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**SECURITY COUNCIL
RESOLUTION 242:
A VIOLATION OF LAW AND
A PATHWAY TO DISASTER**

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SECURITY COUNCIL RESOLUTION 242: A VIOLATION OF LAW AND A PATHWAY TO DISASTER

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Resolution 242, adopted by the United Nations Security Council five and a half months after the outbreak of the Six-Day War of June 1967, stated the principles for the establishment of a just and lasting peace in the Middle East. The goal of Resolution 242 was “to achieve a peaceful and accepted settlement in accordance with the provisions of this resolution”. Since Resolution 242 was not self-enforcing, a settlement of this kind could only be achieved through direct negotiations between the parties who were affected by the resolution. The Draft Resolution that became Resolution 242 was introduced by the United Kingdom Permanent Representative, Lord Caradon (Hugh Mackintosh Foot) on November 16, 1967 and passed unanimously on November 22, 1967. Caradon based his Draft Resolution on Chapter VI of the UN Charter dealing with the “Pacific Settlement of Disputes” containing non-binding provisions involving “parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security” (Article 33 of the Charter). This Resolution was not based on Chapter VII of the Charter dealing with actions or enforcement measures with respect to threats to the peace, breaches of the peace and acts of aggression, as laid down in Articles 41 and 42 of the Charter. Though the legal basis of Resolution 242 is not actually specified in the resolution itself, it can be deduced from its terms and language to be a non-obligatory recommendation and from the fact that it does not make any prior determination of the existence of any threat to the peace, breach of the peace or act of aggression, as required by Article 39 of the Charter. This determination is a necessary condition before any enforcement measures can be taken by the UN for failure by the parties to the conflict to comply with the decisions of the Security Council.

As a consequence of Resolution 242 being only a recommendation to the states involved in the Six-Day War of June 1967 concerning the best way to achieve a just and lasting peace in the Middle East, it cannot be classified as “international law” nor can it produce “legal rights” in favor of any parties to whom it is meant to apply. Neither, for that matter, does the Resolution produce “legal obligations” that are imposed upon all the states concerned, requiring them to act in conformity with the resolution unless those states agree mutually to do so. It is also important to note that Resolution 242 is applicable to states only, and not to non-state entities such as the “Palestine Liberation” Organization.

Two principles, supposedly in fulfillment of the UN Charter, are enunciated in the Resolution to attain “a just and lasting peace in the Middle East” or a peaceful and accepted settlement. The first principle applies to Israel alone and calls for the “withdrawal of Israeli armed forces from territories occupied in the recent conflict”. The use of indefinite language as regards Israel’s contemplated withdrawal was intentional. The British text was preceded by an American draft resolution introduced a week earlier on November 7, 1967 and fully reflected the US position on the question of Israel’s recommended withdrawal “from territories occupied in the recent conflict”. Neither the British nor the American draft resolutions identified the territories from which a withdrawal of forces would be made, nor was a time frame given for this withdrawal. These points were to be decided, as already indicated, by negotiations between the parties and hence no immediate Israeli withdrawal was required to comply with the resolution. The American draft was based on talks previously held with Israel to obtain its consent to withdraw from most but not all “the” territories allegedly

“occupied” by Israeli armed forces in the Six-Day War. In those talks, Israel agreed to withdraw from all of Sinai but not from the Gaza Strip which it wanted to keep, provided a peace treaty could be concluded with Egypt. Israel refused to withdraw from the other territories without proper security adjustments or border changes, the extent of which may or may not have involved major changes to the pre-Six-Day War borders, depending on how “secure” the negotiated borders would be. In order for Israel to have secure borders with Jordan, in accordance with the resolution, extensive border modifications were required, otherwise they would always be insecure. On the other hand, the US believed that only “minor” border changes should be made, but no substantive alterations.

The American position on the extent of the Israeli withdrawal was first enunciated by President Johnson in a speech delivered on June 19, 1967. He stated:

There are some who have urged, as a single, simple solution, an immediate return to the situation as it was on June 4. As our distinguished and able Ambassador, Mr. Arthur Goldberg, has already stated, this is not a prescription for peace, but for renewed hostilities.

Certainly troops must be withdrawn, but there must also be recognized rights of national life, progress in solving the refugee problem, freedom of innocent maritime passage, limitation of the arms race, and respect for political independence and territorial integrity.¹

President Johnson thus linked any Israeli withdrawal of troops with the attainment of all five principles that he set out in his speech. He emphasized strongly that the withdrawal of Israeli forces was not to be immediate, but would take place only when the other conditions he listed were also fulfilled.

The American position on Israel’s withdrawal was challenged in the Security Council by three other draft resolutions submitted by Latin American countries, the Asian-African nations of India, Mali and Nigeria and separately by Soviet Russia. These three drafts demanded a complete Israeli withdrawal to the lines existing prior to the outbreak of war, i.e., to the June 4, 1967 lines. However, none of them ever reached the stage of a vote in the Security Council, since after much wrangling between the members, it was unanimously decided at the end to support only the British text of Lord Caradon, that deliberately used the very same indefinite language on Israeli withdrawal as the draft American resolution did. Thus it is clear that Resolution 242, when finally adopted, did not require a total Israeli withdrawal of forces “from all the territories”, but only “from territories”, which took into account Israel’s security concerns on this question.

