales of oil by Egypt to Israel, and that Israel shall be fully entitled to make bids for Egyptian-origin oil not needed for Egyptian domestic oil



consumption, and Egypt and its oil concessionaires will entertain bids made by Israel on the same basis and terms as apply to other bidders for such oil."<sup>191</sup>

This commercial clause was beyond what was envisaged at Camp David. Yet, according to Israeli sources, the objective of this clause was to confirm the termination of the economic boycott, to allow Israel to buy oil directly from Egypt and transport it in Israeli tankers through the Gulf of Aqaba, thus confirming the end of the boycott and the existence of normal relations. Another objective was, of course, to secure Israeli oil needs in case of any world oil crisis.<sup>192</sup>

Another important condition stipulated in return for the Israeli withdrawal was that Egypt was obliged under Article VI of the Treaty to abandon its obligations under the Arab Joint-Defence Pact of 1951 and other mutual defence treaties with Arab states<sup>193</sup>, if such obligations were in conflict with Egypt's obligation under the 1979 Treaty. This condition was mainly included in Article VI(5) which reads as follows: "Subject to Article 103 of the United Nations Charter, in the event of a conflict between the obligation of the parties under the present Treaty and any of their other obligations, the obligations under this Treaty will be binding and implemented".<sup>194</sup>

Any review of the travaux préparatoire of the Treaty reveals clearly that the principal target of this Article is the Joint Defence and Economic Co-operation Treaty of 1951 between the States of the Arab League (known as the Arab Defence Pact).<sup>195</sup> This means that in the event of a conflict between Egypt's military obligations under the Arab Defense Pact on the one hand, and its obligations to keep peaceful

relations with Israel under the Peace Treaty on the other, Egypt's obligation under the Peace Treaty must prevail.<sup>196</sup>

So far as this condition is concerned, there has never been a consensus of opinion between Egypt and Israel as to the exact meaning of the above article. From an Israeli perspective, this article means that Egypt, under any circumstances, because of its obligations under the Arab Defence Pact or any mutual defense treaty, is not legally permitted to take part in Arab military action against Israel, even if the latter was attacking an Arab League state.<sup>197</sup>

On the other hand, Egypt held that its obligation under the Arab Defense Pact is part of its obligation as a UN member. Consequently, Article VI does not prevent Egypt from coming to the aid of a country with which it has a mutual defense treaty or a collective security agreement if such a country should come under armed attack by Israel. Reasons in support of these two conflicting views need to be clarified.<sup>198</sup>

Before embarking on the argument for and against the effect of Article VI on Egypt's Arab obligation, it is useful to offer a brief account of the legislative history of this Article.

It is sound to assume that the Article on conflict of obligations had never been raised or discussed at Camp David. Nor was a reference made to such problem in the text of the Camp David Accords.<sup>199</sup>

The first text of this Article can be found in the first draft of the Peace Treaty which was nearly accepted by Egyptian and Israeli delegations in Washington in November 1978. Article 6 of the draft treaty was similar to that one which finally appears as Article VI of the 1979 Treaty.<sup>200</sup>



By the end of November, 1978, despite the fact that the draft article was approved by the Egyptian delegation in Washington, President Sadat was reported to have been angry at the article "since that made it seem as if his obligations to Israel took precedence over his obligations to his Arab allies".<sup>201</sup>

On November 30, Carter received a letter from Sadat whereby he stated that this article was impossible to accept and, therefore, needed to be revised.<sup>202</sup>

On the other hand, the Israeli reaction to the draft article was different. On November 21, 1978, it was declared that the Israeli cabinet had voted to accept the draft treaty, including the article on the priority of obligations.<sup>203</sup>

The Americans held that the text of the treaty agreed on 11 November 1978 should be considered closed, including article 6. Carter objected to the idea of revising the treaty, but did suggest that interpretative notes could be appended to it.<sup>204</sup>

Carter's proposal was accepted by Egypt, as Sadat agreed that Article 6 could remain essentially unchanged, provided an interpretative note could be added making clear that this treaty did not prevail over other treaties to which Egypt was a party. Thus, a US interpretative legal opinion was agreed and submitted to Egypt and Israel. This legal opinion stated that Article 6 "did not prevent Egypt from coming to the aid of a country with which she had a mutual defence treaty or a collective security agreement if such a country should come under armed attack".<sup>205</sup>

As expected, this legal opinion was not accepted by Israel. The Israeli cabinet announced its rejection in the following terms:

"The Cabinet takes note of the letter of the Foreign Minister of 28 December 1978 to the Secretary of the State of the United States, which rejects completely the American interpretation of Article 6 (on conflict of obligations). Israel will approach the United States Government with a view to ensuring a single and unequivocal meaning to this Article of the peace treaty".<sup>206</sup>

This angry Israeli reaction resulted in a halt in the peace talks. In an attempt to revive the talks, the Americans agreed with the Israelis that a new interpretation to their original interpretation was to be added. This new interpretation was to be in the form of an agreed letter which Secretary Vance would send to the Israelis. On the contents of this letter, Dayan wrote:

"It was agreed that Vance's letter to us should state that the Israel-Arab conflict was to be resolved through peaceful means, and the United States held that neither side had the right to use, or threaten to use, military means to do so. In accordance with this principle, Egypt would be neither obliged nor entitled to extend help to her allies if they used military force against Israel because of Israel's presence in the territories captured in 1967. The determining sentence on this subject would state that Israel's presence in these territories did not constitute a military attack or an act of aggression which justified military action against her.

On reprisal operations, the letter was to state that military action taken by Israel for self-defence including actions such as those against terrorist attacks could not justify military help against Israel."<sup>207</sup>



Of course, the Egyptians rejected this proposed letter on the ground that, by such an interpretation, the Americans were granting legitimacy to Israel's occupation of conquered territory.<sup>208</sup>

By early 1979, the Americans decided to drop the legal interpretation they had offered to both Israel and Egypt on the meaning of priority of obligations in Article 6. Instead, they proposed some slight revisions of Article 6 which were finally accepted by the parties.<sup>209</sup>

The view that Article VI of the Treaty prevents Egypt from participating in any Arab system for collective self-defence against Israel.

Taking as a point of departure the assumption that the travaux preparatoires of the 1951 Arab Defence Pact shows that the Arab collective defence system was created and developed in order to be directed against Israel, the Israeli view was essentially based on the argument that, as the Treaty is the basis for peace and the Defence Pact is the basis for war, Egypt cannot have its cake and eat it, but rather must decide whether it is really committed to peace, and if so renounce the bellicose Defense Pact. This view is based on a number of considerations.

In the first place, there is a possible contradiction between the Arab Defence Pact and the 1979 Treaty. This is caused by the fact that Egypt and Israel have adopted different interpretations of Article 51 of the UN Charter. While Israel has been a traditional supporter of the anticipatory self-defence concept which allows a state to act in self-defence before the aggressor if it faced an imminent danger, Egypt, however, has been a supporter of a strict interpretation of the right of self-defence and has rejected the anticipatory self defense theory.<sup>210</sup>

This difference will clearly cause difficulties if Israel launches a preemptive strike against an Arab State. In this event Egypt, may be obliged to take part against Israel for three reasons. Egypt considers that the aggressor is the first state to employ force.<sup>211</sup>

Also, Article 2 of the Arab Defence Pact stipulates that armed aggression against any one or more members would be considered as an attack against all, and that all members undertake without delay to employ the appropriate measures, including the use of armed forces.<sup>212</sup>

And the UN Declaration on the Definition of Aggression of 1974 gives priority, in general, to a restrictive interpretation of the right to self-defence.<sup>213</sup>

The Israelis argued that Egypt must renounce the bellicose Defence Pact to avoid such a contradiction.<sup>214</sup>

Moreover, the optional nature of the 1951 Arab Defence Pact makes it possible for Egypt to withdraw from this Pact as to avoid such a contradiction.<sup>215</sup> Article 12 of the Pact referred to the possibility of withdrawal in the following terms:

" After a lapse of 10 years from the date of ratification of this Treaty, any one from the contracting states may withdraw from it, providing 12 months' notice is previously given to the Secretary-General of the Arab League, the Secretary-General of the League shall inform the other contracting states of such notice."

Thus, the Israelis argued that by virtue of this Article Egypt, whose membership in the Treaty is more than 10 years, can legally withdraw from the Defense Pact to maintain its peace with Israel.<sup>216</sup>

Another reason in support of this interpretation is the Israeli argument that they made it clear, during the preparatory work of what



became Article VI of the Treaty, that the target of this Article is the Arab Defence Pact, as well as the fifteen mutual defence treaties concluded between Egypt and other Arab states.<sup>217</sup> Prime Minister Begin told President Carter that Article VI was designed to prevent Egypt from taking part in any Arab joint action against Israel because of an Arab contractual obligation, and is the heart of the Peace Treaty; and without it Israel would not sign the Treaty.<sup>218</sup> Dayan expressed the view that,

"To find a golden mean whereby Egypt could both remain in the Arab anti-Israel camp and yet sign a peace treaty with us seemed as impossible as trying to square the circle."<sup>219</sup>

In the course of the negotiations, Dayan asked Egypt's Prime Minister Khalil, during a meeting in Brussels in December 1978, what would be Egypt's obligation if Syria attacked the Golan Heights and "claimed that this was a defensive war to liberate the holy soil?" Khalil replied that Egypt would side with Syria but would take no part in the war.<sup>220</sup> Also, according to Dayan, when Khalil was asked what would be the situation "if Israel had no alternative but to attack the PLO terrorist bases in Lebanon by invading the latter?" The Egyptian Premier repeated that his government would join those who condemn Israel but would not go to war, and that Egypt would be active with other Arab states in a diplomatic but not in a military campaign.<sup>221</sup>

The Israelis therefore held that the Egyptian had agreed during the negotiations to Israel's understanding of Article VI.

Moreover, a review of the travaux préparatoires reveals that Israel strongly rejected an American interpretation of Article VI to be attached to the Treaty as an interpretative "legal opinion" of the

Government of the U.S.<sup>222</sup> "According to Israeli sources, the rejection of this note sprang from the difficulty of determining when and whether a country was the attacker or the attacked."<sup>223</sup>

In support of their interpretation of Article VI, the Israelis also argued that Egypt's right to participate in the Arab defence system was authorized under Article 52 of the U.N. Charter which dealt with regional arrangements. Article 52 of the Charter, they argued, permits but does not impose regional arrangements. Therefore, such obligation is jus dispositivum and cannot be regarded as jus cogens. In this connection Schwelb states, "The Charter of the United Nations does not say that all of its provisions are rules of jus cogens. It contains a few provisions which are clearly jus dispositivum and from which derogations are permitted. Examples are;....Article 52 which permits but does not impose regional arrangements".<sup>224</sup>

Hence, there is no jus cogens rule in contemporary international law which prevents Egypt and Israel from concluding an agreement conflicting with Egypt's obligations under the Arab League self-defence system.

The View that Article VI of the Treaty does not prevent Egypt from fulfilling its obligations under the Arab Defence Pact

Contrary to the Israeli understanding of Article VI, Egypt expressed the view that the Peace Treaty, which established a "just, comprehensive and lasting peace" between itself and Israel, in no way contradicted the Defence Pact as long as Israel did not intend to launch aggressions on Arab States.<sup>225</sup> Egypt insisted that its obligations under the Arab Defence Pact could not be renounced, and,



consequently, it would participate in any military action if Israel attacked any member of the Arab League.<sup>226</sup>

Egypt argued that its obligation to take part in regional collective security arrangements, such as the Arab Defence Pact, was part of its obligations under the UN Charter. This obligation is supported by Article 103 of the Charter which reads as follows:

"In the event of a conflict between the obligations of the members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail".<sup>227</sup>

It has been agreed that among the situations envisaged by Article 103 was the situation where there is a conflict between the obligation of a member under the Charter and the obligation of that member under an agreement with another member contracted after entry into force by the Charter.<sup>228</sup>

Thus, by extension, Article 103 of the Charter maintained Egypt's obligation in the event of a conflict between the Arab Defence Pact and its obligations under the Peace Treaty.

To prove that Egypt's obligations under the Arab Defence Pact was part of its obligations under the U.N. Charter, it was argued that the Arab League system for collective self-defence, established under the 1951 Arab Defence Pact, was part of the UN system for collective security. It has been said that the emphasis given by the U.N. Charter to regional defence arrangements was among the main reasons which led to the creation of the Arab Defence Pact.<sup>229</sup>

As a consequence, this Pact was regarded as part of an international system established by the Charter in order to maintain international

peace and security. The invitation extended by the UN to the Arab League and to the OAS to attend as observers at the UN may be mentioned as supportive of the view that regional arrangements are part of the UN system.<sup>230</sup>

Secondly, it was argued that Egypt's obligations under the Arab Defence Pact and its mutual defence treaties with other Arab states are part of its obligation under Article 51 of the Charter, which provides for the states' "inherent right of individual or collective self-defence". As is well known, Article 51 was taken from customary international law and is of a jus cogens nature.<sup>231</sup>

Thus, the Egyptians argued that, not only does Article 52 of the Charter legitimate the Defense Pact, but Article 51 is also regarded as the very basis of the Arab Defence Pact.

In the course of the debate in the six session of the General Assembly, the view that collective defence pacts are based on Article 51 was held by western states. When the North Atlantic Treaty was criticised by the Soviet Union because it included states without geographical connections, and without a common language, culture and history and no regional action under Article 52 was therefore involved, other representatives replied that the North Atlantic Treaty is based on Article 51.<sup>232</sup>

Thirdly, in support of their interpretation, the Egyptians also argued that the Arab Defence Pact was not directed against Israel, which was not singled out in the Pact, but against any potential aggression. From Egypt view, it was directed mainly against a possible Soviet intervention<sup>233</sup>.



Consequently, the Pact does not constitute a threat to Israel's security so long as it does not commit any aggression against its Arab neighbors.

Fourthly, from a political perspective, the adoption of the Israeli interpretation demanding Egypt's withdrawal from the Arab Defence Pact would not lead to the establishment of a comprehensive peace in the area which is the main purpose of the Treaty. This is because such withdrawal from the Arab Defence Pact would remove Egypt's considerable weight from the military equation in the Middle East, thus leaving Israel as a major power in the area. This would give the Israelis, as actually happened, a renewed freedom to pursue their goals of fortifying and settling the occupied territories and removing perceived threats by preemptive <sup>action</sup> against some of its neighbours<sup>234</sup>

Finally, the draft of the US interpretative legal opinion on Article VI of the Treaty, which stated that nothing would prevent Egypt from honouring its commitments under other treaties in the event of armed attack on one of its allies, runs counter to the Israeli interpretation and may be mentioned as supportive of Egypt's interpretation. <sup>235</sup>

In considering the above contradictory views advanced by Egypt and Israel, and before attempting to arrive at any conclusion concerning the question whether Article VI affects Egypt's obligations under the Arab Defence Pact, the following observations required to be made:

-The crux of the matter was that Egypt, by introducing its interpretation, wanted peace with Israel but not its isolation among the Arabs. Whereas, on the other hand, the Israelis wanted Egypt to be isolated since that would help Israel's defence strategy;

-One cannot accept the Israeli argument that Egypt should renounce the Arab Defence Pact to avoid any possible confusion because Israel could

still exercise anticipatory self-defence under the western concept of Article 51 of the Charter. There is no doubt that Egypt's membership of the Defence Pact was still possible provided it would take into account the Israeli understanding of Article 51.

- However, one cannot deny the fact that, even if Egypt accepted Israel's right of anticipatory self-defence, there remains a case in which Egypt might have to choose between its obligations under the Treaty and its obligations under the Defence Pact. Under Article 6 of the Defence Pact, the Joint Defence Council is competent to decide whether an act of aggression had occurred. The decisions of the Joint Defence Council, in this respect, are to be taken by the <sup>2/3</sup>third-majority and are binding on all parties to the Pact.<sup>236</sup> In practice, this means that Egypt may find itself obliged to intervene against Israel, even if it voted that Israel was not aggressor. At this point, one must admit that the 1979 Treaty does not provide a satisfactory solution for that problem.

-However, Egypt's practice in the aftermath of the 1979 Peace Treaty suggests that it accepted, to some extent, Israel's right to exercise anticipatory self-defence. An example is Egypt's reaction to the Israeli invasion of Lebanon in 1982. There is no evidence that Egypt took any kind of military action nor extended any military aid to help the Arab forces fighting Israel during this war.

From all of what ~~have~~ been said, one can conclude that Article VI posed rather than solved the question under consideration. However, a more sensible approach would seem to be that Egypt's membership in the Arab Defence Pact, for the sake of peace and stability in the area, must be kept and its obligations under other mutual defence treaties should



be honoured providing they respect and take into account Israel's right to exercise anticipatory self-defence so long as such an exercise is within the limits and in accordance with the conditions stipulated and agreed by international law.

### The Scope of the Withdrawal Clause

A reading at the provisions dealing with the withdrawal issue reveals that they cover the most important aspects of the problem, that is to say the total Israeli withdrawal from Egypt's territory, the evacuation of the three airfields built by Israel in Sinai and the time-table of the Israeli withdrawal. They also covered the peace guarantees and other conditions stipulated in return for the withdrawal.

However, it may be observed that some issues were deliberately excluded from the scope of the withdrawal clause. In the first place, the rest of the Arab occupied territories were excluded from the scope of the provisions. Further, the authors of the Treaty deliberately excluded issues relating to compensation, <sup>for</sup> any damage resulting from the Israeli military occupation. Similarly, issues relating to the legality of the Israeli occupation were excluded.

From a comparison between the scope of the withdrawal clause under the Treaty and the scope of the withdrawal clause under Resolution 242, several comments may be made. While the Resolution covered certain aspects of the withdrawal in somewhat vague language, perhaps deliberately, e.g., the extent and the timing of the withdrawal as well as the peace guarantees, the Peace Treaty covered several issues in clear language leaving no room for dispute over its meaning.

However, the scope of the Treaty's provisions is deliberately limited in order to exclude the territories of the Golan Heights, Gaza and the West Bank. This undermines the Treaty in the light of the fact that its main purpose was to establish a comprehensive peace in the area, rather than, a separate peace between Egypt and Israel.

Before proceeding further, it may be asked, whether and in what circumstances the principle of a total Israeli withdrawal applied to Sinai under the Treaty's provisions can be applied in any future settlement concerning the rest of the Arab territories seized in 1967 ?

It must be admitted that there is no certain or satisfactory answer to that question. From a political perspective, Egypt wanted to prove that it gains something for the Arab cause, thus insisting that the total withdrawal applied to Sinai should be applied to the rest of the Arab territories seized in 1967 in any future settlement.<sup>237</sup> On the other hand, because of its territorial claims with regard to Gaza and the West Bank, Israel holds that what had been applied to Sinai under the Treaty is not applicable to the rest of the occupied territories.<sup>238</sup>

From a legal standpoint, the uncertainty surrounding this question presumably stems from a conflict between the meaning of certain preambular paragraphs on one hand and the scope of the withdrawal clause on the other.

A careful reading of the Treaty's preamble would clearly suggest that all principles applied to the conflict between Egypt and Israel are intended to constitute a basis for peace between Israel and each of the other "Arab neighbours" which is prepared to negotiate peace.<sup>239</sup> However, Article 1(2), dealing with the Israeli withdrawal from Sinai, contained no explicit or implicit mention of the other Arab territories.



One must admit that it would seem difficult to find in that Article a satisfactory basis for Israeli withdrawal from the other Arab territories.

The record of the negotiations reveals that, whilst the preambular paragraph was designed to encourage the Palestinians, Jordan and Syria to join the peace process, because the principles of the withdrawal of Israeli forces and settlers would apply to their territories, the formulation and the wording of Article 1(2) was deliberately designed to eliminate, or at least minimize, the effect of that preambular paragraph.

One possible way around this question is to accept the Israeli view that what had been applied to Sinai cannot be applied to other Arab territories particularly in the West Bank and Gaza. In the words of an Israeli official "if someone thinks that there is any analogy between what had been agreed for Sinai and what might happen in the West Bank and Gaza, he would be making a basic error of judgement."<sup>240</sup>

In the course of the negotiations, the Israeli delegation rejected in clear terms any language which may be understood as a reference to a total Israeli withdrawal, as, for example, Israel's rejection of the inclusion of 'the principle inadmissibility of acquisition of territory by war' in the text of the Treaty.<sup>241</sup> Also, Israel's practice in the aftermath of the 1979 Treaty does not support any interpretation which might require total withdrawal from all Arab occupied territories. Rather, it could mean the reverse, namely, an Israeli intention to remain in the occupied territories or at least most of them. Examples of such practice are Israel's annexation of East-Jerusalem and the

Golan Hight after the Peace Treaty, as well as its settlement policy in these territory after the Treaty.<sup>242</sup>

Another different answer to that question is that advanced by Egypt. Based on the assumption that the problem of the ambiguity of Resolution 242 regarding the extent of the Israeli withdrawal had been resolved by the 1979 Treaty which provided for a total Israeli withdrawal from Egypt's territory.<sup>243</sup>, it follows that, by implication, Israel is required to withdraw from all the territories falling under the scope of Resolution 242, viz, all the other Arab lands occupied in 1967. There is no better quotation in this respect than that by Foreign minister, Ghali, in a statement before the People Assembly in Egypt following the conclusion of the Treaty:

"...for the first time Israel has signed an interpretation of Resolution 242, according to which it has to withdraw from the occupied territories. Also, Israel agreed to withdraw to the international boundary between Egypt and Mandated Palestine. This was included in the Treaty so as the other Arab states could benefit from such precedent, thus Syria, for instance, could ask Israel to withdraw from all the occupied territory and settlements because this was applied under the Treaty"<sup>244</sup>

In assessing the above views, it would be difficult to subscribe to the view expressed by Israel that because its intention during the negotiations was not to withdraw from the other Arab territories, the reference in the preamble to the applicability of such withdrawal from these territories must be overlooked.

One cannot agree, from a legal standpoint, that Israel was obliged under the Peace Treaty, even by implication, to withdraw from the Golan



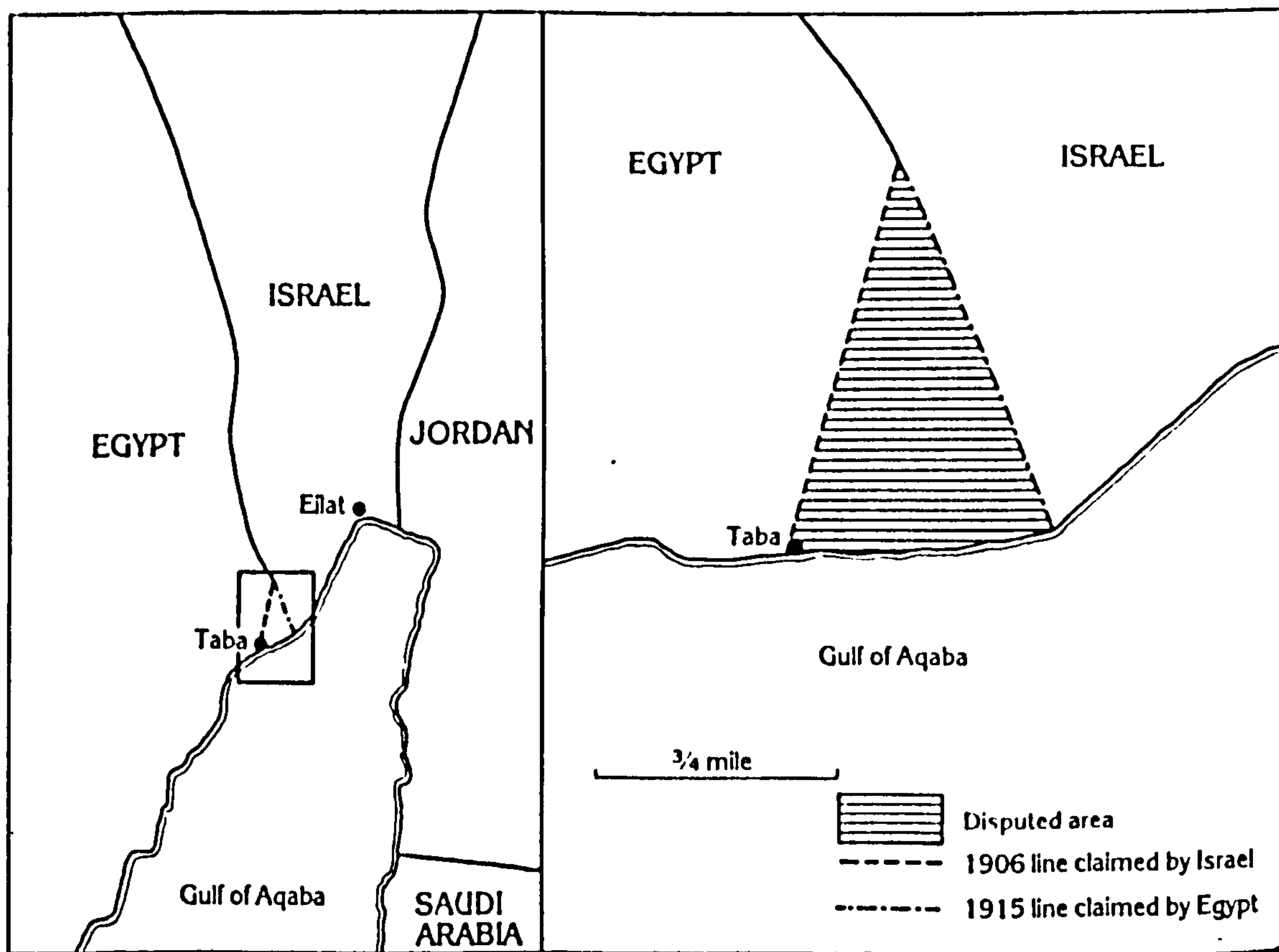
Heights as well as the West Bank and Gaza. If such an important obligation was intended, it should have been clearly stated.

However, to say this is not to accept the view that Israel is not obliged to withdraw from the Syrian and Palestine territories occupied in 1967. As we proved earlier, the Israelis are obliged to withdraw from all these territories under Resolution 242 which is binding on them.

To conclude, one can state that the 1979 Treaty can be used by other Arabs as a precedent, but only as a negotiating position. No legal right was given to them under the 1979 Treaty in this respect. However Resolution 242 does give rights to Arab states in relation to their territory.

### The Taba Dispute

Before leaving this section on the Israeli withdrawal, a final point needs not to be overlooked, namely, the dispute between Egypt and Israel over Taba. As is well known, by April 1982, Israel completed its final withdrawal from Sinai with the exception of a strip of land at Taba on the shore of the Gulf of Aqaba. Taba is the site of the hotel that the Israelis built near Eilat on land that, according to Egypt, belonged on the Egyptian side of the boundary. Israel asserted its claim to remain there.



Map 7 The Taba strip dispute between Egypt and Israel

So far as the Taba problem is concerned, it may be important at the outset to point out that the problem is no longer of practical importance as it was finally settled by the Taba Award of 29 September 1988.<sup>245</sup> However, it is



still of particular importance because it was concerned with the interpretation, as well as the implementation, of the 1979 Treaty. ~~As a matter of~~ fact, Israel's obligation, under Article 1(2) of the Treaty, to withdraw "behind the international boundary"<sup>246</sup>, could not be implemented to the satisfaction of both parties so long as there existed a disagreement over this area.

Among the main reasons behind the Taba dispute was the language used by the authors in Article II of the 1979 Treaty which reads in part as follows:

" The permanent boundary between Egypt and Israel is the recognized international boundary between Egypt and the former mandated territory of Palestine, as shown on the map at Annex II, without prejudice to the issue of the status of the Gaza Strip. The Parties recognize this boundary as inviolable. Each will respect the territorial integrity of the other, including their territorial waters and airspace".<sup>247</sup>

Clearly, as the Taba Tribunal observed "the description of the boundary is not very clear or specific, particularly the word 'recognized' is in the context ambiguous."<sup>248</sup>

The question raised in this respect is: what was exactly the border-line recognized during the mandatory period ? To this question, Professor Lapidot, the Israeli Judge in <sup>the</sup> Taba Tribunal,<sup>249</sup> indicated that there were four possible answers:

- (a) the line defined in the 1906 Agreement;
- (b) the line demarcated by the telegraph poles in October 1906;
- (c) the line formed by the masonry pillars built in 1906-1907 which replaced the telegraph poles and;

(d)the line formed by any pillars which existed de facto on the ground in 1923 and which may have been erected after 1906-1907.<sup>250</sup>

To understand the meaning and the differences between the above lines as well as the background to the dispute, it is useful to go back to 1906 in order to trace its origins. In that year Turkish forces occupied the coastal settlement of Taba, but were subsequently forced to withdraw under British pressure. During this time Turkey was the actual ruler of Palestine and the nominal ruler of Egypt. The actual ruler of Egypt was Britain. The boundary between Egypt and Palestine was uncertain.<sup>251</sup>

After negotiations between Anglo-Egyptian and Turkish representatives, it was agreed, in May 1906, that the boundary between the two territories should be definitively established. In implementation of this agreement, a joint commission was appointed by Egypt and Turkey to negotiate the possible line of the boundary. The area adjacent to the line of the prospective boundary from Taba in the south to Rafa in the north was first surveyed and a map was prepared.<sup>252</sup>

On October 1, 1906, an Agreement determining the international boundary between Egypt and Palestine was reached.<sup>253</sup> So far as the terminus of the line at Taba is concerned, the boundary at its southern terminus was described in the following terms:

"The administrative separating line, as shown on the map attached to this Agreement, begins at the Gulf of Aqaba and follows along the eastern ridge overlooking Wadi Taba to the top of Jebel Fort, from thence the separating line extends by straight lines as follows..."<sup>254</sup>



An important and relevant provision can be found in Article 3 of the 1906 Agreement which reads as follows:

"Boundary pillars will be erected, in the presence of the Joint Commission, at intervisible points along the separating lines, from the point on the Mediterranean shore to the point on the shore of the Gulf of Aqaba".<sup>255</sup>

The term "intervisible points" means points each of which can be seen from points before and points after, and from each of which one can see the point before and the point after. The considerable significance of this Article will become apparent later.<sup>256</sup>

Immediately after the Agreement was signed, temporary markers, in the shape of a series of telegraph poles, were fixed by a joint commission.<sup>257</sup> Subsequently, a process of replacing the telegraph poles by permanent masonry pillars began. On December 31, 1906, Colonel Parker, the then Governor of Sinai,<sup>258</sup> accompanied by the Turkish Commissioners who had negotiated the Agreement, supervised the construction of the first pillar at Taba and took a photograph of the occasion. This photograph was used later to identify with precision that pillar which no longer existed as the cliff on which the original Parker pillar had stood, as revealed by Israel for the first time during the oral pleading of Taba Case, had in fact been removed by blasting when Israel constructed a new coast road between Taba and Eliat in 1970.<sup>259</sup>

At this point, it is worth mentioning that no authentic copy of the large-scale map annexed to the 1906 Agreement was found either in Egypt or in Turkey. Likewise, no formal maps or authentic reports describing the work of the Commission, which demarcated the boundary in accordance with the 1906 Agreement, had been left.<sup>260</sup>

The Mandate Agreement gave no precise definition of the boundary between Egypt and Palestine and no map defining the area of Palestine was attached to the Agreement.<sup>261</sup> However, in 1925, the British Government declared in the House of Commons that " the line binding the territories under Egyptian and Turkish administration respectively was defined in 1906 and has not since been modified."<sup>262</sup>

Again, in June 1926, the British Government assured Egypt that the frontier as defined in the year 1906 between Egypt and Palestine would not be altered. During the mandate, there was an agreement between British officials in Palestine and the Egyptians that the boundary was the same.<sup>263</sup> This line remained up to the establishment of the state of Israel in May 1948.

In the June War of 1967, Israel's capture of the Sinai peninsula from Egypt brought the Taba area under Israeli control. During the period between 1967 and 1982 Israel made some changes in the area, e.g., they built a luxury hotel and a new road as well as <sup>ing</sup> removal of some boundary pillars.<sup>264</sup>

In 1979, under Article IV(3) of the Peace Treaty, a Joint Commission was established "to facilitate the implementation of the Treaty." Among the functions of this Commission, as indicated by Appendix to Annex 1, Art.IV. 3(d), was to "organize the demarcation of the international boundary".<sup>265</sup>

In implementation of this function, the Commission regarded its task as being the reconstruction of pillars where pillars had existed but were damaged. As regards pillars whose locations were not identified, there was disagreement among the parties. In this respect, Egypt took the position that the task of the Commission was to identify the location of the pillars as they were,



whereas Israel argued that the task of the Commission was to implement the 1906 Agreement regardless of the previous locations.<sup>266</sup>

In fact, this remained the basic difference between the parties which led them to resort to arbitration proceedings after their failure to resolve the matter by other means. Such a right to resort to arbitration was permissible, and indeed mandatory under Article VII of the 1979 Treaty which provides for the following :

" 1. Disputes arising out of the application or interpretation of this Treaty shall be resolved by negotiations.            2. Any such disputes which cannot be settled by negotiations shall be resolved by conciliation or submitted to arbitration"<sup>267</sup>

Thus, in a Compromis signed on September 11, 1986, the parties agreed on the establishment of a five-member arbitration tribunal, of whom three members would have to be mutually acceptable to Egypt and Israel, while each country would have the exclusive right to appoint one member.<sup>268</sup>

The task of the Tribunal was defined as follows:

"The Tribunal is requested to decide the location of the boundary pillars of the recognized international boundary between Egypt and the former mandated territory of Palestine..."<sup>269</sup>

As far as Israel was concerned, the only agreement defining the border-line between Egypt and Israel was the 1906 Agreement between Turkey and Egypt. It follows that any de facto demarcation of the boundary which was inconsistent with the legal boundary as defined by the 1906 Agreement could not be recognized as the international boundary between Egypt and Israel.

The Israeli argument was basically that the de facto demarcation of the final boundary pillar at Taba did not satisfy the requirements of intervisibility stipulated in Article 3 of 1906 Agreement; consequently, the Israelis argued that they could not recognize the location of this pillar as constituting part of their international boundary with Egypt. Instead of the illegal location, the Israeli preferred another location which, according to them, not only met the requirement of intervisibility, but also was the original location that was ignored incorrectly in the later de facto demarcation. If this location was accepted then Taba would be part of Israel.<sup>270</sup>

In support of this view, other reasons were mentioned:

- In her dissenting opinion in the Taba Case, Professor Lapidot took up the thesis of the two-stages renvoi: "the 1979 Treaty contains a renvoi to the recognized mandatory boundary and the latter in turn refers us back to the 1906 line as laid down by the Agreement and recognized during the mandatory period."<sup>271</sup> It follows that, in the final analysis, according to her, the 1979 Treaty should be understood as referring to the line defined by the 1906 Agreement which was demarcated on the ground by the telegraph pole.<sup>272</sup>

-Also, according to the Israeli argument, in 1909 Egypt used precise coordinates to identify the location of the terminus of the boundary and described it as ending on a granite knob near the sea. This description was given in the Egyptian Statistical Yearbook of 1909, an official Egyptian Government publication. This granite knob still stood and was the hill just to the south of the Hotel built by Israel at Taba. If this hill had been accepted, the disputed area would have been within Israeli territory.<sup>273</sup>



In the course of the hearing in the Taba Case, Israel produced an evidence from Lt. Col. Rushworth, who was at one time the head of the map-making section of the British Ministry of Defence, to the effect that an error with regard to the location of the boundary pillar at Taba had been made at a crucial stage in the preparation of the map. The 1915 map (known as <sup>the</sup> Newcombe map) was the parent of a whole family of British and Egyptian maps that were in common use throughout the period of the mandate.<sup>274</sup>

The Israelis argued that, because of the fact that the Newcomb map was not published until after the outbreak of World War I, Turkey, as the sovereign over Palestine, never had an opportunity to react specifically to the boundary indicated in that map.<sup>275</sup> As is well-known, Turkey renounced, in the Treaty of Lausanne, 1923, all right or title to a vast area including the whole of Palestine, and in 1922 Britain was granted the mandate over Palestine.<sup>276</sup>

The head of the British team which produced the survey of the 1915 map, Col. T. E. Lawrence ("Lawrence of Arabia"), admitted later that, acting under instructions, he had "invented" certain details of the map. This resulted in an undefined area of roughly triangular shape, its southern edge extending about three-quarters of a mile eastwards along the coast from Taba, with the remaining two sides converging at a point about a mile inland.<sup>277</sup>

Turning to the view advanced by Egypt, it was argued that the phrase "the recognized international boundary between Egypt and the former Mandated territory of Palestine" used in Article 2 of the 1979 Treaty should be understood as a reference to the line linking the boundary pillars which existed on the ground between 1922 and 1948. Consequently, it was the location on the ground during the mandatory period which was intended. It followed

that, since the location of the boundary pillar at Taba between 1922 and 1948 was accepted as part of the international boundary between Egypt and Israel, then the disputed area in Taba would be, as it always was, within Egypt's territory.<sup>278</sup>

In support of its view on the location of the boundary pillar at Taba, Egypt produced the photograph that Col. Parker took on 31 December 1906 of the construction of the first masonry pillar at Taba.<sup>279</sup>

Also, it was argued that the Treaty of 1906 contained a geographical description of the final section of the boundary at Taba. This description meant clearly that the pillars in this area would not be intervisible. Consequently, according to Bowett, "the supposed divergence between the 1906 Treaty line (the so called legal boundary) and the demarcation by the masonry pillars did not in fact exist". This, it was argued, invalidated much of the Israeli reasoning in the case.<sup>280</sup>

Moreover, if this description was to be taken into account, then the Egyptian location of the boundary pillar would conform to the text of the 1906 Treaty and the Israeli location would not.<sup>281</sup> In support of its view, Egypt referred to the principle of stability of international boundaries, insisting that the Israeli claims to Taba run counter to that important principle. In this respect, Egypt invoked, inter alia, the need "to bring into operation the general legal principles of the stability and finality of boundaries, the succession of States to territory, estoppel, acquiescence, and de facto agreement so as to preclude Israel's claims based on application of the terms of the 1906 Agreement".<sup>282</sup>



Egypt demonstrated that the post-1982 Israeli maps showed the boundary to be aligned differently from the pre-1982 Israeli maps. Raising the inference that the maps had been altered in order to suit the Israeli case, . Egypt based its allegation regarding the maps on an article published in 1987 in "Hotam", an Israeli newspaper, which accused the government of altering Israeli maps.<sup>283</sup>

There were also allegations against Israel of having destroyed boundary pillars, of having falsified photographs and of having withheld important evidence.<sup>284</sup>

On 29 September 1988, the Taba Award was delivered by the Arbitration Tribunal. It is not intended here to analyze or evaluate this Award in great detail as it is outside the scope of this work. Few writings on the Award in can be found elsewhere.<sup>285</sup>

However, it seems useful and relevant to end the discussion with some observations on the arguments advanced by Egypt and Israel regarding Taba by reference to the Award.

So far as the meaning of the phrase "recognized international boundary between Egypt and former mandated territory of Palestine " is concerned, the Tribunal pointed out that "the description of the boundary is not very clear or specific, particularly the word recognized is in the context ambiguous".<sup>286</sup> However, the Tribunal rejected Israel's interpretation that the words refer only to the line defined by the 1906 Agreement, and not to the demarcation line. Quoting from and commenting on the Tribunal's view regarding this point, Professor Prosper Weil wrote:

" The Award states that these expressions cannot be interpreted as referring to the description of the line rather than to its demarcation (para.170). And the

final reason put forward by the Tribunal: why should the Treaty of Peace be understood as referring to the Agreement of 1906 "if reference could just as well have been made directly to the 1906 Agreement ?".<sup>287</sup>

Then he goes on to criticize the attitude of the Tribunal:

" This latter argument is, to say the least, not convincing. It could, likewise, be asked why the Peace Treaty should be understood as referring to the demarcation in existence on the ground during the Mandate, if reference could just as well have been made directly to that demarcation."<sup>288</sup>

As regards the Israeli argument that the statement in the Egyptian Statistical Yearbook of 1909 supports its claims, the Tribunal dismissed it saying that " the evidentiary value of such technical publications designed to provide general information is low, for such publications are not designed as authoritative statements about boundaries".<sup>289</sup>

This position of the Tribunal was criticized by E. Lauterpacht who wrote:

"This entirely disregards the fact that what one is concerned with is not the general status of the publication but the specific quality of the information it contains. And one could not be more specific than the description given in the Statistical Yearbook. And why should the evidence in the Yearbook be less authoritative than a map especially in the face of evidence that the relevant sector of the map was inaccurate?".<sup>290</sup>

As regards the argument by Israel that the pillars at Taba were erected inconsistently with the 1906 Agreement and were to be disregarded as being erected in error and that the locations suggested by Israel conformed with the 1906 Agreement, the Tribunal held that a joint agreed demarcation should prevail over the text:



" If a boundary line is once demarcated jointly by the parties concerned, the demarcation is considered as an authentic interpretation of the boundary agreement even if deviations may have occurred or if there are some inconsistencies with the maps",<sup>291</sup>

Then the Tribunal stated that even if a pillar existing during the Mandate had been placed in an erroneous location in terms of the 1906 line, that pillar was nevertheless to be regarded as a pillar of the recognized international boundary between Egypt and the former mandated territory of Palestine, since neither the Mandatory Power nor Egypt had protested it, and they had rather, by their conduct, accepted and recognized it.<sup>292</sup>

Finally, it seems that Egypt's argument that Israeli claims are inconsistent with the principle of the stability of international boundaries was accepted by the Tribunal. A reference to the applicability of such a principle to the dispute can be found in the Award. (para.235)

The opinion of the Tribunal was criticized by some writers who held that the principle of stability of boundaries is not applicable to the Taba dispute and that the Tribunal's approach on this point was "running so clearly to the mainstream of international law on the subject"<sup>293</sup>

A holder of this view is expressed by Professor Weil who argued that there was a classic distinction under international law between disputes relating to the delimitation of a boundary, a legal and political operation which tends to fix the territorial limits of the authority of the state, that is, to define the course of the line in law; and disputes of attribution or demarcation, a technical operation of implementation which transfers to the ground the terms of an established delimitation.

So far as disputes of attribution are concerned, he continued, effective control prevails over legal title. Whereas in disputes of delimitation, legal title prevails over effective control, namely the principle of uti possidetis juris.<sup>294</sup> It follows that, since the Taba dispute, from a legal standpoint, was one of delimitation only, then the Tribunal could have granted predominance to legal title over effective control, namely, to give priority to the provision of the 1906 Treaty over the situation on the ground in 1923. However, the Tribunal did give priority to the situation on the ground in 1923 over the legal line defined by the 1906 Agreement.<sup>295</sup> He then concluded: "in these circumstances, one may wonder about the reasons which induced the Tribunal to adopt an approach running so clearly against the mainstream of international law in this subject."<sup>296</sup>

As is well known, the Taba Award was implemented in a good faith. Israel completed its final withdrawal from Taba and the area was returned to Egypt on March 15, 1989. Several days earlier, viz, on February 26, 1989, at the Taba's Sonesta Hotel which Egypt acquired by purchase, an Agreement regarding the permanent boundary between Egypt and Israel was concluded.<sup>297</sup>

Certainly the importance of the eventual resolution of the Taba Dispute, despite sharp differences of opinion between Egypt and Israel, lies in what it shows about the role of arbitral settlement of International disputes. In the words of Lauterpacht, "The eventual resolution of the problem by arbitration represents an important addition to the list of successful contributions that the process of impartial legal settlement has made to the settlement of international disputes."<sup>298</sup>



.Indeed, the foregoing analysis of the Taba case and the way in which the Award was implemented would lead one to believe that litigation could be among the best methods of settling some of the complicated problems of the Arab-Israeli conflict, in particular, that disputes relating to territory or boundary.

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- 111 Statement to the Israeli Knesset by President Sadat, 20 November 1977. Reprinted in Lukacs, op.cit., pp.44-54.
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- 121 Riad, op.cit. pp.68-75.
- 122 The text of Sadat's statement in Jerusalem.



- 123 See for instance, Israeli Foreign minister Abba Eban Knesst statement on occupied territories. jerosalem, 13 may 13,1969. whereby he referred to "three Israeli demands which Israel will not waive". Among them was "a permanent presence at Sharm el-Sheikh", reprined in, Lukacs, op.cit, p.89.
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- 128 For more details on and an account of the thirteen-day Talks at Camp David, see Carter, Keeping Faith, Collins, London,1982, pp. 319-404.
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- 130 Carter, Jimmy, op.cit, pp.347-374.
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- 140 In the course of negotiations Sadat held that: "two issues I cannot compromise-land and sovereignty...if sovereignty is to mean any thing to the Egyptians, all the Israelis must leave our territory", quoted in Carter, op.cit., p.360. Also, see Dayan op.cit., p.172.
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- 143 Camp David Accords of 1978.
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- 145 Saunders, Harold, The other Walls, American Enterprise Institution for Public Policy Research, Washington, 1985, pp. 39-53.
- 146 The Camp David of 1978.
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- 152 The shaky arguments presented in L.M. Bloomfield, Egypt, Israel and the Gulf of Aqaba in International(1957) and reproduced in Stone, The Middle East Under Cease Fire(1967) and in Blum, Secure Boundaries And Middle East Peace(1971), disputing the long established Egyptian title over Sinai, were wisely denounced by the 1979 Treaty.
- 153 Whiteman, Marjorie, Digest of International Law, Vol.5,1963, Departement of State Publication, Washington D.C., 1971,pp.183-184
- 154 Id.
- 155 Article 7 of the Charter of the Organization of American States provides that: "every American state has the duty to respect the right enjoyed by every other state in accordance with international law. Also, Article 3(3) of the Charter of the O.A.U.reads as follows: "respect for the sovereignty and territorial integrity of each state and for its inalienable right to independent existance";- The OAU Charter and Rules of Procedure, published by the Division of Press and Information of the OAU General Secretariat, Addis Ababa,1981,p.10.
- 156 Stone, J., The November Resolution and Middle East Peace Pitfall or Guidepost ? in Moore, op.cit., p.821.
- 157 See the final section of this Chapter..
- 158 See Annex 1 to the 1979 Treaty.
- 159 Ibid, Article 1(3).



- 160 More provision on the withdrawal can be found in paragraphs 1, 2, 3, and 4 of Article 1 of Annex 1 entitled Concept of the Withdrawal. See also, Article I and II of Appendix To Annex 1 which entitled "Principles of Withdrawal", and "Subphases of the Withdrawal to the Interim Withdrawal Line" respectively.
- 161 See the Text of the U.S. Proposal of September 10, 1978.
- 162 See Article 20 of the Peace Treaty between the Allied Forces and Bulgaria, U.N.T.S. (1947)
- 163 See Article 14 and 73 of the Peace Treaty between the Allied Forces and Italy, op.cit.
- 164 Shabib, Nabil, A political Account of the Camp David Accords, The Islamic Institution in Achen, West Germany, 1978. pp.18-19.
- 165 Saunders, Harold H., op.cit., .1985, p.101
- 166 Id.
- 167 The Text of the Egyptian Proposal at Camp David, Sep.6, 1978.
- 168 Article 1(1) of Annex 1 of the 1979 Treaty.
- 169 See the Text of the Camp David Accords, Sep.1978.
- 170 In April, 1982, in compliance with the Peace Treaty, Israel returned the remainder of Sinai to Egypt, including oil fields and air bases and dismantles its settlements.
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- 172 .Shihata, op.cit., ref 14, p. 602.
- 173 See for example UN G.A. Resolution 2628 (XXV), Nov.4, 1970, GAOR 25th sess, supp.No.28 (A/802B), at 5; which states: "the acquisition of territories by force is inadmissible and...consequently territories thus occupied must be restored".

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- 178 Wright, Quincy, op.cit, p.78.
- 179 Lauterpacht, E., The Taba Case-Some Recollections and Reflections, 23 Israel Law Review, 1989, pp.444-445.
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- 182 Dayan, op.cit, p.274.
- 183 See the Text of the 1979 Treaty.
- 184 Id.
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- 186 The text of the first American Proposal at Camp David.
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- 188 The text of the Peace Treaty.
- 189 Brownlie, op.cit, p.334.
- 190 The text of the 1969 Vienna Convention on the Law of Treaties.
- 191 Annex 3 of the 1979 Treaty.
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- 209 Quandt, op.cit., p.295.
- 210 Gorelick, R., op.cit., pp.11,12.
- 211 Id.
- 212 See Article 2 of the 1951 Joint Defence and Economic Treaty Between the States of the Arab League. Arab League Publication, Cairo.
- 213 Gorelick, op.cit., p.12.
- 214 Dayan, op.cit., p.254.
- 215 Gorelick, R., op.cit., p.12.
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220 Id.

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- 238 Dayan, op.cit., p.230. This view reflected in Israel's Labour Party, Political Resolution, 1980. Para. 28 which states: "The withdrawal of the Israel Defence Forces from sites vital to the security of Israel such as the airfields in northern Sinai shall be no model when it comes to determining boundaries in other sectors". in Luckas, op.cit., p.119.
- 239 See the Preamble of the 1979 Treaty.
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- 241 Brzezinski, op.cit., p.260.
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- 248 See, paragraph 169 of the Taba Award, op.cit.
- 249 According to the Arbitration Agreement, the Tribunal was composed of five members. The parties each appointed one. Professor Hamid Sultan appointed by Egypt and Prof. Ruth Lapidoth appointed by

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- 279 Id.
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- 283 Rizk-Ullah, Y., op.cit.
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- 287 Weil,P., op.cit., p.5.
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## CHAPTER THREE

### ISRAELI SETTLEMENTS AND NAVIGATIONAL RIGHTS

#### SECTION ONE

##### The 1979 Treaty and the Israeli settlements in Sinai

General:

There can be no doubt that the issue of Israeli settlements in the Arab occupied territories is one of the most important and complex issues in the Arab-Israeli conflict. The settlement policy is deeply rooted in the mind and strategy of the Israelis. In the past Israel could not have come into being without the radical transformation of the population of Palestine resulting from its long adopted settlement policy.

At present, Israel's national security is based on its strategy to increase its population in order to establish itself as a major power in the area. This strategy can only be achieved by bringing Jewish immigrants and settling them in the occupied territories.' According to Arab sources, Israel has a long-term plan to bring and absorb four million Russian Jews and settle them in Gaza and the West Bank.<sup>2</sup>

Thus, it is not surprising that any review of the political programmes and platforms of Israel's main parties would reveal that there exists an overwhelming consensus among them on the necessity of adopting such a policy.<sup>3</sup>

Arab states held that Israel's settlement policy is illegal under international law.<sup>4</sup> They argue that the continuation and persistence of Israel in pursuing this policy will endanger peace and security in the area. The Arab



League Summit Conference held in May 1990 in Baghdad condemned and deplored this policy particularly Israel's recent plan to bring one million immigrants Russian Jews to live in new settlements in the West Bank and Gaza. In their resolution, the Arab leaders observed that such policy would lead to another war in the area.<sup>5</sup>

In the meantime, Israel's settlement policy was the subject of several United Nations' inquiries and resolutions<sup>6</sup> in which this policy has been condemned on the ground that it constitutes "a flagrant violation of the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War and also constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East."<sup>7</sup>

Israel's agreement, under the 1979 Peace Treaty, to evacuate its settlements in Sinai constitutes the first case in its history where it agreed to abandon established settlements. Thus, the significance of the present provisions on the settlements is that they demonstrate the handling by the Treaty's authors of an issue not addressed in Security Council Resolution 242 and that they provide a revealing precedent with regard to the resolution of the settlement problem, which may be applicable in future to the rest of the Arab occupied territories.

The problem of the Israeli settlements in Sinai was chiefly dealt under the Treaty in paragraph 2 of Article 1(2):

"Israel will withdraw all its armed forces and civilians from the Sinai behind the international boundary between Egypt and mandated Palestine, as provided in the annexed protocol (Annex 1), and Egypt will resume the exercise of its full sovereignty over the Sinai."

To understand fully the above provision with regard to the settlements it, is necessary to place it within the context of the Treaty as a whole and examine it in the light of its drafting history. With the assistance of a brief inquiry into the legal status of the Israeli settlement policy in Sinai under international law, an examination and evaluation of the Treaty's position will be offered.

The View that Israel's Settlements in Sinai were not Illegal:

It was claimed by Israel, and the few writers who support it, that its settlement policy in Sinai was not in violation of the rules of international law. To find legal bases for Israel's political claims to the right to establish settlements in Sinai, four main arguments have been advanced:

(1) Israel, it is alleged, was not legally bound to apply the law of military occupation to Sinai, though it observed such law de facto.<sup>9</sup> This is based on the assumption that Israel was denying the sovereignty of Egypt over the Sinai Peninsula. It follows that, since the law of belligerent occupation presupposes that the displaced government was a legitimate one, and if it does not so qualify, the occupant is not bound to apply the law.<sup>9</sup>

With regard to the argument disputing the Egyptian title over Sinai, we have referred to it earlier and there is no need to repeat it here.<sup>10</sup>

In support of the claim that the law of occupation presupposes the legitimacy of the displaced government, several views interpreting the law of occupation in this respect were advanced. For example Blum wrote:

"the traditional rules of international law governing belligerent occupation are based on a twofold assumption, namely, (a) that it was the



legitimate sovereign which was ousted from the territory under occupation; and (b) that the ousting side qualifies as a belligerent occupant with respect to the territory. According to Glahn, "belligerent occupation...as regulated by customary and conventional international law, presupposes a state of affairs in which the sovereign, the legitimate government of the occupied territory, is at war with the government of the occupying forces. This assumption of the concurrent existence in respect of the same territory of both an ousted legitimate sovereign and a belligerent occupant lies at the root of all those rules of international law, which, while recognizing and sanctioning the occupant's rights to administer the occupied territory, aim at the same time to safeguard the reversionary rights of the ousted sovereign. It would seem to follow that, in a case like the present where the ousted state never was the legitimate sovereign, those rules of belligerent occupation directed to safeguarding that sovereign's reversionary rights have no application."<sup>11</sup>

At the same ~~time~~<sup>s</sup>, it has been argued that, under the Hague Convention, "territory is considered occupied when it is actually placed under the authority of the hostile army."<sup>12</sup> The word "territory", according to Israel, should be interpreted very narrowly, and should encompass only those territories over which the preceding sovereign had something like de jure sovereignty and the title to the land is not contested.<sup>13</sup>

A similar narrow interpretation should be accorded to the meaning of the word "territory" used in Article 49 of the Fourth Geneva Convention.<sup>14</sup> This Article provides that the Convention will apply to all cases of partial or total occupation of the "territory" of a High Contracting Party.<sup>15</sup>



(2) The law of occupation ceases to apply when active hostility ends. The second argument advanced in support of this view is based on the Israeli contention that the law of military occupation prohibiting Israeli settlements ceases to apply when active hostilities end or when an occupation continues for a long time.<sup>16</sup>

(3) Israel's settlement policy in Sinai is not in contravention of the law of belligerent occupation. This argument is based on the contention that even if the law of military occupation is applicable, a proper and correct understanding of its relevant provisions will lead to the conclusion that Israel's settlements in Sinai were not in contravention of its provisions.<sup>17</sup>

Allan Gerson, a holder of this view, states that while the Hague Regulations of 1907 are silent on the issue of civilian settlements, a careful reading and application of Article 49 of the Geneva Convention dealing with the settlement issue suggests that Israel's settlement policy was not illegal. According to him, Article 49 prohibits only settlements that involve displacement of the existing population.<sup>18</sup> In support of this understanding, he referred to Oppenheim's comment on Article 49 that the prohibition regarding the transfer of civilian population into the occupied territories was "intended to cover cases of the occupant bringing in its nationals for the purposes of displacing the population of the occupied territory."<sup>19</sup>

An application of this to Israel's settlements will reveal, according to Gerson, that Israel does not pursue " a policy aimed at the systematic conversion of the administered territories...Israeli settlement in the territories has been in the nature of ad hoc responses to incipient trends rather than established policy. This may be enhanced, according to him, by the fact that areas settled

in the Sinai by Israeli nationals accounted for roughly a little more than one per cent of the Sinai's total land mass.<sup>20</sup>

From the above, Gerson draws the conclusion that "Israeli settlement does not directly contravene the Geneva Convention, assuming its applicability"<sup>21</sup>.

(4) Precedents from state practice have also been cited in support of Israel's position and practice. For example, the U.S. after the Second World War declared that it was not legally bound to apply the law of military occupation with respect to the territories of the defeated Axis Powers. Another example cited was the rejection of France to apply Articles 42 to 56 of the Hague Rules of 1907 to the territory of Alsace-Lorraine.<sup>22</sup>

In considering the aforesaid view as expressed by Israel and its supporters, one cannot, however, accept it.

First, Israel's argument that the law of occupation was not applicable to Sinai as Egypt's sovereignty over Sinai was disputed cannot be taken seriously from an international law standpoint. It is a well-known fact that such a questioning of Egypt's sovereignty over Sinai had never been raised, nor had Israel itself claimed sovereignty over it. In the words of Clagett, "I have not seen a more frivolous argument for questioning Egyptian sovereignty in the Sinai, and I do not believe that any exists."<sup>23</sup>

Moreover, it is widely recognized that an occupier should not be allowed to ignore the law of occupation simply by questioning the title of its opponent. That law must be applied regardless of whether the sovereignty of the displaced state is open to question. In the words of one writer who rejects Israel's position and practice:



"The Israeli position has not been accepted by any other government. There was a specific resolution on this subject matter at the United Nations in which Israel's position on the applicability of the Geneva Convention was unanimously rejected; even the United States voted against the Israeli contention. The Israeli argument that the law does not apply might, however, be used as a precedent by other countries which find themselves as occupying powers over territory whose title it disputes. If this view succeeds, the law of occupation will probably be a dead letter."<sup>24</sup>

Further, Israel's narrow interpretation of the word "territory" used by Articles 42 of the Hague Regulation and 49 of the Geneva Convention is not consistent with the prevailing view adopted by the majority of states. In this regard, it has been observed that the negotiating record of the Hague and Geneva Conventions indicates that "the only thing stated by those who put the word "territory" into these treaties for the first time is that the word should be read broadly." This alone, it is submitted, makes it difficult to accept a narrow interpretation of what the word should mean.<sup>25</sup>

Furthermore, there is a consensus of opinion among scholars that neither the cessation of active hostilities nor a cease-fire agreement has any effect on the rights or obligations of belligerent occupiers unless a cease-fire agreement provides for deviations from the law of occupation. It is clear that such an agreement does not exist.<sup>26</sup>

Likewise, Israel's argument that Article 49 of the Geneva Convention prohibits only settlements that involve displacement of the existing population cannot be accepted since there is nothing in that Article suggesting such an interpretation. Cummings, who rejects that interpretation, says, "the intention



to prevent displacement emphasized by Oppenheim should not be regarded as the only purpose of Article 49. Particularly since it is not substantiated in the negotiating record of the treaty, it would be inappropriate to derogate <sup>from</sup> the express language of the Article through such an interpretation."<sup>27</sup>

Finally, the claim that Israeli settlement policy in Sinai was more rhetorical than real is doubtful for several reasons. In the first place, it is inconsistent with the finding of the U.N. Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories:

" The evidence that the Special Committee has received reflects a policy on the part of the Government of Israel designed to effect radical changes in the physical character and demographic composition of several areas of the territory under occupation...Measures taken under this policy include the establishment of settlements for Israeli Jews in, for example, occupied Jerusalem, Hebron, certain parts of the Jordan Valley, the Golan Heights, Gaza, Northern Sinai and Sharm El-Sheikh."<sup>28</sup>

Another proof that Israel's settlement policy was real is the existence, in the government of Israel, of a Ministerial Committee for Settlement of the Territories. This Committee "by its very existence" showed, according to the U.N. Committee, beyond doubt, that it is a policy of the Government of Israel to settle the territories occupied."<sup>29</sup>

Also, the U.N. Committee referred to numerous announcements on the settlement issue made by Israeli ministers and leaders, and found that, " their general tenor, the frequency with which they have been repeated and the various measures adopted by the Government of Israel, such as the establishment of

settlements, justify in the Special Committee's opinion the conclusion that these statements are a faithful reflection of official Israeli policy."<sup>30</sup>

Apart from the finding of the U.N. Special Committee, it is worthwhile to refer to Israel's previous plan to build the city of Yamit, in the north-eastern corner of Sinai which was designed to absorb thousands of Israeli settlers.<sup>31</sup> On one occasion Sadat said that one of the main reasons for the October War was the settlement at Yamit. This is another clear example indicating the real nature of Israel's settlement policy.<sup>32</sup>

## II. The View that Israel's Settlements are in Violation of the Rules of Contemporary International Law.

The opposing point of view, and one held by the majority of states, is based on the premise that Israel's status in the Sinai was of a belligerent occupant with all the attendant rights and obligations under international law. Accordingly, the Fourth Geneva Convention of 1949 and the Hague Convention of 1907 provide the applicable standard for judging Israel's conduct. Taking into account the fact that the military occupier is not permitted under these two conventions to establish settlements in the occupied territories, it follows that Israel's settlements in Sinai were not permitted under the law of occupation. Thus, Israel's settlement policy in Sinai was illegal.<sup>33</sup>

In particular, the settlement policy was explicitly in violation of Article 49 of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August, 1949. Article 49 of this Convention prohibits in absolute terms the settlement of occupied territories. It reads in part as follows:



" The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies."<sup>34</sup>

The official commentary prepared by the International Committee of the Red Cross (ICRC) described the above provision as being " intended to prevent the practice adopted during the Second World War by certain powers, which transferred portions of their own population to occupied territory for political and racial reasons, or in order, as they claimed, to colonize these territories."<sup>35</sup>

The negotiation record of the above provision indicates that there was concern expressed by some participating states in relation to the broadness of this provision; however, the language, as it was adopted, does not lend itself to a narrow interpretation.<sup>36</sup>

Israel's settlements also violate the provisions of the Hague Convention on the Laws and Customs of War on Land of 18 October 1907. Although this Convention contains no direct mention of the settlement issue, Article 23 (g) forbids the occupier from seizing the enemy's property unless such "seizure be imperatively demanded by the necessities of war."<sup>37</sup> Taking into account the fact that the creation of settlements involves two elements, the appropriation of land and the establishment of settlers on such land, it follows that the appropriation of the lands in Sinai in order to establish Israeli settlements was in violation of that Article.<sup>38</sup>

Further, Israel is obliged under Article 55 to "safeguard the capital" of the property and to administer it in accordance with the "rules of usufruct".<sup>39</sup> It is clear that the seizure of Egypt's land and the establishment of settlements on such land is inconsistent with the rules imposed by that Article.



