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## THE ARAB-ISRAELI CONFLICT AND THE OBLIGATION TO PURSUE PEACEFUL SETTLEMENT OF INTERNATIONAL DISPUTES\*

*John Norton Moore\*\**

The principal focus of international-legal analysis in the literature of major war-peace issues has been the permissibility of the contending belligerents' use of force. That is, whether each belligerent's use of the armed forces was in violation of Article 2(4) of the United Nations Charter, which proscribes "the threat or use of force against the territorial integrity or political independence of any state." In contrast, there has been little or no analysis of each belligerent's obligation under Articles 2(3) and 33(1) of the Charter to pursue peaceful settlement of international disputes. The resulting pattern is one of over-emphasizing the normative appraisal of initial use of coercion while woefully neglecting a continuing appraisal of each belligerent's efforts at peaceful settlement. The belligerent's positions on settlement, however, may be responsible for indefinite prolongation of conflict and as such may sometimes be a more meaningful indicator of compliance with Charter obligations than a single-barrelled focus on the appraisal of initiating coercion. Both the Indo-China and the Arab-Israeli conflicts, the principal contemporary war-peace issues, demonstrate this one-sided focus. A preoccupation in the Indo-China conflict has been whether the conflict could most meaningfully be characterized as an international or an internal conflict for purposes of assessing the lawfulness of initiating coercion. The negotiating positions of the contending belligerents, while a subject of generalized speculation, have not been the subject of normative analysis under the Charter.<sup>1</sup> Similarly, the principal focus in the Arab-Israeli conflict has been the lawfulness of the Arab and Israeli uses of force in the Six Day War and the consequences of that use of force with respect to retention of the occupied territories. There has been only sporadic attention paid to the "Charterability" of the negotiating positions of the belligerents.<sup>2</sup>

\* This is a revised and updated version of a paper presented at a regional meeting of the American Society of International Law at the University of Kansas on November 20-21, 1970. I would like to thank Professor John Francis Murphy, the organizer of the meeting, for providing me with a forum to test and refine initial formulations. I would also like to thank Mr. Jacob Zemach for his helpful suggestions on an earlier draft. Any errors and infelicities are my own.

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<sup>1</sup> There are more than 115 books and articles dealing with some aspect of the legal issues presented by the Indo-China War. None of these focus on appraisal of the principal belligerent's compliance with the Charter obligation to pursue peaceful settlement of international disputes. The only concession is an occasional article that mentions the Article 33 obligation to pursue peaceful settlement and briefly urges that one side or another is in violation of this obligation. What few materials have been published on efforts at settlement, such as D. KRASLOW & S. LOORY, *THE SECRET SEARCH FOR PEACE IN VIETNAM* (1968), have made no effort at international legal analysis. See the bibliography of writings on Indo-China and the legal order in J. N. MOORE, *LAW AND THE INDO-CHINA WAR* (to be published by the Princeton University Press in late 1971).

<sup>2</sup> In compiling a reader on *THE ARAB-ISRAELI CONFLICT AND INTERNATIONAL LAW* I recently collected more than 65 books and articles dealing with some aspect of the legal issues presented by the Arab-Israeli conflict. A number of these focus on the legal issues surrounding Security Council Resolution 242 of

The result in both conflicts has been that one or another party could stymie all efforts at conflict resolution simply by refusing to negotiate, by setting unreasonable preconditions to negotiation, or by insisting on an unreasonable substantive position for settlement.

Focus on efforts at settlement seems particularly important as limited war and interventionary activity become the predominant form of conflict in the international system. Settlement of such prolonged conflicts may well be a more important problem for the system than the prevention of initiating coercion leading only to short-lived and self-terminating conflict. That is, systemically, settlement of the Arab-Israeli and Indo-China conflicts is more critical than deterrence of the Indian invasion of Goa, even though the lawfulness of the Indian initiation of coercion in the Goan invasion is also a useful subject for inquiry. The prolonged continuation of both the Arab-Israeli and Indo-China conflicts suggests that the time has come to vitalize the Charter obligation to pursue peaceful settlement of international disputes. Normative appraisal of the settlement positions of contending belligerents should be as fundamental to legal analysis as the appraisal of initiating coercion. This is not to suggest substitution of a "justice of the cause" formula for the more advanced Charter framework for the regulation of coercion.<sup>3</sup> It is to urge that prolonged international conflict threatening international peace and security should be subjected to serious appraisal with respect to the efforts of both sides to seek peaceful settlement of the underlying dispute as well as to appraisal of the lawfulness of initiating coercion. Such an additional focus seems required on a major purposes rationale both by the provisions of the Charter regulating the use of force and by those regarding the obligation to pursue peaceful settlement of international disputes.

#### I. THE OBLIGATION TO PURSUE PEACEFUL SETTLEMENT OF INTERNATIONAL DISPUTES

The principal difficulty in normative appraisal of the settlement positions of the participants in major world order disputes is the generality of the Charter provisions regarding the obligation to pursue peaceful settlement of international disputes and the resulting lack of criteria for appraisal. Article 1(1) provides that one of the purposes of the United Nations is "to bring about by peaceful means, and in conformity with the principles of justice and inter-

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November 22, 1967, or on the illegality of maintaining a continuing state of belligerency against Israel, but none focus squarely on appraisal of the principal belligerent's compliance with the Charter obligation to pursue peaceful settlement of international disputes.

<sup>3</sup>For an analysis of the development of the international law of conflict management from the "just war" to the Charter see M. Kaplan & N. Katzenbach, *Resort to Force: War and Neutrality*, II R. FALK & S. MENDLOVITZ (EDS.), *THE STRATEGY OF WORLD ORDER* 276, 279-95 (1966); M. McDUGAL & F. FELICIANO, *LAW AND MINIMUM WORLD PUBLIC ORDER*, 121-55, 167-260 (1961); T. Taylor, *Just and Unjust Wars*, NUREMBERG AND VIETNAM: AN AMERICAN TRAGEDY, ch. 3, at 58-77 (1970); Kunz, *Editorial Comment: Bellum Justum & Bellum Legale*, 45 AM. J. INT'L L. 528 (1951); Nussbaum, *Just War—A Legal Concept?*, 42 MICH. L. REV. 453 (1943); Von Elbe, *The Evolution of the Concept of the Just War in International Law*, 33 AM. J. INT'L L. 665 (1939).

national law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace." Article 2(3) provides: "All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered." And Article 33(1) provides: "The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice." Taken together these three provisions indicate a positive obligation to pursue peaceful settlement of international disputes "the continuance of which is likely to endanger the maintenance of international peace and security." Goodrich and Hambro indicate that in this respect the Charter went beyond the Kellogg-Briand Pact "by which the parties agreed [only] that the settlement of their disputes should 'never be sought except by pacific means.'"<sup>4</sup>

It seems a fair inference that the obligation to pursue peaceful settlement of international disputes continues even during hostilities. The reference in Article 33 that the parties shall "first of all, seek a [peaceful] solution" seems to refer to action prior to referral to the Security Council pursuant to Article 37. And Articles 1(1) and 2(3) have no such temporal limitation.

Although there would seem to be an obligation to pursue some means of peaceful settlement in good faith, no particular means is required. On the substantive side, however, there is a strong implication from Article 1(1) that peaceful settlement is to be based on "the principles of justice and international law." Presumably the principles of the Charter would be among the most important of these principles of international law and as such are an important basis for appraisal of the negotiating positions of the parties. Interestingly, Resolution 242 of November 22, 1967,<sup>5</sup> by which the Security Council recommends general terms of settlement for the Arab-Israeli conflict, refers to "the fulfillment of Charter principles" when making recommendations concerning the principal terms of settlement.

In pouring content into the obligation to pursue peaceful settlement of international disputes it would seem helpful to specify these procedural and substantive obligations at a lower level of abstraction. The following principles of procedure and content are an effort to develop more specific standards for appraisal. Though they represent a personal extrapolation from the Charter they seem strongly inferable from the Charter obligation. Standards of procedure are those that concern the modalities by which settlement is reached. Standards of content are those that concern the content of the settlement.

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<sup>4</sup>L. GOODRICH & E. HAMBRO, *CHARTER OF THE UNITED NATIONS, COMMENTARY AND DOCUMENTS* 237 (2d rev. ed. 1949).

<sup>5</sup>S.C. Res. 242, 22 U.N. SCOR, 1382d meeting 8 (1967).

*Standards of Procedure*

1. The extent to which the contending belligerents take the initiative in urging peaceful settlement.

2. The willingness of the belligerents to negotiate a settlement or at least to negotiate a modality for arriving at settlement: (a) willingness to negotiate at any time without preconditions; (b) willingness to negotiate with all de facto belligerents; (c) willingness to negotiate in direct talks; (d) willingness to negotiate with respect to all of the principal issues in dispute.

3. The willingness of the belligerents to publicly communicate general terms for settlement.

4. The willingness of the belligerents to suggest specific terms for settlement. Specific suggestions need not always be publicly communicated if public disclosure would inhibit the chances for acceptance.

5. The willingness of the belligerents to conclude a legally binding settlement, however arrived at, or to agree on a modality for settlement such as arbitration or judicial determination that implies a legally binding outcome.

*Standards of Content*

1. The reasonableness of suggested terms for settlement as appraised by reference to fundamental Charter principles including: (a) nonuse of force against the territorial integrity or political independence of any state; (1) cessation of all belligerent activities and claims of belligerency; (2) nonacquisition of territory (and other values) by force; (3) control of activities of terrorist or paramilitary forces; (4) measures to strengthen peace; (b) self-determination of peoples; (c) respect for fundamental human rights; (d) cooperation for economic and social progress.

2. The willingness of the parties to accept United Nations recommendations for settlement.

3. In situations in which fundamental Charter principles are uncertain or ambiguous, the willingness of the parties to enter into a compromise settlement.

It is not suggested that each of these standards gives rise under all circumstances to an independent legal obligation. Thus, there is a continuing debate about the legal effect of United Nations settlement recommendations.<sup>6</sup> Taken together, however, they provide a fair indication of compliance with the Charter obligation to pursue peaceful settlement of disputes. Moreover, these suggested principles of content and procedure are interrelated and in using them to appraise settlement positions they should be considered as a whole. For example, at least with respect to contemporary attacks,<sup>7</sup> a state that has

<sup>6</sup> See, e.g., Shapira, *The Security Council Resolution of November 22, 1967—Its Legal Nature and Implications*, 4 ISRAEL L. REV. 229 (1969).

<sup>7</sup> If the basic Charter principle that major coercion cannot be used as an instrument of national policy is to be preserved, at some point even the illegality of an initial acquisition of territory must yield to the overriding Charter judgment that unilateral force should not be employed to attempt to redress perceived past injustices. See the discussion of this point in part III(A) of this paper.

been subjected to an external armed attack in clear violation of fundamental Charter principles need not negotiate away its political territorial integrity. As this example illustrates, the content standard relating to the fundamental rights of the parties under the Charter is particularly important for appraisal of the obligation to pursue peaceful settlement of disputes. As such, appraisal might routinely begin by reference to the applicability of the Charter to the principal issues in the dispute.

The next sections of this paper will first briefly review the settlement positions of the principal belligerents in the Arab-Israeli conflict, will then analyze the conflict by reference to fundamental Charter principles and United Nations recommendations, and finally will appraise the settlement positions of the belligerents by reference to the suggested standards for determining compliance with the obligation to pursue peaceful settlement of disputes.

## II. A BRIEF REVIEW OF THE SETTLEMENT POSITIONS OF THE PRINCIPAL BELLIGERENTS IN THE ARAB-ISRAELI CONFLICT

Assistant Secretary of State Joseph Sisco recently warned that "the Middle East . . . holds greater . . . risks for world peace than any other area in the world."<sup>8</sup> The warning should be heeded. The Arab-Israeli conflict is one that has defied solution since the commencement of the British Mandate for Palestine in 1922 and that since the termination of that Mandate in 1948 has precipitated three major wars. Yet in the aftermath of the third Arab-Israeli War of June, 1967, the conflict has become enormously more volatile. The principal factors responsible for this increased volatility have been a more active Soviet and American involvement, particularly an increased Soviet military presence in Egypt and the Mediterranean, the increasing sophistication of weapons systems on both sides, the rapid political and military growth of the various Palestine commando organizations, the joining of new Arab states in the conflict, and the destabilizing effect of the withdrawal of UNEF and the territorial dislocations of the Six Day War. Events during the past year, including an Egyptian "war of attrition" against Israeli positions in the Suez Canal area, Israeli deep penetration bombing raids against Egypt, the introduction in an operational capacity of Soviet advisors into Egypt, the continuing internal conflict in Jordan in which Syria militarily intervened on behalf of Palestinian insurgents and the United States considered counter-intervention, and the hijackings of commercial aircraft in international flight by the Popular Front for the Liberation of Palestine have underscored the present crisis proportions of the world order threat. The conflict seems clearly to be that kind of serious international dispute "the continuance of which is likely to endanger

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<sup>8</sup> Sisco, *U.S. Objectives in the Middle East*, 63 DEPT. STATE BULL. 175 (Aug. 10, 1970). Assistant Secretary of State Sisco recently reiterated this judgment in a speech before the Commonwealth Club of California. He urged: "[I]f Viet-Nam is our most anguishing problem, the Middle East is the most dangerous problem for the United States as we look ahead over the next decade." Sisco, *The Fluid and Evolving Situation in the Middle East*, 63 DEPT. STATE BULL. 748 (Dec. 21, 1970).

the maintenance of international peace and security," which gives rise to an obligation to pursue peaceful settlement.

