

Understanding UN Security Council Resolution 242

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UN Security Council Resolution 242 has been the pivotal point of reference in all Arab-Israeli diplomacy since 1967. Every major Arab-Israeli agreement – from the 1979 Egyptian-Israeli Treaty of Peace through the 1993 Oslo Agreements – refers to Resolution 242. Significantly, Resolution 242 defined, for the first time, international expectations about the extent of any future Israeli withdrawal from the territories the Israel Defense Forces captured in the 1967 Six-Day War. It linked that withdrawal to the achievement of peace between the parties. Finally, it established the basis of Israel's legal right to defensible borders.

Many articles have been written on Resolution 242 by international legal experts, government officials, and the news media. Unfortunately, since many of these interpretations have no connection whatsoever to the actual substance of the resolution itself, it is important to clarify its true meaning. Indeed, even Israeli politicians interpret Resolution 242 incorrectly and in a manner that totally contradicts the resolution's language and the express intent of its authors.

Three key questions need to be considered separately:

1. How was Resolution 242 born?
2. What is the content of Resolution 242?
3. What is the legal significance of Resolution 242?

The Birth of Resolution 242

On November 7, 1967, the United Arab Republic (Egypt) turned to the president of the UN Security Council and requested an urgent meeting of the Council, considering that Israel refused to pull its forces out of the territories it occupied in the Six-Day War of June 1967. The Security Council met for several sessions from November 9, 1967, through November 22.

Two draft resolutions were presented to the council: First, there was a draft resolution introduced by India, Mali, and Nigeria; and second, the U.S. prepared a draft resolution, as well. During the meetings, two other draft resolutions were prepared; one by the British of November 16, 1967, and a second resolution by the Soviets on November 20.

After a number of Security Council debates, there was only a vote on the British draft resolution, which was finally adopted *unanimously*. In practice, the proposed British text was a compromise between the various drafts that had been considered. Once adopted, the British draft resolution was formally numbered Resolution 242.

It should be emphasized that in the various debates that had been held previously in the UN General Assembly, where the Arab bloc enjoyed an automatic majority against Israel, many anti-Israeli

resolutions had been adopted regarding the Arab-Israel conflict. However, General Assembly resolutions are only recommendations and, therefore, do not create international legal obligations. In contrast to the resolutions of the UN General Assembly, UN Security Council resolutions are legally binding, to the extent to which they are adopted under Chapter VII of the UN Charter. A Chapter VII resolution, according to the Charter, is an “action with respect to threats to the peace, breaches of the peace and acts of aggression.”

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But Resolution 242 did not fit into the category of a Chapter VII resolution (for Israel’s action in the Six-Day War did not merit that characterization). Instead, Resolution 242 was adopted under Chapter VI of the UN Charter that deals with “peaceful resolution of disputes.” Thus, all the efforts of the Arab bloc to have Israel branded at the UN as the aggressor in the Six-Day War completely failed. Therefore, according to Resolution 242, Israel was assigned rights and obligations with respect to the territories its forces had captured.

The Legal Significance of Resolution 242

Resolution 242 applies only to “every state in the area” of the Middle East. It states explicitly that it is necessary to establish “secure and recognized boundaries.” The U.S. ambassador to the UN at the time, Arthur Goldberg, clarified this point when he addressed the Security Council on November 15, 1967: “Historically, there have never been any secure and recognized boundaries in the area. Neither the armistice lines of 1949 nor the cease-fire lines of 1967 have answered this description.”

Indeed, during the debates in the UN Security Council that transpired in May 1957, all the representatives of the Arab states declared that Israel and its Arab neighbors were only separated by armistice lines and that definitive political boundaries between them had not been established. Clearly, Resolution 242 sought to replace these truce lines with permanent political borders.

The word “Palestinian” did not even appear in Resolution 242, which, as already noted, applied only to existing states. True, in the Oslo Agreements, Israel recognized the rights of the Palestinians to self-determination. However, Resolution 242 is mentioned only as the basis for a regional peace settlement.