If any further evidence is needed to prove that Resolution 242 did not oblige Israel to withdraw completely to the June 4, 1967 lines, it is provided by three of the formulators of this resolution, Arthur J. Goldberg, US Ambassador to the UN, George Brown, the British Foreign Secretary in 1967 at the time the resolution was adopted, and Lord Caradon, the sponsor of the resolution.

In the words of Ambassador Goldberg in a speech he delivered on May 8, 1973 in Washington:

Resolution 242 (1967) does not explicitly require that Israel withdraw to the lines occupied by it before the outbreak of the war. The Arab States urged such language; the Soviet Union... proposed this at the Security Council, and Yugoslavia and some other nations at the Special Session of the General Assembly. But such withdrawal language did not receive the requisite support either in the Security Council or in the Assembly.

Resolution 242 (1967) simply endorses the principle of “withdrawal of Israel’s armed forces from territories occupied in the recent conflict”, and interrelates this with the principle that every state in the area is entitled to live in peace within “secure and recognized boundaries”.

The notable omissions – which were not accidental – in regard to withdrawal are the words “the” or “all” and “the June 5, 1967 lines”. In other words, there is lacking a declaration requiring Israel to withdraw from “the” or “all the” territories occupied by it on and after June 5, 1967.²

Substantiating Ambassador Goldberg’s interpretation of Resolution 242, George Brown stated in January 1970:

I formulated the Security Council resolution. Before we submitted it to the Council we showed it to the Arab leaders. The proposal said Israel will withdraw from territories that were occupied and not from “the” territory, which means that Israel will not withdraw from all the territories.³

More corroboration is provided by Lord Caradon:

Withdrawal shall take place to secure and recognized boundaries, and these words were very carefully chosen: they have to be secure, and they have to be recognized. They will not be secure unless they are recognized. And that is why one has to work for agreement. This is essential. If we had attempted to draw a map, we would have been wrong. We did not. And I would defend absolutely what we did. It was not for us to lay down exactly where the border should be. I know the 1967 border very well. It is not a satisfactory border, it is where troops had to stop in 1947, just where they happened to be that night. That is not a permanent boundary.⁴

Later, in an interview with a Lebanese newspaper, the Beirut Daily Star, on June 12, 1974, Lord Caradon is quoted as saying:

It would have been wrong to demand that Israel return to its positions of June 4, 1967 because those positions were undesirable and artificial. After all, they were just the places where the soldiers of each side happened to be on the day the fighting stopped in 1948. They were just armistice lines. That is why we did not demand that the Israelis return to them.

The second principle in Resolution 242 taken directly from the UN Charter to achieve a just and lasting peace in the Middle East applies to every state in the region. This principle affirms what the Charter supremely requires of all states: “Termination of all claims or states of belligerency and respect for and acknowledgment of the sovereignty, territorial integrity and political independence of every state in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force.” The language setting forth this goal was a reflection of Article 2, paragraph 4, of the UN Charter, which lays down the obligation that “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...” The acceptance of this second principle by Arab states which approved Resolution 242 meant in effect the recognition by them of the State of Israel. This principle was the reason why Israel agreed to accept the resolution of November 22, 1967, for not only did it accord recognition of Israel by those Arab states accepting the resolution, it also urged them to end their state of belligerency against the Jewish State and acknowledge its right to live in secure and recognized boundaries. Moreover, they also had to respect Israel’s sovereignty and political independence. Theoretical Arab recognition also resulted from one of the recitals in the Preamble stating the need to work for a just and lasting peace in which every State in the area can live in security and also from the second clause of Resolution 242 which “affirms further the necessity for guaranteeing the territorial inviolability and political independence of every state in the area through measures including the establishment of demilitarized zones”.

The Arab states of Egypt and Jordan both initially accepted Resolution 242 in the hope that Israel would then withdraw from the territories they had just lost to Israel in the Six-Day War,

which either they had illegally acquired in the 1948 War or which never legally belonged to them under international law. In regard to Jordan, the pro-Arab, anti-Israeli journalist and author, Donald Neff, claims in a book he wrote that a secret agreement existed between the US and Jordan under which the US gave what he called “ironclad assurances” to King Hussein of Jordan, “that the US was prepared to support the return of a substantial part of the West Bank to Jordan with boundary adjustments, and would use its influence to obtain compensation to Jordan for any territory it was required to give up”.⁵ The assurances given to Hussein, writes Neff, were made by US Secretary of State Dean Rusk, UN Ambassador Arthur J. Goldberg and President Johnson himself in a meeting with Hussein at the White House on November 8, 1967. Neff reports that Hussein asked Johnson how soon he could expect Israel to withdraw and was told by him that it would take place in six months and this time frame was allegedly reiterated by Goldberg.⁶ Neff further states that Israel acquiesced to the terms of the secret agreement. However, Israel flatly denied ever doing so.