If efforts at peaceful settlement are obligatory, they are equally precarious. As I. F. Stone has written, the Arab-Israeli conflict is a tragedy in the classic sense. That is, it involves "a struggle of right against right."<sup>9</sup> From a Jewish perspective the establishment of the State of Israel represents fulfillment of the Jewish dream of a return to the homeland in which their spiritual, religious, and cultural identity were shaped after 2,000 years of dispersion. Yet as Israeli Premier Golda Meir has pointed out, continuing Arab threats against Israel have tragically drained the dream and forced the Israelis to be a people of war. From an Arab perspective a Jewish Israel is seen as an obstacle in the path of their dream of Arab unity and a denial of self-determination for the Arab Palestinians. Against this background Israelis doubt whether their adversaries really want to make peace, some Arabs doubt whether Israel is willing to withdraw from the occupied territories or to pursue a fair settlement of the refugee problem, and others refuse to accept the existence of Israel. These fundamental disagreements color every effort at settlement.

The starting point for review of post-Six Day War settlement efforts is Security Council Resolution 242 of November 22, 1967. The Resolution was adopted unanimously after five months of intense diplomatic effort and represents a delicately balanced compromise at a fairly high level of generalization.<sup>10</sup> Although the general understanding at the time it was hammered out was that the major parties should work to carry it out, not all of the belligerents have accepted it. The Resolution has been accepted by Egypt, Israel, Jordan, and Lebanon, among others. The principal nonaccepting parties have been Syria and the Palestine Liberation Organization, the conglomerate spokesman for the diverse Palestinian guerrilla organizations. But despite nonacceptance by several of the principal *de facto* belligerents, the resolution continues to be the focal point for serious efforts at settlement. Resolution 242 provides:

*The Security Council,*

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

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

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

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

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<sup>9</sup> Stone, *For a New Approach to the Israeli-Arab Conflict*, reprinted from *New York Review of Books* (Aug. 3, 1967), at 20. See also Goldmann, *The Future of Israel*, 48 *FOREIGN AFFAIRS* 443, 444 (1970).

<sup>10</sup> For a history of the diplomatic negotiations leading up to Resolution 242 see A. LALL, *THE UN AND THE MIDDLE EAST CRISIS, 1967*, 220-70 (1968).

- (i) Withdrawal of Israel armed forces from territories occupied in the recent conflict;<sup>11</sup>
  - (ii) Termination of all claims or states of belligerency and respect for and acknowledgement of the sovereignty, territorial integrity and political independence of every State in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force;
2. *Affirms further* the necessity
- (a) For guaranteeing freedom of navigation through international waterways in the area;
  - (b) For achieving a just settlement of the refugee problem;
  - (c) For guaranteeing the territorial inviolability and political independence of every State in the area, through measures including the establishment of demilitarized zones;
3. *Requests* the Secretary-General to designate a Special Representative to proceed to the Middle East to establish and maintain contacts with the States concerned in order to promote agreement and assist efforts to achieve a peaceful and accepted settlement in accordance with the provisions and principles in this resolution;
4. *Requests* the Secretary-General to report to the Security Council on the progress of the efforts of the Special Representative as soon as possible.<sup>12</sup>

The day after the passage of Resolution 242 Secretary-General U Thant announced the appointment of Dr. Gunnar V. Jarring, the Swedish Ambassador to the Soviet Union, as his Special Representative to promote agreement among the states concerned.<sup>13</sup> Dr. Jarring first met with the parties during December of 1967. Initial contacts indicated that Israel felt that the peaceful settlement required direct negotiations between the parties leading to bilateral peace treaties with Egypt and Jordan and that there could be no Israeli withdrawal from the occupied territories until such agreements had been signed. Accordingly Israel proposed that as a first step Israel should discuss an agenda for peace with Egypt and Jordan. Egypt and Jordan, however, felt that Israeli withdrawal from the occupied territories was a necessary precondition to negotiations.<sup>14</sup>

In an effort to circumvent their conflict, Ambassador Jarring sought assurance from each of the parties that they would implement Resolution 242. Israel's reply emphasized that Resolution 242 was a "framework for *agreement*" that could best be implemented by direct talks between the parties. Discussion with Israeli Foreign Minister Eban, however, indicated a willingness to participate in indirect talks if they were understood to be a prelude to direct talks and agreement. Egypt and Jordan, on the other hand, refused to agree to

<sup>11</sup> One semantically possible interpretation of the French version of this resolution is "the territories occupied" rather than simply "territories occupied." The validity of one or another interpretation has been much stressed in debate concerning whether Israel should withdraw from all or only some of the territories occupied during the Six Day War.

<sup>12</sup> S.C. Res. 242, 22 U.N. SCOR, 1382d meeting 8-9 (1967).

<sup>13</sup> Report by the Secretary-General on the Activities of the Special Representative to the Middle East, U.N. Doc. S/10070, at 2 (Jan. 4, 1971).

<sup>14</sup> *Id.* at 3-4.



direct negotiations but indicated a willingness to accept indirect talks if Israel declared "in clear language" that it would implement Resolution 242.<sup>15</sup>

During March of 1968 Ambassador Jarring presented to the parties for their reactions a draft letter from himself to the Secretary-General, which in its key provision "invited the . . . Governments to meet with . . . [Ambassador Jarring], for conferences within the framework of the Security Council resolution, in Nicosia [on Cyprus]."<sup>16</sup> Contacts with the parties during March and April indicated disagreement with respect to the need for a prior Israeli statement of willingness to implement Resolution 242 and the phrasing of a Jordanian proposal to modify Dr. Jarring's letter to hold talks in New York rather than Nicosia. In general, the Arab states sought clear Israeli assurance that they would withdraw from the occupied territories, and Israel sought assurance that the Arab states intended to negotiate a peace agreement with Israel. According to the Arab interpretation Resolution 242 provided a plan for settlement and should be implemented by Israeli withdrawal from the occupied territories. According to the Israeli interpretation the Resolution was a framework for agreement and withdrawal should follow rather than precede agreement. Contacts in New York during May and June also foundered on this basic disagreement.<sup>17</sup> A second round of contacts during the spring and fall of 1968 in both the Middle East and New York reaffirmed this basic difference in interpretation of Resolution 242 and also clarified a difference in interpretation with respect to the term "territories occupied." The Arab states insisted that Resolution 242 required Israeli withdrawal from "all occupied territories" while Israel interpreted it as requiring withdrawal only to the extent required by agreement between the parties following a negotiated settlement.<sup>18</sup>

During March of 1969 Ambassador Jarring submitted a series of questions to Egypt, Jordan, Israel, and Lebanon concerning their settlement positions. The replies, delivered during March and April are one of the best sources of information about the positions of the parties. They continued to indicate the same major differences in interpretation that had prevented earlier agreement between the parties.<sup>19</sup>

Fearing that prolonged Israeli occupation of the territories seized in the Six Day War would lead to legitimation of the *de facto* borders, President Gamal Abdel Nasser of Egypt began a "war of attrition" against Israeli defenses along the Suez Canal in the Spring of 1969. The Egyptian offensive involved heavy bombardment of the Israeli line in the Suez Canal area. Accelerating mutual responses led to a level of hostilities that might appropriately

<sup>15</sup> *Id.* at 4-6.

<sup>16</sup> *Id.* at 6.

<sup>17</sup> *Id.* at 6-9.

<sup>18</sup> *Id.* at 9-10.

<sup>19</sup> *Id.* at 11-12. For the text of the questions submitted by Special Representative Jarring and the replies of Israel, Jordan, Egypt, and Lebanon see *id.* at Annex I. According to the Secretary-General's Report: "Unfortunately, the replies were in general a repetition of attitudes already expressed to Ambassador Jarring on numerous occasions from the beginning of his mission. They showed continued serious divergencies between the Arab States and Israel both as regards the interpretation to be given to the Security Council resolution and as to the procedures for putting its provisions into effect." *Id.* at 12.

be termed the fourth Arab-Israeli War. During January and February of 1970 the Israelis conducted deep penetration bombing raids against targets in Egypt. The intent of the raids seems to have been to lessen Egyptian pressure in the Suez Canal. In response to the raids a secret trip by Nasser to Moscow led to the introduction of Soviet SAM-3 ground-to-air missiles and substantial strengthening of Egyptian air defenses.<sup>20</sup> During the Spring of 1970 the situation deteriorated further with the introduction of Soviet military advisers into Egypt in an operational capacity, an intensification of the war along the Suez Canal, and a rise in the pattern of Palestinian guerrilla raids on Israeli settlements launched from within Jordan and Lebanon and Israeli responses against the guerrilla encampments within those countries.

On April 3, 1969 periodic four-power talks began between France, Great Britain, the United States, and the Soviet Union in an effort to assist in arriving at conditions for settlement.<sup>21</sup> Although the talks may have been helpful in narrowing the issues, they have not been able to significantly break the deadlock in conflicting interpretations.

In June of 1970 United States Secretary of State William Rogers initiated an "at least" 90-day standstill cease-fire between Israel, Egypt, and Jordan, which went into effect on August 7. After consulting with the parties Ambassador Jarring invited them to take part in discussions opening in New York on August 25. Because of Egyptian violation of the standstill cease-fire by continuing construction and emplacement of substantial numbers of Soviet anti-aircraft missiles in the Suez cease-fire zone, Israel informed Dr. Jarring that it would be unable to participate in the talks until the missiles installed in violation of the cease-fire were withdrawn.<sup>22</sup>

The Rogers initiative for an "at least" 90-day standstill cease-fire precipitated a rash of hijackings and attacks on commercial aircraft by the Popular Front for the Liberation of Palestine in order to focus attention on the Palestinian cause and to undermine efforts at peaceful settlement. Subsequently, there were a series of major clashes between Palestine Liberation Organization forces in Jordan and the army of King Hussain, culminating in an abortive Syrian intervention on behalf of the Palestinian guerrillas and a threatened United States counter-intervention. Although the level of external intervention in Jordan quickly receded, military clashes have continued to occur between Jordanian troops and Palestinian guerrilla forces. As an aftermath to these events, President Nasser died on September 28. He was succeeded as President of the United Arab Republic by Anwar el-Sadat.

<sup>20</sup> See N.Y. Times, Dec. 28, 1970, at 15, col. 1.

<sup>21</sup> Report by the Secretary-General on the Activities of the Special Representative to the Middle East, U.N. Doc. S/10070, at 12 (Jan. 4, 1971).

<sup>22</sup> *Id.* at 13-15. There may also have been Israeli violations in the form of overflights west of the canal into the Egyptian sector of the 50-kilometer standstill cease-fire zone. For a brief description of violations alleged against both sides see Sisco, *The Fluid and Evolving Situation in the Middle East*, 63 DEPT. STATE BULL. 748, 749-50 (Dec. 21, 1970). In appraising charges and countercharges concerning violations of the standstill cease-fire, it is useful to place them in chronological sequence. See particularly *The Middle East and American Security Policy*, REPORT OF SENATOR HENRY M. JACKSON TO THE SENATE COMMITTEE ON ARMED SERVICES, 91ST CONG., 2D SESS. 9-13 (Comm. Print 1970).

On November 4, 1970 the General Assembly passed a resolution requesting an additional three-month extension of the cease-fire.<sup>23</sup> Subsequently, on December 30, 1970, Abba Eban, the Foreign Minister of Israel, informed Ambassador Jarring that in view of "present political and military conditions" Israel was willing to resume talks.<sup>24</sup> During January and early February of 1971 an exchange of views between Egypt, Israel, and Jordan through Ambassador Jarring seemed to narrow the gap between them only slightly. Although Egypt had threatened not to continue the cease-fire beyond February 5 in the absence of substantial progress toward Israeli withdrawal from the occupied territories, on February 4 President el-Sadat announced that at the urging of Secretary-General U Thant he would agree to an extension of the cease-fire until March 7, 1971. President el-Sadat also suggested that the Suez Canal might be reopened if Israel would agree to a partial pullback from the Canal. Early indications were that Egypt and Israel might be in disagreement on whether Israeli shipping would be able to use the Canal following any such pullback or whether partial pullback meant a territorial pullback of all Israeli forces or merely a force reduction along the Suez Canal.<sup>25</sup>

According to the *New York Times*, on February 8, Ambassador Jarring put forward an initiative "in the form of a memorandum to both Israel and the United Arab Republic . . . [inviting] them to submit their formulations of the kind of peace settlement they envisioned."<sup>26</sup> The *Times* also reported that:

Dr. Jarring's questions . . . framed the outline for an Israeli-Egyptian settlement without actually making a formal proposal.

