Remember
The Six Day War – June 1967 and Its Aftermath

We are now approaching the 40th anniversary of the Six Days War. At the present time it is important to recall the causes of that war and the factors that have led us to our present situation. These are too extensive and complicated to set out here in detail, but it should be understood that the Six Day War was caused essentially by a local expression of a wider conflict.

Regionally, the Western Powers retained historical, political and economic interests in the Middle East. These blocked the Soviet intentions to penetrate the region, limiting its sphere of influence, while at the same time, seeking to destabilise Arab relationships with the West. In Egypt, Russia had already supplanted America by financing the construction of the Aswan Dam and supplying arms to Syria and other Islamic Middle-Eastern countries.

Locally, the scarcity of water in Israel led to an escalating tense situation upon which the Soviets capitalised with their misinformation tactics. This resulted in a war which Israel unsuccessfully attempted to avert and the results reverberate to this very day.

1. Context and Proximate Causes of the War

Seven proximate causes compelled Israel to take pre-emptive defensive military action on June 6, 1967; five of them constituted direct *causi belli*, while the two others were of a different nature: one – political and the other being water

a. **Egyptian blockade against Israeli shipping in international waters** - Straits of Tiran - and the failure of the maritime nations to honour their undertakings given to Israel following the Suez Campaign, to challenge that blockade, if imposed by Egypt;

b. **UN acquiescence in removal of the peacekeeping force from Egyptian-Israel border**

In 1956, with the threat of Soviet interference hanging over their heads if Israel failed to withdraw from the Suez Canal, Israel, Britain, and France had conducted intensive diplomatic negotiations with the US and the UN. These produced two "good faith" agreements which gave Israel some degree of security in return for her withdrawal from the Canal zone:

- The first, between Nasser and the Secretary General, whereby Egypt was promised that it would have the right to demand the removal of UN forces whether the peace keepers had completed their mission. from its territory, but only after the General Assembly had considered the matteer;
- The second agreement made between the US Secretary of State and Israel's Foreign Minister, whereby the US undertook that it would regard any Egyptian attempt to interfere with Israel's right of free passage through the Straits of Tiran or any fedayeen attacks emanating from Gaza as causi belli.

It had been agreed that the occurrence of such events would entitle Israel to act in self defence under Article 51 of the UN Charter, and she undertook to inform the United States of any such intention. In the event the UN were to abandon any of its responsibility in Egypt, the United States, France and Britain agreed to support Israel if it found itself in the position of having to take action in self defence against Egyptian aggression. The efficacy of this arrangement was seen in the fact that between March 1957 and May 1967, not a single episode of armed attack took place against Israel from the Gaza strip. (see Michael K. Carroll, *From Peace Keeping To War:The United Nations and the Withdrawal of UNEF*, 9 Meria Volume 9, No. 2, - June 2005; http://meria.idc.ac.il/journal/2005/issue2/jv9no2a5.html Michael Oren, *What Are the Origins of the Middle East Crisis? Six Days of War*, http://hnn.us/articles/725.html ; Branislav L. Slantchev National Security Strategy:The Arab-Israeli eConflict, 1916-1978, http://dss.ucsd.edu/~bslantch/courses/nss/lectures/23-arab-israeli-conflict.pdf)

c. **Massing of troops on Egyptian, Syrian and Lebanese borders** poised for invasion; and

d. **The Jordanian attack** on that part of Jerusalem held by Israel since 1948, and on the UN enclave around Government House despite Israeli approaches to Jordan that if she remained uninvolved, Israel would not attack her. (Oren, p.184)

e. **Water**

The onetime Commander of the UN Observer Forces in the area, General Odd Bull, notes that the roots of the 1967 conflict started much earlier in 1964 (see Odd Bull, *War and peace in the Middle East: The Experiences and Views of a UN Observer,* Leo Cooper; London, 1976, pp. 72-78) On May 28, Israel started to pump water from the River Jordan to irrigate the Negev- the desert southern part of Israel. The quantity to be taken was within that allocated to Israel in Eric Johnson's 1955 plan for sharing the combined water of the Jordan River and its tributaries between Israel and its neighbours. (see Masahiro Murakami, *Managing Water for Peace in the Middle East: Alternative Strategies*, United Nations University Press, New York, 1995 http://www.unu.edu/unupress/unupbooks/80858e/80858E00.htm#Contents)

