BRITISH MANDATE FOR PALESTINE – Preamble

LEAGUE OF NATIONS

Official Journal

3rd YEAR. No. 8 **AUGUST 1922**

ANNEX 391.

BRITISH MANDATE FOR PALESTINE.

The Council of the League of Nations :

Whereas the Principal Allied Powers have agreed, for the purpose of giving effect to the provisions of Article 22 of the Covenant of the League of Nations, to entrust to a Mandatory selected by the said Powers the administration of the territory of Palestine, which formerly belonged to the Turkish Empire, within such boundaries as may be fixed by them ; and

Whereas the Principal Allied Powers have also agreed that the Mandatory should be responsible for putting into effect the declaration originally made on November 2nd, 1917, by the Government of His Britannic Majesty, and adopted by the said Powers, in favour of the establishment in Palestine of a national home for the Jewish people, it being clearly understood that nothing should be done which might prejudice the civil and religious rights of existing non-Jewish communities in Palestine, or the rights and political status enjoyed by Jews in any other country ; and

Whereas recognition has thereby been given to the historical connection of the Jewish people with Palestine and to the grounds for reconstituting their national home in that country ; and

Whereas the Principal Allied Powers have selected His Britannic Majesty as the Mandatory for Palestine ; and

Whereas the mandate in respect of Palestine has been formulated in the following terms and submitted to the Council of the League for approval ; and

Whereas His Britannic Majesty has accepted the mandate in respect of Palestine and undertaken to exercise it on behalf of the League of Nations in conformity with the following provisions ; and

Whereas by the afore-mentioned Article 22 (paragraph 8), it is provided that the degree of authority, control or administration to be exercised by the Mandatory, not having been previously agreed upon by the Members of the League, shall be explicitly defined by the Council of the League of Nations ;

Confirming the said mandate, defines its terms as follows :

MANDATE FOR PALESTINE WAS TO PROMOTE THE ESTABLISHMENT OF THE JEWISH NATIONAL HOME

PALESTINE
ROYAL COMMISSION

REPORT

Presented by the Secretary of State for the Colonies to Parliament by Command of His Majesty

July, 1937

LONDON
PRINTED AND PUBLISHED BY HIS MAJESTY'S STATIONERY OFFICE
To be purchased directly from H.M. STATIONERY OFFICE at the following addresses:
Adastral House, Kingsway, London, W.C.2; 120 George Street, Edinburgh 2;
26 York Street, Manchester 1; 1 St. Andrew's Crescent, Cardiff;
80 Chichester Street, Belfast;
or through any bookseller

Unquestionably, however, the primary purpose of the Mandate, *as expressed in its preamble and its articles*, is to promote the establishment of the Jewish National Home.

(5) Articles 4, 6 and 11 provide for the recognition of a Jewish Agency "as a public body for the purpose of advising and co-operating with the Administration" on matters affecting Jewish interests. No such body is envisaged for dealing with Arab interests.

48. But Palestine was different from the other ex-Turkish provinces. It was, indeed, unique both as the Holy Land of three world-religions and as the old historic homeland of the Jews. The Arabs had lived in it for centuries, but they had long ceased to rule it, and in view of its peculiar character they could not now claim to possess it in the same way as they could claim possession of Syria or 'Iraq.

THERE WERE ALSO SEVERAL MANDATES IN THE MIDDLE EAST TO PROMOTE THE ESTABLISHMENT OF INDEPENDENT ARAB STATES

ANNEX 391 *a*.

FRENCH MANDATE FOR SYRIA AND THE LEBANON.

Article 1.

The Mandatory shall frame, within a period of three years from the coming into force of this mandate, an organic law for Syria and the Lebanon.

This organic law shall be framed in agreement with the native authorities and shall take into account the rights, interests, and wishes of all the population inhabiting the said territory. The Mandatory shall further enact measures to facilitate the progressive development of Syria and the Lebanon as independent States. Pending the coming into effect of the organic law, the Government of Syria and the Lebanon shall be conducted in accordance with the spirit of this mandate.

The Mandatory shall, as far as circumstances permit, encourage local autonomy.

Draft of the Mandate for Mesopotamia as submitted by Mr. Balfour on December 7, 1920, to the Secretariat-General of the League of Nations for the approval of the Council of the League of Nations.