The gist of Dr. Jarring's reasoning . . . was that Israel should withdraw from the entire Sinai Peninsula, that an international peace force be established at Sharm el Sheik to insure Israeli maritime passage through the Strait of Tiran, that there should be a formal peace treaty between the two nations under which Egypt would end her state of war with Israel and recognize her sovereignty [sic] and borders, and that the international powers could provide some guarantees to underwrite the settlement.<sup>27</sup>

At this writing it is too early to assess whether the replies to the Jarring initiative will significantly narrow the gap between the principal belligerents. The indirect exchanges are continuing through the Jarring mission at the United Nations in an atmosphere of hope.<sup>28</sup>

The history of efforts at peaceful settlement on the basis of Resolution 242 demonstrates that, despite the compromise nature of the Resolution, varying

<sup>23</sup> G.A. Res. 2628 (XXV), U.N. Doc. A/RES/2628 (Nov. 4, 1970).

<sup>24</sup> Report by the Secretary-General on the Activities of the Special Representative to the Middle East, U.N. Doc. S/10070, at 15 & Annex II at 6 (Jan. 4, 1971).

<sup>25</sup> See N.Y. Times, Feb. 5, 1971, at 3, col. 3 (city ed.); N.Y. Times, Feb. 10, 1971, at 1, col. 5 (city ed.).

<sup>26</sup> N.Y. Times, Feb. 18, 1971, at 1, col. 5 (city ed.).

<sup>27</sup> N.Y. Times, Feb. 19, 1971, at 8, cols. 5-6 (city ed.).

<sup>28</sup> The New York Times reported that the Egyptian reply indicated a willingness to conclude a binding peace treaty with Israel rather than some other vague form of settlement. If so, this would be a significant departure from the position of the Arab heads of state at the Khartoum Conference of September, 1967, at which they agreed to a common policy toward Israel of no peace, no negotiations, and no recognition. *Id.* at 8, col. 4.

interpretations conceal wide differences between the parties. In attempting to sort out the competing positions it is helpful to keep in mind several general caveats. The first is that one ought not think of the Arab world as monolithic. The Arab world is composed of a politically diverse range of states ranging from traditional monarchies to revolutionary socialist regimes. It also includes an important nonstate participant, the Central Committee of the Palestine Liberation Organization, which itself reflects a wide range of political organizations.<sup>29</sup> Each of these participants, and Israel as well, is in turn the product of competing and sometimes shifting political forces. As a result, any statement of settlement position is likely to oversimplify or to become dated as political conditions change. Moreover, the diverse nature of the Arab camp and the competing political forces within each participant, including Israel, create internal pressures for an external settlement position that is deliberately vague in order to avoid the agony of internal political decision on highly charged issues. One suspects that this is particularly true of public as opposed to private proposals but that it may be shared in substantial degree by all external statements of position.

The second general caveat is that even when there is an internal consensus on position, international public relations and bargaining considerations may deter candid disclosure. Public statements of position, then, may not always reflect the genuine or complete position of the participants. The actual position may be either more or less conciliatory on the issues. Nevertheless, in most cases the public stance probably conveys at least a useful general image of the settlement posture of the participants. In any event the public record seems a fair basis for appraisal.

Perhaps partly as a result of these pressures, there is a dearth of public information about the negotiating positions of the principal participants. The major source of information is the January 4, 1971 Report by the Secretary-General on the Jarring Mission.<sup>30</sup> In addition, the *New York Times* has recently published accounts purporting to represent recent statements of position.<sup>31</sup>

With these caveats in mind, the range of issues and potential issues in the Arab-Israeli negotiations are or have been:

### *Issues of Procedure*

1. Participants in the negotiations: (a) with respect to Israel and her immediately adjacent Arab neighbors, Egypt, Jordan, Syria, and Lebanon;

<sup>29</sup> See D. PERETZ, E. WILSON, & R. WARD, A PALESTINE ENTITY? 47-57 (Special Study Number One of the Middle East Institute 1970).

<sup>30</sup> Report by the Secretary-General on the Activities of the Special Representative to the Middle East, U.N. Doc. S/10070 (Jan. 4, 1971). There have also been a number of earlier reports by the Secretary-General on the Jarring mission.

<sup>31</sup> See the purported text of Israel's suggestions to Ambassador Jarring made during Jarring's visit to Israel on January 8, N.Y. Times, Jan. 19, 1971, at 10, col. 4 (city ed.), the purported Egyptian reply, N.Y. Times, Jan. 20, 1971, at 1, col. 2 (city ed.), and the purported text of the Jordanian reply, N.Y. Times, Jan. 26, 1971, at 6, col. 3 (city ed.).

(b) with respect to Israel and noncontiguous Arab states, Algeria, Libya, the Sudan, Saudi Arabia, Kuwait, and Iraq; (c) with respect to the Palestinian commando organizations.

2. Extension of the cease-fire during negotiations, including preconditions for extension and the modality of extension.

3. Strategies of negotiation: direct talks, indirect talks, "Rhodes formula," or United Nations mediation?

4. Location of talks: New York, Cyprus, or elsewhere.

5. Level of representation: foreign ministers, United Nations ambassador, or other.

6. Timing of agreement or implementation: (a) with respect to priority of Israeli withdrawal from occupied territories and Arab termination of belligerency and agreement on "secure and recognized boundaries;" (b) with respect to Israeli settlement with Egypt or Jordan followed by settlement with other major participants or simultaneous settlement with all major participants, *i.e.*, will settlement proceed state by state and if so in what order; (c) with respect to priority of issues of content such as Israeli passage through the Suez Canal or settlement of the refugee problem; (d) with respect to the possibility of a preliminary agreement to reopen the Suez Canal.

7. Form of final agreement: bilateral peace treaties registered with the United Nations, individual instruments addressed to and endorsed by the Security Council, or some other form.

### *Issues of Content*

1. Status of Resolution 242: the settlement itself or a basis for negotiated agreement?

2. Withdrawal of Israeli armed forces from "territories occupied" or "all the occupied territories," and agreement on "secure and recognized boundaries": (a) with respect to the West Bank; (b) with respect to the Golan Heights; (c) with respect to the Gaza Strip; (d) with respect to the Sinai Peninsula; (e) with respect to Sharm el-Sheikh; (f) with respect to East Jerusalem.

3. The termination of all states of war and acts of belligerency including: (a) free navigation through waterways in the area including the Gulf of Aqaba, the Suez Canal, and the Strait of Tiran; (b) control of nongovernmental and paramilitary guerrilla forces operating from Arab States against Israel; (c) the protection of civilian populations; (d) cessation of economic boycotts and hostile propaganda; (e) annulment of reservations to international conventions stemming from an assumed state of belligerency; (f) nonadherence to political or military alliances directed against a neighboring state; (g) nonstationing on the territory of a nonbelligerent state of armed forces of a third state still maintaining belligerency; (h) recognition and diplomatic relations.

4. The specificity with which the Arab states terminate belligerency with Israel: termination of belligerency "with Israel" or "with any state in the area."

5. The location and extent of demilitarized zones: astride the borders or exclusively within the occupied territories.

6. The use of United Nations peacekeeping forces and other arrangements for insuring security.

7. "Just settlement" of the refugee problem: (a) arrangements for compensation and repatriation of Arab refugees from the 1948 and 1967 wars; (b) Arab Palestinian demands for self-determination including demands for a "secular democratic" State; (c) arrangements for compensation of Jewish refugees from the Arab states.

8. The status of Jerusalem and the Holy Places: (a) extent of Israeli, Arab, and international administration; (b) arrangements for protection of and access to the Holy Places within and without Jerusalem.

9. Recognition of the international status of waterways in the area including the Gulf of Aqaba, the Suez Canal, and the Strait of Tiran.

10. Arrangements for exchange of prisoners of war.

11. Arrangements for Jordan to have free port and transit facilities.

12. Guarantees of the terms of settlement and the role of the United Nations, the four powers, and the United States in implementing or guaranteeing the settlement.

The principal belligerents in the Arab-Israeli conflict are Israel, Egypt, Jordan, Lebanon, Syria, and the Palestine Liberation Organization. Other Arab states not bordering on Israel, including Saudi Arabia, Algeria, Libya, Iraq, Kuwait, and The Sudan, are to a greater or lesser extent also belligerents in the conflict. And as significant military suppliers to the region, the United States and the Soviet Union are also significantly caught up in the conflict.<sup>32</sup> For the most part, though, the greatest influence on settlement is exercised by Israel and the Arab states bordering on Israel, and more particularly by Israel and Egypt. The following discussion will focus on the settlement position of these principal belligerents.

Not all of the full range of issues in the Arab-Israeli conflict are of equal importance for each principal belligerent. At the risk of substantial oversimplification, there seem to be three basic positions: the first is the Israeli position; the second is that of Egypt, Jordan, and Lebanon; and the third is that of Syria and the Palestine Liberation Organization.

The principal concern of Israel is national security and the termination of all Arab states of belligerency against Israel, including cessation of guerrilla attacks on Israel launched from the sanctuary of neighboring states, and free navigation through the Gulf of Aqaba, the Suez Canal, and the Strait of Tiran. Accordingly, Israel seeks definitive bilateral peace treaties with her Arab

<sup>32</sup> For the United States position on settlement see Rogers, *A Lasting Peace in the Middle East: An American View*, 62 DEPT. STATE BULL. 7 (Jan. 5, 1970) (address of Dec. 9, 1969); Statement by United States Ambassador Charles W. Yost in the General Assembly Debate on the Situation in the Middle East, October 29, 1970, reprinted in 63 DEPT. STATE BULL. 656-61 (Nov. 23, 1970); Fulbright, *Old Myths and New Realities—II: The Middle East*, 116 CONG. REC. #147 (Aug. 24, 1970).

neighbors following direct negotiations on secure and recognized boundaries. Israeli withdrawal "from territories lying beyond positions agreed in the peace treaty" would occur only after conclusion of a general peace agreement terminating all states of belligerency. Israeli pronouncements suggest that the present *de facto* boundaries are subject to substantial alteration during negotiations but that Israel would not return to the exact pre-Six Day War boundaries. In support of this position Israel urges that Resolution 242 provides a basis for negotiated agreement rather than a final plan for settlement. Israel also points out that Resolution 242 speaks of withdrawal from "territories occupied" rather than "all the territories occupied" and that the legislative history of the Resolution supports an interpretation of this omission as a deliberate recognition that withdrawal need not be from *all* of the occupied territories. Although Israel has indicated willingness to discuss any issues, there have been strong intimations that Israeli administration of East Jerusalem and possibly of the Golan Heights and Sharm-el-Sheikh is not subject to change. Israel seeks a continuation of the ceasefire, preferably without additional Security Council action, which it fears might alter the delicate balance of Resolution 242, and at least for the present phase of the talks Israel has agreed to indirect talks through Ambassador Jarring at United Nations headquarters in New York. Israel also seeks specific Arab undertakings to control guerrilla activities launched from neighboring Arab territories, cessation of the Arab economic boycott against Israel, and an end to other manifestations of Arab belligerency. In turn, Israel indicates a willingness to terminate on a reciprocal basis all claims or states of belligerency, to discuss settlement of the refugee problem, arrangements concerning places of religious and historic significance, and arrangements for free port and transit facilities. Israel does not seem enthusiastic with respect to the possible role of United Nations peacemaking forces in the area. Nevertheless, it does not rule out discussion of such a presence "[i]n the context of peace providing for full respect for the sovereignty of States and the establishment of agreed boundaries."<sup>33</sup> With respect to the refugee problem, Israel urges that the humanitarian nature of the issues should not make agreement on these issues contingent on agreement on any other aspect of the Arab-Israeli conflict. Accordingly, Israel has proposed:

[T]hat a conference of Middle Eastern States should be convened, together with the Governments contributing to refugee relief and the Specialized Agencies of the United Nations, in order to chart a five-year plan for the solution of the refugee problem in the framework of a lasting peace and the integration of refugees into productive life. This conference can be called in advance of peace negotiations.

Joint refugee integration and rehabilitation commissions should be established by the governments concerned in order to work out agreed projects for refugee integration on a regional basis with international assistance.<sup>34</sup>

<sup>33</sup> Report by the Secretary-General on the Activities of the Special Representative to the Middle East, U.N. Doc. S/10070, at Annex I p. 7 (Jan. 4, 1971).

