

1983

The Legal Status of United States Involvement in the Camp David Peace Process

Farooq Hassan

Follow this and additional works at: <https://scholarship.law.vanderbilt.edu/vjtl>



Part of the [Military, War, and Peace Commons](#)

Recommended Citation

Farooq Hassan, The Legal Status of United States Involvement in the Camp David Peace Process, 16 *Vanderbilt Law Review* 75 (2021)

Available at: <https://scholarship.law.vanderbilt.edu/vjtl/vol16/iss1/3>

This Article is brought to you for free and open access by Scholarship@Vanderbilt Law. It has been accepted for inclusion in Vanderbilt Journal of Transnational Law by an authorized editor of Scholarship@Vanderbilt Law. For more information, please contact mark.j.williams@vanderbilt.edu.

THE LEGAL STATUS OF UNITED STATES INVOLVEMENT IN THE CAMP DAVID PEACE PROCESS

*Farooq Hassan**

TABLE OF CONTENTS

I.	INTRODUCTION	76
II.	THE CAMP DAVID PROCESS	77
	A. The Instruments	77
	B. The Letters	81
	C. The Peace Treaty	82
	D. Letters and Memoranda Relating to the Treaty	84
III.	THE ISSUES RAISED	90
IV.	THE RELEVANT PRINCIPLES OF LAW	91
	A. The Law of Treaties: Position of Third Parties	91
	B. Interpretation of Treaties: Historical Approach	92
	C. Unilateral Declarations of State: Legal Consequences	94
	D. Executive Agreements: Binding Nature Under United States Law	96
V.	AN APPLICATION OF THE PRINCIPLES OF LAW TO THE CAMP DAVID AGREEMENTS	96
	A. Application of the Relevant Law	96
	B. Historical Approach of Interpretation	97
	C. Unilaterally Undertaken Obligations of the United States	100
	D. Congressional Action in Pursuance of the Camp David Agreements	104
VI.	CONCLUSION	106
	A. The United States, the Frameworks, and the Peace Treaty	106
	B. The Nature of United States Undertakings ...	106

* Professor of Law, Willamette University; Barrister at Law, of Lincoln's Inn, London; Senior Advocate, Supreme Court of Pakistan; member of Oregon Bar; member, International Institute of Strategic Studies, London.

C. The Future United States Role in the Middle
East Peace Process 107

I. INTRODUCTION

In one context or another, the turmoil in the Middle East has been tragic not only for the states in the region but for the prospects of world peace. Because of this, the United States has been both directly and indirectly involved in the crises that have erupted there from time to time. A major milestone was reached when, largely due to the personal efforts of President Carter, Egypt and Israel signed the Camp David agreements on September 17, 1978, in Washington, D.C. The United States played a key role in the execution of these agreements and consequential instruments. Indeed, it assumed sizable financial obligations to ensure the success of the goals of peace outlined in these agreements. It is possible to appreciate that role politically; moreover, the legal aspects of this matter require careful scrutiny, because it may not be immediately clear what obligations or rights the United States acquired under international law as a consequence of this involvement. This Article attempts to determine the legal status of the United States involvement in the process initiated at Camp David in 1978.¹

1. The terms "Camp David Peace Process" or "Camp David Process" as used in this Article connote the two "Frameworks" or "Agreements" for peace signed on September 17, 1978, between Egypt and Israel, the peace treaty signed by those countries on March 26, 1979, various letters executed by those two countries and the United States, and other related agreements. *See generally* Bassiouni, *An Analysis of Egyptian Peace Policy Toward Israel: From Resolution 242 (1967) to the 1979 Peace Treaty*, 12 CASE W. RES. J. INT'L L. 3 (1980) (the Palestinian question); *Camp David Accords*, 76 CURRENT HIST. 31 (1979) (portions of the 1978 Agreement reprinted); Dellafar & Pack, *Economic Benefits of Peace in the Middle East — Some Cautionary Notes — Some Potential Benefits*, MIDDLE E. REV., Spring 1979, at 10 (effect of the 1978 Agreement on Egypt and Israel); Draper, *How Not to Make Peace in the Middle East*, COMMENTARY, Mar. 1979, at 23 (problems with 1978 Agreement caused by the United States - Soviet Union agreement); Halperin, *Back to Camp David*, NEW REPUBLIC, Mar. 3, 1979, at 14 (1979 Agreement indirectly initiated by the United States - Soviet Union negotiations); Hitchins, *America's Cuba — Can Sadat Survive Camp David?*, 228 NATION 289 (1979) (President Sadat's dilemma caused by the 1978 Agreement); Mallison & Mallison, *An International Law Analysis of the Major United Nations Resolutions Concerning the Palestine Question*, U.N. Doc. ST/SG/SER.F4, U.N. Sales No. E.79I.19 (1979) (the Palestinian question); Plascov, *The Palestine Predicament After Camp David*, 34