The Arab governments at a meeting on September 7, 1964, objected to the development of the Negev in this manner and resolved to counter Israel's action by drawing off water from two of the three tributaries to the Jordan (Hasbani in Lebanon and Baniyas in Syria), diverting them eastward and then southwards into the River Yarmuk within Jordanian territory. Israel reacted and notified the Armistice Commission and the UN Security Council that it would view the implementation of such plans as aggression and a breach of the Armistice Agreements. (Israeli Notes to the Security Council following th don't do anything second Arab summit conference, S/5980, 18 September, and S/6020, 19-October 1964, http://www.mideastweb.org/israelscnotes.htm) When the Syrian government, inside its own borders, actually attempted to divert the Banyas, Israel responded by three army and air-force attacks on the site of the diversion. (see Lilach Grunfeld, *Jordan River Dispute*, ICE Case Studies, Case Number: 6, Spring 1997 http://66.249.93.104/search?q=cache:9m82PrBMDzIJ:www.american.edu/TED/ice/JORDAN.HTM+Syrian+diversion+water+from+Jordan&hl=en)

In passing, it is worth pointing out that Odd Bull's observation that the conflict started in 1964 is misleading. In fact it started much earlier when Britain agreed to transfer its control over the headwaters of the Jordan to France of the under Franco-British [Boundary] Convention signed on December 23, 1920.

f. Terrorist Activity Emanating from Jordan

Terrorist infiltrations from Jordan and their attacks on civilian settlements inside Israel contributed to Israel's insecurity. On 1 April 1967, Palestinian infiltrators blew up a water pump at a kibbutz on the Lebanese border. Later on April 7, 1967 the Syrians fired on two Israeli tractors entering the Demilitarised Zone located between itself and Israel. The IDF fired back. The battle on land then escalated into one in the air when Israel planes attacked Syrian installations and tangled up with the Syrian Air Force. A huge dogfight took place over Damascus involving an estimated 130 aircraft in which four Syrian MiGs were shot down and Israeli Mirages did a victory loop around the city to rub it in.

g. Soviet disinformation

Soviet disinformation tactics play a crucial role in instigating war. The Israeli air attacks over Syria put the Soviets in the position of being able to feed Syria and ultimately Egypt with disinformation about Israel's supposed intentions such that they provoked Egypt into taking military action against Israel. Commencing on May 8, 1966, a TASS cable from Damascus made the first mention of a suspicious concentration and movement of Israeli troops sighted lately on the border with Syria. By May 21 it was being asserted that about a third of the Israeli army was being transferred to the Syrian border. (see Isabella Ginor, ***The Cold War's Longest Cover Up: How and Why The USSR Instigated The 1967 War,*** vol. 7, Issue #3,Meria Journal, Sept. 2003) The Russian Foreign Ministry sent at least eight warning notes to Israel's diplomats, alleging Israeli troop build-up on the Syrian border, none of which was true. At one point Israeli Premier Eshkol suggested that Soviet Ambassador Sergei Chuvakhin go to the northern border and check for himself. Chuvakhin replied that his job was to communicate Soviet truths and not to test them.

> "The repetition of these charges, together with increasingly acrimonious Soviet statements and the encouragement of Syria to undertake actions (which indeed provoked a forceful Israeli response climaxing on April 7, 1967) were part of a deliberate escalation designed to prepare the ground for harnessing Egypt to the end is in the military confrontation being prepared and to draw an Israeli strike against Egypt as well." (see Greg Goebel, ***Notes From Six Days of War***, Chapter 2 of 4 / 28 Aug 05 http://66.102.9.104/search?q=cache:imlyAQ4zOc8J:www.vectorsite.net/xrsixday_2.html+Eshkol++invitation+Russian+ambassador+visit+northern+border&hl=en)

General Odd Bull commented that in April 1967 during the period when Russian was issuing its warnings concerning Israeli troop build up, the Israelis had agreed to a UN inspection of the Demilitarized Zones, a somewhat strange thing to do if the allegations had been true.