<sup>34</sup> *Id.*

The position of Egypt (the United Arab Republic) centers on Israeli withdrawal from all of the territories occupied during the Six Day War. Egypt urges that Israel has expansionist aims and intends to annex East Jerusalem and maintain continued military occupation of the Syrian Heights, the West Bank, the Gaza Strip, Sharm-el-Sheikh, the Gulf of Aqaba area, and Eastern Sinai. Accordingly, Egypt indicates willingness to implement the obligations from Resolution 242 provided that Israel carries out its obligations, particularly withdrawal from all territories occupied as a result of the Six Day War. Egypt "agrees to pledge termination of all claims or state of belligerency . . . [to become] effective upon withdrawal of Israel's forces from all Arab territories occupied as a result of Israel's aggression of 5 June 1967."<sup>85</sup> It seems evident that Egypt regards Resolution 242 as the settlement itself rather than a basis for a negotiated agreement. There is also a strong intimation that Israel must first withdraw from all of the occupied territories prior to any Egyptian pledge to accept "the right of every State in the area to live in peace within secure and recognized boundaries free from threats or acts of force."<sup>86</sup> If there were prior Israeli withdrawal from all the occupied territories Egypt has indicated a willingness only to sign an instrument addressed to and endorsed by the Security Council rather than enter into a bilateral peace treaty with Israel.<sup>37</sup> In response to Ambassador Jarring's question "what is the conception of secure and recognized boundaries held by the United Arab Republic?,"<sup>88</sup> Egypt replied: "When the question of Palestine was brought before the United Nations in 1947, the General Assembly adopted its resolution 181 of 29 November 1947, for the partition of Palestine and defined Israel's boundaries."<sup>89</sup> Although this rather enigmatic response is ambiguous in a number of ways, it intimates that the "secure and recognized" boundaries to which Egypt would agree would be the 1947 partition boundaries rather than the pre-Six Day War boundaries. If so, this represents a very major divergence in the positions of the parties. Egypt's position also seems vague in a number of critical ways concerning termination of belligerency and recognition of Israel. Thus, because of its general policy of nonrecognition of Israel, Egypt prefers indirect talks through Ambassador Jarring rather than face-to-face talks. Similarly, Egypt seems committed, at least in public pronouncement, to continued assistance to the Palestine Liberation Organization, which seeks to replace the State of Israel with a secular democratic state of Arab design. In addition, Egypt's pledge of termination of belligerency is worded in terms of "the right of every State in the area to live in peace"<sup>40</sup> rather than referring to Israel by

<sup>85</sup> *Id.* at Annex I p. 15.

<sup>86</sup> *Id.* at Annex I p. 16.

<sup>87</sup> *Id.* at Annex I p. 17. According to the New York Times, however, in the reply to Ambassador Jarring's initiative of February 8, 1971, Egypt has indicated a willingness to conclude a binding peace treaty with Israel. At this writing the text of the Egyptian reply has not been made public. See N.Y. Times, Feb. 19, 1971, at 8, col. 4 (city ed.).

<sup>88</sup> Report by the Secretary-General on the Activities of the Special Representative to the Middle East, U.N. Doc. S/10070, at Annex I p. 2 (Jan. 4, 1971).

<sup>89</sup> *Id.* at Annex I p. 16.

<sup>40</sup> *Id.* at Annex I p. 16.



name. In this connection it is useful to note that President Anwar el-Sadat emphatically stated in an interview with James Reston and Raymond H. Anderson of the *New York Times* on December 23, 1970, that despite acceptance of Resolution 242 Egypt would never "make diplomatic relations" with Israel.<sup>41</sup> In the absence of a more definitive agreement between the parties specifically referring to termination of belligerency against Israel, Egypt might be tempted to continue belligerency under the guise that Israel is not a recognized state. With respect to navigation, Egypt has indicated willingness to implement all of the provisions of Resolution 242 including freedom of navigation in "international waterways" in the area provided that Israel implements all provisions of the Resolution. This position would seem to incorporate Egypt's general position concerning prior Israeli withdrawal from all of the occupied territories. There may also be some ambiguity in the parties interpretation of just which waterways in the area are "international waterways." For example, does Egypt's position with respect to freedom of navigation in "international waterways" include the Suez Canal?<sup>42</sup> Egypt does not indicate great enthusiasm for demilitarized zones but indicates a willingness to accept such zones "if they are astride the boundaries."<sup>43</sup> In case such zones are established Egypt "accepts that such zones be supervised and maintained by the United Nations."<sup>44</sup> With respect to the refugee problem, Egypt indicates that a "just settlement" is embodied in paragraph 11 of General Assembly Resolution 194 (III) of December, 1948 and that acceptance of a plan on the basis of that paragraph with adequate guarantees for implementation would justify implementation of the other provisions of Resolution 242.<sup>45</sup> Paragraph 11 of Resolution 194 (III) provides among other things that "the refugees wishing to return to their homes and live at peace with their neighbors should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible."<sup>46</sup> Following the November 4 General Assembly resolution requesting an extension of the United States-initiated August 7 cease-fire, Egypt agreed to an additional three-month extension to February 5, 1971. And on February 4 Egypt agreed to a further one-month extension to March 7. From an Egyptian perspective, however, the fear of legitimation of *de facto* Israeli control of the occupied territories places pressure on continued support of the

<sup>41</sup> N.Y. Times, Dec. 28, 1970, at 1, col. 1.

<sup>42</sup> For a discussion of the legal aspects of Israeli passage through the Suez Canal see R. BAXTER, *THE LAW OF INTERNATIONAL WATERWAYS* 221-37 (1964); Gross, *Passage Through the Suez Canal of Israel-Bound Cargo and Israel Ships*, 51 AM. J. INT'L L. 530 (1957); Huang, *Some International and Legal Aspects of the Suez Canal Questions*, 51 AM. J. INT'L L. 277 (1957); Khadduri, *Closure of the Suez Canal to Israeli Shipping*, 33 LAW & CONTEMP. PROB. 147 (1968).

<sup>43</sup> Report by the Secretary-General on the Activities of the Special Representative to the Middle East, U.N. Doc. S/10070, at Annex I p. 16 (Jan. 4, 1971).

<sup>44</sup> *Id.* at Annex I p. 17.

<sup>45</sup> *Id.* at Annex I p. 16.

<sup>46</sup> G.A. Res. 194, U.N. Doc. A/810, 21 at 24 (1948).

cease-fire. Thus, should negotiations not be successful Egypt has threatened to renew hostilities.

The position of Jordan is closely identified with that of Egypt. In fact, the Egyptian and Jordanian replies to Ambassador Jarring's 14 points are in almost identical language.<sup>47</sup> The settlement situation of Jordan is different from that of Egypt, though, in a number of important ways. Problems of administration and religious freedom in East Jerusalem are of primary concern to Jordan rather than to Egypt. Similarly, the problem of control of paramilitary Palestinian guerrilla forces is greater for Jordan than for Egypt. And conversely, the questions of freedom of navigation through the Strait of Tiran and the Suez Canal are primarily Egyptian issues. Jordan might also be interested in free port and transit facilities in Israel. Because of these state-by-state differences it seems that settlement should take the form of individualized agreement with each accepting state. Although Jordan seeks the return of East Jerusalem to Jordanian administration, Jordan has indicated willingness to "guarantee free access to all religious and historical places to all concerned as well as freedom of worship."<sup>48</sup>

Lebanon is involved only indirectly. Lebanon did not take part in the Six Day War, and there is no territorial dispute between Lebanon and Israel. Perhaps the principal issue between Lebanon and Israel is Lebanese control of Palestinian guerrilla forces operating from Lebanese territory against Israel and the cessation of Israeli military activity directed against such forces within Lebanon. Lebanon has accepted Resolution 242, however, and in this respect has adopted the position of Egypt and Jordan. The Lebanese reply to Ambassador Jarring's 14 points stresses that the 1949 Armistice Agreement concluded between Lebanon and Israel remains valid and that the Armistice lines correspond with the internationally recognized boundaries of Lebanon. Lebanon also proclaims "Lebanon's support of the position of the Arab States whose territory has been occupied by Israel and which have accepted the Security Council's decision of 22 November 1967."<sup>49</sup>

There is perhaps a greater risk of distortion in grouping together the Syrian and Palestine Liberation Organization positions than in grouping together the Egyptian, Jordanian, and Lebanese positions. Nevertheless, both Syria and the Palestine Liberation Organization have rejected Resolution 242 as a basis for settlement, and both seem committed to some version of a Palestinian war of liberation against Israel that would substitute a "secular democratic" Palestinian State in place of the present State of Israel. Since Syria has not accepted Resolution 242, Ambassador Jarring's 14 points were

<sup>47</sup> Compare the reply of the Government of Jordan with the reply of the Government of the United Arab Republic reprinted in Report to the Secretary-General on the Activities of the Special Representative to the Middle East, U.N. Doc. S/10070, at Annex I pp. 9-11, 14-17 (Jan. 4, 1971). The omission of the first paragraphs of the Egyptian reply, which stressed Israeli expansionist aims, may evidence a generally more conciliatory attitude on Jordan's part.

<sup>48</sup> N.Y. Times, Jan. 26, 1971, at 6, col. 6 (city ed.).

<sup>49</sup> Report by the Secretary-General on the Activities of the Special Representative to the Middle East, U.N. Doc. S/10070, at Annex I pp. 12-13 (Jan. 4, 1971).

not even addressed to Syria. As such, the Syrian position on settlement is particularly vague. It seems a fair inference that Syrian nonacceptance of Resolution 242 means that they view settlement as peripheral to or inconsistent with their overriding objection to the existence of the State of Israel as a Jewish State. The Syrian rejection of Resolution 242 suggests again the importance of settlement proceeding state by state. One difficulty with this state-by-state solution is that Egypt has asserted that Israel must withdraw from all of the occupied territories, which would include the Syrian Heights, prior to settlement with Egypt. In turn, Israeli withdrawal from the Heights seems unlikely in the absence of an agreement with Syria on "secure and recognized boundaries." The potential leverage of Syria in preventing settlement, then, is considerable as long as Egypt or Jordan insist on withdrawal from all of the occupied territories as a precondition to termination of belligerency. This also suggests that Egyptian insistence on Israeli withdrawal from Syrian territory as a precondition for settlement with Egypt is unreasonable in the absence of Egyptian ability to deliver on the other features of Resolution 242 for Syria, particularly Syrian termination of belligerency with Israel.

The Palestine Liberation Organization (PLO) is neither a state nor a particularly cohesive political arrangement. It exercises *de facto* control over areas of Jordan, Lebanon, and Syria and receives substantial financial support from a number of Arab states not bordering on Israel. It also receives more active military support from Syria. As such, it is a force to be reckoned with in settlement. To date the PLO has refused to accept Resolution 242 and seems committed to a sustained "war of liberation" against Israel. Beyond that, its precise program and objectives are vague.<sup>50</sup> Writing in early 1970 Don Peretz said of the PLO program:

The commandos state categorically that they seek to destroy the government and state of Israel, its Zionist institutions and its exclusive Jewish character; they brook no compromise based on the pre-1967 borders or even the 1947 U.N. partition resolution. Some leaders have indicated that Palestine would become an Arab state; others have been more ambiguous. None has publicly recognized the possibility of coexistence between Arab and Hebrew nationalism . . .

Hebrew broadcasts of the commando organizations directed to Israel are listened to with derision rather than fear or hope of discovering any serious political intent. The recently announced objective of converting Palestine into a democratic secular state in which all Jews, Muslims and Christians will live in equity is not believed because of the long years in which the people as well as the state of Israel were threatened. The organizations have yet to define clearly the kind of government they propose, the status of minority groups, whether or not the country is to be an Arab state, or what is to become of its Hebrew-speaking residents who retain an attachment to their language and cultural, social and political institutions. . . .<sup>51</sup>

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<sup>50</sup> For a description of the principal Palestinian guerrilla groups see D. PERETZ, E. WILSON, & R. WARD, *supra* note 29, at 47-57. The Arab Palestine Organization (APO) and the Action Group for the Liberation of Palestine, two small Nasserite socialist guerrilla organizations, did support the August 7 cease-fire. *Id.* at 57.

<sup>51</sup> Peretz, *Arab Palestine: Phoenix or Phantom?*, 48 FOREIGN AFFAIRS 322, 331-32 (1970).

Whatever the program it would seem that all Palestinian organizations within the umbrella of the PLO would reject any political settlement that would retain a Jewish State of Israel. Their position, then, seems basically at variance with Resolution 242.

In summary, from the Israeli perspective the most important concern is the demand for clear and legally binding bilateral treaties with the Arab states by which the Arab states would effectively terminate all states of war and acts of belligerency against Israel and agree on "secure and recognized boundaries." Israeli withdrawal would then follow from the occupied territories beyond the agreed boundaries. From the Egyptian, Jordanian, and Lebanese perspectives Israeli withdrawal from all of the occupied territories including East Jerusalem is a precondition for termination of belligerency. Lastly, Syria and the Palestine Liberation Organization, both of which have refused to accept Resolution 242, seem committed to a Palestinian war of liberation against Israel for the purpose of creating a "secular democratic" State of Palestine. This wide divergence in position enormously complicates the problem of settlement.