This inquiry may be approached by initially raising two questions. Was the United States a party to the Camp David agreements or to the treaty subsequently signed between Egypt and Israel in 1979? The short answer based on a *prima facie* reading of the texts is no.² This leads to the second question: If the United States is technically not a party to the agreements or to the treaty, can it still claim any right or be placed under any duty vis-a-vis Egypt and Israel by international law as a consequence of the role it played in this historic event? The answer to this question is not facile and depends upon a careful examination of the various instruments which eventually emerged as a consequence of the signing of the agreements on September 17, 1978. Therefore, before determining the legal status of the United States in the Camp David process, these texts must be examined. This Article will discuss what the parties were attempting to accomplish with the different instruments in order to determine precisely what the United States undertook to do to achieve the goals of these agreements. Accordingly, this Article examines chronologically the agreements, the Treaty of Peace, and the accompanying letters involving the United States, Egypt, and Israel before evaluating the legal status of the United States involvement in this process. The remainder of this Article is divided into five sections. First, all instruments resulting from the Camp David agreements will be analyzed. Second, some of the relevant issues raised by that analysis will be identified. Third, the rules of law with a potential effect upon the issues will be outlined. Fourth, these rules will be applied to the issues. Finally, concluding remarks about the legal status of the United States involvement in the Camp David process will be offered and the future role of the United States will be projected briefly.

II. THE CAMP DAVID PROCESS

A. The Instruments

The instruments resulting from the Camp David process were

WORLD TODAY 467 (1978) (problems caused by the 1978 Agreement); Rosen & Fukuyama, *Egypt and Israel After Camp David*, 76 CURRENT HIST. 1 (1979) (impact of the 1978 Agreement).

2. A simple reading of the Agreements and the Peace Treaty reveals that they were executed and signed between Egypt and Israel. The instruments were "witnessed" by the President of the United States.

issued in two phases: the first phase revolves around the Frameworks and the second is in the context of the Peace Treaty. Only matters dealing with the legal implications of United States involvement in the Camp David process will be emphasized.

The first document arising out of Camp David is the *Exchange of Remarks between the President [of the United States], President Sadat, and Prime Minister Begin at the Signing of the Camp David Agreements, September 7, 1978*.³ This exchange consists of speeches given by President Carter, President Sadat, and Prime Minister Begin. President Carter began by declaring the significance of the signing of two important Agreements between Egypt and Israel.⁴ These speeches, which have no legal significance, contain only generalities. They include, however, the following words of President Sadat, which show Egypt's assessment of the nature of United States involvement: "The continuation of your active role is indispensable. We need your help and the support of the American people."⁵ These remarks indicate that Egypt expected the United States to continue to be active in the process initiated by the Camp David agreements.

The Agreements referred to above emerged in the shape of two "Frameworks." These Frameworks bear the date of September 17, 1978, and are entitled "A Framework for Peace in the Middle East"⁶ and "A Framework for the Conclusion of a Peace Treaty

3. 17 I.L.M. 1463 (1978).

4. *Id.*

5. *Id.* at 1464.

6. *Id.* at 1466. In this document, President Sadat and Prime Minister Begin agreed on the following important details in the Framework for Peace in the Middle East.

The preamble to the document provides that "[t]he 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." *Id.* The preamble provides further:

Peace requires respect for 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 . . . Security is enhanced by a relationship of peace and by cooperation between nations which enjoy normal relations.

Id. at 1467.