Goldberg for his part not only denied the accuracy of the assertion that Resolution 242 presupposed only minor border changes, but emphatically denied that any assurance or commitment had ever been given to King Hussein by the American Government that it would ensure Israel’s withdrawal from the Jordanian West Bank, as the King falsely claimed in US newspaper interviews. In his own newspaper article refuting Hussein’s allegation of a secret agreement with the US, that it would compel Israel’s withdrawal from the Jordanian “West Bank”, Goldberg wrote:

In 1967, I was the permanent representative of the United States in the United Nations. In that capacity, I met with King Hussein in New York during November 1967 on four occasions. These conversations, as described in the reporting cables on file with the US Department of State, foreshadowed the United States drafting of, and concurrence in, United Nations Security Council Resolution 242 of November 1967.

In the course of these meetings, I made it clear to King Hussein that I was speaking at the express authorization of President Lyndon Johnson. It was, I stated, the US view that in light of the fact that Jordan had entered the 1967 war after Israel had urged it not to do so, and had been defeated, the United States could not guarantee that the West Bank would be returned to Jordan. The most we could do, I made clear, would be to use our influence to help Jordan get the best deal possible.

I did say that we did not visualize a Jordan limited only to the East Bank. This is a far cry from a commitment to Jordan that we would guarantee Israel’s withdrawal from the West Bank. The statement in Secretary Henry Kissinger’s memoirs that I assured King Hussein that we would compel Israel’s withdrawal to the pre-June 5, 1967 border, except for minor border rectifications, is inaccurate and unsupported by the contemporaneous records of the Department of State.⁷

Goldberg’s robust rebuttal of King Hussein’s allegation of a secret commitment made to him by the US is significant. Goldberg enjoyed a close relationship with President Johnson and evidently knew his thinking on the subject of Resolution 242 and what it meant. Because of his personal role in helping to draft the resolution, he was uniquely able to refute the mischievous account of Henry Kissinger who served as Secretary of State in the Richard Nixon and Gerald Ford Administrations. During his period of public service, Kissinger was very active in urging Israel’s withdrawal from Judea and Samaria. He conveniently used the lie spread by Hussein to try to compel Israel to return to what Israeli Foreign Minister Abba Eban called the “Auschwitz borders” of Israel that existed with Jordan prior to the Six Day War.

The other principal enemy combatant, Syria, absolutely refused to accept this resolution because it did not recognize the existence of Israel and did not want to negotiate with it to make peace. However, Syria changed its mind after it was defeated in the Yom Kippur War of 1973 and suffered a further loss of territory. It then agreed to UN Resolution 338, adopted on October 22, 1973, which called upon the parties to implement Resolution 242 in all its parts.

Taken together, the two principles of Resolution 242, if implemented by the parties to the conflict, would require Israel's withdrawal, not, as already noted, from "all" the territories it allegedly "occupied" in the Six-Day War – the term "occupied" is fraught with legal meaning under the Hague Regulations of 1907 and the Fourth Geneva Convention of 1949 – but only a withdrawal to "secure and recognized boundaries".

The Arab and Russian interpretation of this resolution, i.e., that Israel must immediately withdraw its forces back to the pre-June 5, 1967 lines without regard to secure and recognized boundaries, and even before negotiations take place, is completely unfounded. The withdrawal could only occur when all other provisions and principles mentioned in the resolution were resolved at the same time and not before. However, in keeping with the Khartoum Summit Conference Resolutions of September 1, 1967, the Arab states refused to enter into any peace talks with Israel, or recognize it, a stance which forestalled any planned Israeli withdrawal. The stalemate ended in the case of Egypt only when such talks did begin, talks that resulted in a peace treaty signed on March 26, 1979, in which Israel agreed to withdraw completely from Sinai over a period of three years. In that particular case, the armistice borders of 1949 were now deemed to be in reference to Resolution 242 "secure and recognized", as opposed to the former Auschwitz armistice borders with Jordan.

Aside from any mis-interpretation of Resolution 242 by Russia and the Arab states, the very principle of Israel withdrawal was inimical to Israel and was not required under the UN Charter as the Resolution purported. In fact, the Security Council does not have and never had the authority or right to order Israel to withdraw from territories that constituted historical and legal areas of the Jewish National Home and Land of Israel that had been recognized implicitly or explicitly as belonging to the Jewish People in various acts of international law: the San Remo Resolution of April 25, 1920; the Franco-British Boundary Convention of December 23, 1920; and the Mandate for Palestine, confirmed by the League of Nations on July 24, 1922 and accepted by the United States in the Anglo-American Treaty on Palestine of December 3, 1924. The principle of withdrawal in Resolution 242 is premised on the words emphasized in the Preamble of this resolution, which refers to the "inadmissibility of the acquisition of territory by war". This dictum, it must be noted, is wrong, since it ignores the situation where a state, threatened with imminent aggression or destruction by one or more other states, takes preemptive action and captures parts of the territory of those states in a war that breaks out between them. In this case it is certainly admissible under international law for the state under imminent attack to keep the territory that was captured from which the planned aggression emanated. The dictum also smacks of great hypocrisy since many states in past centuries have aggrandized their territory by capturing lands from other states by means of war – that Resolution 242 naively states is "inadmissible". A good example of this is the United States which took two-fifths of the territory of Mexico as a result of the Mexican War, 1846-1848. This territory includes what are today the states of California, Nevada, Utah and parts of Arizona, New Mexico, Colorado and Wyoming. France for its part added to its domain by taking Alsace-Lorraine from Germany in World War I, and also fought battles over territories that today comprise France, such as Savoy, Nice and Corsica that were once part of pre-unified Italy, Sardinia and Genoa. Moreover, over the preceding centuries Germany, Italy and Russia also acquired territories in war with other states, and other examples abound. By contrast, the