> "The Soviet Union warned Syria about Israeli troop concentrations and the likelihood of attack. Nasser gave credence to these warnings and resolved to support Syria by concentrating Egyptian forces in Sinai….Nasser was obliged to act if his reputation in the Arab world was not to suffer because he had been subjected to a lot of criticism on the ground that he was sheltering behind UNEF. Presumably his hope was that his gestures of support for Syria would be sufficient to dissuade the Israelis from attacking Syria." (Odd Bull, p. 105)

2. U.N. inaction plays into hands of Soviets while Jordan is warned to avoid involvement

Notwithstanding Israeli pleas to the United Nations for two weeks prior to June 6 1967, the international body, charged with safeguarding world peace, failed to take any positive action in Israel's defence. Neither did the maritime nations attempt to challenge the blockade in accordance with their undertakings under the "good faith" agreements. On June 6, 1967 Israel took pr-emptive military defensive action.

In the ensuing six days, Egypt lost control of Sinai and the Gaza strip, and Syria the Golan Heights.

As regards Jordan, Israel was certainly not interested in becoming involved in an additional front of conflict. Early in the morning of June 5, Israel Foreign Ministry official, Arthur Lourie, notified Odd Bull that it was in a state of war with Egypt and Syria and wished to avoid conflict with Jordan.

> "Lourie…asked me [Odd Bull] to transmit a message to King Hussein expressing the hope of the Israeli Government that he would not join in the war. If he stayed out, Israel would not attack him, but if, on the other hand, he chose to come in, Israel would use against him all the means at its disposal. "

The message was quickly sent and was received by King Hussein before 10.30 that morning. Warnings were also sent to the UN Secretary General in New York in the hope that no attack would be launched in Jerusalem - but at 11.25 a.m. the Jordanians open fire. Odd Bull and his staff tried to arrange a cease fire but to no avail. Then at 1.30 p.m. Jordanian troops entered Government House, the diplomatically sacrosanct UN compound in Jerusalem, and took control over the protests of the UN Observers present there. From that vantage point, Jordanian troops proceeded to open fire against targets in Israeli territory. Israeli troops retaliated and entered the compound at 3.52. p.m. with General Odd Bull and his staff evacuating the building at 5 p.m. The battles in Jerusalem and in the remainder of the West Bank continued for a further 96 hours, with Jordanian forces eventually losing control and suffering defeat.

Israel's critics maintain that the 1967 War was one of Israeli aggression rather than a war of Israeli self-defence. Yet, earlier on May 15, Israel's Independence Day, Egyptian troops had begun moving into the Sinai, massing near the Israeli border. By May 18, Syrian troops, too, were preparing for battle along the Golan Heights, 3000 feet above the Galilee, from which they had shelled Israel's farms and villages for years.

As a consequence of the Six Day War, Israel for first time in its history found itself in control of territory, which prior to the War had been under the control of a foreign power and exercising jurisdiction over a population most of whom held Jordanian citizenship. This new situation raised a number of legal questions as to Israel's right and responsibilities in the circumstances.

3. Six Day War Aftermath

Apart from the euphoria which victory brought to the Israelis and defeat causing depression, loss of prestige and honour to the Arabs, the War enabled the once separated populations to create some degree of contact, commercially if not politically or socially. Jews from West Jerusalem visited the Western Wall in East Jerusalam, their most holy shrine as well as the restaurants, cafés and markets while Arab taxi drivers plied the roads in West Jerusalem and elsewhere looking for custom. At a local and intimate level, the war brought about direct and continuous interchange between the Jewish population of Israel and the Arab populations in the West Bank, Jerusalem and Gaza. The barbed wire barriers between Israel and the West Bank and the block wall separating East and West Jerusalem disappeared. This gave opportunities for both confrontation and cooperation between the peoples which they had not had since 1949.

a. Israeli Attempts at Peace Making with its International Neighbours and their Rejection.

It has been suggested by General Odd Bull that if Israel had immediately offered to return the territory to those neighbouring states from whom it had been captured, it could have avoided a continuation of the conflict with its neighbours and achieved "real peace" as well as the consequences of its "occupation" of the West Bank and Gaza The shock of such an offer coupled with the shock of their defeat, according to Bull, *(Odd Bull*, p.125) might have been sufficient to have terminated the "cycle of arms and counter arms."