In sum, Israel's settlement policy, it is submitted, violates the spirit of the Hague Convention since the basic duty under it is to preserve the existing situation.<sup>40</sup>

Additional reason in support of the illegality of Israel's settlements is the contention that Resolution 242, in its operative paragraph 1(I) calls for the withdrawal of Israel's armed forces from territories occupied in the 1979 conflict. It follows that it requires Israel, as a matter of legal obligation, to withdraw from the occupied lands. Such withdrawal should include settlers as well as military forces.<sup>41</sup>

Another argument in support of the illegitimacy of Israeli settlements is based on the fact that this policy has been explicitly deplored or condemned in several U.N. resolutions adopted by both the General Assembly and the Security Council.<sup>42</sup> A clear example indicating the U.N. position vis a vis the settlements can be found in General Assembly Resolution 2443 of December 1968 calling for the establishment of a special committee to investigate Israeli practices affecting the human rights of the population of the occupied territories. On September 17, 1971 the Special Committee transmitted its full report to the General Assembly in which it confirmed that Israel is following a settlement policy in the occupied territories in a manner calculating to exclude all possibility of restitution to lawful ownership. In addition, the Committee Report found that:

"Every attempt on the part of the Government of Israel at carrying out a policy of annexation and settlement amounts to a denial of the fundamental human rights of the local inhabitants, in particular the right to self-

determination and the right to retain their homeland, and a repudiation by the Government of Israel of accepted norms of international law."<sup>43</sup>

Another U.N. resolution indicates its position vis a vis Israel's settlement policy is Security Council Resolution 465 of 1 March 1980. It not only proclaimed the legal invalidity of Israeli settlements, but also called for their dismantlement. It reads in part as follows:

"...all measures taken by Israel to change the physical character, demographic composition, institutional structure, or status of the Palestinian and other Arab territories occupied since 1967, including Jerusalem, or any part thereof, have no legal validity and that Israel's policy and practices of settling parts of its population and new immigrants in those territories constitute a flagrant violation of the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War and also constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East."<sup>44</sup>

With regard to the above view, one cannot agree with the argument that Resolution 242 prohibits the establishment of Israeli settlements in the occupied territories. That is not to say, however, that we accept Israel's understanding that the term "secure boundaries" as used in Article 1(III) of the Resolution permits the establishment of settlements which could be used, according to Begin, as buffer zones between Egypt and Israel.<sup>45</sup> The Resolution neither prohibits nor permits the establishment of such settlements for the simple reason that the first Israeli settlement in the occupied territory was established in 1968, a year after the Resolution was adopted.<sup>46</sup>



One is forced to conclude that the Israeli settlement policy is illegal under the rules of international law, in particular in the light of the Security Council Resolution 465 referred to earlier.

Having discussed the legality of Israel's settlement policy in Sinai under international law, we proceed now to consider the position of the parties on the settlement issue at the beginning of the peace process, namely, during Sadat's visit to Jerusalem in 1977.

Israel expressed the view that it was ready to evacuate its settlements in Sinai except those in the north-eastern and south-eastern Sinai which should remain within its control.<sup>47</sup> However, this was not a final position since Israel, as indicated earlier, held the view that no party should rule out any subject on the claim that it was not negotiable.<sup>48</sup>

As to Egypt's position, although the text of Sadat's statement at the Knesset on November 20, 1977 contained no explicit mention of the settlement issue, it may be correct, however, to say that it implied a rejection of Israel's settlement policy in Sinai, in particular its proposal to keep some of these settlements as part of its final secure boundaries.

Certain expressions in the speech refer to Israel's legal status in Sinai as a military occupier: " There is an Arab land which Israel occupied by military force....Conceive with me....ending the Israeli occupation."<sup>49</sup> The speech demands a total Israeli withdrawal from Egypt's territory: "...we insist on complete withdrawal from that land."<sup>50</sup> Of course, such complete withdrawal must include the military forces as well as the settlers.



To reaffirm Egypt's strong position vis a vis Israel's demand to keep some of its settlements permanently in Sinai, Sadat declared: "...our land does not yield itself to bargaining. It is not even open to argument. To us, the national soil is equal to the holy valley...None of us can, or accept to cede one inch of it, or accept the principle of debating or bargaining over it."<sup>51</sup>

Sadat's description of Sinai as a holy place was taken from and referring to certain versions in the "Quran" on Sinai. The purpose of such a transportation of a religious term to a political field<sup>52</sup> is perhaps to point out that Egypt's position was not based only on legal and political condition, but also on particular religious considerations. This clearly reflects Egypt's strong and firm opposition against any kind of Israeli presence in Sinai.

The main discussions and proposals on the settlement issue can be found in the negotiations taking place at Camp David where the problem was finally resolved. However, the text of the Camp David Agreements contains no provision on the settlement issue. The reason for this will be indicated below. Thus, the Camp David negotiations, in this respect, are of special value and importance.

As mentioned earlier, Egypt submitted its proposal for a "Framework Agreement" on September 6, 1978. The second part of Article 2 of the draft deals with the problem of the settlements. It calls for "Removal of the Israeli settlements in the occupied territories according to a time-table to be agreed upon within the period referred to in Article 6."<sup>53</sup>

Like the military withdrawal, the legal basis of Israel's evacuation of its settlements was the principle of inadmissibility of the acquisition of territory

by war. This principle is referred to in the first part of Article 2 of the draft and is taken from the preamble to Resolution 242.

The period during which Israel was to remove its settlements, is three months "as from the conclusion of the "Framework Treaty". This has been provided in Article 6 of the draft.<sup>54</sup> In other words, Egypt suggested a total withdrawal of the settlers before signing the "Peace Treaty".

This provision on the settlements was severely criticized by the Israeli delegation and it was unacceptable on many grounds. The language on the inadmissibility of the acquisition of territory by force has always been rejected by Israel. The reasons behind such rejection were indicated earlier.<sup>55</sup> While the settlements in the other Arab occupied territories fell within the scope of the Egyptian draft on the settlements, Israel, however, was not ready to abandon its settlements in the Golan Heights or the West Bank and Gaza for the sake of a separate peace with Egypt.

The timing suggested for the evacuation was inconsistent with Israel's view that peace should precede, not only the military withdrawal, but also the evacuation of the settlements.

Article 2 of the Egyptian draft could be interpreted to mean that Israel had to pay compensation to the Egyptian civilians for the damage which resulted from the operations in establishing settlements. Israel was not prepared to pay any compensation because, according to Begin, it was not defeated in the war. Only defeated nations, in his view, had to pay compensation.<sup>56</sup> Egypt's right to compensation from Israel is not our concern here.



In response to the above criticism, Sadat agreed on two concessions: to omit the language on the inadmissibility of acquisition of territory by war; and to allow the Israeli settlers to remain in Egypt for three years.

In the meantime, the U.S. delegation opposed Israel's demand to keep its settlements in Sinai, and took the position that the settlements were illegal and had to be dismantled or removed. Brzezinski went further and informed Begin that such settlements were not only illegal, but also a form of colonialism.

Nevertheless, the Americans worked out a proposal to narrow the gap between Egypt and Israel. On September 10, the U.S. submitted its first proposal at Camp David. The relevant provision suggested by the Americans deals both with the military withdrawal and the evacuation of the settlers. It was quoted earlier in dealing with the withdrawal clause, and it may be quoted again for the purpose of the present analysis:

"Israel has agreed to the restoration of the exercise of full Egyptian sovereignty in the Sinai up to the internationally recognized border between Egypt and Israel."<sup>57</sup>

This clause contained no explicit mention of the Israeli settlements. Also, the principle of inadmissibility of the acquisition of territory by war was omitted. Further, the geographical scope of this Article is limited to Sinai<sup>58</sup>; thus, the settlements in the rest of the occupied territories fell outside its scope. The issue of compensation was also deliberately omitted from the U.S. draft.



Notwithstanding the above, the Americans assumed that the text was well balanced and covered a total Israeli withdrawal, including both the settlers and the forces.

As was mentioned earlier, the Egyptians doubted whether it was advisable to accept a text which referred vaguely to a very important issue, namely, the Israeli withdrawal and the settlements. They preferred language calling for a total withdrawal, including the Israeli settlers.<sup>59</sup>

In response, the Americans amended that text in their second written proposal submitted at Camp David on 12 September:

"Israel and Egypt agree to negotiate (on)

a. the full exercise of Egyptian sovereignty up to the internationally recognized border between Egypt and mandated Palestine,

b- the time of withdrawal of Israeli personnel from the Sinai."<sup>60</sup>

As mentioned earlier, the phrase "withdrawal of Israeli personnel from the Sinai" had been inserted in the last part of the amended text to meet Egypt's demand for clearer language on the withdrawal. The word "personnel" is used as referring both to the forces and the settlers. Thus, on the ground that this text ensured a total Israeli withdrawal from Egypt's territory, it was accepted by the Egyptians.<sup>61</sup>

In fact, it was this text which, after a minor change, was finally approved and adopted by the authors of the 1979 Peace Treaty.

With regard to the position by the Israelis, a distinction may be made between the initial position taken by them during the first ten days of the negotiations and their final position. From September 6 to 16, Israel turned down all the aforementioned proposals. According to Dayan, Israel insisted on its previous

proposal that some of its strategic settlements in Sinai should remain in its control in the final resolution. Of course, this proposal was rejected by Egypt as encroaching on its sovereignty.<sup>62</sup> During the negotiations, Sadat mentioned that, as long as issues relating to sovereignty and territory are concerned, no concessions could be made.<sup>63</sup> Hence, Dayan offered to let the title to the settlements be transferred to Egypt, but allow the Israelis to live there for a limited time, i.e., a period of 20 years. Carter tried to convince Sadat to accept this proposal since it is not in violation of Egypt's sovereignty, but Sadat rejected it.<sup>64</sup> At the same time, Begin insisted that the Israeli settlements in Sinai were legally permitted under Resolution 242.<sup>65</sup> It was important, he continued, that the few Israeli settlers in the Sinai be accepted by the Egyptian people as no threat to them and as no encroachment on their sovereignty.<sup>66</sup>

Because of these differences of opinion concerning the settlement issue, Dayan proposed that the issue be postponed until resolution of all the problems between Egypt and Israel.<sup>67</sup>

By September 16, the only remaining obstacle to a Sinai agreement seemed to be the settlements. There was a conflict among the Israeli delegation: "Begin wanted no commitment to withdrawal; Dayan was willing to promise withdrawal after an extended period of time (20 years); and Weizman believed that the settlers should leave if the Knesset would agree."<sup>68</sup>

The last view was the basis of the final position taken by Israel in which it agreed to remove all its settlements provided that such evacuation was to be approved by the Israeli Knesset. This position was accepted by Egypt.



Thus, on September 17, Begin wrote a letter to Carter confirming that within two weeks after his return to Israel, he would submit a motion before Israel's Knesset to decide on the following question:

" If during the negotiations to conclude a peace treaty between Israel and Egypt all outstanding issues are agreed upon, are you in favour of the removal of the Israeli settlers from the northern and southern Sinai areas or are you in favour of keeping the aforementioned settlers in those areas ?"<sup>69</sup>

In the meantime, Sadat wrote a letter to Carter in which he reaffirmed Egypt's position with respect to the settlements:

"...1.All Israeli settlers must be withdrawn from Sinai according to a timetable within the period specified for the implementation of the peace treaty.

2. Agreement by the Israeli Government and its constitutional institutions to this basic principle is therefore a prerequisite to starting negotiations for concluding a peace treaty.

3. If Israel fails to meet this commitment, the "Framework" shall be void and invalid."<sup>70</sup>

By the end of September 1979, the Israeli Knesset adopted a resolution in which it authorized the government to evacuate the settlements in Sinai in the following terms:

"....If in the negotiations between Egypt and Israel towards the signing of a peace treaty, agreement is reached...and finds expression in a written document, the Knesset authorizes the Government...to evacuate the Israeli settlers from Sinai and resettle them anew."<sup>71</sup>



In the course of the subsequent negotiations which followed the conclusion of the Camp David Agreements, Israeli settlements in Sinai did not constitute any obstacle. The parties agreed on a formula essentially taken from the second American proposal.

An Analysis of the 1979 Treaty's Provisions:

In spite the fact that the settlement issue was, and is still, one of the important and complicated issues of the Arab-Israeli conflict, the text of the Treaty contains no separate provision to deal with it. Instead, it seems that the authors of the Treaty favoured a formula in which the settlement issue would be incorporated in or/and linked to the provisions dealing with the withdrawal of the military forces. For example, Article 1(2) of the Treaty speaks of withdrawal of all the Israeli "armed forces and civilians from Sinai." Again, Article 1(1) of Annex 1, which deals with the period during which Israel will complete its withdrawal, uses the expression " withdrawal of Israeli armed forces and civilians." Along the same lines, Art.1(1) of Appendix to Annex 1, which deals with the phases of the Israeli withdrawal, uses the same expression.<sup>72</sup>

Language of this kind is somewhat disturbing since it gives rise to the question of what was the intention of the framers behind the linkage between the withdrawal of the forces and settlers. Taking into account the fact that every word and expression of the Treaty is carefully weighed and chosen,<sup>73</sup> we proceed to examine the possible answers of that question.

On one hand, one may argue that such linkage was intended to express the frameres' view that the evacuation of the settlers was conditional on the

withdrawal of the military forces. On the other hand, it may be argued that the evacuation of the settlers was not conditional on the military withdrawal, but both of them, however, are subject to certain principles included in the withdrawal clause, viz. the extent, the period, and the phases, of the withdrawal.

The argument that the withdrawal of the settlers is conditional on the military withdrawal has some support.

Whenever the Treaty referred to the withdrawal of the forces and settlers, the term "armed forces" was physically placed before the word "civilian". This could mean that the military withdrawal must precede the evacuation of the settlers.

It may be also argued that, during the preparatory work, Israel made it clear that its military occupation, for security reasons, must be accompanied by the establishment of civilian settlements. Based on the (incorrect) assumption that Israeli settlement policy in the occupied territory was not illegal under international law, it can be argued that such a linkage is legally permissible.

If this interpretation is correct, it would mean that the Treaty is in line with Israel's view that where it has military presence, it is entitled to establish and to keep civilian settlements.<sup>74</sup> Yet, this interpretation, far from being legally permitted, could undermine the Treaty in two other aspects. It may reflect a deviation from the rules of international law, that is to say, there is a clear distinction under international law between "the right to remain in occupation of a territory" and the right "to establish settlements in such a territory." While the former may be legal under certain circumstances,<sup>75</sup> the latter is absolutely illegal under any circumstances. Nevertheless, the



1979 Peace Treaty seems to adopt a different position, since the notion of the withdrawal of the illegal Israeli settlers, under its provision, has become deliberately blurred with the end of the military occupation ( which might be legal and subject to conditions for its withdrawal).

The linkage between the withdrawal of the forces and the settlers constituted a legal precedent which, if applied in the future, could lead to absurd consequences in relation to the West Bank and Gaza. Taking into account the fact that under the Preamble of both the Camp David Accords and the Treaty, Israel could argue that this legal precedent is intended to constitute a principle applicable to the would-be settlement between her and the Arabs concerning the West Bank and Gaza. If a similar linkage was accepted, then Israel, whose intention is to have a permanent military presence in certain areas there, would be able to maintain its settlements in these area. It may be well to recall here that Israel's practice after the Peace Treaty reveals its intention to maintain military presence as well as settlements in certain areas in the West Bank and Gaza.<sup>76</sup> Of course, this is inconsistent with the international norms prohibiting such settledments.

Turning to the second possible interpretation, i.e., the evacuation of the settlers under the Treaty is not conditional. In support of this view, it could be argued that a careful reading of the relevant provision would reveal that there is no linkage between the two kinds of withdrawal; rather it employed the expression "withdrawal of military forces and civilians" only when dealing with the extent, the period and the phases of the withdrawal. Such partial linkage could not be interpreted to mean that the evacuation of the settlers is subject to the military withdrawal. Moreover, recourse to the preparatory work and the



circumstances of the conclusion of the Treaty would suggest that the evacuation of the settlements is unconditional. For example, Sadat, in Camp David, not only rejected any conditions with regard to such evacuation, but also made it clear, in his letter dated September 17, 1978, that the evacuation of the settler is a basic principle and a prerequisite to starting peace negotiations.<sup>77</sup> Also in the Camp David negotiations, the Americans expressed the view that the Israeli settlements were not only illegal but also constituted a form of colonialism and therefore had to be dismantled or removed.<sup>78</sup> In addition, an examination of the decision of the Israeli Knesset, referred to earlier, which authorized the Israeli Government to dismantle the settlements in Sinai, would reveal that it contained no conditions. Finally, a conditional withdrawal of the settlers was inconsistent with the rules of international law. It is well established that whatever the correct construction of a treaty, it cannot be interpreted as violating international law.

Thus, despite the language used, which strongly links the evacuation of the settlers to the withdrawal of the forces, we cannot interpret such linkage to mean that the former is conditional on the latter.

The word "civilians", included in the first sentence of Article 1(2) and repeated again in other parts<sup>79</sup>, was used as a reference to the "settlers". To understand this word, we may refer to other similar words that might have been used. In this connection, the authors had to choose between three possible words. The first is the word "personnel" which was used by the second American draft in the course of the preparatory work of the Article on the settlements. It is necessary to construe the word "personnel", as used in the relevant paragraph in the U.S. draft, as referring both to Israeli military forces and to

the settlers. Perhaps the Egyptians regarded this word as somewhat vague and therefore they preferred clearer language on this important issue.

The second possible word is "settlers". The relevant provision of the Egyptian draft which was quoted earlier refers directly to the "removal of the Israeli settlements". Of course, any language referring directly to the settlements or the settlers was rejected by Israel for reasons mentioned above.

The third word is "civilians". Probably this word is derived from the language of, and referred to Article 49 of the Fourth Geneva Convention of 1949, in particular paragraph 6 of that Article which reads as follows:

"The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies."<sup>90</sup>

Taking into account the widely-recognized view that the Israeli settlements were explicitly prohibited by Article 49 which reflected customary international law<sup>91</sup>, it follows that such reference could mean that the evacuation of the settlers was based on the rules of international law rather a bilateral agreement.

From the Egyptian perspective, the word "civilians" is accepted since it could be taken as referring to the illegality of Israeli settlements in Sinai and referred to Israel's obligation under the law of military occupation.

As to the Israelis, the word "civilians" was accepted because it could be used instead of the word "settlers" which they were anxious to avoid, and because it could not be interpreted as referring to the settlers of the other occupied territories.

Thus, for these reasons, the word "civilians" was chosen by the drafters.



The last part of paragraph 2 provides that "Egypt will resume the exercise of its full sovereignty over the Sinai". The legal meaning of this expression in respect of the withdrawal issue has been discussed in section one of this chapter. It remains now to consider its meaning with regard to the withdrawal issue.

We have proved earlier that the word "resume" was used to reaffirm Israel's recognition of Egypt's long-established title over Sinai. This could mean that the authors of the Treaty denounced the previous Israeli argument for the legality of its settlements in Sinai which was based on the premise that the law of military occupation did not apply to Sinai as it does not belong to Egypt or any sovereign.<sup>82</sup>

The expression "exercise its full sovereignty" was a clear reference to the principle of respect for sovereignty and territorial integrity of states. The value and the legal meaning of that principle were pointed out earlier. Suffice it to say here that the purpose of such reference in respect of the settlements is twofold:

(1) To ensure the total evacuation of the Israeli settlers from Sinai. No one can deny that the mere presence of the settlers in Sinai was inconsistent with the meaning attributed to that principle under international law;

(2) To confirm that Israel's evacuation of its settlers in Sinai was based on, and in accordance with, that principle rather any international principle, particularly the principle of inadmissibility of the acquisition of territory by force. In the course of the preparatory work of that Article, the Israeli negotiators avoided the inclusion of language that could be interpreted as committing Israel to evacuate its settlements in the other Arab occupied



territories. Thus, by reference to this principle, no similar evacuation can be envisaged in Gaza and the West Bank for the simple reason that, so far as sovereignty is concerned, no state has a valid title over Gaza and the West Bank.<sup>33</sup>

Surely the settlers' withdrawal was part of the deal under the 1979 Treaty. Yet, the above analysis of the meaning both of the word "civilians" and the expression "exercise of its full sovereignty" suggests that the legal bases of Israel's obligation to withdraw its settlers from Sinai are the relevant rules of international law which we have indicated above, rather than any bilateral agreement.

However, the question which may be raised in this respect is whether or not Resolution 242 constituted a judicial basis for the withdrawal of the settlers from Sinai. The answer of this question is of special importance as it would help in ascertaining the scope of the settlement clause.

The correct answer to that question seems to be in the negative. In fact one finds it somewhat difficult to assume that Resolution 242 constituted a legal basis for the evacuation for the Israeli settlers in Sinai. The Resolution contained no explicit or implicit mention of the settlement issue. We have rejected earlier the view that it implies a prohibition of such settlements.<sup>34</sup> In the course of the preparatory work, any proposed term or expression taken from or referred to the Resolution was deliberately omitted. Consequently, the provision on the settlements contains any reference to the Resolution.

In relation to the period during which the evacuation of the settlements is to be completed, Article 1 (1) of Annex 1 provides:

"Israel will complete withdrawal of all its armed forces and civilians from the Sinai not later than three years from the date of exchange of instruments of ratification of this Treaty."<sup>65</sup>

More details on the period and the timing of the evacuation of the settlers were set out in Article 1(1) of Appendix to Annex one which reads in part as follows:

" The withdrawal of Israeli armed forces and civilians from the Sinai will be accomplished in two phases as described in Article 1 of Annex 1. The description and timing of the withdrawal are included in this Appendix."<sup>66</sup>

A study of the provisions dealing with the settlement issue reveals that it covers certain important aspects of the problem while leaving aside other important issues. On the one hand, the Treaty provides for a set of rules governing the most significant aspects of the settlement issue, e.g., the total evacuation of the settlers, the timing and the period during which such evacuation is to be completed, the judicial bases and the final line of the settlers' withdrawal. On the other hand, certain issues have been deliberately excluded from the scope of the provision. In the first place, the question of the settlements in Gaza and the West Bank and the Golan Heights was excluded from its scope. Thus, its geographical scope is limited only to Sinai. Moreover, the provision deliberately does not seek to regulate issues relating to compensation for the damage resulting from the operations against the civilian population during the establishment of the settlements in Sinai. As an example, hundreds of Egyptian farmers in Sinai were dismissed from their lands and homes when Israel was building the city of Yamit<sup>67</sup> in North Sinai. At this



point, it is worth while to refer that paragraph eighth of Article 2 of the Egyptian draft at Camp David provides the following:

" Israel undertakes to pay full and prompt compensation for the damage which resulted from the operations of its armed forces against the civilian population and installations..."<sup>88</sup>

Egypt's demand for compensation was based upon Article 52 of the Hague Regulations, which provides that, where property is requisitioned, payment is to be made at once or, if not possible, as soon as the occupier is so able;<sup>89</sup> contributions in kind shall be given and the payment of the amount due shall be made as soon as possible.<sup>90</sup>

However, the Egyptian draft was rejected and the rights of the Egyptian civilians were, illexally, overlooked.

Before leaving this section, a final important question must be addressed, namely, whether and in what circumstances the settlement clause under the Peace Treaty is applicable to the settlements in the other Arab occupied territories ?

Before answering this question, some relevant and important considerations should be taken into account. These are:

(1) It is clear that the settlement clause as included in Article 1(2) contains no explicit or implicit mention of the settlements in other Arab occupied territories. One must admit that it would seem difficult to find in that Article a satisfactory basis for the evacuation of the settlements in the other occupied territories;

(2) However, we have proved in the previous section on the military withdrawal that, under the preamble of the Peace Treaty, any Arab party which joins the



peace process will be legally entitled under certain conditions to benefit from the principles applied in settling the Egyptian-Israeli conflict.

(3) The language and the wording of the provisions on the settlements give rise to the question of whether or not the evacuation of the settlers is conditional on the military withdrawal. We have indicated earlier that such question has two possible answers, one in the affirmative and the other is in the negative.

Thus, one possible way to answer the question of the applicability of the settlement provisions to the settlements in the other Arab territories is to assume, for the purposes of the argument, that the evacuation of the settlers is conditional on the military withdrawal under the Treaty. It follows that Arab states which join the peace process will be entitled to benefit from the settlement clause and consequently demand the dismantling of the settlements in their territory. Yet, on the other hand, any Arab states have to accept that such dismantling should be part of and conditional on the military withdrawal and the conditions stipulated in return of that withdrawal.

In practice, this interpretation would enable Israel, for example, to maintain its settlements in the Golan Heights in Syria until the implementation of an agreement on the withdrawal of the forces. Further, Israel, which intends to keep a permanent military presence in certain strategic areas in the West Bank and Gaza, would also be entitled to keep its settlements in these occupied areas for indefinite period. Of course, this answer is inconsistent with the rules of international law and the relevant U.N. resolutions calling for unconditional dismantling of the settlements in the occupied territories.

This answer, however, seems to affect the rights of third states and therefore cannot be accepted. In the words of Judge Huber in the Island of Palmas arbitration, "...whatever may be the right construction of a treaty, it cannot be interpreted as disposing of the rights of independent third Powers."<sup>91</sup>

The correct answer of the question under consideration, in our view, is that Israel is obliged to evacuate its settlements in the Arab occupied territories because such an obligation stems from the rules of international law and the relevant resolutions of the U.N. A careful reading of the Treaty's position in this respect would lead to the same conclusion. On one hand, the evacuation of the settlers under the Treaty, as we proved earlier, was not conditional. On the other hand, the language on the ~~settlements~~ made it clear that such evacuation was based on Israel's obligation under international law rather <sup>than</sup> bilateral agreement. This was indicated earlier in some detail.

Thus, Israel's evacuation of its settlements in Sinai should be looked upon as a legal precedent applicable without prior conditions to all the settlements in the Arab occupied territories.

SECTION TWOThe Gulf Of Aqaba And The Straits Of Tiran

The problem of the legal status of the Gulf of Aqaba and the Straits of Tiran is governed by Article V, Paragraph 2 of the 1979 Treaty which declares the following:

"the parties consider the straits of Tiran and the Gulf of Aqaba to be international waterways open to all nations for unimpeded and non-suspendable freedom of navigation and airflight"<sup>22</sup>

There is no doubt that this Article embarks on the establishment, through a bilateral treaty, of a new regime to govern international navigation in the Gulf including Israeli navigation in the Gulf. To fully understand Article V(2), it is necessary to place it within the context of the 1979 Treaty as a whole. With the assistance of a brief inquiry into the legislative history of the law applicable to the Gulf and state practice with regard to the passage through the Gulf of Aqaba and the straits since 1949, an examination and evaluation of the new regime will be offered.

In order to understand the legal aspects of the problem under consideration, some geographical facts about the Gulf of Aqaba must be mentioned at the outset.

According to the Secretariat Study of Bays and Estuaries, the Coasts of which belong to different States, "The Gulf of Aqaba is a long narrow gulf on the the eastern side of the Sinai Peninsula. The western shore is Egyptian, the eastern shore is Saudi Arabian and the head of the Gulf is Israeli and Jordanian territory. The islands of Tiran and Sanafir front the entrance"<sup>23</sup>



The Red Sea at its northern extremity, the western arm is the Gulf of Suez which leads into the Suez Canal. The Gulf is somewhat over one hundred miles in length, and varies in width between three miles in the narrow bay at its northern end to seventeen miles at its width point.



Map 8 The Gulf of Aqaba and the Straits of Tiran

The islands of Tiran and Sanafir have been under Egyptian occupation since 1950. Saudi Arabia, however, claimed the two islands. The entrance of the Gulf is through the Straits of Tiran. There are two passages in the Straits; Enterprise passage and Grafton passage. The former, which lies close to the Sinai Peninsula, is the principal channel into the Gulf and the only channel which can be navigated safely by vessels of substantial size. Grafton passage, separated from Enterprise passage by a series of reefs, lies close to Tiran islands.

This entrance appears seldom to be used as the reefs therein render navigation difficult.<sup>94</sup>

For legal purposes the Gulf of Aqaba and the straits of Tiran are considered to be an inland sea which are connected with the high seas by means of a strait and consequently they are subject to the regime of inland sea in international law.<sup>95</sup>

Under customary international law, a distinction was made between straits connecting two parts of the high seas, and those connecting parts of the high seas with an inland sea. While the former were subject to the right of innocent passage, the legal status of the latter had never been definitively determined.<sup>96</sup>

It may be observed, in this regard that, the second Sub-Committee of the Hague Codification Conference did not formulate rules for inland seas surrounded by more than one state.<sup>97</sup> Thus the legal status of the Gulf of Aqaba under international law remained uncertain.

A review of the work of the International Law Commission reveals that its draft article did not contain any rules with respect to bays surrounded by more than one coastal state. The reason given for not formulating rules applicable to such bays was the Commission's lack of "sufficient data at its disposal concerning the number of cases involved".<sup>98</sup>

Further, the Special Report of the ILC, in 1956, expressed the view that the situation of the Gulf of Aqaba is "exceptional-possibly unique"<sup>99</sup>.

Nevertheless, under Article 16(4) of the 1958 Territorial Sea Convention, the legal regime applicable to "straits connecting two parts



of the high seas" was expanded so as to include straits at the entrance of inland seas surrounded by more than one state.

" There shall be no suspension of the innocent passage of foreign ships through the straits which are used for international navigation between one part of the high seas and another part of the high seas or the territorial seas of a foreign state"<sup>100</sup>

This means that passage through the Gulf was subject to a regime of non-suspedable innocent passage. However, it has been rightly observed that the Convention merely regulates access to the strait at the entrance of the Gulf, while remaining completely silent as to the Gulf itself.<sup>101</sup>

In any event this rule, included in Article 16(4), was regarded by Arab states as not part of customary international law and only binding on ratification.<sup>102</sup>

In the UN Convention on the Law of the Sea of 1982, Article 45(1) provided that the regime of innocent passage shall apply to straits connected between high seas and territorial seas. This Article was regarded as applicable to the straits of Tiran.<sup>103</sup> Again, it may be observed that the regime applicable to the waters of the Gulf itself has remained uncertain under the Convention.

Having outlined the legal status of the Gulf under customary international law and multilateral treaties, and the uncertainty surrounding it, we now turn to consider state practice regarding the problem of the passage through the Aqaba Gulf.

State practice, in the period between 1948 and 1979, reveals that states, by reasons partly of their attitude towards the Arab-Israeli conflict, and partly of the fact that international rules governing the



status of the Gulf are uncertain, adopted different attitudes towards the problem. However, in this connection three main attitudes can be traced:

In the first place the attitude adopted by the Western states and Israel provides that the Gulf of Aqaba, by reasons partly of its breadth and partly of the fact that its shores border <sup>upon</sup> to four different states, constitutes international waters. It follows that freedom of navigation should be ensured in it. In other words, according to them, the Gulf and the straits must be open for non-suspendable freedom of navigation similar to navigation in the high seas.<sup>104</sup> There is no better quotation in support of this view than what has been stated by the representative of the Netherlands at the General Assembly:

"First, inasmuch as the Gulf of Aqaba is bordered by four different States and has a width in excess of the three miles of territorial waters of the four littoral States on either side, it is, under the rules of international law, to be regarded as part of the open sea. Secondly, the Straits of Tiran consequently are, in the legal sense, straits connecting two open seas, normally used for international navigation. Thirdly, in regard to such straits, there is a right of free passage even if the straits are so narrow that they fall entirely within the territorial waters of one or more States. This rule was acknowledged by the International Court of Justice in the case of the Corfu Channel (Judgment of December 15, 1949; I.C.J. Reports 1949, p. 244) and also by the International Law Commission in its report for 1956 (A/3159). Fourthly, if a strait falls entirely within the territorial waters of one or more of the littoral States, there is still a right of innocent passage, but then the littoral States have the right, if

necessary, to verify the innocent character of the passage. Fifthly, this right of verification, however, does not exist in those cases where the strait connects two parts of the open sea. It must, therefore, be concluded that all States have the right of free and unhampered passage for their vessels through the Straits of Tiran".<sup>105</sup>

This attitude was declared by Israel on several occasions.<sup>106</sup> It was also supported by many Western states (e.g., the US, France and Italy) during the debate on the problem in the UN General Assembly in March 1957.<sup>107</sup>

Some states held the view that the Gulf of Aqaba and the straits must be subject to the regime of territorial seas. Foreign ships, therefore, have the right of innocent passage in its waters. In his report to the General Assembly in 1957, Secretary General Dag Hammarskjold took the position that there was a right of innocent passage but the extent of that right was subject to legal controversy.<sup>108</sup> This view was adopted by Egypt on certain occasions: in 1950, following its occupation of the two Saudi Arabian islands at the entrance of the Aqaba Gulf, Egypt informed the US that it would guarantee the freedom of innocent passage in the Gulf. According to the Aide Memoire sent by the Egyptian Government to the American Embassy:

"..This occupation is not conceived in a spirit to hinder in whatever way it may be the innocent passage across the maritime space separating these two islands from the Egyptian coast of Sinai. It goes without saying that this passage, the only practicable, will remain free as in the past being in conformity with the international practice and the recognized principle of international law."<sup>109</sup>



Moreover, Egypt declared in the 1950 that its restriction and procedures against Israel in the Gulf were based on the existence of war between them.<sup>110</sup>

Further, the internal regulation of the littoral states of the Gulf asserted that its waters are territorial seas. We may refer in this respect to Article 5 of The Territorial Waters Decree in Saudi Arabia and Egypt which extended the territorial sea "for a distance of six nautical miles."<sup>111</sup> Likewise Israel's Territorial Water Decree of 1955 has a similar provision.<sup>112</sup>

In 1957, several states declared in the UN that the Gulf of Aqaba should be governed by the rules of innocent passage though there was disagreement on the question of what constitutes innocent passage. The Indian Representative stated for example that:

"this right of innocent passage, so-called, actually means that, first of all, one must prove innocence. Innocence depends upon the character of the party claiming the passage; it depends upon the purpose of the passage, and also upon the freight that is carried."<sup>113</sup>

The delegate of Italy challenged India's opinion and stated that:

"This interpretation would nullify the rule of innocent passage, since it is obvious that, if it were valid, the littoral States would no longer have the duty of justifying their refusal of passage to a vessel on specific occasions and for specific reasons; rather, it would rest with the vessel to prove that its passage was innocent."<sup>114</sup>

The third attitude held that waters of the Gulf of Aqaba possesses the character of historic waters. In a Memorandum to the UN registering the position of Saudi Arabia on the problem of the Straits of Tiran and the Gulf of Aqaba, it was argued that the Gulf was an Arab mare clausum



for over thirteen centuries, and that Israel's footholds on the Aqaba Gulf were illegal. As a result, the waters of the Gulf, under the doctrine of historic bays should be treated as internal waters.<sup>115</sup> This means that the coastal state is not bound to admit the innocent passage of foreign vessels in the waters.

The legal basis of this view, which was held for some time, by Egypt,<sup>116</sup> as well as other states, is based on the following considerations.

First, Israel's foothold on the Aqaba Gulf, apart from its illegal origin, was based on the Armistice Agreements which by their character and express provision vest no sovereignty whatsoever and leave the territory, including the Aqaba Gulf, subject to rights, claims, and reservations. The armistice lines were purely dictated by military considerations and have no political significance.<sup>117</sup>

Secondly, the Gulf has been an exclusive Arab route under Arab sovereignty since the establishment of the Arab Empire in 700 A.D. Its regular use as a sea route to Moslem holy places ever since that time cannot be denied.<sup>118</sup>

Thirdly, in the Case of the Gulf of Fonseca, the Central American Court of Justice, in its decision of March 1917, found that the origin of the status of the Gulf as a historic water dates back to 1522 when it was discovered.<sup>119</sup> The Gulf of Aqaba and the Gulf of Fonseca are characterized by the fact that some of the coastal states are not situated in their entrance, and the two waters areas are approximately of similar size and restricted configuration.<sup>120</sup>

Fourthly, a careful reading of some international <sup>o</sup>conventions concluded before 1948 would support the above view. For example the drafters of

the 1888 Constantinople Convention left the Gulf of Aqaba outside the scope of the passage defined for the Suez Canal, because they regarded the Gulf as a locked Arab water without any international character.<sup>121</sup> Another example is the omission of the Gulf of Aqaba in the international Sanitary Convention of 1912;<sup>122</sup>

Fifthly, Shukairy, asserted that "not a single international authority makes any mention of the Gulf as an international waterway"<sup>123</sup> For example, the American Journal of international law, in April 1929, described the Gulf of Aqaba as internal waters.<sup>124</sup>

To sum up, we may conclude that the uncertainty surrounding the legal status of the Gulf had been confirmed by state practice. However, in this respect, this writer agrees with the view expressed by Secretary of State Dulles that:

"..the straits of Tiran are territorial because they are less than six miles wide... But it is also a principle of international law that even though waters are territorial if they give access to a body of water comprehends international waterway, there is a right of free and innocent passage ..that passage should be open unless [there is a] contrary decision by the International Court of Justice."<sup>125</sup>

#### Textual and Contextual Analysis of Article V(2) Of The 1979 Treaty

The 1979 Treaty, according to its preamble, was based on the provisions of the Camp David Accords and the Security Council Resolutions 242 and 338. Consequently, in spite of the fact that Article V(2) did not refer to any of these documents, there is no doubt that it was based on them.

In dealing with the problem of the Aqaba Gulf, the Camp David Agreement made the following provision:



"The Straits of Tiran and the Gulf of Aqaba are international waterways to be open to all nations for unimpeded and non-suspendable freedom of navigation and overflight."<sup>126</sup>

Clearly, this provision is based on the Security Council Resolution 242, namely, Paragraph 2(a) of which referred to "the necessity ..for guaranteeing the freedom of navigation through international waters in the area."<sup>127</sup> Resolution 338 of October 22, 1973, called upon the parties concerned to "start immediately the implementation of the Security Council Resolution 242 (1967) in all its parts."<sup>128</sup>

Hence if the new regime is based on Resolution 242, then a correct interpretation of the relevant parts of the resolution needs to be explored.

The language used in Resolution 242 suggests the following observations.

First, the term international waterways is derived from the language of the International Court of Justice in the Corfu Channel Case,<sup>129</sup> and it could be understood to mean waterways used for international navigation, rather <sup>than</sup> waters used exclusively for local navigation and leading to the internal waters of coastal state;<sup>130</sup>

Secondly, the term freedom of navigation could be interpreted as a reference to the high seas freedom of navigation.<sup>131</sup> However, some believe that it should be understood as "a reference to the general principles that should underline the regime of the passage...rather than as indication of the applicability of the high seas freedom of navigation."<sup>132</sup>

Thirdly, the use of the word "through" has been understood as a reference to the issue of passage through the Straits of Tiran rather



than as a reference to the regime applicable to the Suez Canal<sup>133</sup>. The latter is governed by the 1888 Constantinople Convention.

Further legal analysis of Resolution 242 raised the following question: which article of the UN Charter was the resolution based on? In answering this question, two views can be found.

Some observed that the action of the Security Council in that context was based on consideration of expediency rather than relying on legal grounds or specific Charter provision.<sup>134</sup> Others thought that the Council was aiming to bring to an end the situation which at that time constituted a potential danger to the world peace and security.

This leads to the conclusion that the legal regime provided by the Security Council should be limited to those states that have accepted the resolution.

Nevertheless, on the other hand, some held the view that Resolutions 242 and 338 are binding on all members of the UN and that the Security Council view on the question of the Gulf and the Straits overrides both the Territorial Sea Convention of 1958 and the UN Law of the Sea Convention of 1982.<sup>135</sup>

At any rate, the prevailing view is that the scope of Resolution 242 with regard to the regime of the Gulf is limited to Egypt and Israel because they have accepted it.<sup>136</sup>

Turning to the legal regime of the Gulf under the 1979 Treaty, we may state that the scope of the new regime is limited to Egypt and Israel. This is due to the following reasons: the new regime is based on the legal regime of the Gulf under Resolution 242 whose scope is confined, as indicated earlier, to Egypt and Israel; the binding nature of the new regime is due to the bilateral agreement between Egypt and Israel

rather than any international customary and multilateral treaties on the law of the sea.<sup>137</sup>

As a result the new regime is not binding on Saudi Arabia and Jordan which both declared their rejection of the Treaty.<sup>138</sup>

The first sentence of the Article is declaratory in character<sup>139</sup>: "the parties consider the straits of Tiran and the Gulf of Aqaba to be international waterways".<sup>140</sup> This could be interpreted to mean that the new regime stems from the rules of general international law rather than bilateral agreement between the two states.

The word "Strait" of Tiran, which used instead of the word "Straits" of Tiran, suggest that it refers to the western and principal entrance of the Gulf known as "Enterprise passage" which falls within the territorial sea of Egypt. The term "Straits of Tiran", which was not mentioned, is always used to refer to the two channels, Enterprise Passage and Grafton Passage.<sup>141</sup> The latter passage falls within the territorial sea of Saudi Arabia. This could be interpreted to mean that the intention of the parties was to avoid any problem likely to occur if Saudi Arabia rejected the Treaty. It could also be understood as a reference to the nature of the regime as resting upon a bilateral agreement.

The term "international waterways" is taken from Resolution 242 and, as mentioned earlier, is derived from the language of the ICJ in the Corfu Channel case. This could be understood as a reference to the idea that the freedom of navigation in the Gulf and the Straits should be similar to the freedom of navigation applied in the Corfu Channel. Such understanding leads to the conclusion that the Gulf and the Straits



should be subject to the regime of navigation in the high seas. This conclusion is supported by the fact that no hint of territorial competence with regard to the passage had been mentioned.<sup>142</sup> The term freedom of navigation is usually associated with the regime of the high seas.<sup>143</sup> It was used by Article (2) of the 1958 Convention on the legal status of the High sea. Reisman regarded it as "a term comprehensive in intention, including movement, observation, inspection, maneuvers, tests and so forth carried out above, on and below the surface."<sup>144</sup> Under freedom of navigation warships have complete immunity from any state other than the flag state.<sup>145</sup>

However, on the other hand, the term has been used from 1973 by the UN Conference on The law of the Sea (UNCLOSIII) in relation to the right of "transit passage". The concept of transit passage was defined as the exercise... of freedom of navigation and overflight solely for the purpose of continuous and expeditious transit of strait."<sup>146</sup>

To sum up, we may state that, while the term 'freedom of navigation' has been normally used to describe the regime of the high seas, it is also used since 1973 to refer to the new concept of transit passage in territorial seas.<sup>147</sup>

The terms "non-suspendable" and "unimpeded" which were used by the 1979 Treaty before the term freedom of navigation is similar to the terms used by Article 16(4) of the 1958 Convention which states that:

" There shall be no suspension of the innocent passage of foreign ships through straits which are used for international navigation between one part of the high seas and another part of the high seas or the territorial seas of foreign state"<sup>148</sup>



Further, the terms were also used by Article 45 (2) of the same Convention to describe the legal system applicable to straits at the entrance to an inland seas.<sup>149</sup> However, the same term has usually been used to describe the freedom of navigation in the high seas.

The question of the nature of the new legal regime and whether it falls under the regime of innocent passage or under the high seas' regime is raised by the above argument. The answer of this question is of special significance for two main reasons.

First, there is no mention of any duty on the part of the passing ships and aircraft or of the extent of the coastal state's competence and rights;<sup>150</sup>

Secondly, the Peace Treaty assigned to a third party (i.e., UN forces or its alternative multinational force) the task of "ensuring the freedom of navigation through the Straits of Tiran in accordance with Article V of the Treaty of Peace."<sup>151</sup>

In answering the above question, el-Baradei argued that the parties intended to establish a regime that goes beyond the regime of innocent passage, but that falls short of the freedom of navigation and overflight applicable in the high seas. He added that the objective of the parties intended to establish a regime analogous in content to the UNCLOS regime of transit passage, which assures the rights of the international community while preserving coastal states' rights of protection and self-preservation.<sup>152</sup>

In support of his view, el-Baradei advanced a number of reasons. First, the parties continue to regard the Gulf as part of their territorial seas. The reference to the performance of normal police

functions made in Annex 1 of the 1979 Treaty may be recalled. Secondly, the parties agreed that their permissible military activities in some parts of territorial would be restricted."It does not therefore seem plausible in such a security-conscious agreement that the intention was to create rights for third states exceeding the rights of the parties themselves"<sup>153</sup>. Thirdly, if the Gulf was subject to the high seas' regime, the states' rights of protection and self-preservation may be affected by security risking activities, e.g., the conduct of military maneuver§ or carrying out of research activities.<sup>154</sup>

From a legal perspective, this view was not accepted by writers for the following reasons:<sup>155</sup>

First, no direct or indirect reference has been made to the right of transit passage in the treaty. Nor did the preparatory work refer to it. Having in mind the fact that the new concept of transit passage was already known since 1973, it may be correct to suppose that it was deliberately ignored by the drafters of the Treaty.

Also, according to Israeli sources, the Israeli negotiators rejected the idea of applying the regime of transit passage to the Gulf.<sup>156</sup>

According to Reisman, the coastal state has the right to suspend transit passage. As he put it: "a state bordering a strait might unilaterally determine that a particular transit in given circumstances violates...Article 39(1)(b) hence is not transit passage in the meaning in the Convention and may either be prohibited entirely or permitted only upon the fulfillment of conditions."<sup>157</sup>

There is no doubt that such right to suspend the navigation is inconsistent with Article V(2) which referred to non-suspension and unimpeded navigation.



We have pointed out earlier that the new regime is based on the regime provided by Paragraph 2(a) of resolution 242. The legal regime applicable to the Gulf, according to that resolution, is similar to the regime applicable to the Corfu Channel, i.e., the regime of the high seas. Further, the fact that the concept of transit passage was not known when Resolution 242 was adopted in 1967 may be referred to in support of this argument.

The Peace Treaty, perhaps deliberately, did not mention any duty on the parts of the passing ships for the simple reasons that the intention of the drafters was to subject their new regime to the high seas norms. If this was the intention, then there is no need to mention duties, rights, or competence because the high seas are subject to international law alone, and national authority exercised thereupon must conform to international custom or convention.

Egypt's practice in the aftermath of the 1979 Treaty shows that it did not take any procedures or declared any act which may affect any kind of navigation in the Gulf and the Straits. Israel's practice is along in the same line. An example is the Agreement on the Creation of the Multinational Forces and Observers (MFO) signed by Egypt and Israel in 1981, whereby no mention of Egypt's competence or national authority regarding foreign ships in the Gulf and the Straits of Tiran has been made. <sup>150</sup>

From the above, we may conclude that the new regime established by the 1979 Treaty cannot fall under the transit passage regime or even any similar one.



The question which arises now is, to what extent can the new regime be considered as similar or/and subject to the international rules governing the high seas?

In considering the regime of the Gulf of Aqaba and the Straits of Tiran under the 1979 Peace Treaty, Reisman wrote:

"..With that sort of formula tortured, casu~~x~~stic interpretation is not necessary...the waterways are characterized as international and any hint of territorial competence with regard to the passage repeatedly excluded; there is no right of transit characterizable by the coastal state, but instead the traditional freedom of navigation...interpreted logically or teleologically Camp David produces freedom of navigation."<sup>159</sup>

As is well known, Article V(2) was based on the Camp David Agreements.

The Security Council has dealt specially with the issue of the Aqaba Gulf and the Straits of Tiran in Resolutions 242 and 338. These two resolutions, as we indicated earlier, have considered the Gulf as subject to the rules governing the high seas. Consequently, the new regime established by the parties under the 1979 Treaty must be governed by the rules of the high seas because of the binding nature of these resolutions.

The textual interpretation of Article V(2) suggests that the intention of the drafters was to subject the Gulf to the rules of the high seas. This was clear by using terms associated to the high seas regime. For example, the parties consider the Gulf and the Straits as "international waterways." Another example is the phrase "unimpeded and non-suspendable freedom of navigation". This phrase, as we explained earlier, must be interpreted as a reference to the regime applicable to the high seas. <sup>160</sup>

The practice of Israel and the US after the Treaty confirmed that they considered the Gulf and the Straits as being governed by the rules of the high seas. To prove this we may refer to the Memorandum of Agreement between the Governments of the US and Israel signed in 1979 after the conclusion of the Treaty.<sup>161</sup> According to Article 3 of this Memorandum, if a violation of the Treaty should threaten the security of Israel, including, inter alia a blockade of Israel's use of international waterways, the US will be prepared to consider such measures as "the exercise of maritime rights to put an end to the violation".<sup>162</sup>

Clearly, as some writers observed, the expression "international waterway" could refer to the Gulf and the Straits of Tiran as well as other relevant passages.<sup>163</sup>

A similar position can be found in the statement by the Chairman of the US delegation to UNCLOS III made on January 29, 1982:

" The U.S. fully supports the continuing applicability and force of freedom of navigation and overflight for the Straits of Tiran and the Gulf of Aqaba as set out in the Treaty of Peace is fully compatible with the LOS convention and will continue to prevail. The conclusion of the LOS convention will not affect these provisions in any way".<sup>164</sup>

Likewise, after its signature of the 1979 Treaty, Egypt did not take or declare any action which may affect international navigation in the Gulf. For example, Egypt's declaration upon its ratification of the 1982 Convention, while it refers to its right to take some measures relating to its right of self-preservation in the Gulf, did not refer to any competence concerning foreign ships in the Gulf.<sup>165</sup> Competence, as rightly observed, is the key difference between freedom of navigation and innocent passage. In the former, competence about the character of



the user vests in the flag state; in the latter it vests in the coastal state<sup>166</sup>. Egypt's declaration, therefore, could be understood as supportive of the view that it considers the Gulf as subject to the regime of the high seas.

Finally, the interpretation that the Gulf is subject to the transit passage regime encounters a number of obstacles. For example, there is need for more provisions to regulate matters such as submerged passage, the duties on the part of passing ships, the competence of the coastal states and so on. Such matters are still controversial and were not settled by the rules governing the transit passage regime.

From the above considerations, one can conclude that the new regime is subject to the regime applicable to high seas.

Having reached the above conclusion, the question arises: what is the position of other coastal states in the Gulf, namely, Saudi Arabia and Jordan, with regard to the application of the new regime to them?

Having in mind the fact that the new regime is not a codification of customary international law,<sup>167</sup> and that both Saudi Arabia and Jordan have expressed their rejection of the 1979 Treaty, including the new regime of the Gulf and the Straits on several occasions,<sup>168</sup> one can state that this regime is not binding on them.

As a result, that part of the Gulf constituting the territorial seas of Egypt and Israel should be subject to the rules governing the high seas. The other parts of the Gulf, namely, the territorial seas of Jordan and Saudi Arabia would be subject to the rules of international law, i.e., the regime of innocent passage with its broad coastal competence, passage duties and overflight limitation.



In practice, however, the Straits of Tiran will not be affected by the application of a diversity of legal norms since it falls within the territorial seas of Egypt. Moreover, access to Israel through the Straits of Tiran and the Gulf of Aqaba could be gained through or over the Egyptian and Israeli territorial seas. This would be the case even if Saudi Arabia was restored to the islands occupied by Egypt at the entrance of the Straits.

#### The Attitude Of The Arab League Towards The New Regime

The rejection of the new regime, declared by Saudi Arabia and Jordan in the aftermath of the Peace Treaty, cannot be separated from the Arab League's complete rejection of the peace process between Egypt and Israel including the two Agreements. The Arab League's rejection, which was declared at the Baghdad Summit(1978) and the Arab League Foreign Ministers Conference of 1979, was mainly due to political reasons which we pointed out in other parts of this work.<sup>169</sup> However, the Arab policy regarding the legal status of the Gulf seemed to be affected by two main considerations: first, the political one that the legal status of the Gulf should be part of a comprehensive settlement of the Arab Israeli conflict; secondly, the legal and practical problem stemmed from the fact, referred to earlier, that Israel's frontier in the Gulf is of a temporary nature.

Nevertheless, the question that needs to be answered is: whether the attitude of the Arab League towards the new regime of the Gulf established by the 1979 Treaty changed in the aftermath of the 1982 Summit meeting when the Arab leaders adopted the 1982 peace plan (known as Fez Plan).

As a ~~matter~~ of fact, there is no mention of the question of the Gulf either in the text of the plan or in the discussions during the meetings. This could lead to the interpretation that the League's intention was to subject the Gulf to the norms of international customary law and multilateral treaties. Yet, a careful reading of the Fez plan refutes this interpretation.

In the first place, it is clear that the problem of the Israeli boundary in the Gulf of Aqaba no longer exists since it was not included in the Arab territorial claims. The Fez plan called for a complete withdrawal only from the "...Arab territory occupied in 1967."<sup>170</sup> By implication, this means that the plan considered Israel's boundaries of the pre-June 1967 war, including the Gulf frontier, as legal and final boundaries.

Further, the plan called for "the United Nations Security Council to provide guarantees for peace" and "to guarantee implementation" of the Arab plan.<sup>171</sup> This could be understood as an implicit approval of Resolution 242. Clearly, if the UN Security Council is to play any role to settle the Arab Israeli conflict, this would be dominated by its Resolution 242 which is of special importance and binding nature. Omission, by the 1982 Arab Summit, of the League's former rejection of resolution 242 is supportive of that conclusion.

To the above, it may be added that apart from its position on the Palestine question, the principles of the Fez plan, as we proved, are in line with the principles of Resolution 242.

Thus we can conclude that the Fez plan does not, from a legal view, reject the new legal regime of the Gulf of Aqaba provided by the 1979 Treaty. However, in the meantime, it seems that the Fez plan did not

envisage any final determination of the question of the Aqaba Gulf to be decided separately, since the League does not allow any of its member states to conclude bilateral agreement with Israel.<sup>172</sup>

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Notes

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- 23 Clagett, B., op.cit, p.124.
- 24 Cummings, op.cit, p.121.
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54 See Article 6 of the Egyptian Proposal.

55 See also Carter, op.cit., p.337.

56 Ibid, p. 350.

57 Brzezinski, Power and Principle, London, 1983, p.263.

58 For the First American Proposal at Camp David, see Appendix III.58

59 Quandt, William, Camp David, Peace Making and Politics, Washington, 1986, p.363.

60 The Second US Proposal submitted on September 12, Ibid, p. 369.

61 Sadat main concern at Camp David was to restore Sinai and to remove the settlements which in his view was against Egypt's sovereignty see Carter, op.cit., pp. 349,351,345.

62 Dayan, op.cit., p.168.

63 Carter, op.cit., p.360.

64 Ibid, p.378.

65 Ibid, p.374.

66 Ibid, p.359.

67 Brzezinski, op.cit., p. 285.

68 Carter, op.cit., pp.394-395.

69 Letter from Israeli Prime Minister Manachem Begin to President Jimmy Carter, September 17, 1978, Appendix IV.

70 Letter from Egyptian President Anwar El-Sadat to President Jimmy Carter, September 17, 1978, see Appendix IV.

71 Resolution adopted by the Israeli Knesset authorizing the government to evacuate the Israeli settlements in Sinai, September

- 28, 1978. The Resolution was taken by 84 in favour of the evacuation, 19 against and 17 absentations. See Dayan, op.cit., p.194.
- 72 Appendix To Annex One of the 1979 Treaty.
- 73 This suggestion can be easily inferred from the record of the negotiation, Quandt, for example mentioned that by the end of the Camp David negotiation there twenty-three Drafts were at least prepared. Quandt, op.cit., p.226.
- 74 Dayan, op.cit.
- 75 Higgens, Rosalyn, The June War: The United Nations and legal background, Journal of Contemporary History, p.270.
- 76 See the Likud Party Platform 1981, Lukacs, op.cit., pp.120-121.
- 77 See Sadat's Letter to Begin dated September 17, 1978, Appendix IV of this work.
- 78 Brzezinski, Zbigniew, op.cit., p.263.
- 79 The word "civilian" as a reference to Israeli settlers used in several parts of the 1979 Treaty, i.e., Article 1(2), Article 1(1), Article 1X of Annex One and Article 1(1) of Appendix To Annex 1.
- 80 See Article 49 paragraph 6 of the 1949 Geneva Convention relating to the protection of civilians.
- 81 Cummings, R, op.cit., p119
- 82 Clagett, R, op.cit., p.23.
- 83 There is a lot of a controversy surrounding the question of sovereignty over the West Bank and the Gaza, see for example, Nathan Feinberg, The Question of Sovereignty over Palestine, in John Moore (ed)), The Arab-Israeli Conflict vol.1, pp. 225-52.
- 84 See p. 189. of this work.



- 85 See the text of the 1979 Treaty.
- 86 Id.
- 87 According to an article published by Israeli journalist Amnon Kapeliouk in Le Monde, May 15, 1975, some 17,00 of Israeli settlers were located within Dayan's ambitiously conceived port 'city' of Yamit for which, in 1972, Israeli soldiers had driven off "some ten thousand farmers and bedouins, bulldozed or dynamited their houses, pulled down their tents, destroyed their crops, and filled their wells".
- 88 The text of the Egyptian Proposal, op.cit.
- 89 Gerson, A., op.cit., p.163.
- 90 See Article 52 of the Hague Regulations of 1907.
- 91 1928 Reports of International Arbitral Awards, Vol.II, p.842.
- 92 See Article V(2) of the 1979 Treaty of Peace.
- 93 Quoted in, Johnson, D. Some legal problems of International Waterways With Particular Reference to the Straits of Tiran and the Suez Canal John Moore(ed), op.cit., Vol.I, p.826.
- 94 Selak, Charles. A consideration of the legal status of the Gulf of Aqaba, John Moore(ed), op.cit., Vol.I, pp.697-699.
- 95 ElBaradei, Mohamedi, The Egyptian-Israeli Peace Treaty and Access to the Gulf of Aqaba: A New Legal Regime, AJIL, 1982, p.533.
- 96 Id.
- 97 Id.
- 98 336th Meeting, June 13, 1956, 1 I.L.C. Yearbook 1956, Summary Records its 8th Sess., April 23-July 4, 1956, p.202, par.89.
- 99 Id.
- 100 Article 16(4) of the 1958 Geneva Convention of the Territorial Sea.

- 101 ElBaradei, Mohamed, op.cit, p.554.
- 102 Higgins, Rosalyn, op.cit, pp. 263-265.
- 103 Moore, John, The Regime Of States And The Third United Nations Conference On The Law Of The Sea, AJIL, 1980, Vol.74, p.112.
- 104 See in general the discussions during the 666th Plenary Meeting, General Assembly, 11th Sess., Official Records, p.1276, para.11.
- 105 Ibid, reprinted also in Gross, op.cit, p.789.
- 106 Gross, op.cit, p.788.
- 107 Ibid, p.789.
- 108 Salans, Carl, Gulf of Aqaba and Strait of Tiran: Troubled Waters, John Moore (ed), op.cit, Vol.I, pp.811-17.
- 109 For the text of the Aide Memoire sent by the Egyptian Government to the American Embassy in Cairo reprinted in, Hammad, Burhan, The Right of Passage in the Gulf of Aqaba, John Moore(ed), op.cit, Vol.I, p.737
- 110 Salans, op.cit, p.814.
- 111 Article 5 of Saudi Arabia Territorial Waters Decree, May 28, 1949 reads: "The coastal sea of Saudi Arabia lies outside the inland waters of the Kingdom and extends seaward for a distance of six nautical miles". Article 5 of the Egyptian Territorial Waters Decree of January 15, 1951 is identical. See Selak, op.cit, p.703.
- 112 Israel's Territorial Waters Decree of September 11, 1955 reads: "The maritime frontier of the State of Israel is placed at a distance of six nautical miles from the coast measured from the low-water line, and the areas of the sea between the low-water line as aforesaid and the maritime frontier, together with the airspace above them, constitute the maritime areas of Israel". See Selak, op.cit, p.704.

- 113 667th Plenary meeting General Assembly, 11th Sess., Official Records, p.1301.
- 114 Gross, Ibid, p.1287, par. 51.
- 115 For the text of the Memorandum submitted by Saudi Arabia Government, see UN Doc A/3575 April 15, 1957.
- 116 This view was held by Egypt in certain occasions, e.g., in 1967 upon the closure of the Gulf to Israeli shipping President Nasser announced: " The Tiran Straits are Egyptian territorial waters over which Egypt has exercised her sovereignty rights. No power whatever its might can infringe upon Egyptian sovereignty rights and any such attempt shall be regarded as aggression against the Egyptian people and the Arab nation at large...", statement by President Nasser in a press conference held in Cairo on 28 May 1967, Al-Ahram, 29 May, 1967, Cairo.
- 117 For more details on this point, see for example Burhan, H., op.cit., p.762.
- 118 Ibid, pp.741-48.
- 119 Judicial Decisions Involving Questions of International Law; The Republic of ElSalvador v. The Republic of Nicaragua, Central American Court of Justice, 11 AJIL, 1917, p.677.
- 120 Burhan, op.cit., pp.748-51.
- 121 Article 10 (3) of the Constantinople Convention of 1888 reads: "It is also understood that the provisions of the four Articles in question shall in no case stand in the way of measures which the Imperial Ottoman Government considers it necessary to assure by its forces the defence of its other possessions situated on the eastern



coast of the Red Sea.". For the text, see 3 Moore's Digest, 3 IJIL, 1909, pp. 264-66.

122 Shukairy, Ahmed, Territorial and Historical Waters in International Law, Palestine Monograph, No. 4 1971. Also see statement by Shukairy, then the delegate of Saudi Arabia to the UN, before the General Assembly, 12th Sess., Official Records, 697 Plenary Meeting, (A/P.V.697) October 2, 1957, p. 233.

123 Id.

124 See the comment made by George Graflon Wilson, reporter of the Harvard Draft Convention on Territorial Waters of 1929 with reference to Article 6: "Where the waters within the seaward limit are bordered by two or more states, it would seem that the bordering states should be permitted by international law to divide such waters between them as inland waters. If the same waters are bordered by one state only, that state would clearly be entitled, under Article 5, to treat all of the waters as inland waters. The powers of two or more states should not be smaller than the powers of one state in this respect if the states can reach an agreement."

23 AJIL Spec Rep. 274 (1929)

125 36 Dep. of State Bulletin 482-489

126 See the text of the Camp David Accords.

127 See Security Council Resolution 242.

128 See the text of Security Council Res. 338.

129 Corfu Channel Case (United Kingdom v. Albania) 1949 ICJ Reports 4 (Judgment of April 9)

130 El-Baradie, op.cit., p. 546

131 Ibid., pp. 532-53.

132 Moore, op.cit., ref. 103, p. 113.

133 Id.

134 ElBradie, op.cit., p.546.

135 More, op.cit., ref.103, p.113.

136 El-Baradie, op.cit., p.546.

137 Id.

138 For the rejection of both Saudi Arabia and Jordan of the Camp David Accords and the Peace Treaty see, Resolutions of the Arab League Summit of 1978 and resolutions passed at the Conference of Arab Foreign Economy and Finance Ministers, Arab League Publications, Tunissia.

139 El-Baradie, op.cit., p.549.

140 Article V of the 1979 Treaty.

141 Selak, Charles, A Consideration of the Legal Status of the Gulf of Aqaba, AJIL, 1958, pp.661-662

142 Reisman, Michael, The Regime of Straits and National Security: An Appraisal of International Lawmaking, AJIL, 1980 Vol.74, p.77.