### III. AN APPRAISAL OF THE ARAB-ISRAELI CONFLICT BY REFERENCE TO FUNDAMENTAL CHARTER PRINCIPLES AND UNITED NATIONS RECOMMENDATIONS

The major Charter principles applicable to appraisal of the Arab-Israeli conflict are nonuse of force against the territorial integrity or political independence of another state, self-determination of peoples, and respect for human rights. In addition, the United Nations has made important recommendations concerning partition of Palestine, refugees, control of terrorist activities, the status of Jerusalem, freedom of navigation through international waterways, and the protection of civilian populations.

#### *A. Nonuse of Force Against the Territorial Integrity or Political Independence of Another State*

Article 2(4) sets out what is perhaps the most important principles of the Charter. It provides: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations." A major purpose of this provision is to incorporate and strengthen the judgment of the Kellogg-Briand Pact that major coercion could not be used as an instrument of national policy no matter how clear the justice of the cause. Instead, major coercion was restricted to individual and collective defense and enforcement action pursuant to a Security Council determination. In this respect the Charter and the Kellogg-Briand Pact before it made an evolutionary jump in the international law of conflict management from both the Augustinian "just war" doctrine that measured lawfulness by the justice of the cause and the 19th Century positivist notion that

war was merely a "metajuristic phenomenon" between sovereign states and as such was neither legal nor illegal. The Charter principle was an advance over these earlier notions, particularly in focusing on the destructiveness of coercive strategies of change, in adopting a more objective test of permissible and impermissible coercion, and in focusing on the important difference between unilateral and community action.<sup>52</sup>

This basic Charter principle would seem to apply to the Arab-Israeli conflict in a number of important ways. First, the State of Israel has existed for more than 22 years within the 1949 Armistice boundaries; since 1949 it has been a member of the United Nations, and it is widely recognized among the community of nations, including long-term recognition by both the United States and the Soviet Union. As such, regardless of the legitimacy of Arab grievances with respect to the initial creation of the State of Israel, there is no right to use force to challenge the very existence of Israel. Israel clearly has a right to exist within "secure and recognized" borders as affirmed in Resolution 242. It is sometimes urged that the very existence of Israel constitutes a continuing attack on the Palestinian people or the Arab world. The argument is basically a rhetorical substitution of an armed attack claim in place of an underlying self-determination claim. The rhetorical claim, however, should not be confused with the factual reality of an armed attack by one state against another. A little reflection on the applicability of similarly broad claims in the Korean, China-Taiwan, Kashmir, German, and a host of other problem situations indicates its potential as a prescription for anarchy. The Charter principle proscribing the use of force against the territorial integrity or political independence of another state does not contain an exception permitting unilateral determination of denial of self-determination as a basis for lawful use of major coercion. If, of course, the argument is simply meant to announce a right of revolution of the Palestinian people against Israel (which is really the only meaningful referent) it is not a pronouncement of international law. But in this latter case it should be pointed out that international law does not recognize a right of revolution from the sanctuary of neighboring states. States have a legal duty to take measures within their means to control guerrilla attacks launched from their territory against third states.<sup>53</sup>

A second consequence of the principle of nonuse of force is that a continuing exercise of belligerent rights against another state is unlawful in the absence of a genuine need for individual or collective defense. If the Arab states are prohibited by international law from using force to challenge the existence of Israel as a Jewish state it would seem equally impermissible to

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<sup>52</sup> For discussion of these points see the authorities cited at note 3 *supra*.

<sup>53</sup> The General Assembly Declaration of 1965 on the Inadmissibility of Intervention is representative of many authoritative pronouncements: "[N]o State shall organize, assist . . . or *tolerate* subversive, terrorist or armed activities directed towards the violent overthrow of the régime of another State . . ." G.A. Res. 2131, 20 U.N. GAOR, Supp. 14, at 11-12, U.N. Doc. A/6014 (1965) (emphasis added). For a general discussion of the problem of control of foreign intervention see Moore, *The Control of Foreign Intervention in Internal Conflict*, 9 VA. J. INT'L L. 205 (1969).

maintain a continuing state of belligerency for that purpose.<sup>54</sup> As a result, it would seem that the Arab states have a duty to terminate their continuing state of belligerency with Israel. As consequences of this termination, Israel should enjoy security and freedom of navigation through the Gulf of Aqaba, the Suez Canal, and the Strait of Tiran. Resolution 242 would seem to support this analysis when it "[a]ffirms that the fulfillment of Charter principles requires . . . [t]ermination of all claims or states of belligerency" and "[a]ffirms further the necessity . . . [f]or guaranteeing freedom of navigation through international waterways in the area."<sup>55</sup>

A third consequence of the principle of nonuse of force is the obligation to control guerrilla or private paramilitary forces operating from one's territory against a neighboring state. This principle has been frequently stated to be a requirement of international law and was recently reaffirmed in the 1970 General Assembly Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States In Accordance With the Charter of the United Nations.<sup>56</sup> This principle would seem to require the Arab States to refrain from assisting the Palestine Liberation Organization or other Palestinian commando organizations and to take those measures within their ability to prevent guerrilla activities based in their territory and directed against Israel. The continuing civil conflict in Jordan between the army of King Hussain and the commandos of the Palestine Liberation Organization indicates that at least in some Arab countries effective control of Palestinian commando groups is difficult to achieve. It might also be noted that if Arab assistance to Palestinian resistance organizations were conceptualized as assistance to insurgents engaged in a civil war for Palestine, such assistance would still be unlawful. Despite the general uncertainty surrounding the law of non-intervention, international legal scholars are in substantial agreement that it is impermissible to provide assistance to insurgents attempting to overthrow a

<sup>54</sup> See generally N. FEINBERG, THE LEGALITY OF A "STATE OF WAR" AFTER THE CESSATION OF HOSTILITIES (1961); S. ROSENNE, ISRAEL'S ARMISTICE AGREEMENTS WITH THE ARAB STATES (1951). In this connection it might be noted that as early as September 1, 1951 the Security Council passed a resolution concerning passage of Israeli ships through the Suez Canal in which it pointed out: "[S]ince the armistice régime, 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 to exercise the right of visit, search, and seizure for any legitimate purpose of self-defence . . . ." 6 U.N. SCOR, 558th meeting 2 (1951).

<sup>55</sup> S.C. Res. 242, 22 U.N. SCOR, 1382d meeting 8-9 (1967). And with respect to the Suez Canal see the Security Council Resolution of September 1, 1951, which: "Calls upon Egypt to terminate the restrictions on the passage of international commercial shipping and goods through the Suez Canal wherever bound and to cease all interference with such shipping beyond that essential to the safety of shipping in the Canal itself and to the observance of the international conventions in force." 6 U.N. SCOR, 558th meeting 2 at 3 (1951).

<sup>56</sup> G.A. Res. 2625, 25th Sess., U.N. Doc. A/RES/2625 (Oct. 24, 1970). The Declaration states in pertinent part:

Every state has the duty to refrain from organizing or encouraging the organization of irregular forces or armed bands, including mercenaries, for incursion into the territory of another state.

Every state has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another state or acquiescing in organized activities within its territory directed towards the commission of such acts, when the acts referred to in the present paragraph involve a threat or use of force.

See also the authorities cited at note 53 *supra*.

widely recognized government.<sup>57</sup> In any event, in view of the evidence that the principal base of Palestinian guerrilla activity is outside the State of Israel, this civil war characterization is not the most useful. With allowances for all of the imprecision of any analogy in international relations, the analogy most on point would seem to be the United States assistance to Cuban exiles in the Bay of Pigs invasion. Few would accept a characterization of that invasion as a civil war.

The meaning of the principle of nonuse of force is more difficult with respect to its corollary "the inadmissibility of the acquisition of territory by war," which is emphasized in Resolution 242 and its application to the territories occupied by Israel during the Six Day War. On the one hand, some scholars writing in support of the Arab position seem to suggest that since it is impermissible to acquire territory by war, Israel's continued occupation of the territories seized in the Six Day War constitutes a continuing armed attack against Arab territorial integrity justifying a defensive war of attrition against Israel until the territories are relinquished.<sup>58</sup> On the other hand, some scholars writing in support of the Israeli position urge that the principle is limited to aggressive as opposed to defensive wars and that Israel's use of force in the Six Day War was defensive. They then point out that with respect to the West Bank of Jordan, East Jerusalem, and the Gaza Strip, Israel's territorial claim following its defensive actions in the Six Day War should be at least as good as the Jordanian and Egyptian claims to those areas that were initially acquired aggressively by Jordan and Egypt during the 1948 Arab-Israeli War.<sup>59</sup> Both positions seem extreme. A more useful approach is to recognize that the doctrine of "the inadmissibility of the acquisition of territory by war" is being used in several different functional senses in the Arab-Israeli conflict. The first is the extent to which continued Israeli military occupation of the territories seized in the Six Day War is justified. The second is whether continued Israeli occupation of the territories seized in the Six Day War gives the Arab states a legal right to use force to recover the territories. And the third is the extent of "ownership" rights that Israel has in the occupied territories.

As announced in the Stimson Doctrine the basic purpose of the principle of "the inadmissibility of the acquisition of territory by war" was to discourage aggressive war by denying the spoils of war to the aggressor. Though an ineffective substitute for League action, the principle nevertheless embodied a useful deterrent by encouraging third states not to recognize claims to territories acquired by aggressive war. Under the United Nations Charter the basic distinction in determining whether initial military occupation is lawful is whether it is incident to unlawful aggression or lawful defense. It would seem, then, that the principle should be equally applicable under the Charter as

<sup>57</sup> See the authorities collected in Moore, *supra* note 53, at 242-46, 315-32.

<sup>58</sup> See, e.g., Bassiouni, *Some Legal Aspects of the Arab-Israeli Conflict*, 14 THE ARAB WORLD 41, 44 (Special Issue on the Arab-Israeli Confrontation of June, 1967).

<sup>59</sup> See, e.g., Schwebel, *What Weight to Conquest?*, 64 AM. J. INT'L L. 344 (1970).

applied to acquisition of territory by aggressive use of force. Even if incident to a defensive effort, however, to itself be lawful occupation of territory, like other defensive efforts, must be necessary and proportional to lawful defense objectives. Thus, a vast military occupation occasioned by an initial defensive effort but unnecessary for effective defense is probably unlawful. Although there is little authority on the issue it would seem that military occupation under the Charter confers a security interest only.<sup>60</sup> To the extent that continued occupation is necessary and proportional to lawful defense objectives it would be lawful. If military occupation is no longer needed for the protection of security, then it seems reasonable to require its termination. As applied in the Arab-Israeli conflict the first question is, was the Israeli action in the Six Day War aggressive or defensive, and the second is, if it was defensive was the resultant occupation of the territory necessary and proportional to lawful defense objectives. On the first question, although scholars are in disagreement about the lawfulness of Arab and Israeli actions in the Six Day War, the most persuasive assessment seems to be that the Israeli actions in the War were lawful defense actions.<sup>61</sup> And on the second question, Israeli seizure of the territories occupied in the Six Day War seems to have been reasonably necessary and proportional in relation to Israeli security needs. Moreover, at least most of the occupied territories seem to have a reasonable relation to continuing Israeli security needs. The Golan Heights and the Gaza Strip have been used repeatedly for launching attacks on Israel, and the Sinai and West Bank have an important strategic location in relation to overall Israeli security needs. As such, continued occupation until an overall peace agreement is negotiated or the security risk otherwise abates seems reasonable.

With respect to the second issue, the right of the Arab States to use force to recover the territories, whether the territories were occupied as a result of an aggressive or a defensive war would seem to be an important factor. An aggressive armed attack resulting in seizure of territory should, at least in the short run, give rise to a proportional right of defense. The distinction proves too much, though, as applied by some Arab spokesmen to the Arab-Israeli conflict. First, the most persuasive assessment seems to be that the Israeli actions in the Six Day War were lawful defense actions. Second, negotiations within the framework of Resolution 242, including cessation of Arab belligerent activities directed against Israel, would seem a preferable alternative to the use of force in recovering the territories even if the Israeli action had been aggressive action. Lawful defense action must be necessary and proportional,

<sup>60</sup> The 1970 General Assembly Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States suggests a distinction between occupation and acquisition of territory by force. The test for lawful occupation is whether the use of force that gave rise to the occupation is consistent with the Charter. On the other hand, "[t]he 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." G.A. Res. 2625, 25th Sess., U.N. Doc. A/RES/2625 (Oct. 24, 1970) (emphasis added).