The framework of the document concerns primarily: (1) the West Bank and Gaza; (2) Egypt and Israel; and (3) other associated principles. As a general statement, the framework provides that "the parties are determined to reach a just, comprehensive, and durable settlement of the Middle East conflict through the conclusion of peace treaties based on Security Council Resolutions 242 and

Between Egypt and Israel.”” The first Framework, while expressing far-reaching goals for a comprehensive Middle East peace, has one provision, clause 5, that directly addresses the matter of United States involvement. By this clause Egypt and Israel agreed to “invite” United States participation when “implementing” the agreements and the “timetable” and “modalities” involved therein. A major part of the implementation of this agreement relates to the future of occupied territory. Both parties clearly wanted to consult with the United States in that process.

338 in all their parts.” *Id.*

Regarding the West Bank and Gaza, the document provides that Egypt, Israel, Jordan, and representatives of the Palestinian people should participate in resolving the “Palestinian Problem” in the following three stages.

First, a transition period of up to five years should exist in which the Israeli military government of the West Bank and Gaza should be turned over to a “self-governing authority [which] has been freely elected by the inhabitants of these areas.” *Id.*

Second, “Egypt, Israel and Jordan will agree on the modalities for establishing the elected self-governing authority in the West Bank and Gaza. The delegations of Egypt and Jordan may include Palestinians from the West Bank and Gaza or other Palestinians as mutually agreed.” *Id.*

Finally, negotiations to determine the final status of the West Bank and Gaza should begin no later than three years after the beginning of the transitional period. *Id.* at 1468.

Regarding the Egypt-Israel relationship, the document provides that those countries shall settle disputes by the means provided in article 33 of the Charter of the United Nations. The use or threat of force may not be used. Moreover, peace negotiations are governed by the Framework for the Conclusion of a Peace Treaty Between Egypt and Israel. *Id.* at 1468-69.

The broad principles contained in the document could apply to future peace treaties between Israel and Jordan, Syria, or Lebanon. Moreover, the agreement calls for the abolition of economic boycotts and the guarantee of due process of law for citizens of the parties. *Id.* at 1469. Other associated principles concern the United States and the United Nations. Regarding the United States, the agreement stipulates that “[t]he United States shall be invited to participate in the talks on matters related to the modalities of the implementation of the agreements and working out the timetable for the carrying out of the obligations of the parties.” *Id.* Regarding the United Nations, the agreement provides:

The United Nations Security Council shall be requested to endorse the peace treaties and ensure that their provisions shall not be violated. The permanent members of the Security Council shall be requested to underwrite the peace treaties and ensure respect for their provisions. They shall also be requested to conform their policies and actions with the undertakings contained in this Framework.

Id.

7. *Id.* at 1470.

Apart from Israeli withdrawal from Egyptian territory, for which separate agreement is clearly contemplated, a major part of this Framework deals with the Palestinian question.⁸ Certain arrangements are envisaged; some include involving third parties, such as Jordan, to make possible what the Framework calls "self-government" for the Palestinians of the West Bank and Gaza.⁹ *Prima facie*, either of the parties, or both, could "consult" with the United States in order to secure these goals.¹⁰

It should be carefully noted, however, that this particular instrument does not have the legal status of a treaty. The Framework is essentially a declaration of intent and by its terms aims at creating future treaties to bring peace to the entire region. In law, clause 5 does not establish any right or duty for either of the parties to call upon the United States. Politically, however, this point may have considerable significance, for it emphasizes the continued involvement of the United States in the international relations affecting the Middle East.

The second document, executed simultaneously with the first, is the "Framework for the Conclusion of a Peace Treaty Between Egypt and Israel."¹¹ This Framework essentially provides (i) that the parties should conclude a peace treaty within three months after the signing of the Framework, (ii) that negotiations should be conducted under the United Nations flag, and (iii) that Resolution 242 should govern all resolutions between Israel and Egypt.¹² It further provides that the peace treaty shall be implemented within two or three years after its signing.¹³ Substantively, this Framework provides that Israel will withdraw from, and Egypt will regain sovereignty over, the Sinai.¹⁴ It calls for each party to recognize the other's international borders,¹⁵ enables Egypt to have non-military use of abandoned Israeli airfields in the Sinai, and gives Israel free passage through the Suez Canal, the Gulf of Suez, the Strait of Tiran, and the Gulf of Aqaba. The Framework further provides for construction of a highway between Egypt and Jordan and for the specific stationing

8. *Id.* at 1466-67.