This conclusion seems most unlikely and is not supported by the facts:

- The United States called upon Israel to withdraw from the conquered territories in return for signed peace treaties.
- In response, on June 19, 1967, the Israeli government offered:
  - to Egypt: the return to its sovereignty over the Sinai Peninsula provided it was demilitarized; and
  - to Syria: an Israeli withdrawal to the 1922 international border with Syria, provided that the Golan Heights were demilitarized and subject to a commitment that the headwaters of the Jordan in Syria would not be diverted; and
  - to both Egypt and Syria to conduct separate negotiations regarding the future of the Gaza Strip and the West Bank and a solution to the refugee problem.
- The offer, transmitted through the United States, was rejected by Egypt and Syria. (see Moshe Gat, Britain *and the Occupied Territories After The 1967 War,* 10, MERIA J. Dec.2006 http://216.239.59.104/search?q=cache:gH_57GyUvUoJ:meria.idc.ac.il/journal/2006/issue4/jv1 0no4a4.html+Israel+Cabinet+Decision+June+19,+1967&hl=en&ct=clnk&cd=3&gl=uk

Although the offer did not mention Jordan or the West Bank, the Israeli government also resolved to open negotiations with King Hussein of Jordan regarding the Eastern border which was problematic for Israel.

While the double shock to the Arabs of the defeat coupled with that of the offer of withdrawal might have brought a positive response if presented to a Western opponent, it is questionable whether pride, loss of face and humiliation would have permitted the Arabs to have accepted such an offer-especially from a _dhimmi_ dominated state. (see Y. Harkabi, **_Arab Attitudes to Israel,_** Vallentine, Mitchell, London 1972)

A _dhimmi_ is one who lives in a Muslim society without being Muslim (Jews and Christians) having a lower social, political, and economic status than his neighbour by virtue of his not being a Muslim. The _dhimmi_ was and still is viewed as a second class person; by extreme Islamic fundamentalists he is sub-human. He was "protected" from being killed and treated as an infidel provided he paid a special tax and suffered a number of personal and group indignities. Initially viewed by Muslims with disdain, the _dhimmi_ was later treated with contempt and latterly - especially Jews - with hate.
(see, Raphael Patai, **_The Arab Mind,_** Hatherleigh Prress, Newe York, 2002; S. Deshen and W.P. Zenner (eds) **_Jews Among Muslims_**, Macmillan Prress, Basingstoke, UK 1996; Bat Ye'Or, **_The Dhimmi- Jews and Christians under Islam,_** Associated University Presses**,** Canbury NJ, 1985. By the same author and publisher see also **_The Decline of Eastern Christianity under Islam – From Jihad to Dhimmitude,_** 1996 and **_Islam and Dhimmitude – Where Civilizations Collide_**, 2002)

The return of territory of itself would not have solved the problem of the Palestinian refugees. Neither would it have satisfied the emerging Palestine Liberation Organisation, established in 1964, which had been given a mandate by the Arab states to act on the behalf of the Palestinian refugees.

b. Israeli Responses

On July 4, 1967, Eshkol appointed a committee to establish contacts within the conquered regions, to report and make recommendations. These recommendations were unanimous:
- "[Establish and maintain] intensive political activities, to reach a peace agreement with Jordan.
- In the absence of an immediate peace agreement with Jordan, Israel will continue to administer the West Bank "as a separate administrative and economic unit", "a civilian regime with emergency powers".
  IDF will control the new borders while the domestic security will be the responsibility of the Police. "A special minister will rule the West Bank in the form of a Canton. A small Israeli group of personnel will deal with state policy level while local domestic topics (municipal, etc.) will be handled by local Arab officials.
- An immediate search for a comprehensive solution of the Refugee Problem (that time there were 23 refugee camps in the Gaza Strip and the West Bank), either in the framework of the Peace Agreement or by Israel, recruiting the help of the International Community.
- Two tracks - the Jordanian on one hand and the Israeli-Palestinian - will be taken simultaneously "since they are not necessarily interdependent." (see Moshe Sasson, **_Levi Eshkol – A Man of Peace,_** http://research.haifa.ac.il/~eshkol/peace.html

In Jerusalem especially, the ability for Jews to visit their holy places also gave them the opportunity to visit the Arab markets and restaurants. Fairly soon after the 1967 War, Israel began to see the employment of Arab workers, within Israel, especially in the building trade. The concern of both peoples seemed to be centred on the restructuring of their lives.

Having been denied access by Jordan to its most holy places in Jerusalem and all the Jewish places of worship having been destroyed by Jordan while under its control, Israel was not about to risk the physical surrender of its most precious symbols of its Jewish identity to those who believed that the Jewish state was illegitimate and who were capable later of replacing an ephemeral "peace" to one of physical violence.
There was, therefore, a consensus in Israel's government that East Jerusalem should be annexed.

c. Palestinian Views and Israel's Reaction

At the political level, selected Israeli military reservists were directed to undertake a fact finding mission - to make contact with local leading Palestinians in order to assess their political opinions.