ARTICLE 1.

The Mandatory will frame within the shortest possible time, not exceeding three years from the date of the coming into force of this Mandate, an Organic Law for Mesopotamia. This Organic Law shall be framed in consultation with the native authorities, and shall take account of the rights, interests and wishes of all the populations inhabiting the mandated territory. It shall contain provisions designed to facilitate the progressive development of Mesopotamia as an independent State. Pending the coming into effect of the organic law, the administration of Mesopotamia shall be conducted in accordance with the spirit of this Mandate.

CONDEMNATION OF ARAB COUNTRIES WHO MADE AN UNLAWFUL INVASION OF THE STATE OF ISRAEL IN MAY 1948, BY THE UKRAINIAN SOVIET UNION

UNITED NATIONS / NATIONS UNIES

SECURITY COUNCIL

OFFICIAL RECORDS

THIRD YEAR

306th MEETING: 27 MAY 1948

No. 75

Mr. TARASENKO (Ukrainian Soviet Socialist Republic) (*translated from Russian*):

What can the Security Council do today? It can only note the same situation as it did on 17 May, namely, that an armed struggle is taking place in Palestine as a result of the unlawful invasion by a number of States of the territory of Palestine, which does not form part of the territory of any of the States whose armed forces have invaded it. The situation is the same today as it was on 17 May, the only difference being that the number of casualties and the amount of destruction are greater today than they were then.

RULINGS BY AUTHORITIES ON INTERNATIONAL LAW ON THE ILLEGAL OCCUPATION OF JUDEA, SAMARIA ("West Bank") AND GAZA STRIP BY JORDAN AND EGYPT BETWEEN 1948 AND 1967

It is submitted that the external military intervention that took place on the termination of the British Mandate over Palestine on May 15, 1948, across the frontiers of former Mandatory Palestine—including the armed intervention of the Kingdom of Transjordan of those days—constituted a use of force in violation of the rule embodied in Article 2(4) of the Charter, since that use of force cannot be justified by any of the recognised exceptions to that rule.[11] In addition, of course, it was aimed to defeat a resolution by the United Nations General Assembly. The use of force by the contiguous Arab States having been illegal, it naturally could not give rise to any valid legal title. *Ex injuria jus non oritur*. And as has been seen above, acquisitive occupation *stricto sensu* must be excluded.

Dr. Yehuda Blum
Lecturer in International Law at the Hebrew University of Jerusalem

If, then, there was no legal warrant for the Arab invasion of Palestine in 1948 aimed at the destruction of Israel, two consequences follow. First, by reason of the illegality of the conduct, no Arab State could rely upon its physical occupation of any part of Palestine as a valid foundation for filling the sovereignty vacuum. Thus Jordan was not entitled to claim any of the areas west of the river Jordan (a matter of special relevance in connection with Jordan's position in the Old City of Jerusalem —of which more will be said later) and Egypt was not entitled to assert sovereignty over the Gaza Strip.[2]

Dr. Elihu Lauterpacht
Lecturer in Law at the University of Cambridge

Jordan's invasion of Palestine in 1948 after rejecting the Partition Resolution resulted in Jordan's control of the West Bank and East Jerusalem. Whether Jordan acquired sovereignty at that time or some future time is the next consideration in a determination of sovereignty. In the very least, Jordan's actions must be viewed as a violation of those principles of the Mandate system; the Partition, although a compromise, would have effectuated the objective of self-government for both the Jewish and Arab inhabitants of the area. Furthermore, the action of Jordan was a violation of the principles of Article 2(4) of the United Nations Charter which imposed on members the duty to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, and to refrain from acting in any manner inconsistent with the purposes of the United Nations.[34] Since the invasion by Jordan was a violation of international law, it therefore did not give rise to any valid legal title.[35]

Alan Levine
New York University Law School

It should, however, be mentioned that in the interpretation most favorable to the Kingdom of Jordan her legal standing in the West Bank was at most that of a belligerent occupant following an unlawful invasion. In other words, following an armed invasion in violation of international law, the military forces of Jordan remained stationed in the West Bank and the Kingdom of Jordan then annexed the West Bank, after having agreed in the Armistice agreement of 1949 that it had no intention of prejudicing the rights, claims, and positions of the parties to the agreement.