State of Israel, which is a creation of the Jewish People and an inherent part of it, never acquired legal title to the liberated Jewish territories as a result of war it itself initiated, but only as a result of the decisions taken by the Principal Allied Powers at the San Remo Peace Conference on April 24-25, 1920 and in various acts of international law. The territories liberated in the Six-Day War had been illegally removed by Britain from the Jewish national patrimony during the 28 years Britain administered Palestine as a mandated territory from July 1, 1920 to May 14, 1948. What happened in the Six-Day War was that the State of Israel, threatened with stark Arab aggression and destruction, restored to the Jewish nation in a war of self-defense those areas of the Jewish National Home and the Land of Israel that originally belonged to it under international law. The situation was similar to what France achieved in World War I, when it restored Alsace-Lorraine to its patrimony, after this territory had been taken by Germany in the Franco-Prussian War of 1870-1871. Alsace-Lorraine was never called “occupied German territory” after France re-conquered it. Moreover, the dictum of the “inadmissibility of the acquisition of territory by war” should be applied not to Israel, but to Jordan which illegally occupied Judea and Samaria in the 1948 War of Independence, and also to Egypt which did the same in regard to Gaza. It is thus a serious misrepresentation to characterize Israel’s restoration of Jewish-owned territory as an “occupation”, as Resolution 242 did, when it was nothing of the kind. To the extent that Resolution 242 calls for an Israeli retreat from parts of the historical Jewish homeland, which includes Judea, Samaria and Gaza as well as the Golan and at least part of Sinai, it is to that extent illegal under international law. In terms of the UN Charter under which Resolution 242 was supposedly made, this resolution violates a key provision thereof, Article 80, which declares in effect that until a trusteeship agreement has been concluded to replace the then-existing Mandate for Palestine (no such agreement was ever made), nothing shall be construed to alter the rights of any states or peoples or the terms of existing international instruments. The language of Article 80 refers implicitly to the rights of the Jewish People acquired under the Mandate for Palestine and other international acts related to the Mandate. Resolution 242 can therefore have no application to any area of the Jewish National Home and Land of Israel or alter Jewish legal rights thereto. Insofar as the resolution does alter these rights, by calling for an Israeli withdrawal from territories historically connected with the Jewish People, that were repossessed in the Six Day War, it is a violation of international law and definitely not a principle in fulfillment of the UN Charter as Resolution 242 falsely alleges in paragraph 1(i) of the resolution. In this regard, since none of the territories that Resolution 242 infers were “occupied territories” were in actual fact “occupied territories”, but part of the national patrimony of the Jewish People, or at the very least not owned by Arab states, this resolution becomes devoid of any legal meaning. It represents not international law, but a travesty of that law.

In addition to the resolution’s incompatibility with international law that bestowed the legal right to all of Palestine on the Jewish People, the resolution also violated Israel’s own constitutional law in the form of the Area of Jurisdiction and Powers Ordinance and the Proclamation issued on September 2, 1948 by Defense Minister David Ben-Gurion, formally known as “Israel Defense Forces Government in the Land of Israel” (or simply “the Land of Israel Proclamation”). Israeli constitutional law as it existed when Resolution 242 was adopted on November 22, 1967 prohibited Israel’s withdrawal from the territories comprising the Land of Israel that were liberated in the Six Day War. That fact, however, did not stop the Eshkol Government from accepting Resolution 242, a clear violation of Israeli law that has produced disastrous repercussions for the country ever since. Rather than withdrawing from the territories reconquered by the IDF in 1967, Israel was obliged to incorporate those territories into the State in accordance with the provisions of the aforementioned Area of Jurisdiction and Powers

Ordinance and the Land of Israel Proclamation or, at the very least, leave them open for future incorporation under section 11B of the Law and Administration Ordinance.