9. *Id.* at 1467.

10. *Id.* at 1469.

11. *Id.* at 1470.

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.* at 1471.

of military forces. The Framework was signed by President Sadat and Prime Minister Begin and witnessed by President Carter.

B. The Letters

There are ten related letters between the three leading figures of the Camp David process:¹⁶

(1) a letter to President Carter from Prime Minister Begin informing the President of the pending vote in the Knesset to remove Israeli settlers in the Northern and Southern Sinai regions;¹⁷

(2) a letter to President Sadat from President Carter informing President Sadat of Prime Minister Begin's letter;¹⁸

(3) a letter to President Carter from President Sadat stating that if the Israeli settlers are not removed, the Framework shall be void and invalid;¹⁹

(4) a letter from President Carter to Prime Minister Begin informing Prime Minister Begin of President Sadat's letter;²⁰

(5) a letter to President Carter from President Sadat describing Egypt's views on the status of Jerusalem, stating that Arab Jerusalem is part of the West Bank and shall remain part of the West Bank;²¹

(6) a letter to President Carter from Prime Minister Begin informing President Carter that Jerusalem is the undivided capital of the State of Israel;²²

(7) a letter to President Sadat from President Carter informing President Sadat that the United States position remains as "stated by Ambassador Goldberg in the United Nations General Assembly on July 14, 1967, and subsequently by Ambassador Yost in the United Nations Security Council on July 1, 1969";²³

(8) a letter to President Carter from President Sadat stating

16. For text of those letters between the heads of state, see *id.* at 1471.

17. *Id.* (dated Sept. 17, 1978).

18. *Id.* (dated Sept. 22, 1978).

19. *Id.* at 1472 (dated Sept. 17, 1978).

20. *Id.* (dated Sept. 22, 1978).

21. *Id.* at 1473 (dated Sept. 17, 1978).

22. *Id.* (dated Sept. 17, 1978).

23. *Id.* (dated Sept. 22, 1978). For the text of the statements, see *U.S. Abstains on U.N. Resolution on Jerusalem; Urges Steps Toward Peace in Near East*, 57 DEPT. ST. BULL. 148 (1967) (statement of Ambassador Goldberg), and *United States Reaffirms Position on Jerusalem*, 61 DEPT. ST. BULL. 76 (1969) (statement of Ambassador Yost).

that, "to ensure the implementation of the provisions related to the West Bank and Gaza and in order to safeguard the legitimate rights of the Palestinian people, Egypt will be prepared to assume the Arab role emanating from these provisions, following consultations with Jordan and the representatives of the Palestinian people";²⁴

(9) a letter to Prime Minister Begin from President Carter clarifying that, where the Framework provisions refer to Palestinians or Palestinian peoples, Israel understands the term to mean Palestinian Arabs, and, where the Framework speaks of the West Bank, Israel understands it to mean Judea and Samaria;²⁵ and

(10) a letter to Ezer Weizman, Israel's Minister of Defense, from Secretary of Defense Harold Brown discussing United States assistance for air bases that Israel plans to build and stating that President Carter was prepared to seek congressional funding and approval for other assistance.²⁶

This tenth letter is the first statement by the United States that proposes United States assistance to Israel with regard to the Peace Treaty envisaged by the Frameworks and the proposed transfer of Egyptian territory. The executive branch does not promise funds, but informs Israel of its willingness to seek funds to finance military airbases which Israel considers necessary for its security after the return of the Sinai. Furthermore, this letter suggests or promises future action of a bilateral nature between Israel and the United States. The United States executive branch did obtain the congressional approval necessary to provide the type of assistance suggested in this and later documents.

Pursuant to the second Framework, a treaty was signed between Egypt and Israel approximately six months after the Camp David process began. This Treaty included annexes and was accompanied by several letters.

C. The Peace Treaty

The 1979 Treaty of Peace,²⁷ the major instrument of this phase

24. 17 I.L.M. 1474 (dated Sept. 17, 1978).

25. *Id.* (dated Sept. 22, 1978).

26. *Id.* (dated Sept. 28, 1978).