<sup>61</sup> See, e.g., O'Brien, *International Law and the Outbreak of War in the Middle East, 1967*, 11 ORBIS 692, 713-23 (1968); Schwebel *supra* note 59, at 346; Wright, *Legal Aspects of the Middle East Situation*, 33 LAW & CONTEMP. PROB. 5, 26-27 (1968).



and the availability of a reasonable settlement alternative would seem to undercut the necessity for use of force. If the Arab States were to proclaim a willingness to immediately conclude peace agreements with Israel on condition that Israel would *subsequently* withdraw from the occupied territories, their case for use of force if Israel rejected the proposal would be much more plausible. Third, continued Arab attacks on Israel would seem inconsistent with the Security Council cease-fire resolutions of June, 1967.<sup>62</sup> Lastly, although the aggression-defense distinction is important in the short run, at some point *de facto* control of territory becomes sufficiently established that force can no longer be used to alter the situation whether or not occupation was initially lawful. Any other alternative would open up a Pandora's box of claims to use force to redress ancient boundaries, and this would substantially emasculate Article 2(4) of the Charter. The suggestion of criteria for establishing when the point is reached at which the lawfulness of the initial occupation becomes unimportant in assessing responding coercion is one of the largely unexplored areas under the Charter. But at the least, this principle would seem to apply in the Arab-Israeli conflict to the boundaries resulting from the 1948 War. Just because force cannot be used to alter a *de facto* boundary, of course, does not indicate the lawfulness of continued occupation by an aggressor.

The third functional sense in which the principle of "the inadmissibility of the acquisition of territory by war" is invoked in the Arab-Israeli conflict is the extent of Israel's "ownership" rights in the occupied territories. It is reasonably clear that at least to the extent consistent with a security interest Israel is entitled to the normal rights and has the normal obligations of an occupying power under international law.<sup>63</sup> Such rights and obligations continue until a peace treaty is signed or the security interest abates. It is also clear that the parties concerned may fix the boundaries in the area by treaty in any way they see fit. It does not follow, however, that in the absence of a peace treaty Israel is entitled to greater rights in the occupied territories than an occupying power. An additional purpose of the doctrine of "the inadmissibility of the acquisition of territory by war" would seem to be to protect the self-determination of an indigenous population and the "ownership" expectations of a deprived state. Both purposes seem applicable with respect to the territories occupied during the Six Day War even though the occupation resulted from a defensive war.<sup>64</sup> It should be remembered that prior to the Six Day War the inhabitants of the occupied territories were largely Arab. The ownership expectations of Egypt and Jordan are perhaps less to the extent that they are based on Egypt's seizure of the Gaza strip from the territory of Palestine

<sup>62</sup> S.C. Res. 233, 22 U.N. SCOR, 1348th meeting 2 (1967); S.C. Res. 234, 22 U.N. SCOR, 1349th meeting 3 (1967); S.C. Res. 235, 22 U.N. SCOR, 1350th meeting 3 (1967); S.C. Res. 236, 22 U.N. SCOR, 1357th meeting 4 (1967).

<sup>63</sup> See Higgins, *The June War: The United Nations and Legal Background*, 3 J. CONTEMP. HISTORY 253, 270-73 (1968). With her usual perceptiveness Rosalyn Higgins is careful to separate the issue of occupation from that of acquisition.

<sup>64</sup> See R. JENNINGS, *THE ACQUISITION OF TERRITORY* 52-67 (1963). See also the excerpt from G.A. Res. 2625, *supra* note 60.

during the 1948 War and Jordan's seizure of East Jerusalem and the West Bank from Palestine during that War. Nineteen years of *de facto* control may nevertheless give rise to substantial expectations. In the absence of a solution that would provide for separate Palestinian-Arab self-determination in these territories, these expectations should be honored.

### B. *Self-Determination of Peoples*

The second Charter principle applicable to appraisal of the Arab-Israeli conflict is the principle of self-determination of peoples. Article 1(2) of the Charter recognizes that a principal purpose of the United Nations is: "To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples . . . ." The principle is reasserted in Article 55. Self-determination of peoples is a notoriously slippery concept. The basic referent seems to be the freedom of a people to choose their own government and institutions and to share in the values of their society.<sup>65</sup> There is a wide range of potential kinds of self-determination claims. Most of these claims seem to arise from three basic situations. They are first, type I, the control by one nation of another's governmental structure or resources. Situations in this category are usually spoken of as colonialism or, in the case of control of resources other than governmental structures, neo-colonialism. A paradigm example is the Congo prior to independence. The second, type II, is a society that prevents a particular group within the society from sharing in authority structures or other value institutions of the society. A paradigm example is the system of apartheid in South Africa. And the third, type III, is an ethnic, religious, or other group within one or more societies that seeks to establish its own national identity. A paradigm example is the attempt of the Ibos to secede from Nigeria and set up a separate State of Biafra.

Applying these paradigms to the Arab-Israeli conflict, the Israeli claim to self-determination is an example of a type III claim. That is, a claim for the establishment (since 1948 the preservation) of a national homeland for the Jews where the Jewish cultural and religious heritage can be preserved. Internationally, Israel is supported in this claim by the 1947 decision of the General Assembly to partition Palestine into Arab and Jewish areas<sup>66</sup> and by the substantial expectations of a separate state resulting from the more than 22 year existence of the State of Israel, its admission to the United Nations, and its widespread international recognition and activity.

The Arab-Palestinian claim is not so readily apparent. In analyzing their claim it seems important to distinguish "moderate" from extreme claims. The "moderate" claim seems to be a demand for a unified, secular, democratic,

<sup>65</sup> See generally H. JOHNSON, *SELF-DETERMINATION WITHIN THE COMMUNITY OF NATIONS* (1967); R. Emerson, *Self-Determination* (unpublished paper prepared for the American Society of International Law Panel on Self-Determination, 1970); T. Mensah, *Self-Determination Under United Nations' Auspices* (unpublished J.S.D. dissertation in the Yale Law Library, 1963).

<sup>66</sup> G.A. Res. 181(II), U.N. Doc. A/519 at 131 (1947) (Recommending the Plan of Partition With Economic Union).

and multi-religious Palestinian State in which all Jews, Muslims, and Christians presently residing in the former mandate territory would be full citizens. Don Peretz indicates that this is a relatively recent formulation of the Palestinian position.<sup>67</sup> The extreme claim would exclude an indefinite number of "Zionist Jews," "persons who did not participate in the revolution," or "persons who did not accept the character of the state" from citizenship in the new state without stating where those excluded would go. There is a studied ambiguity in Palestinian pronouncements on this subject that makes it difficult to know precisely which claim is supported and what it means. For example, Article 6 of the 1968 Palestinian National Covenant provides: "Jews who were living permanently in Palestine until the beginning of the Zionist invasion will be considered Palestinians."<sup>68</sup> Dr. Harkabi, a lecturer in international affairs at Hebrew University, writes that this provision implies that only those Jews who lived permanently in Palestine before 1917 would be considered citizens of the Palestinian state.<sup>69</sup> That would, of course, exclude the bulk of the Jewish population of Israel, including more than half a million Jewish refugees who came to Israel from Arab countries. A recent survey of settlement efforts published in *International Conciliation* indicates as another formula that "leaders of the guerrilla movements have repeatedly stated that all the non-Zionist Israelis would be free to live in the 'secular and democratic' state they envision."<sup>70</sup> In the absence of a definition of what would be considered a "non-Zionist Israeli," this may mean the same thing or something different from Dr. Harkabi's interpretation of Article 6 of the 1968 Palestinian National Covenant. A partial explanation for this ambiguity, of course, is that there is a range of Palestinian views on the government, structure and composition of the new state. But the ambiguity of the Palestinian position on a critically important point suggests that it would not be unfair to appraise their position as if it were the extreme claim. Nevertheless, it seems useful first to analyze the "moderate" claim and then to analyze the extreme claim.

The Palestinian claim to a "secular democratic" Palestine does not readily

<sup>67</sup> See Peretz, *supra* note 51, at 332.

<sup>68</sup> Reprinted in Harkabi, *The Position of the Palestinians in the Israeli-Arab Conflict and Their National Covenant* (1968), 3 N.Y.U. J. INT'L L. & POLITICS 209, 230 (1970).

<sup>69</sup> *Id.* at 223, 230-31. Dr. Harkabi writes:

The . . . [1964 Palestinian National Covenant] can be interpreted to the effect that the Jews who lived in Palestine in 1947 would be recognized as Palestinians, that is, would be able to remain; whereas in the new text, as revised in the fourth session of the National Council (July, 1968), it is explicitly stated that only Jews who lived permanently in Palestine before 1917 would be recognized as Palestinians. This implies that the rest are aliens and must leave. It is indeed difficult to agree with the claim of some people, that the Arabs have become more realistic and their position more moderate, if a hallowed and authoritative document like the National Covenant specifies the aim of banishing almost two and a half million Jews.

*Id.* at 223.

<sup>70</sup> "Issues Before the 25th General Assembly," *International Conciliation* 17 (Sept. 1970). The full description of the Palestinian position given in *International Conciliation* is:

Palestinian guerrillas no longer insist that all those Jews who have migrated to Israel since 1948 have to be repatriated to the country of their origin. Since the adoption of the Palestinian National Covenant by the Palestinian National Council in 1968, leaders of the guerrilla movements have repeatedly stated that all the non-Zionist Israelis would be free to live in the "secular and democratic" state they envision.

*Id.*

fit any of the three paradigm self-determination situations. It is not a type I claim that Israel controls the governmental institutions or resources of another state or a type II claim that a class of citizens within Israel is denied self-determination as with apartheid in South Africa, although there may be overtones of both claims in the Arab position. And by its own terms it is not a type III claim for a separate Palestinian Arab national identity existing side by side with a Jewish Israel. Instead, it seems primarily a claim based on historical or territorial determinism. That is, historically the original territory and population of the Palestine mandate was largely Arab; therefore, a Jewish state within the mandate territory is a denial of self-determination. A principal difficulty with this position is that it fails to make clear why 1917 or 1922 is a more meaningful focus than the present for analyzing the demands of self-determination. Moreover, if history is the principal criterion then the Jews might also assert a plausible claim using an even older starting date.<sup>71</sup> But surely history is not the most meaningful referent of self-determination. To the contrary, it would seem more useful to refer to the demands and expectations of all of the people living in the former mandate territory today. That is, the starting place for self-determination is most meaningfully the demands and expectations of all of the people living in an area *now*, not merely the descendants of some group that at some time in the past were the principal inhabitants. This would include approximately two and one-half million Jews already organized in a separate Jewish state. Certainly their views on self-determination and the character of the state in which they would like to live are entitled to equal weight with the approximately equal number of Muslims and Christians in the area. It is hard to see, then, how in self-determination theory a separate Jewish state is any more unreasonable than a secular democratic state. To the contrary, it seems reasonable to take into account in support of the Israeli claim that the Jews have no national identity other than Israel,<sup>72</sup> that the United Nations recommended in 1947 after thorough study of what was already an intractable problem that Palestine should be partitioned into separate Jewish and Arab states, and that there is far greater assurance that the functioning democratic institutions of Israel represent its three million citizens than that the splintered Palestinian guerrilla organizations meaningfully represent the non-Israeli population of the area. In the real world the continued existence of the State of Israel would seem to have given rise to greater right than the rhetoric of the PLO.

The Palestinian claim also suggests a territorial determinism. That is, since the territory of Palestine was once united under the mandate it could not in 1948 or 1971 be divided into separate Jewish and Arab states. But as

<sup>71</sup> For an excursion into the historical arguments see, e.g., W. LAQUEUR (ED.), *THE ISRAEL/ARAB READER* (1968); Feinberg, *The Recognition of the Jewish People In International Law*, *JEWISH YEARBOOK OF INTERNATIONAL LAW* 1 (1948); Mallison, *The Zionist-Israel Juridical Claims to Constitute "The Jewish People" Nationality Entity and to Confer Membership In It: Appraisal In Public International Law*, 32 *GEO. WASH. L. REV.* 983 (1964).

<sup>72</sup> This is, of course, also true of the Palestinian Arabs, but unlike the Palestinians the Israelis accepted the United Nations partition plan which would have created both Jewish and Arab states.

the reapportionment decisions should remind us, people, not territory, are the relevant standard. Moreover, there is no absolute of territorial determinancy in international law. French Togoland became Ghana and Togo, and the German Cameroons became the Cameroons and part of Northern Nigeria.<sup>73</sup> Interestingly, both examples share a colonial background as does Palestine. Although the principle of self-determination of peoples might support creation of a separate Arab Palestinian state side by side with Israel, as for example in the West Bank and Gaza, it does not readily support Palestinian demands for a unified "secular democratic" Palestine. Other principles, such as restitution for the Arab refugees, may support Arab claims, but if it proves anything, the principle of self-determination supports the continued existence of the State of Israel.

It might also be questioned whether the proposed Palestinian model of a "secular democratic" state is necessarily a preferable formula in terms of national development. Although there are many successful examples of a multi-religious state, including the United States, on the other hand Cyprus, Lebanon, Kashmir, the Sudan, and Northern Ireland suggest that at least some such models may lead to continued strife and retarded national and human development. Along these lines it is certainly reasonable to take into account that it would seem particularly hard to establish a secular multi-religious state in the Middle East, a part of the world where pressures are strong for an established religion.