From another aspect, it is sterile to argue that Israel is not obliged to withdraw from liberated Jewish territories (Judea, Samaria, Gaza, Golan and Sinai) merely because of the fact that Resolution 242 uses indefinite language rather than the definite article "the" before the word "territories" in the official English version in which the resolution was drawn up, but not incidentally in the text of the UN's four other official languages (French, Spanish, Russian and Chinese). While it is undoubtedly true that Resolution 242, based on the indefinite language employed therein, does not require a complete Israeli withdrawal, Israel's rights to lands constituting its ancient and modern patrimony should not be founded on this grammatical argument, as it so often is by those who mistakenly believe that this resolution is a beneficial document in support of Israel's position and rights. Israel's legal case for keeping Judea, Samaria, the Golan Heights and formerly Gaza and Sinai is based on a much sturdier foundation, without regard being paid to the indefinite language of Resolution 242 which first and foremost calls for an Israeli retreat, even if it is to secure and recognized boundaries or what are sometimes called "defensible borders". That foundation was created in the global peace settlement following the Great War of 1914-1918 between the Principal Allied Powers and the Central Powers. In the settlement that was then made, the aspirations of the Arab Independence Movement were amply fulfilled, gaining most of the land mass of the Middle East, while all of Palestine was left for the establishment of the Jewish National Home, i.e., a future Jewish State, as signified by the Arabs themselves in the Weizmann-Feisal Agreement of January 3, 1919. It was thus a great mistake for Israel to approve this resolution which denied or ignored its rights to all of Palestine, as recognized in the global peace settlement concluded in 1919 and 1920. It was really an act of utter folly by Israel to succumb to American pressure on this critical point, requiring it to withdraw from parts of the Jewish homeland, just as it was to accept the terminology of the resolution – that these territories should be characterized as "occupied". The result of this folly was to seriously undermine Israel's iron-clad legal case to the liberated Jewish territories.

Israel should have made it clear to the American Government from the very beginning that it is not required to withdraw from any of the aforementioned territories and that it considered them part of the Jewish national patrimony. This was true even in regard to Sinai which, except for a relatively small portion of land in the north-west part of the peninsula, was not an officially recognized appendage of Egypt in 1967 under international law. During the Ottoman Period prior to 1906, the Sanjak of Jerusalem that unofficially comprised the core part of "Palestine", but not the whole of it, included a large slice of Sinai in its northern and central section, from El-Arish to the port of Suez and thence across to Aqaba. From 1906 to 1949, the administrative boundary in Sinai was pushed back under British coercion to a line extending from Rafah to Taba, which in 1949 became the armistice line until 1967. The Egyptian-Israeli Armistice Agreement stated specifically that the demarcation line "is not to be construed in any sense as a political or territorial boundary".

Resolution 242 adds two more requirements for achieving a just and lasting peace in the Middle East. First, it affirms the necessity for guaranteeing freedom of navigation through international waterways in the area. This was a reference to Egypt's closure of the Tiran Straits to Israeli shipping, an act of war which was a major factor in sparking the Six-Day War, as President Johnson said in his June 19, 1967 speech. The narrow straits connect the Gulf of Eilat with the Red Sea. In addition, Egypt had prevented Israel from using the Suez Canal which, as an international waterway, was also included in the call for freedom of navigation for all nations in the Middle East.

Second, Resolution 242 “affirms further the necessity for achieving a just settlement of the refugee problem”. The “refugee problem” had more than one meaning. It was naturally a reference to the existing Arab refugee problem that has been immune to resolution and has grown exponentially over the years by illogically adding to the original number of refugees in 1948 and 1967 most of whom have already passed away, all of their descendants including, amazingly enough, even grandchildren and great-grandchildren who never lived in or fled from Mandated Palestine, and providing them with free rations, medical care, educational facilities and other services. Most of these so-called refugees live in Gaza where about four-fifths or 80% of the population receive support and benefits from the United Nations. The Arab refugee issue has been shamelessly exploited by the twenty-two Arab states as a propaganda weapon against Israel. No other group of displaced persons in the world has held the status of refugees for such a long period of time. The whole idea of Arab refugees remaining refugees even after 60 years, or in effect forever, is nothing less than a gigantic fraud that should be brought to an end by one simple method, the disbanding of the UN agency (UNRWA) and the withdrawal of all US and European funding for it, that serve to perpetuate the ongoing fraud.

“A just solution of the refugee problem” also carried with it a reference to the problem of Jewish refugees from Arab countries who were driven out or escaped from Moslem persecution both before and after the rebirth of the State of Israel. In fact, the number of Jewish refugees exceeded the number of Arab refugees who fled Palestine and Israel during the course of war. There were about 800,000 Jews who left Arab countries – up to one million if Shi’ite Iran is included – as compared to about 700,000 Arabs who left what became the State of Israel both in 1948 and 1967.

No mention is made in Resolution 242 of the so-called “Palestinians” and their alleged right of self-determination. That would only come later, on December 10, 1969, when the General Assembly adopted Resolution No. 2535 (XXIV) which affirmed “the inalienable rights of the people of Palestine”, followed in later years by a slew of other resolutions of the same type that converted the “refugees” into a new “nation” unknown in history and no different from other Arabs living in Israel and the Arab states.

To carry out Resolution 242, a special Representative was designated by the Secretary-General “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”. This representative was Gunnar Jarring, the Swedish diplomat who failed in his mission because the Arab states would not recognize Israel, negotiate with it nor make peace with Israel, in accordance with the Khartoum Arab Summit Resolutions of September 1, 1967.