27. Treaty of Peace, Mar. 26, 1979, Egypt-Israel, 18 I.L.M. 362 (1979) [hereinafter cited as Treaty of Peace]. The Treaty is composed primarily of a preamble and seven articles. The following is a brief synopsis of the Treaty's key elements.

of the Camp David process, addresses matters between Egypt and Israel and does not directly involve the United States. In Annex I the treaty contains provisions concerning security arrangements following the Israeli withdrawal from the Sinai.²⁸ The appendix to this annex is relevant because article VII directly involves the United States by requesting that the United States provide aerial surveillance during the withdrawal period.²⁹ This clause is impor-

The preamble provides that a peace settlement between Egypt and Israel must be based upon United Nations Security Council Resolutions 242 and 338 as well as the Camp David Framework.

Article I provides for the termination of war and establishes peace upon the treaty's ratification. Article I also provides for the withdrawal of Israeli military and civilians from the Sinai, as well as the concomitant reestablishment of Egypt's sovereignty over the Sinai. *Id.* at 363.

Article II establishes permanent boundaries between Egypt and Israel and emphasizes respect of each other's territorial integrity including airspace and waters. *Id.*

Article IV provides for the United Nations to lend forces and observers to oversee Israel's withdrawal from the Sinai. *Id.* at 364-65.

Article V guarantees Israel the right of passage to the Gulf of Suez, the Suez Canal, the Strait of Tiran and the Gulf of Aqaba. *Id.* at 365.

Article VII provides that disputes arising out of the treaty are to be resolved by arbitration. *Id.* at 366.

28. *Id.* at 367. Annex I is entitled "Protocol Concerning Israeli Withdrawal and Security Arrangements." *Id.* Its major provisions are contained in its articles I, II, VI and VII.

Article I details the multistaged withdrawal of Israel from the Sinai and the formation of a Joint Commission to supervise and coordinate that withdrawal. *Id.*

Article II describes the final lines and zones between Egypt and Israel and the armaments allowed in each zone.

Article VI outlines the permissible operations of the United Nations forces and observers during and after the withdrawal. *Id.* at 371.

Article VII provides for the establishment of a "liason system" upon the dissolution of the Joint Commission. *Id.* at 373.

29. *Id.* at 374. The appendix pertains to the organization of movements in the Sinai. The main provisions of the appendix are contained in its articles I, II, III, and VII.

Article I provides the principles of withdrawal. *Id.* at 374-75.

Article II provides a description of subphases of withdrawal to interim withdrawal lines. *Id.* at 375-77.

Article III defines United Nations forces and observers. *Id.* at 377-78.

Article VII governs surveillance activities. It provides in relevant part that aerial surveillance activities during the withdrawal will be carried out as follows:

1. Both Parties request the United States to continue airborne surveillance flights in accordance with previous agreements until the completion

tant for two reasons. First, it shows that both Egypt and Israel were eager to involve the United States during the Sinai withdrawal to ensure compliance with the treaty. Second, this was a method of temporarily associating the United States directly with the terms of the Peace Treaty. The involvement terminated automatically with the transfer of the Sinai to Egypt. Consequently, this is not a matter of long-term legal significance.

D. Letters and Memoranda Relating to the Treaty

The following is a list of the letters and memoranda executed between Egypt, Israel, and the United States in the context of the Peace Treaty.

The first letter³⁰ states that both parties will conduct future negotiations to effect a total peace in the Middle East and concludes, "This letter also confirms our understanding that the United States Government will participate fully in all stages of negotiations."³¹ Although important in a political sense, this is simply an invitation by Egypt and Israel to have the United States participate in further negotiations and does not create legal obligations for the United States.

Another letter, to President Sadat from President Carter, dated March 26, 1979, is important because it states:

I wish to confirm to you that subject to United States Constitutional processes:

In the event of an actual or threatened violation of the Treaty of Peace between Egypt and Israel, the United States will, on request of one or both of the Parties, consult with the Parties with respect thereto and will take such other action as it may deem appropriate and helpful to achieve compliance with the Treaty.

The United States will conduct aerial monitoring as requested by the Parties pursuant to Annex I of the Treaty.

The United States believes the Treaty provision for permanent stationing of United Nations personnel in the designated limited force zone can and should be implemented by the United Nations

of final Israeli withdrawal.

2. Both Parties request the United States operated Sinai Field Mission to continue its operation in accordance with previous agreements until completion of the Israeli withdrawal from the area east of the Giddi and Mitla Passes. Thereafter, the Mission will be terminated.