> "A clear picture emerged from their conversations: **The Palestinian Arabs**-except for a minority with special interests **did not want to return to Jordanian rule**. They suffered from economic discrimination designed to favour the East Bank Jordanians against the West bank Palestinians. More than anything they wanted to be free to shape their own future. They were therefore prepared to strike a deal with their latest masters…in return form an independent state or entity on the West Bank and in Gaza they were willing to sign a formal peace treaty with Israel and co-exist with us in every way. **This was in stark contrast to the conventional position of the Arab states.**
>
> Those of us who had been in daily touch with the Palestinian groups, felt that we had before us an opportunity to reach an agreement with representative Palestinians which should not be missed even if it meant giving up some of the land we considered to be ours" (see David Kimche, *The Last Option*, Weidenfeld & Nicholson, London, 1991, pp 241-248) (gma emphasis)

4. Subsequent Outcomes

Notwithstanding the positive Reservist's recommendations to enter into negotiations with the Palestinians, neither the Arabs nor the Jews were politically or psychologically prepared to entertain the idea. Neither King Hussein nor the Fattah section within the PLO would consider the idea. - Arafat singled it out for vitriolic condemnation. As for the Israelis, they were looking to the neighbouring Arab states to conclude a peace treaty. It was with Jordan that Israel had fought- not the Palestinian population on the West Bank and Gaza. During Phase I of the Occupation, Israel failed to consider the indigenous Arab leadership as having the capacity to make a peace settlement. For Israel, her policy was directed towards negotiations and a peace treaty with the Arabs. With Israel refusing to deal with the local Palestinians, they naturally turned to the PLO for support. The PLO, in its turn, commenced its terrorist incursions against Israel from without.

Following the War, Israel somewhat surprised at the extent of its outcome, lacked any clear policy as to how to manage the "occupation." except for Jerusalem. The basic policy lines in fact were hammered out some years later in what was described as a policy of "benevolent occupation." The aim of the programme was to minimize Israeli intervention in the lives of Palestinians; to allow them to pursue their lives unmolested as long as they obeyed the law and did not defy the occupation. The Israeli government established a clear cut policy of reward and punishment; promising benefits to those who cooperated with the administration and sanctions against those who did not. Talks were held here and there with local leaders in an attempt to arrive at a tacit understanding of the "rules of the game," but an overall long-term policy was lacking.

5. The Arab Response: Khartoum Conference 1967: The Three "Noes"
No peace with Israel, No recognition of Israel, No negotiations

Following the Arab defeat, eight Arab heads of state attended an Arab summit conference in Khartoum, Sudan between August 29 - September 1, 1967. The conference set official Arab policy in relation to Israel:

- The Arab Heads of State have agreed to unite their political efforts at the international and diplomatic level to eliminate the effects of the aggression and to ensure the withdrawal of the aggressive Israeli forces from the Arab lands which have been occupied since the aggression of June 5. This will be done within the framework of the main principles by which the Arab States abide, namely, "no peace with Israel, no recognition of Israel, no negotiations with it, and insistence on the rights of the Palestinian people in their own country."
- The Conference also recognized that oil pumping could be used as a positive weapon to strengthen to be used in the service of Arab goals and changed oil embargo policy. In so doing it also resolved to establish a fund to assist the economics of those Arab States (Jordan and Egypt especially) who lost economic resources as a result of the war.
- Unsurprisingly, the Conference agreed on the need to adopt "the necessary measures to strengthen military preparation to face all eventualities" and to expedite the elimination of foreign bases in the Arab States.

For the Israeli Government, the outcome of the Khartoum Resolutions weakened those members supporting conciliation and strengthened those calling for annexation of the conquered territories and their Jewish settlement. In the case of Jerusalem and the Etzion Block located between Bethlehem and Hebron, the National Religious Party and the right wing parties demanded their resettlement. The pursuit of this latter policy was to have long term implications for the relations between Jews and Arabs in the West Bank, the results of which are still with us today.(see Ami Isseroff ,*Khartoum Resolutions* Mid-East Web, http://www.mideastweb.org/khartoum.htm)

6. United Nations Security Council Resolution 242.

The importance of Resolution 242 is at the centre of all attempts to resolve the conflict today and critically revolves around the words "all the" and the extent of the withdrawal