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It is important to stress that Resolution 242 in no way called on Israel to withdraw to the lines of June 4, 1967, before the outbreak of the Six-Day War. Arab diplomats have tried to argue nonetheless that the resolution precludes any territorial modifications since the resolution’s preamble refers to the international principle that the annexation of territory by force is illegal. True, the preamble specifically

refers to “the inadmissibility of the acquisition of territory by war.” Yet this principle was placed by the drafters of Resolution 242 in the preamble and not in the operative paragraphs below. There is a ruling of the International Court of Justice (from the dispute over Danzig) that preambles of League of Nations resolutions are not binding – only the operative parts of these resolutions can create legal responsibilities. This determination carried over from the era of the League of Nations to that of the United Nations.

The Acquisition of Territory Captured in a War of Self-Defense is Different from a War of Aggression

There is a further cardinal point regarding the question of whether the acquisition of captured territory from 1967 by Israel can be regarded as illegal. The great authority in international law, Elihu Lauterpacht, has drawn the distinction between unlawful territorial change by an aggressor and lawful territorial change in response to an aggressor. In drafting its preamble, the architects of Resolution 242 were referring to known international legal principles that precluded territorial modifications as a result of aggression. The preamble talks about “acquisition of territory by *war*.”

Is the acquisition of captured territory by Israel in 1967 illegal? There is a distinction between unlawful territorial change by an aggressor and lawful territorial change in response to an aggressor.

The case of a war of self-defense in response to aggression is a very different matter. This distinction was further made by Stephen Schwebel, who would later become the legal advisor of the U.S. Department of State and then serve as President of the International Court of Justice at The Hague. The preamble of Resolution 242 was a compromise that took into account the other drafts that were before the Security Council, even though it did not really apply to Israel’s case. And by keeping it in the preamble and not in the operative parts of the resolution, the architects of Resolution 242 avoided creating any legal obligations for Israel that could be construed as precluding the resolution’s call for new “secure and recognized boundaries” beyond the earlier 1967 lines.

Soviet Efforts to Modify Resolution 242 Failed

Another argument raised by Arab diplomats over the years is the difference between the English text of the withdrawal clause, which calls for the “withdrawal of Israeli armed forces *from territories* occupied in the recent conflict,” and the French text which calls for “retrait des forces armées israéliennes *des territoires* occupés lors du récent conflit.” The English text intentionally left out the definite article “the” before the word “territories,” leaving indefinite the amount of territory from which Israel might be expected to withdraw. In contrast, the French text is an improper translation since “des territoires” has a definite meaning (a better translation would have been “de territories”).

True, the official languages of the UN in 1967 were only English and French – sometime later, additional languages were added. Yet the accepted procedure to be followed in cases of clashing texts due to language differences is to give preference to the text that was originally submitted to the Security Council. In the case of Resolution 242, the original draft resolution that was voted on was a *British* text, which of course was written in English. There was a separate French text submitted by Mali and

Nigeria over which there was no vote. The USSR proposed on November 20, 1967, to include a clause requiring Israel to withdraw to the pre-war lines of June 5, 1967, but this language was rejected. The very fact that the Soviet delegation sought to modify the British draft with additional language is a further indication that the British did not intend to suggest a full Israeli withdrawal. Indeed, after Resolution 242 was adopted, the Soviet deputy foreign minister, Vasily Kuznetsov, admitted: “There is certainly much leeway for different interpretations that retain for Israel the right to establish new boundaries and to withdraw its troops only so far as the lines it judges convenient.”

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Moreover, Resolution 242 itself relates to the need to establish “secure and recognized boundaries,” which, as already noted, were to be different from the previous armistice lines. If the UN Security Council intended, as the incorrect French text suggests, that a full Israeli withdrawal from *all the territories* take place, then there would be no need to write language into the resolution that required new borders to be fixed. Lord Caradon, the British ambassador who submitted to the Security Council what was to become the accepted version of Resolution 242, publicly declared afterward on repeated occasions that there was no intent to demand an Israeli withdrawal to the 1967 lines.

From time to time, the argument is made that according to Resolution 242 the occupation of territories is illegal. As previously noted in the discussion over the preamble of Resolution 242, there is an international legal principle against “the acquisition of territory by war.” Yet there is nothing in Resolution 242 that states the occupation of territory is illegal. Thus, it is incorrect to argue that according to Resolution 242 the occupation of the territories Israel captured in the 1967 Six-Day War is illegal, especially since that war was imposed on Israel through the aggression of Arab states along three of Israel’s fronts.