Resolution 242 was further re-affirmed in Security Council Resolution 338, adopted on October 22, 1973 in the wake of the Yom Kippur War. This new resolution called for a cease-fire and the implementation of Resolution 242 in all of its parts through negotiations conducted between the parties concerned in order to establish a just and durable peace in the Middle East. Though Resolution 338 uses the word “decides” in urging the parties to start negotiations immediately, concurrently with the cease-fire, to ostensibly bring this resolution within the parameters of Article 25 of the Charter, which requires UN members to carry out the binding “decisions” of the Security Council, the essential meaning or nature of Resolution 242 as a non-binding recommendation under Chapter VI of the Charter is not changed. A Chapter VI resolution cannot be converted into a Chapter VII resolution by this clever tactic, when the language of the original resolution remains exactly the same. Furthermore, no sovereign state can be forced into

negotiations with another state against its will. Therefore, Resolution 242 remains a non-binding resolution under Chapter VI of the Charter, to which Article 25 does not apply.

In the years that followed the adoption of Resolution 242, the American position on Israeli withdrawal moved much closer to the Arab position as originally understood by King Hussein of Jordan. A harbinger of a new American interpretation of Resolution 242 came in a speech delivered by the US representative to the UN, Charles W. Yost, in the Security Council, that dealt with the question of the status of Jerusalem. Yost, acting under the explicit instructions of President Nixon, deplored the application of Israeli law to what he called “the occupied portions of the city”. He further expounded on this point:

The United States considers that the part of Jerusalem that came under the control of Israel in the June war, like other areas occupied by Israel, is occupied territory and hence subject to the provisions of international law governing the rights and obligations of an occupying power. Among the provisions of international law which bind Israel, as they would bind any occupier, are the provisions that the occupier has no right to make changes in laws or in administration other than those which are temporarily necessitated by his security interest, and that an occupier may not confiscate or destroy private property. The pattern of behavior authorized under the Geneva Convention and international law is clear: the occupier must maintain the occupied area as intact and unaltered as possible, without interfering with the customary life of the area, and any changes must be necessitated by immediate needs of the occupation. I regret to say that the actions of Israel in the occupied portion of Jerusalem present a different picture, one which gives rise to understandable concerns that the eventual disposition of East Jerusalem may be prejudiced and the rights and activities of the population are already being affected and altered.⁸

As seen by the foregoing statement of Ambassador Yost, the US Administration under President Richard Nixon now formally considered eastern Jerusalem as “occupied territory”, being part of the “West Bank” of Jordan, and it did not recognize the application of Israeli law, jurisdiction and administration to this part of Jerusalem. This was a departure from the policy adopted by the previous Johnson Administration on the question of Jerusalem, as stated by Yost’s predecessor, Arthur J. Goldberg, even though it, too, had not approved unilateral steps taken by Israel to include the eastern part of the city within its legal jurisdiction. In a letter he sent to the New York Times on March 12, 1980 “to set the record straight”, as he put it, he wrote:

Resolution 242 in no way refers to Jerusalem and this omission was deliberate. I wanted to make clear that Jerusalem was a discrete matter, not linked to the West Bank.

In a number of speeches at the UN in 1967, I repeatedly stated that the armistice lines fixed after 1948 were intended to be temporary. This, of course, was particularly true of Jerusalem. At no time in these many speeches did I refer to East Jerusalem as occupied territory.

My speech of July 14, 1967, which Hodding Carter⁹ distributed, did not say that Jerusalem was occupied territory. On the contrary, I made it clear that the status of Jerusalem should be negotiable and that the armistice lines dividing Jerusalem were no longer viable. In other words, Jerusalem was not to be divided again.

This is a far cry from Ambassador Yost’s statement that we conceived East Jerusalem to be occupied territory, to be returned to Jordanian sovereignty.

The Yost statement to the UN Security Council was followed by the unanimous adoption of Resolution 267 on July 3, 1969 that censured Israel in the strongest terms for all measures and actions it had taken to change the status of Jerusalem. The Yost statement also set the stage for the Rogers Plan enunciated several months later by US Secretary of State, William Pierce

Rogers. In a speech he gave on December 9, 1969 containing his plan, he revealed how the Nixon Administration now interpreted Resolution 242 on the question of Israeli withdrawal, not merely from eastern Jerusalem but from all of the so-called “occupied territories”:

The Security Council resolution neither endorses nor precludes [the] armistice lines as the definitive political boundaries. However, it calls for withdrawal from occupied territories, the non-acquisition of territory by war, and the establishment of secure and recognized boundaries. We believe that while recognized political boundaries must be established and agreed upon by the parties, any changes in the pre-existing [armistice] lines [of 1949] should not reflect the weight of conquest and should be confined to insubstantial alterations required for mutual security. We do not support expansionism. We believe troops must be withdrawn as the resolution provides. We support Israel’s security and the security of the Arab states as well. We are for a lasting peace that requires security for both.¹⁰