143 El-Baradie, op.cit., p.550.

144 Reisman, op.cit., p.70.

145 Article 8 of the Geneva Convention of 1958 on the Law of the Sea.

146 Draft Convention on the Law of the Sea UN Doc.A/Conf.62/L78 Art. 37, 1981.

147 The Third United Nation Conference on the Law of the Sea convened in 1973. Thereupon, the concept of innocent passage was introduced by the USSR and the US.

148 See the text of the 1958 Geneva Convention on the law of Territorial Sea.

149 See the text of the UNCLOS, op.cit.

150 El-Baradie, op.cit. 550.

151 See Annex III (Art.VIII) of the 1979 Treaty.

152 El-Baradie, op.cit., p. 551.

153 Id.

154 Id.

155 For the refutation of this view, see Lapidoth, Ruth, The Strait of Tiran, The Gulf of Aqaba and the 1979 Treaty Between Egypt and Israel, AJIL, 1983.pp. 99-103.

156 Id.

157 Reisman, op.cit., p.76.

158 For the Agreement on the establishment of MFO, see 20 ILM, 1981, p.1190

159 Reisman, op.cit., p.76.

160 Lapidoth, Ruth, op.cit., pp.99-101.

161 The text of the Memorandum of Agreement between the US and Israel signed in 1979, see, 18 ILM, 1979, p537-39

162 Art.3 of the Memrandum of Agreement, Id.

163 Lapidoth, Ruth, op.cit., p.105.

164 128 Congress Records S 4089 (daily ed. Apr. 27, 1982).165

166 Reisman, op.cit., p.58.

167 El-Baradie, op.cit., p.552.

168 Op.cit., ref. 138.

169 See Chapter One of this work.

170 See the text of the Fez Plap approved by the Arab heads of state, Fez Summit, 1982, Arab League Publication, London Office.



171 See Resolutions of the Arab League Summit Conference between 1973 and 1985, Arab League Publication, Pamphlet by the Arab League Office. London, 1987.

PART THREE  
THE PALESTINIAN PEOPLE

CHAPTER FOUR  
THE PALESTINIANS

This chapter is concerned with the attitude of the Peace Treaty towards the Palestinian state and the peoples' right to self-determination. Here, it is necessary to stress that, although no mention has been made of such right in the Peace Treaty itself, all the issues relating to the Palestinians' rights were dealt <sup>with</sup> by the Camp David Accords of 1978, particularly in the document entitled "Framework for Peace in the Middle East".<sup>1</sup>

For legal purposes, the relevant provisions of the Camp David Accords dealing with the rights of the Palestinian people must be regarded as an integral part of the Peace Treaty. This can easily be understood from paragraph 2 of the preamble to the Peace Treaty which provides that the parties reaffirm their adherence to the "Framework for Peace in the Middle East" agreed at Camp David, dated September 17, 1978.<sup>2</sup>

The scheme envisaged by the Camp David Accords can be described briefly along the following lines. A self-governing authority on the West Bank and Gaza is to be set up for a transitional period (of up to five years); the authority is to be elected by inhabitants of the West Bank and Gaza (presumably, only present inhabitants).<sup>3</sup> During the transitional period, representatives of Egypt, Israel, Jordan and a self-governing authority will constitute a continuing committee to decide on the modalities of the admission of persons displaced from the West Bank and Gaza in 1967, together with necessary measures to prevent disruption and disorder.<sup>4</sup> Israel's security interests, in this respect,



are to be taken into account and there is to be no return of persons displaced in 1948 from territory which then became Israel.<sup>5</sup>

As to the general refugee problem, i.e. the Arab refugees of 1948, Egypt and Israel are to "work with each other and with other interested parties to establish agreed procedures for a prompt, just and permanent implementation of the resolution of the refugee problem." Yet, no time period is set for the general resolution of the refugee problem; nor is there any indication that the problem must be resolved by means of a wholesale "right of return". Such expedients as resettlement, compensation and other alternatives are not excluded in those cases even where the first choice of the refugees concerned is repatriation.<sup>6</sup>

After this clarification, in order to understand and evaluate the aforementioned scheme, it is necessary in the first place to undertake a brief inquiry into the right of the Palestinian people under the rules of international law. With the assistance of this inquiry, a textual and contextual legal interpretation of the Accords and the Peace Treaty will then be offered.

SECTION ONEThe Right of the Palestinian People  
to Self-Determination under International Law

Before taking up the matter under consideration, it might be convenient at this point to note very briefly that there has never been a consensus of opinion as to the issues relating to the Palestinians' right to self-determination. For instance, the Palestinian people as a whole, according to one view, are entitled to self-determination. It follows therefore that they have the right to return and establish their own state. On the other hand, an opposing view takes up a position that the Palestinians are not entitled to self-determination, irrespective of the General Assembly resolutions in this regard.

These two contradictory views are the subject of the following discussion.

The Palestinian People are entitled to Self-Determination

This view claims that the Palestinians are a people whose right of self-determination has been violated by the State of Israel. What is claimed is not a right of self-determination arising only in the present, but a right which came into existence before 1948, and which has not been terminated.<sup>7</sup> The main tenet of this position is that legitimate rights, such as self-determination, are not extinguishable by the coercive displacement or preventing the return of the "people" from the "territory" after the right has accrued to this very "people" on that very "territory".<sup>8</sup> There can be no doubt that this claim may raise

a number of complex issues related to the doctrine of self-determination in international law. This complexity arises because of two main considerations: the inevitable contradiction between the implementation of the Palestinians' self-determination on one hand, and the principle of sovereignty and territorial integrity of the state of Israel on the other,<sup>9</sup> and the lack of consensus of opinion as to the legal character of the principle of self-determination.<sup>10</sup>

Notwithstanding, this discussion will be devoted to three main issues: First, the legal reasons for justifying the Palestinians' right to self-determination; Secondly, the problem of which territory whose fate is to be determined by the Palestinians and, Thirdly, the problem of timing, namely, at what point does the population of Palestine represent the true population for the purpose of self-determination?

Reasons in support of the Palestinians' right to self-determination

It is worth remembering that the legal basis for such a claim has been the subject of long and arduous discussion. Yet, these reasons are in general based upon two main considerations: that the Palestinians have fulfilled the conditions required to exercise the right of self-determination under international law<sup>11</sup> and, that the Arabs' claim that the "so called-Israel" is an illegal state whose establishment was in conflict with the rules of international law.<sup>12</sup>

This view asserts that the right of self-determination under contemporary international law is a legally operative right backed by legal obligation and not merely a pious hope devoid of legal substance.<sup>13</sup> If self-determination is a mere political principle which is not recognized as a binding rule of international law, the argument of this view will be far from convincing.<sup>14</sup>



The view that self-determination has developed into an international legal right is supported by several writers such as Higgins who rejected the interpretation that self-determination remains a mere "principle" and Article 2(7) is an effective defence against its implementation:

"To insist upon this interpretation is to fail to give any weight either to the doctrine of bona fides or to the practice of states as revealed by unanimous and consistent behaviour."<sup>15</sup>

The right of self-determination presupposes the existence of two interrelated factors : people and territory. It also requires the existence of a genuine link between the people and the territory claimed by them. The Palestinians, as it is rightly observed, have fulfilled these requirements. They are descendants of Abraham, Semites by race who have continuously inhabited the area known as Palestine since time immemorial. The territory belonging to these people are the lands known as Palestine, which incorporates Israel, Gaza and the West Bank. Their genuine link to this territory is well known and cannot be denied.<sup>16</sup>

The existence of this Palestinian right before the establishment of Israel would lead to a reasonable conclusion that, once such a legitimate right had come into existence, it cannot be terminated by the coercive displacement of the Palestinians. Some authors believe that the Palestinians' right to self-determination was established under the Covenant of the League of Nations in 1922.<sup>17</sup> Under this view, the ideas of President Wilson were generally accepted and incorporated in 1919 in Article 22. The text of this Article, which was applied to communities detached from the Ottoman Empire, including Palestine, pointed out that:

"...their existence as independent nations can be provisionally recognized subject to the rendering of administrative advice and assistance by a mandatory until such times as they were able to stand alone".<sup>19</sup>

There is no doubt, according to this view, that this Article referred to the right of self-determination of those peoples including the Palestinians.<sup>19</sup> At this point, it may be worth mentioning that Article 6 of the Palestinian National Covenant is based on the above opinion, as we shall indicate later.<sup>20</sup> Others incline to the opinion that the Palestinian right to self-determination came into existence by the U.N. Resolution for the Partition of Palestine adopted in 1947,<sup>21</sup> which seems a more reasonable view, as we shall see later.<sup>22</sup>

There is no doubt that the change in the indigenous Arab character of Palestine, caused by the Jewish immigration, was the legal foundation of the 1947 U.N. Resolution for the Partition of Palestine which lead to the establishment of Israel.

Before considering the reasons forwarded to justify the illegality of this immigration, the census figures ought to be mentioned to clarify the extent of this immigration:

Throughout the mandate period, the Jewish population increased more than tenfold, from 56,000 in 1918, the number of Jews in Palestine increased to 83,794, according to the census of 1931, and to 608,230 in 1946 out of a total population of 1,972,560. In other words, while the non-Jewish population was 90 per cent in 1918 when the British forces entered Palestine, it was reduced to 55 percent in 1947 at the end of the mandate.<sup>23</sup>



According to this view, the overwhelming Jewish immigration was in violation of international law. In the first place, it was against the will of the original inhabitants. Their clear opposition was demonstrated in riots and civil wars against Jewish communities in order to stop the immigration.<sup>24</sup> In support of this argument, the following quotation of ~~the~~ Mandates Commission may be cited:

"It is to be remembered that the non-Jewish population of Palestine, nearly nine-tenth of the whole, are emphatically against the Zionist Programme."<sup>25</sup>

The deliberate overlooking of the Palestinian wishes is in direct conflict with the practice of the League of Nations, which was pointed out by Mr. Yanaghita, in a memorandum to the Third Session of the Permanent Mandate Commission. He stated:

"If ... it happens that the interests of two classes of inhabitants, those previously living in a mandate area and those arriving later prove irreconcilable, the mandatory administration will naturally give first consideration to those of the original inhabitants."<sup>26</sup>

It has been estimated that one half of the Jewish population in 1947 had illegally entered Palestine, did not obtain Palestinian nationality, and were not officially recorded.<sup>27</sup> Further, this overwhelming immigration was contrary to the formal policy of the British Government, which declared in 1939 that the entire population ratio was to be kept at the level it had reached of one third Jewish and two thirds non-Jewish Arabs.<sup>28</sup> Furthermore, unlimited immigration was against the spirit of the mandate, as well as against certain provisions of the legal instrument governing the mandate.<sup>29</sup> As long as the mandate was regarded as "a sacred trust of civilization",<sup>30</sup> the change of the



demographic structure of the original population in favour of a Jewish minority cannot be in accordance with the aim and spirit of the mandate.<sup>31</sup>

This inference could be supported by a number of instances illustrating the existence of conflicts between certain provisions governing the mandate on the one hand, and unlimited Jewish immigration on the other.

It is in conflict with Article 22 of the League of Nations which provides that the main aim of the mandate system is the well-being of the inhabitants of the mandate territory. It is clear from this history of Palestine that the immigration was inimical to the "well being" of the Palestinians. Another illustration is the conflict between the massive immigration and certain provisions of the Balfour Declaration, which required the United Kingdom to ensure that:

"Nothing should be done which might prejudice the civil and religious rights of existing non-Jewish communities in Palestine."<sup>32</sup>

It may be worth remembering that the text of the mandate included in its preamble the text of the Balfour Declaration.<sup>33</sup>

Thus, it has been rightly concluded that "the mandate system and its successor, the trusteeship system of the U.N., did not envisage or permit a trust territory to be so administered as to allow an imposed or forceful demographic transformation designed to alter the indigenous character of that territory and to remove its original inhabitants."<sup>34</sup>

It is a well-known contention by Arab states that Israel, as an illegal state is not protected by the principle of the sovereignty and territorial integrity of states. This reason has been forwarded<sup>so</sup> as to avoid the inescapable contradiction between the implementation of the Palestinians' right to self-determination on one hand and the principles

of international law which protect the sovereignty and territorial integrity of Israel on the other. The argument forwarded by some authors to support the illegality of Israel is well known.<sup>35</sup> However, in recent years, it may be observed that many of the Arab States no longer support such a claim.

The U.N. General Assembly's resolutions have supported and recognized the Palestinians' right to self-determination. It is argued that the General Assembly of the United Nations adopted several resolutions in which the right of the Palestinian people to self-determination has been recognized.<sup>36</sup>

Resolution 2672 C, passed in 1970, was the first to use the phrase "people of Palestine" and to acknowledge their right to "self-determination."<sup>37</sup> Before this time, the Palestinian problem was regarded by the U.N. as a refugee problem.<sup>38</sup> In 1971 and 1972, similar resolutions were adopted. These resolutions, however, refer only vaguely to the people of Palestine without specifying what was meant by Palestine.<sup>39</sup>

In 1974, the General Assembly adopted the most complete statement to date of its conceptions of Palestinian rights.<sup>40</sup> In its relevant part, Resolution 3236 of 1974 states that:

"The General Assembly,  
Recalling its relevant resolutions which affirm the right of the Palestinian people to self-determination

(1) Reaffirms the inalienable rights of the Palestinian people in Palestine, including

- a. The right to self-determination without external interference,
- b. The right to national independence and sovereignty.



(2) Reaffirms also the inalienable right of the Palestinians to return to their homes and property from which they have been displaced and uprooted, and call for their return."<sup>41</sup>

The Resolution undoubtedly confirmed that the Palestinians have the right to return within the overall context of self-determination.<sup>42</sup>

In interpreting the meaning envisaged by Resolution 3263 as to Palestinian self-determination, two opinions were advanced. Some held that it would appear to be entirely consistent with the Palestinian Liberation Organization's idea of a democratic secular Palestinian state to replace Israel.<sup>43</sup> Other authors believe that the resolution suggests a Palestinian state along the lines proposed in the plan of partition of 1947.<sup>44</sup> This latter interpretation seems to be supported by the "Report of the Committee on the Exercise of the Inalienable Rights of the Palestinian People",<sup>45</sup> which included repeated references to the partition plan, Resolution 181(II) as well as an acknowledgement of Israel itself.<sup>46</sup>

Having explained the grounds for the legitimacy of the right of the Palestinian people to self-determination, another important question remains, namely, the question of the territories whose fate is to be determined by the Palestinian people. From the outset, it must be admitted that the question is difficult to answer satisfactorily. However, this is not to say that answers have not been advanced. Indeed, three types of answer have been advanced:

The first answer, as put forward by the Palestinian National Covenant and some authors, provides that the area including the territories of Israel as well as Gaza and the West Bank is the territory whose fate must be determined by the Palestinians.<sup>47</sup> This answer, as a matter of



reasonable inference, should lead to the dismantling of Israel and "the establishment - in Palestine - of a secular, democratic and progressive society without distinction or discrimination as between Jews, Christians and Moslems."<sup>49</sup>

One must admit that this solution would realize satisfactorily the rights claimed by the Palestinians. However, the implementation of such a solution appears to be in conflict with rules of contemporary international law.

The destruction of Israel, as envisaged by this view, is against the principle of sovereign equality of States upon which, according to Article 2(1) of the Charter, the United Nations is based.<sup>49</sup> It is in conflict with the 1960 Declaration on colonial independence (Resolution 1514 (XV) ) which provides that:

"Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations."<sup>50</sup>

Along the same lines, Secretary General U Thant affirmed that:

"When a state joins the United Nations, there is an implied acceptance by the entire membership of its territorial integrity and sovereignty .... the United Nations has never accepted and does not accept and I do not believe it will ever accept the principle of secession of parts of its member states."<sup>51</sup>

The destruction of Israel is in conflict with Security Council Resolution 242 which is based on the principle of respect for the sovereignty and political independence of every state in the Middle East.<sup>52</sup>

Israel's rejection of this solution would result in the continuation of a war system in the region, which constitutes a threat to international peace,<sup>53</sup> and such a situation is in conflict with a rule governing the exercise of self-determination, namely the rule based on the opinion that self-determination is only possible within a general environment of peace,<sup>54</sup> which means that it is sometimes necessary to curb self-determination for the sake of peace.<sup>55</sup> As stated by Franklin Roosevelt, "the choice freely exercised by a nation must not threaten ... with disaster of war." This opinion is supported by state practice, specially the two Super Powers.<sup>56</sup>

Along the same lines, at San Francisco, it has been aptly observed that "Self-determination...was regarded, not as an independent value, but only as secondary to the goal of peace, with the obvious consequence that it might and indeed should be set aside when its fulfillment give rise to tension and conflict among states".<sup>57</sup>

Turning to the second answer, it has been suggested that the area whose fate is to be determined by self-determination are the territories earmarked to the Arab-Palestinian state in the 1947 U.N. Partition Resolution.<sup>58</sup> This view rests upon the U.N. General Assembly Resolution 181 of 29 November 1947, which divided the territories of Palestine between the Arab and the Jewish inhabitants.<sup>59</sup> It also rests upon Israel's acceptance of the Partition Resolution including its approval of the frontiers provided by the Partition Plan.<sup>60</sup> Thus the Proclamation of the Independence of Israel stated "the state of Israel is prepared to co-operate with the agencies and representatives of the United Nations in implementing the Resolution of the General Assembly of the 29th November 1947".<sup>61</sup> In a letter addressed on 14 May 1948 by Epestein,



Agent for the Provisional Government of Israel, to President Truman requesting recognition, the President was notified that:

"The State of Israel has been proclaimed as an independent republic within frontiers approved by the General Assembly of the United Nations in its resolution of November 29, 1947, and that a provisional government has been charged to assume the rights and duties of government for preserving law and order within the boundaries of Israel".<sup>62</sup>

From the above passages, there is no ground to deny that the frontiers of the Partition Plan were accepted by Israel, at least in 1948. This view is consistent with the solution provided by the General Assembly Resolution 3236 of 1974 which has been interpreted as envisaging a Palestinian state within the territories earmarked to them by the 1947 Partition Plan. This was indicated when we discussed the Resolution earlier.<sup>63</sup>

One must admit that, from a political perspective, such a solution may constitute a compromise which could be accepted by many Palestinians in the light of the view that something is better than nothing.<sup>64</sup> However, from a legal perspective, some authors raise the claim that the U.N. Partition Resolution of 1947 was invalid.<sup>65</sup>

Consequently, it cannot be regarded as a legal basis for any solution. The arguments against the legitimacy of the Partition Plan have been thoroughly examined by others, and it is irrelevant to be repeated. However, it may be relevant to refer to the opinions of some international authorities who recently expressed a somewhat similar view. For example, Brownlie has said:



"It is doubtful if the United Nations has a capacity to convey title, inter alia because the Organization cannot assume the role of territorial sovereign ... Thus the resolution of 1947 containing a partition plan for Palestine was probably ultra vires [outside the competence of the United Nations], and if it was not, was not binding on member states in any case".<sup>66</sup>

Along the same lines, Quincy Wright recently expressed the view that "the legality of the General Assembly's recommendations for the partition of Palestine was doubtful".<sup>67</sup>

The third answer suggested that the area including Gaza and the West Bank, which has been occupied by Israel since 1967, is the territory whose fate could be determined by the Palestinians.<sup>68</sup>

It is well established that Israel has no legal right under contemporary international law to occupy and annex these territories which it has occupied by force since 1967. Israel, therefore, is obliged to terminate its military occupation.<sup>70</sup> The legal obligation of Israel to withdraw from Gaza and the West Bank derives specifically from three fundamental legal principles. They may be worth mentioning in brief:

- The general principle of non-use of force prescribed by the U.N. Charter in Article 2(4) stipulating that all members shall refrain from the threat or the use of force.
- The principle of the illegality of the military occupation of the territory of another state by force. Even under Article 51 of the Charter, force may only be used by a state in the exercise of its inherent right of self-defence "if an armed attack occurs" and only "until the Security Council has taken measures necessary to maintain

international peace and security".<sup>71</sup> The principle of illegality is further elaborated in the 1970 United Nations General Assembly's Declaration on the Principles of International Law concerning Friendly Relations and Co-operation among States,<sup>72</sup>

The principle of inadmissibility of acquisition of territory by force. This principle is stipulated in paragraph 1 of the General Assembly Declaration on the Principles of International Law concerning Friendly Relations and Co-operation among States, and in paragraph 5 of the Declaration on the Strengthening of International Security.<sup>73</sup> They both read:

"the territory of a state shall not be the object of acquisition by another state resulting from the threat or use of force ... no territorial acquisition resulting from the threat or use of force shall be recognized as legal."<sup>74</sup>

Further it has been rightly observed that the implementation of the Palestinian right to self-determination within the territories of Gaza and the West Bank will not give rise to any problem related to the sovereignty and territorial integrity of Israel. It may also minimize the possibilities of war in the area.<sup>75</sup>

In the light of the foregoing, it can be submitted that this last solution on the one hand reflects an ignorance of the right of the Palestinian people to self-determination and reveals the weaknesses of international law in finding a workable solution based on justice for the Palestinian people. On the other hand, it would be fair to say that this solution may be legally accepted if there exists, as mentioned earlier, a norm of international law which permits self-determination to



be put aside when its fulfillment would give rise to tension and conflict among states.<sup>76</sup>

The question of the territory whose fate should be determined by the Palestinians gives rise to another legal question, namely, the difficult problem of the critical date to distinguish between the indigenous inhabitants of Palestine and other illegal Jewish population entering Palestine during the mandate. There is no consensus among supporters of the Palestinian people as to the choice of a cut-off date.

Apart from a rejected view that 1971 may be chosen as a cut-off date because self-determination has been recognized as a legally binding rule for Palestinians since that year,<sup>77</sup> we need to distinguish between two main opinions accepted by the Palestinians.

The first, in brief, claimed that 1923 must be chosen as the critical year because, in their opinion, it is the commencement of the Zionist invasion.<sup>78</sup> This is the position of the Palestinian Liberation Organization which was expressed in Article 6 of the 1968 Palestine National Covenant:

"Jews who were living permanently in Palestine until the beginning of the Zionist invasion will be considered Palestinians."<sup>79</sup> According to this argument, the population of Palestine which is entitled to exercise self-determination is estimated to be one third Jewish.<sup>80</sup>

The legal basis of this choice is once more the claim that the Palestinian right to self-determination came into existence by Article 22 of the League of Nations and, since that time, has never been terminated, and that all the subsequent events leading to the establishment of Israel were illegal and in violation of the Palestinians' right to self-determination.



This cut-off date is debatable since Palestinian Arab representatives agreed in ensuing years to an immigration quota which allowed for the lawful entry of many more European Jews.<sup>81</sup> This cut-off date would lead to the destruction of Israel. We have proved earlier that such destruction is not acceptable under international law. The claim upon which this solution is based is doubtful because there is a lack of consensus as to whether Article 22 of the Covenant of the League of Nations provided for self-determination for the Palestinians. The majority of international writers, at that time, did not recognize the existence of self-determination as a legal right.<sup>82</sup> That date seems to be in conflict with the attitude of the U.N. towards the problem. Any review of the relevant resolutions of the General Assembly supporting the Palestinian right would reveal that it was never envisaged. Moreover, it is also in conflict with Resolution 242 of the Security Council, which provides full respect for Israel's sovereignty within its frontiers before the 1967 war.<sup>83</sup>

For the foregoing reasons, this cut-off date cannot be accepted.

On turning to the second attitude, some authors hold that 1947 should be chosen as the cut-off year.<sup>84</sup> In their opinion, the right of the Palestinian people to self-determination came into existence by virtue of the Partition Plan of 1947, and it was accepted by Israel. The Jewish population under this argument is estimated to be 45 per cent of the whole population, and they would be obliged to accept, and to live in, the area earmarked to them by the 1947 Resolution.<sup>85</sup>

There is no doubt that self-determination was recognized as a principle of international law under the U.N. Charter. Consequently, it is correct to say that the Palestinians' self-determination came into

existence in, or immediately before, 1947.<sup>86</sup> The choice of that cut-off date would lead to a final settlement of the problem of the Palestinian refugees of 1948. It would give a right to these refugees to return to their homes and property, as recognized by the General Assembly in Resolution 194 (111) of 11 December 1948, and since that time, in the years 1952 through 1975, in the General Assembly annually reaffirming Resolution 194.<sup>87</sup>

The question which arises is whether or not Israel is in fact free under international law to refuse such a solution. Once again it may be stated that Israel has the right under international law, for reasons discussed in another part,<sup>88</sup> to refuse any partial destruction or secession.

Before leaving the argument which supports the Palestinian right to self-determination, it seems relevant to refer in brief to some additional legal points.

In the first place, whatever the methods that may be chosen to ascertain the wishes of the Palestinian people, the view of the Palestinian Liberation Organization, it is submitted, must not be ignored. The importance of the views of liberation movements has been recognized by United Nations practice in several cases.<sup>89</sup> In this regard, Judge Ammoun in his separate opinion in the Western Sahara Case pointed out that the views of the national liberation movements are "more decisive than a referendum".<sup>90</sup>

The Palestinian Liberation Organisation is widely recognised, by the United Nations, the Arab League and the majority of States as the sole representative of the Palestinian people.<sup>91</sup>



Moreover, in ascertaining the wishes of the Palestinian people in Gaza and the West Bank, the Jewish settlers, it is submitted, have no right to decide the fate of this area. The legal ground of this opinion rests upon the fact that Israel, as a belligerent occupant, has no right under international law to establish settlements in occupied areas. The argument for the illegality of such settlements is not our concern here.<sup>92</sup>

Furthermore, the right of the Palestinian people to self-determination includes their right to establish an independent state. The words of Resolution 3236 of 1974 accept "...the inalienable right of the Palestinian people in Palestine including :

- (a) The right to self-determination without external interference
- (b) The right of national independence and sovereignty."<sup>93</sup>

The view that the Palestinians are not entitled to exercise the right of Self-Determination

It remains to consider the opposing point of view, as forwarded by international authors supporting Israel. This view rests its case on the denial of the Palestinian right to self-determination. The legal justification of this view rests upon three main claims : the first is that the principle of self-determination was not recognised as a binding rule of positive international law when Israel came into existence; secondly, it is claimed that the Arab Palestinian state has been already established on parts of the mandate territory under the name of Jordan and, thirdly, it is claimed that the Arab Palestinians living in Israel are not entitled to such a right under contemporary international law.



It is asserted that self-determination was not recognised as a binding rule of positive international law in 1948. The argument here is based on the premise that, if self-determination was not a principle of international law in 1948 when the state of Israel was proclaimed, the Palestinian claim to self-determination would lack any legal foundation.<sup>94</sup> Some writers have gone as far as to deny the existence of this principle under contemporary international law,<sup>95</sup> while others hold the view that it became a principle of international law in 1969 or 1970.<sup>96</sup> The legal argument in support of each opinion is not our concern now. At any event, in support of the denial of the existence of self-determination in the period before 1948, a number of legal arguments have been forwarded. Any review to the standard writings of classical international law would reveal no reference to self-determination, or to anything that might be construed as its equivalent. Further, classical international law has conceded that a right and a title to sovereignty flow from conquest or usurpation.<sup>97</sup>

In the period after World War I, President Wilson's ideas on self-determination were considered in the light of the adjustment of colonial claims as among the victors, rather than of independence<sup>98</sup>. The history of United States practice in that period shows that all statements regarding self-determination, unless made in circumstances which indicate that they represent undertakings given by that country to another, were mere declarations of policy, lacking any legal significance.<sup>99</sup>

The Covenant of the League of Nations can hardly be described as including a recognition of any right to self-determination. The only general mention of a principle of self-determination occurred in Article

5, but even this was more narrowly confined than has sometimes been implied.<sup>100</sup> The reference in Article 22, that in so far as former enemy territories were being placed under the mandate system "the wishes of these communities must be a principle consideration in the selection of the mandatory", and that the well-being of the inhabitants was a paramount concern, cannot be accepted as a recognition of self-determination.<sup>101</sup> It may be useful to recall the fact that the draft of Article 22 suggested by President Wilson was rejected by the Alliance because the term "self-determination" was explicitly used.<sup>102</sup>

In an attempt to strengthen the argument, reference has been made to the report of the Commission of Jurists which had been set up to deal with the Aaland Islands dispute. The report stated:

"Although the principle of self-determination of peoples plays an important part in modern political thought, especially since the Great War, it must be pointed out that there is no mention of it in the Covenant of the League of Nations. The recognition of this principle in a certain number of international treaties cannot be considered as sufficient to put it upon the same footing as a positive rule of the Law of Nations...To concede to minorities of either of language or religion, or to any fraction of population, the right to withdraw from the community to which they belong because it is their wish or their good pleasure, would be to destroy order and stability within states and to inaugurate anarchy in international life. It would be to uphold a theory incompatible with the very idea of a state as a territorial and political unity."<sup>103</sup>

State practice during the Second World War shows that self-determination was conceived merely as a political principle which



imposed no legal obligation. For example, after Roosevelt persuaded Churchill to include in the Atlantic Charter a statement of respect for the right of all peoples to choose the form of government under which they will live, Churchill soon made it clear that Britain did not regard this as constituting a legal obligation.<sup>104</sup>

Another reason in support of denying the existence of self-determination under the U.N. Charter is the opinion that the Charter, though referring twice to the term, said so little of a concrete character on self-determination. According to this opinion, there is little ground for arguing that the delegates at San Francisco were really concerned with what is now known as the right of self-determination. This understanding, it is argued, has been inferred from the interpretation of Article 41 which refers to relations among states, rather than groups. Therefore, the word "people" in the term "self-determination of peoples" means only sovereignty of states. This interpretation, it was added, is rooted in the preparatory work of the U.N. Charter.<sup>105</sup>

In order to support this argument, they referred to Kelsen's opinion that the relevant article refers to relations among states and: "therefore the term "peoples" too - in connection with "equal rights" - means probably states, since only states have "equal rights" according to general international law. That the purpose of the Organization is to develop friendly relations among states based on respect for the principle of self-determination of "peoples" does not mean that friendly relations among states depend on democratic forms of government and that the purpose of the Organization is to favour such form of government. This would not be compatible with the principle of "sovereign equality"



of the Members, nor with the principle of non-intervention in domestic affairs established in Article 2, paragraph 7. If the term "peoples" in Article 1, paragraph 2, means the same as the term "nations" in the Preamble, then "self-determination of peoples" in Article 1 can mean only "sovereignty of the states".<sup>106</sup>

Further, no reference was made to self-determination in the Universal Declaration of Human Rights, adopted in the early years of the U.N. This has been regarded as more evidence that the U.N. members were not concerned with such a right.

The final reason for the contention that the practice of the U.N. towards the question reveals that self-determination was not recognized as a binding rule of positive international law. A holder of this view is Leo Gross, who illustrates that, in spite of the fact that an impressively large number of people have been granted or conceded self-determination, it is not possible to supply the missing element, namely, that practice was based on a sense of legal obligation:

"On the contrary, the practice of decolonization is a perfect illustration of the usage dictated by political expediency or necessity or sheer convenience. And moreover, it is neither constant nor uniform"<sup>107</sup>

Thus, this view concluded that neither the Charter nor the subsequent practice supports the proposition that the principle of self-determination is to be interpreted as a right in the early days of the U.N.

It also contended that the Arab Palestinian state had been established in the Palestine mandate under the name of Jordan.<sup>108</sup> According to this view, the Arab Palestine state was already been established in 1922 on

eighty per cent of the whole territory of the Palestine mandate under the name of Jordan. Accordingly, as long as the Palestinians exercised self-determination in Jordan, and since the right of self-determination can be exercised only once,<sup>109</sup> the Palestinians are not allowed to exercise this right again. It is added that, if there are some Palestinians living outside Palestine and wishing to exercise self-determination, they can exercise their right within the territory of Jordan, not Israel.<sup>110</sup>

This argument rests upon the contention that the whole territory of Jordan was part of the mandate granted by the League of Nations to Britain in 1922. Transjordan was taken out of the mandate provision and allocated to the creation within Palestine of the Emirate of Transjordan, which became independent in 1946. The Palestinians represent more than 60 per cent of the population of Jordan where they enjoy the suffrage and all political rights.<sup>111</sup> Further, those Palestinians regard Jordan as an integral part of Palestine.<sup>112</sup>

It is also contended that Palestinian Arabs living in Israel are not entitled to self-determination under international law because they not only enjoy suffrage and full political rights as Israeli citizens, but also because they are bound by the principle that no continuing right of self-determination for any part of the population survives once independent statehood has been achieved.<sup>113</sup>

The legal argument to justify this view is based mainly on the interpretation of paragraph 7 of the Declaration of Friendly Relations of 1970, which indicates that the exercise of self-determination must not affect the territorial integrity of states except those states which are not "conducting themselves in compliance with the principle of equal



rights and self-determination."<sup>114</sup> This means that self-determination to people inside the political boundaries of existing sovereign states will be applicable only in situations where the government does not represent the governed.

In the words of the International Commission of Jurists in its 1972 study entitled East Pakistan : "...the conflicting principles of territorial integrity had to be given full weight when considering the principle of self-determination ... however this principle is subject to the requirement that the government does comply with the principle of equal rights and does represent the whole people without distinction. If one of the constituent peoples of a state is denied equal rights and is discriminated against, it is submitted that their full right of self-determination will revive."<sup>115</sup>

On this basis the Palestinian Arabs living in Israel and enjoying full political rights cannot be entitled to self-determination.

This conclusion is also supported by the fact that any inquiry into the legal content of a right of secessionist self-determination is not supported by an analysis of the practice of states.<sup>116</sup>

Having set out the view supporting the right of Palestinian people to self-determination, followed by the other contradictory view that the Palestinians are not entitled to self-determination, some evaluation of these two views will now be attempted.

In relation to the first view which supports the Palestinian people's right to self-determination, the following observations ought to be made. In the first place, we cannot accept the claim that the right of the Palestinian people to self-determination came into existence in



Article 22 of the Covenant of the League of Nations. The substantial grounds of rejecting this claim are based on both the principles of international law and the practice of states. It is also supported by the view of the majority of international writers who did not recognize, as indicated earlier, the existence of self-determination as a rule of international law prior to 1945<sup>17</sup>. This leads us to reject, in turn, all relevant consequences which are mainly based on this article. Accordingly, it may be correct to regard the opinion that the territory whose fate is to be determined by the Palestinians must include Israel as not well established.

Also, the choice of 1923 as a cut-off date cannot be accepted for the same reason, and for the reasons discussed earlier.

While we can agree with the viewpoint that the right of the Palestinian people to self-determination was established by the U.N. Partition Plan, we have to admit that the legal consequences of this opinion is inconsistent with certain rules of international law. For example, this opinion would lead to the establishment of a Palestine state in parts of Israel as envisaged by the Partition Plan.

In these circumstances, it would seem that any attempt to divide the state of Israel will be in conflict with the principle of the territorial integrity of states and Article 1(2) of the United Nations Charter. It is also in conflict with Resolution 242. The detailed reasons were indicated earlier.

Also, for the same reasons, the choice of 1947, as a cut-off date, cannot be legally accepted.

However, the aforementioned argument is not to say that we are against the establishment of a Palestine State according to the 1947 Partition

Plan, but the legal and practical difficulties surrounding such a solution should not be ignored.

An examination of the second view which denies the right of the Palestinian people to self-determination reveals that it is based, to a large extent, on two disputed claims, that self-determination was not recognized as a binding rule of international law and, that the Palestinian Arab state has been established under the name of Jordan.

We cannot, from a legal view, accept the opinion that self-determination is not recognized as a legal principle of international law, or perhaps became so only after 1969. Certainly, the right of self-determination has been recognized by the Charter of the United Nations. Article 1(2) of the Charter, which sets out the Purposes and Principles of the Organization, declares that it is based on "friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples ...". And again, Article 55 considers that friendly relations between nations are to be based "on respect for the principle of equal rights and self-determination of peoples", while in Chapter XI, which is concerned with non-self governing territories, Article 73 notes that members assuming responsibility for such territories are "to develop self-government, to take due account of the political aspirations of the peoples and to assist them in the progressive development for their free political institutions."<sup>118</sup>

Moreover, the legal character of self-determination as an operative legal right has been asserted by U.N. practice as reflected in the relevant resolutions. It may be well to recall the large number of cases of decolonization in which the U.N. has invoked self-determination



, e.g. the overwhelming acceptance of the 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples of 1960 (Resolution 1514 (XV) ) and its 1961 successor (Resolution 1654 (XVI) ) setting up a special Committee to oversee the application of the Declaration.<sup>119</sup>

The majority of international writers accept self-determination as a legally binding right. Higgins, for instance, after examining United Nations practice and the 1960 Declaration, pointed out that "that Declaration, taken together with seventeen years of evolving practice by the United Nations' organs, provides ample evidence that there now exists a legal right of self-determination."<sup>120</sup>

Further evidence in support of the above is afforded by those who are inclined to accept self-determination, not only as a legal right, but also as a norm of jus cogens. In the words of a formal report submitted to the United Nations by Gros Espiell:

"Today, no one can challenge the fact that, in the light of contemporary international realities, the principle of self-determination necessarily possesses the character of jus cogens."<sup>121</sup>

Along the same lines, Vedel cogently argued on behalf of Morocco in the Western Sahara Case that, if there is jus cogens in the United Nations in matters of self-determination, it consists of decolonization as an end result rather than self-determination as a technique.<sup>122</sup>

Finally, any review of the opinions of the International Court of Justice, particularly in the Western Sahara Case, would reveal that the principle of self-determination has been considered as an important rule of contemporary international law.<sup>123</sup>



In relation to the second claim, we cannot accept that the Arab state of Palestine has been established under the name of Jordan as part of the mandate provision. This rejection in fact is based on historical fact that the Territory of Jordan, which was called Transjordan, had not been part of historical Palestine. In Ottoman times, it had been administratively part of the Province of Syria and was called the district of Al Balqa. When the question of delimiting the British and French mandates arose, Britain insisted on the inclusion of the district of Al Balqa in its mandate over Palestine because it wished to entrust its administration to Amir Abdullah, son of King Hussein Ben Ali, the Sharif of Mecca, to reward him for help during the war against the Turks. The new state assumed the name of Transjordan and was set up as an Emirate. It remained under a protective treaty relationship with Britain until 25 May 1946, when it was formally detached from the Palestine mandate, and Amir Abdullah was recognized as King of Transjordan. In 1949 the new Kingdom took the name of Hashemite Kingdom of Jordan.<sup>124</sup>

Before leaving this evaluation, it seems inescapable to raise and attempt to answer the question of whether or not it is permissible under international law to put aside international rules protecting the territorial integrity of Israel for the sake of applying the Palestinians' self-determination.

To answer this question, we need to consider the prevailing view on the conflict between the principles of territorial integrity and self-determination. The most authoritative statement in international law relevant to this question is paragraph 7 of the 1970 Declaration on Friendly Relations. As noted, this paragraph appears to give prima

~~fact~~ respect to the territorial integrity of states and to protect centered order. However, it confirms that not all states will enjoy this inviolability of their territorial integrity, but only those states "conducting themselves in compliance with the principle of equal rights and self-determination. This opinion was supported by the International Commission of Jurists in its 1972 study entitled "The Events in West Pakistan".<sup>125</sup>

In applying the opinion of the Commission to the case of Palestinian Arabs living in Israel, it may be correct to say that they are not entitled to self-determination under international law as long as they enjoy suffrage and equal political rights with the other inhabitants of Israel. However, on the other hand, Israel's policy of preventing the return of the Arab refugees of 1948 may be regarded as a denial of equal rights and discrimination against the Palestinian Arabs. Consequently, this denial and that discrimination could give rise to the right of this people to self-determination.<sup>126</sup>

From the above evaluation, it seems quite correct to draw the following conclusions.

1. There is no doubt that the Palestinian people are entitled to self-determination under international law since that right came into existence at the latest by the 1947 Partition Resolution.
2. As noted above, the difficulties inherent in the application of such right may lead to confining its application to the area including Gaza and the West Bank unless Israel agrees to give up the area allocated to the Palestinian Arabs by the Partition Plan.

3. Whatever the methods used to ascertain the wishes of the Palestinians, the views of the Palestinian Liberation Organization must not be ignored.

4. The Palestinians' right to self-determination includes the right of the 1948 refugees to return to their homelands in Israel. In the words of Secretary General U Thant, in his Annual Report to the 22nd Session of the General Assembly:

"People everywhere, and this certainly applies to the Palestinian refugees, have a natural right to be in their homeland and to have a future."<sup>127</sup>



## SECTION TWO

### Textual and Contextual Interpretation of the Palestinian Clause under the Camp David Accords and the 1979 Peace Treaty

.It is necessary at the outset to recall that, as neither the Palestinians nor their representatives have signed the Camp David Accords and the 1979 Treaty, then, strictly speaking, all the provisions in the Accords and the Treaty regarding the resolution of their problems may not be invoked against them.

It is generally recognized, as a principle of international law, that treaties create rights and duties only for the parties to them (pacta tertiis nec nocere nec prodesse possunt).<sup>128</sup>

In the Island of Palmas Case for instance, Judge Huber said:

"It appears further to be evident that treaties concluded by Spain with third powers recognizing her sovereignty over the Philippines could not be binding upon the Netherlands." Later Judge Huber went on to say that:

"The inchoate title of Netherlands could not have been modified by a treaty concluded between third powers."<sup>129</sup>

Similarly, in the case of the Free Zones of Upper Savoy and the District of Gex, the P.C.I.J. held that Article. 435 of the Treaty of Versailles was not binding upon Switzerland which was not a party to the treaty, "except to the extent to which that country had accepted it".<sup>130</sup>

This principle has also gained the recognition of the international community and is codified in the Vienna Convention of 1969 on the Law of Treaties.<sup>131</sup>

In sum, we may state that it is an accepted principle of international law that a bilateral treaty or a particular provision in such a treaty could have an effect upon non-parties only if they accept it or when the treaty or a provision passed into customary law.<sup>132</sup>

Certainly, the Camp David formula was rejected by the Palestinian people. In his letter to the U.N. Secretary General dated March 24, 1979, P.L.O. Chairman, Yasir Arafat, pointed out that "the Palestinian people have unanimously rejected this agreement and everything related to it, especially the suspect proposals for self-government, which will consolidate the occupation and submit our people to a new form of slavery."<sup>133</sup>

To that may be added that the fact that the authors of the Agreement possessed no competence or capacity to decide the Palestinian question or the future of the West Bank and Gaza<sup>134</sup> On the one hand, Israel is the military occupier of the West Bank and Gaza. The status of a military occupier is well defined under international law an occupier does not acquire sovereignty and can only act as an administrator. There exists no rule of international law which confers on a military occupier any power to decide the political and constitutional future of the inhabitants or the status of the occupied territory. In the words of Henry Cattan, "By assuming in the Camp David Accords a right to decide these matters and to sit as arbiter over the destinies of the Palestinian people, Israel was usurping a power in violation of the law of nations."<sup>135</sup>

Similarly, Egypt possessed no right or power to decide the future of the Palestinians. Sadat "was not their guardian, nor did he hold a mandate to represent them."<sup>136</sup>

As to the Americans, it has been rightly observed that there existed no legal basis upon which their participation in deciding the future of the Palestinian people can be justified. As one Palestinian has put it, "President Carter had as much a right to decide the future of the Palestinians and Palestinian territory as the Palestinians have a right to decide the future of U.S. citizens or of U.S. territory."<sup>137</sup>

To argue that the provisions dealing with the Palestinian problem are not binding on the Palestinians is not to deny the binding force of these provisions as between the parties. Undoubtedly the relevant provisions of the Camp David Accords are binding on Israel regardless of the fact that Palestinian factions have rejected the Accords. However as regards the 1979 Treaty, due to the fact that it dealt with Palestinian issues in a separate instrument appended to it, doubts have been raised as to the binding nature of that instrument, particularly whether or not it constitutes an integral part of the Treaty.<sup>138</sup>

This instrument is an agreement between Egypt and Israel concerning how and when the "autonomy scheme" provided for by the Camp David Accords is to be implemented. It established a kind of link between the implementation of the Peace Treaty and the Camp David Accords in order to indicate that the parties are aiming at achieving a comprehensive, rather than separate, peace.<sup>139</sup> Yet, for reasons which are not our concern,<sup>140</sup> the authors of the Treaty decided to put it in the form of a joint letter from Sadat and Begin to Carter in which they informed him about the agreement. This letter, it may be observed, was signed on the same day as the Treaty.<sup>141</sup>



The Vienna Convention on the Law of Treaties distinguishes between "Travaux preparatoires" which according to Article 32 are merely supplementary means of interpretation,<sup>142</sup> and agreements or instruments related to the Treaty which according to Article 31 are to be considered as part of the context for the purpose of interpreting a Treaty. The meaning and scope of the term "context" are defined in Article 31(2) in the following terms:

"The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preable and annexes:

(a) any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty;

(b) any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty."<sup>144</sup>

Clearly, for a document to be regarded as forming part of the context of a treaty for the purpose of its interpretation, it must be the result of an agreement by all the parties to the treaty, must have been made in connection with the conclusion of the treaty and must be understood as such by all of them.<sup>145</sup>

As regards the criteria for determining which instrument is to be considered as an integral part of the Treaty or part of the context for the purpose of interpretation, Waldock referred to two cases in which two opposite views were taken by the International Court of Justice.<sup>146</sup>

In the Ambatielos Case, one of the main contentions of the United Kingdom Government against Greece was that the Declaration, which was signed at the same time as the Treaty of 1926, was not a part of that Treaty and the

provisions of that Declaration were not provisions of that Treaty. One of the reasons given by the United Kingdom for this submission was that the Declaration was signed separately from the Treaty itself, though by the same signatories and on the same day. Another of the stated reasons was that the Declaration did not expressly state that it was to be regarded as an integral part of the Treaty<sup>147</sup>. The Court, however, after referring to certain circumstances relating to the construction of the Declaration found as a fact that "the intention of the Declaration was to prevent the Treaty of 1926 from being interpreted as coming into full force in so sweeping a manner as to prejudice claims based on the older Treaty of 1866".<sup>148</sup> The Court, then concluded : "Thus the provisions of the Declaration are in the nature of an interpretation clause, and as such, should be regarded as an integral part of the Treaty, even if this was not stated in terms."<sup>149</sup>

Here, there is a clear expression in favour of regarding as an integral part of the Treaty instruments such as the Sadat-Begin joint letter appended to the 1979 Treaty. In fact, this is the view expressed by Egypt.<sup>150</sup>

However, while this ruling is clear it should be remembered that, as Waldock observed, it was contrary to the views expressed in the Advisory Opinion on Admission to the United Nations. In the Admissions Case, the Court had defined everything as travaux preparations which was not part of the actual text of the Treaty and could only be used as a supplementary method of interpretation.<sup>151</sup>

Having in his mind the above cases, Waldock in his report to the International Law Commission on the provision, which became Article 31(2) of the Vienna Convention, pointed out the criteria for deciding whether an instrument is to be considered as an integral part of a treaty.



"The fact that these documents are recognized in para.2 as forming part of the "context" does not mean that they are necessarily to be considered as an integral part of the treaty. Whether they are an actual part of the treaty depends on the intention of the parties in each case."<sup>152</sup>

From the above, the conclusion to be drawn with regard to the legal status of the Sadat-Begin joint letter is that at least it should be recognized as part of the context of the 1979 Treaty within the meaning of Article 31(2) of the Vienna Convention.

In asserting the scope of the Camp David scheme, we may note at the outset that it covers mainly the problem of the West Bank and Gaza. The section of the Agreement dealing with the Palestinians is entitled the "West Bank and Gaza". The first important question arises as to whether the scope of the provisions covers all the Palestinian people. The answer to that question is undoubtedly in the negative. Such answer may be inferred from a careful reading of paragraph A. Certainly, the wording of this paragraph covers three groups of the Palestinian people. The first group includes the Palestinians living in the West Bank and Gaza whose problem was addressed by paragraph A.1(a) and (b). The second group includes the Palestinians who were displaced from the West Bank and Gaza by the Israeli military authorities after the June 1967 War. The problem of this group was dealt by paragraph A.3.<sup>153</sup> The third group includes the Palestinian refugees of 1948 whose problem was tackled by paragraph A.4.

It follows that other Palestinian groups have been left outside the scope of the Camp David formula. Suygh pointed out three Palestinian groups falling outside the scope of the scheme : the Palestinians who left Gaza and the West



Bank by their own will after the Israeli occupation of 1967; those who left their homes in Palestine in 1948, either by their own free will or by force but not officially registered as refugees by the U.N.R.W.A.; and the Arab Palestinians living in Israel.<sup>154</sup>

From the foregoing, it is clear that the scope of the scheme covers some important groups of the Palestinian people. The scope, looked at from this angle, reflects the intention of Israel, perhaps for the first time in its history, to give particular solutions to the Palestinian problem.<sup>155</sup>

Quite apart from the above advantage, the scheme is inadequate since it leaves some groups of Palestinians outside its scope. Additionally, the extent of the scope differs from group to group and from place to place. For example, while it covers all the Palestinians living in Gaza and the West Bank, it covers only part of the Palestinians displaced from these areas after 1967, but it does not cover any of the Palestinians living in Israel.

Furthermore, the scope as defined at Camp David, lacks the necessary precision and gives rise to disputes as well as uncertainty, such as in the case of East Jerusalem and the Israeli settlers in the area.

While the geographical scope of Resolution 242 covers the Palestinian territories occupied in 1967, including undoubtedly East Jerusalem<sup>156</sup> the scope of the Camp David Accords does not cover East Jerusalem. In his reply to Jordanian questions concerning the meaning of the Camp David Accords, President Carter indicated that a distinction must be made between Jerusalem and the rest of the West Bank because of the city's special status and circumstances.<sup>157</sup> According to him:

"The issue of the status of Jerusalem was not resolved at Camp David and must be dealt with in subsequent negotiations. The questions of how the Arab inhabitants of East Jerusalem relate to the self-governing authority remains to be determined in the negotiations on the transitional arrangements."<sup>158</sup>

The delimitation of the provisions to exclude the territory of East Jerusalem represents a deviation from the position adopted by Resolution 242. This must undermine the Accords as it is legally based on Resolution. 242.

A further worthwhile question in this respect is whether or not the Israeli settlers living in Gaza and the West Bank fall under the scope of the provisions. This question will be examined later. Suffice to point out at this stage that the wording of paragraph A1 which used the word "inhabitants" instead of the words "Palestinian inhabitants" suggests that the intention was to refer to all the inhabitants in the area, including the Arabs as well as the Israeli settlers.

The refugee problem was dealt with in paragraph A 4 of the Agreement which reads as follows:

"Egypt and Israel will work with each other and with other interested parties to establish agreed procedures for a prompt, just and permanent implementation of the resolution of the refugee problem."<sup>159</sup>

Clearly, the language of the above text is taken from, and refers to, para. 2(b) of Security Council Resolution 242 which calls for "a just solution for the refugee problem."<sup>160</sup> Like Resolution 242, the above text used the word "refugee" as a reference to the Palestinian as well as Jewish refugees.<sup>161</sup> It is not intended here to examine in detail the position of the Camp David Accords towards the refugee problem, because of to the simple fact that it referred to



and adopted the position of Resolution 242. The position of the latter on refugees has been examined by several writers elsewhere and it seem unnecessary to repeat what had been said in this respect suffice it here to refer very briefly to the position.

Para 2(b) of Resolution 242 affirms "the necessity for achieving a just settlement of the refugee problem". A careful reading of this wording suggests a number of observations.

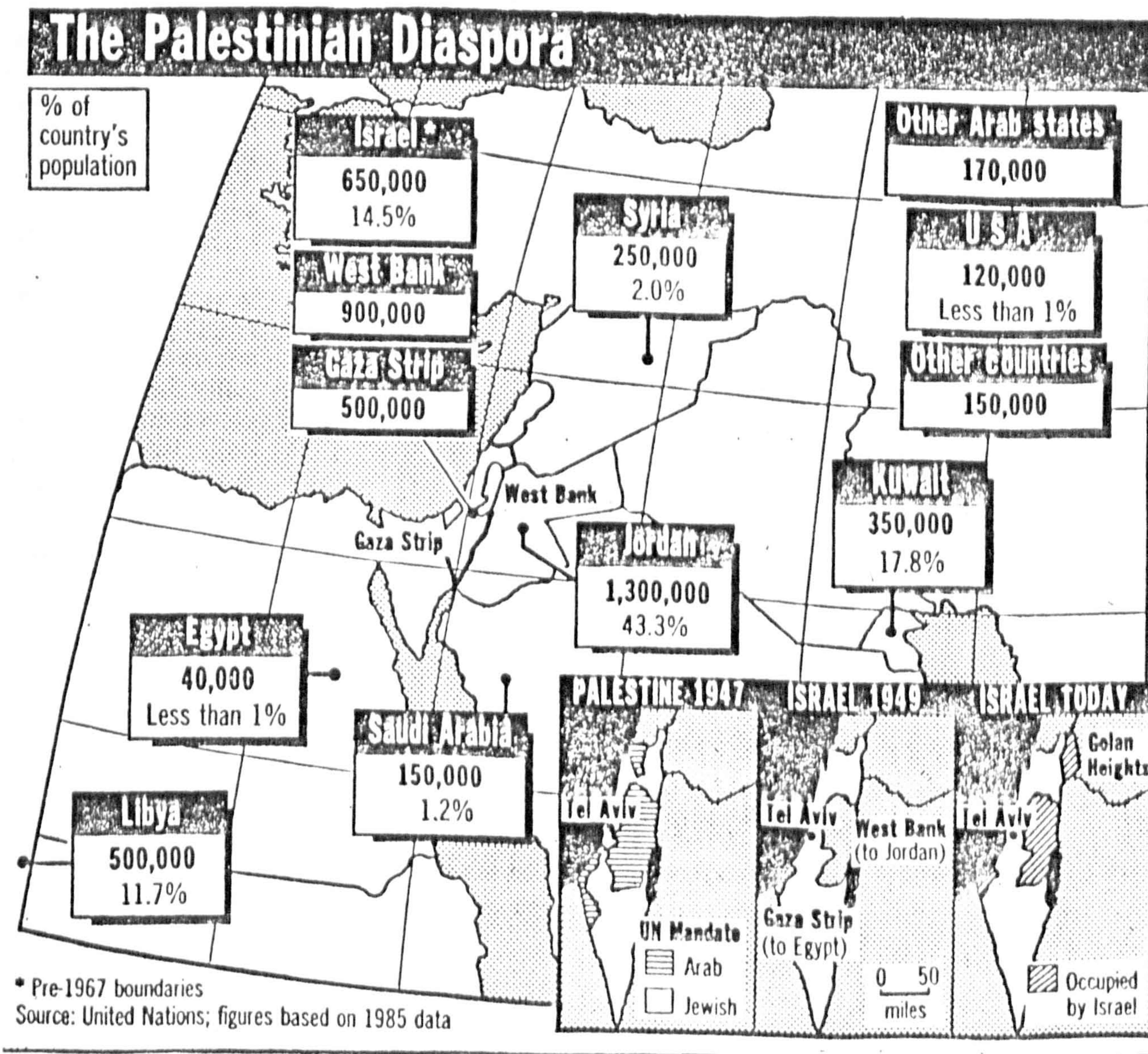
The use of the term "refugee" instead of the term "Palestinian refugee" has been understood as a reference, not only to the 1948 Arab refugees but also to the Jewish refugees who fled to Israel from Arab states during the Arab-Israeli wars. This interpretation leads to the conclusion that the intention of this paragraph is to link a solution for the Palestinian refugees with a solution for the Jewish refugees. Israel has suggested that Arab states must absorb the refugees of 1948 in return for Israel's absorption of a similar number of Jewish refugees who have fled from Arab states.<sup>162</sup>

Certainly, this paragraph overlooked the right of the 1948 refugees to return to their homeland in Israel. There is no express provision, nor explicit or implicit mention of the General Assembly Resolution 194 of 1949 which called for their return. Even if we accept, for the sake of argument, that the term "just settlement" includes the right of those refugees to return, such return cannot be within a context of self-determination. It is well established that the recognition of Israel's sovereignty and territorial integrity as stipulated by Resolution 242 means the abrogation of the Partition resolution of 1947 and the approval of Israel's sovereignty over most of the territories earmarked to the Arab Palestinians by the Partition resolution.<sup>163</sup> Also, the wording of this



article suggests that its intention was to provide the general principle which would constitute the basis for settling the problem of the Palestinian refugees (i.e. by linking it to the Jewish refugees) rather than to prescribe the specific terms of a settlement.

Finally, this paragraph is, in effect, an agreement to seek further agreement. Thus, according to Tacna-Arica Arbitration (1925), it created an obligation in international law to negotiate in good faith. In other words, this paragraph is a recommendation to negotiate the refugee problem in good faith.<sup>164</sup>



Map 9 The Palestinian Diaspora



### The West Bank and Gaza

The first Camp David Agreement provides for a three-stage scheme to resolve the problem of the West Bank and Gaza. In a first stage, Egypt, Israel and Jordan would negotiate and agree on the modalities for establishing a self-governing authority for these areas and would define its powers and responsibilities.<sup>165</sup> After the completion of the negotiations, free elections would be held to elect a self-governing authority.<sup>166</sup>

In a second stage, transitional arrangements would be set up for a period not exceeding five years. During this period the inhabitants would be granted full autonomy.<sup>167</sup> The Israeli military government and its civilian administration would be withdrawn,<sup>168</sup> to be replaced by the elected self-governing authority.<sup>169</sup> Upon the establishment of this local government most Israeli military forces would be withdrawn and those remaining would be redeployed into specified security locations.<sup>170</sup>

In a third and final stage, the Palestinians would be able to determine the future of the area before the end of the transitional period. According to the Agreement, by the end of the third year after the beginning of the transitional period, negotiations would take place to determine the final status of the West Bank and Gaza and its relationship with its neighbours.<sup>171</sup>

It must be acknowledged that the provisions on the West Bank and Gaza abounded with so much ambiguity that it was obvious that several phrases and expressions were carefully designed to "fuzz over the issue rather than resolve it."<sup>172</sup> As John Murphy observes:

"The provisions on Palestinian self-government are largely hortatory, deliberately ambiguous and envisage that agreement on the more difficult issues arising out of the situation will be reached in future negotiations."<sup>173</sup>

One must admit that the differing interpretations of the Agreement on the West Bank and Gaza adopted by each party tend to give the impression that it is not one single agreement, but two separate stances which happen, somehow, to be included in the same document. This is evident in two respects. First, the inability of the two states (i.e. Egypt and Israel) to reach a consensus as to the main provisions; second, the dispute over the exact meaning of several expressions which were deliberately inserted and which need to be "defined" and "refined".<sup>174</sup>

This being the case, it is necessary to begin the present analysis by some observations on certain terms and expressions whose exact meaning gives rise to dispute among the parties.

"Full autonomy" is the first term which needs to be considered. Para.A.1.(a) of the first Camp David Agreement provides that the inhabitants of the West Bank and Gaza will be granted "full autonomy."<sup>175</sup> It is widely recognised that autonomy is a very broad term which has no precise meaning. Carter recorded that he spent several hours at Camp David with Begin "seeking a common understanding of what autonomy meant - unsuccessfully."<sup>176</sup> "While the term autonomy is not a term of art under international law" observe Parry and Grant "it is widely used in the literature of international law."<sup>177</sup>

A typical definition of the term can be found in Crawford:

"Autonomous areas are regions of a State, usually possessing some ethnic or cultural distinctiveness which have been granted separate powers of internal



administration, to whatever degree, without being detached from the State of which they are part. For such status to be of present interest, it must be in some way internationally binding upon the central authorities. Given such guarantees, the local entity may have a certain status, although since that does not normally involve any foreign relations capacity, it is necessarily limited. Until a very advanced stage is reached in the progress towards self-government, such areas are not states."<sup>178</sup>

In their recent survey of twenty two autonomous areas, Hannon and Lillich, after referring to "the extreme diversity of the entities surveyed and the wide variation exhibited in the degree of autonomy or international self-government each one enjoys," reached the conclusion that "autonomy remains a useful, if imprecise, concept within which flexible and unique political structures may be developed."<sup>179</sup>

The use of the term "autonomy" in the Agreement gives rise to the question of the difference between autonomy and self-determination.

According to one view, autonomy may be regarded as internal self-determination. Pomerance observed that, in the Wilsonian view, self-determination was a composite concept involving chiefly the right of people to choose sovereignty (i.e. external self-determination) and the right of people to select its own form of government (i.e. internal self-determination).<sup>180</sup> Independence he believed, need not be one of the options offered to the population when it is determining its future status.<sup>181</sup> In the Western Sahara Case the Court emphasized the free and genuine expression of the will of the people of the territory as to their future and studiously avoided any reference to the necessity of including the independence option.<sup>182</sup>

This argument can, however, be criticized. It is not consistent with U.N. practice, which suggests that self-determination and independence are synonymous in most cases.<sup>183</sup> It is also not in line with the substantial majority of jurists who support the view that the principle of self-determination must include, but not necessarily require, the right to independence.<sup>184</sup> An opposite view as to the difference between autonomy and self-determination was advanced by Talal who wrote:

"In legal and political terms autonomy and self-determination are not identical and may embody conflicting ideas. They differ in a number of respects. The right of self-determination derives from the general principle that the people determine the destiny of the territory. Autonomy derives from the converse proposition that the territory determines the destiny of the people in it. Autonomy in the modern sense is a question of degree, ranging from a grant of limited municipal or local government conferring authority in such matters as street lighting and children's play-grounds, to extensive regional, governmental powers in a federal association or union. The right of self-determination of peoples arises independently of grant and confers upon them the international law right to determine their political destiny without subjection to the control of any state."<sup>185</sup>

It is interesting to observe that a distinction may be made between transitional and permanent autonomous regimes. In practice, the former have been granted a much more limited degree of autonomy to the local community during the transitional period, de facto government has often been in the hands of an administering authority of local inhabitants.<sup>186</sup>



The conclusion to be drawn with regard to the meaning of the term "full autonomy" in the Camp David Agreement is that, although the term autonomy has no precise meaning, it has been used by the authors of the Agreement as a reference to a wide and extensive degree of self-governing authority amounting to the powers and competence of a de facto government. Yet, it appears that the term was acceptable to the Egyptians and the Israelis for different reasons.

From an Israeli perspective, the word "autonomy" was chosen in preference to the word "sovereignty." Israel was not ready to give up its sovereignty over the West Bank and Gaza.<sup>187</sup> Also the term "autonomy" would not place Israel under any precise obligation since the term has no strict legal meaning, and covers different degrees of self-government ranging from a grant of limited local government to extensive regional governmental power in a federal union.