Id. at 384.

30. *Id.* at 530.

31. *Id.* at 531.

Security Council. The United States will exert its utmost efforts to obtain the requisite action by the Security Council. If the Security Council fails to establish and maintain the arrangements called for in the Treaty, the President will be prepared to take those steps necessary to ensure the establishment and maintenance of an acceptable alternative multinational force.³²

Two points with respect to this letter need to be stressed. First, President Carter, while committing the Government to oversee and protect the peace process, did so "subject to United States Constitutional processes." As this letter is clearly not a treaty, this qualification refers to the need for congressional action should the United States commit funds or troops to international peacekeeping forces. Thus, in this letter the United States undertook no immediately binding legal obligation. Second, this letter is essentially an incentive: the United States will take various actions to ensure the "implementation" of the Treaty after the "withdrawal provisions" executed between Egypt and Israel take effect. In sum, though this letter is important, it creates no important and far-reaching legal rights or obligations. Nevertheless, the first part of this letter requires examination to determine whether it proposed future United States mediation, and if so, to what extent. This analysis is contained in section V of this Article.

A memorandum between the United States and Israel concerns the supply of oil to Israel for fifteen years.³³ This agreement will be analyzed briefly below. At this point it is sufficient to note that through this bilateral agreement the United States promised to supply oil to Israel for a certain period of time. This is clearly a binding agreement and was approved subsequently by Congress.

Another "Memorandum of Agreement" between the United States and Israel³⁴ contains observations on the role of the United States in the Camp David process. This memorandum, drafted by the United States, states as follows:

Recognizing that the withdrawal from Sinai imposes additional heavy security, military and economic burdens on Israel;

The Government of the United States of America and of the State of Israel, subject to their constitutional processes and applicable law, confirm as follows:

32. *Id.* at 532-33.

33. *Id.* at 533.

34. *Id.* at 537.

1. In the light of the role of the United States in achieving the Treaty of Peace and the Parties' desire that the United States continue its supportive efforts, the United States will take appropriate measures to promote full observance of the Treaty of Peace.

2. Should it be demonstrated to the satisfaction of the United States that there has been a violation or threat of violation of the Treaty of Peace, the United States will consult with the parties with regard to measures to halt or prevent the violation, ensure observance of the Treaty of Peace, enhance friendly and peaceful relations between the parties and promote peace in the region, and will take such remedial measures as it deems appropriate, which may include diplomatic economic and military measures as described below.

3. The United States will provide support it deems appropriate for proper actions taken by Israel in response to such demonstrated violations of the Treaty of Peace. In particular, if a violation of the Treaty of Peace is deemed to threaten the security of Israel, including inter alia, a blockade of Israel's use of international waterways, a violation of the provisions of the Treaty of Peace concerning limitation of forces or an armed attack against Israel, the United States will be prepared to consider, on an urgent basis, such measures as the strengthening of the United States presence in the area, the providing of emergency supplies to Israel, and the exercise of maritime rights in order to put an end to the violation.³⁵

The Prime Minister of Egypt, Mostafa Khalil, responded by writing to Secretary of State Cyrus Vance protesting the implication that Egypt lacked good faith in carrying out the agreement.³⁶ The following passages from that letter represent Egypt's view of the United States role in the peace process:

I trust that you would agree that this new definition of the United States role constitutes a departure from our understanding of that role as a full partner and not as an arbiter. It also constitutes a distortion of that role in the eyes of others.

The United States assumed for herself the role of the arbiter in determining that there has been a violation or threat of violation of the Treaty. I wish to state that the Treaty provides for settlement of disputes procedured in Article VII. This equal right to have recourse to the procedure specified in the Treaty ensures that the balance of corresponding obligations will be maintained. The pro-

35. *Id.* at 538.

36. *Id.* at 536.

posed Memorandum therefore constitutes a prejudgment of the outcome of future disputes, a matter which, in point of fact, amounts to negating the existence of an article on dispute settlement.³⁷

The Prime Minister of Egypt went on to remind the United States that its earlier position was somewhat different. He said:

Furthermore, the letter addressed to the Prime Minister of Israel on March 26, 1979, by the President of the United States stipulates that: "In the event of an actual or threatened violation of the Treaty of Peace between Israel and Egypt, the United States will, on request of one or both of the Parties, consult with the Parties with respect thereto and will take such other action as it may deem appropriate and helpful to achieve compliance with the Treaty."