By saying that Israel’s borders should not reflect the weight of conquest and that any changes in the June 4, 1967 lines should be confined to insubstantial alterations and by opposing Israeli “expansionism”, Rogers was adopting an unmistakable pro-Arab position that Israel should give up almost all its territorial gains in the Six-Day War and go back to the pre-existing lines of June 4, 1967 that clearly were not the defensible borders required under Resolution 242. President Nixon himself stated on July 1, 1970 that “Israel must withdraw to borders that are defensible”.¹¹ The Rogers Plan was basically though not explicitly endorsed by President Reagan on September 1, 1982 when he presented a peace proposal whose real architect was Secretary of State George P. Schultz, in which the President said that the United States, while it does not support the establishment of an independent “Palestinian” state in the “West Bank” and Gaza, neither does it support annexation or permanent control of those areas by Israel. He further stated that Resolution 242 applies to all fronts, including the “West Bank” and Gaza, though this is not stated in the resolution itself and is therefore only an hypothesis and not an actual fact. According to President Reagan, the extent to which Israel should be asked to give up territory, “will be heavily affected by the extent of true peace and normalization and the security arrangements”. The conclusion seemed to be that for full peace with the Arab states there would need to be nearly full Israeli withdrawal from all territories taken in the Six-Day War, with only insubstantial alterations. This prescription for the attainment of peace was a clear reflection of the Rogers Plan. The Reagan Plan, as explained by Secretary Shultz to King Hussein in a letter addressed to him in January 1983, also endorsed the concept that eastern Jerusalem which Israel had already annexed by a government order issued on June 27, 1967 (promulgated the following day) was part of the “occupied territory”. This was bizarre in light of Arthur Goldberg’s repudiation of this very idea. Goldberg, a former Supreme Court justice, was intimately involved in the framing of Resolution 242 and therefore ought to have known what was or was not included in this resolution.

One of the strangest reactions to Resolution 242 came from Menahem Begin. He was a minister of the National Unity Government of Israel in December 1967 when it was decided to accept the resolution, but he was apparently not privy to this decision. After he learned of it, he expressed his disapproval, but did not resign from the Government. However, when the Government in which he served accepted the Second Rogers Plan on July 31, 1970, to renew a cease-fire and “standstill” in the military situation between Egypt (then officially called the United Arab Republic) and Israel and also to pursue an agreement for the establishment of a just and lasting peace between Jordan and Israel as well as between Egypt and Israel, Begin and the Gahal bloc of the Herut and Liberal parties quit the Government. He did so because the new Rogers Plan was explicitly based on Resolution 242 which required Israeli

withdrawal “from territories occupied” in the 1967 conflict that under the American interpretation included Jerusalem and the Jordanian “West Bank”, and also all other fronts. For Begin that meant a new partition of the Land of Israel which also jeopardized Israel’s security. Begin’s commendable reaction was consistent with his life-long principles as a devout adherent of the Land of Israel that inexplicably excluded the Sinai Peninsula. However, when he became Prime Minister and signed the Camp David Framework Agreement for Peace in the Middle East, he abandoned his previous opposition to Resolution 242. The preamble of this agreement states that the agreed basis for a peaceful settlement of the conflict between Israel and its neighbors is United Nations Security Council Resolution 242, in all its parts. Furthermore, the final status of the “West Bank” and Gaza was to be decided upon in negotiations based on all the provisions and principles of UN Security Council Resolution 242. In accepting the applicability of Resolution 242 to Judea, Samaria and Gaza, Begin, whether he realized it or not, was accepting the damaging concept embedded in the resolution that these regions of the Land of Israel were considered “occupied territories” from which Israel was obliged to withdraw, even if the withdrawal was not to be a complete one but only to secure and recognized boundaries. This concept was a bedrock principle of the resolution that should have prevented Begin from endorsing Resolution 242 as the agreed basis for reaching any possible peace agreement with the Arab states concerned.

Begin’s acceptance of Resolution 242 was a stark repudiation of all that he previously professed. His volte-face contrasted with the steadfast position taken by his successor, Prime Minister Yitzhak Shamir, who stoutly believed that Israel had the right to retain all of the territory then under its military control since in his interpretation Resolution 242 did not apply to Judea, Samaria and Gaza. Moreover, Shamir believed that Israel had fulfilled its alleged obligations under the resolution by withdrawing from all of the Sinai, which constituted over 90% of the so-called “occupied territories”. Shamir’s interpretation was the right one for, as already noted, Resolution 242 falsely assumed that all the liberated territories of 1967 were “occupied territories”, contrary to both international law, including the UN Charter, and Israeli constitutional law. In truth, all of these territories were part of the Land of Israel that were either included or illegally excluded from the Jewish National Home whose borders were supposed to embrace all of the lands historically connected with the Jewish People under the San Remo Resolution of April 25, 1920. By the time Shamir became Prime Minister on October 10, 1983, Israel had already carried out a full-scale withdrawal from Sinai, as a result of the Egyptian-Israeli Peace Treaty of March 26, 1979, thus bringing to an end the assumed “occupation” of Sinai. No additional withdrawals were required from the other territories since they were not really “occupied territories”, exactly as Shamir believed.