From Egypt's perspective, although the Egyptians did not favour the use of the term because it enabled Israel to keep sovereignty over the West Bank and Gaza during the transitional period, the term, however, was accepted for two reasons. First, the Israelis agreed on Egypt's demand to insert the word "full" before the word "autonomy". Clearly the term "full autonomy" must be interpreted as a reference to an extensive rather than a limited degree of autonomy, thus the Israelis could not claim in the future that they intended only a limited degree of autonomy. Secondly, the term "full autonomy" is to be understood as a reference to a de facto Palestinian government which eventually would be a state. It seems that such meaning was in the mind of the Israeli opposition leader when he criticised the Agreement at the Israeli Knesset because "the autonomy plan" would lead to the establishment of an independent Palestinian state.<sup>188</sup>

The phrase "the legitimate rights of the Palestinian people" needs to be clarified. Paragraph A(c) of the Camp David Accords provides that "the resolution from the negotiations must also recognize the legitimate rights of the Palestinian people."<sup>189</sup> This expression is inaccurate and liable to cause confusion. In some cases, it was apparently a synonym for the right to self-determination, as in some Arab literature;<sup>190</sup> elsewhere, it has a different meaning which does not include the right to self-determination, as, for instance, in paragraph B 9 (a) of the first American draft at Camp David.<sup>191</sup> Unfortunately, there is no satisfactory answer to the question of whether or not the right to self-determination was intended by the phrase. A review of the preparatory work of the Camp David Agreement reveals that this expression appeared in the first American draft which read "...The solution must recognize the legitimate rights of the Palestinian people."<sup>192</sup> This term was proposed as an alternative to the language on the Palestinian's self-determination proposed in the Egyptian draft,<sup>193</sup> but rejected totally by the Israelis. In the view of the Americans, this term is appropriate and well-balanced as it satisfies both the Egyptians and the Israelis.

Arab critics who oppose the Camp David Accords believe that the words "legitimate rights of the Palestinian people" are deliberately designed to frustrate the Palestinian rights to self-determination by implying that some Palestinian rights - most particularly the right to an independent state of Palestine - cannot be pursued.<sup>194</sup> The Israelis, of course, do not recognize that the words "legitimate rights" are intended to cover self-determination. At Camp David the Israelis rejected any language on such a right. Further, they carefully avoided any implicit reference to self-determination. For instance, in a letter



appended to the Camp David Accords, Carter felt constrained to point out to Begin that he was informed by him that "in each paragraph of the Agreed Framework Document the expressions "Palestinians" or "Palestinian People" are being and will be construed and understood by you as "Palestinian Arabs"."<sup>196</sup>

Clearly, the aim of this letter was to avoid any argument that Israel recognized the Palestinians as a people and, therefore, that they are entitled under the U.N. Charter to self-determination.<sup>196</sup>

From the Egyptian perspective the term "legitimate rights" included the right to self-determination. According to the Egyptians, the term was clarified by the General Assembly Resolution 3236 (XXIX) adopted on November 22, 1974, which reaffirmed:

"The inalienable rights of the Palestinian people in Palestine, including:

- A) The right to self-determination without external interference,
- B) The right to national independence and sovereignty."<sup>197</sup>

The position of the U.S. in respect to the issue under consideration is still not clear. After the conclusion of the Camp David Accords, in a letter to the U.S. Government, King Hussein of Jordan raised the question as to whether the inhabitants of the West Bank and Gaza can exercise in freedom the right of self-determination in order to decide their political future.<sup>198</sup> A careful reading of Carter's reply suggests that the U.S. government preferred not to put a direct or explicit answer to that question. In fact, the reply implied that the issue might be decided by the parties concerned in the negotiations on the final status of the West Bank and Gaza, and that, whatever the final agreement, the Palestinians would be entitled to reject or accept it.<sup>199</sup> In his words:

"The Framework provides for the elected representatives of the inhabitants of the West Bank and Gaza to participate fully in the negotiations that will determine the final status of the West Bank and Gaza and, in addition, for their elected representatives to ratify or reject the agreement reached in those negotiations."<sup>200</sup>

What does the Camp David Agreement mean when it refers to the representatives of the Palestinian people?<sup>201</sup> Again, no clear answer to that question can be found, nor is any comprehensive definition attempted.

Before proceeding to explore the different interpretations advanced in respect of this phrase, it is important to indicate that such a phrase could be understood as referring to one or more of the following Palestinian groups:

- 1) The inhabitants of the West Bank and Gaza;
- 2) The Arab Palestinians living in Israel as Israeli citizens;
- 3) The Palestinians living outside the territory of the former mandated Palestine as refugees; and
- 4) The Palestinian Liberation Organization (PLO).

The U.S. government, i.e. the Carter administration, declared its position in the following words:

"The United States interprets the phrase "the representatives of the Palestinian people" not in terms of any single group or organization as representing the Palestinian people, but as encompassing those elected or chosen for participation in negotiations. It is expected that they will accept the purposes of the negotiations as defined in United Nations Security Council Resolution 242, and in the framework to live in peace and good neighbourly relations with Israel."<sup>202</sup>



This quotation is taken from Carter's reply to Jordan in answer to the U.S. interpretation of certain provisions of the Camp David Accords. The U.S. suggested a distinction be made between two groups of Palestinians, those who accept Resolution 242 and recognize Israel's right to live in peace, and those who reject both. The former group could take part in the negotiations, while the latter could not. Clearly, the aim of such a distinction was to prevent the P.L.O. and its supporters from participating in the negotiations. As is well known, the PLO, until November 1988,<sup>203</sup> rejected Security Council Resolution 242. Under the Palestine National Charter of 1964 and 1968, particularly Articles 23 and 26 respectively, the PLO claims to be responsible for the liberation of Palestine.<sup>204</sup>

Another aim of the American interpretation was to encourage moderate elements in the PLO to accept Resolution 242 and so take part in the proposed negotiations. Under the Nixon-Kissinger administration, Israel reached an agreement with the U.S. that the Americans would not hold any negotiation with the PLO unless it recognized Resolution 242. This agreement was still binding on the U.S. in 1978/79.<sup>205</sup> Whatever the intention behind this interpretation, it would be unreasonable now, due to the P.L.O's recognition of Resolution 242, to argue for the expulsion of the PLO from the negotiations. As is well known, the Palestinian National Council, meeting in Algeria on November 15, 1988, proclaimed a new moderate political programme endorsing, for the first time, U.N. Security Council Resolution <sup>206</sup>

As to the Israeli's, they maintained that the phrase "representative of the Palestinian people" does not cover the PLO, Israel's view is that, while the negotiations with the Palestinians would be based, according to the Camp David

Accords, on Resolution 242, the PLO did not recognize that Resolution. And the words "as mutually agreed" were deliberately inserted, after the term "other Palestinians" in paragraph A.2(b).<sup>207</sup> While such a term may cover the PLO, as well as other Palestinians, the purpose of the term "as mutually agreed." was to permit Israel to reject the PLO. In fact, this policy of "no recognition" is deeply rooted in Israel's thinking and strategy, as is confirmed in the programmes of its main political parties.<sup>208</sup> For example, in the Likud party platform of 1981, it is stated that "...the Terrorist organization which calls itself "P.L.O." seeks to destroy the state of Israel. There will be no negotiations with this murderous organization."<sup>209</sup>

Notwithstanding, the acceptance of Resolution 242 in the Algeria Declaration of 1988, the Israeli government has rejected the Declaration and the new political programme, and has claimed that the PLO continues to be committed to the destruction of Israel.<sup>210</sup>

To the foregoing, we may add that in recent peace talks, the Israeli government has rejected an American proposal according to which the PLO may be consulted in respect of forming the delegation of the Palestinian representatives.<sup>211</sup>

Egypt, on the other hand, held the view that in the Camp David Agreement no mention whatsoever is made of such exclusion of the PLO or its supporters.<sup>212</sup> Moreover, after the PLO recognition of Resolution 242 there is no legal basis upon which such exclusion could be based. In fact, during the autonomy negotiations in 1980, Israel agreed that any Palestinian living in the West Bank and Gaza could be elected to represent the Palestinians regardless of his political attitudes.<sup>213</sup>



"The legitimate security concerns of the Parties" is another ambiguous expression which raises rather than resolves problems. Paragraph A.1.(a) of the Accords provides that the arrangements for the full autonomy "should give due consideration both to the principle of self-government by the inhabitants of these territories and to the legitimate security concerns of the parties involved."<sup>214</sup> The use of the word "legitimate" before the term "security concerns" suggests that some security concerns of the parties are illegitimate.<sup>215</sup> The authors, however, neither identify these security concerns nor propose any test for determining whether or not a security demand advanced could be regarded as legitimate. The difficulty stems from the fact that each of the parties had its own understanding of the term. Egypt, for example, suggested that Israel's security concerns could be satisfied by stationing U.N. Forces in certain strategic areas in the West Bank and Gaza following Israel's complete withdrawal to the 4 June 1967 lines.<sup>216</sup> In Egypt's view, Israel had to accept these arrangements as they are in accordance with Resolution 242, which constituted the basis of the negotiations.<sup>217</sup> Israel, on the other hand, held that its security concerns could only be achieved by maintaining a military presence, as well as Jewish settlements, in the West Bank and Gaza.<sup>218</sup> From an Israeli view these arrangements are consistent with Resolution 242, particularly paragraph 2(c) which affirms the necessity for guaranteeing the territorial inviolability and political independence of every state in the area through security measures.<sup>219</sup> In fact, the question remains unresolved.

The term "self-governing authority" was repeated in several paragraphs in the Agreement. The authors, however, did not specify the intended meaning. There are three possible answers. The term could be a reference to an administrative

council which would be entitled to exercise exclusive authority.<sup>220</sup> The term could also be intended to refer to an assembly, namely, a legislative body which would exercise powers and functions on the lines of the British parliamentary model.<sup>221</sup> The term could be intended to refer to a full, local government, which would be entitled to exercise legislative, executive and judicial authorities.

From an Israeli perspective, the term referred to an administrative council which would be directly elected by the inhabitants. This council would be entitled to exercise executive authority as well as a very limited degree of legislative and judicial authority.<sup>222</sup>

On the other hand, Egypt understood the term as a reference to an assembly composed of a large number of freely-elected members. This assembly would, in turn, elect the administrative council from among its members and would exercise powers, functions and competences as in the British parliamentary model.<sup>223</sup>

Notwithstanding the above views, one must admit that what is particularly disturbing to a lawyer is the way in <sup>h</sup>which the term "self-governing authority" has been used in the Camp David Accords: that is to say, the meaning of the term "self-governing" in one paragraph differed from its meaning in other paragraphs. For example, while the words "administrative council" were inserted after the term "self-governing authority" in para. A.1(c) to emphasize the meaning intended, a reasonable understanding of the term in para. A.1(a) (where the words "administrative council" were not included) suggests that it is used as a reference to a legislative body (an Assembly). In the meantime, in other



parts of the agreement the term "self-governing authority" can be understood as a reference to the local government as a whole<sup>224</sup>

As mentioned earlier, the Accords provided for a three-stage resolution of the problem of the Palestinians; thus, it is necessary to distinguish (1) provisions on the arrangements leading to the establishment of autonomy; (2) provisions on the autonomy; and (3) provisions on the final status.

(1) In relation to the first point, the Camp David Accords provide for two main arrangements which were to be accomplished in the period prior to the establishment of the self-governing authority. These are negotiations on the powers and responsibilities of the self-governing authority, and free elections among the inhabitants of the West Bank and Gaza to choose the self-governing authority.

As far as the negotiations are concerned, three main questions need to be explored. Who are going to negotiate? What is to be discussed? When are the negotiations to begin and end?

The first Camp David Agreement referred to the parties who were to participate in the negotiations in the following terms:

"Egypt, Israel and Jordan will agree on the modalities for establishing the elected self-governing authority in the West Bank and Gaza. The delegations of Egypt and Jordan may include Palestinians from the West Bank and Gaza or other Palestinians as mutually agreed."<sup>225</sup>

This wording indicates clearly that there was no intention to accept the participation of a separate Palestinian delegation, nor to allow any Palestinians living outside the Occupied Territories to take part in the negotiations unless approved by Israel.

From an Israeli perspective, an agreement to hold negotiations with a separate Palestinian delegation would mean a deviation from Israel's long and firm position that it cannot deal with the Palestinians as a separate entity because it does not recognize them as a "people" in the legal meaning of that term.<sup>226</sup> If the wording of the above text were to be expanded to include a separate Palestinian delegation, it could be construed as an implicit recognition of the Palestinians as a people. Also, from a political view, Israel believed that any Palestinian delegation would be under the influence of the PLO whose aim, according to Israel, was the destruction of the state of Israel. The drafting history of this text reveals that the idea of not permitting the Palestinians to have a separate delegation appeared in the first American draft submitted at Camp David. Its relevant portion reads:

"Egypt, Israel and Jordan will determine the modalities for establishing the elected self-governing authority in the West Bank and Gaza. The delegates may include Palestinians from the West Bank and Gaza."<sup>227</sup>

A study of this American draft suggests that, as well as not permitting the Palestinians to have a separate delegation, it also excluded from the scope of the draft any Palestinians living outside the West Bank and Gaza. The only group of Palestinians allowed to take part in the negotiations are "Palestinians from the West Bank and Gaza".

This language, which contained no reference to Palestinians from outside Gaza and the West Bank was not accepted by Egypt. It demanded, therefore, that this draft should be amended in order to permit other Palestinians to take part in the negotiations.<sup>228</sup>



Egypt, it may be recalled, had been obliged under the Resolution of the Arab League Summit Conference of 1974 to regard the PLO as the sole and legitimate representative of the Palestinian people.<sup>229</sup> Had Egypt accepted the American draft in this respect, it would have violated its obligation as an Arab League member. Israel, on the other hand, was not ready to negotiate with the other Palestinians because they were mainly either members or supporters of the PLO.<sup>230</sup> In order to bridge the gap between the two views, the Americans proposed to add the expression "other Palestinians as mutually agreed." This was regarded as a well-balanced expression. The term "Palestinians from outside" satisfied the Egyptians, while the term "as mutually agreed" satisfied the Israeli's who would be allowed to reject or accept any Palestinians from outside the Occupied Territories.

The question of whether or not the PLO was permitted to take part in the negotiations has been referred to earlier. It is sufficient at this stage to note that it remains unsettled.<sup>231</sup>

Having defined the parties who would negotiate, an important question arises as to the situation if the Palestinians or Jordanians refused to join the negotiations. Would this undermine or delay the implementation of the agreed provisions on the West Bank and Gaza? A somewhat vague answer to that question can be found in a letter from Sadat to Carter appended to the Camp David Accords. This letter, dated September 22, 1978, pointed out

"To ensure the implementation of the provisions relating to the West Bank and Gaza and in order to safeguard the legitimate rights of the Palestinian people, Egypt will be prepared to assume the Arab role emanating from these provisions,

following consultations with Jordan and the representatives of the Palestinian people."<sup>232</sup>

The wording of the above letter indicates that it was designed to cover a possible situation in which the Palestinians and Jordanians rejected negotiations with Israel, but were willing to consult with Egypt in order to represent them in the negotiations. There is no indication of what was meant by the word "consultation". Moreover, this letter does not cover a possible situation in which the Palestinians and/or the Jordanians refused even to consult with Egypt. Later, in another letter appended to the 1979 Treaty, Sadat and Begin agreed that:

"In the event Jordan decides not to take part in the negotiations, the negotiations will be held by Egypt and Israel."<sup>233</sup>

Clearly, the language used in the above letter indicates that there was no intention to exclude the Palestinians from the negotiations, although Jordan may be excluded at its own instance.

Having indicated the parties who will participate in the negotiations, it remains to consider the topics which will be discussed. In this respect paragraph A1(b) of the Camp David Accords provided:

"The parties will negotiate an agreement which will define the powers and responsibilities of the self-governing authority to be exercised in the West Bank and Gaza. A withdrawal of Israeli armed forces will take place and there will be a redeployment of the remaining Israeli forces into specified security locations. The agreement will also include arrangements for assuring internal and external security and public order."<sup>234</sup>



This text specified in clear language the issues which will be negotiated, namely, the power and responsibilities of the self-governing authority and arrangements for assuring security and public order.

There is no reference whatsoever in the whole text of the Treaty that other issues outside the scope of this Article could be discussed; that is to say, in legal terms, the parties to the negotiations could not raise or suggest topics outside the scope of this Article for discussion. The objective here is the election issue. While it was reasonable to put the elections among the topics off the agenda, by leaving it outside the scope of the discussion, the result was to leave all the important and crucial matters to be decided exclusively by Israel. This is a concession made by the authors to Israel, perhaps to encourage it to enter peace with Egypt.

The language used inaccurate terms and expressions that need to be defined. Unfortunately, no definition of such words can be found either in the provisions or in the travaux préparatoires. For example, the expression "arrangements for assuring internal and external security and public order" was not defined. In considering this expression, no one can underestimate the practical difficulties that might arise. There was no consensus among the parties as to what such arrangements may entail. While the Israelis could interpret this term in its broad meaning in order to limit the degree of autonomy granted to the Arabs, the Arab delegations, seeking to enhance the powers and authorities of the local government vis-a-vis Israel, could interpret the term in a narrow way.

Again, the use of ambiguous language is not surprising. Quandt, a member of the American team at Camp David, admitted that, by the end of the negotiations, when the authors realized that the crucial West Bank and Gaza issue could not

be fully resolved, they approved an Israeli proposal to employ ambiguous language and a vague formula for such unresolved issues.<sup>235</sup>

As regards the question of the timing of the negotiations, the Camp David Accords contained no reference to this issue. However, reference can be found in a joint letter from Sadat and Begin to Carter appended to the Peace Treaty. According to this letter dated March 1979, Egypt and Israel "agreed to start negotiations with<sup>in</sup> a month after the first exchange of instruments of ratification of the Peace Treaty."<sup>236</sup> The letter affirmed also that:

"Egypt and Israel set for themselves the goal of completing the negotiations within one year." In another part, the letter provided that:

"The two governments agree...to conclude these negotiations at the earliest possible date."<sup>237</sup>

<sup>Some</sup> observations on the attitude of the Camp David Accords and the Peace Treaty towards the question of timing require to be made. The reference to the timing of the negotiations in a letter appended to the Treaty, but not included in its text, suggests that the agreement on timing was not part of the legal obligations of the parties under the Treaty. Also, the language used suggests that the intention was to propose imprecise and non-binding dates. The term "earliest possible date", for example, suggests such an understanding. Also, the word "goal" refers to something which may or may not be achieved. The stipulation that the autonomy negotiations will begin after one month from the ratification of the Peace Treaty suggests the existence of a link between the West Bank formula agreed at Camp David and the Peace Treaty. According to the Egyptians, such linkage is legally binding because the Sadat-Begin joint letter appended to the 1979 Peace Treaty is an integral part of the Peace Treaty.<sup>238</sup>



From a political and legal perspective, the Egyptians wanted to prove to the Arab world that they did not sign a separate peace with Israel. Further, Egypt was obliged by Arab League resolutions to seek a comprehensive, rather a separate, peace with Israel.<sup>239</sup>

On the other hand, Israel held the view that the Sadat - Begin letter did not create a binding obligation. Rather, it could be regarded as a political and "non-binding obligation."<sup>240</sup> The binding nature of that letter was discussed earlier. Suffice it at this stage to note that the prevailing view during the process of the negotiations was that :

"The treaty must be legally independent of whatever happened on the West Bank and Gaza, even though some degree of political linkage might exist."<sup>241</sup>

In fact, the authors thought that the West Bank formula might fail because of the actions or inactions of the Jordanians or Palestinians.

The second step to be taken after the completion of the negotiations on autonomy was to hold free elections. Paragraph A.1(a) of the Camp David Accords provided that

"The Israeli military government and its civilian administration will be withdrawn as soon as self-governing authority has been freely elected by the inhabitant of these areas."<sup>242</sup>

Another reference to the election issue can be found in the Sadat-Begin letter:

"Elections will be held as expeditiously as possible after agreement has been reached between the parties."<sup>243</sup>

Clearly, there is a general agreement in principle that the proposed elections should be freely held, but there is no clarification whatsoever of how to deal in practice with several problems expected to be raised in respect of the "free

elections." For example, are the Israeli settlers in the West Bank and Gaza going to participate in the elections? Who is going to supervise these elections? How will the number of constituencies be determined? Has Israel the right to prevent some Palestinians from taking part in the elections under claims of national security? In the light of the fact that many Palestinian leaders in the West Bank and Gaza were either in Israeli prisons or displaced outside the area, what is their position in the election process?

It is interesting to observe that, so far there is no consensus among the parties concerned in respect of these questions.

The language on the elections could be understood to mean that the intention was to hold the elections under the supervision and the instruction<sup>?</sup> of the Israeli military government in Gaza and the West Bank. In this respect, the exclusion of the election issue from the scope of the paragraph on the negotiations, as well as the absence of any detailed provision on the elections, should be considered with the text of paragraph A.1.(a) which provides that the military government has to be withdrawn after (but not before) the elections. It follows that a reasonable understanding of this formulation suggests that the intention was to hold the elections under the military government.

The drafting history of the paragraph on the elections reveals that the American draft submitted at Camp David on September 10, 1978, adopted the same line. Its relevant paragraph on the elections reads:

"The Israeli military government and administration will be abolished and withdrawn as soon as a self-governing authority can be freely elected by the inhabitants of these areas."<sup>244</sup>



Undoubtedly, this draft implied that the elections were to be held in the presence of the military government. The rest of the American draft contained no mention of the election issue. It appears that the intention was to avoid addressing the complex issues arising in respect of the elections. One must admit that, regardless of the intention behind such language, it would be paradoxical to provide for free elections under, or in the presence of, a military government representing the occupying power.

Before proceeding further, a brief mention of how Egypt and Israel interpreted and understood the term "free election" ought to be made.

In respect of the necessity of guaranteeing the impartiality of the elections, Egypt proposed a number of points: international supervision of the elections process; the withdrawal of the Israeli forces from the <sup>places</sup> in which the voting will take place; a joint Palestinian-Israeli Commission to be formed to prepare for the elections; the Palestinian voters should have immunity against any procedure which may be taken by the Israeli's against them; and Israeli personnel to be prevented from entering Gaza and the West Bank on election day.<sup>245</sup> According to Egyptian sources, the Israeli's agreed during the autonomy negotiations to hold the elections under international supervision. The remaining points have not been settled.<sup>246</sup>

Israel, on the other hand, maintained that, due to considerations of national security, it should have the right to object to, and prevent, any candidate from being elected, in particular the supporters of the PLO.<sup>247</sup>

Before leaving this point, a final and relevant question must not be overlooked, namely, whether the Israeli settlers in the West Bank and Gaza were to be entitled to participate in the elections. Again, the Accords and the Peace

Treaty provided no answer. A review of the preparatory work reveals that each party had its own, and different, answer to the question.

From an Israeli perspective, based on the assumption that its settlement policy was legal and therefore that the settlers would remain permanently in the area, the settlers in the West Bank and Gaza had the right to participate in the elections as candidates and voters. This view was reflected in the original autonomy plan submitted in 1977, Articles 4 and 5 providing respectively for the following:

"4. Any resident, 18 years old and above, without distinction of citizenship, or if stateless, will be entitled to vote in the elections to the Administrative Council.

5. Any resident whose name is included in the list of candidates for the Administrative Council and who, on the day the list is submitted, is 25 years old or above, will be entitled to be elected in the Council."<sup>249</sup>

Clearly, the word "resident" in the above text refers to the Palestinians as well as Jewish settlers in the area. Further, the words "without distinction of citizenship" were added to emphasize the meaning intended by the word "resident." Thus, there is no doubt that the Israeli settlers under the above text have the right to vote and to be elected. However, it is interesting to note that the Israeli autonomy plan of 1982 contained no mention of the Israeli settlers in the area. Rather, it spoke in Article. 1 of a self-governing authority that would comprise one body representing only the Arab inhabitants, thus excluding any role for the Jewish settlers in the elections.<sup>249</sup> Notwithstanding these two contradicting views, the American officials believed that the Camp David Accords did not deal with the status of the Israeli



settlements in the area, and therefore, their relationship with the self-governing authority would have to be dealt with in the course of the negotiations.<sup>250</sup>

Having examined the procedures leading to the establishment of the self-governing authority we proceed now to consider the provisions on the self-governing authority.

The main provisions relating to the self-governing authority in the Camp David Accords read as follows:

"In order to provide full autonomy to the inhabitants, under these arrangements the Israeli military government and its civilian administration will be withdrawn as soon as a self-governing authority has been freely elected by the inhabitants of these areas to replace the existing military government.

The parties will negotiate an agreement which will define the powers and responsibilities of the self-governing authority.

The agreement will also include arrangements for assuring internal and external security and public order. A strong local police force will be established, which may include Jordanian citizens. In addition, Israeli and Jordanian forces will participate in joint patrols and in the manning of control posts to assure the security of the borders.

When the self-governing authority (Administrative Council) in the West Bank and Gaza is established and inaugurated, the transitional period of five years will begin."<sup>251</sup>

Another mention of the self-governing authority can be found in the Sadat-Begin joint letter appended to the Peace Treaty:

"...The establishment of the self-governing authority in the West Bank and Gaza in order to provide full autonomy to the inhabitants. The self-governing authority will be established and inaugurated within one month after it has been elected, at which time the transitional period of five years will begin. The Israeli military government and its civilian administration will be withdrawn to be replaced by the self-governing authority as specified in the 'Framework for Peace in the Middle East'"<sup>252</sup>

The wording of these provisions clearly indicates that, while the intention of the authors was to leave the whole matter of the self-governing authority to be resolved in the negotiations, certain issues had been settled at Camp David, e.g. the agreement that the self-governing authority would establish a strong local police force.

Generally speaking, the structure of a "local government" or "an autonomous entity" may be examined by reference to three main points: the legislative authority; the executive authority; and the judicial authority; as well as other particular issues such as control over foreign relations, defence and natural resources. For the sake of clarity, it would help if we examined the relevant provisions relating to autonomy along these points.

So far as a legislative authority is concerned, it is interesting to observe that neither the Camp David Accords nor the joint-letter appended to the 1979 Treaty contained any mention of the legislature. The question of whether or not they are legally permitted to establish a legislative authority is, therefore, a matter of interpretation, and two conflicting views have been advanced. According to one view, the provisions must be understood as implying a legislative body possessing the power to enact laws and regulations.<sup>253</sup> The



second view holds that the intention was to give the administrative council power to promulgate regulations.<sup>254</sup>

The first view is based on the argument that a reasonable understanding of the whole text and language used suggests that the self-governing authority should be entitled to exercise an extensive degree of legislative competence, which would necessarily include the enactment of laws as well as regulations.<sup>255</sup> In support of this view, the following reasons can be mentioned:

= The term "full autonomy" has been used, as mentioned earlier, to refer to a wide and extensive degree of autonomy. Understood in conjunction with the term "transitional period" the term "full autonomy" must be construed as a reference to a de facto government which includes a legislative body.

= The statement in paragraph A.1 that the self-governing authority would "replace" the military government, as mentioned earlier, implies that the self-governing authority, should exercise all the powers exercised by the military government, including the enactment of laws and regulations.<sup>256</sup>

= Turning back to the records of the negotiations, it appears that the first American draft at Camp David was in line with the Egyptian view. According to this draft, the self-governing authority would replace the military government which would be "abolished."<sup>257</sup> As mentioned earlier, the word "replace" has to be considered in conjunction with the word "abolished". It follows that the self-governing authority should exercise all the powers and competence of the abolished government. As is well-known the Israeli military government is empowered to enact laws.<sup>258</sup>

= It may be also argued that an extensive review of international practice reveals that the great majority of autonomous entities have a locally-elected

legislative body as the fundamental source of local government power.<sup>260</sup> According to Hannum and Lillich, "while the extent of legislative competence varies considerably, as do the designations both for the body itself (legislature, council, parliament) and for the instruments enacted (laws, decrees, regulations), the existence of an elected legislative body is nearly universal."<sup>260</sup>

In sum, the Egyptians maintained that the term "self-governing authority" refers to "an authority which governs itself by itself...no outside source vests it with its authority."<sup>261</sup> The intention was to establish a de facto democratic structure of government by and for the people that would be able, after the transitional period, to form a de jure government.

In practice, the Egyptians envisaged an elected body (assembly) whose members would fulfill the legislative functions as well as exercise the powers that an elected representative body usually does. This view can be found in Egypt's "Proposed Model of Full Autonomy for the West Bank and Gaza Strip."<sup>262</sup>

According to this proposal, the self-governing authority would be composed of two main organs, a council and "An assembly composed of all freely-elected representatives from the West Bank and Gaza...The Assembly will take over and replace the authority of the military government in enacting laws and regulations, formulating and supervising policies, adopting the budget, levying taxes, etc. Its internal organization of chairmen with one or more vice-chairman, its rules of procedure and the number and composition of its committees will be determined by the Assembly itself."<sup>263</sup>

In another part of that proposal, the Egyptians suggested that:



"The S.G.A. (self-governing authority) will be composed of 80-100 members freely elected from the Palestinian people in the West Bank and Gaza."<sup>264</sup>

The second view, advanced by Israel, held that the intention was not to establish a legislative body. Rather, it was to give the self-governing authority, which would take the form of an administrative council, the authority to promulgate regulations in respect of matters operated by it. In support of this view, the following reasons can be mentioned.

In the first place, the term "self-governing authority", according to Israel, had only one meaning, i.e. administrative council. The wording of paragraph A.1.c supported this as the words "administrative council" were inserted after the term "self-governing authority" to emphasise the meaning intended.<sup>265</sup>

Moreover, the Israelis did not accept Egypt's view that the self-governing authority should have all the powers exercised by the military government after its withdrawal. According to Begin, what the word "withdrawal" meant, very simply, was that the Israeli military presence would be physically withdrawn, but not abolished.<sup>266</sup> The powers of the administrative council would devolve from this military government which would continue to exercise functions, including the enactment of laws.<sup>267</sup> Along the same lines, Ruth Lapidot argued:

"The Camp David Accords did not provide for the automatic transfer of all the powers of the military government and its civilian administration to the self-governing authority. If such a complete transfer of authority had been aimed at, it would not have been necessary to state, as the Camp David framework did, that "the Parties will negotiate an agreement which will define the powers and responsibilities of the self-governing authority".<sup>268</sup>

The drafting history of the paragraph on the transfer of power to the self-governing authority reveals that the word "abolished" as used in the proposed text was deleted in the final draft. That is to say, while the U.S. draft used the expression "the Israeli military government and administration will be abolished and withdrawn,"<sup>269</sup> the word "abolished" did not appear in the final text which became paragraph A 1(a) of the Camp David Accords.

Also, it can be argued that, despite the fact that a large number of autonomous entities have legislative bodies, there exist several governed only by an administrative council, as, for example, in the transitional League of Nations administration for the Saar, which was governed by an administrative council without any legislative body.<sup>270</sup> Similarly, the Landowners' Council in Shanghai and the systems of cultural autonomy within the Belgian linguistic communities and under the Ottoman millet systems are examples of autonomous entities which lack a separate legislative body.<sup>271</sup>

In support of this view, the Israelis argued that they made it clear before and after the Camp David Accords that no separate legislative body was envisaged.

The original Israeli autonomy plan submitted by Begin on December 28, 1977, refers to this limited function. Paragraph 10 of that plan provided that the administrative council shall:

"Promulgate regulations relating to the operation of these departments (which it will operate)<sup>272</sup>

Also, paragraph 19 of the same proposal provided that a committee will be established to determine:

"What will be the competence of the administrative council to promulgate regulations."<sup>273</sup>



Again, the Israelis adhered to the same line during the autonomy negotiations which followed the conclusion of the 1979 Treaty. In their proposal submitted in January 1982 the Israelis suggested that the proposed council "will, moreover, have a wide range of powers to promulgate regulations as required by a body of this kind."<sup>274</sup>

Notwithstanding the above, it is clear that Israel's rejection of the existence of a legislative body, and the very limited power which was proposed by the Israelis to be granted to the administrative council, should be understood in the light of its view that the Palestinians should permanently remain under its sovereignty after the end of the transitional period.<sup>275</sup>

So far as judicial authority is concerned, it may be useful at the outset to indicate that it was firmly recognized that a free and independent judiciary formed part of any politically autonomous entity.<sup>276</sup> However, this independence does not necessarily imply total separation from the central or sovereign judicial authority as it is common for appeals from local courts to be heard in higher courts in the central government.<sup>277</sup>

Generally speaking two areas can be regarded as criteria for determining the degree of local judicial autonomy; the manner of selection of local judges, particularly the judges of the highest local court, and whether or not local matters may be appealed to a higher tribunal outside the autonomous entity's jurisdiction.<sup>278</sup>

It has been observed that entities with high or even moderate degrees of autonomy have total control over the appointment of local judges, e.g., the proposed Turkish Federal State of Cyprus, Eritrea, Catalonia, the Emirates and the Swiss cantons.<sup>279</sup>

Yet, even where local courts are otherwise independent and selected by local authorities, most autonomous entities are subject to the ultimate control of the highest court of the national judiciary. It was also observed that such appeals are appropriate only to consider the constitutionality of local enactments or challenges that local actions are contrary to, or beyond the powers of, the basic constituent documents defining the relationship between the autonomous and principal entities.<sup>280</sup>

Turning to the Camp David Accords and the Peace Treaty, no explicit or implicit mention of the judicial authority can be found. Moreover, a review of the Camp David talks and the travaux préparatoires of the Peace Treaty suggests that the issue of the judicial authority, as part of the would-be self-governing authority, was never discussed.

From the above, it seems reasonable to suppose that the intention was to leave such questions to be decided in the negotiations.

Notwithstanding, it is not irrelevant before leaving this point to refer in brief to the views expressed by Egypt and Israel in respect of the local judicial authority in the West Bank and Gaza.

Prior to the conclusion of the Camp David Accords and the Peace Treaty, the only reference to the judicial authority can be found in Begin's Autonomy Plan announced on December 28, 1977. It pointed out that the "administration of justice" was among the departments which would be operated by the administrative council.<sup>281</sup>

In the aftermath of the Peace Treaty, a similar text can be found in the Israeli Autonomy Plan submitted in January 1982:



"The powers to be granted to the authority, under these proposals, are in the following domains:

1. Administration of Justice, Supervision of the administrative system of the courts in the areas dealing with matters connected with the prosecution system and with the registration of companies, partnerships, patents, trademarks, etc."<sup>292</sup>

It is interesting to observe that this text overlooked several important issues in respect of the judicial authority, e.g. the relations between the local courts and the Israeli courts and the appointment of judges. Also, no mention of a supreme court or appeal courts was made.

Turning to Egypt's view, we may note that it employed clear language calling for an efficient and independent judiciary. The Egyptian proposed model for full autonomy refers to that issue in paragraph IV.4(e):

"The judicial authority will be manifested in a system of courts of law, courts of appeal and supreme court enjoying full guarantees for independence and efficiency in their administration of justice."<sup>293</sup>

Although the examination of the above text is outside the realm of this work, it is interesting to observe that the Egyptian proposal implied a total separation of the local courts from the Israeli courts.

Two observations in connection with the views of both Egypt and Israel appear necessary. While Egypt envisaged a complete and independent judiciary, the Israelis proposed a moderate degree of local judicial autonomy, but not completely independence. Israel's view in this respect was in line with the general trend of international practice in this respect.<sup>294</sup> Several important issues relating to the judicial authority have been overlooked, e.g. the relation

between the local courts and the sovereign state, the appointment of judges and, finally and most significantly, the legal status of the Israeli settlers in the area vis a vis the Arab local courts there. The absence of clear provisions on such issues will open the door to differences and difficulties.

While the preceding analysis shows, for example, that an autonomous entity may or may not have a legislative body, there is no doubt that any autonomous entity must have an identifiable executive branch of government headed by a chief executive, be that a governor, president, prime minister or an executive or administrative council.<sup>285</sup>

Generally speaking, an executive council is granted power to administer all the affairs of the local inhabitants, with the exception only of foreign affairs and defence. Autonomy is not sovereignty and these two attributes of a sovereign state could not be conferred on an autonomous unit.<sup>286</sup>

In examining the executive authority under the Camp David autonomy plan, discussion will be confined to two main points: the political character of the administrative council, particularly the question of whether it represents the central or local government, how and by whom it is selected; and the extent of the powers of the local government, particularly its power over foreign relations, external and internal security, and natural resources.

In respect of the question of selecting the administrative council, the wording of the Camp David Plan clearly indicated that the self-governing authority would be elected by the local inhabitants.<sup>287</sup> At this point, a distinction should be made between the Israeli and Egyptian interpretations. Based on its interpretation that the term "self-governing authority" refers to an



administrative council, Israel held that the executive authority would be selected directly by the local population and, thus, it would be responsible to them, rather than to the Israeli government.<sup>288</sup> The origins of this view can be found in the first autonomy plan submitted by Israel in 1977, Article 3 of which reads:

"The residents of Judea, <sup>a</sup>Samaria and the Gaza district will elect an Administrative Council composed of eleven members. The Administrative Council will operate in accordance with the principles laid down in this paper."<sup>289</sup>

A similar approach was adopted by the Israeli Autonomy Plan submitted in January 1982 which referred to "an elected representative body...that will be able to carry out the functions assigned to it as an administrative council."<sup>290</sup>

On the other hand, Egypt's view was based on the assumption, mentioned earlier, that the Accords provided for the election of an assembly which will exercise powers and competences on the British parliamentary model. It followed that the executive authority should be selected by, and from among, the members of the assembly. In this connection, we may recall that Egypt adhered to this view in the autonomy negotiations following the conclusion of the 1979 Treaty.<sup>291</sup> Its Proposal Model for Full Autonomy submitted on January 28, 1980 provide for "A council composed of ten to fifteen members to be elected from among the membership of the assembly."<sup>292</sup>

As to the question of whether the administrative council would administer the laws and enactments of the Israeli government, and whether the latter would retain separate powers to enforce national laws, two answers can be found.

On the one hand, Egypt held that the council should administer the laws enacted by itself and that the Israeli government did not retain any power to

enforce Israeli laws.<sup>293</sup> Yet, the weakness of this argument is that, whatever interpretation one may extract from the provisions, there is no doubt that, if the Camp David agreement is implemented, the administrative council will administer Israeli laws relating to external defence and foreign affairs. Also, the Israeli government in legal terms would be entitled to enforce law concerning these two areas.

On the other hand, if we accept Israel's view that the "council" would not be entitled to enact laws, then the answer will be clear. The council would administer Israel's laws and enactments, and its government would retain power to enforce laws against the Palestinian council.

As to the question of who will supervise the administrative council, it may be noted that no clear answer can be found. Any answer must be a matter of negotiation as well as interpretation. Let us consider the views expressed on that issue in the preparatory work and in the aftermath of the 1979 Treaty.

While, as a matter of reasonable inference, the council elected solely by the local people should be exclusively responsible to them, the Israelis maintained that the administrative council should be responsible to, and supervised by, the military government. Brzezinski recorded that he was informed by Begin that the authority of the local government in the West Bank should be devolved from the Israeli military governor and hence could be revoked by him.<sup>294</sup>

In the proposal submitted by Egypt at Camp David on September 6, 1978, the Egyptians suggested that a distinction be made between the local government in Gaza and the local government in the West Bank. The former was to be supervised by Egypt, while the latter to be supervised by Jordan.<sup>295</sup> In this respect, the relevant text reads:



"There shall be a transitional period not to exceed five years from the date of the signing of the "Framework" during which Jordan shall supervise the administration of the West Bank and Egypt shall supervise the administration of the Gaza Strip."<sup>296</sup>

It is interesting to observe that at a later stage Egypt's proposal that she and Jordan should supervise the local government changed. In the autonomy negotiations that followed the conclusion of the 1979 Treaty, Egypt expressed the view that an elected Palestinian assembly must supervise the administrative council.

As to the American position, it is clear that they favoured leaving the question of who would supervise the self-governing authority to be decided in the future. In this respect, the American draft provided that the parties would negotiate an agreement which would define "the...responsibilities of the self-governing authority."<sup>297</sup> Clearly, the negotiations on the responsibilities must settle the question of supervision. The wording of the American draft was adopted by the authors and appeared in paragraph A.1(b).

We turn now to consider the extent of <sup>the</sup> powers of the authority over local and national matters. At the outset, we may note that the Camp David Accords, as well as the joint letter appended to the 1979 Treaty, contained no mention of these matters, with the exception of a reference to local police forces and joint Jordanian-Israeli patrols to secure the borders.

Generally speaking, the term "autonomy" refers to the authority of the local government over the affairs of the inhabitants, with the exception of foreign relations and defence which are matters that should be reserved to the central or national government.<sup>298</sup>

We can therefore conclude that the Treaty should be construed as granting the Palestinian local government authority and powers over all matters, except foreign relations and defence.

Fortunately, a careful examination of the proposal submitted during and after the Camp David Accords suggests an agreement among the parties in this respect. Thus, both the Egyptian and Israeli proposals suggest that the self-governing authority will be granted the power over agriculture, finance, education, housing etc. - all clearly internal matters.<sup>299</sup>

However, despite the agreement among the parties on these matters, a dispute arose among the parties in respect of land and natural resources in the area. Israel, on the one hand, held the view that, at Camp David, it agreed to grant full autonomy for the inhabitants, but not over the territory of the West Bank and Gaza.

Paragraph A.1(a) used the expression "in order to provide full autonomy to the inhabitants." If the territory was to be included, the word "inhabitants" should have been deleted and replaced by other words referring explicitly or implicitly to the territory. According to the Israelis it follows that all matters relating to land were reserved to the Israeli government.<sup>300</sup> The aim of this Israeli interpretation was twofold. First, Israel wanted to maintain its right to establish new settlements in the West Bank and Gaza. If the Palestinian local government was to have control over land, the Israelis might not be able to establish new settlements. As we mentioned earlier, the Israeli government, as well as the opposition parties in Israel, believe that "such settlement is a Jewish inalienable right and an integral part of our national security."<sup>301</sup>



Secondly, Israel wanted to keep tight control over the water resources of the West Bank. These water resources are the main sources of water for the Israeli coastal plain.<sup>302</sup> Also, Israel wanted to guarantee the supply of water to the settlers and their farms in the West Bank, which had been subject to Israeli control previously. Order 192 promulgated by the "Officer Commanding - Israel Defence Forces in Judea and Samaria" provided that Israeli officials are responsible for all the matters relating to the water resources and their use by the inhabitants.<sup>303</sup>

For these reasons, the Israeli Commission to study the autonomy plan recommended that the water resources in the West Bank and Gaza remain under Israeli control.<sup>304</sup> This Israeli view was rejected by Egypt on the ground that the term "full autonomy" implied the transfer of authority over the land and natural resources to the self-governing authority.<sup>305</sup>

As regards the establishment of local police forces, the Camp David Accords have the following provision:

"To assist in providing such security, a strong local police force will be constituted by the self-governing authority. It will be composed of inhabitants of the West Bank and Gaza. The police will maintain continuing liaison on internal security matters with the designated Israeli, Jordanian and Egyptian officers."<sup>306</sup>

The wording of this paragraph indicates clearly that once the transitional period has begun security would no longer remain, as it is now, an exclusive Israeli responsibility. In the words of a former Israeli official, "Whichever way one turns this text, whatever interpretations one may extract from it, what is

quite clear is that, if the Camp David agreement is implemented, it is not Israel that will control the internal security of the West Bank and Gaza."<sup>307</sup>

The establishment of a local police force is in line with the general trend that local police forces are seen as a normal component of the governmental power of any autonomous entity.<sup>308</sup> Hannum and Lillich observe that with the exception of cases such as the Ottoman millet which depended on Turkish civil authorities for execution of their decisions within the religious and cultural spheres, most autonomous entities have a local police force to enforce local legislation in the delegated areas, e.g. taxation, trade, social welfare and protection of the environment.<sup>309</sup>

The wording used on the Palestinian police force is taken from the original autonomy plan submitted by Begin in 1977. Under Article 10 of this proposal, "the supervision of local police forces" was included within the specific powers delegated to the self-governing authority.<sup>310</sup> At Camp David the first American proposal submitted on September 10, 1978 referred to the local force in the following terms:

"It will also include arrangements for assuring internal and external security and public order, including the respective roles of Israeli armed forces and local police."<sup>311</sup>

As to external security and defence, there is an overwhelming consensus that responsibility for, and authority over, national defence matters rest with the central or sovereign government.<sup>312</sup> The only exception to this general principle is the proposed Turkish Federated State of Cyprus which assigned to its President, under Articles 80 and 135 of the Turkish Cypriot Constitution,



the responsibility for preserving the integrity of the state and the right to receive any aid from foreign states, including military aid.<sup>313</sup>

Turning back to the Camp David Accords, we can find two relevant provisions. The first suggests that this matter will be defined in the negotiations. It reads as follows: "The agreement will also include arrangements for assuring internal and external security and public order."<sup>314</sup>

The second provision suggests that Jordan will take part in respect of the external security of the West Bank and Gaza. It reads as follows:

"In addition, Israeli and Jordanian forces will participate in joint patrols and in the manning of control posts to assure the security of the borders."<sup>315</sup>

The wording of these paragraphs clearly indicates that the intention was to make a distinction between external security and the security of the borders. While there were a number of options in respect of the former, the Camp David Agreement specified one option in respect of the latter, namely, joint Jordanian-Israeli forces to safeguard the borders. In respect of this point, some comments require to be made.

The Camp David Agreement did not provide an answer to the question as to what exactly were to be the borders which need to be safeguarded. The borders could mean the borderline between Jordan and the West Bank, i.e. the River Jordan. A senior Arab diplomat held that this was the line intended:<sup>316</sup>

"the borders here, from the context, have only one meaning; the River Jordan, which meant that the Framework had fallen into a serious trap; the recognition of the River Jordan as the borderline between Israel and Jordan."<sup>317</sup>

Alternatively, it could mean the pre-1967 border between Israel and the West Bank and Gaza. One must admit that no authoritative answer can be advanced.

The language on the joint Jordanian-Israeli patrols to safeguard the borders is somewhat disturbing. In practice, as well as in military terms, the Israelis do not need Jordanian forces to secure their "borders". If this is to be true in the future, the question arises as to the intention of the authors behind such a reference to including Jordan.

From an Israeli perspective, this reference implied that Jordan would assume a role in deciding the final status of the area, thereby rejecting implicitly a possible independent Palestinian state. As we shall see later, the American and some Israeli parties favoured the view that the West Bank and Gaza should be finally linked to Jordan.<sup>318</sup>

Also, this reference would encourage Jordan to join the peace process. Perhaps the reference to a Jordanian role in the local police force<sup>319</sup> as well as in the security of the "borders" could be construed as an implicit recognition by the authors of Jordan's claim to or/and role in the future of the area.<sup>320</sup>

It is clear that one of the most controversial problems arising from the Camp David Accords is that of the final status of the West Bank and Gaza. It is relevant to recall that the purpose of Camp David had not been to establish the final status at that time. The participants, Egypt, Israel and the U.S.A., agreed to the view that the situation required an interim solution for a specified period.<sup>321</sup>

From the perspective of the Camp David Accords, it was not legitimate to decide the future of the Palestinians who were not represented there.<sup>322</sup> Moreover, if an immediate solution to the problem was forced, the parties would have been unable to produce any agreement on this particular issue.<sup>323</sup> In fact, the basic idea was the importance of the time factor. As Blum observes:



"The timing was extremely important. If a cooling-off period could be secured, if an atmosphere of co-operation could be established, if the barriers of mutual suspicion that had been built over a period of 50 years could be broken down, then in three to five years many of the day's seemingly insurmountable problems might become soluble."<sup>324</sup>

The only mention of the final status of the West Bank and Gaza can be found in paragraph A1(c):

"As soon as possible, but not later than the third year after the beginning of the transitional period, negotiations will take place to determine the final status of the West Bank and Gaza and its relation with its neighbours."<sup>325</sup>

Although the wording of this text clearly indicates that the intention was to leave the question of the final status of the area to be decided in the negotiations which would begin within three years of the transitional period, both the parties claimed that the Accords implied certain options in respect of the future of the area. On the one hand, Israel claimed that certain paragraphs of the Accords excluded the possibility of an independent Palestinian state. The other view, which was, of course, advanced by Egypt, held that the Accords did imply reference to the Palestinian right to self-determination, including the right to establish an independent state.

The view that the Camp David Accords exclude the option of an independent Palestinian state are based on the assumption that, while there were a number of conceivable options with respect to the final status of the area concerned, certain options were deliberately excluded by the participants. Among them was the establishment of an independent Palestinian state.<sup>326</sup>

In the first place, it has been argued that the Camp David Accords provided that the boundaries between Jordan and Israel would be determined within the framework of the Peace Treaty to be negotiated directly between Jordan and Israel. It follows that, since there would be a boundary between Jordan and Israel, the Camp David Accords did not envisage the possibility of a third state on the territory of the former Palestine Mandate.<sup>327</sup>

One must admit that there is an objection to this view articulated by Blum. There is no clear and precise language in the Accords providing for the establishment of boundary between Jordan and Israel. The relevant portion which was in Blum's mind is worth quoting:

"...to negotiate the Peace Treaty between Israel and Jordan, taking into account the agreement reached on the final status of the West Bank and Gaza. The negotiations shall be based on all the provisions and principles of U.N. Security Council Resolution 242. The negotiations will resolve, among other matters, the location of the boundaries and the nature of the security arrangements."<sup>328</sup>

It is correct that the words "location of boundaries" do not necessarily mean the Jordanian/Israeli boundary. If such a meaning had been intended, the words "between Jordan and Israel" would have been added to emphasize that important meaning.

Further, the Accords contain no mention of the term "self-determination". Having in mind the fact that the term "self-determination" carried with it notions of independence and sovereignty, it follows that the absence of this term could mean that the intention of the authors was not to establish a third state.<sup>329</sup> According to this view, the Accords avoided the term



"self-determination" because the Palestinians were not entitled to such a right. The argument against the Palestinian self-determination was mentioned earlier.<sup>330</sup>

The word "autonomy" should be understood as a clear indication that sovereignty was not intended to be granted to the Palestinians. In the words of Blum:

"The autonomy idea proposed that the Arab residents in those areas run their own affairs, including agriculture, trade and industry, education, justice, finance and practically all other matters with the exceptions only of foreign affairs and defence. Autonomy was not sovereignty, and these two attributes of a sovereign state could not be conferred on an autonomous unit which was not, and which under the Camp David Accords was not intended to become, a sovereign unit."<sup>331</sup>

Also, it was argued that Security Council Resolution 242, upon which the Camp David Accords and the Peace Treaty were based, made no reference whatsoever to the right to self-determination of the Palestinian people. The only reference to them in that resolution was the reference to the just solution of the refugee problem and the reference was not to Arab refugees alone. The first U.N. resolution referring to the Palestinian right to self-determination was adopted in 1969, two years after the adoption of Resolution 242. Also, it does not require total Israeli withdrawal from the West Bank and Gaza. As such, the resolution under any circumstances cannot be construed as implying Palestinian self-determination.

The drafting history of the Accords reveals that any phrase, term or word referring explicitly or implicitly to a Palestinian state or to the Palestinian

right to self-determination had been deleted. For example, Article 2(5) of the Egyptian Proposal which provides that "the Palestinian people shall exercise their fundamental right to self-determination and shall be enabled to establish their national entity"<sup>332</sup>; this language was totally rejected by the Israelis.<sup>333</sup>

Another example is the letter from Carter to Begin dated September 22 1978 which was appended to the Camp David Accords. According to this letter Carter acknowledged that he had been informed by the Israelis that "In each paragraph of the Agreed Framework Document the expressions "Palestinians" or "Palestinian People" are being and will be construed and understood by you as "Palestinian Arabs".<sup>334</sup> Clearly, the target of this letter is the term "Palestinian People" which could be construed as referring to "people" within the legal meaning intended by Article 1 of the U.N. International Covenant on Civil and Political Rights which provides "All people have the right of self-determination..."

To the above, it may be added that in the course of the negotiations, as Brzezinski records, "the Israelis repeatedly expressed their concern that the Palestinians should not end up acquiring an independent state."<sup>335</sup>

Also, in drafting the paragraph on the final status of Gaza and the West Bank the original text of the American draft pointed out that the final status of the area should be based on all the principles of Resolution 242:

"the negotiators...will settle the inal status of the West Bank and Gaza after the transitional period and its relationship with its neighbours on the basis of all of the principles of the U.N. Security Council Resolution 242, including the mutual obligations of peace, the necessity for security arrangements for all parties concerned following the transitional period, the withdrawal of Israeli forces."<sup>336</sup>



This language, however, was not accepted by Begin since it would imply a total Israeli withdrawal which may or may not be followed by an independent Palestinian state.<sup>337</sup> The paragraph was amended to read:

"...the negotiations (on the final status) shall be based on all the provisions and principles of U.N. Security Council Resolution 242."<sup>338</sup>

The wording of the above text clearly indicates that the negotiations only, but not necessarily the final status would be based on Resolution 242. In Begin's view this meant that the final status may not necessarily be in accordance with the principle of the Resolution.<sup>339</sup> The amended text appeared in paragraph A.1(c) of the Camp David Accords.

Israel's practice, in the aftermath of the Camp David Accords, suggests that its intention was not to agree on the establishment of a Palestinian state after the transitional period. An example of such practice is Israel's extension of its public services, like electricity and transport, to the West Bank and Gaza.<sup>340</sup> Such practice can be found in statements declared by Israeli officials on several occasions against the establishment of the Palestinian state. A striking example is that of Prime Minister Begin in 1981 declaring his government policy concerning the West Bank and Gaza:

"I, Menachem, son of Ze'ev and Hana Begin, do solemnly swear that as long as I serve the nation as Prime Minister, we will not leave any part of Judea, Samaria, the Gaza Strip or the Golan Heights."<sup>341</sup>

This statement, as Carter observed, contravenes the basic terms of the Camp David Accords.

In support of the interpretation that the Camp David Accords do not envisage an independent Palestinian state, reference may be made to the Reagan Peace

Plan of September 1982 which was based on the Camp David Accords and Resolution 242. The relevant part of this plan reads as follows:

"Beyond the transition period, as we look to the future of the West Bank and Gaza, it is clear to me that peace cannot be achieved by the formation of an independent Palestinian state in those territories...But it is the firm view of the United States that self-government by the Palestinians of the West Bank and Gaza in association with Jordan offers the best chance for a durable, just and lasting peace."<sup>342</sup>

Finally, Israeli claims that it has acquired a title to Gaza and the West Bank.<sup>343</sup>

The other view is that the Camp David Accords conceive<sup>of</sup> the formation of a Palestinian state in Gaza and the West Bank after the transitional period, and was strongly supported by Egypt on a number of grounds.

The reference in paragraph A.1(c) to the idea that the final solution "must recognise the legitimate right" of the Palestinian people should be considered in conjunction with the phrase providing that the negotiations on the final status shall be "based on all the provisions and principles of the U.N. Security Council Resolution 242." It follows that the exercise of the right to self-determination would be the only logical conclusion which could reasonably be derived from the meaning of the two phrases. As Ambassador Nabil El Araby, former Egyptian representative to the U.N., put it:

"it is inconceivable to entertain the<sup>or</sup> thought<sup>^</sup> that an agreement to confirm the application of Resolution 242, which entails withdrawal from the West Bank and Gaza and the recognition of the legitimate rights of the Palestinian people, could be misconstrued and presented as limiting the exercise of the most



fundamental and sacred of these rights. The exercise of the right to self-determination is inevitably the only logical conclusion that could reasonably be derived from the binding commitments arrived at Camp David."<sup>344</sup>

To construe the Accords as limiting the rights of the Palestinian people to self-determination would prejudice them as against other groups in two aspects. It would run counter to the various resolutions adopted by the General Assembly, between 1969 and 1975 which call for respect for and the implementation of the inalienable rights of the Palestinians to self-determination, national independence and sovereignty. In particular, resolution 3236 (XXIX) on November 22, 1974 which reads in part as follows:

"...Recognizing that the Palestinian people is entitled to self-determination in accordance with the Charter of the United Nations,

...Reaffirms the inalienable rights of the Palestinian people in Palestine, including:

- (a) The right to self-determination without external interference;
- (b) The right to national independence and sovereignty;"<sup>345</sup>

Further, the Accords should not be construed in a manner that implied that the authors intention was to violate a principle of the highest international order. While it is widely accepted that self-determination is or has become a recognized principle of modern international law,<sup>346</sup> some believed that it is a jus cogens principle under the General Assembly practice. Professor Vedel, arguing on behalf of Morocco in the Western Sahara Case, stated:

"If there is jus cogens in the United Nations in matters of self-determination, it consists of decolonization as an end result rather than self-determination as a technique or method."<sup>347</sup>

One cannot accept completely, from a textual standpoint, the view that the Treaty contains some provision depriving the Palestinians of such a right. Thus, there is no need to resort to the travaux preparatoires in order to investigate the Israeli intention, whatever it was.

Further, the American rejection of the formation of a Palestinian state in the West Bank and Gaza, as in the Reagan Plan which based on the Camp David formula, should not be regarded as a legal interpretation of the Accords. Rather, it is a political plan which was based on strategic and political considerations rather than on legal interpretation.

To conclude, one must admit that a reasonable understanding of the relevant provisions of the Accords suggests that they neither exclude the possibility of, nor provide for, the formation of a Palestinian state. The whole matter was left to be decided in the future.

...



NOTES

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- 35 For example see, Nakhleh, Issa, The Liberation of Palestine is supported by International Law and Justice, Moore, op.cit., p.567. See also Cattan H., op.cit., Ref. (12) p. 85-97.
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138 The Egyptian lawyers hold the view that all the letters appended to the 1979 Treaty are an integral part of the text of the Treaty. See for example El Araby, Nabil, Camp David And Beyond, A.S.I.L. Proc., 1980, p. 127.

139 For the text of this letter see, Appendix V.

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142 Article 32 of the 1969 Vienna Convention reads: "Recourse may be had to supplementary means of interpretation including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of Article 31, or to determine the meaning when the interpretation according to Article 31: (a) leaves the meaning ambiguous or obscure; or (b) leads to result which is manifestly absurd or unreasonable."

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- 166 Paragraph A.1(a), Ibid.
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- 189 See the text of the Camp David Accords.
- 190 In Arabic Language the word legitimate (sharaia), which used in the Arabic copy of the Treaty has a comprehensive meaning in Islamic literature and therefore it could be understood as a reference to to all rights including the right to self-Determination.
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- 192 Ibid.

193 Article 2(fifth) of the Egyptian Proposal at Camp David reads in part:

"Six months before the end of the transitional period, the Palestinian people shall exercise their fundamental right to self-determination and shall be enabled to establish their national entity."

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196 Murphy, John, op. cit., p. 118.

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198 American answers to Jordanian questions, Quandt, op. cit., pp. 388-396.

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201 The phrase "representatives of the Palestinian people" was mentioned only in the first sentence of the agreement on the West Bank and Gaza. No mention of such phrase can be found in the operative paragraph.

202 op. cit., ref. 198.

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- 212 Nafai, Ibrahim, Comments on Shamir's Initiative, Al Ahram, Cairo, February 2, 1989 (in Arabic).
- 213 Ibid.
- 214 See the text of Camp David Accords.
- 215 Murphy, John, op.cit.

216 Nafai, Ibrahim, op.cit.

217 Id.

218 Dayan, Moshe, op.cit., p.167.

219 See Article 2(c) of Security Council Resolution 242.

220 See Prime Minister Begin's Autonomy Plan, 28 December 1979, in Lukacs, Yehuda, op.cit., p.61.

221 Nafai, Ibrahim, op.cit.

222 This view was expressed by Israel in its autonomy proposal, i.e. the 1979 Autonomy Plan and the 1982 Autonomy Proposal. For the text of the latter, see Lukacs, Yehuda, op.cit., pp.74-78.

223 Nafai, Ibrahim, op.cit.

224 The term "self-governing authority" was mentioned six times in paragraphs A.1(a), (b), (c) A2 and A3.

225 See paragraph A 1(a), the Camp David Accords.

226 el-Abdulah Hany, op.cit., 125-34.

227 See the First American Proposal at Camp David, op.cit.

228 Neil, Zakarya, Al Ahram (in Arabic)

229 Arab League Summit Conference Communique, Rabat, Morocco, 29 October, 1974 stated that: "To affirm the right of the Palestinian people to establish an independent national authority under the command of the Palestinian Liberation Organization, the sole legitimate representative of the Palestinian people in any Palestinian territory that is liberated. This authority, once it is established shall enjoy the support of the Arab States in all fields and at all levels. Lukacs, Yehuda, op.cit., p.223.

230 Nafai, Ibrahim, op.cit.



- 231 For more details on recent peace initiatives and the Israeli position in this respect, see, Shabib, Sameih, Palestine Affairs, op.cit., pp.102-106.
- 232 For the text of the letter, see letters appended to the Camp David Accords.
- 233 For the text of the Sadat-Begin Joint letter, see Appendix V of this work.
- 234 See the text of the Camp David Accords.
- 235 Quandt, W., op.cit., p. 244.
- 236 The Sadat-Begin Joint Letter, op.cit.
- 237 Ibid.
- 238 El Araby, Nabil, op.cit., p. 127.
- 239 Id.
- 240 Quandt, W., op.cit., p. 297.
- 241 Id.
- 242 See the text of the Camp David Agreement.
- 243 The Sadat-Begin Joint Letter, op.cit.
- 244 The First American Proposal at Camp David, Appendix III of this work.
- 245 This proposal was submitted by Egypt in 1989 and known as Mubarak Ten Points. See, Seidah, Ibrahim, An Israeli Crisis Caused by Mubarak, Al Akhbar, September, 20, 1989.
- 246 Nafai, Ibrahim, op.cit.
- 247 The Economist, November 11, 1989, p. 53.
- 248 See text of the Israeli Autonomy Plan of 1977, op.cit.
- 249 See text of the Israeli Autonomy Plan of 1982, op.cit.
- 250 American Answers to Jordanian Questions, Quandt, W, op.cit., p. 393.

- 251 Framework for Peace in the Middle East, Camp David Accords.
- 252 Id.
- 253 Government of Egypt, Proposed Model of Full Autonomy for the West Bank and Gaza Strip, 28 January 1980, see Appendix VI of this work
- 254 Israel Autonomy Proposals of 1977 and 1982, see Appendices I and VII of this work
- 255 Nafai, Ibrahim, op.cit.
- 256 El Araby, Nabil, op.cit., pp. 115-116.
- 257 See paragraph B.2(a) of the First American Proposal at Camp David.
- 258 For more details on the enactment of laws by Israeli military government, see for example, Blum, Yehuda, The Missing Reversionar Reflections on the Status of Judea and Samaria, 3 Israel Law Review, 1968, pp. 279-301.
- 259 Hannum, H. and Lillich, R., op.cit., p. 865.
- 260 Ibid, pp. 865-866.
- 261 The Egyptian Autonomy Proposal of 1980, particularly paragraph IV.
- 262 Id.
- 263 Id.
- 264 Id.
- 265 See the text of the Camp David Accords.
- 266 Quandt, W., op.cit., p. 256.
- 267 Brzezinski, Zbigniew, op.cit., p. 118.
- 268 Lapidoth, Ruth, Peace in the Middle East : Camp David, The Treaty and Beyond, ASIL Proc., 1980, p. 127.
- 269 See paragraph B.1(a) of the First American Proposal at Camp David.
- 270 Hannum, H. and Lillich, R., op.cit., p. 864.
- 271 Id.