Meir Shamgar
Attorney-General of Israel and later President of the Israel Supreme Court

Similarly the position of the State of Jordan on the West Bank and in East Jerusalem itself, insofar as it had a legal basis in May 1967, rested on the fact that the State of Transjordan had overrun this territory during the 1948 hostilities against Israel. It was a belligerent occupant there.

Dr. Julius Stone
Professor of International Law and Jurisprudence at the University of Sydney

RULINGS BY AUTHORITIES ON INTERNATIONAL LAW ON THE LEGALITY OF ISRAEL'S TITLE TO JUDEA, SAMARIA ("West Bank") AND GAZA STRIP

> The legal standing of Israel in the territories in question is thus that of a State which is lawfully in control of territory in respect of which no other States can show a better title. Or, if it is preferred to state the matter in terms of belligerent occupation, then the legal standing of Israel in the territories in question is at the very least that of a belligerent occupant of territory in respect of which Jordan is *not* entitled to the reversionary rights of a legitimate sovereign.[60]

Dr. Yehuda Blum
Lecturer in International Law at the Hebrew University of Jerusalem

> Israel does not have to recognize the Jordanian conquest of Jerusalem and the West Bank, or the Egyptian conquest of the Gaza Strip. The Egyptians merely had military occupation of the Gaza Strip during the entire period. Israel is now in at least the same position, and in fact it has a better title than Egypt over the Gaza Strip and than Jordan over Jerusalem and those territories which are historically part of Palestine and were promised to the Jewish people.

Dr. Benjamin Halevi
former Judge in Israel Supreme Court

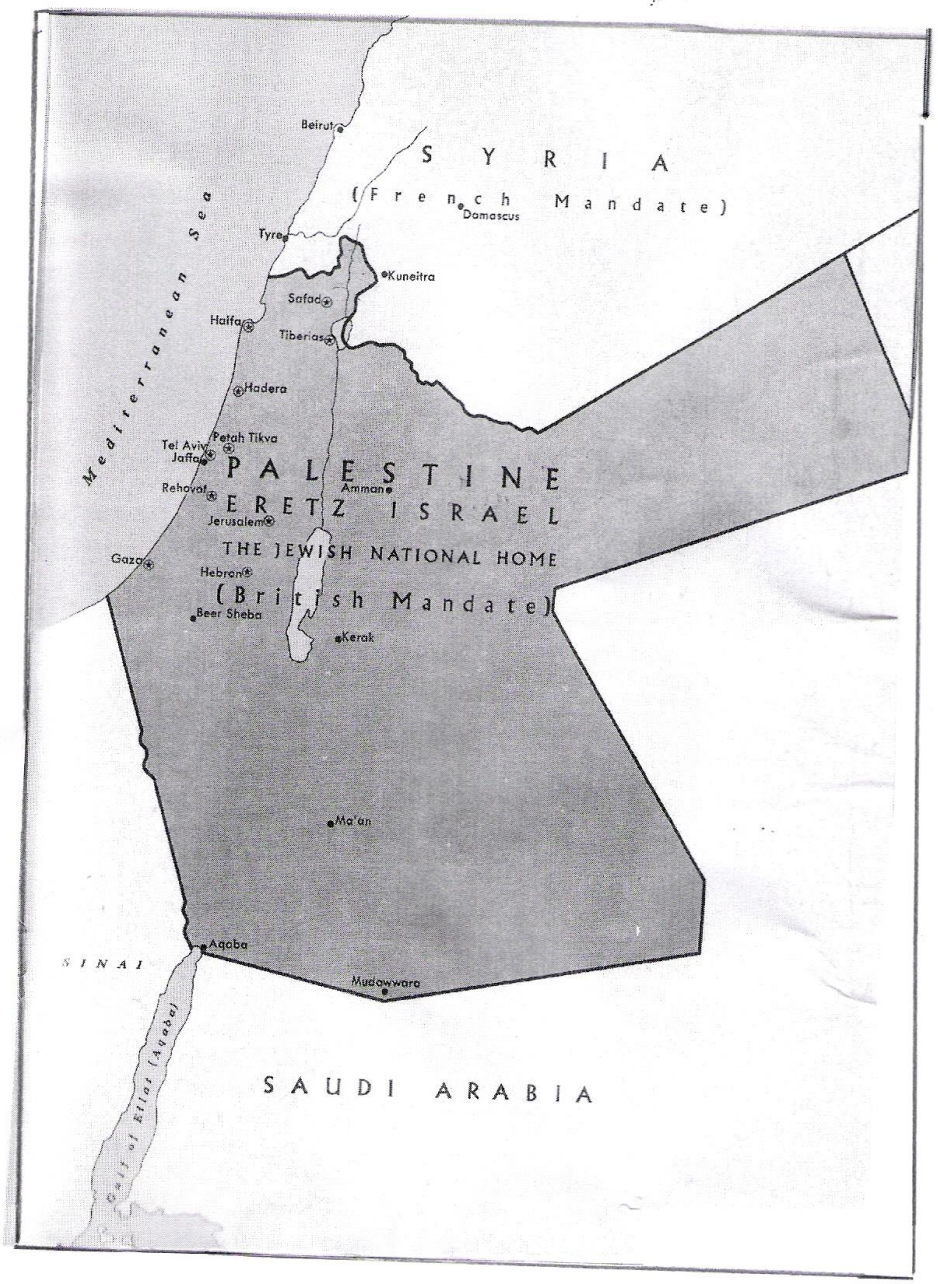
> Vis-à-vis Jordan on the one hand and Egypt on the other, Israel has better title because it was acting lawfully and defensively in 1948 and in 1967, while on both occasions—the occasion on which Egypt and Jordan took the territory in 1948, and the occasion in 1967 when they used that territory for aggressive acts—they were acting aggresively. Having been stripped of the territory, they stand in a position legally less cogent than that of Israel. Relatively speaking, Israel has better title.