Notwithstanding the passage of a number of weak Security Council resolutions calling for a cease-fire (the first of which took some thirty two hours to pass because the Russian delegation tried to include within it a condemnation of Israel as the aggressor), the fighting continued until June 10, 1967. Even then violations of the cease fire continued to occur, the last being the sinking by Egypt of the Israeli destroyer *Eilat* on October 21, 1967. This brought an Israeli reprisal on October 24, 1967 with the destruction of the Egyptian oil refineries at Suez. The Security Council took more than five months to arrive at an agreed Resolution. (See ***UN Resolution 242: Building Block of Peacemaking***, The Washington Institute, Washington, DC, 1993)

After intense diplomatic activity, the text – drafted in English - was finally negotiated and carefully crafted by Lord Caradon, head of the British delegation and approved unanimously by the Security Council on November 22 1967.

Resolution 242 declares that the establishment of a just and lasting peace in the Middle East should include the application of **both** the following principles:
- Withdrawal of Israel armed forces from territories occupied in the recent conflict;
- Termination of all claims or states of belligerency and respect for and acknowledgment 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.

The Resolution also affirms further the necessity for:

(i) for guaranteeing freedom of navigation through international waterways in the area;
(ii) achieving a just settlement of the refugee problem;

(see http://domino.un.org/UNISPAL.NSF/0/59210ce6d04aef61852560c3005da209?OpenDocument)

Since Resolution 242 is often misquoted, the following points should be carefully noted:

a. Israeli Withdrawal "from Territories"

i. All or Partial?

The sponsors of the resolution, intentionally omitted from the text the significant words "all the" before the word "territories."

- The General Assembly had had presented before it four earlier draft resolutions which were more demanding of Israel and which failed to obtain the necessary support. Two of them employ language which the Palestinians continue to declare as being the UN's intention, notwithstanding their rejection. GA A/L 522 introduced by Yugoslavia called for Israel to withdraw behind the lines established in 1948 General Armistice Agreements; Resolution A/L 523 submitted by the Latin-American Nations required Israel to withdraw "from all the territories;"

- The Security Council had had a number of meetings between November 9 through November 22, 1967, following a request by the United Arab Republic (Egypt). Two draft resolutions had been presented to the Council; the first by India, Mali and Nigeria; the second by the USA. During the meetings two further drafts were prepared: one by Britain and the other by the Soviets. This latter draft, which included a clause requiring Israel to withdraw to the pre war cease fire lines of June 5, 1967 was rejected. Only the British draft, being a compromise between the various drafts submitted, was ever voted upon and passed unanimously;

- Successive British Foreign Secretaries, Michael Stewart, in November 17, 1969, and George Brown, on January 19, 1970, both confirmed to Parliament that intentional omission of the words "all the" from the Resolution and implies that Israel is not required to retreat to the boundaries in effect before 1967, namely the Armistice lines determined in 1948 - and that territorial adjustments have to be made.

- Lord Caradon himself admitted to the same position:
  "Withdrawal should take place to boundaries which are both secure and recognized….. It was not for us to lay down exactly where the border should be. I know the 1967 border very well. It is not a satisfactory border. It is where troops had to stop, just where they happened to be that night. That is not a permanent boundary." (Lord Caradon Interview Kol Yisrael February 1973 www.mfa.gov.il/mfa/go.asp?MFAHOcyv)

Since the negotiation of the resolution was conducted in English and the language of its draft and final texts were similarly expressed, it is the English version of the Resolution which should be utilized in matters of interpretation and application. The French translation, even though an official UN document, is inaccurate. It calls for "*retrait des forces arrives Isreliennes **des territoires occupés lores dur recent conflit**" A more accurate translation of the English text would have been "de territories". This notwithstanding, Palestinian supporters continue to quote the French text as demanding that Israel withdraw from all the territories. (see Meir Rosenne***, Understanding UN Security Council Resolution 242, of November 22, 1967,*** Jerusalem Center for Public Affairs http://www.defensibleborders.org/rosenne.htm)

ii. Withdrawal to Secure and Recognised Boundaries

Paragraph ii of the Resolution demands the termination of belligerency and respect the right for every State in the area "to live in peace within secure and recognized boundaries." This creates a problem for implementation. The term "secure" would include geographic, political and military parameters. The setting of a "secure" geographic boundary, presumes that the then existing political and military components which influence the physical location of the boundary line on the ground, will remain unchanged over time. In the Middle East this may be an unrealistic assumption. Given the rapid technological, economic, and political changes in the region, it is impossible to rely on the continuation of the present political constellations and their policies over any long term. Consequently, from a military perspective, the physical boundaries have to be set such as will provide Israel with enough strategic depth to allow

her to organize and repel an attack initiated by any neighbouring state in the event of adverse changes in the political environment.