- 272 See the text of Israeli Autonomy Plan of 1977, op.cit.
- 273 Id.
- 274 See the text of Israeli Autonomy Plan of 1982, op.cit.
- 275 According to Prime Minister Shamir: "Some form of autonomy for the Palestinians is the most that we can expect. There will be no Palestinian state, no talks with the P.L.O., and Israeli control over the vast bulk of the Occupied Territories will be maintained." See, Marcus, Jonathan, The Politics of Israel's Security, 65 International Affairs, 1969, p. 245.
- 276 Hannun, H. and Lillich, R., op.cit., p. 869.
- 277 Ibid., p. 869.
- 278 Ibid., p. 870.
- 279 Id.
- 280 Ibid., p. 872.
- 281 The Israeli Autonomy Plan of 1979, op.cit.
- 282 The Israeli Autonomy Plan of 1982, op.cit.
- 283 Egypt's Autonomy Proposal of 1980, op.cit.
- 284 Hannun, H. and Lillich, R., op.cit., pp. 861-863.
- 285 Id.
- 286 Blum, Yehuda, Peace in the Middle East, Camp David, The Treaty and Beyond, op.cit., p. 110.
- 287 See paragraph A.1(a), Camp David Accords.
- 288 Nafai, I., op.cit.
- 289 See the text of Israel's Autonomy Plan of 1977, op.cit.
- 290 Israel's Autonomy Proposal of 1982, op.cit.
- 291 Nafai, I., op.cit.
- 292 Egypt's Autonomy Proposal of 1981, paragraph 4(b), op.cit.

293 Nafai, I., op.cit.

294 Brzezinski, Z., op.cit., pp. 114-118.

295 Egypt's Proposal at Camp David submitted at September 6 1978.

296 Ibid.

297 Paragraph B.2(b) of the American Proposal submitted at Camp David on September 10, 1978, op.cit.

298 Blum, Y., Peace in the Middle East, op.cit., p. 110.

299 See the texts of the Proposals on Autonomy submitted by Egypt and Israel in 1980 and 1982 Appendices VI and VII..

300 Quandt, W., op.cit., p. 256.

301 See the Likud Party Platform 1981, Lukas, Yehuda, op.cit., p. 120.

302 Harmalani, Imad, Israel's Water Policy and its Effect on the Settlement Future, Palestine Affairs, p. 66.

303 Ibid, p. 63.

304 Devis, Yory and Others. Israel's Water Policy. Al thakafa Al Alamia, , Kuwait, September 1983, p. 24. (in Arabic)

305 Nafai, I., op.cit.

306 See Camp David Accords.

307 Quoted in El Araby, op.cit., p.127.

308 Hannum and Lillich, op.cit., p. 876.

309 Id.

310 See the text of Israel's Autonomy Plan of 1977.

311 See paragraph B. of the American Proposal submitted at Camp David on September 10, 1978.

312 Blum, Yehuda, Peace in the Middle East, op.cit.

313 Hannum and Lillich, op.cit., p. 862.

314 Paragraph A.1.6, Camp David Accords.



315 Id.

316 This view was expressed by Mahmoud Riad, former Secretary General of the Arab League and Egypt Foreign Minister. See, Riad, Mahmoud, The Struggle for Peace in the Middle East, Quartet Books, London, 1981, p. 325.

317 Id.

318 The American governments under Presidents Carter and Reagan expressed the view that the final status of the area should be linked to Jordan. See, Reagan's Peace Plan, September 1, 1982, Lukacs, Y., op.cit., p. 35. Also, Carter, J., The Blood of Ibrahim, op.cit p. 49. Also, the Labour Party of Israel believes that certain parts of the area should be finally linked to Jordan. See, Marcus, Jonathan, op.cit., pp. 234-235.

319 See paragraph A.1(b) of the Camp David Accords.

320 In the years immediately after the 1967 War, there was international understanding that Jordan possessed a revisionary interest in the West Bank and was the legitimate negotiating party for the conclusion of a treaty of peace with Israel. In Security Council Resolution 242 reference was made exclusively to ther 'states' of the region as the parties responsible for negotiating a peace. Jordan, in its relations with the West Bank, made it clear that the negotiation of Israeli withdrawal from the West Bank was Jordan's responsibility; the legitimate representatives of the West Bank were deemed to be its ministers in the Government of Jordan. For more details on this point, see, Horowitz, D., Political Adaptation Under Military Occupation : The Cause of the West Bank, June 1967, October

- 1973, Paper No.9, International Political Science Association Conference, Jerusalem, September 9 - 13, 1971. 12, N. 45.
- 321 Saunders, Harold; The Other Walls - The Politics of the Arab-Israeli Peace Process, American Enterprise Institute for Public Policy Research, Washington, 1985, p. 101.
- 322 El Araby, op.cit.
- 323 Quandt, W., op.cit., p. 244.
- 324 Blum, Y., Peace in the Middle East, op.cit.
- 325 See the text of the Camp David Accords.
- 326 Blum, Y., op.cit., ref. 192.
- 327 Id.
- 328 Paragraph A.1(c), Camp David Accords.
- 329 Blum, op.cit., ref. 192.
- 330 See Section one of this Chapter.
- 331 Blum, op.cit., p. 110.
- 332 The text of the Egyptian Proposal submitted at Camp David on September 6, 1978.
- 333 Carter, Jimmy, Keeping Faith. Memoirs of a President, Collins, London, 1982, p. 374.
- 334 For the text of the letter see : Letters appended to Camp David.
- 335 Brzezinski, op.cit., p. 261.
- 336 See the text of the American Proposal submitted at Camp David on September 10, 1978, op.cit.
- 337 Carter, Keeping Faith, pp. 337,374.
- 338 Paragraph A.2(c), Camp David Accords.
- 339 Ref. 337, op.cit.
- 340 Riad, Mohmoud, op.cit., p. 325.

341 Carter, J., *The Blood of Abraham*, op.cit., p. 45.

342 Reagan Peace Plan, 1 September 1982, Lukacs, Y., op.cit., p. 39.

343 See Section One of this Chapter.

344 El Araby, N., *Peace in the Middle East*, op.cit., p. 113.

345 Resolution 3236 of the General Assembly.

346 Bassiouni, M.C., *Self-Determination and the Palestians*, ASIL Proc.,  
pp. 31-34.

347 The Oral Pleading in the Western Sahara Case, ICJ Report (1975)  
p. 126, July 24, 1975.



Chapter FiveJerusalem

It is generally recognized that in any peace settlement in the Middle East the solution to the question of Jerusalem and its Holy Places will play a significant part. To a large extent this is true because Jerusalem is at the physical centre of the conflict and because the tension surrounding it is symbolic of the division between the Arabs and the Israelis. In the words of Sir Alec Douglas-Home:

"There is one special problem, which in some ways symbolizes the Arab/Israel problem as a whole. I mean the problem of Jerusalem. The complexity of this problem and the depth of feeling about the city are so great as to make any compromise between the positions of the two sides hard to conceive. Some agreement on the status of the city, some agreement providing for freedom of access to the Holy Places and for their protection will be an essential part of a settlement. But this may have to be almost the last problem to be tackled."

Nevertheless, the Camp David Agreements contain no reference to Jerusalem, although a reference was included in the exchange of three letters appended to the instruments by Presidents Carter and Sadat and Prime Minister Begin.

The Carter letter declared that the U.S. policy on Jerusalem remained as stated by Ambassadors Goldberg and Yost at the United Nations<sup>2</sup>.

The Begin letter pointed out that Israel's position was based on the law adopted by the Knesset on June 28, 1967 according to which the Israeli government was empowered by decree to apply the law, the

jurisdiction and the administration of the state to any part of Eretz Israel. Under this law, the Israeli government in July 1967 decreed that Jerusalem was one city indivisible and the capital of the state of Israel.<sup>3</sup>

The Sadat letter declared Egypt's position in some detail.<sup>4</sup> In the first place, Arab Jerusalem was an integral part of the West Bank and Gaza and, therefore, it should be under Arab sovereignty. Egypt considered all the measures taken by Israel to be null and void. It called also for the application of the relevant Security Council resolutions to Jerusalem, particularly Resolutions 242 and 267. Further, it proposed that the essential functions in the city should be undivided and a joint municipal council composed of an equal number of Arab and Israeli members should supervise the carrying out of these functions. As regards the Holy Places, Sadat indicated that all people must have free access to the city and to enjoy free exercise of worship. In this respect, he proposed that the Holy Places of each faith should be placed under the administration and control of their representatives<sup>5</sup>.

Clearly, these letters reflected a fundamental difference of opinion among the participants. Israel wanted to have permanent sovereignty over East Jerusalem, while Egypt held that the 'Old City' should be returned to the Arabs, as it was an integral part of Gaza and the West Bank. The U.S. adopted a vague position which could be construed as referring implicitly to the U.N. Plan for the Internationalization of Jerusalem.<sup>6</sup>

Despite such fundamental differences in their positions, it was no secret that at the Camp David talks they agreed after long and arduous discussions to a carefully-worded paragraph on this sensitive issue.<sup>7</sup>



This paragraph will be quoted and examined later<sup>e</sup>. However, as Carter recorded, after several days of unanimous agreement, both Sadat and Begin decided that there were already enough controversial elements in the Accords, and requested that this paragraph be deleted from the final text.<sup>9</sup>

A review of the political literature on Jerusalem reveals that various names have been used to refer to Jerusalem or certain parts of the city, e.g. the Old City, the Arab City, the Walled City, Eastern Jerusalem, the New City, the Jewish City, Western Jerusalem and the Holy City. Moreover, in much of Arab political literature, the word Jerusalem or "Al Qods" is usually used to refer to the Eastern Arab sector of the city taken by Israel in 1967.<sup>10</sup> These various names may cause confusion. It may be useful at the outset to refer to some geographical facts on Jerusalem to clarify the exact extent of the area under discussion.

Jerusalem is located on the ridge of the Judean Mountains between the mountains of Beth-El in the north and of Hebron in the south. To the west of the city are slopes of the Judean Mountains, and to the east lies the Judean desert, which descends to the Dead Sea.<sup>11</sup> Jerusalem, or the Holy City, has three parts, the Walled City, the Arab quarter north of the Walled City, and the New City west of it.

So far as the Walled City is concerned, it is the religious focus of Jerusalem. Within the Walled City are the three edifices that most link each of the three great monotheistic religions to the Holy City: the Church of the Holy Sepulchre, the Mosque Haram esh Sharif, and the Wailing Wall. It is an extremely small area, whose walls were erected by the Ottomans in 1542. The population within the Walled City has been



almost entirely Arab for over a thousand years.<sup>12</sup> The British Mandatory Government's census for 1931 found 25,183 people living within the Walled City at that time. Of this total, some 20,000 were Arabs (both Christian and Muslim), about 5,000 were Jews, with a handful of Armenians. Subsequent to that date, there was a steady decline in the Jewish population within the Walled City, accounting for 4,000 in 1946 and about 2,000 in April 1948.<sup>13</sup>

Outside the Walled City, generally running north of the walls is an area populated almost entirely by Arabs. This area is known as the Arab quarter.<sup>14</sup> The words "East Jerusalem" refer to the area embracing the Walled City and the Arab quarter north of it.

To the west of the Walled City is the New City, by far the most populous section, and predominantly Jewish. It was established in the mid-nineteenth century by a number of American Jews who sent sizable contributions to foster a Jewish community in the Jerusalem area<sup>15</sup>. It began as a housing project near the Walled City for Jews. From this nucleus the New City grew slowly north and west of the Walled City. The great bulk of the Jewish population of Jerusalem is, however, of recent origin. Only after the establishment of the British Mandate over Palestine in the 1920s did the Jewish Community in Jerusalem grow to any significant size.<sup>16</sup> By 1931 some 46,000 Jews were living in the New City, and by 1946 the number had grown to 95,000, the increase primarily the result of Jewish immigration to Palestine following the rise of Hitler. By 1948 the Jewish population in the New City exceeded 100,000.<sup>17</sup>

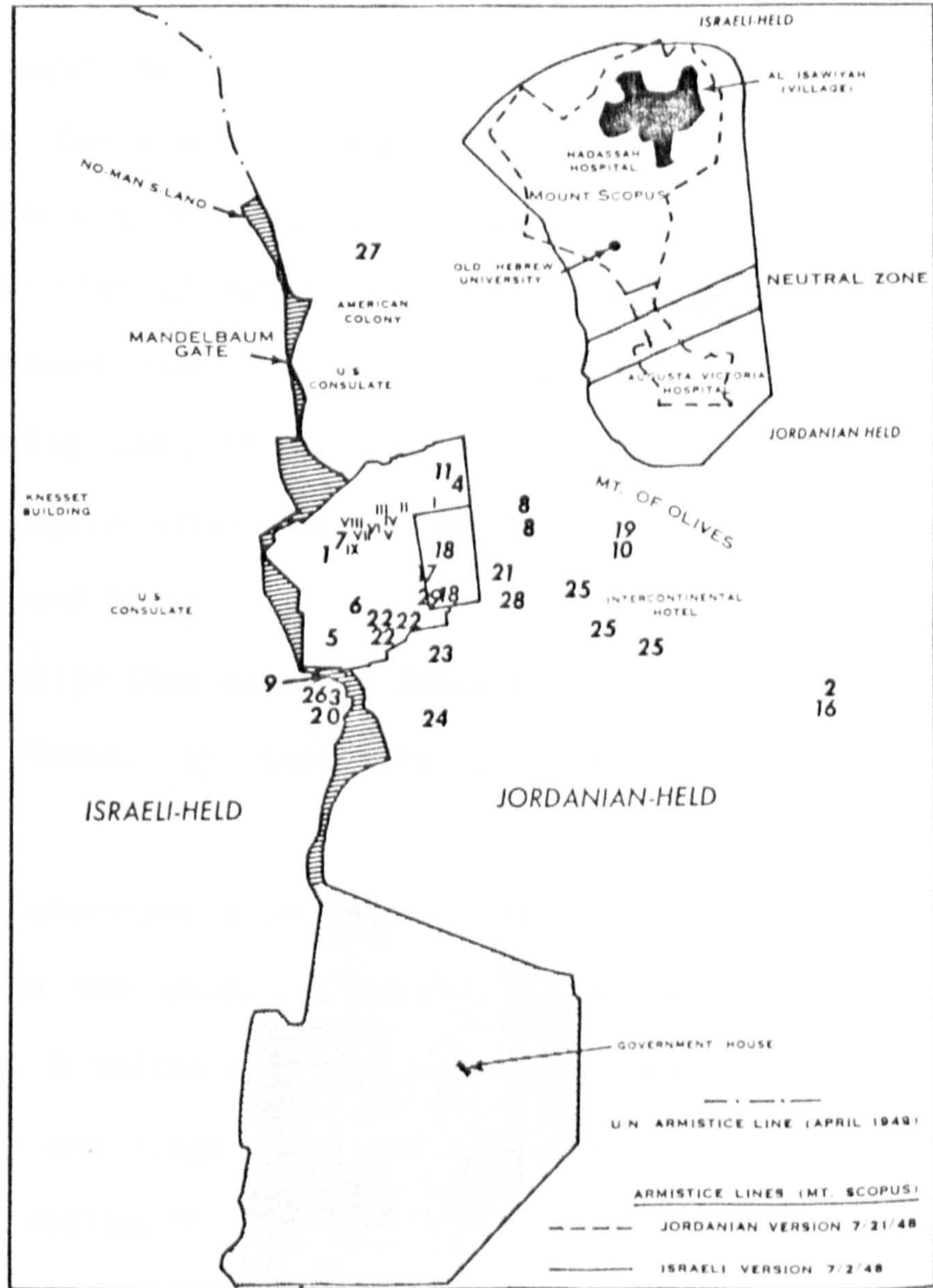
In conclusion, Jerusalem is essentially two cities; an Arab East Jerusalem and a Jewish West Jerusalem. It is within East Jerusalem that



one finds virtually all of the Holy Places; this is, in fact, the "Jerusalem" of religious significance. In contrast, West Jerusalem is modern, more expressive of Western culture, and linked politically, economically and ideologically with the Israeli communities along the Mediterranean coast rather than with the immediate hinterland of the Holy City.<sup>1a</sup>

ACCORDING TO THE MOUNT SCOPUS AGREEMENT OF JULY 7, 1948, THE WHOLE OF THE MOUNT SCOPUS AREA WAS UNDER U.N. PROTECTION. THERE WAS ALSO A NO-MAN'S-LAND ALONG THE MAIN ROAD BETWEEN AUGUSTA VICTORIA HOSPITAL AND THE HEBREW UNIVERSITY BUILDINGS.

GOVERNMENT HOUSE AND THE SURROUNDING AREA WAS HANDED OVER TO THE UNITED NATIONS IN OCTOBER 1948 BY THE INTERNATIONAL RED CROSS IN PURSUANCE OF AN AGREEMENT WITH THE MANDATE POWER.



LIST OF HOLY PLACES TAKEN FROM U.N. MAP NO. 229, NOVEMBER 1949, U.N. PRESENTATION 1485

CHRISTIAN	MUSLIM	JEWISH
1. BASILICA OF THE HOLY SEPULCHRE *		
2. BETHANY		
3. CENACLE		
4. CHURCH OF ST. ANNE		
5. CHURCH OF ST. JAMES THE GREAT		
6. CHURCH OF ST. MARK		
7. DEIR AL SULTAN *		
8. TOMB OF THE VIRGIN * AND GARDEN OF GETHSEMANE		
9. HOUSE OF CAIPHAS AND PRISON OF CHRIST		
10. SANCTUARY OF THE ASCENSION * AND MOUNT OF OLIVES		
11. POOL OF BETHESDA		
12. 'EIN KARIM **		
13. BASILICA OF THE NATIVITY, BETHLEHEM * **		
14. MILK GROTTO BETHLEHEM * **		
15. SHEPHERDS FIELD, BETHLEHEM * **		
I TO IX INCLUSIVE		
STATIONS OF THE CROSS		
	16. TOMB OF LAZARUS	
	17. EL BURAK ESH-SHARIF	
	18. HAREM AL-SHARIF (MOSQUE OF UMAR AND MOSQUE OF ASKAI)	
	19. MOSQUE OF THE ASCENSION	
		20. TOMB OF DAVID (NEBI DAQUD)
		21. TOMB OF ABSALOM
		22. ANCIENT AND MODERN SYNAGOGUES
		23. BATH OF RABBI ISHMAEL
		24. BROOK SILDAM
		25. CEMETARY ON MOUNT OF OLIVES
		26. TOMB OF DAVID
		27. TOMB OF SIMON THE JUST
		28. TOMB OF ZACHARIAH AND OTHER TOMBS IN HIRON VALLEY
		29. WAILING WALL *
		30. RACHAEL'S TOMB * **

\* HOLY PLACE TO WHICH THE STATUS QUO APPLIES  
 \*\* HOLY PLACES IN INTERNATIONAL AREA OF JERUSALEM NOT SHOWN ON THIS MAP

Map 10 The Holy Places in Jerusalem



Jerusalem is one of the oldest cities in the world and was founded by the Canaanites in the eighteenth century B.C. Thus the city was in existence before the arrival of the Israelites in the land of Canaan. According to the Jewish Encyclopaedia, Jerusalem was expressly called a "foreign city" not belonging to the Israelites.<sup>19</sup>

Since its foundation, the city has changed hands more than twenty-five times. We can begin with the Jebusites, a Canaanite subgroup who inhabited the city for some 800 years. During these years Jerusalem remained a Canaanite city.<sup>20</sup> Around 1000 B.C. it was captured by David and claimed as the City of David. It should be noted, however, that when David captured the city he did not displace its original inhabitants, allowing them to remain in their city. Later it was conquered by one empire after another Babylonian, Persian, Macedonian, Ptolemaic, Selucid and Roman.

In 638 A.D. the Caliph Omar captured Jerusalem for Islam. Later it was held by Seljuk Turks, by Christian Crusaders, and by Egyptian Mameluks.<sup>21</sup>

During the four centuries from 1517 to 1917, Jerusalem, as part of Palestine, was under the exclusive control of the Ottoman Empire. For four hundred years, a united city was governed by a single sovereign in a manner which by and large permitted adequate pursuit of the three dominant religious faiths.<sup>22</sup>

From 1917 to 1947, Jerusalem was under British control, first as occupiers of the city during and immediately after the First World War and then as the administering authority under the League of Nations mandate granted in 1922. During this period the city was governed by a single sovereign.



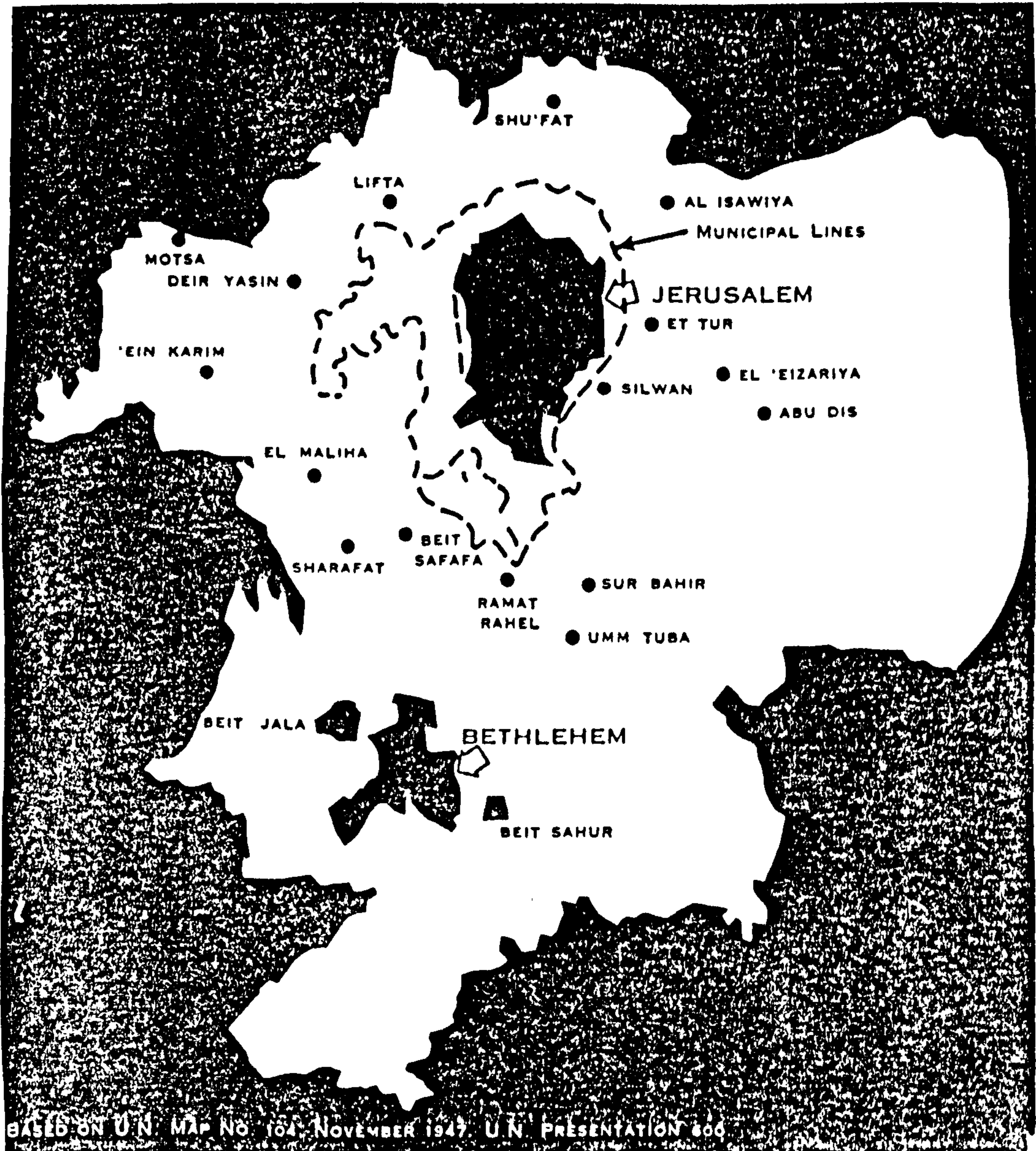
Thus, as far as title is concerned, we may observe that during 3000 years of history, control over Jerusalem has been almost invariably acquired by conquest. However, in 1923, by Article 16 of the Treaty of Lausanne of 1923, Turkey renounced all rights and titles to Palestine and agreed that the future of the territory was to be settled by the parties concerned, i.e. the Principal Allied and Associated Powers<sup>23</sup>. In fact, the "parties concerned" had already settled the future of Palestine. On July 24, 1922, the League of Nations, with the assent of the Principal Allied and Associated Powers, had granted a mandate in respect of Palestine to the British Government<sup>24</sup>

Hence, as Lauterpacht rightly observed, we have a situation in which Turkey's title to Palestine devolved upon the Principal Allied and Associated Powers which, in turn, had in effect conveyed their rights to the League of Nations.<sup>25</sup>

After the grant of the mandate, sovereignty over Palestine, according to the prevailing view, was vested in the League and the administering authority acting jointly<sup>26</sup>. In 1946, the League of Nations was dissolved. There was, however, no formal conveyance by the League to the U.N. of the rights and powers of the former in relation to the mandated territories<sup>27</sup>. In 1950, however, the International Court of Justice in an advisory opinion on the International Status of South-West Africa expressed the view that the status of a mandated territory transferred from the League of Nations to the United Nations could be altered only with the consent of the United Nations.<sup>28</sup>

Towards the end of the British mandate, the Palestine Partition Resolution was adopted by the General Assembly in 1947 providing for the establishment of Jerusalem as corpus separatum under a special



Map 11 Jerusalem internationalized The. Corpus Separatum

### JERUSALEM INTERNATIONALIZED, THE CORPUS SEPARATUM

THE CITY OF JERUSALEM SHALL BE ESTABLISHED AS A CORPUS SEPARATUM UNDER A SPECIAL INTERNATIONAL REGIME AND SHALL BE ADMINISTERED BY THE UNITED NATIONS. THE TRUSTEESHIP COUNCIL SHALL BE DESIGNATED TO DISCHARGE THE RESPONSIBILITIES OF THE ADMINISTERING AUTHORITY ON BEHALF OF THE UNITED NATIONS.

THE CITY OF JERUSALEM SHALL INCLUDE THE PRESENT MUNICIPALITY OF JERUSALEM PLUS THE SURROUNDING VILLAGES AND TOWNS, THE MOST EASTERN OF WHICH SHALL BE ABU DIS; THE MOST SOUTHERN BETHLEHEM; THE MOST WESTERN 'EIN KARIM (INCLUDING ALSO THE BUILT-UP AREA OF MOTSA); AND THE MOST NORTHERN SHU FAT, AS INDICATED ON THE ATTACHED SKETCH-MAP (ABOVE).

JERUSALEM ACCORDING TO THE U.N. PARTITION PLAN ADOPTED BY THE GENERAL ASSEMBLY, NOVEMBER 29, 1947, SECTIONS A AND B FROM PART III OF RESOLUTION 181(II)A.



international regime to be administered by the Trusteeship Council of the United Nations.<sup>29</sup> Thus, the city was to fall outside the jurisdiction of the Jewish and Arab states envisaged by the Partition Resolution. The three territorial units, Jerusalem and the two independent states, were to be linked in an economic union. Under this plan, Jerusalem would have been a city of approximately equal Arab and Jewish populations, with Moslem Arabs more numerous than Christian Arabs.<sup>30</sup>

In 1948 the first Arab-Israeli war broke out. By the end of this war, Jordanian forces had seized the Arab sector of the city, while Israeli forces had captured Western Jerusalem. Later, on April 3 1949, Israel and Jordan signed an armistice agreement in which the de facto division of Jerusalem and its consequent non-internationalization was crystalized<sup>31</sup>. Under Article 8 of this agreement free access to the Holy Places in the city was guaranteed by the parties.<sup>32</sup>

While Jordan and Israel took steps to formalize their respective control over East and West Jerusalem, the United Nations continued to discuss the internationalization of the Holy City. On December 11, 1948, the General Assembly asked the Palestinian Conciliation Commission to present "detailed proposals for a permanent international regime for the Jerusalem area"<sup>32</sup>. In the same resolution, the General Assembly again affirmed its position that the Holy Places "be under effective United Nations supervision"<sup>33</sup>.

During the same period, the Arab League Council, in October 1949 adopted a resolution in favour of the internationalization of Jerusalem.<sup>34</sup> This resolution reflected a shift in Arab policy which was not accepted by Jordan. In 1950, the Ruler of Jordan declared the



unification of Jordan and the West Bank with East Jerusalem as a second capital of the new state<sup>35</sup>. In the same year, the Knesset adopted a resolution to proclaiming Jerusalem the capital of Israel<sup>36</sup>

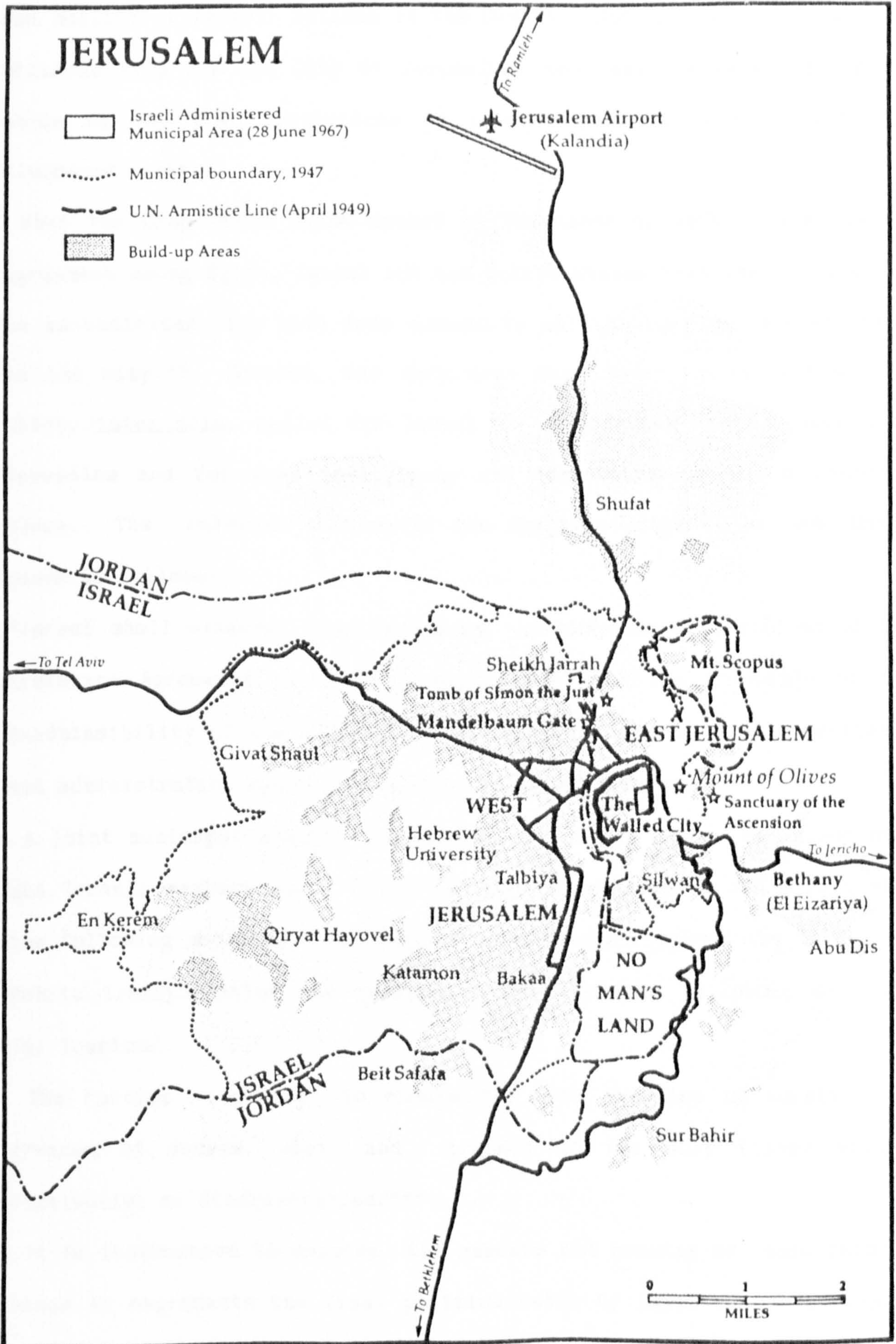
From 1949 to 1967 the U.N. took no action with regard to the status of Jerusalem. Lauterpacht held the view that the absence of the question of Jerusalem from discussions in the U.N. for fifteen years meant that the members were content to accept the de facto unilateral control of Israel and Jordan over the Holy Places within their respective jurisdictions.<sup>37</sup>

In 1967 Israeli forces occupied East Jerusalem during the Six-Day War and the Jordanian forces which had governed the city since 1948, were driven out. As soon as the Israelis entered the Old City they took several measures to reunite the administration of the two parts of the city.<sup>38</sup> On June 27 the Israeli Knesset enacted three laws to enable the Israeli authorities to take the necessary measures for the unification of Jerusalem. Under this enactment East Jerusalem was regarded as part of the municipal City of Jerusalem.<sup>39</sup>

The Israeli action on Jerusalem provoked criticism at the United Nations.<sup>40</sup> Some members described the administrative and legislative measures taken by Israel for the unification of the city as annexation<sup>41</sup>. On July 4, 1967, the General Assembly (by a vote of 99 to 0 with 20 abstentions) adopted a resolution in which it expressed its deep concern at the situation in Jerusalem resulting from the measures taken by Israel to change the status of the city. The resolution considered the measures 'invalid' and called upon Israel to rescind them.<sup>42</sup>



Map 12 Jerusalem after 1967





Although U.N. resolutions since 1967 have emphasized the illegality and nullity of Israeli actions in the Old City and called upon Israel to withdraw from the Old City of Jerusalem, the Israelis have refused to abide by the U.N. resolutions in this respect. This point will be discussed later.

When the Camp David talks opened on September 5, 1978, there was an agreement among Egypt, Israel and the United States that Jerusalem would be an undivided city with free access to all the Holy Shrines situated in the city.<sup>43</sup> However, the very next day, Sadat submitted a plan which, inter alia, called for Israel to relinquish control over Arab Jerusalem and for Arab sovereignty and administration to be restored there. The relevant version of the Egyptian proposal at Camp David reads as follows:

"Israel shall withdraw from Jerusalem to the demarcation lines of the Armistice Agreement of 1949 in conformity with the principle of the inadmissibility of the acquisition of territory by war. Arab sovereignty and administration shall be restored to the Arab Sector.

A joint municipal council composed of an equal number of Palestinian and Israeli members shall be entrusted with regulating and supervising the following matters: (a) Public utilities throughout the City; (b) Public transportation and traffic; (c) Postal and telephone services; (d) Tourism.

The Parties undertake to ensure the free exercise of worship, the freedom of access, visit and transit to the Holy Places without distinction or discrimination."<sup>44</sup>

It is instructive to examine the genesis and meaning of this formula, since it represents the final position taken by Egypt on the Jerusalem



question as expressed in Sadat's letter appended to the Treaty Like the military withdrawal from Egypt's territory, the legal basis of Israel's withdrawal from East Jerusalem was the principle of the inadmissibility of the acquisition of territory by force. Such language on the inadmissibility of the acquisition of territory by force was taken from the Preamble to Security Council Resolution 242. The prevailing view was that Israel is obliged under the Resolution to withdraw from all the territories it seized in the Six-Day War<sup>45</sup>, thus rejecting all Israeli claims that East Jerusalem is outside the scope of the withdrawal envisaged by the Resolution.

This view is consistent with the Arab League's view expressed on many occasions. For example, the Arab League Peace Plan adopted in Fez on September 9, 1982 is based on several principles, among which is "the withdrawal of Israel from all Arab territories occupied in 1967 including Arab Al Qods"<sup>46</sup>.

The view that Jerusalem is part of the Arab occupied territories was held by the US when the question of Jerusalem was debated before the Security Council in 1969. The US position as expressed by Ambassador Yost, in July 3 1969, will be examined later. It may be sufficient at this stage to note that he made it clear that the US considers that the part of Jerusalem that came under the control of Israel in the June war is occupied territory.<sup>47</sup>

So far as sovereignty is concerned, it is clear that Egypt's proposal on Jerusalem was not in line with the idea of the unification of Jerusalem. Rather, Egypt preferred a divided city in which both the Israelis and Arabs could exercise full sovereignty over their respective sectors of the city. A divided Jerusalem with two sovereigns

was inconsistent, not only with the U.N. resolutions on Jerusalem, but also with Israel's position calling for a unified Jerusalem under its sovereignty.

Egypt's position was inconsistent with the special international regime for Jerusalem which was defined by the 1947 Partition Resolution and then redefined by General Assembly Resolution 149 on December 11, 1948. It was recommended that the City of Jerusalem be established as corpus separatum under a special international regime, to be administered by the Trusteeship Council on behalf of the United Nations. This regime was to involve the appointment of a governor, responsible to the Trusteeship Council, the establishment of a special police force whose members were to be recruited from outside Palestine, the election of a legislative council and the demilitarization of the City. It was recommended that the internationalization should cover the entire area of greater Jerusalem. Thus, the city was to fall outside the jurisdiction of the Jewish and Arab states envisaged by the Partition Resolution.<sup>49</sup>

From the above, it is clear that, unlike the Egyptian proposal, the relevant U.N. resolutions neither approved Arab or Israeli sovereignty over Jerusalem nor envisaged a divided city. Further, Egypt's demand for Arab sovereignty over East Jerusalem was not in line with Israel's policy and practice with regard to East Jerusalem since 1967.<sup>49</sup>

As far as the Holy Places were concerned, Egypt's demand for the free exercise of worship and freedom of access to the Holy Places was consistent with the relevant U.N. resolutions - indeed perhaps the expression "free exercise of worship" was taken from Article 13 of the Mandate over Palestine.<sup>50</sup>



Nevertheless, it may be noted that, while Article 15 of the Mandate provided that the freedom of access to the Holy Places and the free exercise of worship were subject to the maintenance of public order and morals, Egypt's proposal contains no similar limitations or conditions. At this point, it is worth mentioning that Israel's Draft Resolution submitted to the U.N. with regard to the Holy Places on November 1947 suggested a similar restriction. Article 4(7) of this Draft reads:

"Subject only to requirements of national security, public order and decorum, health, liberty of access, visit and transit to the Holy Places in Jerusalem shall be accorded to all persons without distinction in respect of nationality in conformity with the rights in force on 14 May 1948."<sup>51</sup>

A similar restriction can be found in Article 29 of the Draft Statute for the City of Jerusalem prepared by the Trusteeship Council:

"Subject only to the requirement of public order and security and of public morals and public health, freedom of entry into and of temporary residence in the City shall be ensured to all foreign pilgrims and visitors without distinction as to nationality or faith."<sup>52</sup>

Similarly, Article 13(b) of Part III of the original Partition Resolution 181 subjected the free access to the Holy Places and the free exercise of worship to the requirement of public order and decorum.<sup>53</sup> The formulation of the paragraph on the proposed joint municipal council seems to imply that the administration of the city would be shared, with the authority of both the Palestinians and Israelis extending to political and economic spheres as well as other matters. Such a re-division of the administration of the city was not accepted by Israel. It could also mean that the Palestinians would participate in the

administration of the western part of the city, the sector upon which Israel had exercised de facto full sovereignty since 1948.

Finally, Egypt's proposal defined the final line of the Israeli withdrawal from East Jerusalem in terms of the Armistice line of 1949. Such reference to the 1949 Armistice Agreement between Jordan and Israel could mean that Egypt was rejecting the Israeli demand to establish a new and final borderline in Jerusalem which would be different from the pre-June 1967 line.<sup>54</sup>

The Egyptian draft on Jerusalem provoked sharp criticism among the Israeli delegation.<sup>55</sup> The draft was totally unacceptable even as a starting point for negotiations for several reasons. The language on the inadmissibility of acquisition of territory by war had consistently been objected to by the Israelis.

Also, the reference to an Israeli withdrawal to the 4 June 1967 line or the 1949 armistice line was contrary to Israel's long-standing position that the pre-June line did not constitute a final and permanent international boundary.<sup>56</sup>

Further, so far as sovereignty over East Jerusalem is concerned, the Israelis were not willing to give it up to the Jordanians or the Palestinians. As we shall discuss later, the Israelis have their own legal claims in respect of sovereignty over East Jerusalem.<sup>57</sup>

Finally, had Egypt's proposal been accepted, Jerusalem would have been re-divided again. Israel was not willing to accept such a re-division. Moreover, before entering the negotiations, there existed an implicit agreement among the parties that the Holy City must remain undivided.<sup>58</sup>



Predictably, the sharp differences between the Egyptians and the Israelis resulted in deadlock on the Jerusalem question.

The Americans attempted to break the deadlock. Carter, who was unofficially informed by Sadat that Egypt's proposal did not represent its final position,<sup>59</sup> set about drafting an American proposal which he hoped would bridge the gap between the parties.

On September 10, an American draft was submitted. Paragraph B(5) of this draft dealt with the Jerusalem question in the following terms:

"Jerusalem, the city of peace, shall not be divided. It is a City holy to Jew, Muslim and Christian and all peoples must have free access to it and enjoy the free exercise of worship and the right to visit and transit to the Holy Places without distinction or discrimination. The Holy Places of each faith will be under the administration of their representatives. For peace to endure, each community in Jerusalem must be able to express freely its cultural and religious values in an acceptable political framework. A representative municipal council shall supervise essential functions in the city. An agreement on relationships in Jerusalem should be reached in the negotiations dealing with the final status of the West Bank and Gaza."<sup>60</sup>

Clearly, this was a carefully-worded paragraph in respect of which some observations require to be made.

In the first place, we may observe that the key features of the Jerusalem clause in the American plan closely parallel certain recommendations of a 1975 Middle East Study Group convened by the Brookings Institution.<sup>61</sup> According to the Report of this Study Group, the Jerusalem question could only be resolved within the framework of a general settlement, if the following criteria, as a minimum, were

fulfilled: (a) there should be unimpeded access to all the Holy Places and each should be under the custodianship of its own faith; (b) there should be no barriers dividing the city which would prevent free circulation throughout it; (c) each national group within the city should, if it so desires, have substantial political autonomy within the area where it predominates.<sup>62</sup>

The wording of the American draft distinguished between the secular administration of the City of Jerusalem on the one hand, and the religious administration of the Holy Shrines on the other. In respect of the former, the text contained no clear language on the question who would be responsible for the secular administration of the city. While it referred to a "representative municipal council" to "supervise the essential functions", there was no clear indication of the composition of this council or what was meant by "essential functions." Clearly, this vague language was deliberately employed. So far as religious administration is concerned, the text made it clear that the Holy Places of each faith would be under the administration of their representatives.

The American attitude towards the religious places was in line with the U.S. policy under President Lyndon Johnson, in particular his statement of June 19, 1967:

"There must be adequate recognition of the special interest of the three great religions in the Holy Places of Jerusalem."<sup>63</sup>

This statement drew a distinction between the City of Jerusalem on one hand and the Holy Places on the other. The U.S., under this statement, was only interested in the Holy Places.



Moreover, this clause, unlike Egypt's proposal, contained no mention of restoring Arab sovereignty over East Jerusalem. Nor did it refer to any Israeli withdrawal from the Old City to the pre-June lines. To say this is not to interpret the American proposal as ruling out any possible Israeli withdrawal or the restoration of Arab sovereignty over East Jerusalem. In fact, the draft made it clear that the final status of the city must be negotiated between the parties concerned.

The reference to a "municipal council" was taken from Egypt's draft. Yet, the Americans avoided any reference to the composition of that council. In other words, they deleted Egypt's phrase that the Council was to be composed of an equal number of Palestinian and Israeli members". Undoubtedly, the aim of such deletion was to satisfy the Israelis. Further, the functions of that council were not defined. The term "essential functions" provided no clear indication in this respect. One must admit that many practical difficulties might arise in respect of this composition and the functions of that council. The only alternative to overcome such difficulties was clear language.

The phrase "each community in Jerusalem must be able to express freely its cultural and religious values in an acceptable political framework" was used to satisfy the aspirations of the Arab Palestinians in Jerusalem. Clearly, it implied some kind of autonomy for the Arab society in Jerusalem. We may observe that the word "must" was used instead of other words, such as "should" or "may", in order to emphasize the meaning intended, i.e. that Arab affairs were to be taken out of the hands of the Israelis. In other words, considerable local autonomy should be guaranteed to both the Palestinians and Israelis in Jerusalem.

This idea, as mentioned earlier, was taken from the recommendations of the 1975 Middle East Study Group on Jerusalem

With regard to free access to the city and the freedom of worship, the American draft, like Egypt's draft, did not provide that such freedom of worship could be subjected to conditions of Israel's national security or public order.

Finally, no reference to any form of internationalization of Jerusalem was made. The U.S. had obviously abandoned its earlier view on the internationalization of Jerusalem and left the future of the city to be decided by its inhabitants and not by any outside power.

From an Israeli perspective, the text was acceptable. It contained no mention of an Israeli withdrawal from East Jerusalem. Nor did it refer to any restoration of Arab sovereignty over East Jerusalem. Also, reference to the inadmissibility of acquisition of territory by force was deleted. Finally, there was no reference to the city being divided. Begin described this text as "a beautiful number, deeply appreciated and positive."<sup>64</sup> Yet, Begin proposed the insertion of the words "the capital of Israel" after the word "Jerusalem"<sup>65</sup> so as to read "Jerusalem the capital of Israel." Begin's proposal was dropped when Dayan ridiculed the idea that Sadat might accept such wording.<sup>66</sup>

The Egyptians, on the other hand, believed that this text reflected a substantial retreat from the previous US position.<sup>67</sup> Carter tried to convince Sadat that it would be better not to attempt to solve the Jerusalem problem at Camp David. Rather, it was better for Sadat to let King Hussein and others share the responsibility for any agreement concerning the Holy City.<sup>68</sup> However, perhaps because of the pressure



exercised on Sadat by the Egyptian delegation, Sadat asked the Americans to amend their text.

Consequently, the Americans amended the Jerusalem clause to be read as follows: "Jerusalem, the city of peace, is holy to Judaism, Christianity, and Islam, and all peoples must have free access to it and enjoy the free exercise of worship and the right to visit and transit to the holy places without distinction or discrimination. The holy places of each faith will be under the administration and control of their representatives. A municipal council representative of the inhabitants of the city shall supervise essential functions in the city such as public utilities, public transportation, and tourism and shall ensure that each community can maintain its own cultural and educational institutions."<sup>68</sup>

There are three differences between the original and the amended texts. While the original version contained no mention of the proposed municipal council, the phrase "representatives of the inhabitants of the city" was inserted after the word "municipal council." The purpose of this addition was to confirm the idea that the Arab inhabitants would participate in the administration of the city.

The amended version provided three examples of the term "essential functions." Indeed, the phrase "such as public utilities, public transportation and tourism", could mean that the secular administration of the city would be shared with the authority of Arab and Israeli inhabitants extending to civic, public, economic and religious life of the city.

The first draft did not specify which authority would be responsible for guaranteeing that each community could maintain its own culture and

educational institutions. The amended draft made it clear that the municipal council was to assume this responsibility.

Despite these amendments which favoured the Arab inhabitants of Jerusalem, the version remained acceptable to the Israelis so long as it did not call for their military withdrawal from, nor refer specifically to the restoration of Arab sovereignty over, East Jerusalem.

As to the Egyptians, Sadat, who was partly satisfied by the amended text, was 'induced' by Carter to accept the text on the understanding that there would be an exchange of letters confirming the historic U.S. position that East Jerusalem was part of the West Bank and Gaza.<sup>70</sup>

On September 14, Sadat informed Carter that he could only accept the Jerusalem clause if provision was made for the flag of Islam to fly over Islamic Holy Places, although he expected that Begin would be reluctant to agree to this because of its symbolism of sovereignty.<sup>71</sup> As expected, Begin rejected this proposal.

Yet, on September 16, the second last day of the Camp David Conference, Carter told the Israelis that Sadat accepted the paragraph as drafted, but that he wanted "a separate exchange of letters so that each nation could make public its own different ideas as part of the official records." "The Israelis would not have to participate in the exchange" Carter added "but could let their views be known if they preferred."<sup>72</sup>

In accordance with Carter's promise to Sadat, the Americans prepared a draft letter stating the U.S. position on Jerusalem. It read in part as follows:

"In the official US view East Jerusalem should be considered occupied territories subject to the provisions of the Geneva Convention of 1949 and its final status should be resolved in future negotiations."<sup>73</sup>



The wording of the draft indicates clearly that, so far the final status of Jerusalem was concerned, the US would support the withdrawal of the Israeli forces and the restoration of Arab sovereignty over East Jerusalem.<sup>74</sup>

In spite of the fact that there was nothing new in the formulation of this letter, which has been taken from statements by two former U.S. ambassadors to the United Nations,<sup>75</sup> the Israelis sharply criticized it. They maintained that Carter had reversed his earlier stand on supporting the unification of Jerusalem.<sup>76</sup> They also considered that the wording of the draft letter was in conflict with the agreed paragraph on Jerusalem.<sup>77</sup> Further, the Israelis doubted that international law accorded any legal effect to a presidential pronouncement appended to an international treaty.<sup>78</sup> Dayan argued:

"The agreement to be signed was an Israel-Egypt Agreement. Why then should it include a statement on the position taken by the United States? Was it an agreement between Israel and the United States?"<sup>79</sup>

Hence, the Israelis declared that they would not sign any agreement to which was attached a letter proclaiming Jerusalem as occupied territory.

Begin threatened to walk out of the negotiations, and he seemed to be serious.<sup>80</sup> This resulted in a crisis which threatened to terminate the whole proceedings.<sup>81</sup>

Ultimately, it was agreed that the U.S. would restate its position by referring to the Goldberg and Yost statements, but would not quote from them.<sup>82</sup>

From the Israeli view, Carter's decision to omit any specific reference to Jerusalem as an occupied city made the letter impartial.<sup>83</sup> The

reference to Goldberg could satisfy Begin, and the reference to Yost could satisfy Sadat in part.<sup>84</sup>

However, Quandt believed that "in substantive terms this changed nothing. But somehow Begin was able to accept the less precise formulation."<sup>85</sup>

We proceed now to examine the final position adopted by Egypt, Israel and the U.S. as expressed in the letters appended to the Accords.

As regards the U.S., we may observe at the outset that, in spite of the fact that it signed the Camp David agreements simply as a witness and not as a party, it found it necessary and proper to publicly define its position on the issue of Jerusalem. On no other issue did the U.S. feel compelled to set forth an official independent viewpoint in the final document.<sup>86</sup>

The Carter letter, which was directed to Sadat and not to Begin,<sup>87</sup> read in part as follows:

"The position of the United States on Jerusalem remains as stated by Ambassador Goldberg in the United Nations General Assembly on July 14, 1967, and subsequently by Ambassador Yost in the United Nations Security Council on July 1, 1969."<sup>88</sup>

Two points are worthy of note. The reference to statements by Goldberg and Yost indicates clearly that there was nothing new in respect of the U.S. position vis a vis Jerusalem. In fact, the former position, adopted by the U.S. at the U.N. in 1967 and 1969, had been examined in several writings. It does not seem necessary, therefore, to repeat what had been said.<sup>89</sup> Suffice it to refer in brief to the main outlines of the Goldberg and Yost statements, noting the argument that there existed a contradiction between the Goldberg statement and that of Yost.



On July 14, 1967 Ambassador Goldberg had occasion to deliver a major policy address to the General Assembly on the subject of Jerusalem. In the face of Israel's refusal to restore the status quo ante as called for by the Assembly's July 4 Resolution, Pakistan had introduced a new draft resolution deploring Israel's stand and reiterating the call to Israel to rescind all measures taken. Its draft resolution was adopted without opposition (by a vote of 100 to 0 with 18 abstentions including the US).<sup>20</sup> In explaining the US vote, Ambassador Goldberg indicated his country's position on the Jerusalem question.<sup>21</sup> The key features of this position can be summarized briefly.

As regards the Israeli occupation of East Jerusalem, there was no mention of Israel as a military occupier. Nor was there any reference to the restoration of Jordanian or Arab sovereignty over East Jerusalem.

As regards the legislative and administrative measures taken by Israel for the unification of Jerusalem, Goldberg indicated that these measures do not constitute annexation in the view of the US Government. In his words:

"The resolution (of the General Assembly on July 4) does not fully correspond to our views, particularly since it appears to accept by its call for rescission of measures that the administrative measures taken constitute annexation of Jerusalem by Israel."<sup>22</sup> This may be understood as implying American approval of the measures taken by Israel. Such approval, however, had no legal effect on the future status of the Holy City. This was clearly indicated by Goldberg:

"With regard to the specific measures taken by the government of Israel on June 28, I wish to make it clear that the United States does not accept or recognize these measures as altering the status of Jerusalem.

My Government does not recognize that the administrative measures taken by the Government of Israel on June 28 can be regarded as the last word on the matter, and we regret that they were taken. We insist that the measures taken cannot be considered other than interim and provisional, and not prejudging the final and permanent status of Jerusalem."<sup>33</sup>

This view on the effect of the Israeli measures was based on a statement issued by the State Department on June 28, 1967, which confirmed that such action "cannot be regarded as determining the future of the Holy Places or the status of Jerusalem in relation to them."<sup>34</sup>

As far as the Holy Places were concerned, Goldberg quoted his earlier statement to the General Assembly on July 3, 1967:

"the safeguarding of the Holy Places, and freedom of access to them for all, should be internationally guaranteed; and the status of Jerusalem in relation to them should be decided not unilaterally but in consultation with all concerned."<sup>35</sup>

Goldberg made it clear that the above statement represents the considered and continuing policy of the United States Government. However, Goldberg provided no answer to the question of who would be responsible for guaranteeing this freedom. Presumably this question would be determined in the future by all the parties concerned. There was no specific reference to Israel assuming this responsibility.

Goldberg indicated that the United States did not "believe the problem of Jerusalem can realistically be solved apart from the other related aspects of Jerusalem and of the Middle Eastern situation."<sup>36</sup> As to who would have permanent sovereignty over East Jerusalem, Goldberg referred to the U.S. vote for the Latin American draft which called for the internationalization of Jerusalem.<sup>37</sup> Taking into account the fact that



the statement did not call for restoration of Jordanian sovereignty over, nor approved Israel's occupation of, East Jerusalem, it is clear that the U.S. adhered to its previous position that neither Jordan nor Israel should have sovereignty over the city; rather they should administer the city under the supervision of the United Nations.<sup>98</sup> There is no better quotation summarizing the U.S. policy on Jerusalem than that contained in a State Department memorandum:

"We believe that an agreement between Israel and Trans-Jordan looking toward the division of Jerusalem into two areas to be administered by the two countries would be an appropriate solution to the problem. However the United States cannot support any arrangement which would purport to authorize the establishment of Israeli or Trans-Jordanian sovereignty over parts of the Jerusalem area in view of the United Nations resolutions and our support thereof. The Israelis and Trans-Jordanians should be supervised in their administration of the City by a United Nations Commissioner, the principle of the internationalization of Jerusalem, in favour of which the world community has voted, thus being maintained."<sup>99</sup>

In January 19, 1969 the Nixon administration replaced the Johnston administration. Later that year, when the issue of the status of Jerusalem arose before the Security Council as a result of a Jordanian complaint about Israeli action in the city, the new U.S. Ambassador to the U.N., Charles Yost, had occasion to deliver a major policy statement to the Security Council, upon the US voting for Resolution 267 of July 3, 1969 which sharply criticized Israel for its policy in Jerusalem.<sup>100</sup> In addressing the Council on July 1, Yost defined his country's Jerusalem policy. The relevant and most important paragraph

of his speech described Israel as a military occupier of East Jerusalem:

"The United States considers that the part of Jerusalem that came under the control of Israel in the June war, like other areas occupied by Israel, is occupied territory and hence subject to the provisions of international law governing the rights and obligations of an occupying power."<sup>101</sup>

A careful study of the other parts of the Yost speech suggests that, with the exception of the above paragraph, it was in line with the views expressed by Goldberg in 1967.

An important question arises here in respect of the above-mentioned statements, namely, whether there is a difference between the U.S. Jerusalem policy under Goldberg and that under Yost. According to a reasonable view, the U.S. policy expressed by Yost represented a radical departure from the previous U.S. position indicated by Goldberg.<sup>102</sup> The extent to which the Yost statement diverged from the views expressed by his predecessor at the U.N. is best revealed in a letter which appeared in the New York Times in March 1989, written by Goldberg himself:

"The facts are that I never described Jerusalem as occupied territory. Ambassador Yost did, in his speech of July 1 1969, under instructions from President Nixon, and his statement represented a departure from the policy I, President Johnston and the Department of State pursued with respect to Jerusalem during the period of my tenure . In a number of speeches at the U.N. in 1967, I repeatedly stated that the armistice lines fixed after 1948 were intended to be temporary. This, of course, was particularly true of Jerusalem. At no time in these many speeches did I refer to East Jerusalem as occupied territory. I made it clear



that the status of Jerusalem should be negotiable and that the armistice lines dividing Jerusalem were no longer viable. In other words, Jerusalem was not to be divided again."

This is a far cry from Ambassador Yost's statement that we conceived East Jerusalem to be occupied territory, to be returned to Jordanian sovereignty ...<sup>103</sup>

On the other hand, the Carter administration held the view that the Yost approach did not represent a departure from the preceding policy as expressed by Goldberg.<sup>104</sup> According to this view, the concept of Jerusalem as occupied territory was inaugurated by Goldberg and continued by Yost.<sup>105</sup>

The weakness of this view lies in the fact that there is no reasonable explanation as to why, in his letter to Sadat, President Carter found it necessary to refer to both U.N. statements when the Yost statement included everything in the Goldberg statement and even went beyond it.

In considering the legal aspect of the U.S position, particularly the reference to East Jerusalem as occupied territory subject to the law of military occupation, some comments must be made.

Clearly, the Americans did not accept Israel's argument that it had a better title to East Jerusalem than Jordan. Nor did they accept Israel's argument that the law of military occupation was not applicable to the West Bank and Gaza because Israel replaced a military occupier in East Jerusalem, i.e. Jordan. The argument that the law of military occupation<sup>106</sup> cannot be applied unless the ousted sovereign was legitimate has been discussed earlier.<sup>107</sup>

The American position regarding East Jerusalem was consistent with the prevailing view that Resolution 242 required Israel to withdraw

from all the territories occupied in 1967, including East Jerusalem. It was also consistent with several other U.N. resolutions, particularly Security Council Resolution 465 of March 1, 1980, which criticized Israel for its settlement policy in the West Bank on the ground that it constituted a "flagrant violation of the Fourth Geneva Convention" and called on Israel to rescind the measures taken and "to dismantle the existing settlements and in particular to cease, on an urgent basis, the establishment, construction and planning of settlements in the Arab territories occupied since 1967, including Jerusalem."<sup>108</sup>

The precise meaning of the term "occupied territory" had not been clarified, i.e. whether the term is taken to refer to territories occupied from Jordan or territories occupied from the United Nations. It might be argued that the U.N. retained a residual right of sovereignty in Jerusalem from 1948 to 1967 and Israel's entry into East Jerusalem constituted occupation of territory appertaining to the United Nations<sup>109</sup>. At this point, it is worth mentioning that the U.N. Committee on the Exercise of Inalienable Rights of the Palestinian People, in a paper issued in 1979 on the status of Jerusalem, contended that General Assembly and Security Council resolutions after 1967, which declared that Israeli actions tending to change the legal status of Jerusalem were invalid, must be taken to refer to the legal status of corpus separatum of the original Partition Resolution.<sup>110</sup> Thus a distinguished writer suggested that Israel withdraw from East Jerusalem to be replaced by a U.N. administration.<sup>111</sup>

The term "occupied territory" could also be understood as referring to territory occupied from Jordan. In the years immediately after the 1967 war, there was an international understanding that Jordan possessed a



reversionary interest in the West Bank and was the legitimate negotiating party for the conclusion of a treaty of peace with Israel whereby the West Bank, including East Jerusalem, with allowances for minor territorial adjustment, would finally become de jure a recognized part of Jordan's territory.<sup>112</sup> The legal argument advanced to justify Jordanian rights to the West Bank was that the 1949 Armistice Agreement between Israel and Jordan, coupled with the 1950 Jericho petition<sup>113</sup> of Arab notables for Arab Palestine to be joined to Transjordan brought about a situation whereby Jordan became not only the de facto but the legitimate sovereign authority in the West Bank and East Jerusalem. These acts, it was said, constituted a form of self-determination. According to this argument, U.N. resolutions since 1967 calling for the return of the status quo ante in East Jerusalem refer to the restoration of Jordanian authority.<sup>114</sup>

The view that the term "occupied territory" should be understood to describe territories occupied from Jordan can be supported by the terms of the Rogers Peace Plan, announced by the American Secretary of State on December 9, 1967.<sup>115</sup> He referred to a Jordanian authority in East Jerusalem in the following terms:

"Arrangements for the administration of the unified city should take into account the interests of all its inhabitants and of the Jewish Islamic and Christian communities. And there should be roles for both Israel and Jordan in the civic, economic and religious life of the city."<sup>116</sup>

Clearly, the formulation of this last sentence implied that the administration of the city would be shared, with the authority of both Jordan and Israel extending to the political and economic spheres, as

well as the religious. In other words, it can be argued, Jordanian sovereignty was to be restored.

Such an approach, which implied a recognition of the legality of Jordanian sovereignty in East Jerusalem, was inconsistent with the previous U.S. policy. Since 1948, the U.S. had considered the Jordanian entry into East Jerusalem to be illegal. In 1948 the U.S. representative in Security Council referred to the Ruler of Jordan as "a ruler who is occupying land outside his domain. The illegal purposes of this government invading Palestine with armed forces...is against the peace ...It is an invasion with a definite purpose ... Therefore we have the highest type of the international violation of law."<sup>117</sup>

Subsequently, the US refused to recognise Jordan's annexation of the West Bank, including East Jerusalem.<sup>118</sup>

The position of the U.S. concerning the final status of Jerusalem is not clear. While the paragraph agreed on Jerusalem, as well as the Goldberg statement, referred to a united city and functional internationalization, the Carter letter, by reference to the Yost statement, endorsed a separate status for East Jerusalem, and hence implicitly a commitment by the U.S. to support two legal regimes in the city. These two lines of policy, as has been rightly observed, were divergent and could not readily be reconciled.<sup>119</sup>

Subsequently, the Carter administration provided more clarification on that point. In Carter's reply to questions submitted to him by King Hussein of Jordan in respect of the final status of Jerusalem, the U.S. President stated:

"The final status of Jerusalem should not be prejudged by the unilateral actions undertaken in Jerusalem since the 1967 war. Whatever solution



is agreed upon should preserve Jerusalem as a physically undivided city. It should provide for free access to the Jewish, Muslim and Christian Holy Places without distinction or discrimination for the free exercise of worship. It should assure the basic rights of all the City's residents. The Holy Places of each faith should be under the full authority of their representatives."<sup>120</sup>

It is noteworthy that the word "physically" was deliberately inserted before the word "undivided". Taking into consideration the fact that previous U.S. statements used the word "undivided" without being preceded by the term "physically", one may wonder as to the precise meaning of this term. Fortunately, Secretary Vance interpreted its meaning in his testimony before the Senate Foreign Relations Committee on March 21, 1980. He stated:

"What is meant, very simply, was that it should be physically undivided; that never again should there be barbed wire between the various parts. It did not purport to say what the final political solution should be. It did not speak to of the ultimate question of sovereignty. It talked of the question of what the City would be in terms of its physical characteristics."<sup>121</sup>

He concluded his testimony by stating that "Our policy on this city has remained consistent under the past four Presidents."<sup>122</sup>

The Begin letter appended to the Agreements defined Israel's position in the following terms:

"... on 28 June 1967, Israel's Parliament (the Knesset) promulgated and adopted a law to the effect : "The Government is empowered by a decree to apply the law, the jurisdiction and administration of the state to

any part of Eretz Israel (Land of Israel-Palestine)", as stated in that decree.