Finally, in a radical shift from President Johnson’s position, President George W. Bush, acting in concert with the United Nations, Russia and the European Union, gave American support to the Road Map Peace Plan advocating “an independent, democratic and viable ‘Palestinian’ state living side by side in peace and security with Israel and its other neighbors” in Judea, Samaria and Gaza. This plan, which grew out of Resolution 242 and cited it in the preamble as one of its foundations, envisages an end of Israel’s so-called “occupation” of these territories that it said began in 1967. The idea that a new Arab state in what was once Mandated Palestine would live in peace and security with Israel and be democratic is a naive expectation or illusion that flies in the face of all of the empirical evidence that Arab violence is and has always been endemic and that the establishment of true democratic institutions is foreign to the Arab psyche and do not exist today in even a single independent Arab state. To further claim that a new Arab state in former Palestine would be a panacea to the existing Arab antagonistic approach to the Jewish State is not only baseless, but more importantly is a gross denial of Israel’s legal rights under international law to all of the Land of Israel as

determined by the Principal Allied Powers after the end of World War I which created Palestine, not for a fictitious nation called “Palestinians”, but rather for the Jewish People. There is no need for another Arab state in Palestine since Jordan was created by the British for that very purpose, and moreover, twenty-two Arab states already exist in the Middle East. A new Arab state would become a terrorist irredentist state with disastrous repercussions for Israel. Official support for such a state by the US, Europe and Israel represents nothing less than a loss of sanity by the leaders of these countries.

Over the years, Resolution 242 became a cornerstone document in international diplomacy seeking to bring about a just and lasting peace between Israel and the Arab states. It has been cited in all the major documents drawn up for this purpose ever since November 1967, such as the Camp David Framework Peace Agreement of September 17, 1978, the Egypt-Israel Peace Treaty of March 26, 1979, the Israel-PLO Declaration of Principles of August 20 and September 13, 1993, and, as already noted, the Road Map Peace Plan announced by the US Department of State on April 30, 2003. Resolution 242 is essentially a “land for peace” document or a new, updated UN Partition Plan which works against Israel’s best interests. It represents nothing less than a pathway to the destruction of the Jewish State if implemented according to the official interpretation by the US State Department and all the Presidents who have parroted that interpretation. Ironically, Israel, through its official spokesmen, also acts as if it was beneficial and essential for bringing an end to Arab hostility to the existence of the Jewish State in the Middle East, not appreciating the great damage it has already caused to Israel’s legal case in the eyes of the world by urging Israeli withdrawal from its ancestral lands that are also vital for its overall security. If Israel itself agrees to withdraw from these lands that historically and legally belong to it, it is not surprising that almost all countries in the world now demand that Israel implement a full or nearly full withdrawal to achieve “peace”. Israel is bringing upon itself the disaster that would be caused by carrying out this kind of withdrawal by initially accepting Resolution 242, when it should not have done so, and then by making it an integral part of all subsequent “peace” proposals or documents with the Arab world. The only way to end this ongoing noxious “peace process” that terminates Israel’s legal rights to the so-called “occupied territories” is to denounce formally once and for all the deleterious “land for peace” formula as exemplified by Resolution 242.

Endnotes

- ¹ Bernard Reich (ed.), *Arab-Israeli Conflict and Conciliation: A Documentary History*, Praeger Publishers, Westport, Connecticut, 1995, Document Entitled: “Johnson’s Five Principles of Peace”, pp. 97, 99.
- ² Yosef Tekoah, *In the Face of Nations*, David Aphek (ed.), NY: Simon & Schuster, 1976, p. 257.
- ³ Yosef Tekoah, *ibid.*, p. 263.
- ⁴ Yosef Tekoah, *ibid.*, pp. 263-264.
- ⁵ See his book, *Warriors for Jerusalem: The Six Days That Changed the Middle East*, NY: Linden Press/Simon & Schuster, 1986, pp. 341, 345.
- ⁶ *Ibid.*, p. 342.
- ⁷ “Hussein’s Misreading of History”, *The Jerusalem Post*, May 28, 1984, p. 8.
- ⁸ John Norton Moore (ed.), *The Arab-Israeli Conflict*, NJ: Princeton University Press, Princeton, Volume III, Documents [1974], pp. 993-994.

- ⁹ Hodding Carter, the Assistant Secretary of State for Public Affairs in the Jimmy Carter Administration.
- ¹⁰ Reich, *op. cit.*, p. 105.
- ¹¹ Yosef Tekoah, *op. cit.*, p. 261.

**UNITED NATIONS SECURITY COUNCIL RESOLUTION NO. 242
OF NOVEMBER 22, 1967
STATING THE PRINCIPLES OF A JUST AND LASTING PEACE
IN THE MIDDLE EAST**

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:
 - (i) Withdrawal of Israeli armed forces from territories occupied in the recent conflict;
 - (ii) Termination of all claims or states of belligerency and respect for and acknowledgement of the sovereignty, territorial integrity and political independence of every State in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force;
- 2 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.

Adopted unanimously at the 1382nd meeting.

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