(see Steinitz, Amidror, Rosenne and Gold, *Defensible Borders for a Lasting Peace*, Jerusalem Center for Public Affairs, Jerusalem 2005; Norman Bentwich, *Israel Two Fateful Years 1967-1969*, Elek, London, 1970)

b. Resolution 242 Does Not Designate The Territories as Arab or Palestinian

Resolution 242 makes no reference whatsoever to "Palestine" or to any "Palestinian" jurisdiction. It merely requires Israeli withdrawal from territory. It is theoretically conceivable, therefore, that some Jewish populated settlements could remain in the territories under whatever jurisdiction is established (presumably Palestinian) and subject to that law, just as many Arab villages exist peaceably within Israel proper and are subject to Israeli law. Only negotiations will determine which portion of the West Bank territories will eventually become "Israeli territory" and that which will be retained by Israel's Arab counterpart.

c. Refugees

In referring to a "just settlement" of the refugee problem, UNSC Resolution 242 makes no reference to the refugees' place of origin and unlike UNGA Resolution 181, neither does Resolution 242 refer to any specific means by which the refugee problem may be resolved such as a "right of return." Since the outcome of the Six Day War directly affected them, it might be assumed (incorrectly), that the Resolution refers obviously to Palestinian refugees. However, it must be remembered that the refugee problem was originally created as a result of 1948-1949 conflict which affected both Arabs and Jews and the short duration of the 1967 war did not exacerbate the situation significantly. While Israel has resolved on its own account the plight of the Jewish refugees, Palestinian refugees have been left to the tender mercies of their host countries and continue to be reliant upon UN and other international aid.

Palestinain Arab refugee camps have to a great extent been physically absorbed into the urban areas close to where they were originally located and have become almost indistinguishable from them. Their populations, however, have not been fully integrated into their host societies. Apart from Jordan, neither Lebanon nor Syria, have offered Palestinian refugees the right to become citizens.

Thus in searching for a "just" settlement of the refugees' problems, the responsibility of the Arab states who invaded Palestine in 1948 must be taken into account – not only for the prolongation of the Arab refugees' plight, but also for the loss of life and property of those Jewish refugees expelled from Arab countries.

7. Conquest Arising from Defensive Action in Contrast to Conquest by Aggression

In examining and giving his approval to the text of the Resolution 242, US Secretary of State Williams Rogers is reputed to have commented that the changes in the 1949 Armistice lines should be (1) "insubstantial alterations required for mutual security" and (2) that they "should not reflect the weight of conquest." (The text of Rogers statement published in full in New York Times, December 11, 1969, p. 16.)

Stephen Schwebel, formerly a Judge at the International Court of Justice, in an extensive comment, questions Rogers' criteria in determining the limited extent of the changes demanded of Israel and the assumptions upon which the criteria were based.

> "As a general principle of international law,..it is correct to say that there shall be no weight to conquest, that the acquisition of territory by war is inadmissible. But that principle must be read ….together with other general principles,… that no legal right shall spring from a wrong, and the Charter principle that the Members of the United Nations shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State.
>
> So read, the distinctions between
> - aggressive conquest and defensive conquest, [and]
> - between the taking of territory legally held and the taking of territory illegally held, become no less vital and correct than the central principle itself.
>
> (gma emphasis and paragraphing) (see Schwebel, *What Weight to Conquest",* Justice In International Law, Selected Writings pp 521-526: http://middleeastfacts.org/content/schwebel/what-weight-to-conquest.htm) First published in (1970), American J. International Law 64)

Schwebel briefly surveys that factual events giving rise to Israel's response to the Egyptian, Syrian and Jordanian aggressive moves prior to the outbreak of:
- the Six Day War: (Egypt's prior closure of the Straits of Tiran, blockade of the Israeli port of Eilat, massing of UAR's troops in Sinai, and its ejection of UNEF); and
- the 1948 Arab attack on the nascent State of Israel: (Egypt's seizure of the Gaza Strip, and Jordan's seizure and subsequent annexation of the West Bank and the old city of Jerusalem following Israel's proclamation as an independent State within the boundaries allotted to her by the General Assembly's partition resolution 181)

and concludes, in both cases, that not only was Israel reacted defensively against the threat and use of force against her by her Arab neighbours, but in addition the rejection by the Arabs of the Resolution 181 on partition was no warrant for the invasion by those Arab States of Palestine, whether of territory allotted to Israel, to the projected, stillborn Arab State or to the projected, internationalized city of Jerusalem.