On the basis of this law, the Government of Israel decreed in July 1967 that Jerusalem is one city indivisible, the capital of the State of Israel.<sup>123</sup>

The wording of this letter indicates clearly that there is no change in Israel's position vis-a-vis East Jerusalem since its occupation in 1967, particularly the administrative and legislative measures taken on June 28, 1967. The argument for and against these Israeli measures is well known. It does not seem necessary to repeat what has been said in this respect,<sup>124</sup> and it may be sufficient to refer in brief to such measures and their legality under international law.

Immediately after its occupation of East Jerusalem during the 1967 war, Israel removed the barriers of brick and barbed wire separating the two parts of Jerusalem and proceeded to treat the city as one united municipal entity.<sup>125</sup>

This situation was formalized by the Knesset in the enactment of three laws on June 27, 1967. The first was the Law and Administration Ordinance Amendment Act which provided that Israeli "law, jurisdiction and administration shall extend to any area of Eretz Israel designated by the Government by order".<sup>126</sup> The second effected an amendment to the 1934 Municipalities Ordinance Act to enable the Minister of the Interior to expand by proclamation the area of the municipal corporation to include any area designated under the Law and Administration Ordinance Act<sup>127</sup>. And finally, the third law provided for the protection of the Holy Places and for untrammelled freedom of access to them<sup>128</sup>. The next day, June 28, 1967, the Minister of the Interior, on the basis of the



revised Law and Administration Ordinance Act, designated an area embracing East Jerusalem and outlying areas as part of the municipal City of Jerusalem. The administrative unification of the City was thereby formally completed.<sup>129</sup>

Israel's announcement that the law, jurisdiction and administration of the State of Israel were being applied to East Jerusalem provoked bitter protest from Jordan and other states, including the U.S.<sup>130</sup>

The United Nations General Assembly adopted two Resolutions without opposition on July 4 and 14, 1967, declaring Israel's actions "invalid" and calling upon Israel "to rescind all measures already taken and desist forthwith from taking any action which would alter the status of Jerusalem."<sup>131</sup> Israel refused to comply, contending that "no international or other interest would be served by the institution of divisions and barriers which would only sharpen tension and generate discrimination."<sup>132</sup> The claim was made that Israel was responding to "the intrinsic necessity of ensuring equal rights and opportunities to all the city's residents."<sup>133</sup> This answer was not accepted by the General Assembly.<sup>134</sup>

These measures were the subject of sharp criticism at the Security Council in several resolutions adopted in 1968<sup>135</sup>, 1969<sup>136</sup> and 1971<sup>137</sup>. For instance, Security Council Resolution 298 adopted on September 25, 1971 confirmed that "legislative and administrative actions taken by Israel to change the status of the City of Jerusalem, including expropriation of land and properties, transfer of populations and legislation aimed at the incorporation of the occupied section are totally invalid and cannot change that status".

"Urgently calls upon Israel to rescind all previous measures and actions and to take no further steps in the occupied section of Jerusalem which may purport to change the status of the City, or which would prejudice the rights of the inhabitants and the interests of the international community, or a just and lasting peace."<sup>138</sup>

Reacting to this Resolution, the Israeli government issued a statement in which it declared its rejection in the following terms:

"The Government of Israel considers that there was no justification whatever for raising the issue of Jerusalem in the Security Council, nor for the Resolution adopted. The Government of Israel will not enter into any discussion with any political organ on the basis of this Resolution. Israel's policy on Jerusalem will remain unchanged."<sup>139</sup>

In the period following the conclusion of the Peace Treaty, it is not surprising that Israeli practice has gone a long way in tying East Jerusalem to it through a variety of measures, including the extension of public services and the establishment of settlements in the area.<sup>140</sup>

On March 1, 1980, the Security Council unanimously adopted Resolution 465 which criticized Israel for its settlement policy on the West Bank which, it charged, was "a flagrant violation of the Fourth Geneva Convention ..and ..a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East."<sup>141</sup> The resolution called on Israel to rescind the measures taken and "to dismantle the existing settlements and in particular to cease on an urgent basis, the establishment, construction and planning of settlements in the Arab territories occupied since 1967, including Jerusalem."<sup>142</sup>

The Israelis' reaction on the above Resolution came very soon. Again they challenged the will of the U.N. On July 31, 1980, the Knesset



passed a law which proclaimed Jerusalem the eternal capital of Israel.

The relevant text of this law reads:

- "1. Jerusalem united in its entirety is the capital of Israel.
2. Jerusalem is the seat of the President of the State, the Knesset, and the Government, and the Supreme Court.
3. The Holy Places shall be protected from desecration and any other violation and from anything likely to violate the freedom of access of the members of the different religions to the places sacred to them or their feelings with regard to those places."<sup>143</sup>

This law was not accepted by the Egyptians who considered it to be a flagrant violation of what had been agreed at Camp David, and immediately decided to stop the autonomy negotiations with Israel.<sup>144</sup>

In turn, the Security Council, on August 20, 1980, adopted Resolution 478 which censured Israel for its enactment of the "basic law" on Jerusalem and called upon all member states maintaining diplomatic missions in Jerusalem to withdraw them from the City.<sup>145</sup>

A final and important question arises in respect of Israel's final position vis-a-vis East Jerusalem, namely, whether or not the Israeli administrative and legislative measures taken in Jerusalem before and after the conclusion of the Camp David Accords were permissible under international law? On the one hand, the prevailing view is that these measures are a flagrant violation of international law.<sup>146</sup> Opposing this trend, on the other hand, is the view, held by Israel and some writers supporting it, that these measures are not illegal.

Several arguments can be advanced in support of the view held by an overwhelming majority of U.N. members that the Israeli measures were

illegal. First, it was argued that the Israeli action is in violation of its obligation under the Camp David Accords.

The Egyptians argued that Israel's law, enacted on July 31, 1980, proclaiming Jerusalem the eternal capital of Israel, constituted a flagrant violation of the Camp David Accords. At Camp David, according to the Egyptians, the parties agreed that the final status of Jerusalem should be left to future negotiations.<sup>147</sup> Any review of the records of the negotiations confirm this agreement. It follows that Israel was obliged not to decide unilaterally on the final status of Jerusalem as it had done in 1980.<sup>148</sup>

Perhaps, the weakness of this argument lies in the fact that there was no provision in the Camp David Accords or in the 1979 Peace Treaty under which Israel was obliged to negotiate on the future status of East Jerusalem. Even the Carter letter on the U.S. position concerning East Jerusalem was addressed to Sadat, but not to Begin. The Israelis, therefore, declared themselves in no way bound by what Carter had written to Sadat.

It was also argued that the Israeli measures constituted annexation of the Arab Sector, rather than the administrative unification of the City.<sup>149</sup> If this were true, it followed that this annexation must be invalid under the principle of the inadmissibility of the acquisition of territory by force. This is a well established and recognized principle of international law. According to Quincy Wright, the application of this principle to the Arab-Israeli conflict "clearly required that Israel gained no political advantage by its occupation."<sup>150</sup> In practice, this would mean that Israel had no right to annex any part of the territories it occupied by military force in the Six-Day War.<sup>151</sup>



The argument that these measures constituted annexation is complicated by the fact that Israel had not expressly claimed "sovereignty" over the Old City. Instead it spoke of re-unification, and of reuniting the administration of the two parts of the City.<sup>152</sup>

However, the assumption was that Israel had in law formally annexed East Jerusalem. A review of the views expressed by the U.N. members during the discussion of Resolutions 2254 adopted by the General Assembly on July 17, 1967 and 252 adopted by the Security Council on May 21, 1968, confirms this assumption.<sup>153</sup> In the Ruwaydi and Maches v. Hebron Military Court Case two judges of the Israeli Supreme Court accepted that East Jerusalem was formally annexed by Israel.<sup>154</sup>

To sum up, the argument here is based on the distinction made by traditional international law between occupation and annexation of enemy territory. Occupation is mere control of enemy territory by force of arms for so long as the belligerent is able to maintain his position or until he voluntarily gives it up. It involves no termination of the de jure rights of the regular sovereign, only a temporary, though possibly prolonged, de facto suspension of the exercise of those rights. Under certain circumstances, occupation may be legally permitted.<sup>155</sup> Annexation involves an attempt by the occupier to convert his physical right of occupation into a legal title to the territory. In other words, he seeks to change sovereignty over the territory from his enemy to himself. Such annexation is prohibited.<sup>156</sup>

It has been contended the Israeli measures in East Jerusalem are in violation of the law of military occupation. The international law of military occupation determines the extent of the occupier's jurisdiction and its power to make and enforce law in the occupied territory. The

degree of erosion of the internal law of the territory so occupied is controlled in Article 43 of the Hague Regulations of 1907, as modified by the Fourth Geneva Convention. Article 43 of the former reads:

"The authority of the power of the State, having passed de facto into the hands of the Occupant, the latter shall do all in his power to restore and ensure as far as possible, public order and safety, respecting at the same time, unless absolutely prevented, the laws in force in the country."<sup>157</sup>

In the course of the U.N. debates on the Israeli measures in Jerusalem, Lord Caradon said on behalf of the United Kingdom that the Israeli measures in Jerusalem were invalid because they went beyond the competence of the occupying power as defined by international law.<sup>158</sup> A similar view was expressed by Ambassador Yost in the course of the Security Council debates:

"Among the provisions of international law which bind Israel, as they would bind any occupier, are the provisions that the occupier has no right to make changes in law or in administration other than those which are temporarily necessitated by his security interest, and that an occupier may not confiscate or destroy private property. The pattern of behaviour authorized under the Geneva Convention and international law is clear: the occupier must maintain the occupied areas as intact and unaltered as possible, without interfering with the customary life of the area, and any changes must be necessitated by immediate needs of the occupation. I regret to say that the actions of Israel in the occupied portion of Jerusalem present a different picture, one which gives rise to understandable concerns that the eventual disposition of East



Jerusalem may be prejudiced and the rights and activities of the population are already being affected and altered."<sup>159</sup>

Israel's measures have been said to be a "trespass upon", and a "usurpation of a territory" to be administered by the U.N.<sup>160</sup>

As is wellknown, the General Assembly of the United Nations recommended the internationalization of Jerusalem by its Resolutions 181 of November 19, 1947, 194 of December 11, 1948, and 303 of December 9 1949.<sup>161</sup>

Israel undertook at the time of her application for admission to U.N. membership to implement the resolutions of the General Assembly concerning the internationalization of Jerusalem. During the prolonged debate that preceded Israel's application for admission, it specifically undertook to respect the status and the internationalization of Jerusalem.<sup>162</sup> The Resolution of the General Assembly of 11 May 1949, which recommended Israel's admission to U.N. membership, expressly referred to Israel's "declarations and explanations" with respect to the resolutions on Jerusalem.<sup>163</sup> Israel was bound by her "declarations and explanations" and could not rely on a breach of its own formal assurances to the U.N. to claim title over Jerusalem.

Cattan maintained that these resolutions on the international regime for the City of Jerusalem are still valid and operative. To prove this, he referred to the U.N. resolutions deploring the Israeli measures in Jerusalem and to the refusal of most states to establish their diplomatic missions in Jerusalem.<sup>164</sup>

The Israeli measures were also condemned by several U.N. resolutions calling on Israel to rescind them and to withdraw from East Jerusalem. The argument here refers to U.N. resolutions adopted by the General

Assembly and the Security Council in reaction to the Israeli administrative and legislative measures taken since June 1967. We may refer specifically to General Assembly Resolution 2253 adopted on July 4, 1967, which was the first U.N. resolution condemning these measures:

"The General Assembly ..

1. Considers that these measures are invalid;
2. Calls upon Israel to rescind all measures already taken and to desist forthwith from taking any action which would alter the status of Jerusalem."<sup>165</sup>

Again, on July 14, 1967, the General Assembly adopted Resolution 2254 wherein it expressed the deepest regret and concern at the noncompliance by Israel with Resolution 2253 and:"

2. Reiterates its call to Israel in that Resolution to rescind all measures already taken and to desist forthwith from taking any action which would alter the status of Jerusalem."<sup>166</sup>

Similar resolutions were adopted by the Security Council in May 1968<sup>167</sup>, July 1969, September 1969<sup>168</sup> and September 1971.<sup>169</sup>

On March 1, 1980 a strong resolution was adopted by the Security Council in which it confirmed its previous position in respect of the Israeli measures. The U.S. voted for this resolution, which reads in part:

"The Security Council,...

affirming once more that the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949 is applicable to the Arab territories occupied by Israel since 1967, including Jerusalem....



Deploring the decision of the government of Israel officially to support Israeli settlements in the Palestinian and other Arab territories occupied since 1967,

Deeply concerned by the practices of the Israeli authorities in implementing that settlement policy in the occupied Arab territories, including Jerusalem, and its consequences for the local Arab and Palestinian population,...

Determines that all measures taken by Israel to change the physical character, demographic composition, institutional structure or status of the Palestinian and other Arab territories occupied since 1967, including Jerusalem, or any part thereof have no legal validity and that Israel's policy and practices of settling parts of its population and new immigrants in those territories constitute a flagrant violation of the Geneva Convention relative to the Protection of Civilian Persons in Time of War and also constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East;

Strongly deplores the continuation and persistence of Israel in pursuing those policies and practices and calls upon the Government and people of Israel to rescind those measures, to dismantle the existing settlements and in particular to cease, on an urgent basis, the establishment, construction and planning of settlements in the Arab territories occupied since 1967, including Jerusalem..."<sup>170</sup>

In reaction to the Israeli law of July 1980 declaring Jerusalem in its entirety the capital of Israel, the Security Council on August 20, 1980 adopted Resolution 478 censuring Israel for its enactment of the "basic

law" on Jerusalem and calling upon all member states maintaining diplomatic missions in Jerusalem to withdraw them from the City.<sup>171</sup>

There is also another view to the effect that Israeli administrative and legislative measures in East Jerusalem were not illegal. Several writers have attempted to find legal bases for Israel's measures in East Jerusalem. Three main arguments have been advanced in this respect.

Israel, it is alleged, has acquired a legal title to East Jerusalem, based on the assumption either that it filled the sovereignty vacuum arising in East Jerusalem after the end of the Mandate (which was not filled by Jordan's occupation of East Jerusalem in 1948)<sup>172</sup>, or that Israel acquired such title under the theory of "relative title".<sup>173</sup>

A holder of the view that Israel filled the sovereignty vacuum is B. Lauterpacht who stated :

"The sovereignty vacuum arising in the Old City at the end of the Mandate was not filled by Jordan, whose status there was one of de facto occupation protected by the Armistice Agreement. Once Jordan was physically removed from the Old City, legitimate measures - as the Israeli reactions to the Jordanian attack on 5th June 1967 - undoubtedly <sup>the</sup> - the way was open for a lawful occupant to fill the still subsisting vacancy."<sup>174</sup>

So far as the argument for Israel's relative title to East Jerusalem is concerned, some held that title to territory is normally based not on <sup>a</sup> claim of absolute validity but rather on one of relative validity. Thus, e.g., in the Minquers and Crehos case the International Court of Justice decided to "appraise the relative strength <sup>of</sup> the opposing claims to sovereignty."<sup>175</sup> A supporter of this view is S. Schwebel who wrote:



"Having regard to the consideration that Israel ..[acted] defensively in 1948 and 1967..and her Arab neighbours..[acted] aggressively in 1948 and 1967 ..Israel has better title in the territory of what was Palestine, including the whole of Jerusalem, than do Jordan and Egypt.."176

Clearly, the argument for Israel's territorial title to East Jerusalem is based on the two-fold assumption: that Israel was exercising self-defence against Jordan whose previous territorial sovereignty over East Jerusalem was doubtful;176 that the U.N resolutions on the internationalization of Jerusalem were no longer valid or effective since they contain no reference to such a concept after 1949.177

It has been argued that the law of military occupation, under which these Israeli measures could be valid, is not applicable to East Jerusalem. According to Blum:

"The traditional rules of international law governing belligerent occupation are based on a two-fold assumption, namely, (a) that it was the legitimate sovereign which was ousted from the territory under occupation, and (b) that the ousting side qualifies as a belligerent occupant with respect to the territory."178

Thus, since the Kingdom of Jordan never had the status of a legitimate sovereign over East Jerusalem, the rules of international law limiting the occupant's duty to safeguard the reversionary rights of the legitimate sovereign have no application as against Israel.179

Also, it has been argued that even if it were assumed that Israel was merely a "belligerent occupant" and the law of military occupation was applicable to the Israeli position in Jerusalem, the measures adopted

by Israel are largely "consistent with the technical maintenance of a condition of belligerent occupation".<sup>1e0</sup>

Lauterpacht asserted that the texts of the three Israeli laws of June 28, 1967 did not include any explicit or implicit reference to a formal annexation of East Jerusalem.<sup>1e1</sup> Along the same lines, Israeli officials maintained that its moves in Jerusalem were administrative and not political. An example is Israel's reply, dated July 15 1967 to a letter to UN Secretary General concerning Resolution 2253 of the General Assembly on East Jearusalem, wherein Foreign Minister Abba Eban, stated that, the term "annexation" used by supporters of the Resolution is out of place, and that the measures adopted relate to the integration of Jerusalem in the administrative and municipal spheres, and furnish a legal basis for the protection of the Holy Places in Jerusalem.<sup>1e2</sup>

Similarly, the text of the Israeli law of July 31, 1980 declaring Jerusalem the capital of Israel contained no mention of a formal annexation.<sup>1e3</sup>

In considering the Israeli position regarding East Jerusalem in the light of the above arguments against and in favour of the legitimacy of Israeli measures in the Old City, this writer, influenced by scores of relevant United Nations resolutions, inclines to support the first view. Certainly, it is a matter of justice that Israel must rescind all these measures aiming to change the legal status of the Old City. Israel has to withdraw and the Palestinians should be entitled to decide their own future. It is equally true that it is difficult, if not impossible, for reasons relating to principles of international law and relevant UN resolutions, to accept the continuing Israeli occupation of that part of Jerusalem seized in 1967. However, one must admit that political,



historic, religious and strategic considerations<sup>1e4</sup> rather than legal ones were and still are playing an important role in shaping Israeli decisions regarding East Jerusalem. This has to be taken into account in understanding the Israeli present and future position on this crucial issue.

In the light of the preceding discussion on the final position of Egypt, the US, and Israel, it would be correct to assert that it is more likely that the resolution of the Jerusalem question would constitute the main obstacle in any future settlement of the Palestinian problem. Indeed, it is a difficult problem to solve satisfactorily. Several pertinent difficulties may arise in this connection. Three may be cited because of their importance. First, for a number of reasons, there is a consensus of opinion amongst all the Arab states, as reflected in relevant Arab League Summit resolutions, that Arab sovereignty over East Jerusalem (Al Qods) must be completely restored. Secondly, however, for reasons discussed earlier, particularly in the light of the fact that no access to the Holy places in East Jerusalem was given to the Israelis when the Old City was under Arab sovereignty between 1948 and 1967, it is unlikely that the Israelis would accept the restoration of a complete Arab sovereignty over East Jerusalem. Thirdly, it is difficult, if not impossible, for reasons relating to principles of international law and relevant UN resolutions, to accept Israel as a sovereign over the Old City which it seized in the 1967 War.

To say this is not to argue that the problem of the status of Jerusalem is absolutely <sup>in</sup>unsoluble. Indeed, three solutions have been suggested and the future of the Holy City ought to be based upon one of them. The

first solution, as put forward by the majority proposal of the UNSCOP in 1947, is the internationalization of Jerusalem. Resolution 194 of the UN General Assembly provided that the city should "be accorded special and separate treatment from the rest of Palestine and should be placed under effective United Nations Control with the maximum feasible local autonomy for the Arab and Jewish communities"<sup>165</sup>. A new scheme for the internationalization of the city to the degree necessary to achieve agreement among the main parties in interest may be derived. A second solution, as put forward by others such as Cont Bernadotte, is based on three main points: no integral annexation, maximum local autonomy for Arab and Jewish communities, and some form of international guarantees of legitimate international interests.<sup>166</sup> A third solution is to return to pre-June war situation: to divide the city between two sovereigns.

In the view of this writer, a settlement which based generally on the second solution may, in the light of the present circumstances, have the best chances of being accepted by the parties. Perhaps, the main outlines of the Brooking Institution Report of 1975 with regard to Jerusalem, which was adopted by the Carter administration at Camp David, are the most optimistic basis for a solution.<sup>167</sup>

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Notes

- 1 Statement by the United Kingdom Secretary of State for Foreign and Commonwealth Affairs, Sir Alec Douglas-Home, October 31, 1970, in John Moore (ed), The Arab-Israeli Conflict, Princeton University Press, New Jersey, 1974, p. 1119.
- 2 For the text of the Carter letter, see Appendix IV.
- 3 For the text of the Begin letter, see Appendix IV.
- 4 For the text of the Sadat letter, see Appendix IV.
- 5 Ibid.
- 6 For more details, see p. 379-88. of this chapter.
- 7 Carter, Jimmy, The Blood Of Abraham, Houghton Mifflin Company, Boston, 1986, p. 44.
- 8 See p. 376. of this chapter.
- 9 Carter, op.cit., p.44.
- 10 The word "AL Qods" has been used in the official translation of Arab League resolutions, see for example Article 6 of Fez Resolution of 1982.
- 11 Israel Pocket Library, Jerusalem, Keter Publishing House, Jerusalem, 1973, p.3.
- 12 Pfaff, Richard, Jerusalem: Keystone of an Arab-Israeli Settlement, in Moore, op.cit., p.1013.
- 13 UN General Assembly, Official Records (V), Suppl. 9, Question of an International Regime for the Jerusalem Area and Protection of the Holy Places. Doc. A/ 1286, p.17. The decrease primarily was the result of the evacuation of a large number of Jews from the Old City

- following the civil war between Arabs and Jews. See, Israel Pocket Library, op.cit., p. 167.
- 14 Pfaff, op.cit., p.1013.
- 15 For more details on the establishment of the new Jerusalem, see generally Parkes, James, The Story of Jerusalem, The Cresset Press, London, 1950.
- 16 Pfaff, op.cit., p.1016.
- 17 UN Doc. A/ 1282.
- 18 Pfaff, op.cit., p.1017.
- 19 The Jewish Encyclopedia, Vol. VII, p.120. Also, on the subject of the establishment of Jerusalem Josephus wrote " But he who first built it [Jerusalem] was a potent man among the Canaanites, and is in our tongue called Melchisedek, The Righteous King, for such he really was; on which account he was (there) the first priest of God, and first built a temple (there), and called the city Jerusalem, which was formerly called Salem.", Flavius, Josephus, The Great Roman-Jewish War AD 60-70, Gloucester, Mass., 1970, p.250.
- 20 For the history of Jerusalem until the Arab era, see Israel Pocket Library, op.cit., pp.6-47.
- 21 Ibid, pp.48-76.
- 22 Wilson, Sir Charles W., and Sir Charles M. Watson, Jerusalem, Encyclopedia Britannica, 11th ed., XV, pp.331-35.
- 23 Article 16 of the Treaty of Lausanne of 1923 reads as follows:  
"Turkey hereby renounces all rights and title whatsoever over or respecting the territories situated outside the frontiers laid down in the present Treaty and the islands other than those over which her sovereignty is recognised by the said Treaty, the future of



these territories and islands being settled or to be settled by the parties concerned.

The provisions of the present Article do not prejudice any special arrangements arising from neighbourly relations which have been or may be concluded between Turkey and any limitrophe countries.", The Treaty of Peace signed at Lausanne, July 24, 1923, 28 League of Nations Treaty Series No. 701, 13-113, at 15, 23, 25, 1924.

- 24 See Article 22 of the Covenant of the League of Nations, June 28, 1919.
- 25 Lauterpacht, Elihu, Jerusalem and the Holy Places, in Moore, op.cit., p.938.
- 26 Ibid. pp. 937-38.
- 27 Potter, Pitman, The Palestine Problem Before the United Nations, A.J.L.L., Vol. 42, 1948, p.860.
- 28 International Status of South-West Africa, Advisory opinion, I.C.J. Reports 1950, p. 148.
- 29 Resolution 181 (II) adopted by the General Assembly on 29 November 1947 concerning the future Government of Palestine.
- 30 See part III of Resolution 181.
- 31 General Armistice Agreement between Israel and Jordan, April 3, 1949, pp.303-20.
- 32 See Article VIII (2), Ibid.
- 33 General Assembly Resolution 194 (III) Concerning the Progress Report of the United Nations Mediator, December 11, 1948.
- 34 Shwadran, Benjamin, Jordan: A State of Tension, Council for Middle Eastern Affairs Press, New York, 1959, p.245.
- 35 Ibid., p.250.

- 36 Brecher, Michael, Jerusalem: Israel's Political Decisions, 1947-1977, 1978, p.21.
- 37 Lauterpacht, op.cit., p.957.
- 38 For a brief account concerning the Israeli measures in Jerusalem between 1967-1989, see Bahahat, Dan., The Illustrated Atlas of Jerusalem, The Israeli Map and Publishing Company, London, 1990, pp.144-147.
- 39 See pp. 388-402. of this Chapter.
- 40 For discussions of the UN reaction to the Israeli measures in Jerusalem after the June War, see Jones, Shepard, The Status of Jerusalem, in Moore, op.cit., pp.916-920.
- 41 G.A. Resolution 2253, U.N. GAOR, 5th Emer. Spec. Sess, Supp I at 4, UN. Doc. A/ 6798.
- 42 See, e.g., Doc. A/6743, July 3, 1967, and A/6774, July 25, 1967. See also remarks of Iraqi Delegation, U.N. Doc. A/PV. 1559, Sept. 18, 1967, at 6-16.
- 43 Carter, Jimmy, Keeping Faith, Collins, London, 1982, p.325.
- 44 See Appendix II.
- 45 See Chapter Two of this work.
- 46 Arab League Summit Resolutions, Fez, 1982.
- 47 S.C.Q. R. 1483 rd Mtg. July 1, 1969, p.11.
- 48 Resolution 181 Part III; Resolution 194 (III) concerning the Conciliation Commission, the international regime of Jerusalem, and the return of refugees, dated 11 December 1948; Resolution 303 (IV) of the General Assembly dated 9 December 1949 concerning the international regime for Jerusalem, see also Lauterpacht, op.cit., pp.948-957.



- 49 For an account of Israel's policy and practices in Jerusalem between 1967 and 1989, see for example Cattan, The Palestine Question, Croom Helm, London, 1988, pp.251-260.
- 50 Article 13 of the mandate over Palestine reads in part as follows: " All responsibility in connection with the Holy Places and religious buildings or sites in Palestine, including that of preserving existing rights and of securing free access to the Holy Places, religious buildings and sites and the free exercise of worship, while ensuring the requirements of public order and decorum, is assumed by the Mandatory...", Report to the General Assembly of the United Nations Special Committee on Palestine, Vol. II, Annexes, Appendix, U.N. Doc. A/364 Add. 1, September 9, 1947.
- 51 Israel: Draft Resolution U.N. Doc. A/Ac. 31/L.42, 25 November 1949.
- 52 U.N. Trusteeship Council Official Records, 2nd Sess., 3rd Part, Annex at 4-24, U.N. Doc. T/118/Rev.2 (1948).
- 53 See Article 13 of Resolution 181 (II) A.
- 54 For a discussion of Israeli view that the pre-June boundaries are of temporary nature and need to be changed, see for example, Rosenne, S., Directions for a Middle East Settlement, Some Underlying Legal Problems, in The Middle East Crisis: Test of International Law, 1969, pp.60-61; Rostow, Eugene, Legal Aspects of the Search for Peace in the Middle East, 64 A.J.L.L., 1970, pp.64, 69; Blum, Yehuda, Secure Boundaries and Middle East Peace, 1971, pp.72-79.
- 55 Carter, op.cit. note 43, p. 346-7.
- 56 See Chapter Two of this work.
- 57 See pp. 399-401 of this Chapter.

- 58 Shlomo, Slonim, The US and the status of Jerusalem, 19 Israel Law Review, 1984, p. 231.
- 59 Carter, op.cit., note 43, p. 340.
- 60 For the text of the U.S. draft, see Appendix III.
- 61 Brzezinski, Zbigniew, Power And Principle, Weidenfeld and Nicolson, London, 1983, p.85.
- 62 Toward Peace in the Middle East, Report of a Study Group, Washington, D.C. Brookings Institution, 1975, see also Brzezinski, Ibid, p.86.
- 63 See Dept. of State Bulletin, Vol. 57, 1967, p.31.
- 64 Carter, op.cit., note 43, p.375.
- 65 Ibid, p. 377.
- 66 Ibid, pp. 377-378.
- 67 Ibid, pp. 381-382.
- 68 Ibid, p. 395.
- 69 Carter, op.cit., note 7, p. 44.
- 70 Carter, op.cit., note 43, p. 395.
- 71 Ibid, p. 389.
- 72 Ibid, p. 397.
- 73 Quandt, William, Camp David-Peacemaking And Politics, The Brookings Institution, Washington, 1986, p. 252.
- 74 Dayan, op.cit., p. 179.
- 75 Quandt, op.cit., p. 252.
- 76 For a detailed description of Israeli response to American draft letter on Jerusalem, see Dayan, op.cit., pp. 177-79.
- 77 Slonim, Shlomo, The United States And The Status Of Jerusalem 1947-1984, Israel Law Review, Vol.19, 1984, p.334.



- 78 Dayan, op.cit., p.179.
- 79 Ibid., p.178.
- 80 Quandt, op.cit., p.252.
- 81 Dayan, op.cit., pp. 177-179.
- 82 Carter, op.cit., note 43, pp. 398-399.
- 83 Slonim, op.cit., p. 235.
- 84 Ibid., p. 235.
- 85 Quandt, op.cit., p. 252.
- 86 Slonim, op.cit. p. 179.
- 87 According to Shlomo, "Inquiries of Prime Minister Begin's office did not elicit an explanation as to why the Carter letter was addressed to President Sadat alone.", Slonim, op.cit., p. 181.
- 88 See Appendix V. for the text of the Carter Letter.
- 89 For discussions concerning the U.S. and the question of Jerusalem, see Jones, Shepard, The Status of Jerusalem: Some National and International Aspects, in Moore, op.cit., pp. 918-920; Slonim, op.cit., pp. 212-31.
- 90 U.N.Doc. A/pv. 1554, at 41.
- 91 57 Dep'T State Bull. 148 (1967).
- 92 Ibid. p. 965.
- 93 Ibid. p. 965.
- 94 57 Department of State Bull. 60, 1967; also, Ibid. p.964.
- 95 The Goldberg Statement, op.cit. p.965.
- 96 Ibid. p.965.
- 97 The Latin American draft Resolution reads in part as follows:  
"reaffirm...as in earlier recommendations, the desirability of

establishing an international regime for the city of Jerusalem, to be considered by the General Assembly at its twenty-second session", U.N. Doc. A/L. 523/Rev. 1.

98 Slonim, op.cit. p.190.

99 Quoted in Ibid. p.191.

100 Resolution 267 of the Security Council dated 3 July 1969 concerning measures taken by Israel to change the status of Jerusalem.

101 Statement by Ambassador Charles W. Yost, United States Representative to the United Nations, in the Security Council, on the Situation in Jerusalem, July 1, 1969, SCOR, 1483rd, July 1, 1969, p.11.

102 Slonim, op.cit. p.216.

103 N.Y. Times, March 12, 1980, p.26.

104 Slonim, op.cit. p.217.

105 Senate Foreign Relations Committee Hearing, p.8.

106 See Chapter Three of tyhis work.

107 See Chapter Two of this work.

108 Security Council Resolution 465 dated 1 March, 1980.

109 Slonim, op.cit. p. 225, also see Cattan, Jerusalem, London, 1981, p. 109.

110 Slonim, Ibid. p. 225.

111 Wright, Quincy, The Middle East Problem, in A.J.L.L., 1970, pp.280-281.

112 Gerson, Allan, Israel, The West Bank and International Law, Frank Cass, London, 1978, p. 205.

113 In 1950 Jordan's King Abdullah obtained, at the Jericho Conference, a vote of acclamation from five thousand West Bank notables as the



sovereign of Arab Palestine, see Hassan bin Talal, Palestinian Self-Determination, Quartet Books, London, 1981, pp. 40-41.

114 Gerson, op.cit., pp. 77,78,205.

115 Dept. of State Bulletin, Jan. 5, 1970, p.10.

116 Ibid. p.10.

117 See remarks of the US representative to the UN, SCOR, 302nd Mtg., May 22, 1948, p. 41.

118 Bovis, Eugene, The Jerusalem Question, Hoover Institution Press, 1971, p. 88.

119 Slonim, op.cit. p.233.

120 Quandt, op.cit. pp.388-396.

121 Senate Foreign Relations Committee Hearing, p.8.

122 Ibid.

123 See Appendix IV for the text of the Begin letter.

124 For the argument and refutation of the Israeli measures in Jerusalem, see for example Cattan, Henry, Palestine and International Law, Longman, London, 1973, pp.180-190; in support of the Israeli measures, see for example Lauterpacht, op.cit. pp.970-977.

125 The text of the three Israeli laws concerning East Jerusalem adopted by the Israeli Knesset can be found in Moore (ed), op.cit. pp.949-954.

126 Ibid., p 950.

127 Ibid., p. 952.

128 Ibid., p. 954

129 Ibid., p. 951

130 Jones, S., op.cit., pp. 915-920.

- 131 G.A. Resolutions 2253 and 2254, U.N. GAOR, 5th Emer. Spec. Sess., Supp.1, at 4, U.N. Doc. A/6798, 1967.
- 132 See Israel's reply to the UN Secretary General, dated 11 September 1967, Sec-Gen Report under General Assembly Resolution 2254 (ES-V) Relating to Jerusalem, September 12, 1967. Reprinted in Moore, op.cit p. 988.
- 133 Ibid, p. 988.
- 134 Jones, op.cit, p. 916.
- 135 Resolution 252 of the Security Council dated 21 May 1968 concerning measures taken by Israel to change the status of Jerusalem.
- 136 Resolution 267 of the Security Council dated 3 July 1969 concerning measures taken by Israel to change the status of Jerusalem.
- 137 Resolution 298 of the Security Council dated 25 September 1971 concerning measures taken by Israel to change the status of Jerusalem.
- 138 Ibid
- 139 Statement by the Government of Israel Concerning Security Council Resolution 298, September 26, 1971, reprinted in Moore, op.cit, p.1003.
- 140 Riad, Mahmud, The Struggle for Peace in the Middle East, Quartet Books, London, 1981, p.325.
- 141 Security Council Resolution 465, dated 1 March 1980 Concerning Israeli Settlements in the Arab Occupied Territories.
- 142 On the background of this law, Shlomo wrote: "A bill declaring Jerusalem the capital of Israel had been introduced into the Knesset several months earlier by M.K. Geula Cohen, a member of Tehiya, a small right-wing party not associated with the government (at that



time). This private member's bill had not yet received a first reading by March 1 and might well have remained unenacted if not for the Security Council and Egyptian actions. In the face of such external challenges, the government and opposition joined ranks to pass the bill.", Slonim, op.cit. p.243.

- 143 Law Enacted by Israel's Knesset Proclaiming Jerusalem the Capital of Israel, July 29 1980, reprinted in Lukacs, Yehuda, op.cit. pp.106-107.
- 144 Nafai, Ibrahim, Comments on Shamir's Initiative, Al-Ahram, February 2, 1989.
- 145 Resolution 478 of the Security Council dated 20 August 1980.
- 146 Carter, op.cit. note 7, p.48.
- 147 Nafai, I., op.cit.
- 148 American Answers to Jordanian Questions, October 1978, Quandt, op.cit. pp.388-396.
- 149 In several occasions Begin stated that letters from Carter to Sadat and from Sadat to Carter do not constitute any obligation on Israel.
- 150 Wright, Q., op.cit. p.860.
- 151 Cattani, op.cit. note 124, p.110.
- 152 In a letter dated 10 July 1967 to UN Secretary General, Israeli Foreign minister Iban wrote: "the term "annexation" used by supporters of the resolution is out of place. The measures adopted relate to the integration of Jerusalem in the administrative and municipal spheres, and furnish a legal basis for the protection of the Holy Places in Jerusalem"., in Medzini, Meron (ed), Israel's Foreign Relations: Selected Documents, 1977-1979, Vol.1 Jerusalem,

- Ministry of Foreign Affairs, 1981, pp. 248-251, also see, Lauterpacht, op.cit., p.972.
- 153 See for example remarks of Lord Caradon, the U.K. Ambassador to the U.N. in General Assembly discussions on Resolution 2253, A/PV. 1553, p.7, for more details see Pfaff, op.cit., pp.1046-1050.
- 154 48 I.L.R., 1975, p.63.
- 155 Higgins, Rosalyn, The June War: The United Nations and Legal Background, in Journal of Contemporary History, Vol.3, 1968, pp. 269-91.
- 156 Lauterpacht, op.cit., p.973.
- 157 Article 43 of the Hague Regulations.
- 158 See, A/Pv. 1553, p.7.
- 159 The Yost Statement, op.cit., note 101.
- 160 Cattan, op.cit., note 124, pp.180-83.
- 161 Ibid, p.182
- 162 See Official Records of the 3rd Session of the General Assembly, Part II, Ad Hoc Political Committee, 1949, pp. 179-360.
- 163 Resolution 273 (III) of the General Assembly dated 11 May 1949 concerning the admission of Israel to the Un membership reads in part: "Recalling its resolutions of 29 November 1947 and 11 December 1948 and taking note of the declarations and explanations made by the representative of the Government of Israel before the ad hoc Political Committee in respect of the implementation of the said resolutions...", see UN Document A/818.
- 164 Cattan, op.cit., note 49, p. 258.



- 165 Resolution 2253 (ES-V) of the General Assembly dated 4 July 1967 concerning measures taken by Israel to change the status of Jerusalem, see 1548 th plenary meeting, 4 July 1967.
- 166 Resolution 2254 (ES-V) of the General Assembly dated 14 July 1967 concerning measures taken by Israel to change the status of Jerusalem.
- 167 See ref. 135, op.cit.
- 168 See ref. 136, op.cit.
- 169 See ref. 137, op.cit.
- 170 Resolution 465 of the Security Council dated 1 March 1980 concerning Israeli Settlements in Occupied Territories.
- 171 Resolution 478 of the Security Council dated 20 August 1980.
- 172 Lauterpacht, op.cit., pp. 970-75.
- 173 Blum, Yehuda, The Missing Reversioner: Reflections on the Status of Judea and Samaria, in Moore (ed), op.cit., pp. 287-318.
- 174 Lauterpacht, op.cit., p.972.
- 175 ICJ Reports(1953), p.63, see also Blum, op.cit., p.305.
- 176 Schwebel, Stephen, What Weight to Conquest?, 46 A.J.I.L., p.346.
- 177 Lauterpacht, op.cit., p.947.
- 178 Blum, op.cit., pp.303-304.
- 179 Ibid, p.304.
- 180 Lauterpacht, op.cit., p.975.
- 181 Id.
- 182 See ref. 152, op.cit.
- 183 For the text of the Law Enacted by the Israeli Knesset proclaiming Jerusalem the Capital of Israel, on July 30, 1980, see Lukacs, op.cit., p.106.

184 For more details, see "The Historical Connections of the Jewish People with Jerusalem", Memorandum To the Palestine Partition Commission submitted by the Jewish Agency, July 1938. Reprinted in Moore (ed), op.cit., pp. 191-209.

185 G. A. Resolution 194 (III).

186 Count Bernadotte, appointed U.N. Mediator by the General Assembly on the day the mandate ended, was despatched to Palestine to supervise the cease-fire and to "promote a peaceful adjustment of the future situation in Palestine. He proposed a plan to resolve the problem but both sides rejected it. According to his plan, Jerusalem was to be placed under U.N. administration. For more details concerning the Bernadotte Proposal, see Official Records of the General Assembly, Third Session, Supplement No. 11, Document A/648 (Progress Report of the U.N. Mediator on Palestine) Part I, Section VIII, para 4.

187 See ref. 62, op.cit. Also a summary of the Brookings Institution Study can be found in Lukacs, Yehuda (ed), Documents on the Israeli-Palestinian Conflict 1967-1983, Cambridge University Press, 1984, pp. 28-30.



PART FOUR

## CHAPTER SIX

### CONCLUSIONS

Certainly, the Camp David Accords and the 1979 Treaty were intended, as a first step, towards realizing a comprehensive peace settlement of the Arab Israeli conflict. It was planned that the 1979 Treaty should provide a model for subsequent peace treaties between Israel and other Arab states.

The 1979 Treaty can be reduced to two broad elements, territory and the Palestinians. The territorial issues under the Treaty are certainly proved to be a success if measured against the Palestinian clause. Clearly, the authors of the Treaty were aware of the fact that territorial issues were not just a question of lines and colours on the map; rather they touch deeply-rooted sentiments of individuals and groups and involve "all the complexities of civilization". However, when it came to disputes between the Israelis and Palestinians the problem was admittedly more difficult for political and legal reasons.

Notwithstanding, these two elements, with some minor differences and additions, would form the basis for other Arab treaties with Israel, e.g., with Syria. What is important now is to consider the critical lessons we can learn from the Treaty.

#### I. The Territorial Issues:

A judgement on the territorial issues under the 1979 Treaty must begin with its benefits. One of the critical problems of the Arab-Israeli conflict was the extent of the Israeli withdrawal, under Resolution 242, from the Arab territories occupied in 1967. The meaning attributed to the Resolution in the



standard pro-Israel argument is that it does not require Israeli withdrawal from all Arab occupied territories, but requires withdrawal to such lines as would constitute "secure boundaries" for Israel, while the Arab states argue that the Resolution requires a total Israeli withdrawal from all the occupied territories. Correct as that latter view may be, the ambiguity regarding the extent of the withdrawal has been decisively settled in the Peace Treaty which endorsed the concept of full withdrawal. This would no doubt affect the extent of the Israeli withdrawal from the rest of the Arab occupied territories.

One component of the Egyptian-Israeli conflict was the Israeli settlement policy in Sinai. As Sadat admitted, one of the Israeli settlements in Sinai, Yamit, was among the main reasons behind the October War of 1973. So far as these settlements are concerned, the Israelis held the view that the settlements were not illegal and that such settlements were an inalienable Jewish right and an integral part of Israel's national security. However, regardless of Israel's numerous attempts to justify its settlement policy, the international community without any exception has consistently condemned this policy as an illegal measure and a clear violation of binding international conventions. By endorsing the Egyptian proposal for dismantling all the Israeli settlements in Sinai, the authors of the Treaty adopted a reasonable attitude which was certainly in line with the general trend of international practice. Had the Treaty adopted the Israeli view, it would have run counter to the norms of international law as well as the relevant UN resolutions in this respect. In fact, the attitudes of the Treaty towards the Israeli settlement in Sinai were implicitly praised and adopted by the UN Security Council in its resolution 465 of 1980 which calls upon Israel, for the first time, in clear and explicit

language, to "dismantle and cease the establishment of settlements in the occupied territories".<sup>1</sup> In spite of the fact that several Israeli officials declared that the removal of the Sinai settlements should not be regarded as a precedent applicable to other Israeli settlements in the occupied territories, it is reasonable to suppose that the attitude of the Peace Treaty towards the settlements in Sinai may be looked upon as a legal precedent applicable to all the settlements in the occupied territories, or at least to the Golan Heights in Syria.

The dispute over Israeli navigation through the Gulf of Aqaba and the Straits of Tiran has been the occasion of the outbreak of two wars between Egypt and Israel in 1956 and 1967. As far as the legal regime of the Gulf of Aqaba is concerned, it seems clear that until the conclusion of the 1979 Treaty writers differed in their opinions as to the regime applicable. A number of them held that the waters of the Gulf of Aqaba possess the character of historic waters as the Gulf was an Arab mare clausum for over thirteen centuries and therefore should be treated as internal waters; others oppose this view, arguing that the Gulf and the Straits must be subject to the regime of territorial seas in accordance with Article 16 (4) of the 1958 Geneva Convention on the Territorial Sea of 1958, i.e., to a regime of non-suspendable innocent passage; and still others believed that the Gulf and the Straits constitute international waters and must be, therefore, opened for non-suspendable freedom of navigation similar to navigation on the high seas. After analysing the various claims and examining international evidence (treaties, unilateral acts, etc.), one can only conclude that the legal system governing the Gulf and the Straits prior to the 1979 Treaty was uncertain. No



better evidence may be found to support this suggestion than what has been concluded by the International Law Commission in its 1956 Special Report that the situation of the Gulf of Aqaba is "exceptional - possible unique"<sup>2</sup>.

As noted earlier, Article V(2) of the 1979 Treaty provides that the Gulf and the Straits are international waterways open to all nations for unimpeded and non-suspendable freedom of navigation. While the new regime established under this Article does not cause problems of practical importance in relation to Israeli navigation, certain difficulties have been raised as to the legal nature of the new regime. Some held that the authors intended to establish a regime that goes beyond the regime of innocent passage but that falls short of the freedom of navigation and overflight applicable in the high seas, i.e., to establish a regime analogous in the content to the UN Convention on the Law of the Sea regime of transit passage, which assures the rights of international community while preserving coastal states' rights of protection and self-preservation. However, after examining the language used and Egypt's practice after the 1979 Treaty, we have concluded that the new regime should be governed by the rules governing navigation on the high seas. No better evidence may be found to support this conclusion than that concluded by Reisman who indicated that "interpreted logically or teleologically Camp David produces freedom of navigation".<sup>3</sup>

Concerning the state of war between Egypt and Israel which was dealt in Article 1(1) of the Treaty, it is important to emphasize that, by the exchange of instruments of ratification at the US Surveillance Post at UM-Khashiba in Sinai on April 25, 1979, the 31-year-old state of war between Egypt and Israel was officially terminated. It is obvious that the termination of the state of

war was part of Egypt's obligation stipulated in return of recovering its territories occupied by Israel. Indeed, this is in line with Security Council Resolution 242 upon which the Camp David Accords and the Peace Treaty were based. Under the Resolution the formula to resolve the conflict contained two sets of corresponding obligations whose fulfillment would lead to the achievement of peace. As mentioned earlier, Article 1(II) of Resolution 242 stipulates the "termination of all claims or states of belligerency". Despite the reference to the termination of the state of war in the text of the Treaty as from the date of ratification, some writers argued that the state of war had been legally terminated by the cessation of hostilities in 1973. The wars between Sweden and Poland in 1716 and between Russia and Persia in 1867 may be mentioned as examples where the status of war had been terminated by simple cessation of hostilities. In 1950 the Security Council in its resolution adopted on September 25, 1951 considered the state of war between Egypt and Israel as terminated after the cessation of hostilities under the 1949 Armistice Agreement. However, the prevailing view was that the state of war between Egypt and Israel was not terminated by the simple cessation of hostilities. In the Flying Trader, the Alexandria Prize Court rejected the claimant's argument that no state of war existed between Egypt and Israel.<sup>4</sup> Similarly, state practice suggests that many states refused to regard termination of hostilities as analagous to the termination of the status of war, e.g., despite the unconditional surrender of Germany and Japan after the Second World War, the US, including its national courts and authorities, considered themselves at a state of war with Japan until it signed the 1950 Peace Treaty, and at a state



of war with Germany until it adopted the 1951 Act which ended the state of war between them.

From the above, we may conclude that the authors of the Treaty adopted the reasonable view that the simple cessation of hostilities could not be regarded as an alternative to the formal termination of the state of war between Egypt and Israel which was one of the main legal features of the conflict between 1948 and 1979. ✓

The recognition of the state of Israel and the establishment of diplomatic and economic relations were part of the package-deal which was based on the formula of Resolution 242. However, the establishment of full diplomatic relations, as well as economic relations, went far beyond Resolution 242. Under the Resolution, Egypt was only obliged to terminate the state of war and to recognize Israel's right to live in secure boundaries, but no economic and diplomatic relations were envisaged. If the 1979 Treaty is to be considered as a model, then, any future peace treaty between Israel and other Arab states would necessarily include the establishment of such relationships.

A final benefit which deserves mentioning is that, under the 1979 Peace Treaty, and after the Taba Award of September 29, 1988, the permanent international boundary between Egypt and Israel was finally established. It is the same boundary as existed between Egypt and mandated Palestine as governed by the 1906 Agreement between Anglo-Egyptian and Turkish representatives. In implementation of the 1979 Treaty and the Taba Award, Egypt and Israel signed an agreement in September 1989 whereby the final and permanent border-line between the two states was fixed. In fact, the eventual resolution of the

dispute over Taba by arbitration represents an important addition to the list of successes of the 1979 Treaty.

The above conclusions on the benefits of the Agreement are in line with the conclusions reached by William Quandt when he referred to the political gains for Egypt and Israel in the following terms:

"By these standards the Egyptian-Israeli peace treaty looks very good. Egypt recovered its territory and oil fields, and was able to turn some of its energies from the planning of war to the challenge of development...For Israel, too, the Treaty has been valuable. On the strategic level, Egypt today poses no military danger. This means that most of Israel's formidable arsenal can be aimed at deterring Syrian threats. A one-front war is a much less alarming prospect for Israel than a two-front war. Israel has also been able to meet its oil needs by purchasing Egyptian oil."<sup>5</sup>

As well as its benefits, the territorial settlement of the Egyptian-Israeli conflict has its defects. It would, of course, be foolish to underestimate the effect of these defects upon the future of peace between Egypt and Israel and upon the peace process in the Middle East as a whole.

Turning first to the issue of compensation for the war damage and the oil taken by Israel during its occupation of Sinai, it is important to emphasize that the critics of the 1979 Treaty have pointed out that one of its shortcomings is the failure to lay down definite rules of compensation and guidelines concerning the many problems which may arise in this respect. As indicated earlier, Article VIII of the 1979 Peace Treaty which speaks of "a claims commission for the mutual settlement of all financial claims" includes a



formula which was designed to gloss over the issue rather than resolve it. In fact, it reflects a policy of postponement, perhaps permanently, of the compensation issue.

Two difficulties have arisen concerning compensation. The first concerns cases where, as a result of military operations and/or Israeli occupation, an Egyptian or foreign national has suffered a loss by reason of injury or damage to his property in Sinai. We have suggested earlier that any Egyptian citizen whose property was requisition<sup>ed</sup> by the Israeli settlements is entitled under international law to be compensated. Article 52 of the Hague Regulations provides "contributions in kind shall be given and the payment of the amount due shall be made as soon as possible".<sup>6</sup> In the Kamatzucas v. Germany Case, the German-Greek Mixed Arbitral Tribunal held that requisitions without compensation were contrary to international law:

"Such requisitions were lawful as complied with the provisions of Article 52, namely, that the payment of the amount due should be made as soon as possible after the requisition; and that as nearly nine years had elapsed since the requisition and full payment had not been made, the requisition was contrary to International Law and afforded a good ground for the recognition of the competence of the Tribunal and an award of compensation".<sup>7</sup>

Nevertheless, under the 1979 Treaty no owner of damaged property is entitled to receive compensation. In other words, the 1979 Treaty, due to Israel's rejection, produced nothing like Article 78 of the 1947 Peace Treaty between Italy and the Allied and Associated Powers<sup>8</sup> which has several provisions concerning compensation, in particular how a person whose property had been

requisitioned or damaged during the occupation can claim for compensation. An example is Article 78(4) which reads as follows:

"In cases where property cannot be returned or where as a result of the war a United Nations national has suffered a loss by reason of injury or damage to property in Italy, he shall receive from the Italian Government compensation in lire to the extent of two-thirds of the sum necessary, at the date of payment, to purchase similar property or to make good the loss suffered".<sup>9</sup>

A more important problem concerning compensation is that of Israeli exploitation of oil fields in Sinai since the Israeli occupation began in 1967. Whilst Egypt has consistently taken the position that such exploitation violated international law, Israel held the view that its exploitation of the oil fields was within its authority as an occupying power and thus not in violation of the law of military occupation. The reasons in support of these two conflicting views are not our concern, nor is it intended here to repeat all that has been said in this respect. However, one may be entitled to assume that Egypt's precious oil resources could not be legally taken by a temporary belligerent occupant but must be safeguarded as Article 55 of the Hague Regulations expressly requires. No better evidence may be found to support this suggestion than what was concluded by the International Military Tribunal at Nuremberg in The Farben and Krupp cases that: "at the outermost limit an occupant may take no more property from the occupied territory - public or private, movable or immovable, in aggregate than is necessary to meet the costs of the occupation"<sup>10</sup>.

It is well known that the Sinai oil fields were producing 55% of Israel's oil needs, and it may be correct to say that omission of any explicit reference to



the issue leaves the way open for invoking all kinds of allegations which could no doubt affect the peace between Egypt and Israel.

It may be added that Egypt has explicitly maintained that it is entitled under the provisions of the Peace Treaty to get compensation for the oil taken by Israel. In 1989 President Mubarak of Egypt restated this position, which was rejected by Israel.<sup>11</sup>

Another important shortcoming in the territorial settlement under the 1979 Peace Treaty is the absence of reciprocity in the provisions on the security requirements. Several qualified observers have maintained that Israel enjoys a privileged position under the provisions of the Treaty stipulating the permanent demilitarization of Sinai. We have indicated earlier that under Article IV of the 1979 Treaty and other relevant provisions, whilst a very small border area of Israeli territory was to be a limited force zone, one third of Egypt's territory was to be a limited force and demilitarized zone. Moreover, while the provisions provided for the stationing of UN or international forces in Egypt's territory, only UN observers (but not forces) will be allowed to stay in Israeli territory. Furthermore, Egypt would not be allowed by its own decision to evacuate the international forces from its territory. In this respect, Egypt needs either Israeli approval or a Security Council resolution in order to evacuate such foreign forces from its own territory. Surely such conditions are undesirable, since they could be interpreted as denying Egypt's complete sovereignty over part of its own territory. Also, these conditions went beyond what had been envisaged by Resolution 242 and the Camp David Framework Agreement. As is well-known, both the Resolution and the Agreement refer to the security concerns "of all parties" and to the security of "Israel

and its neighbours". In the negotiations all the parties, including the US Government, endorsed the principle of reciprocity on the security requirements. No party has accepted that these requirements are to be one-sided only. There is no better quotation in this regard than a passage from Mahmoud Riad in which he indicated that:

"if circumstances had forced Egypt to sign on its own an agreement which denied it complete sovereignty over part of its own territories, then every Egyptian would feel that the security of Egypt was in danger and that Israel that attacked Egypt twice, in 1956 and 1967, might be more tempted to do so again in the future".<sup>12</sup>

Bearing in mind that Article IV (4) permits that these security arrangements may, at the request of either party, be reviewed and amended by mutual agreement of the Parties, we suggest that a revision of the conditions would be useful in order to lessen their shortcomings. Looked upon as a model for other peace treaties with Israel, such a revision of the 1979 Peace Treaty, which would enhance the chances for a permanent peace in the area, cannot be avoided.

Another type of difficulty appears to be in cases where Israel, under the pretext of exercising the right of self-defence, could attack an Arab state. In such a situation, it is possible to anticipate a contradiction between Egypt's obligations under the Arab Joint Defence Pact of 1951 on one hand and its obligations under the 1979 Peace Treaty on the other. Article 2 of the Arab Defence Pact stipulates that armed aggression against any one or more member would be considered as an attack against all. Article 6 of that Pact provides for the establishment of a Joint Defence Council which would be competent to



decide (by a two-third majority) whether an act of aggression had occurred. Thus, even if Egypt was to vote that Israel was not the aggressor in the case of an act of anticipatory self-defence, it would be obliged to intervene against Israel if two-thirds of the parties to the Defence Pact condemned Israel, whilst in the meantime it is obliged under Article VI (5) of the Peace Treaty not to intervene militarily against Israel because of its obligation under any other treaty. As indicated earlier Article VI of the 1979 Treaty stipulates the rationale of the Egyptian-Israeli Peace Treaty over other obligations which either State has entered. So far as this problem is concerned, Israel insisted that the target of Article VI is the Arab Defence Pact and therefore demands that Egypt must withdraw from the Defence Pact so as to avoid such a possible contradiction. While Egypt has explicitly maintained that its obligations under the Defence Pact are part of its obligations under Article 51 and 52 of the UN Charter and therefore that it cannot renounce the Defence Pact.

Bearing in mind that the 1979 Treaty does not provide a mechanism to deal with controversies concerning the interpretation and execution of the Treaty, the foregoing conflicting interpretations could lead in certain circumstances to a serious consequence which might threaten the peace between Egypt and Israel.

Undoubtedly, the absence of any specific provision for a mechanism to deal with disputes concerning the interpretation and execution of the Treaty which are not settled by diplomatic negotiations represents an important shortcoming in the Treaty. A review of the Treaties of Peace of 1949 between the Allied and Associated Powers on the one hand and Bulgaria, Finland, Hungary, Italy and Romania on the other reveals that they all included provisions for the settlement of disputes which may arise out of their operation; the provisions

are almost identical in terms. Part XI of the Treaty with Italy, for example, provides in Article 87 that such controversies are to be submitted to the Ambassadors in Rome of Great Britain, the United States, the Soviet Union and of France. If this dispute has not been resolved by them within a period of two months,

"it shall, unless the parties to the dispute mutually agree upon another means of settlement, be referred at the request of either party to a Commission composed of one representative of each party and a third member selected by mutual agreement of the two parties from nationals of a third country. Should the two parties fail to agree within a period of one month upon the appointment of the third member, the Secretary-General of the United Nations may be requested by either party to make the appointment".<sup>13</sup>

Likewise, the Peace Treaty with Japan which was signed in San Francisco on September 8, 1951 provides that disputes concerning the interpretation or execution of the peace treaty which were not resolved by a special claims tribunal or by other agreed means were to be referred at the request of any party to the International Court of Justice for settlement.<sup>14</sup>

Having in their mind the importance of such a mechanism for the interpretation of the Treaty between Egypt and Israel, both the Egyptians and Americans in their proposals at Camp David in 1978 suggested in Article 2(5) and Para.A.1. respectively that the parties would "accept the compulsory jurisdiction of the International Court of Justice with respect to all disputes emanating from the application or the interpretation of their contractual arrangements". Nevertheless, Israel rejected these proposals. Instead, the parties agreed in Article VII that, if disputes concerning interpretation cannot be settled by



negotiations, they shall be resolved by conciliation or submitted to arbitration. It is not intended here to appraise the foregoing Article. For present purposes, it is enough to suppose that the methods laid down by Article VII to deal with disputes arising out of the Treaty's interpretation are not entirely satisfactory. No better evidence may be found to support this suggestion than the failure of these methods to settle the disputes over the meaning of certain provisions concerning the Palestinians raised by conflicting interpretations submitted by the parties. This failure prevented the implementation of the Agreement on the West Bank. If the 1979 Treaty had established an effective mechanism, similar to those of the post World War II peace treaties, the Palestinian clause might have been implemented.

At this point it should be added that, despite the strong argument that the eventual resolution of the Taba problem by arbitration represented a success of the methods defined in Article VII of the Treaty, nevertheless one may be entitled to suggest that such a success was an exception. A careful study of the Taba Case reveals that, whilst Israel rejected any form of arbitration over Taba after the failure of the negotiations to settle the problem in 1983, Egypt was not able to force Israel to accept arbitration for more than four years. Nevertheless, by reasons partly of US intensive political pressure on Israel and partly of Egypt's implicit threats to abrogate the Treaty, the Israeli Cabinet in January 1988 decided to accept binding international arbitration on the issue. In fact, the resolution of the dispute over Taba by means of arbitration was a success for American and Egyptian diplomatic efforts rather than a success for the vague mechanism established by Article VII of the 1979 Treaty.

Again, if the Treaty had provided for an effective mechanism, it would not have been taken more than seven years to settle the Taba dispute.

## II. The Palestinians' Clause:

A judgement of the provisions dealing with the Palestinians under the 1979 Peace Treaty and the Camp David Accords must begin with its defects. One of the essential defects of the Agreement concerning the Palestinians is that it was concluded in the absence of any Palestinian or any authorized person who could speak on behalf of the Palestinians. So far as this defect is concerned, attention will be paid only to a few points:

Because the Palestinians were not legally represented at Camp David or at the negotiations that led to the 1979 Treaty, the provisions dealing with their issues are not binding on the Palestinian people. This being the case, the drafters, who realized that any agreement reached on the Palestinian problem could be rejected, were reluctant to give the problem more effort and time.;

Moreover, because of the fact that Egypt could not speak for the Palestinians or make binding commitments on their behalf, Egypt felt obliged to be a staunch advocate of general principles in a situation in which details were of more importance to the Israelis and to the Palestinians.

Finally, the absence of the Palestinians from the peace negotiations led to the absurd conclusion that they were, in practice, represented mainly by the Egyptians and sometimes by the Americans. Both have been accused of being not sufficiently aware of the realities of the situation in the West Bank and Gaza. President Carter admitted that it was not until he visited the West Bank as a private citizen in 1983 that he became aware of many of the realities of the



situation there. Also, Dayan criticized Egyptian officials' lack of comprehension of many of the realities of the situation in Gaza and the West Bank.

So far as the scope of the Palestinian provisions is concerned, we have indicated earlier that several important aspects of the Palestinian question were excluded. Among these is the question of East Jerusalem. It is important to emphasize that critics of the Camp David Accords and the 1979 Peace Treaty have pointed out one of its shortcomings as failing to produce any provisions on the problem of East Jerusalem.

One component of the Jerusalem problem was the Israeli occupation of the Arab sector of the city in the Six-Day War of 1967. As indicated earlier, Israel maintained that the sovereignty vacuum arising in the Old City at the end of the mandate was not filled by Jordan, whose status there was one of the de facto occupation. It follows that, once Jordan was physically removed from East Jerusalem by legitimate measures, namely Israeli defensive action on June 5, 1967, the way was open for Israel, as a lawful occupant, to fill the still subsisting vacancy. However, it seems quite clear that the overwhelming majority of states are not prepared to agree to this Israeli view. It is not intended here to repeat what had been said in this respect. For present purposes it is enough to refer to the Security Council Resolution 465 of 1980 (adopted by a majority including the US) whereby East Jerusalem was described as an occupied territory.