Extreme Arab Palestinian claims are even more doubtful than the "moderate" claims. If the referent of self-determination is people, more precisely people currently residing in an area, then it would seem indefensible to exclude any of them either from the initial constitutive decision as to the preferred character of their state or from participation in the proposed state. But extreme Arab claims may do just that with respect to "Zionist Israelis," Jews not living permanently in Palestine at the "beginning of the Zionist invasion," or persons in some other equally vague category. Although these extreme claims may not be a formula for driving the Israelis into the sea, they are at least a formula for creating a massive new refugee problem for a people who do not have neighbors to receive them. As such, these extreme claims would seem to curtail rather than support genuine self-determination. One can understand the feeling of helplessness of the Arab Palestinian caught up in international decisions concerning the character of his homeland. One can also understand his sense of grievance at his substantial disenfranchisement from those decisions. To offer the same or worse to the Israeli, however, is but to compound the suffering.

### *C. Respect for Human Rights*

Article 1(3) of the United Nations Charter focuses on "promoting and

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<sup>73</sup> E. LAUTERPACHT, *JERUSALEM AND THE HOLY PLACES* 17 (Anglo-Israel Association Pamphlet No. 19, 1968).

encouraging respect for human rights and for fundamental freedoms." As is also the case with respect to self-determination, Article 55 reiterates this purpose. And pursuant to Article 56 the members of the United Nations pledge themselves to take action to promote the purposes set forth in Article 55. This pledge to promote basic human rights would seem applicable to the Arab-Israeli conflict in a number of important ways. First, both Israel and the Arab states have an obligation to alleviate the plight of the Arab and Jewish refugees.<sup>74</sup> Moreover, the refugee problem is a human rights problem that should not have to await a full political solution of the Arab-Israeli conflict. Israel has a responsibility to permit Arab refugees willing to live in peace in Israel to return to Israel. And the Arab states have a responsibility to assist Arab refugees not wishing to return to Israel to resettle elsewhere and to allow Jews in Arab countries who wish to emigrate to Israel to do so. Both sides have a responsibility to compensate Arab and Jewish refugees for lost property to the extent required under usual principles of international law.

Second, both Israel and the Arab states have an obligation to protect the human rights of Arabs and Jews living under their control. This means protection of Arab civilians in the Israeli occupied territories by applying at least the minimal standards of the 1949 Geneva Convention Relative to the Treatment of Civilians. As the report of the Special Working Group of Experts established by the Human Rights Commission<sup>75</sup> and the report of the Special Committee of the General Assembly<sup>76</sup> demonstrate, this has not always been the case. On the other hand, Arab states should protect Jews living in Arab countries. As the recent Baghdad trials demonstrate, this has also not always been the case.

Lastly, protection of basic human rights strongly suggests the importance of protection of free access for all religions to Jerusalem and the Holy Places.<sup>77</sup> One possible model is the Trusteeship Council Statute for the City of Jerusalem,<sup>78</sup> although both Israel and the Arab states seem to have rejected internationalization as a solution. A more likely possibility would leave the administration of the city jointly in the hands of the states in the area but would provide an international presence for guaranteed access to the Holy Places. Whatever the final solution it should not be unilaterally determined by either side and should adequately guarantee free access to the Holy Places.

<sup>74</sup> See generally on the refugee problem Louise W. Holborn, *The Palestine Arab Refugee Problem*, 23 INT'L J. 82-96 (1968).

<sup>75</sup> Report of the Special Working Group of Experts Established Under Resolution 6 (XXV) of the Commission on Human Rights, U.N. Doc. E/CN.4/1016 (Jan. 20, 1970), Adds. 1 & 2 (Feb. 11, 1970), Adds. 3 & 5 (Feb. 20, 1970), Add. 4 (Feb. 18, 1970).

<sup>76</sup> Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories, U.N. Doc. A/8089 (Oct. 26, 1970).

<sup>77</sup> With respect to Jerusalem and the Holy Places see generally E. LAUTERPACHT, JERUSALEM AND THE HOLY PLACES 1-3, 5-85 (The Anglo-Israel Association Pamphlet No. 19, 1968); Jones *The Status of Jerusalem: Some National and International Aspects*, 33 LAW & CONTEMP. PROB. 169 (1968). It seems useful to keep separate the issues of administration of Jerusalem and free access to and preservation of the Holy Places.

<sup>78</sup> Trusteeship Council Statute for the City of Jerusalem, 5 U.N. GAOR, Supp. 9, at 19, U.N. Doc. A/1286 (1950).

#### D. *United Nations Recommendations*

There are a number of United Nations recommendations relevant to an appraisal of the Arab-Israeli conflict. One of the most important is General Assembly Resolution 181(II) of November 29, 1947, which recommended implementation of the United Nations Special Committee plan for partition with economic union.<sup>79</sup> The Resolution represents an important policy judgment that solution to the Arab-Israeli conflict should be a solution based on individual Jewish and Arab communities.

With respect to settlement of the refugee problem, General Assembly Resolution 242 of November 22, 1967, affirms the need "[f]or achieving a just settlement of the refugee problem"<sup>80</sup> as part of an overall settlement of the Arab-Israeli Conflict. General Assembly Resolution 194(III) of December 11, 1948, sets out a formula that has been repeatedly reaffirmed by the United Nations as a basis for just settlement. It provides that:

the refugees wishing to return to their homes and live at peace with their neighbors should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible . . . .<sup>81</sup>

In a significant departure from this formula, General Assembly Resolution 2535 of December 10, 1969, speaks of "the inalienable rights of the people of Palestine."<sup>82</sup> The referent of "inalienable rights of the people of Palestine" is vague, but the Resolution seems to indicate a political shift in United Nations consideration of the refugee problem. In addition to considering the problem as a human rights problem, the resolution seems to be focusing on the self-determination dimensions of the Arab Palestinians' situation as well. As the previous discussion of self-determination illustrates, the potential difficulties concealed by this vague language are enormous.

With respect to the status of Jerusalem, General Assembly Resolution 194(III) of December 11, 1948,<sup>83</sup> and Resolution 303(IV) of December 9, 1949,<sup>84</sup> recommended that the City of Jerusalem be placed under United Nations control. Pursuant to these determinations a Draft Statute for the City of Jerusalem was drawn up by the Trusteeship Council and approved on April 4, 1950.<sup>85</sup> Although all parties in the area seem to reject an international solution, the Draft Statute provides a useful model for an internationalized city. More recently, during 1967, 1968, and 1969, the General Assembly and

<sup>79</sup> G.A. Res. 181(II), U.N. Doc. A/519 at 131 (1947).

<sup>80</sup> S.C. Res. 242, 22 U.N. SCOR, 1382d meeting 8 (1967).

<sup>81</sup> G.A. Res. 194(III), U.N. Doc. A/810, 21 at 24 (1948).

<sup>82</sup> G.A. Res. 2535, 24 U.N. GAOR, Supp. 30, U.N. Doc. A/7630 (1969). For a brief discussion of the debates leading up to the adoption of this resolution see "Issues Before the 25th General Assembly," *supra* note 70, at 29-30.

<sup>83</sup> G.A. Res. 194(III), U.N. Doc. A/810 at 21 (1948).

<sup>84</sup> G.A. Res. 303(IV), U.N. Doc. A/1251 at 25 (1949).

<sup>85</sup> Trusteeship Council Statute for the City of Jerusalem, 5 U.N. GAOR, Supp. 9, at 19, U.N. Doc. A/1286 (1950).

Security Council passed a series of four resolutions calling on Israel not to unilaterally alter the status of Jerusalem and to rescind measures already taken to change the status of the City.<sup>86</sup>

With respect to freedom of navigation through international waterways in the area, a Security Council Resolution of September 1, 1951, calls on Egypt to permit the unrestricted passage of "shipping and goods through the Suez Canal wherever bound" and indicates that a continued state of belligerency is inconsistent with the 1949 Armistice agreements.<sup>87</sup> In addition, Resolution 242 of November 22, 1967, affirms the necessity "[f]or guaranteeing freedom of navigation through international waterways in the area"<sup>88</sup> as part of an overall settlement.

During 1967 the Security Council and the General Assembly called on all the parties to render humanitarian assistance to civilians and prisoners of war in the Arab-Israeli conflict and to "respect . . . the humanitarian principles governing the treatment of prisoners of war and the protection of civilian persons in time of war contained in the Geneva Conventions of 12 August 1949."<sup>89</sup> Most recently, a Special Committee of the General Assembly and a Committee of the Human Rights Commission have studied human rights problems in the occupied territories.<sup>90</sup> The composition and procedures of these Committees have been substantially politicized, and the resulting reports are correspondingly less useful. Nevertheless, the reports point up incidents of human rights violations that call for Israeli corrective action. A broadened study as requested by Israel that would also have examined the treatment of Jews in the Arab states would probably also have reported human rights violations requiring correction.

The most important United Nations recommendation on settlement is Resolution 242 of November 22, 1967. This resolution, set out in full earlier in this article,<sup>91</sup> outlines a carefully balanced package settlement. Most importantly, the outlines of that settlement include "[w]ithdrawal of Israel armed forces from territories occupied in the recent conflict" and "[t]ermination 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 bound-

<sup>86</sup> S.C. Res. 267, 24 U.N. SCOR, 1485th meeting 3 (1969); S.C. Res. 252, 23 U.N. SCOR, 1426th meeting 9 (1968); G.A. Resolutions 2253 (ES-V), 2254 (ES-V), U.N. GAOR (5th Emer. Spec. Sess. Supp. 1), 4 U.N. Doc. A/6798 (1967). Security Council Resolution 267 of July 3, 1969 was strongly worded. Among other strong clauses one "[c]ensures in the strongest terms all measures taken to change the status of the City of Jerusalem."

<sup>87</sup> S.C. Res. S/2322, 6 U.N. SCOR, 558th meeting 3 (1951).

<sup>88</sup> S.C. Res. 242, 22 U.N. SCOR, 1382d meeting 8 (1967).

<sup>89</sup> S.C. Res. 237, 22 U.N. SCOR, 1361st meeting 5 (1967); G.A. Res. 2252 (ES-V), U.N. GAOR (5th Emer. Spec. Sess. Supp. 1), 3 U.N. Doc. A/6798 (1967). Apparently the United States-sponsored truce accord of August 7 between Israel and Egypt also required both sides to abide by the Geneva Convention of 1949 Relative to the Treatment of Prisoners of War and to "accept the assistance of the International Committee of the Red Cross in carrying out their obligations under that convention." See "Treaty of Truce Accord," N.Y. Times, Aug. 14, 1970, at 7, col. 6.

<sup>90</sup> See the reports cited in notes 75-76 *supra*.

<sup>91</sup> See text at note 12 *supra*.



aries free from threats or acts of force."<sup>92</sup> Because of its careful balance, willingness to accept Resolution 242 would seem particularly important in assessing the settlement positions of the parties.

*E. The Outlines of a Reasonable Settlement as Suggested by Fundamental Charter Principles and United Nations Recommendations*

The outlines of a reasonable settlement as suggested by an analysis of these fundamental Charter principles and United Nations recommendations might be:

1. The Arab States should recognize the right of Israel to exist, terminate all claims of belligerency against Israel, and take effective measures to end fedayeen attacks on Israel launched from their territory.

2. The interest of Israel in the territories occupied as a result of the Six Day War is a functional interest limited to the protection of national security and the preservation of religious freedom in Jerusalem and the Holy Places. Except for freely negotiated border adjustments, the armed forces of Israel should withdraw from the occupied territories as the security threat abates and their religious freedom in Jerusalem and the Holy Places is assured. Under present conditions the nature of the security threat is such that it would not seem unreasonable to make peace agreements with the concerned Arab states a precondition for territorial withdrawal. In addition, demilitarized zones and arrangements for international supervision and major power guarantee might be employed to ensure the integrity of the agreed boundaries and freedom of passage through the Strait of Tiran. Demilitarized zones and some form of international supervision would seem particularly appropriate for the Golan Heights, Sharm-el-Sheikh, Jerusalem, the Gaza Strip, and border areas in the Sinai and the West Bank.

3. Any international supervisory forces should be under the continuing supervision of the United Nations. The agreement stationing such forces in the area should make it clear that they can be withdrawn only with the consent of the Security Council or other appropriate United Nations body.

4. As a consequence of termination of all states of belligerency Israeli shipping should be guaranteed free passage through the Strait of Tiran, the Gulf of Aqaba, a reopened Suez Canal, and the Strait of Bab-el-Mandeb.

5. There should be free access for all religions to the Holy Places in Jerusalem and elsewhere. In this connection it would seem appropriate that Jerusalem be demilitarized and that there be United Nations supervision of the Holy Places and guarantee of freedom of religious access within Jerusalem. Jerusalem could then be administered by some combination of Arab and Israeli control (e.g., joint Israeli-Jordanian administration of the entire City or Israeli administration of West Jerusalem and Jordanian administration of East Jerusalem).

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<sup>92</sup> S.C. Res. 242, 22 U.N. SCOR, 1382d meeting 8 (1967).