It follows that the Egyptian occupation of Gaza, and the Jordanian annexation of the West Bank and Jerusalem, could not vest in Egypt and Jordan lawful, indefinite control, whether as occupying Power or sovereign *ex injuria jus non oritur.*

This conclusion impacts on the nature, timing and extent of Israeli withdrawal

a. Withdrawal - Within What Time Frame?

The language of Resolution 242 does not provide a time frame within which withdrawal should be implemented. How long, therefore, is Israel justified in delaying redeployment of its troops? Judge Schwebel suggests that in the absence of peace agreement, withdrawal of Israeli forces from captured territory is not required until a state of peace was established instead of belligerency, and that the continued Israeli occupation of Arab territory would be legal until such event.

Since Israel's action in 1967 was defensive and the danger in response to which that defensive action was still taken remains, occupation - though not annexation - is justified, pending a peace settlement

b. Conditional Nature and Extent of Israel's Required Withdrawal

In contrasting conquest arising from defensive action from that of conquest by aggression, Judge Schwebel points out the implications and conclusions to be drawn:

Those distinctions may be summarized as follows: (a) a State acting in lawful exercise of its right of self-defence may seize and occupy foreign territory as long as such seizure and occupation are necessary to its self -defence; (b) as a condition of its withdrawal from such territory, that State may require the institution of security measures reasonably designed to ensure that that territory shall not again be used to mount a threat or use of force against it of such a nature as to justify exercise of self-defence; (c) where the prior holder of territory had seized that territory unlawfully, the State which subsequently takes that territory in the lawful exercise of self-defence has, against that prior holder, better title.

This last point (c) requires some further examination because it raises by implication the issue of the legitimacy of Israeli civilian settlement in the West Bank.

c. Defensive Conquest Gives Better Title than Conquest by Aggression

Inasmuch as Israeli action in 1967 was defensive and the 1948 aggressive Arab action was inadequate to legalize Egyptian and Jordanian taking of Palestinian territory, in Judge Schwebel's opinion, Israel has better title in the territory of what was Palestine, including the whole of Jerusalem, than do Jordan and Egypt. It therefore follows that the application of the Rogers' doctrine of "according no weight to conquest" requires to be modified.

> "[I]t follows that modifications of the 1949 armistice lines among those States within former Palestinian territory are lawful (if not necessarily desirable), whether those modifications are, in Secretary Rogers's words, "insubstantial alterations required for mutual security" or more substantial alterations - such as recognition of Israeli sovereignty over the whole of Jerusalem."

The state of the law has been correctly summarized by Elihu Lauterpacht, as follows:

> "[T]erritorial change cannot properly take place as a result of the unlawful use of force. But to omit the word "unlawful" is to change the substantive content of the rule and to turn an important safeguard of legal principle into an aggressor's charter. For if force can never be used to effect lawful territory change, then, if territory has once changed hands as a result of the unlawful use of force, the illegitimacy of the position thus established is sterilized by the prohibition upon the use of force to restore the lawful sovereign. This cannot be regarded as reasonable or correct." (Elihu Lauterpacht, *Jerusalem and the Holy Places*, Anglo-Israel Association, Pamphlet No. 19 (1968), p. 52. cited in Schwebel)

While legal analysis may provide some assistance in the search for a resolution of the local and regional conflict between Israel on the one hand and Palestinians and Syria on the other, the root of the current Middle East impasse continues to lie in the dissemination of hate emanating from Arab media, mosques and schools, directed at the West in general, and Israel in particular, together with the lack of political will and effective leadership in all parties to substitute co-existence for violence.

Of considerable impact, however, is the ripple effect which mid-eastern regional political instability has on the global community. The continuing Western reliance on Arab oil resources coupled with the aggressive nature of expanding Islamic fundamentalism backed by Iranian aspirations to attain nuclear capability should also now be of major concern.

© Gerald M. Adler

Published on www.sixdaywar.co.uk