Another aspect of the Jerusalem question is the Israeli administrative and legislative measures taken in East Jerusalem. Among these measures are the Israeli administrative unification and/or annexation of the Arab city, the

establishment of Israeli settlements and attempts to change the demographic structure of the Arab city. As far as these measures are concerned whilst the Israelis considered that their settlement policy in East Jerusalem is within the limits of law of military occupation and that the administrative unification of the city does not constitute a formal annexation, the overwhelming majority of states oppose this view, arguing that it is in violation of the rules of international law as well as the UN Charter. In fact, several UN resolutions call upon Israel to rescind these measures on the ground that they are in violation of the law of military occupation.

From the foregoing, we may conclude that the omission of such an important question as Jerusalem was not only unreasonable but also undesirable. This omission was understood by some as an endorsement by Egypt and the US of Israel's annexation and unification of the Holy City as its capital. Others emphasized that the omission reflected the failure of the framers to meet the aspirations of the Palestinian people, thus failing to achieve a comprehensive peace as required by Resolution 242.

The attitude towards the Palestinian refugees represents another shortcoming attributed to the provisions on the Palestinians. Several qualified observers criticized the solution provided by the Treaty for the refugee problem because it was not in conformity with the UN resolutions relating to the Palestinian refugees. Also, it was criticized for not laying down a workable solution for all the groups of Palestinian refugees. As noted earlier, the framers made a distinction between the "old" refugees who fled in 1947-1948 and "new" refugees of 1967 war. Whilst an agreed procedure would be established by Israel for the resolution of the former's problem, it has been agreed that the latter group



would only <sup>be</sup> allowed to return subject to the consent of the Israeli authorities. However, the authors of the Camp David Accords made an uneasy distinction among the refugees of the latter group by providing that the right to return is not applicable to the 1967 refugees in general but only to those who have been forcibly transferred or expelled. In practice, suppose that two persons A and B left the West Bank after Israel's occupation in 1967, and that A was expelled by the Israelis while B fled because of his fears. Under the Camp David Accords only A could be allowed to return. To deprive B of the right to return to his homeland is clearly in violation of various UN resolutions in this respect, as, for example, the Security Council Resolution 237 adopted on June 14, 1967 and reaffirmed by the General Assembly on July 4, 1967 whereby the Security Council calls upon the Government of Israel to facilitate the return of those inhabitants who have fled the areas since the outbreak of hostilities. It is also inconsistent with Resolution 3236 adopted by the General Assembly in 1974 whereby the Assembly affirmed the inalienable right of the Palestinians to return to their homes and property from which they have been displaced and uprooted.

It may be added that the Committee on the Exercise of the Inalienable Rights of the Palestinian People, established in 1975 by the General Assembly to prepare a programme of implementation to enable the Palestinians to exercise the rights recognized in Resolution 3236, recommended a Palestinian return in two phases. The first phase would involve refugees of the Six Days' war of 1967 who had fled areas of the West Bank and Gaza now occupied by Israel. In the second phase, Arab refugees would be permitted to return to areas in Israel from which they had fled during the original hostilities of 1947-48.

Turning to the provisions on the autonomy plan for the inhabitants of the West Bank and Gaza, it is important to emphasize that several qualified observers have criticized the authors, not only for their failure to work out a satisfactory formula acceptable to all the parties, but also because the wording of these provisions was extremely vague and imprecise and might give rise to differences of opinions on various words and expressions which had been used.

The first imprecise term which does cause problems of practical importance is "full autonomy". As noted earlier, autonomy is not a term of legal art, nor has it an accepted precise meaning. Consequently, we were confronted with two sharply opposing points of view on the nature of Palestinian autonomy. The Egyptians understood the term as a reference to an extensive degree of autonomy similar to a de facto government and as the precursor to Palestinian self-determination and Israeli withdrawal from the West Bank. The Israelis held that autonomy meant a limited form of administrative self-government under circumstances in which Israel retained control over both the West Bank and Gaza. Nevertheless, despite the conclusion, demonstrated earlier, that a reasonable understanding of the language would support Egypt's view that the term "autonomy" was intended by the authors to refer to a wide and extensive degree of autonomy, however, one may be entitled to suppose that the term "autonomy" was acceptable to Egypt and Israel mainly because it would enable them to invoke all kinds of interpretations as to its meaning. Undoubtedly, this is an undesirable suggestion but it is a possible understanding of the intention of the parties.

Another type of difficulty appears to be in the exact meaning of the phrase "the representatives of the Palestinian people" used in paragraph (A) 1. The



parties concerned differed in their opinions as to the correct interpretation of this phrase. The US interprets it not in terms of any single group or organization as representing the Palestinian people, but as encompassing those elected or chosen for participation in negotiations provided that they would accept the purposes of the negotiations as defined in Resolution 242 and in the Camp David Agreement as well as being prepared to live in peace with Israel. The Israelis opposed this view, arguing that the phrase does not encompass the PLO. Egypt held that there is nothing in the language of the Camp David Accords which prevents the PLO from representing the Palestinian people. However, the Camp David Accords neither permit nor prevent the PLO from taking part in the negotiations and, after the PLO's acceptance of Resolution 242 in November 1988, there is nothing from a legal view which prevents the PLO from assuming such a role. To support this conclusion, we may refer to the conclusion of Bernard Lewis that, in negotiations to end a conflict, one does not choose the representatives of the other side. He went on further to say that "it is not for the Israelis or any other outside party to choose, or impose any veto on Palestinian representation".<sup>15</sup>

Similar difficulties have been raised concerning the meaning of other phrases in the Camp David Agreement as "self-governing authority", "the legitimate security concerns of the parties" and "the legitimate rights of the Palestinian people and their just requirements". It is not intended here to repeat what has been said earlier in respect of conflicting interpretations submitted by the parties. For the present purpose it is enough to indicate that there has simply been no meeting of minds between Israel and Egypt on the meaning of these phrases. Greater precision in defining and redefining such terms is desirable.

Concerning the election of the self-governing authority, it is important to emphasize that critics of the Camp David Agreement have pointed out one of its shortcomings the omission of provisions to deal with questions which may arise out of the elections. As, for example, who will supervise the elections? Who will be eligible to elect and to be elected? Will Israel have the right to object to any candidate? Whether the Israeli settlers will take part in these elections. While these questions do not raise problems of principle, they do cause problems of practical importance which are both difficult and of immediate concern to the parties involved.

Among the main components of the Palestinian problem is the Israeli military occupation of the West Bank and Gaza. The Camp David Agreement, however, has no provision for Israeli withdrawal from the area. Instead, the Agreement speaks of redeployment of Israeli forces into specified security locations. Apart from the uncertainty relating to the definitions and the geographical position of these security locations and the number of forces which will remain in them, the absence of specific provisions on the final Israeli withdrawal has been considered as one of its main defects for several reasons. In the first place, it is inconsistent with Resolution 242 which undoubtedly called for a final Israeli withdrawal from the area, and Resolution 242 is the legal basis of the Camp David Accords and the 1979 Peace Treaty. Moreover, the failure to resolve the issue of the Israeli withdrawal represented a failure to achieve the comprehensive peace promised by the parties. Finally and most significantly, this failure may be looked upon as a double-standard in dealing with different parts of the occupied territories, that is to say, while the Security Council made no distinction whatsoever between the Arab territories occupied in 1967,



whether they belonged to Egypt, Syria or the Palestinians, as they all should be evacuated by the Israeli forces, the authors of the 1979 Treaty and the Camp David Accords laid down an uneasy and undesirable distinction between Palestinian and Egyptian territory. By providing for a total and final withdrawal from the Sinai and at the same time ignoring a similar withdrawal from the West Bank and Gaza, the authors left their Agreement open for sharp criticism.

Another shortcoming is the absence of any provision on the Israeli settlements in Gaza and the West Bank. It is submitted that the Israeli settlement policy in Gaza and the West Bank is illegal under the rules of international law and according to the various UN resolutions condemning such policy and calling upon Israel to dismantle the settlements. In fact, there is a consensus of opinion among states as to the illegality of these settlements. There is no need to repeat here what was said in this respect. From the foregoing, one may be entitled to suggest that the attitude of the Accords and the Treaty towards the Israeli settlements in Gaza and the West Bank runs counter, not only to the general trend of international law in this respect, but also to the attitude of the Peace Treaty itself towards the Israeli settlements in Sinai which the authors agreed to dismantle. Again, we are confronted with a double-standard in dealing with Palestinian issues.

As far as the final status of the West Bank and Gaza is concerned, it is clear that the authors failed to settle these problems by including only a sentence to the effect that negotiations would deal with all outstanding issues after the transitional period. This approach towards the final status of the area has left the door open for the parties to submit two sharply opposing points of

view on that crucial issue. The Egyptians hold that the Palestinians will be entitled after the transitional period to exercise the right of self-determination, including the formation of the Palestinian state, if they choose to do so. The Israelis believe that the Camp David Accords exclude the choice of an independent Palestinian state; and therefore the area could remain under permanent Israeli sovereignty after the transitional period. The Americans believed that self-government by the Palestinians of the West Bank and Gaza, in association with Jordan, offers the best chance for a durable, just and lasting peace.

It is suggested that the timing of the implementation of the Agreement on the West Bank and Gaza was badly phrased, as well as not binding on Israel. The language on the implementation of the Sinai Agreement referred to fixed and binding dates which were included in the text of the Treaty. Nevertheless, when it comes to implementing the Agreement on the Palestinians, the authors speak of target, rather than fixed, dates. Moreover, such target dates were not included in the text of the Agreement; instead they were referred to in a separate letter attached to the Peace Treaty. Comparing the latter to the dates of the Sinai Agreement, one may be entitled to suppose that there does exist a double-standard in dealing with the Palestinians. Indeed, this may cast doubts on the real intention of the parties, or at least on the Israeli intention as to the implementation of the Palestinian clause. President Carter admitted in 1983 that he miscalculated Israeli intention as to implementing the Agreement on the West Bank:



"From Begin's point of view, the peace agreement with Egypt was the significant act for Israel; the references to the West Bank and Palestinians were to be finessed."<sup>16</sup>

From a political viewpoint, several qualified observers have maintained that the authors of the Accords and the Treaty overestimated the role that Egypt could play in laying the groundwork for a negotiated settlement of the Palestinian issue. In fact, during the post-Camp David autonomy negotiations, the Egyptians tried to negotiate on behalf of the Palestinians, but realized that their ability to make arrangement for others was limited. Similarly, they misjudged the attitude of King Hussein and the Palestinian leaders by assuming that they might be willing to take part in negotiations.

Despite all the foregoing defects which have been presented by a number of leading writers for holding that the Accords and the Treaty failed to achieve, or to lay down, bases for a comprehensive peace, nevertheless one may be entitled to suggest that there may be a number of benefits for the Agreement on the Palestinians which perhaps could open the way for a final and comprehensive solution. It is submitted that Para.A.1.(c) of the Agreement pointed out that the solution must recognize "the legitimate rights of the Palestinian people and their just requirements." Undoubtedly, this is the first document in which Israel recognized in writing that the Palestinians had legitimate rights.

Moreover, it was agreed that the negotiations to determine the final status of the West Bank and Gaza are to be "based on the provisions and principles of UN Security Council Resolution 242." Surely, there are ample reasons to argue that these words on Resolution 242 had been phrased in such a manner as to show

that the resolution must be applied to the West Bank and Gaza. Logically, this would lead to, or at least keep the door open for, a final and total Israeli withdrawal from the area.

Further, although the proposed autonomy does not meet the aspirations of the Palestinians, nor their just requirements under international law, Israel's commitment in an international agreement that the Palestinians would be given "full autonomy", should not be underestimated. In fact, Israel did commit itself to a process<sup>which</sup> if faithfully implemented, would have led to the withdrawal of the military government and the establishment of an elected Palestinian self-governing body. This autonomy process, for political and legal reasons, would become irreversible. Surely, if the "Palestinian elected body" acted responsibly, then Israel, after the transitional period, could be politically, if not legally, obliged to abandon sovereignty over the area.

For all the defects presented earlier, it is not surprising that the Agreement on the Palestinians was not implemented. Perhaps, because of these defects, it appears that both Egypt and Israel no longer adhere to the Camp David formula. For example, a review of the Shamir Plan of May 1989 whereby he speaks of "transitional" self-rule leading to "permanent" self-rule reveals how far Israel has denounced its commitments under the Camp David Agreement. On the other hand, Egypt made it clear that, because the circumstances have changed, the Camp David formula is no longer an appropriate framework for the solution of the Palestinian problem. This is due partly to the Palestinian uprising, and partly to the fact that the Palestinians have accepted Resolution 242 and declared their own state in 1988.



### III Camp David as a model

We have to distinguish between Camp David as a model for negotiations (a process) and Camp David as a model for other peace treaties.

So far as the former is concerned, some believe that it could be a model for future negotiations between Israel and its other Arab neighbours. Under American auspices an agreement based on the "territory for peace" formula could be produced. In other words, Camp David could be seen as something of a model for Arab-Israeli peace negotiations as an alternative to the idea of an international conference. From a legal view, this could be accepted since the Security Council Resolution 338 speaks of negotiations under "appropriate auspices". Such auspices could be the UN, the US or an international conference.

However, this view was criticized on the ground that, for several political reasons, the Camp David Accords do not provide a model that can be easily copied in future negotiations. Among these reasons is the fact that by removing Egypt's considerable strength from the military equation vis-a vis Jordan, Syria and the Palestinians, Israel was greatly strengthened. According to some, this weakness of the Arab positions could make negotiations with Israel impossible or at least the Arab leaders cannot expect to gain as much from negotiations as Sadat did.

Perhaps for this reason, the Camp David model for negotiations, in which the US would play an active role to help the parties concerned in achieving an agreement, is no longer supported by Egypt. Instead, the idea of having an international conference to discuss all the remaining problems of the Arab-Israeli conflict, including the Palestinian issue, is nowadays widely accepted by international society. Nevertheless, Israel opposes the idea on the ground that

such an international conference would put much pressure on Israel and thus weaken its bargaining position.<sup>17</sup>

This writer, however, believes that the Camp David process provides a rare opportunity to understand how a powerful mediator can play an important role in solving the complicated issues of the Arab-Israeli conflict. Having in mind the fact that there was nothing new at Camp David, the situation was not more than heads of states at a summit deciding grave issues of war and peace, one may conclude that, theoretically, Camp David as a model and pattern for negotiations can be copied. In a recent study published in January 1991, Tom Princen reached a similar conclusion:<sup>18</sup>

Concerning Camp David as a model for other peace treaties with Arab States a distinction should be made between the agreement on Sinai and that on the Palestinians".

Apart from the Palestinian clause, the Egyptian-Israeli Peace Treaty, though far short of an ideal model, did establish the important precedents of trading territory and the dismantling of settlements for a binding peace treaty and elaborate security arrangements. Surely, such precedents would be useful in any future agreements between Israel and Arab states.

Notwithstanding the fact that the basic approach to the question of the Palestinian people at the Camp David Accords was not the right one, this writer believes that the Camp David formula provided a unique opportunity, at least as a starting point, for working out a formula accepted by all the parties concerned provided that the Palestinians and the Israelis have to give up any preconditions which are not accepted by the other party, that is to say, the Israelis have to abandon the precondition that they would have a right to veto



the choice of Palestinian spokesmen. On the Palestinian side, there has hitherto been a precondition that they will not enter into any negotiations unless the result, a Palestinian state, is determined in advance.

#### IV. Recommendations

It is pertinent to end these conclusions with the suggestion that, instead of the separate negotiations resulting sometimes in agreements binding only between the nations concerned, sometimes in failure to agree, and sometimes even in failure after the agreement was concluded (e.g. the Peace Agreement of 1983 between Lebanon and Israel which was abrogated in 1984), there should be a multilateral conference including all the states concerned as well as the permanent members of the UN Security Council, or alternatively only of Israel and Arab States still in conflict with it, at which peace agreements would be simultaneously negotiated. The proposed agreement should:

1. Define precisely and exactly the border between Israel and each of the Arab neighbouring states. Otherwise, in the absence of such a precise definition of the boundaries with Israel, there could afterwards arise disputes, like the Egyptian-Israeli dispute over Taba, which might have been avoided by more careful drafting of the agreement,

2. There should be some mechanism for compulsory settlement of any dispute in the future.

3. The principle of reciprocity should be regarded as the basis on which the parties can agree to special security arrangements. It would be a mistake to apply these requirements only to one side.

4. Some provision ought to be made with respect to the water resources problems which already exist between Israel on the one hand and Syria, Lebanon and the Palestinians in the West Bank on the other.

5. There should be provisions to deal precisely with all the financial claims which might arise.

6. Finally, the suggested agreement should be based on the "territory for peace" formula upon which the Security Council Resolution 242 was based. This would mean that Israel has to give up all the occupied Arab territories in return for a genuine and permanent peace.



Notes

- 1 Security Council Resolution 465 adopted on March 1, 1980.
- 2 YBILC, (1956).
- 3 Reisman, Michael, The Regime of Straits and National Security, 74 AJIL, 1980, p.16.
- 4 The Flying Trader, Prize Court of Alexandria, December 2, 1950, LLR.4, 1950, p.444.
- 5 Quandt, William, The Camp David- Peace Making and Politics, Washington, p.324.
- 6 Article 52 of the Hague Regulations.
- 7 3 International Digest, p. 380.
- 8 The Peace Treaty between the Allied Powers and Italy, U.N.T.S.(1947).
- 9 Ibid, Article 78.
- 10 The Farben Case, United States v. Krauch et al. (1948) UN war Crime Commission X Law Reports of Trial of War Crimina, at 135; The Krupp Trial United States v. Krupp von Bohlen et al(1948),Id.
- 11 Statement by President Mubarak published in Al-Ahram, 25 February, 1989, Cairo.
- 12 Riad, Mahmoud, The Struggle for Peace in the Middle East, Quarter Books, London, 1981, p.324.
- 13 Article 78 of the Peace Treaty with Italy.
- 14 The Peace Treaty with Japan, September 8, 1951, U.N.T.S. Vol.
- 15 Lewis, Bernard, The Arab-Israeli Conflict, Sunday Times, March 10, 1991.
- 16 Carter, Jimmy., The Blood Of Abraham, p.45.

17 Princen Tom, Camp David: Problem-Solving or Power Politics as Usual, 28  
Journal of Peace Research, 1991, pp. 57-69.



## APPENDIX I

### Prime Minister Begin's Autonomy Plan

28 December, 1977

1. The administration of the Military Government in Judea, Samaria and the Gaza district will be abolished.

2. In Judea, Samaria and the Gaza district, administrative autonomy of the residents, by and for them, will be established.

3. The residents of Judea, Samaria and the Gaza district will elect an Administrative Council composed of 11 members. The Administrative Council will operate in accordance with the principles laid down in this paper.

4. Any resident, 18 years old and above, without distinction of citizenship, or if stateless, will be entitled to vote in the elections to the Administrative Council.

5. Any resident whose name is included in the list of candidates for the Administrative Council and who, on the day the list is submitted, is 25 years old or above, will be entitled to be elected to the Council.

6. The Administrative Council will be elected by general, direct, personal, equal and secret ballot.

7. The period of office of the Administrative Council will be four years from the day of its election.

8. The Administrative Council will sit in Bethlehem.

9. All the administrative affairs relating to the Arab residents of the areas of Judea, Samaria and Gaza district will be under the direction and within the competence of the Administrative Council.

10. The Administrative Council will operate the following Departments: education; religious affairs; finance; transportation; construction and housing; industry; commerce and tourism; agriculture; health; labour and social welfare; rehabilitation of refugees; and the administration of justice and supervision of local police forces; and promulgate regulations relating to the operation of these Departments.

11. Security and public order in the areas of Judea, Samaria and the Gaza district will be the responsibility of the Israeli authorities.

12. The Administrative Council will elect its own chairman.

13. The first session of the Administrative Council will be convened 30 days after the publication of the election results.

14. Residents of Judea, Samaria and the Gaza district, without distinction of citizenship, or if stateless, will be granted free choice (option) of either Israeli or Jordanian citizenship.

15. A resident of the areas of Judea, Samaria and the Gaza district who requests Israeli citizenship will be granted such citizenship in accordance with the citizenship law of the state.

16. Residents of Judea, Samaria and the Gaza district who, in accordance with the right of free option, choose Israeli citizenship, will be entitled to vote for, and be elected to, the Knesset in accordance with the election law.

17. Residents of Judea, Samaria and the Gaza district who are citizens of Jordan or who, in accordance with the right of free option will become citizens of Jordan, will elect and be eligible for election to the Parliament of the Hashemit Kingdom of Jordan in accordance with the election law of that country.

18. Questions arising from the vote to the Jordanian Parliament by residents of Judea, Samaria and the Gaza district will be clarified in negotiations between Israel and Jordan.

19. A committee will be established of representatives of Israel, Jordan and the Administrative Council to examine existing legislation in Judea, Samaria and the Gaza district, and to determine which legislation will continue in force which will be abolished, and what will be the competence of the Administrative Council to promulgate regulations. The rulings of the committee will be adopted by unanimous decision.

20. Residents of Israel will be entitled to acquire land and settle in the area of Judea, Samaria and the Gaza district. Arabs, residents of Judea, Samaria and the Gaza district, who, in accordance with the free option granted them, will become Israeli citizens, will be entitled to acquire land and settle in Israel.



21. A committee will be established of representatives of Israel, Jordan and the Administrative Council to determine norms of immigration to the areas of Judea, Samaria and the Gaza district. The committee will determine the norms whereby Arab refugees residing outside Judea, Samaria and the Gaza district will be permitted to immigrate to these areas in reasonable numbers. The rulings of the committee will be adopted by unanimous decision.

22. Residents of Israel and residents of Judea, Samaria and the Gaza district will be assured freedom of movement and freedom of economic activity in Israel, Judea, Samaria and the Gaza district.

23. The Administrative Council will appoint one of its members to represent the Council before the Government of Israel for deliberation on matters of common interest, and one of its members to represent the Council before the Government of Jordan for deliberation on matters of common interest.

24. Israel stands by its right and its claim of sovereignty to Judea, Samaria and the Gaza district. In the knowledge that other claims exist, it proposes, for the sake of the agreement and the peace, that the question of sovereignty in the areas be left open.

25. With regard to the administration of the holy places of the three religions in Jerusalem, a special proposal will be drawn up and submitted that will include the guarantee of freedom of access to members of all the faiths to the shrines holy to them.

26. These principles will be subject to review after a five-year period.

## APPENDIX II

### Egyptian Proposal at Camp David September 6, 1978

#### Framework For The Comprehensive Peace Settlement Of The Middle East

Following: The historic initiative of President Sadat which rekindled the hopes of all nations a better future for mankind.

In view of the firm determination of the peoples of the Middle East, together with all peace-loving nations, to put an end to the unhappy past, spare this generation and the generations to come the scourge of war and open a new chapter in their history ushering in an era of mutual respect and understanding.

Desirous to make the Middle East, the cradle of civilization and the birthplace of all Divine missions, a shining model for coexistence and cooperation among nations.

Determined to revive the great tradition of tolerance and mutual acceptance free from prejudice and discrimination.

Determined to conduct their relations in accordance with the provisions of the Charter of the United Nations and the accepted norms of international law and legitimacy.

Committed to adhere to the letter and spirit of the Universal Declaration of Human Rights.

Desirous to develop between them good-neighborly relations in accordance with the Declaration of Principles of International Law concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations.

Bearing in mind that the establishment of peace and good-neighborly relations should be founded upon legitimacy, justice, equality and respect for fundamental rights and that good neighbors should demonstrate, in their acts and claims, a strict adherence to the rule of law and a genuine willingness to assume their



mutual obligation to refrain from any infringement upon each other's sovereignty or territorial integrity.

Convinced that military occupation and/or the denial of other peoples' rights and legitimate aspirations to live and develop freely are incompatible with the spirit of peace.

Considering the vital interests of all peoples of the Middle East as well as the universal interest that exists in strengthening World Peace and security.

#### Article 1

The Parties express their determination to reach a comprehensive settlement of the Middle East problem through the conclusion of peace treaties on the basis of the full implementation of Security Council Resolutions 242 and 338 in all their parts.

#### Article 2

The Parties agree that the establishment of a just and lasting peace among them requires the fulfillment of the following:

First: Withdrawal of Israel from the occupied territories in accordance with the principle of inadmissibility of the acquisition of territory by War.

In Sinai and the Golan, withdrawal shall take place to the international boundaries between mandated Palestine and Egypt and Syria respectively.

In the West Bank, Israel shall withdraw to the demarcation lines of the 1949 Armistice Agreement between Israel and Jordan with such insubstantial alterations as might be mutually accepted by the Parties concerned. It is to be understood that such alterations should not reflect the weight of conquest. Security measures shall be introduced in accordance with the provisions below mentioned with a view to meeting the Parties' legitimate concern for security and safeguarding the rights and aspirations of the Palestinian people.

Withdrawal from the Gaza Strip shall take place to the demarcation lines of the 1949 Armistice Agreement between Egypt and Israel.

Israeli withdrawal shall commence immediately after the signing of the peace treaties and shall be completed according to a time-table to be agreed upon within the period referred to in Article 6.

Second: Removal of the Israeli settlements in the occupied territories according to a time-table to be agreed upon within the period referred to in Article 6.

Third: Guaranteeing the security, sovereignty, territorial integrity and inviolability and the political independence of every State through the following measures:

- (a) The establishment of demilitarized zones astride the borders.
- (b) The establishment of limited armament zones astride the borders.
- (c) the stationing of United Nations forces astride the borders.
- (d) The stationing of early warning systems on the basis of reciprocity.
- (e) Regulating the acquisition of arms by the Parties and the type of their armament and weapons system.
- (f) The adherence by all the Parties to the Treaty on the Non-Proliferation of nuclear weapons. The Parties undertake not to manufacture or acquire nuclear weapons or other nuclear explosive devices.
- (g) Applying the principle of innocent passage to transit through the Straits of Tiran.
- (h) The establishment of relations of peace and good-neighborly cooperation among the Parties.

Fourth: An undertaking by all the Parties not to resort to the threat or the use of force to settle disputes. Any disputes shall be settled by peaceful means in accordance with the provisions of Article 33 of the Charter of the United Nations.

The Parties also undertake to accept the compulsory jurisdiction of the International Court of Justice with respect to all disputes emanating from the application or the interpretation of their contractual arrangements.

Fifth: Upon the signing of the peace treaties, the Israeli military Government in the West Bank and Gaza shall be abolished and authority shall be transferred to the Arab side in an orderly and peaceful manner. There shall be a transitional period not to exceed five years from the date of the signing of the "Framework" during which Jordan shall supervise the administration of the Gaza Strip.



Egypt and Jordan shall carry out their responsibility in cooperation with freely elected representatives of the Palestinian people who shall exercise direct authority over the administration of the West Bank and Gaza simultaneously with the abolition of the Israeli military government.

Six months before the end of the transitional period, the Palestinian people shall exercise their fundamental right to self-determination and shall be enabled to establish their responsibility in the Gaza Strip and the West Bank, shall recommend that the entity be linked with Jordan as decided by their peoples.

Palestinian refugees and displaced persons shall be enabled to exercise the right to return or receive compensation in accordance with relevant United Nations resolutions.

Sixth: Israel shall withdraw from Jerusalem to the demarcation lines of the Armistice Agreement of 1949 in conformity with the principle of the inadmissibility of the acquisition of territory by war. Arab sovereignty and administration shall be restored to the Arab sector.

A joint municipal council composed of an equal number of Palestinian and Israeli members shall be entrusted with regulating and supervising the following matters:

- (a) Public utilities throughout the City.
- (b) Public transportation and traffic.
- (c) Postal and telephone services.
- (d) Tourism.

The Parties undertake to ensure the free exercise of worship, the freedom of access, visit and transit to the holy places without distinction or discrimination.

Seventh: Synchronized with the implementation of the provisions related to withdrawal, the Parties shall proceed to establish among them relationships normal to States at peace with one another. To this end, they undertake to abide by all the provisions of the Charter of the United Nations. Steps taken in this respect include:

- (a) Full recognition.
- (b) Abolishing economic boycott.

(c) Ensuring the freedom of passage through the Suez Canal in accordance with the provisions of the Constantinople Convention of 1888 and the Declaration of the Egyptian Government of April 24, 1957.

(d) Guaranteeing that under their jurisdiction the citizens of the other Parties shall enjoy the protection of the due process of law.

Eighth: Israel undertakes to pay full and prompt compensation for the damage which resulted from the operations of its armed forces against the civilian population and installations, as well as its exploitation of natural resources in occupied territories.

#### Article 3

Upon the signing of this "Framework", which represents a comprehensive and balanced package embodying all the rights and obligations of the Parties, other Parties concerned shall be invited to adhere to it under the Middle East Peace Conference in Geneva.

#### Article 4

The representatives of the Palestinian people shall take part in the peace talks to be held after the signing of the "Framework".

#### Article 5

The United States shall participate in the talks on matters related to the modalities of the implementation of the agreements and working out the timetable for the carrying out of the obligations of the Parties.

#### Article 6

Peace treaties shall be concluded within three months from the signing of this "Framework" by the Parties concerned, thus signalling the beginning of the peace process and setting in motion the dynamics of peace and co-existence.



## Article 7

The Security Council shall be requested to endorse the Peace Treaties and ensure that their provisions shall not be violated. The Council shall also be requested to guarantee the boundaries between the Parties.

## Article 8

The Permanent Members of the Security Council shall be requested to underwrite the Peace Treaties and ensure respect for their provisions. They shall also be requested to conform their policies and actions with the undertakings contained in this Framework.

## Article 9

The United States shall guarantee the implementation of this "Framework" and the peace treaties in full and in good faith.

## APPENDIX III

**First Draft of the American Proposal  
At Camp David, September 10, 1978****A Framework For Peace In The Middle East Agreed  
At Camp David**

Muhammad Anwar Al-Sadat, President of Arab Republic of Egypt, and Menachem Begin, Prime Minister of Israel, met with Jimmy Carter, President of the United States of America, at Camp David from September 5 to- , 1978, and have agreed on the following framework for peace in the Middle East. They invite other parties to the Arab-Israeli conflict to adhere to it.

**Preamble**

The search for peace in the Middle East must be guided by the following:

- After four wars during thirty years, despite intensive human efforts, the Middle East, which is the cradle of civilization and the birthplace of three great religions, does not yet enjoy the blessings of peace. The people of the Middle East yearn for peace so that the vast human and natural resources of the region can be turned to the pursuits of peace and so that this area can become a model for coexistence and cooperation among nations.

- The historic initiative of President Sadat in visiting Jerusalem and the reciprocal visit of Prime Minister Begin to Ismailia, the constructive peace proposals made by both leaders, as well as the warm reception of these missions by the peoples of both countries, have created an unprecedented opportunity for peace which must not be lost if this generation and future generations are to be spared the tragedies of war.

- The provisions of the Charter of the United Nations and the other accepted norms of international law and legitimacy now provide accepted standards for the conduct of relations among all states.

- The only agreed basis for a peaceful settlement of the Arab-Israeli conflict is United Nations Security Council Resolution 242, supplemented by Resolution



338. Resolution 242 in its preamble emphasizes the obligation of Member States in the United Nations to act in accordance with Article 2 of the Charter. Article 2, among other points, calls for the settlement of disputes by peaceful means and for Members to refrain from the threat or use of force. Egypt and Israel in their agreement signed September 4, 1975, agreed: "The Parties hereby undertake not to resort to the threat or used of force or military blockade against each other." They have both also stated that there shall be no more war between them. In a relationship of peace, in the spirit of Article 2, negotiations between Israel and any neighbor prepared to negotiate peace and security with it should be based on all the provisions and principles of Resolution 242, including 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 within secure and recognized borders. Negotiations based on these principles are necessary with respect to all fronts of the conflict-the Sinai, the Golan Heights, the West Bank and Gaza, and Lebanon.

- Peace is more than the juridical end of the state of belligerency. It should encompass the full range of normal relations between nations. Progress toward that goal can accelerate movement toward a new era of reconciliation in the Middle East marked by cooperation in promoting economic development, in maintaining stability, and in assuring security.

- Security is enhanced by a relationship of peace and by cooperation between nations which enjoy normal relations. In addition, under the terms of peace treaties, the sovereign parties can agree to special security arrangements such as demilitarized zones, limited armaments areas, early warning stations, special security forces, liaison, agreed measures for monitoring, and other arrangements that they agree are useful.

#### Agreement

Taking these factors into account, Egypt and Israel are determined to reach a just, comprehensive, and durable settlement of the Middle East conflict through the conclusion of peace treaties on the basis of the full implementation of Security Council Resolution 242 and 338 in all their parts. Their purpose is to achieve peace and good neighborly relations. They recognize that, for peace to

endure, it must involve all those who have been principal parties to the Arab-Israeli conflict; it must provide security; and it must give the peoples who have been most deeply affected by the conflict, including the Palestinians, a sense that they have been dealt with fairly in the peace agreement. They therefore agree that this Framework as appropriate is intended by them to constitute a basis for peace not only between Egypt and Israel, but also between Israel and each of its other neighbors which is prepared to negotiate peace with Israel on this basis. With that objective in mind, they have agreed to proceed as follows:

A. Egypt-Israel

1. Egypt and Israel undertake not to resort to the threat or the use of force to settle disputes. Any disputes shall be settled by peaceful means in accordance with the provisions of Article 33 of the Charter of the United Nations. In the event of disputes arising from the application or interpretation of their contractual agreements, the two parties will seek to reach a settlement by direct negotiations. Failing agreement, the parties accept the compulsory jurisdiction of the International Court of Justice with respect to all disputes emanating from the application or the interpretation of their contractual arrangements.

2. In order to achieve peace between them, they have agreed to negotiate without interruption with a goal of concluding within three months from the signing of this Framework a peace treaty between them, while inviting the other parties to the conflict to proceed simultaneously to negotiate and conclude similar peace treaties with a view to achieving a comprehensive peace in the area. Israel has agreed to the restoration of the exercise of full Egyptian sovereignty in the Sinai up to the internationally recognized border between Egypt and Israel, and Egypt has agreed to establish full peace and normal relations with Israel. Security arrangements, the timing of withdrawal of all Israeli forces from the Sinai, and the elements of a normal, peaceful relationship between them have been discussed and will be defined in the peace treaty.



3. Egypt and Israel agree that freedom of passage through the Suez Canal, the Strait of Tiran, and the Gulf of Suez should be assured for ships of all flags, including Israel.

#### B. West Bank and Gaza

1. Egypt and Israel will participate in negotiations on resolution of the Palestinian problem in all its aspects. The solution must recognize the legitimate rights of the Palestinian people and enable the Palestinians to participate in the determination of their own future.

2. To this end, negotiations relating to the West Bank and Gaza should provide for links between these areas and Jordan and should proceed in three stages:

(a) Egypt and Israel hereby agree that the following should be the main elements of a settlement in the West Bank and Gaza: In order to ensure a peaceful and orderly transfer of authority, there should be transitional arrangements for the West Bank and Gaza for a period not exceeding five years. In order to provide full autonomy to the inhabitants; under these arrangements the Israeli military government and administration will be abolished and withdrawn as soon as a self-governing authority can be freely elected by the inhabitants of these areas to replace the existing military government. This transitional arrangement should derive its authority for self-government from Egypt and Israel, and Jordan, when Jordan joins the negotiations. To negotiate the details of a transitional arrangement, the Government of Jordan will be invited to join the negotiations on the basis of this Framework. These new arrangements should give due consideration both to the principle of self-government by the inhabitants of these territories and to the legitimate security concerns of Egypt, Israel, Jordan and the inhabitants of the West Bank and Gaza.

(b) Egypt, Israel, and Jordan will determine the modalities for establishing the elected self-governing authority in the West Bank and Gaza. The delegations may include Palestinians from the West Bank and Gaza. The parties will negotiate an agreement which will define the powers and responsibilities of the self-governing authority. The Agreement will provide for the withdrawal of

Israeli armed forces and the redeployment of some of them to limited and specified security points. It will also include arrangements for assuring internal and external security and public order, including the respective roles of Israeli armed forces and local police.

(c) When the self-governing authority in the West Bank and Gaza is inaugurated, the transitional period will begin. Within three years after the beginning of the transitional period, Egypt, Israel, Jordan and the self-governing authority in the West Bank and Gaza will undertake negotiations for a peace treaty which will settle the final status of the West Bank and Gaza after the transitional period and its relationship with its neighbors on the basis of all of the principles of UN Security Council Resolution 242, including the mutual obligations of peace, the necessity for security arrangements for all parties concerned following the transitional period, the withdrawal of Israeli forces, a just settlement of the refugee problem, and the establishment of secure and recognized boundaries. The boundaries and security arrangements must both satisfy the aspirations of the Palestinians and meet Israel's security needs. They may incorporate agreed minor modifications in the temporary armistice lines which existed between 1949 and 1967. The peace treaty will define the rights of the citizens of each of the parties to do business, to work, to live, and to carry on other transactions in each other's territory on a reciprocal basis.

3. All necessary measures will be taken and provisions made to assure Israel's security during the transitional period and beyond. To assist in providing security during and beyond the transitional period:

(a) Egypt and Israel propose that Jordan and Egypt assign personnel to the police forces of the self-governing authority in the West Bank and Gaza, respectively. They will also maintain continuing liaison on internal security matters with the designated Israeli authorities to ensure that no hostile threats or acts against Israel or its citizens originate from the West Bank or Gaza. The numbers, equipment, and responsibilities of such Egyptian and Jordanian personnel will be defined by the agreement. By mutual agreement, United Nations forces or observers may also be introduced during the transitional period.



(b) The nature of the Israeli security presence during the transitional period and beyond will be agreed in the negotiations described in paragraphs B2 (b) and (c) above.

4. During the transitional period, the negotiating parties (Egypt, Israel, Jordan, the self-governing authority) will constitute a continuing committee to reach mutual agreements applicable during that period on:

(a) issues involving interpretation of the agreement or issues unforeseen during the negotiation of the agreement, if not resolvable by the self-governing authority;

(b) the return of agreed numbers of persons displaced from the West Bank in 1967 and of Palestinian refugees together with necessary measures in connection with their return to prevent disruption and disorder.

5. Jerusalem, the city of peace, shall not be divided. It is a city holy to Jew, Muslim, and Christian and all peoples must have free access to it and enjoy the free exercise of worship and the right to visit and transit to the holy places without distinction or discrimination. The holy places of each faith will be under the administration of their representatives. For peace to endure, each community in Jerusalem must be able to express freely its cultural and religious values in an acceptable political framework. A representative municipal council shall supervise essential functions in the city. An agreement on relationships in Jerusalem should be reached in the negotiations dealing with the final status of the West Bank and Gaza.

6. Egypt and Israel agree to work with each other and with other interested parties to achieve a just and permanent solution of the problems of Palestinian and Jewish refugees.

7. If Jordan is unable to join these negotiations, Egypt, Israel, and the inhabitants of the West Bank and Gaza will proceed to establish and administer the self-governing authority.

### C. Settlements

(Language to be inserted)

### D. Associated Principles

1. Egypt and Israel believe that the principles and provisions described below should apply to peace treaties on all fronts.

2. Synchronized with the implementation of the provisions related to withdrawal, signatories shall proceed to establish among themselves relationships normal to states at peace with one another. To this end, they should undertake to abide by all the provisions of the Charter of the United Nations. Steps to be taken in this respect include:

(a) full recognition, including diplomatic, economic and cultural relations;

(b) abolishing economic boycotts and barriers to the free movement of goods and people;

(c) guaranteeing that under their jurisdiction the citizens of the other parties shall enjoy the protection of the due process of law.

3. Signatories should agree to provide for the security and respect the sovereignty, territorial integrity and inviolability and the political independence of each state negotiating peace through measures such as the following:

(a) the establishment of demilitarized zones;

(b) the establishment of limited armament zones;

(c) the stationing of United Nations forces or observer groups as agreed;

(d) the stationing of early warning systems on the basis of reciprocity;

(e) regulating the size of their armed forces and the types of their armament and weapons systems.

4. Signatories should explore possibilities for regional economic development in the context of both traditional arrangements and final peace treaties, with the objective of contributing to the atmosphere of peace, cooperation and friendship which is their common goal.

5. Claims Commissions may be established for the mutual settlement of all financial claims.



6. The United States shall be invited to participate in the talks on matters related to the modalities of the implementation of the agreements and working out the timetable for the carrying out of the obligations of the parties.

7. The United Nations Security Council shall be requested to endorse the peace treaties and ensure that their provisions shall not be violated. The permanent members of the Security Council shall be requested to underwrite the peace treaties and ensure respect for their provisions. They shall also be requested to conform their policies and actions with the undertakings contained in this Framework.

## APPENDIX IV

### THE Camp David Accords, September 17, 1978 A Framework For Peace in the Middle East Agreed At Camp David

Muhammad Anwar al-Sadat, President of the Arab Republic of Egypt, and Menachem Begin, Prime Minister of Israel, met with Jimmy Carter, President of the United States of America, at Camp David from September 5 to September 17, 1978, and have agreed on the following framework for peace in the Middle East. They invite other parties to the Arab-Israeli conflict to adhere to it.

#### Preamble

The search for peace in the Middle East must be guided by the following:

-The agreed basis for a peaceful settlement of the conflict between Israel and its neighbors is United Nations Security Council Resolution 242, in all its parts.

-After four wars during thirty years, despite intensive human efforts, the Middle East, which is the cradle of civilization and the birthplace of three great religions, does not yet enjoy the blessing of peace. The people of the Middle East yearn for peace so that the vast human and natural resources of the region can be turned to the pursuits of peace and so that this area can become a model for coexistence and cooperation among nations.

-The historic initiative of President Sadat in visiting Jerusalem and the reception accorded to him by the Parliament, government and people of Israel, and the reciprocal visit of Prime Minister Begin to Ismailia, the peace proposals made by both countries, have created an unprecedented opportunity for peace which must not be lost if this generation and future generations are to be spared the tragedies of war.

-The provisions of the Charter of the United Nations and the other accepted norms of international law and legitimacy now provide accepted standards for the conduct of relations among all states.



-To achieve a relationship of peace, in the spirit of Article 2 of the United Nations Charter, future negotiations between Israel and any neighbor prepared to negotiate peace and security with it, are necessary for the purpose of carrying out all provisions and principles of Resolution 242 and 338.

-Peace requires respect for 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. Progress toward that goal can accelerate movement toward a new era of reconciliation in the Middle East marked by cooperation in promoting economic development, in maintaining stability, and in assuring security.

-Security is enhanced by a relationship of peace and by cooperation between nations which enjoy normal relations. In addition, under the terms of peace treaties, the parties can, on the basis of reciprocity, agree to special security arrangements such as demilitarized zones, limited armaments areas, early warning stations, the presence of international forces, liaison, agreed measures for monitoring, and other arrangements that they agree are useful.

#### Framework

Taking these factors into account, the parties are determined to reach a just, comprehensive, and durable settlement of the Middle East conflict through the conclusion of peace treaties based on Security Council Resolutions 242 and 338 in all their parts. Their purpose is to achieve peace and good neighborly relations. They recognize that, for peace to endure, it must involve all those who have been most deeply affected by the conflict. They therefore agree that this framework as appropriate is intended by them to constitute a basis for peace not only between Egypt and Israel, but also between Israel and each of its other neighbors which is prepared to negotiate peace with Israel on this basis. With that objective in mind, they have agreed to proceed as follows:

##### A. West Bank and Gaza

1. Egypt, Israel, Jordan and the representatives of the Palestinian people should participate in negotiations on the resolution of Palestinian problem in all its aspects. To achieve that objective, negotiations relating to the West Bank and Gaza should proceed in three stages:

(a) Egypt and Israel agree that, in order to ensure a peaceful and orderly transfer of authority, and taking into account the security concerns of all the parties, there should be transitional arrangements for the West Bank and Gaza for a period not exceeding five years. In order to provide full autonomy to the inhabitants, under these arrangements the Israeli military government and its civilian administration will be withdrawn as soon as a self-governing authority has been freely elected by the inhabitants of these areas to replace the existing military government. To negotiate the details of a transitional arrangement, the Government of Jordan will be invited to join the negotiations on the basis of this framework. These new arrangements should give due consideration both to the principle of self-government by the inhabitants of these territories and to the legitimate security concerns of the parties involved.

(b) Egypt, Israel and Jordan will agree on the modalities for establishing the elected self-governing authority in the West-Bank and Gaza. The delegations of Egypt and Jordan may include Palestinians from the West Bank and Gaza or other Palestinians as mutually agreed. The parties will negotiate an agreement which will define the powers and responsibilities of the self-governing authority to be exercised in the West Bank and Gaza. A withdrawal of Israeli armed forces will take place and there will be a redeployment of the remaining Israeli forces into specified security locations. The agreement will also include arrangements for assuring internal and external security and public order. A strong local police force will be established, which may include Jordanian Citizens. In addition, Israeli and Jordanian forces will participate in joint patrols and in the manning of control posts to assure the security of the borders.

(c) When the self-governing authority (administrative council) in the West Bank and Gaza is established and inaugurated, the transitional period of five years will begin. As soon as possible, but not later than the third year after the beginning of the transitional period, negotiations will take place to determine the final status of the West Bank and Gaza and its relationship with its neighbors, and to conclude a peace treaty between Israel and Jordan by the end of the transitional period. These negotiations will be conducted among Egypt, Israel, Jordan, and the elected representatives of the inhabitants of the



West Bank and Gaza. Two separate but related committees will be convened, one committee, consisting of representatives of the four parties which will negotiate and agree on the final status of the West Bank and Gaza, and its relationship with its neighbors, and the second committee, consisting of representatives of Israel and representatives of Jordan to be joined by the elected representatives of the inhabitants of the West Bank and Gaza, to negotiate the peace treaty between Israel and Jordan, taking into account the agreement reached on the final status of the West Bank and Gaza. The negotiations shall be based on all provisions and principles of UN Security Council Resolution 242. The negotiations will resolve, among other matters, the location of the boundaries and the nature of the security arrangements. The solution from the negotiations must also recognize the legitimate rights of the Palestinian people and their just requirements. In this way, the Palestinians will participate in the determination of their own future through:

(1) The negotiations among Egypt, Israel, Jordan and the representatives of the inhabitants of the West Bank and Gaza and other outstanding issues by the end of the transitional period.

(2) Submitting their agreement to a vote by the elected representatives of the inhabitants of the West Bank and Gaza.

(3) Providing for the elected representatives of the inhabitants of the West Bank and Gaza to decide how they shall govern themselves consistent with the provisions of their agreement.

(4) Participating as stated above in the work of the committee negotiating the peace treaty between Israel and Jordan.

2. All necessary measures will be taken and provisions made to assure the security of Israel and its neighbors during the transitional period and beyond. To assist in providing such security, a strong local police force will be constituted by the self-governing authority. It will be composed of inhabitants of the West Bank and Gaza. The police will maintain continuing liaison on internal security matters with the designated Israeli, Jordanian, and Egyptian officers.

3. During the transitional period, representatives of Egypt, Israel, Jordan, and the self-governing authority will constitute a continuing committee to decide by

agreement on the modalities of admission of persons displaced from the West Bank and Gaza in 1967, together with necessary measures to prevent disruption and disorder. Other matters of common concern may also be dealt with by this committee.

4. Egypt and Israel will work with each other and with other interested parties to establish agreed procedures for a prompt, just and permanent implementation of the resolution of the refugee problem.

#### B. Egypt-Israel

1. Egypt and Israel undertake not to resort to the threat or the use of force to settle disputes. Any disputes shall be settled by peaceful means in accordance with the provisions of Article 33 of the Charter of the United Nations.

2. In order to achieve peace between them, the parties agreed to negotiate in good faith with a good faith with a goal of concluding within three months from the signing of this Framework a peace treaty between them, while inviting the other parties to the conflict to proceed simultaneously to negotiate and conclude similar peace treaties with a view to achieving a comprehensive peace in the area. The Framework for the conclusion of a Peace Treaty between Egypt and Israel will govern the peace negotiations between them. The parties will agree on the modalities and the timetable for the implementation of their obligations under the treaty.

#### C. Associated Principles

1. Egypt and Israel state that the principles and provisions described below should apply to peace treaties between Israel and each of its neighbors-Egypt, Jordan, Syria and Lebanon.

2. Signatories shall establish among themselves relationships normal to states at peace with one another. To this end, they should undertake to abide by all the provisions of the Charter of the United Nations. Steps to be taken in this respect include:

(a) full recognition;

(b) abolishing economic boycotts;

(c) guaranteeing that under their jurisdiction the citizens of the other parties shall enjoy the protection of the due process of law.



3. Signatories should explore possibilities for economic development in the context of final peace treaties, with the objective of contributing to the atmosphere of peace, cooperation and friendship which is their common goal.

4. Claims Commissions may be established for the mutual settlement of all financial claims.

5. The United States shall be invited to participate in the talks on matters related to the modalities of the implementation of the agreements and working out the timetable for the carrying out of the obligations of the parties.

6. The United Nations Security Council shall be requested to endorse the peace treaties and ensure that their provisions shall not be violated. The permanent members of the Security Council shall be requested to underwrite the peace treaties and ensure respect for their provisions. They shall also be requested to conform their policies and actions with the undertakings contained in this Framework.

### Framework For The Conclusion Of A Peace Treaty

#### Between Egypt And Israel

In order to achieve peace between them, Israel and Egypt agree to negotiate in good faith with a goal of concluding within three months of the signing of this framework a peace treaty between them.

It is agreed that:

The site of the negotiations will be under a United Nations flag at a location or locations to be mutually agreed.

All of the principles of UN Resolution 242 will apply in this resolution of the dispute between Israel and Egypt.

Unless otherwise mutually agreed, terms of the peace treaty will be implemented between two and three years after the peace treaty is signed.

The following matters are agreed between the parties:

(a) the full exercise of Egyptian sovereignty up to the internationally recognized border between Egypt and mandated Palestine;

(b) the withdrawal of Israeli armed forces from the Sinai;

(c) the use of airfields left by the Israelis near El Arish, Rafah, Ras en Naqb, and Sharm el Sheikh for civilian purposes only, including possible commercial use by all nations;

(d) the right of free passage by ships of Israel through the Gulf of Suez and the Suez Canal on the basis of the Constantinople Convention of 1888 applying to all nations; the Strait of Tiran and the Gulf of Aqaba are international waterways to be open to all nations for unimpeded and nonsuspendable freedom of navigation and overflight;

(e) the construction of a highway between the Sinai and Jordan near Elat with guaranteed free and peaceful passage by Egypt and Jordan; and

(f) the stationing of military forces listed below.

#### Stationing of Forces

A. No more than one division (mechanized or infantry) of Egyptian armed forces will be stationed within an area lying approximately 50 kilometers (km) east of the Gulf of Suez and the Suez Canal.

B. Only United Nations forces and civil police equipped with light weapons to perform normal police functions will be stationed within an area lying west of the international border and the Gulf of Aqaba, varying in width from 20 km to 40 km.

C. In the area within 3 km east of the international border there will be Israeli limited military forces not to exceed four infantry battalions and United Nations observers.

D. Border patrol units, not to exceed three battalions, will supplement the civil police in maintaining order in the area not included above.

The exact demarcation of the above areas will be as decided during the peace negotiations.

Early warning stations may exist to insure compliance with the terms of the agreement.

United Nations forces will be stationed: (a) in part of the area in the Sinai lying within about 20 km of the Mediterranean Sea and adjacent to the international border, and (b) in the Sharm el Sheikh area to ensure freedom of passage through the Strait of Tiran; and these forces will not be removed



unless such removal is approved by the Security Council of the United Nations with a unanimous vote of the five permanent members.

After a peace treaty is signed, and after the interim withdrawal is complete, normal relations will be established between Egypt and Israel, including: full recognition, including diplomatic, economic and cultural relations; termination of economic boycotts and barriers to the free movement of goods and people; and mutual protection of citizens by the due process of law.

#### Interim Withdrawal

Between three months and nine months after the signing of the peace treaty, all Israeli forces will withdraw east of a line extending from a point east of El Arish to Ras Muhammad, the exact location of this line to be determined by mutual agreement.

Letter From Israel Prime Minister Menachem Begin  
To President Jimmy Carter, September 17, 1978

Dear Mr. President:

I have the honor to inform you that during two weeks after my return home I will submit a motion before Israel's Parliament (the Knesset) to decide on the following question:

If during the negotiations to conclude a peace treaty between Israel and Egypt all outstanding issues are agreed upon, "are you in favor of the removal of the Israeli settlers from the northern and southern Sinai areas or are you in favor of keeping the aforementioned settlers in those areas?"

The vote, Mr. President, on this issue will be completely free from the usual Parliamentary Party discipline to the effect that, although the coalition is being now supported by 70 members out of 120, every member of the Knesset, as I believe, both on the Government and the Opposition benches will be enabled to vote in accordance with his own conscience.

Letter From President Jimmy Carter To Egyptian  
President Anwar El Sadat, September 22, 1978

Dear Mr. President:

I transmit herewith a copy of a letter to me from Prime Minister Begin setting forth how he proposes to present the issue of the Sinai settlements to the Knesset for the latter's decision.

In this connection, I understand from your letter that Knesset approval to withdraw all Israeli settlers from Sinai according to a timetable within the period specified for the implementation of the peace treaty is a prerequisite to any negotiations on a peace treaty between Egypt and Israel.

Letter From Egyptian President Anwar El Sadat To  
President Jimmy Carter, September 17, 1978

Dear Mr. President:

In connection with the "Framework for a Settlement in Sinai" to be signed tonight, I would like to reaffirm the position of the Arab Republic of Egypt with respect to the settlements:

1. All Israeli settlers must be withdrawn from Sinai according to a timetable within the period specified for the implementation of the peace treaty.
2. Agreement by the Israeli Government and its constitutional institutions to this basic principle is therefore a prerequisite to starting peace negotiations for concluding a peace treaty.
3. If Israel fails to meet this commitment, the "Framework" shall be void and invalid.

Letter From President Jimmy Carter To Israeli Prime  
Minister Menachem Begin, September 22, 1978

Dear Mr. Prime Minister:

I have received your letter of September 17, 1978, describing how you intend to place the question of the future of Israeli settlements in Sinai before the Knesset for its decision.

Enclosed is a copy of President Sadat's letter to me on this subject.

Letter From Egyptian President Anwar El Sadat To  
President Jimmy Carter, September 17, 1978

Dear Mr. President:



I am writing to you to reaffirm the position of the Arab Republic of Egypt with respect to Jerusalem:

1. Arab Jerusalem is an integral part of the West Bank. Legal and historical Arab rights in the City must be respected and restored.

2. Arab Jerusalem should be under Arab sovereignty.

3. The Palestinian inhabitants of Arab Jerusalem are entitled to exercise their legitimate national rights, being part of the Palestinian People in the West Bank.

4. Relevant Security Council Resolutions, particularly Resolutions 242 and 267, must be applied with regard to Jerusalem. All the measures taken by Israel to alter the status of the city are null and void and should be rescinded.

5. All peoples must have free access to the City and enjoy the free exercise of worship and the right to visit and transit to the holy places without distinction or discrimination.

6. The holy places of each faith may be placed under the administration and control of their representatives.

7. Essential functions in the City should be undivided and a joint municipal council composed of an equal number of Arab and Israeli members can supervise the carrying out of these functions. In this way, the City shall be undivided.

Letter From Israeli Prime Minister Menachem Begin

To President Jimmy Carter, September 17, 1978

Dear Mr. President:

I have the honor to inform you, Mr. President, that on 28 June 1967 Israel's Parliament (The Knesset) promulgated and adopted a law to the effect: "the Government is empowered by a decree to apply the law, the jurisdiction and administration of the State to any part of Eretz Israel (land of Israel-Palestine), as stated in that decree".

On the basis of this law, the Government of Israel decreed in July 1967 that Jerusalem is one city indivisible, the Capital of the State of Israel.

Letter From President Jimmy Carter To Egyptian  
President Anwar El Sadat, September 22, 1978

Dear Mr. President:

I have received your letter of September 17, 1978, setting forth the Egyptian position on Jerusalem. I am transmitting a copy of that letter to Prime Minister Begin for his information.

The position of the United States on Jerusalem remains as stated by Ambassador Goldberg in the United Nations General Assembly on July 14, 1967, and subsequently by Ambassador Yost in the United Nations Security Council on July 1, 1969.

Letter From Egyptian President Anwar El Sadat To  
President Jimmy Carter, September 17, 1978

Dear Mr. President:

In connection with the "Framework for Peace in the Middle East," I am writing you this letter to inform you of the position of the Arab Republic of Egypt, with respect to the implementation of the comprehensive settlement.

To ensure the implementation of the provisions related to the West Bank and Gaza and in order to safeguard the legitimate rights of the Palestinian people, Egypt will be prepared to assume the Arab role emanating from these provisions, following consultations with Jordan and the representatives of the Palestinian people.

Letter From President Jimmy Carter To Israeli Prime  
Minister Menachem Begin, September 22, 1978

Dear Mr. Prime Minister:

I hereby acknowledge that you have informed me as follows:

A) In each paragraph of the Agreed Framework Document the expressions "Palestinians" or "Palestinian People" are being and will be construed and understood by you as "Palestinian Arabs."

B) In each paragraph in which the expression "West Bank" appears, it is being, and will be, understood by the Government of Israel as Judea and Samaria.



Letter From Secretary Of Defense Harold Brown To  
Israeli Defense Minister Ezer Weizman,  
Accompanying The Documents Agreed To At Camp  
David, Released September 29, 1978

Dear Mr. Minister:

The U.S. understands that, in connection with carrying out the agreements reached at Camp David, Israel intends to build two military airbases at appropriate sites in the Negev to replace the airbases at Eitam and Etzion which will be evacuated by Israel in accordance with the peace treaty to be concluded between Egypt and Israel. We also understand the special urgency and priority which Israel attaches to preparing the new bases in light of its conviction that it cannot safely leave the Sinai airbases until the new ones are operational.

I suggest that our two governments consult on the scope of the two new airbases as well as on related forms of assistance which the United States might appropriately provide in light of the special problems which may be presented by carrying out such a project on an urgent basis. The President is prepared to seek the necessary Congressional approvals for such assistance as may be agreed upon by the U.S. side as a result of such consultations.

## APPENDIX V

The Treaty Of Peace Between Egypt And Israel  
Washington, March 17, 1979.

The Government Of the Arab Republic of Egypt  
and the Government of the State of Israel

## Preamble

Convinced of the urgent necessity of the establishment of a just comprehensive and lasting peace in the Middle East in accordance with Security Council Resolution 242 and 338.

Reaffirming their adherence to the Framework for Peace in the Middle East Agreed at Camp David dated September 17, 1978;

Noting that the aforementioned Framework as appropriate is intended to constitute a basis for peace not only between Egypt and Israel but also between Israel and each of its other Arab neighbors which is prepared to negotiate peace with it on this basis.

Desiring to bring to an end the state of war between them and to establish a peace in which every state in the area can live in security;

Convinced that the conclusion of a Treaty of Peace between Egypt and Israel is an important step in the search for comprehensive peace in the area and for the attainment of the settlement of the Arab-Israeli conflict in all its aspects.

Inviting the other Arab parties to this dispute to join the peace process with Israel guided by and based on the principles of the aforementioned Framework ; Desiring as well to develop friendly relations and cooperation between themselves in accordance with the United Nations Charter and the principles of international law governing international relations in times of peace; Agree to the following provisions in the free exercise of their sovereignty, in order to implement the "Framework for the Conclusion of a Peace Treaty between Egypt and Israel"



### Article 1

1 The state of war between the parties will be terminated and peace will be established between them upon the exchange of instruments of ratification of this Treaty. 2-Israel will withdraw all its armed forces and civilians from the Sinai behind the international boundary between Egypt and mandated Palestine, as provided in the annexed protocol (Annex 1), and Egypt will resume the exercise of its full sovereignty over the Sinai. 3-Upon completion of the interim withdrawal provided for in Annex 1, the Parties will establish normal and friendly relations, in accordance with Article III (3).

### Article II

The permanent boundary between Egypt and Israel is the recognized international boundary between Egypt and the former mandated territory of Palestine, as shown on the map at Annex II, without prejudice to the issue of the status of the Gaza Strip. The Parties recognize this boundary as inviolable. Each will respect the territorial integrity of the other, including their territorial waters and air space.

### Article III

1-The Parties will apply between them the provisions of the Charter of the United Nations and the principles of international law governing relations among states in times of peace. In particular a-They recognize and will respect each other's sovereignty, territorial integrity and political independence;

b-They recognize and will respect each other's right to live in peace within their secure and recognized boundaries;

c-They will refrain from the threat or use of force, directly or indirectly, against each other and will settle all disputes between them by peaceful means.

2-Each party undertakes to ensure that acts or threats of belligerency, hostility, or violence do not originate from and are not committed from within its territory, or any forces subject to its control or by any other forces stationed on its territory, against the population,

citizens or property of the other Party. Each Party also undertakes to refrain from organizing, instigating, inciting, assisting or participating in acts or threats of belligerency, hostility, subversion or violence against the other Party, anywhere, and undertakes to ensure that perpetrators of such acts are brought to justice.

3-The Parties agree that the normal relationship established between them will include full recognition, diplomatic, economic and cultural relations, termination of economic boycotts and discriminatory barriers to the free movement of people and goods, and will guarantee the mutual enjoyment by citizens of the due process of law. The process by which they undertake to achieve such a relationship parallel to the implementation of other provisions of this Treaty is set out in the annexed protocol [Annex III].

#### Article IV

1-In order to provide maximum security for both Parties on the basis of reciprocity, agreed security arrangements will be established including limited force zones in Egyptian and Israeli territory, and United Nations forces and observers, described in detail as to nature and timing in Annex 1, and other security arrangements the Parties may agree upon.

2-The Parties agree to the stationing of United Nations personnel in areas described in Annex 1. The Parties agree not to request withdrawal of the United Nations personnel will not be removed unless such removal is approved by the Security Council of the United Nations, with the affirmative vote of the five Permanent Members, unless the Parties otherwise agree.

3-A joint Commission will be established to facilitate the implementation of the Treaty, as provided for in Annex 1.

4-The security arrangements provided for in paragraphs 1 and 2 of this Article may at the request of either party be reviewed and amended by mutual agreement of the Parties.

#### Article V

1-Ships of Israel, and cargoes destined for or coming from Israel, shall enjoy the right of free 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. Israeli nationals, vessels and cargoes, as well as persons, vessels and cargoes destined for or coming from Israel, shall be accorded non-discriminatory treatment in all matters connected with usage of the canal.

2-The Parties consider the Strait of Tiran and the Gulf of Aqaba to be international waterways open to all nations for unimpeded and non-suspendable freedom of navigation and overflight. The Parties will respect each other's right to navigation and overflight for access to either country through the Strait of Tiran and the Gulf of Aqaba.