6. Settlement should be concluded by binding peace agreements between the principal parties that spell out in full the details of agreement, including the parties to be bound, secured boundaries for Israel and the Arab states, demilitarized zones, and any arrangements for international supervision and guarantee.

7. Settlement of the refugee problem should provide for voluntary repatriation and compensation to the extent consistent with security and economic viability of the states concerned. All of the states of the Middle East, the Arab states as well as Israel, have an obligation to assist in a meaningful permanent solution of the refugee problem. Solution to the refugee problem is an urgent human rights issue that need not await a final political settlement of the Arab-Israeli conflict.

8. Israel and the Arab States should take steps to afford greater protection for the human rights of Arabs in the occupied territories and Jews in the Arab states and to scrupulously observe the provisions of the 1949 Geneva Convention Relative to the Treatment of Prisoners of War.

9. Israel and the Arab states should cooperate for economic and social progress in the area. In this connection there should be a cessation of the Arab economic boycott against Israel. It might also be useful to arrange port facilities in Israel for Jordan and for Arab access between Gaza and the West Bank and to arrange for cooperative utilization of the resources of the Jordan River.

These proposals are by no means the only basis for a fair settlement of the Arab-Israeli conflict. A striking feature of the conflict is the wide range of reasonable compromise alternatives available if all participants were really dedicated to ending it. One creative suggestion demonstrating this wide availability of positive plans for peace is the proposal by Professor Michael Reisman, which features a Development Trust for the Sinai and a United Nations Trusteeship of the Golan Heights for the benefit of the indigenous Druze population.<sup>93</sup>

#### IV. COMPLIANCE OF THE PRINCIPAL BELLIGERENTS IN THE ARAB-ISRAELI CONFLICT WITH THE CHARTER OBLIGATION TO PURSUE PEACEFUL SETTLEMENT OF INTERNATIONAL DISPUTES

The three preceding sections have dealt with standards for appraisal of the obligation to pursue peaceful settlement of international disputes, the settlement positions of the contending belligerents in the Arab-Israeli Conflict, and the applicability of fundamental Charter principles and United Nations recommendations to that conflict. This final section will appraise the extent to which the parties settlement positions comply with their Charter obligation to pursue peaceful settlement. Since the record of settlement efforts is not wholly public,

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<sup>93</sup> M. REISMAN, *THE ART OF THE POSSIBLE: DIPLOMATIC ALTERNATIVES IN THE MIDDLE EAST* (1970).

conclusions are necessarily tentative. Nevertheless, enough information seems available to make some useful judgments.

Fundamental Charter principles and United Nations recommendations strongly support the right of Israel to exist in peace within "secure and recognized boundaries." Pursuant to this obligation the Arab states should take effective measures to end fedayeen raids launched from their territory against Israel and should cease all acts of belligerency directed against Israel. Until the Arab states take steps to end their continuing state of belligerency against Israel, Israel will have a continuing security problem. As such, the Israeli position of no withdrawal from the occupied territories until a genuine peace is achieved seems not unreasonable under the Charter, at least with respect to those territories functionally necessary for Israeli security. If the Arab states were to agree to termination of belligerency on condition that Israel withdraw from the occupied territories and Israel refused to withdraw, the Arab states could simply resume belligerency and would not be seriously prejudiced. On the other hand, if Israel were to withdraw prior to Arab agreement to terminate belligerency and the Arab states then refused to terminate belligerency, Israel's security might be seriously impaired with no way of rectifying the situation short of another Six Day War. Since both sides mistrust the intentions of the other this is a useful comparison to make. On the other hand, it may also be true that the Arab states are put at a disadvantage in negotiations by virtue of Israel's continued occupation of the territories seized in the Six Day War. In order to comply with their Charter obligation to pursue peaceful settlement of disputes, though, the Arab states need not propose anything other than a reasonable settlement consistent with fundamental principles of the Charter and United Nations recommendations. If Israel then refused to accept the proposed settlement the burden of justification would rest on Israel rather than the Arab States.

If Israel's position is justifiable with respect to Arab termination of belligerency against Israel, in several other respects it has been less satisfactory. There have been indications that Israel would be unwilling to make concessions concerning the status of East Jerusalem and possibly the Golan Heights and Sharm-el-Sheikh. Moreover, the Israeli position even with respect to the other occupied territories has been ambiguous and has not clearly indicated that the interest of Israel in the occupied territories is a security interest only. Although Israel is entitled to retain the occupied territories until termination of Arab belligerency, it should make clear that its interest in the territories (other than East Jerusalem) is a security interest only. Israel might appropriately take the initiative in proposing territorial boundaries with only minor readjustments, pullback in exchange for unambiguous termination of belligerency, demilitarized zones, major power guarantees, and meaningful international supervision that would take account of the legitimate interests of both Israel and the Arab States as well as the indigenous population of the territories. Some minor

boundary adjustments seem called for simply in terms of benefit to both sides from straightening out the accidents of the 1948 boundaries. But aside from freely negotiated readjustments in boundaries and in the status of Jerusalem, Israel should indicate clearly that its interest in the occupied territory is a security interest only.

Israel has a legitimate interest in orderly administration of and free access to Jerusalem and the Holy Places. In view of the past Jordanian refusal to comply with the intent of the 1949 Armistice Agreement permitting Israeli's access to the Holy Places in East Jerusalem, Israeli reluctance to negotiate the future of Jerusalem is understandable.<sup>94</sup> Nevertheless, the final status of Jerusalem should not be determined unilaterally by any state in the area. There are reasonable alternatives available to ensure free access to Jerusalem and the Holy Places. Israel should take the initiative in urging proposals that would recognize the substantial Arab, Israeli, and international religious concern for the status of Jerusalem. Perhaps the most realistic solution would be joint Israeli-Jordanian administration of the City with a limited international supervision to ensure free access to the Holy Places.

With respect to the Golan Heights, Israel should propose such arrangements as will recognize the very real security interests of Israel as well as the aspirations of the indigenous population, particularly the substantial Druze population of the area. Continued Syrian refusal to accept such arrangements or to terminate belligerency would justify continued occupation at least of those areas necessary for Israeli security.

Lastly, Israel should take the initiative in urging specific proposals for cooperative settlement of the refugee problem. Such initiatives should provide maximum free choice for refugees living in the occupied territories to return to Israel to the extent that such refugees are willing to live in peace with Israel.

Perhaps the central issue in the Arab-Israeli conflict is Arab willingness to accept the existence of Israel, to take steps to control fedayeen activities directed against Israel from Arab territory, and to end all acts of belligerency against Israel. Although both Egypt and Jordan have accepted Security Council Resolution 242, which implies all of this, in a number of important respects their settlement position fails to confirm that acceptance. Thus, they refuse to have direct talks with Israel, officially accept only the 1947 partition resolution boundaries, refuse (at least publicly) to accept a final settlement in the form of a binding peace agreement with Israel,<sup>95</sup> indicate that they will never have diplomatic relations with Israel, require pullback from Syrian as well as Egyptian and Jordanian territory as a precondition to settlement even though Syria has not accepted Resolution 242, and publicly proclaim support for the Palestine Liberation Organization, which is dedicated to a continuing armed

<sup>94</sup> See Article VIII of the General Armistice Agreement between the Hashemite Kingdom of Jordan and the State of Israel, 42 U.N.T.S. 304, 314 (April 3, 1949).

<sup>95</sup> The New York Times has reported that the Egyptian reply to Ambassador Jarring's initiative of February 8, 1970 indicates a willingness to conclude a binding peace treaty with Israel. If so this would be a significant shift in the Egyptian position. N.Y. Times, Feb. 19, 1971, at 8, col. 4 (city ed.).

struggle against the existence of Israel as a Jewish state. As a result, the ambiguity in their position raises serious doubt about good faith compliance with the Charter obligation to pursue peaceful settlement of disputes. Compliance with the Charter obligation suggests that the Arab states should be willing to negotiate directly with Israel for the purpose of concluding a definitive and legally binding settlement of the Arab-Israeli conflict. To that end they should take the initiative in proposing an agreement that would fully take account of Israel's right to exist within "agreed and recognized" boundaries approximating the pre-Six Day War boundaries, control of fedayeen raids from Arab territory directed against Israel, guarantees of free access through major waterways in the area, including the Strait of Tiran and the Suez Canal, and cessation of all acts of belligerency against Israel. They should also be willing to proceed state by state in settlement and not to link termination of belligerency with withdrawal from the territory of a State that has refused to accept Resolution 242. At least in the absence of such realistic proposals for ending belligerency, resumption of a "war of attrition" against Israel to force relinquishment of the occupied territories would seem in violation of the Charter.

Egypt and Jordan should also take the initiative in proposing cooperative settlement of the Jerusalem and refugee problems. If Israel should not unilaterally determine the status of Jerusalem neither should Jordan, even with respect to East Jerusalem. All states in the area have an obligation to recognize the substantial and legitimate Arab, Israeli, and international religious concern in Jerusalem and the Holy Places. If international administration is unacceptable, one possibility would be some form of joint Arab-Israeli administration of the City with international supervision of free access to the City and the Holy Places. Above all, however, Jerusalem should not be treated simply as a problem of territorial withdrawal like that of the other occupied territories. With respect to refugees, the Arab states should take steps to protect the human rights of Jews in Arab territories and should develop and provide meaningful opportunities for Palestinian refugees who would prefer assimilation in the Arab countries rather than to return to Israel. An appeal might be made to the United Nations or the four powers to provide the necessary financing for the plan. One of the great tragedies in the Arab-Israeli conflict has been the needless sacrifice of the human potential of the Palestinian refugees, a sacrifice now being passed along to a second generation. It is time for all sides to recognize that a genuine commitment to human rights transcends political causes.

Syria has refused to accept General Assembly Resolution 242 and seems committed to a continuing challenge to the existence of Israel. By any standards of content and procedure Syria is in fundamental violation of the Charter obligation to pursue peaceful settlement of disputes. Syria has not urged peaceful settlement, has not indicated a willingness to negotiate, has refused to terminate belligerency against Israel, provides substantial assistance

and encouragement to the PLO, has refused to accept the most important United Nations recommendations for settlement, and seems unwilling to compromise.

The Palestine Liberation Organization is a revolutionary political and military front rather than a state. Accordingly, it may be somewhat anomalous to speak of its obligation under the Charter to pursue peaceful settlement of disputes. More precisely, the obligation is that of the states assisting the PLO and from whose territory the PLO operates. Nevertheless, it seems meaningful to appraise the PLO position by reference to fundamental Charter principles, particularly self-determination. As has been seen, the principle of self-determination of peoples does not readily support even "moderate" Palestinian demands for the replacement of Israel with a "secular democratic" State of Arab design. Even if it did, under the Charter principle restricting the use of force as an instrument of national policy, continuing third party assistance to the PLO would seem to violate the obligation to pursue peaceful settlement of disputes as well as the obligation to refrain from assisting insurgent movements directed against another state.

#### V. CONCLUSION

Appraisal of the Charter obligation to pursue peaceful settlement of international disputes has been virtually ignored by international-legal scholars concerned with major war-peace issues. Such appraisal is an important additional focus for legal analysis, particularly with respect to major recurring world order issues. One difficulty in such appraisal has been the lack of recognized standards. Analysis of the general Charter structure, however, suggests a range of useful standards of procedure and content. A particularly important criterion for appraisal is the consistency of the belligerents' settlement positions with respect to the fundamental Charter principles and United Nations recommendations.

Applying suggested standards of procedure and content to the positions of the major participants in the Arab-Israeli conflict indicates that all participants have room for improvement in complying with the Charter obligation to pursue peaceful settlement of disputes. Israel should clarify that its interest in the occupied territories is a security interest only and that its forces will withdraw as security in the area is guaranteed and a negotiated settlement is reached with respect to Jerusalem and the Holy Places. Egypt, Jordan, Syria, and Lebanon should unequivocally indicate their willingness to agree to a binding agreement with Israel recognizing the right of Israel to exist in peace within "secure and recognized boundaries," agreeing to take effective measures to control fedayeen raids on Israel launched from their territory, agreeing to a negotiated settlement of the problem of Jerusalem and the Holy Places, and terminating all acts of belligerency against Israel. That all parties have room for improvement does not indicate that all are in equal compliance with Charter

obligations. Of the principal belligerents, Syria seems in open violation of the Charter obligation to pursue peaceful settlement of international disputes. Even with respect to the more moderate posture of Egypt, Jordan, and Lebanon, perhaps the most critical need is for unequivocal indication of Arab willingness to terminate belligerency against Israel.

The tortured history of efforts at belligerent solutions to the Arab-Israeli conflict strongly suggests that a peaceful solution is the only solution. Until all parties accept this fundamental truth time will probably be on the side of wider conflict. If, however, all parties to the conflict genuinely fulfill their Charter obligations to seek a peaceful solution, the present period of diplomatic activity could be a prelude to lasting peace.