Professor Stephen Schwebel
former United States State Department Legal Advisor and later President of the International Court of Justice

> Once this position is reached, and it is remembered that neither Jordan nor any other State is a sovereign reversioner entitled to re-enter the West Bank, the legal standing of Israel takes on new aspects. She is a State in lawful control of territory in respect of which no other State can show a better title. The general principles of international law applicable to such a situation, moreover, are rather well established. The International Court of Justice, when called upon to adjudicate in territorial disputes, for instance in the *Minquiers* and *Echrehos* Case between the United Kingdom and France, proceeded "to appraise the relative strength of the opposing claims to. . .sovereignty." (I.C.J. *Reports,* 1953, p. 67; emphasis supplied.) Since title to territory is thus based on a claim not of *absolute,* but only of *relative,* validity, the result here seems decisive. No other State having a legal claim even equal to that of Israel under the cease-fire and the rule of *uti possidetis,* this relative superiority of title would seem to assimilate Israel's possession under international law to an absolute title, valid *erga omnes.*

Dr. Julius Stone
Professor of International Law and Jurisprudence at the University of Sydney

MAP OF BRITISH MANDATE FOR PALESTINE:
AREA DESIGNATED AS THE JEWISH NATIONAL HOME
(76% of the area is on the east side of the River Jordan)



BRITAIN CONFIRMS TO THE LEAGUE OF NATIONS IN 1928 THAT THE PALESTINE MANDATE REMAINS IN FULL FORCE IN TRANSJORDAN

LEAGUE OF NATIONS

Official Journal

9TH YEAR, No. 10. OCTOBER 1928.

MINUTES OF THE COUNCIL

Lord CUSHENDUN:

In Transjordan, however, the Palestine mandate remains in full force, except in so far as certain of its provisions are, in accordance with Article 25 and with the concurrence of the Council, excluded from operation, and His Majesty's Government in Great Britain still remains responsible to the Council for the proper application in Transjordan of all the other provisions of the mandate which remain in force.

M. Beelaerts van Blokland then submitted the following draft resolution:

"As regards the Agreement of February 20th, 1928, between Great Britain and Transjordan, the Council takes note of the declaration of the representative of Great Britain according to which his Government regards itself as responsible to the Council of the League of Nations for the application in Transjordan of the Palestine mandate, with the exception of the articles which, based on Article 25, are not applicable,

"And acknowledge that this Agreement is in conformity with the principles of the mandate, which remains fully in force."