#### Article VI

1-This Treaty does not affect and shall not be interpreted as affecting in any way the rights and obligations of the Parties under the Charter of the United Nations. 2-The Parties undertake to fulfill in good faith their obligations under this Treaty; without regard to action or inaction of any other party and independently of any instrument external to this Treaty.

3-They further undertake to take all the necessary measures for the application in their relations of the multilateral conventions to which they are parties, including the submission of appropriate notification to the Secretary General of the United Nations and other depositaries of such conventions.

4-The Parties undertake not to enter into any obligation in conflict with this Treaty.

5-Subject to Article 103 of the United Nations Charter, in the event of a conflict between the obligations of the Parties under the present Treaty and any of their obligations, the obligations under this Treaty will be binding and implemented.

#### Article VII

1-Disputes arising out of the application or interpretation of this Treaty shall be resolved by negotiations.

2-Any such disputes which cannot be settled by negotiations shall be resolved by conciliation or submitted to arbitration.

**Article VIII**

The Parties agree to establish a claims commission for the mutual settlement of all financial claims.

**Article IX**

1-This Treaty shall enter into force upon exchange of instruments of ratification.

2-This Treaty supersedes the Agreement between Egypt and Israel of September, 1975.

3-All protocols, annexes, and maps attached to this Treaty shall be regarded as an integral part hereof.

4-The Treaty shall be communitied to the Secretary General of the United Nations for registration in accordance with the provisions of Article 102 of the Charter of the United Nations.

**Annex 1****Protocol Concerning Israeli Withdrawal And Security Arrangements****Article I****Concept of Withdrawal**

Israel will complete withdrawal of all its armed forces and civilians from the Sinai not later than three years from the date of exchange of instruments of ratification of this Treaty.

2-To ensure the mutual security of the Parties, the implementation of phased withdrawal will be accompanied by the military measures and establishment of zones set out in this Annex and in Map 1, hereinafter referred to as 'the Zones'.

3-The withdrawal from the Sinai will be accomplished in two phases;

a. The interim withdrawal behind the line from east of ElArish to Ras Muhammed as delineated on Map 2 within nine months from the date of exchange of instruments of ratification of this Treaty.

b. The final withdrawal from the Sinai behind the international boundary not later than three years from the date of exchange of instruments of ratification of this Treaty.

4-A Joint Commission will be formed immediately after the exchange of instruments of ratification of this Treaty in order to supervise and coordinate movements and schedules during the withdrawal, and to adjust



plans and timetables as necessary within the limits established by paragraph 3, above. Details relating to the Joint Commission are set out in Article IV of the attached Appendix. The Joint Commission will be dissolved upon completion of final Israeli withdrawal from the Sinai.

## Article II

### Determination of Final Lines and Zones

1-In order to provide maximum security for both Parties after the final withdrawal, the lines and the Zones delineated on Map 1 are to be established and organized as follows:

#### a. Zone A

(1) Zone A is bounded on the east by line A ( red line ) and on the west by the Suez Canal and the east coast of the Gulf of Suez, as shown on Map 1.

(2) An Egyptian armed force of one mechanized infantry division and its military installations and field fortifications, will be in this Zone.

(3) The main elements of that Division will consist of: (a) Three mechanized infantry brigades.

(b) One armed brigade.

(c) Seven field artillery battalions including up to 126 artillery pieces.

(d) Seven anti-aircraft artillery battalions including individual's surface-to-air missiles and up to 126 anti-aircraft guns of 37 mm and above.

(e) Up to 230 tanks.

(f) Up to 480 armored personnel vehicles of all types.

(g) Up to a total of twenty-two thousand personnel.

#### b. Zone B

(1) Zone B is bounded by line B (green-line) on the east and by line A (red line) on the west, as shown on Map 1.

(2) Egyptian border units of four battalions equipped with light weapons and wheeled vehicles will provide security and supplement the civil police in maintaining order in Zone B. The main elements of the four Border Battalions will consist of up to a total of four thousand personnel.

(3) Land based, short range, low power, coastal warning points of the border patrol units may be established on the coast of this Zone.

(4) There will be in Zone B field fortifications and military installations for the four border battalions.

c. Zone C

(1) Zone C is bounded by line B (green line) on the west and the International Boundary and the Gulf of Aqaba on the east, as shown on Map 1.

(2) Only United Nations forces and Egyptian civil police will be stationed in Zone C.

(3) The Egyptian civil police armed with light weapons will perform normal police functions within this Zone.

(4) The United Nations Force will be deployed within Zone C and perform its functions as defined in Article VI of this Annex.

(5) The United Nations Force will be stationed mainly in camps located within the following stationing areas shown on Map 1, and will establish its precise locations after consultations with Egypt : (a) In that part of the area in the Sinai lying within about 20 Km. of the Mediterranean Sea and adjacent to the International Boundary.

(b) In the Sharm el Sheikh area.

d. Zone D

(1) Zone D is bounded by line D (blue line) on the east and the international boundary on the west, as shown on Map 1.

(2) In this Zone there will be an Israeli limited force of four infantry battalions, their military installations, and field fortifications, the United Nations observers.

(3) The Israeli forces in Zone D will not include tanks, artillery and anti-aircraft missiles except individual surface-to-air missiles.

(4) The main elements of the four Israeli infantry battalions will consist of up to 180 armored personnel vehicles of all types and up to a total of four thousand personnel.

2. Access across the international boundary shall only be permitted through entry check points designated by each Party and under its control. Such access shall be in accordance with laws and regulations of each country.



3. Only those field fortifications, military installations, forces, and weapons specifically permitted by this Annex shall be in the Zones.

### Article III

#### Aerial Military Regime

1. Flights of combat aircraft and reconnaissance flights of Egypt and Israel shall take place only over Zones A and D, respectively.

2. Only unarmed, non-combat aircraft of Egypt and Israel will be stationed in Zones A and D, respectively.

3. Only Egyptian unarmed transport aircraft will take off and land in Zone B and up to eight such aircraft may be maintained in Zone B. The Egyptian border units may be equipped with unarmed helicopters to perform their functions in Zone B.

4. The Egyptian civil police may be equipped with unarmed police helicopters to perform normal police functions in Zone C.

5. Only civilian airfields may be built in the Zones.

6. Without prejudice to the provisions of this Treaty, only those military aerial activities specifically permitted by this Annex shall be allowed in the Zones and the airspace above their territorial waters.

### Article IV

#### Naval Regime

1. Egypt and Israel may base and operate naval vessels along the coasts of Zones A and D, respectively.

2. Egyptian coast guard boats, lightly armed, may be stationed and operate in the territorial waters of Zone B to assist the border units in performing their functions in this Zone.

3. Egyptian civil police equipped with light boats, lightly armed, shall perform normal police functions within the territorial waters of Zone C.

4. Nothing in this Annex shall be considered as derogating from the right of innocent passage of the naval vessels of either party.

5. Only civilian maritime ports and installations may be built in the Zones.

6. Without prejudice to the provisions of this Treaty, only those naval activities specifically permitted by this Annex shall be allowed in the Zones and in their territorial waters.

#### Article V

##### Early Warning Systems

Egypt and Israel may establish and operate early warning systems only in Zones A and D respectively.

#### Article VI

##### United Nations Operations

1. The Parties will request the United Nations to provide forces and observers to supervise the implementation of this Annex and employ their best efforts to prevent any violation of its terms.

2 With respect to these United Nations forces and observers, as appropriate, the Parties agree to request the following arrangements:

a. Operation of check points, reconnaissance patrols, and observation posts along the international boundary and line B, and within Zone C.

b. Periodic verification of the implementation of the provisions of this Annex will be carried out not less than twice a month unless otherwise agreed by the Parties.

c. Additional verifications within 48 hours after the receipt of a request from either Party.

d. Ensuring the freedom of navigation through the Strait of Tiran in accordance with Article V of the Treaty of Peace.

3. The arrangements described in this article for each zone will be implemented in Zones A, B, and C by the United Nations Force and in Zone D by the United Nations Observers.

4. United Nations verification teams shall be accompanied by liaison officers of the respective Party.

5. The United Nations Force and observers will report their findings to both Parties.

6. The United Nations Force and Observers operating in the Zones will enjoy freedom of movement and other facilities necessary for the performance of their tasks.



7. The United Nations Force and Observers are not empowered to authorize the crossing of the international boundary. 8. The Parties shall agree on the nations from which the United Nations Force and Observers will be drawn. They will be drawn from nations other than those which are permanent members of the United Nations Security Council.

9. The Parties agree that the United Nations should make those command arrangements that will best assure the effective implementation of its responsibilities.

#### Article VII

##### Liaison System

1. Upon dissolution of the Joint Commission, liaison system between the Parties will be established. This liaison system is intended to provide an effective method to assess progress in the implementation of obligations under the present Annex and to resolve any problem that may arise in the course of implementation, and refer other unresolved matters to the higher military authorities of the two countries respectively for consideration. It is also intended to prevent situations resulting from errors or misinterpretation on the part of either Party.

2. An Egyptian liaison office will be established in the city of El-Arish and an Israeli liaison office will be established in the city of Beer-Sheba. Each office will be headed by an officer of the respective country, and assisted by a number of officers.

3. A direct telephone link between the two offices will be set up and also direct telephone lines with the United Nations command will be maintained by both offices.

#### Article VIII

##### Respect For War Memorials

Each Party undertakes to preserve in good condition the War Memorials erected in the memory of soldiers of the other Party, namely those erected by Israel in the Sinai and those erected by Egypt in Israel, and shall permit access to such monuments..

**Article IX****Interim Arrangements**

The withdrawal of Israeli armed forces and civilians behind the interim withdrawal line, and the conduct of the forces of the Parties and the United Nations prior to the final withdrawal, will be governed by the attached Appendix and Maps 2 and 3.

**Appendix To Annex 1****Organization of Movements in the Sinai****Article 1****Principles of Withdrawal**

1. The withdrawal of Israeli forces and civilians from the Sinai will be accomplished in two phases as described in Article 1 of Annex 1. The description and timing of the withdrawal are included in this Appendix. The joint Commission will develop and present to the Chief Coordinator of the United Nations forces in the Middle East the details of these phases not later than one month before the initiation of each phase of withdrawal.

2. Both Parties agree on the following principles for the sequence of military movements.

a. Notwithstanding the provisions of Article IX, paragraph 2, of this Treaty, until Israeli armed forces complete withdrawal from the current J and M Lines established by the Egyptian-Israeli Agreement of September 1975, hereinafter referred to as the 1975 Agreement, up to the interim withdrawal line, all military arrangements existing under that Agreement will remain in effect, except those military arrangements otherwise provided for in this Appendix.

b. As Israeli armed forces withdraw, United Nations forces will immediately enter the evacuated areas to establish interim and temporary buffer zones as shown on Maps 2 and 3, respectively, for the purpose of maintaining a separation of forces. United Nations forces deployment will precede the movement of any other personnel into these areas.



c. Within a period of seven days after Israeli armed forces have evacuated any area located in Zone A, units of Egyptian armed forces shall deploy in accordance with the provisions of Article II of this Appendix.

d. Within a period of seven days after Israeli armed forces have evacuated any area located in Zone A or B, Egyptian border units shall deploy in accordance with the provisions of Article II of this Appendix, and will function in accordance with the provisions of Article II of Annex I. e. Egyptian civil police will enter evacuated areas immediately after the United Nations forces to perform normal police functions.

f. Egyptian naval units shall deploy in the Gulf of Suez in accordance with the provisions of Article II of this Appendix.

g. Except those movements mentioned above, deployments of Egyptian armed forces and the activities covered in Annex I will be effected in the evacuated areas when Israeli armed forces have completed their withdrawal behind the interim withdrawal line.

## Article II

### Subphases of the Withdrawal to the Interim Withdrawal Line

1. The withdrawal to the interim withdrawal line will be accomplished in subphases as described in this Article and as shown on Map 3. Each subphase will be completed within the indicated number of months from the date of the exchange of instruments of ratification of this Treaty.

a. First subphase: within two months, Israeli armed forces will withdraw from the area of El Arish, including the town of El Arish and its airfield, shown as Area I on Map 3.

b. Second subphase: within three months, Israeli armed forces will withdraw from the area between line M of the 1975 Agreement and line A, shown as Area II on Map 3.

c. Third subphase: within five months, Israeli armed forces will withdraw from the areas east and south of Area II, shown as Area III on Map 3.

d. Fourth subphase: within seven months, Israeli armed forces will withdraw from the area of El Tor-Ras El Kenisa, shown as Area IV on Map 3.

e. Fifth subphase: within nine months, Israeli armed forces will withdraw from the remaining areas west of the interim withdrawal line, including the areas of Santa Katrina and the areas east of the Giddi and Mitla passes, shown as Area V on Map 3, thereby completing Israeli withdrawal behind the interim withdrawal line.

2. Egyptian forces will deploy in the areas evacuated by Israeli armed forces as follows:

a. Up to one-third of the Egyptian armed forces in the Sinai in accordance with the 1975 Agreement will deploy in the portions of Zone A lying within Area I, until the completion of interim withdrawal. Thereafter, Egyptian armed forces as described in Article II of Annex I will be deployed in Zone A up to the limits of the interim buffer zone.

b. The Egyptian naval activity in accordance with Article IV of Annex I will commence along the coasts of Areas II, III, and IV, upon completion of the second, third, and fourth subphases, respectively.

c. Of the Egyptian border units described in Article II of Annex I, upon completion of the first subphase one battalion will be deployed in Area I. A second battalion will be deployed in Area II upon completion of the second subphase. A third battalion will be deployed in Area III upon completion of the third subphase. The second and third battalions mentioned above may also be deployed in any of the subsequently evacuated areas of the southern Sinai.

3. United Nations forces in Buffer Zone I of the 1975 Agreement will redisplay to enable the deployment of Egyptian forces described above upon the completion of the first subphase, but will otherwise continue to function in accordance with the provisions of that Agreement in the remainder of that zone until the completion of interim withdrawal, as indicated in Article I of this Appendix.

4. Israeli convoys may use the roads south and east of the main road junction east of El Arish to evacuate Israeli forces and equipment up to the completion of interim withdrawal. These convoys will proceed in



daylight upon four hours notice to the Egyptian liaison group and United Nations forces, will be escorted by United Nations forces, and will be in accordance with schedules coordinated by the Joint Commission. An Egyptian liaison officer will accompany convoys to assure an uninterrupted movement. The Joint Commission may approve other arrangements for convoys.

### Article III

#### United Nations Forces

1. The Parties shall request that United Nations forces be deployed as necessary to perform the functions described in this Appendix up to the time of completion of final Israeli withdrawal. For that purpose, the Parties agree to the redployment of the United Nations Emergency Force.

2. United Nations forces will supervise the implementation of this Appendix and will employ their best efforts to prevent any violation of its terms.

3. When United Nations forces deploy in accordance with the provisions of Articles I and II of this Appendix, they will perform the functions of verification in limited force zones in accordance with Article VI of Annex I, and will establish check points, reconnaissance patrols, and observation posts in the temporary buffer zones described in Article II above. Other functions of the United Nations forces which concern the interim buffer zone are described in Article V of this Appendix.

### Article IV

#### Joint Commission and Liaison

1. The Joint Commission referred to in Article IV of this Treaty will function from the date of exchange of instruments of ratification of this Treaty up to the date of completion of final Israeli withdrawal from the Sinai.

2. The Joint Commission will be composed of representatives of each Party headed by senior officers. This Commission shall invite a representative of the United Nations when discussing subjects concerning the United Nations, or when either Party requests United Nations presence. Decisions of the Joint Commission will be reached by agreement of Egypt and Israel.

3. The Joint Commission will supervise the implementation of the arrangements described in Annex II and this Appendix. To this end, and by agreement of both Parties, it will:

a. coordinate military movements described in this Appendix and supervise their implementation;

b. address and seek to resolve any problem arising out of the implementation of Annex I and this Appendix, and discuss any violations reported by the United Nations Force and Observers and refer to the Governments of Egypt and Israel any unresolved problems;

c. assist the United Nations Force and Observers in the execution of their mandates, and deal with the timetable of the periodic verifications when referred to it by the Parties as provided for in Annex I and in this Appendix;

d. organize the demarcation of the international boundary and all lines and zones described in Annex I and this Appendix;

e. supervise the handing over of the main installation in the Sinai from Israel to Egypt;

f. agree on necessary arrangements for finding and returning missing bodies of Egyptian and Israeli soldiers;

g. organize the setting up and operation of entry check points along the El Arish-Ras Muhammed line in accordance with the provisions of Article 4 of Annex III;

h. conduct its operations through the use of joint liaison teams consisting of one Israeli representative and one Egyptian representative, provided from a standing Liaison Group, which will conduct activities as directed by the Joint Commission;

i. provide liaison and coordination to the United Nations command implementing provisions of the Treaty, and, through the joint liaison teams, maintain local coordination with the United Nations Force stationed in specific areas or United Nations Observers monitoring specific areas for any assistance as needed;

j. discuss any other matters which the Parties by agreement may place before it.



4. Meeting of the Joint Commission shall be held at least once a month. In the event that either Party or the Command of the United Nations Force requests a special meeting, it will be convened within 24 hours.

5. The Joint Commission will meet in the buffer zone until the completion of the interim withdrawal and in El Arish and Beer-Sheba alternately afterwards. The first meeting will be held not later than two weeks after the entry into force of this Treaty.

#### Article V

##### Definition of the Interim Buffer Zone and Its Activities

1. An interim buffer zone, by which the United Nations Force will effect a separation of Egyptian and Israeli elements, will be established west of and adjacent to the interim withdrawal line as shown on Map 2 after implementation of Israeli withdrawal and deployment behind the interim withdrawal line. Egyptian civil police equipped with light weapons will perform normal police functions within this zone.

2. The United Nations Force will operate check points, reconnaissance patrols, and observation posts within the interim buffer zone in order to ensure compliance with the terms of this Article.

3. In accordance with arrangements agreed upon by both Parties and to be coordinated by the Joint Commission, Israeli personnel will operate military technical installations at four specific locations shown on Map 2 and designated as T1 (map central coordinate 57163940), T2 (map central coordinate 59351541), T3 (map central coordinate 59331527), and T4 (map central coordinate 61130979) under the following principles:

a. The technical installations shall be manned by technical and administrative personnel equipped with small arms required for their protection (revolvers, rifles, sub-machine guns, light machine guns hand grenades, and ammunition), as follows:

T1-up to 150 personnel

T2 and T3-up to 350 personnel

T4-up to 200 personnel

b. Israeli personnel will not carry weapons outside the sites, except officers who may carry personnel weapons.

c. Only a third party agreed to by Egypt and Israel will enter and conduct inspections within the perimeters of technical installations in the buffer zone. The third party will conduct inspections in a random manner at least once a month. The inspections will verify the nature of the operation of the installations and the weapons and personnel therein. The third party will immediately report to the Parties any divergence from an installations visual and electronic surveillance or communications role. d. Supply of the installations, visits for technical and administrative purposes, and replacement of personnel and equipment situated in the sites, may occur uninterrruptedly from the United Nations check points to the perimeter of the technical installations, after checking and being escorted by only the United Nations forces.

e. Israel will be permitted to introduce into its technical installations items required for the proper functioning of the installations and personnel.

f. As determined by the Joint Commission, Israel will be permitted to:

(1) Maintain in its installations fire-fighting and general maintenance equipment as well as wheeled administrative vehicles and mobile engineering equipment necessary for the maintenance of the sites. All vehicles shall be unarmed.

(2) Within the sites and in the buffer zone, maintain roads, water lines, and communications cables which serve the sites. At each of the three installation locations (T1, T2 and T3, and T4), this maintenance may be performed with up to two unarmed wheeled vehicles and by up to twelve unarmed personnel with only necessary equipment, including heavy engineering equipment if needed. This maintenance may be performed three times a week, except for special problems, and only after giving the United Nations four hours notice. The teams will be escorted by the United Nations.

g. Movement to and from the technical installations will take place only during daylight hours. Access to, and exit from, the technical installations shall be as follows:



(1) T1: through a United Nations check point, and vis the road between Abu Aweigila road and the Gebel Libni road (at Km. 161), as shown on Map 2.

(2) T2 and T3: through a United Nations checkpoint and via the road constructed across the buffer zone to Gebel Katrina, as shown on Map 2.

(3) T2, T3, and T4: via helicopters flying within a corridor at the times, and according to a flight profile, agreed to by the Joint Commision. The helicopters will be checked by the United Nations Force at landing sites outside the perimeter of the installations.

h. Israel will inform the United Nations Force at least one hour in advance of each intended movement to and from the installations.

i. Israel shall be entitled to evacuate sick and wounded and summon medical experts and medical teams at any time after giving immediate notice to the United Nations Force.

4. The details of the above principles and all other matters in this Article requiring coordination by the Parties will be handled by the Joint Commision.

5. These technical installations will be withdrawn when Israeli forces withdraw from the interim withdrawal line, or at a time agreed by the Parties.

**Article VI****Disposition of Installations and Military Barriers**

Dispositions of installations and military barriers will be determined by the Parties in accordance the following guidelines:

1. Up to three weeks before Israeli withdrawal from any area, the Joint Commision will arrange for Israeli and Egyptian liaison and technical teams to conduct a joint inspection of all appropriate installations to agree upon condition of structures and articles which will be transferred to Egyptian control and to arrange for such transfer. Israel will declare, at that time, its plans for disposition of installations and articles within the installations.

2. Israel undertakes to transfer to Egypt all agreed infrastructure, utilities, and installations intact, inter alia, airfields, roads, pumping stations, and ports. Israel will present to Egypt the information necessary for the maintenance and operation of these facilities. Egyptian technical teams will be permitted to observe and familiarize themselves with the operation of these facilities for a period of up to two weeks prior to transfer.

3. When Israel relinquishes Israeli military water points near El Arish and El Tor, Egyptian technical teams will assume control of those installations and ancillary equipment in accordance with an orderly transfer process arranged beforehand by the Joint Commision. Egypt undertakes to continue to make available at all water supply points the normal quantity of currently available water up to the time Israel withdraws behind the international boundary, unless otherwise agreed in the Joint Commision.

4. Israel will make its best effort to remove or destroy all military barriers, including obstacles and minefields, in the araes and adjacent waters from which it withdraws, according to the following concept:

a. Military barriers will be cleared first from areas near populations, roads, and major installations and utilities.

b. For these obstacles and minefields which cannot be removed or destroyed prior to Israeli withdrawal, Israel will provide detailed maps to Egypt and the United Nations through the Joint Commision not



later than 15 days before entry of United Nations forces into the affected areas.

c. Egyptian military engineers will enter those areas after United Nations forces enter to conduct barrier clearance operations in accordance with Egyptian plans to be submitted prior to implementation.

#### Article VII

##### Surveillance Activities

1. Aerial surveillance activities during the withdrawal will be carried out as follows:

a. Both Parties request the United States to continue airborne surveillance flights in accordance with previous agreements until the completion of final Israeli withdrawal.

b. Flight profiles will cover the Limited Forces Zones to monitor the limitations on forces and armaments, and to determine that Israeli armed forces have withdrawn from the areas described in Article II of Annex I, Article II of this Appendix, and Maps 2 and 3, and that these forces thereafter remain behind their lines. Special inspection flights may be flown at the request of either Party or of the United Nations.

c. Only the main elements in the military organizations of each Party, as described in Annex I and in this Appendix, will be reported.

2. Both Parties request the United States operated Sinai Field Mission to continue its operations in accordance with previous agreements until completion of the Israeli withdrawal from the area east of the Giddi and Mitla Passes. Thereafter, the Mission will be terminated.

#### Article VIII

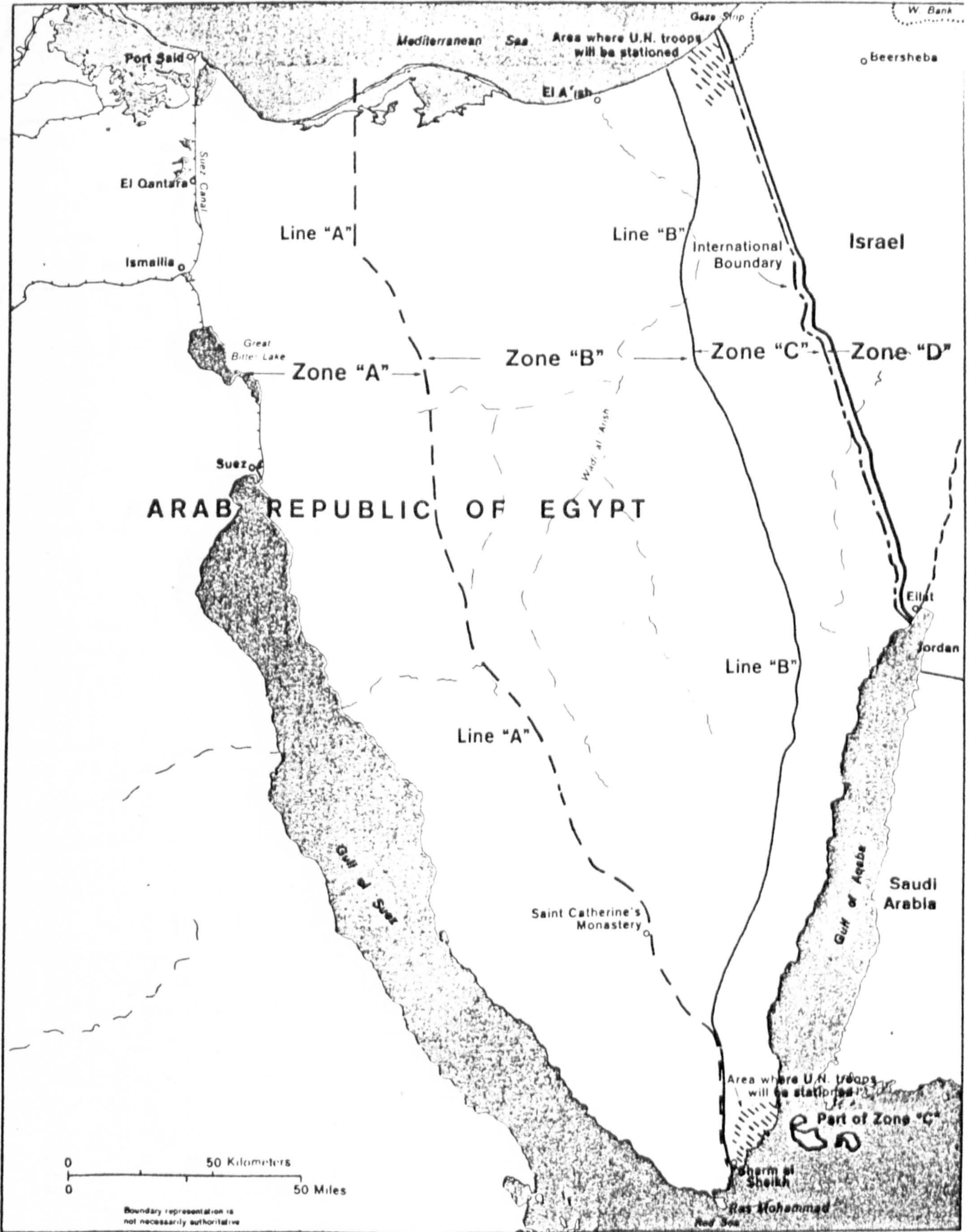
##### Exercise of Egyptian Sovereignty

Egypt will resume the exercise of its full sovereignty over evacuated parts of the Sinai upon Israeli withdrawal as provided for in Article I of this Treaty.



# Sinai Peninsula

# MAP 1

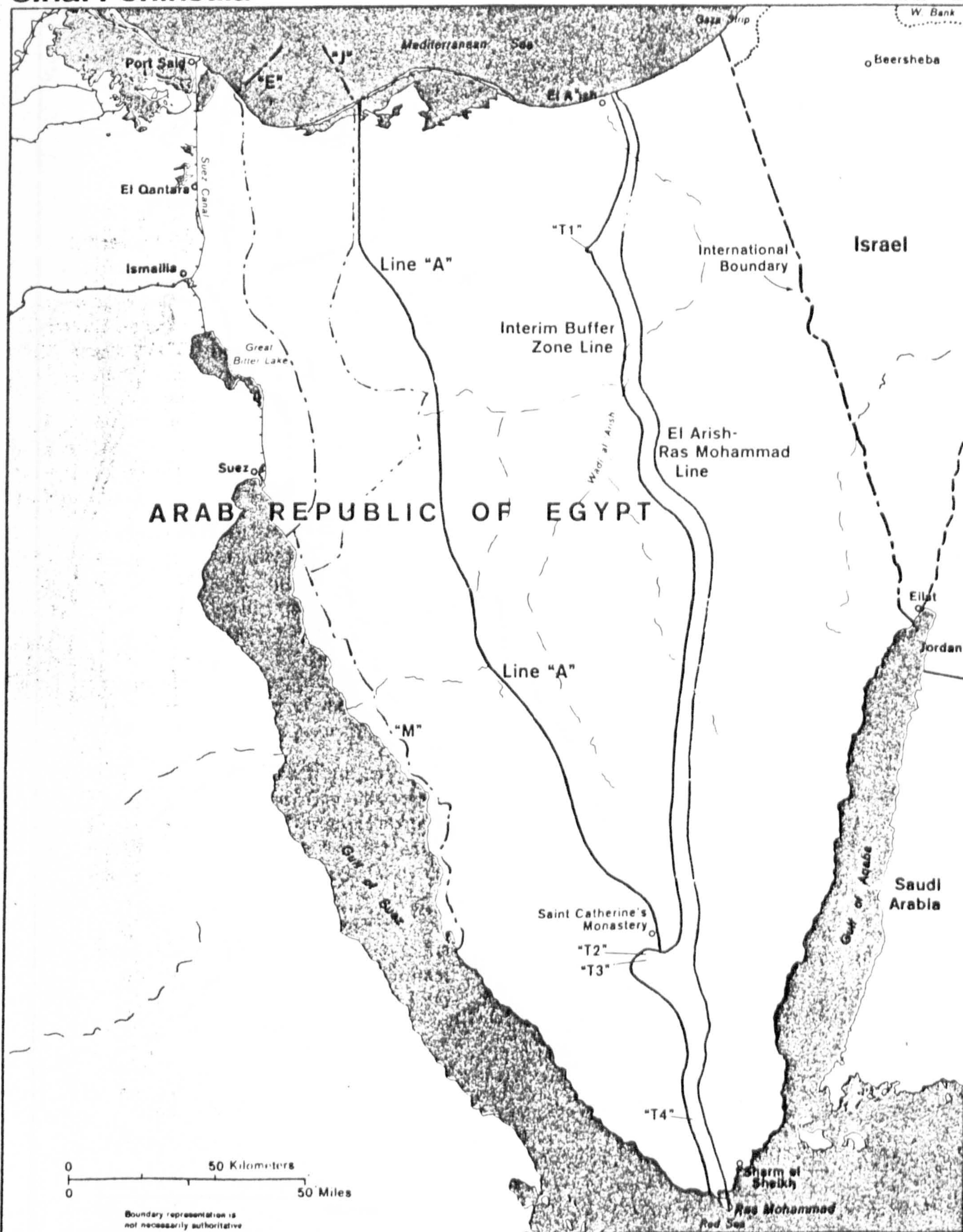


Representation of original map included in treaty.



# Sinai Peninsula

# MAP 2

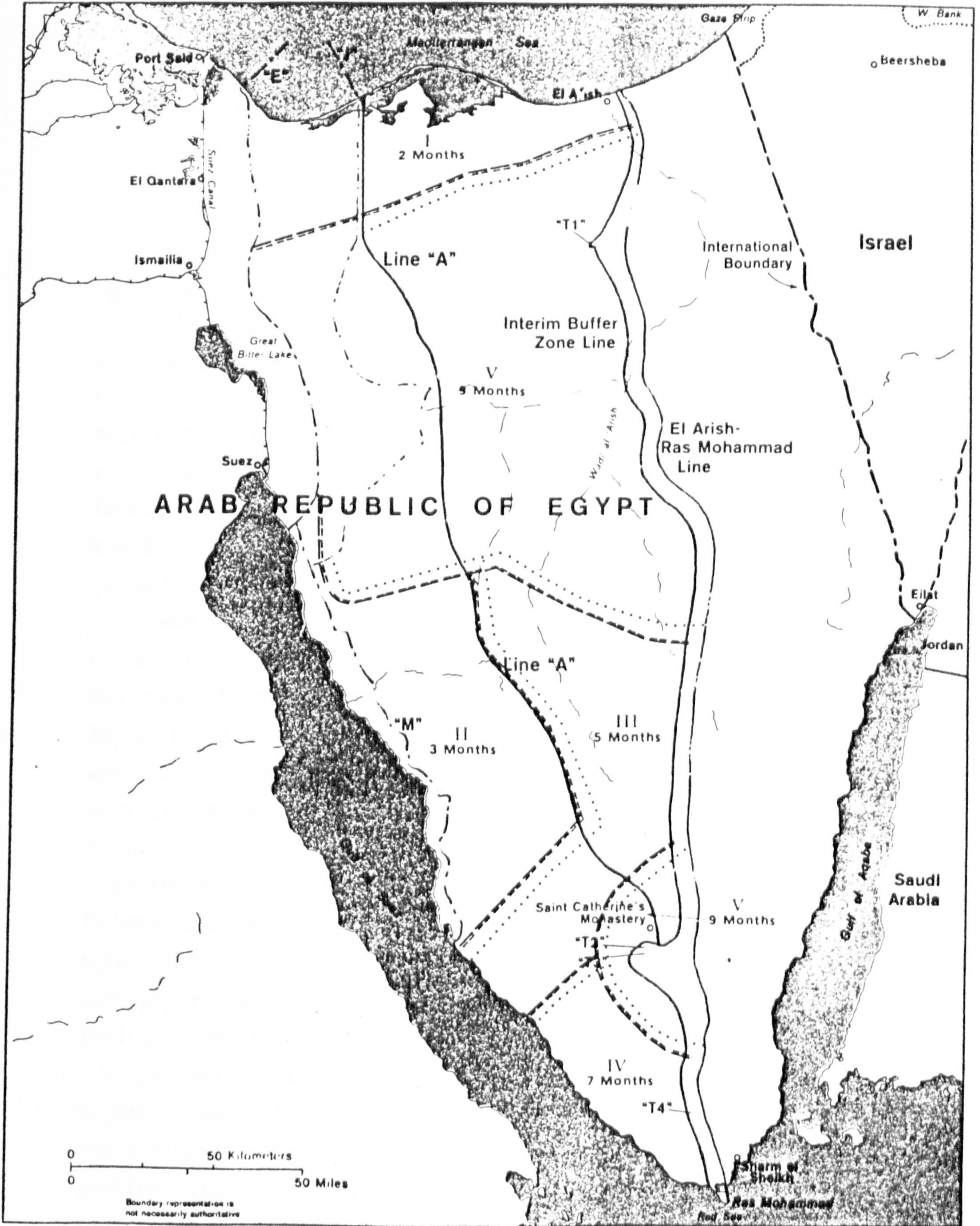


Representation of original map included in treaty.



# Sinai Peninsula

# MAP 3



- ..... Israeli Sub-Phase Line
- Egyptian Sub-Phase Line
- ..... U.N. Sub-Phase Buffer Zone
- Representation of original map included in treaty.



JOINT LETTER TO PRESIDENT CARTER FROM PRESIDENT SADAT AND  
PRIME MINISTER BEGIN Mrch 26, 1979

Dear Mr. President:

This letter confirms that Egypt and Israel have agreed as follows:

The Governments of Egypt and Israel recall that they concluded at Camp David and signed at the White House on September 17, 1978, the annexed documents entitled "A Framework for Peace in the Middle East Agreed at Camp David" and "Framework for the conclusion of a Peace Treaty between Egypt and Israel."

For the purpose of achieving a comprehensive peace settlement in accordance with the above mentioned Frameworks, Egypt and Israel will proceed with the implementation of those provisions relating to the West Bank and the Gaza Strip. They have agreed to start negotiations within a month after the exchange of the instruments of ratification of the Peace Treaty. In accordance with the "Framework for Peace in the Middle East," the Hashemite Kingdom of Jordan is invited to join the negotiations. The Delegations of Egypt and Jordan may include Palestinians from the West Bank and Gaza Strip or other Palestinians as mutually agreed. The purpose of the negotiation shall be to agree, prior to the elections, on the modalities for establishing the elected self-governing authority (administrative council), define its powers and responsibilities, and agree upon other related issues. In the event Jordan decides not to take part in the negotiations, the negotiations will be held by Egypt and Israel.

The two Governments agree to negotiate continuously and in good faith to conclude these negotiations at the earliest possible date. They also agree that the objective of the negotiations is the establishment of the self-governing authority in the West Bank and Gaza in order to provide full autonomy to the inhabitants.

Egypt and Israel set for themselves the goal of completing the negotiations within one year so that elections will be held as expeditiously as possible after agreement has been reached between the parties. The self-governing authority referred to in the "Framework for Peace in the Middle East" will be established and inaugurated within one month after it has been elected, at which time the transitional period of five years will begin. The Israeli military government and its

civilian administration will be withdrawn, to be replaced by the self-governing authority, as specified in the "Framework for Peace in the Middle East." A withdrawal of Israeli armed forces will then take place and there will be a redeployment of the remaining Israeli forces into specified security locations.

This letter also confirms our understanding that the United States Government will participate fully in all stages of negotiations.

#### Explanatory Note

President Carter, upon receipt of the Joint Letter to him from President Sadat and Prime Minister Begin, has added to the American and Israeli copies the notion: "I have been informed that the expression "West Bank" is understood by the Government of Israel to mean "Judea and Samaria". This notation is in accordance with similar procedures established at Camp David.

#### LETTERS REGARDING EXCHANGE OF AMBASSADORS

March 26, 1979

Dear Mr. President:

: In response to your request, I can confirm that, within one month after the completion of Israel's withdrawal to the interim line as provided for in the Treaty of Peace between Egypt and Israel, Egypt will send a resident ambassador to Israel and will receive a resident Israeli ambassador in Egypt.

Sincerely,

Anwar El-Sadat

March 26, 1979

Dear Mr. Prime Minister:

I have received a letter from President Sadat that, within one month after Israel completes its withdrawal to the interim line in Sinai, as provided for in the Treaty of Peace between Egypt and Israel, Egypt will



send a resident ambassador to Israel and will receive in Egypt a resident Israeli ambassador.

I would be grateful if you will confirm that this procedure will be agreeable to the Government of Israel.

Sincerely

JIMMY CARTER

## APPENDIX VI

### Government of Egypt Proposed Model of Full Autonomy For the West Bank and Gaza Strip, 28 January, 1980

#### 1-Introduction

(a) The Camp David Framework stipulates the withdrawal of the military government and its civilian administration, and the transfer of its authority to the self-governing authority which will replace it.

(b) In reviewing the powers and responsibilities of the military government and its civilian administration, the working group was seeking to envisage, through a practical approach, the powers and responsibilities to be exercised by the SGA in the context of its replacement of the military government and its civilian administration as stated in the Camp David Framework. That was the purpose of the survey of the current situation, it was a way out of the deadlock caused by the conceptual discussion of the comprehensive approach, and a step to provide the parties with basic information for discussing the transfer of authority. Indeed, the presentations of the powers and responsibilities of the military government and its civilian administration were meant to lead the working group, in the light of these presentations, and in the context of the transfer of authority, to prepare a model for the powers and responsibilities to be exercised by the SGA.

This method was endorsed by the decision taken at the London meeting of the heads of delegation on October 26, 1979:

"...Presentations on the current situation will provide the parties with basic information for discussing transfer of authority as stated in the Camp David Framework."

This led subsequently to the call of the plenary on December 19, 1979 to the working group:

"To proceed to prepare for the plenary's future consideration a proposed model for the powers and responsibilities to be exercised by the SGA".



(c) When the method is thus set in perspective, it becomes clear that when a model of the powers and responsibilities of the SGA is to be prepared, the guiding frame should be the powers and responsibilities of the military government and its civilian administration and that the focal points in discussing such a model should be:

1- Withdrawal of the Israeli military government and its civilian administration.

2- The transfer of authority.

3- Organs of the SGA which will take over from, and replace, the military government and its civilian administration.

## II-The Military Government and its Civilian Administration

(a) On June 7, 1967, the Israeli military command published proclamation No.2 entitled "Laws and administration proclamation". A section of which is concerned with the assumption of government by the Israeli defence forces, and under the title "Assumption of powers" it reads:

"Any power of government, legislation, appointment, or administration with respect to the region or its inhabitants shall henceforth vest in me alone and shall be exercised only by me or a person appointed by me to that end or acting on my behalf."

(b) The Israeli military government currently existing in the West Bank and Gaza Strip has full comprehensive authority. It assumes the power of formulating all policies and coordinating all activities. Its decision making emanates from different and interconnected channels of Israeli cabinet and interministerial levels as well as a chain of military command leading to the area or regional commander (one for the West Bank and one for Gaza) who was vested with full legislative and executive authority in the area as shown in the aforementioned proclamation. Mandatory orders issued by the military commander presented legislative enactment and revisions. Policy is determined according to considerations adopted by the office of the coordinator of activities, the Israeli ministry concerned and the regional command.

(c) Administrative authority is delegated to regional and district commanders. Routine administrative duties and conduct of ordinary activities are left to the

relevant institutions that were already operating in the West Bank and Gaza or to newly organized units of administrative service.

The civil administration of the military government is carried out by branches, each branch supervising a number of units. The units carry out the conduct of every day life. Heads of units who operate in the areas are directly subordinated through the chief of branch to the military commander while they come, at the same time, under the corresponding ministries in Israel on professional matters. From the ministry they get instructions on professional matters, how to act, how to deal with the problems arising out of the daily life. From the commander, through the chief of branch, they get the policy, the command.

(d) The military government and its civilian administration is therefore composed of different levels manifesting different layers of authority. One layer legislates and formulates policies while another layer executes and carries out the policies.

The Camp David Framework stipulates the transfer of both. It is not a matter of transferring the administrative set-up which implements the orders but first and foremost transferring the strata of authority which holds the power to issue the orders.

(e) It may be recalled that the civil administration of the military government is mainly composed, even now, of local inhabitants. According to the figures of December 1978 there were in the West Bank 11,165 local employees in the civil administration (and only 980 Israelis) while in Gaza there are local director-generals heading 14 of the main units.

So, it may be said, that even now the Palestinian people in the West Bank and Gaza Strip are bearing most of the responsibility for running the affairs of their daily life but only carrying out decisions which were made for them and implementing policies which were formulated over their heads.

When the Camp David Framework promises them full autonomy, it can only mean that under the SGA they will be able to take their own decisions and formulate their own policies.

The full autonomy which the Camp David Framework provides for cannot amount to a reorganization of what the Palestinians in the West Bank and Gaza Strip



already have, but rather the transformation of that set-up in an authority which is self-governing. Hence, the withdrawal of the military government and the transfer of its manifold authority to the inhabitants.

### III- Withdrawal of the Military Government and the Transfer of Authority

(a) The first step in establishing the SGA should be the withdrawal of the military government, the Camp David Framework for peace states clearly that: "The Israeli military government and its civilian administration will be withdrawn as soon as self-governing authority has been freely elected by the inhabitants of these areas to replace the existing military government."

The joint letter of March 26, 1979 states that: "The Military Government and its civilian administration will be withdrawn, to be replaced by the SGA."

(b) Distinction is made in both the Camp David Framework and the joint letter between two kinds of withdrawals:

1- The withdrawal of the military government and its civilian administration which is total and absolute. It is an unqualified withdrawal; and

2- A withdrawal of Israeli armed forces which is going to be partial and there will be a redeployment of the remaining forces into specified security locations.

(c) The withdrawal of the military government and its civilian administration, which occurs as soon as the SGA is elected, is the first step towards the assumption by the SGA of its powers and responsibilities. The transfer of authority takes place by handing over the powers and responsibilities of the military government and its civilian administration to the newly elected SGA. The SGA replaces the outgoing regime.

(d) In this respect, the following elements should be stressed:

(1) The transfer of authority implies the handing over of all powers and responsibilities presently exercised by the military government and its civilian administration.

(2) The transfer of authority should be carried out in a peaceful and orderly manner.

(3) Whenever Palestinian Institutions already exist in the West Bank and Gaza Strip, as part of the prevailing system of civil service, they will, in the course of such transfer of authority, take over the functions of, and replace,

the military government and its civilian administration. It is only when new functions, or new powers, are transferred to the SGA which were not exercised before under the military regime by the Palestinian people that new organs should be sought.

(e) Stress should be focused more on the powers and functions that are not exercised by the Palestinian people under the military regime so that the necessary relevant organs would be suggested. The Palestinian people already played the major role in the civil service which obeyed the commands and implemented the policies of the military regime. Under the autonomy there will be need for an organ to fulfill their newly acquired power to make their own decisions and formulate their own policies. The elected body of the SGA is obviously that organ.

#### **IV- Powers and Responsibilities to be Exercised by the Self-Governing Authority**

For a model of powers and responsibilities to be exercised by the SGA, some keywords and guidelines from the Camp David Framework for peace should be stressed at the outset.

(a) It is a self-governing authority, which means that it governs itself by itself. It is a self-generating authority. No outside source vests it with its authority.

(b) It provides full autonomy, and not an impaired or partial autonomy.

(c) This self-governing authority with full autonomy comes through free elections. It is a democratic structure of a government by the people and for the people. As an elected body it has a representative character and its membership fulfill the functions and exercise the powers that an elected representative body usually does.

#### **1- Nature of the SGA**

The SGA is an interim arrangement for a period not exceeding 5 years. This transitional process, at the outset of which the Israeli military government and its civilian administration will be withdrawn and the SGA established, can demonstrate that the practical problems arising from a transition to peace can be satisfactorily resolved. The transitional period is aimed at bringing about the changes in attitudes that can assure a final settlement which realizes the



legitimate rights of the Palestinian people while assuring the security of all the parties. The purpose of this transitional arrangement is:

(a) To ensure a peaceful and orderly transfer of authority to the Palestinian people in the West Bank and Gaza Strip.

(b) To help the Palestinian people to develop their own political, economic and social institutions in the West Bank and Gaza Strip so as to give expression to the principle of full autonomy which the SGA provides.

(c) To provide the proper conditions for the Palestinian people to participate in negotiations leading to the solution of the Palestinian problem in all its aspects and the realization of their legitimate rights including their right to self-determination.

## 2- Scope of the SGA:

(a) The jurisdiction of the SGA will encompass all of the Palestinian territories occupied after 5 June 1967 and which are delineated in the relevant armistice agreements of 1949 (Egyptian-Israeli armistice agreement of 2 April, 1949 regarding the Gaza Strip and Jordanian-Israeli armistice agreement of 24 February, 1949 regarding the West Bank including Arab Jerusalem).

(b) Authority of the SGA extends to the inhabitants as well as the land in the West Bank and the Gaza Strip.

(c) All powers and responsibilities of the SGA apply to the West Bank and Gaza Strip which shall be regarded under the autonomy as one territory and integral whole.

(d) All changes in the geographic character, the demographic composition and the legal status of the West Bank and Gaza Strip or any part thereof are null and void and must be rescinded as they jeopardize the attainment of the legitimate rights of the Palestinian people as provided for in the Camp David Framework.

This applies in particular to :

1- East Jerusalem, the annexation of which by Israel is null and void and must be rescinded. Relevant Security Council Resolutions, particularly Resolutions 242 and 267 must be applied to Jerusalem which is an integral part of the West Bank. Legal and historical Arab rights in the City must be respected and restored.

2- Israeli settlements in the West Bank and Gaza Strip are illegal and, in the course of a final settlement should be withdrawn.

During the transitional period there should be a ban on the establishment of new settlements or enlarging the existing ones. After the inauguration of the SGA all settlers in the West Bank and Gaza will come under the authority of the SGA.

### 3- General Powers and Responsibilities of the SGA

1- Promulgation of laws and regulations

2- Policy formulation and supervision

3- Budgetary provisions

4- Taxation

5- Employment of staff

6- Issuance of identity and travel documents

7- Control of in and out movement of persons and goods

8- Power to assume obligations and own property

9- Power to hold title to public land

10- Power to sue and to be sued

11- Power to enter into contracts

12- Power to participate in negotiations on the final status of the West Bank and Gaza Strip and to ascertain in the views of the Palestinians

13- Assuming responsibility for:

(a) Public administration;

(b) Public services;

(c) Public order and internal security and police;

(d) Public domain and natural resources;

(e) Economic and financial fields;

(f) Social and cultural fields;

(g) Human rights and fundamental freedoms;

14- Administration of Justice.

### 4- Structure of the SGA

(a) The SGA will be composed of 80-100 members freely elected from the Palestinian people in the West Bank and Gaza Strip.

(b) The structure of the SGA contains two main organs:



- An assembly of the SGA composed of all freely elected representatives from the West Bank and Gaza.

-A council composed of 10-15 members to be elected from among the membership of the assembly.

(c) The Assembly:

(1) It will take over, and replace, the authority of the military government in enacting laws and regulations, formulating and supervising policies, adopting the budget, levying taxes, etc...

(2) Its internal organization of a chairman with one or more vice-chairmen, its rules of procedure and the number and composition of its committees will be determined by the Assembly itself.

(d) The Council:

(1) It assumes the actual administration of the West Bank and Gaza and implements the policies formulated by the assembly in the different domains.

(2) It covers the whole range of activities and has full power in organizing, operating, employing staff and supervising the following executive branches; Education- Information and Culture- Transportation and Communications- Health- Social Welfare- Labour- Tourism- Internal Security- Housing- Religious Affairs- Agriculture- Economy and Finance- Commerce- Industry- Administration of Justice.

(3) The Council will constitute its divisions as it deems necessary for the proper conduct of its functions and will determine the number of divisions, the internal organization of divisions and the machinery for coordination as befits the best and the most effective conduct of its activities. It may get in this respect, and if requested, expert help from the parties.

(e) The Judicial authority will be manifested in a system of courts of law, courts of appeal and supreme court enjoying full guarantees for independence and efficiency in their administration of justice.

(f) The SGA will have a representative, alongside with the representatives of Israel, Egypt (and Jordan), on the continuing committee in accordance with Article 3 of the Camp David Framework. Matters of common concern to Israel and the SGA which need mutual arrangements could be dealt with through the committee.

#### 5- Seat of the SGA

The seat of the SGA will be East Jerusalem.

#### 6- Additional Arrangements

(a) As soon as the SGA is established and inaugurated in the West Bank and Gaza Strip, a withdrawal of Israeli armed forces will take place and there will be a redeployedntg of the remaining Israeli forces into specified security locations. Permission will be required for any movement of military troops into or through the territory.

(b) The Camp David Framework requires the parties to negotiate an agreement which includes, inter alia, arrangements for assuring internal security and public order. Responsibilities for security and public order will be decided jointly by the parties including the Palestinians, the Israelis, the Egyptians (and the Jordanians).

(c) A strong police force will be established in the West Bank and Gaza Strip. It will be constituted by the SGA and composed of the people of the West Bank and Gaza Strip.



## APPENDIX VII

## Israel Autonomy Proposal, January 1982

In the Camp David Agreement signed on 17 September 1978 between Egypt and Israel, with the United States signing as a witness, agreement was reached on a plan for the solution of the problem of the Palestinian Arabs, that includes a proposal for full autonomy for the Palestinian Arabs living in Judea, Samaria and Gaza. The manner of establishing this autonomy, as well as its powers, were to be determined in negotiations between the signatories (Jordan was invited to participate, but did not respond). It was Israel that first raised the idea of autonomy that was later to serve as the basis of the Camp David agreement. For the first time in the history of the Palestinian Arab inhabitants of Judea-Samaria and the Gaza district, they were offered an opportunity of this kind to conduct their own affairs by themselves. Since 1979, talks have been held for the implementation of this agreement; there were intermissions in the negotiations, but talks were resumed intensively in the summer of 1981, leading to a thorough-going clarification of the positions of the parties. At these talks Israel put forward its proposals with regard to the self-governing authority (administrative council), its powers, responsibilities and structure as well as other related issues. The main points of Israel's proposals, as submitted in the course of the negotiations were as follows:

**Scope, Jurisdiction and Structure of the Self-Governing Authority (Administrative Council) :**

1. The Camp David accords set forth the establishment of a self-governing authority (administrative council) that will comprise one body representing the Arab inhabitants of Judea, Samaria and the Gaza district, who will choose this body in free elections, and it will assume those functional powers that will be transferred to it. Thus the Palestinian Arabs will for the first time have an elected and representative body, in accordance with their own wishes and free choice, that will be able to carry out the functions assigned to it as an administrative council.

2. The members of the administrative council will be able, as a group, to discuss all subjects within the council's competence, apportioning

among themselves the spheres of responsibility for the various functions. Within the domain of its assigned powers and responsibilities, the council will be responsible for planning and carrying out its activities.

**Powers of the Self-Governing Authority (Administrative Council):**

1.a. Under the terms of the Camp David agreement, the parties have to reach an agreement on the powers and responsibilities of the authority. Israel's detailed proposals include a list of powers that will be given to the authority and that, by any reasonable and objective criterion, represent a wide and comprehensive range of fields of operation. Without any doubt, the transferring of these powers constitutes the bestowal of full autonomy- in the full meaning of that term.

b. The powers to be granted the authority, under these proposals, are in the following domains:

1. Administration of Justice: Supervision of the administrative system of the courts in the areas; dealing with matters concerned with the prosecution system and with the registration of companies, partnership, patents, trademarks, etc.

2. Agriculture: All branches of agriculture and fisheries, nature reserves and parks.

3. Finance: Budget of the administrative council and allocations among its various divisions; taxation.

4. Civil Service: Appointment and working conditions of the Council's employees. (Today, the civil service of the inhabitants of Judea-Samaria and Gaza, within the framework of the Military Government's Civilian Administration, numbers about 12,000 persons.)

5. Education and Culture: Operation of the network of schools in the areas, from kindergarten to higher education; supervision of cultural, artistic and sporting activities.

6. Health: Supervision of hospitals and clinics; operation of sanitary and other services related to Public health.

7. Housing and Public Works: Construction, housing for the inhabitants and public works projects.

8. Transportation and Communications: Maintenance and coordinations services.



9. Labour and Social Welfare: Welfare, labour and employment services, including the operation of labour exchanges.

10. Municipal Affairs: Matters concerning municipalities and their effectived operation.

11. Local Police: Operation of a strong local police force, as provided for in the Camp David agreement, and maintenance of prisons for criminal offenders sentenced by the courts in the areas.

12. Religious Affairs: Provision and maintenance of religious facilities for all religious communities among the Arab inhabitants of Judea-Samaria and the Gaza district.

13. Industry, Commerce and Tourism: Development of industry, commerce, workshops and tourist services.

2. The council will have full powers in its spheres of competence to determine its budget, to enter into contractual obligations, to sue and be sued and to engage manpower. It will, moreover, have wide powers to promulgate regulations, as required by a body of this kind. In the nature of things, in view of the free movement that will prevail between Judea-Samaria and the Gaza district and Israel and for the general welfare of the inhabitants, arrangements will be agreed upon in the negotiations, in a number of domains, for cooperation and coordination with Israel. The administrative council will, hence, have full scope to exercise its wide-ranging powers under the terms of the autonomy agreement. These powers embrace all walks of life, and will enable the inhabitants of the areas concerned to enjoy full autonomy.

3. Size: The size of the administrative council, whose representative character finds expression in its establishment through free elections, by the Arab inhabitants of Judea, Samaria and Gaza. Clearly, the criterion for determining the number of its members must be the functions that the council is empowered to perform. We propose, therefore, that the number of members will conform with the functions listed above.

4. Free elections: Elections to the administrative council, under Israel's proposals, will be absolutely free, as stipulated in the Camp David agreement. Under the terms of the agreement, the parties will agree upon the modalities of the elections; as a matter of fact, in past negotiations a long list of principles and guidelines has already been

prepared in this matter. In these free elections, all the rights pertaining to a peaceful assembly, freedom of expression and secret balloting will be preserved and assured, and all necessary steps will be taken to prevent any interference with the election process. The holding of an absolutely free and unhampered election process will thus be assured in full, under the law, and in keeping with the tradition of free elections practiced in democratic societies. These elections will, in many respects, constitute a new departure in the region around us which in most of its parts is not too close to the ways of democracy, and in which free elections are a rare phenomenon. It is of some interest, therefore, to note that Judea-Samaria and Gaza under Israel's Military Government since 1967, have exemplified the practical possibility of totally free elections in these areas. In 1972, and again in 1976, Israel organized free elections in these areas based on the tradition and model of its own democratic and liberal tradition and custom; voters and elected officials alike concede that these were free elections in the fullest sense. The elections in the administrative council will be organized and supervised by a central elections committee whose composition has been agreed upon by the parties.

5. Time of elections and establishment of the self-governing authority (Administrative council): The elections will be held as expeditiously as possible after agreement will have been reached on the autonomy. This was set forth in the joint letter of the late President Sadat and of Prime Minister Begin to President Carter, dated 26 March 1979, setting for the manner in which the self-governing authority (administrative council) is to be established, under the terms of the Camp David agreement.

6. Within one month following the elections, the self-governing authority (administrative council) is to be established and inaugurated, and at that time the transitional period of five years will begin again, in conformity with the Camp David agreement and the joint letter.

7. Hence, every effort will be made to hold elections without delay, once an agreement is reached, to be followed by the establishment of the self-governing authority (administrative council).

8. Following the elections and the establishment of the self-governing authority (administrative council) the military government and its



civilian administration will be withdrawn, a withdrawal of Israeli armed forces will take place, and there will be a redeployment of the remaining Israeli forces into specified security locations, in full conformity with the Camp David agreement. Israel will present to the other parties in the negotiations the map of the specified security locations of the redeployment. It goes without saying that all this will be done for the purpose of safeguarding the security of Israel as well as of the Arab inhabitants of Judea-Samaria and Gaza and of the Israeli citizens residing in these areas.

9. All of the above indicates Israel's readiness to observe the Camp David agreement fully and in every detail, in letter and spirit, while safeguarding the interests of all concerned.

## APPENDIX VIII

### Agreement Regarding The Permanent Boundary Between Egypt And Israel, 26 February, 1989

The Governments of Egypt and Israel,

Reaffirming their adherence to the provisions of the Treaty of Peace of 26 March 1979, and their respect for the inviolability and sanctity of the permanent boundary between Egypt and Israel, which is the recognized international boundary between Egypt and the former mandated territory of Palestine,

Recognizing as final and binding upon them the Award of 29 September 1988 of the Arbitral Tribunal established by the Compromis of 10 September 1986,

Having mutually located the recognized international boundary between boundary Pillar 91 and the Gulf of Aqaba,

Have agreed as follows:

1. The permanent boundary between Egypt and Israel, as defined in Article 11 of the Treaty of Peace, meets the Gulf of Aqaba at the point marked by the two governments on the ground, as recorded in Annex A.

2. On or before noon, March 15, 1989, Israel will withdraw behind the recognized international boundary.

#### Annex A

The surveyors of the Arab Republic of Egypt and the State of Israel, meeting on February 24, 1989, determined that the permanent boundary between Egypt and Israel, as defined in Article II of the Treaty of Peace, follows a straight line between agreed Boundary Pillar 91 and the Gulf of Aqaba. The surveyors of the two countries marked that line on the ground with two markers, one on the northern side of the road (as shown on the attached sketch) and one on the ridge immediately above the road. The surveyors agreed that tomorrow, February 27, the latter marker will be replaced by a more permanent marker and an additional, similar marker will be erected on the same line where the line meets the shore.



#### **Addendum To Annex A**

On 7 March 1989 the surveyors of the Arab Republic of Egypt and the State of Israel augmented the local description of the two permanent markers established on 27 February 1989 Pursuant to Annex A of the document signed on 26 February 1989 by recording the distances from these two markers to BP91 and by tying, through surveying measurements, to two agreed points on the Hotel and an agreed point on the top of the "granite knob".

The above were recorded on the attached description card which, together with this Addendum are an integral part of Annex A.

The parties agreed that a measurement of the angle between the prolongation of the line between B.P.90 and B.P.91 and the line connecting B.P.91 and the two above noted markers will be carried out within the Framework of the documentation of the entire permanent boundary in the near future to be coordinated between the parties.

#### **Agreed Minutes**

##### **Concerning Tourism In South Sinai Through Checkpoint Number 4**

Delegations from Egypt and Israel met during January and February 1989 in order to promote tourism between the two countries on a reciprocal basis and to their mutual benefit. At the end of these meetings the Egyptians delegation advised the Israeli delegation that the competent Egyptian authorities issued appropriate regulations necessary for the implementation of the following regulations and the following agreed arrangements regarding tourists of all nationalities. These regulations are to be communicated to all Egyptian consulates abroad. The Israeli delegation advised the Egyptian delegation that Israel shall provide reciprocal arrangements on a proportional basis upon Egypt's request.

##### **Passports:**

In addition to the use of regular passports, the Egyptian authorities shall recognize Israeli regular passports valid for travel only to Egypt, provided such passports are valid for at least two months as of the date of entry. The Egyptian delegation requested to see and approve a sample in advance of use. Regular collective passports (for group tours and large families) for around 25

persons would be valid for a single entry provided such passports are valid for at least two months as of the date of entry.

Visas:

All tourists entering South Sinai will be exempted from tourist visas, and entry and exit stamps will be stamped either on the passport upon the tourist's request or on the regular registration forms upon entry. Such stamps will be valid for a period of 14 days.

Fees:

No fee will be charged for persons traveling less than one kilometer from the checkpoint.

Customs:

There will be only random spot checks and checks of suspicious persons. Anyone having anything to declare, such declaration will be noted by officials on the exit form.

Currency:

In accordance with agreed Technical Arrangements: (a) facilities will be provided in the Sonesta Hotel on a 24-hour basis for the exchange of Israeli currency for Egyptian currency and vice versa; and (b) Israeli currency obtained through this procedure will be convertible into U.S. dollars by the Bank of Israel.

Vehicles

Private passenger vehicles and rental cars: Customs authorities will register car license plate number, owner name, and driver name; they will affix a sticker valid for multiple entries for one kilometer for a period of stay of up to 14 days. These rules will also apply to authorized service and supply vehicles attending to the needs of the hotel, authorized hotel shuttles and tour buses carrying passengers from Israel to the hotel and vice versa, and to emergency vehicles, the passage of which will be expedited by both sides.

Vehicles crossing the border shall be covered by appropriate Egyptian insurance valid for up to 14 days, or longer up to one year - if requested.



Terminal Hours:

The delegations agreed to extend the working hours of their respective terminals to 0600-2400 hours. They further agreed to re-evaluate the need for and length of such extension after three months.

Food Regulations:

Importation of food for personal consumption will be allowed subject to health and customs requirements.

General:

Appropriate liaison will be established between managers of the Israeli and Egyptian terminals.

The Egyptian authorities will look into the possibility of designating a confined camping area that would be equipped with facilities.

All rules and regulations with respect to tourism agreed to between Egypt and Israel shall continue to apply unless otherwise stipulated in these matters.

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