The Government of Egypt therefore reiterates that the concept and orientation of the proposed Memorandum is detrimental to the peace process.

Needless to say that Egypt does not consider itself bound by that Memorandum or whatever commitments to which it was not a party or on which it was not consulted.³⁸

This letter is important, for it helps to interpret the Framework and the Peace Treaty. In Egypt's view, the United States was a "full partner," and not an "arbiter." Though "full partner" does not connote legal status as a party to the instruments, it does signify that Egypt considered the United States role to be that of a party extremely interested in the resolution of the Middle East conflict. Also, this letter clearly emphasizes that the United States was not to "arbitrate" possible future disputes but that, at least for Egypt, the United States role was merely that of a friend providing assistance to two of its friends who were former adversaries.³⁹ Egypt sent another letter expressing similar concerns on the following day.⁴⁰ In paragraphs 7 and 8 of the earlier letter the

37. *Id.*

38. *Id.* at 537.

39. *Id.*

40. Letter from Mostafa Khalil, Egyptian Minister of Foreign Affairs to Cyrus R. Vance, United States Secretary of State (Mar. 26, 1979), *reprinted in id.* at 540-41. The letter stated:

Pursuant to my letter of yesterday concerning the proposed Memorandum of Agreement between U.S. and Israel I wish to inform you of the following:

While Egypt does not contest the right of the United States Government, or any other government for that matter, to take the decisions it

Egyptian Prime Minister appeared to say that, through its agree-

deems compatible with its foreign policy, the Government of Egypt maintains the right not to accept any decision or action which it considers directed against Egypt. I would like to state that the contents of the proposed Memorandum will have a direct bearing on the Peace Treaty.

You are certainly aware of the keen desire of Egypt to strengthen the friendly relations between our two countries as well as to establish peace and stability in the whole region. This will be furthered by achieving a peace treaty between Egypt and Israel as an important step towards a comprehensive settlement of the conflict in the Middle East. Bearing this in mind, I want you to know that we were deeply disappointed to find the United States accepting to enter into an agreement we consider directed against Egypt. The Memorandum does not serve any useful purpose. On the contrary, its contents and purpose would adversely affect the whole process of peace and stability in the area.

Egypt rejects the Memorandum for the following reasons:

1. It is contrary to the spirit existing between our two countries and does not contribute to the strengthening of relations between them. I wish to put on record that Egypt was never consulted on the substance of the proposed memorandum.

2. The contents of the proposed memorandum are based upon alleged accusations against Egypt and providing for certain measures to be taken against her in that hypothetical case of violations, the determination of which is largely left to Israel.

3. We have been engaged in the final process of negotiating the Treaty for over a month now, however, we have not been notified of the intention of the United States to agree on such a memorandum. Moreover, we learned of it by way of information and not consultation. Ambassador Eilts gave it to me at 2:00 p.m., March 25, only 24 hours before the scheduled ceremonies for signature of the Treaty.

4. The United States is supposed to be a partner in a tripartite effort to achieve peace and not to support the allegations of one side against the other.

5. The proposed Memorandum assumes that Egypt is the side liable to violate its obligations.

6. The proposed Memorandum could be construed as an eventual alliance between the United States and Israel against Egypt.

7. It gives the United States certain rights that were never mentioned or negotiated with us.

8. It gives the United States the power to impose measures, or to put it bluntly, punitive measures, a matter which raises doubt about the future relations and could affect the situation in the whole region.

9. The proposed Memorandum even uses dangerously vague terms as "threats of violations" against which certain measures would be taken. We consider this to be a matter of grave consequences.

10. It implies that the economic and arms supply are subject to the sole judgment of the United States Government in connection with the alleged threats of violations being attributed to one side.

ment with Israel, the United States was assuming certain rights vis-à-vis Egypt. That the United States did not do so in law is clear for two reasons. First, in article 1 of the agreement the United States committed itself to continue its supportive role in the peace process.⁴¹ Second, in article 2 the United States clearly agreed to consult with both parties in order to maintain friendly relations between them.⁴² Thus, this letter is significant only because it shows Egypt's displeasure with the contents of the United States-Israeli agreement. Indeed, at the end of the letter, the Egyptian Prime Minister said that his country considered this agreement void. Void or not, the agreement is not directly relevant to the general inquiry of this Article.