The draft resolution was adopted.

BRITAIN "NOTIFIES" THE LEAGUE OF NATION OF THE INDEPENDENCE OF TRANSJORDAN (this is contrary to Article 5 of the Mandate for Palestine and hence the invalid status of Jordan to this day)

LEAGUE OF NATIONS

Official Journal

SPECIAL SUPPLEMENT No. 194

RECORDS

OF THE

TWENTIETH (CONCLUSION) AND TWENTY-FIRST ORDINARY SESSIONS OF THE ASSEMBLY

SECOND PLENARY MEETING

Tuesday, April 9th, 1946, at 10.30 a.m.

Viscount Cecil of Chelwood (United Kingdom)

The mandates administered by the United Kingdom were originally those for Iraq, Palestine, Transjordan, Tanganyika, part of the Cameroons, and part of Togoland. Two of these territories have already become independent sovereign States, Iraq in 1923, and Transjordan just the other day in 1946.

Article 5.

The Mandatory shall be responsible for seeing that no Palestine territory shall be ceded or leased to, or in any way placed under the control of, the Government of any foreign Power.

Mandate for Palestine

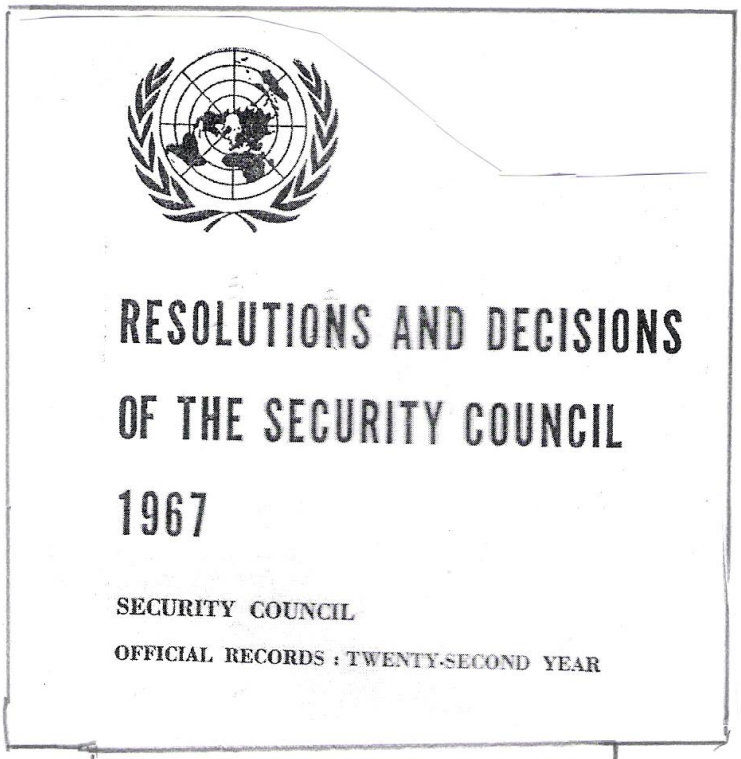
It is our suggestion that the government of Israel set up a panel of international lawyers and entrust them with the task of preparing a memorandum dealing with all the legal aspects of the Hashemite Kingdom with a view to setting the juridical record straight. As the Hashemite Kingdom rests on an illegal base, its independent status is invalid from its very inception. It ought still to be considered part of what was formerly Palestine. The government of Israel would be well advised to apply to the International Court at the Hague for a declaratory ruling as to the legal anomaly of the Hashemite Kingdom. Illegality does not endow a people with any prescriptive right of sovereignty.

Jordan is Arab Palestine

Joseph Nedava

Professor of Political Science, University of Haifa

UNITED NATIONS SECURITY COUNCIL RESOLUTION 242



RESOLUTIONS AND DECISIONS

OF THE SECURITY COUNCIL

1967

SECURITY COUNCIL

OFFICIAL RECORDS : TWENTY-SECOND YEAR

Resolution 242 (1967)

of 22 November 1967

The Security Council,

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

Emphasizing the inadmissibility of the acquisition of territory by war and the need to work for a just and lasting peace in which every State in the area can live in security,

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

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

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

(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;

extract from Resolution 242

RESOLUTION 242 DOES NOT REQUIRE ISRAEL'S WITHDRAWAL TO PRE-JUNE 1967 LINES

PARLIAMENTARY DEBATES

(HANSARD)

FIFTH SERIES—VOLUME 791

HOUSE OF COMMONS

OFFICIAL REPORT

Oral Answers 17 NOVEMBER 1969

Viscount Lambton : What is the British interpretation of the wording of the 1967 resolution? Does the right hon. Gentleman understand it to mean that the Israelis should withdraw from all territory taken in the late war?