Resolution 242 and the Refugee Problem

Resolution 242 also deals with the resolution of the refugee problem. During the drafting phase of the resolution, the Arab states demanded that there be explicit reference to “Arab” refugees, but their proposals were not accepted. U.S. Ambassador Arthur Goldberg repeatedly emphasized that the refugee clause in Resolution 242 also covers the need to take care of the issue of Jewish refugees who were expelled from Arab states since 1948 and who lost all their property.

In order to understand the extent to which Resolution 242 constituted the basis for a peace settlement in the Middle East (as well as how much Israel attached importance to what it said), there is a need to look back and remember that the U.S. and Israel indeed signed an agreement in December 1973, right before the Geneva Peace Conference, in which a specific clause was included that stated:

The United States will oppose and, if necessary, vote against any initiative in the Security Council that alters adversely the terms of reference of the Geneva Peace Conference or to change Resolutions 242 and 338 in ways which are incompatible with their original purpose. (Paragraph 4)

This commitment at the time seemed to be very unusual in the view of a number of U.S. Senators, so the legal advisors of the U.S. Senate were asked whether it was consistent with U.S. law. What disturbed them was the fact that, according to the above-mentioned clause, the Nixon administration undertook to adopt a line of foreign policy for the future that was determined through an agreement with a foreign country, rather than by the administration itself. The Senate legal advisor, nonetheless, determined that the Nixon administration's commitment to Israel had legal standing, and it should be stressed that this clause continued to be respected even when subsequent agreements were signed with the U.S.

Resolution 242 is not self-enforcing; Israel is not expected to unilaterally withdraw from territories to fulfill its terms. It requires direct negotiations between Israel and its Arab neighbors.

Conclusions

UN Security Council Resolution 242 – along with Resolution 338 – serves as the only agreed legal basis for resolving the Arab-Israeli conflict that is acceptable to both Israel and the Arab states (Syria agreed after the 1973 Yom Kippur War to Resolution 242 when it accepted Resolution 338 which refers to a resolution of the conflict that must be based on Resolution 242). The elements of Resolution 242 that should be considered in any discussion of the resolution's meaning include:

- Resolution 242 is not self-enforcing; Israel does not just withdraw from territories to fulfill its terms. As a Chapter VI resolution, it requires direct negotiations between Israel and its Arab neighbors.
- There is no condemnation of Israel's occupation of the territories that the Israel Defense Forces captured in 1967, nor is Israel's occupation of territories defined as "illegal."
- The various elements of the resolution must be implemented in parallel. There is no Israeli obligation to withdraw prior to the achievement of a comprehensive peace.
- There is no Israeli requirement to withdraw fully from the territories it captured in 1967. While Israel agreed to a full withdrawal in the case of its 1979 peace treaty with Egypt, the Egyptian case is not a precedent for other fronts. True, the Egyptians sought to include a reference in the Camp David Accords that the Egyptian-Israeli Treaty of Peace will constitute the principal basis of future agreements with other Arab states. However, what was finally concluded was an important caveat that limited the Egyptian model to other cases "as appropriate."
- There is no reference to a Palestinian "right of return" in Resolution 242.
- The main principle inferred in the resolution is that everything is still open for negotiation between the parties.

Appendix 1

UN Security Council Resolution 242, November 22, 1967

The Security Council,

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

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

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

1. *Affirms* that the 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.

Appendix 2

UN Security Council Resolution 338, October 22, 1973

The Security Council,

1. Calls upon all parties to the present fighting to cease all firing and terminate all military activity immediately, no later than 12 hours after the moment of the adoption of this decision, in the positions they now occupy;

2. Calls upon the parties concerned to start immediately after the cease-fire the implementation of Security Council Resolution 242 (1967) in all its parts;

3. Decides that, immediately and concurrently with the cease-fire, negotiations start between the parties concerned under appropriate auspices aimed at establishing a just and durable peace in the Middle East.

http://jcpa.org/security_council_resolution_242/