Mr. Stewart : No, Sir. That is not the phrase used in the resolution. The resolution speaks of secure and recognised boundaries. Those words must be read concurrently with the statement on withdrawal.

Brown 'just as optimistic'

Jerusalem Post Reporter

LYDDA AIRPORT. — Deputy British Labour Party leader George Brown left for home yesterday "no less optimistic than when I got here." His five-day stay in Israel was the final stage in a Middle East study tour.

Asked about the proper formulation of the U.N. Security Council resolution of November, 1967, which he fathered, and whether it was correct to say, as the B.B.C. world service always does, that it speaks of "withdrawal from the territories," instead of "withdrawal from territories," Mr. Brown said:

NO REWRITING

"I wish the B.B.C. and other people would stop rewriting the U. N. resolution. I have been asked over and over again to clarify, modify or improve the wording, but I do not intend to do that. The phrasing of the resolution was very carefully worked out, and it was a difficult and complicated exercise to get it accepted by the U.N. Security Council. I don't want to say any more about this, except that we had better stick to the original wording of the resolution."

Mr. Brown made his views on the exact text of the Security Council resolution even clearer during his meeting in Jerusalem on Sunday with Arab leaders from Jerusalem, and the administered areas. He told them: "I formulated the Security Council resolution. Before we submitted it to the Council, we showed it to Arab leaders. The proposal said 'Israel will withdraw from territories that were occupied, and not from 'the' territories, which means that Israel will not withdraw from all the territories. All the leaders of the Arab countries agreed with this text."

Jerusalem Post
20 January 1970

UNITED NATIONS

A S

General Assembly
Security Council

Distr.
GENERAL

A/56/983
S/2002/669
14 June 2002

Original: English

General Assembly
Fifty-sixth session
Agenda items 42 and 166
The situation in the Middle East
Measures to eliminate international terrorism

Security Council
Fifty-seventh year

Letter dated 14 June 2002 from the Permanent Representative of Israel to the United Nations addressed to the Secretary-General

The true distortion is the oft-repeated claim that resolution 242 (1967) calls for full and complete withdrawal from the territories that came under Israeli control in 1967. In reality, the drafters of the resolution intentionally did not issue such a call. Proposals put forward to indicate a requirement for full withdrawal, such as the inclusion of the article "the" when describing the territories from which Israel should withdraw in a peace settlement, were deliberately rejected. This was in recognition of the fact that the establishment of secure and recognized boundaries should be based on negotiations between the parties rather than temporary and demonstrably vulnerable armistice lines.

It should also be noted that resolution 242 (1967) was drafted in relation to the "States in the area"; it did not directly refer to the Israeli-Palestinian conflict. The application of the principles of resolutions 242 (1967) and 338 (1973) to Israeli-Palestinian negotiations is a result of subsequent agreements between the parties. Indeed, no internationally recognized, secure border has ever existed in West Bank and Gaza Strip territory. The Palestinian agreement to conduct negotiations on the issue of borders in permanent status talks indicates that the Palestinians themselves have accepted the principle of territorial compromise in relation to the West Bank and Gaza Strip in accordance with resolution 242 (1967). In the words of Lord Caradon, the chief architect of the resolution, in an interview with the *Beirut Daily Star* from 12 June 1974: "It would have been wrong to demand that Israel return to its positions of June 4,1967, because those positions were undesirable and artificial. After all, they were just the places where the soldiers of each side happened to be on the day the fighting stopped in 1948. They were just armistice lines. That's why we didn't demand that the Israelis return to them."

NATIONAL COMMITTEE ON AMERICAN FOREIGN POLICY

Security Interests

Resolution 242 After Twenty Years

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

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

Arthur Goldberg
United States Ambassador to the United Nations in 1967