Before examining the norms of international law which may apply to this set of facts, three preliminary observations may be made. First, except for the separate agreements with Israel concerning military and economic compensation for vacating the Si-

11. It makes certain aspects of Egyptian-American relations to be subject to elements extraneous to those relations and its commitments made to a third party.

12. It implies the United States acquiescence to Israel's embarking on measures, including military measures, against Egypt on the assumption that there are violations or threats of violation of the Treaty.

13. It gives the United States the right to impose a military presence in the region for reasons agreed between Israel and the United States. A matter which we cannot accept.

14. The proposed Memorandum will cast grave doubts about the real intention of the United States, especially in connection with the peace process. It could be accused of collaboration with Israel to create such circumstances that would lead to American military presence in the area, a matter which would certainly have serious implications especially on the stability in the whole region.

15. It will have adverse effects in Egypt towards the United States and would certainly drive other Arab countries to take a harder position against the peace process, and would give added reasons for them not to participate in that process.

16. It would also pave the way for other alliances to be formed in the area to counter the one whose seeds could be found in the proposed Memorandum.

For all these reasons, I hereby inform you that the Government of Egypt will not recognize the legality of the Memorandum and considers it null and void and as having no effect whatsoever so far as Egypt is concerned.

Id.

41. Memorandum of the Agreement between the United States of America and the State of Israel, Mar. 26, 1979, T.I.A.S. No. 9825.

42. *Id.*

nai, the United States does not appear to be a party, in a technical legal sense, to the Frameworks, the Agreements, or the Peace Treaty between Egypt and Israel. It remains to be seen whether further analysis of the facts and texts can contradict this *prima facie* evaluation. Second, the United States was intimately involved in the creation of the various instruments, and these instruments contain references to consultations with the United States in the event of possible controversies. These facts might give the United States the specific role of an arbitrator or mediator. This Article will categorize the assigned role of the United States and determine whether this role has a specific label under international law. Third, some of the instruments suggest various unilateral acts that the United States may undertake to assist implementation of the peace process between Egypt and Israel. This Article will determine the juristic consequences of such acts. The basic issue is: Can these instruments legally bind the United States to Egypt, to Israel, or to third parties?

III. THE ISSUES RAISED

Four questions are relevant to this analysis:

(1) Though technically not a party to the two Frameworks or the Treaty, can the United States still be considered, under the applicable rules of international law, to have become one by construction or necessary intendment of diverse provisions in these instruments?

(2) What obligations or rights accrue to the United States as a result of its unilateral declarations or assurances contained in letters (some involving the commitment, or implicating commitment of substantial funds) written by the President of the United States or agencies of the Government to the two parties to the Agreements?

(3) If rights or duties do devolve upon the United States, what role should that country play in relation to the two parties that formally signed the Agreements, or *vis-à-vis* third parties?

(4) What is the status of the memoranda of agreement entered into by the United States?

The answers to the above questions will determine the legal status of the United States involvement in the Camp David process, yet the novelty of the facts involved renders it difficult to find the applicable law. Also, the language of the Frameworks, the Treaty, and particularly the letters exchanged as a result thereof, is (perhaps deliberately) so diplomatic that it is not easy to iden-

tify clearly the precise legal consequences resulting from violation of the pertinent clauses. Nevertheless, with this caveat this Article will attempt to interpret those provisions or clauses that reasonably may give rise to legal implications for the United States.

IV. THE RELEVANT PRINCIPLES OF LAW

Because of the peculiar facts of the situation, this section will outline those broad principles which may apply to the four questions raised in section III. After such an examination one might of course conclude that one or more of the principles does not in fact apply or govern the situation.

A. The Law of Treaties: Position of Third Parties

The fundamental principle regarding the effect of treaties is that treaties create rights and duties solely for the parties; this has been represented by the classic maxim, *pacta tertiis nec nocent nec prosunt*. This principle of law also has been incorporated into the Vienna Convention on the Law of Treaties.⁴³ Article 24 of the Convention specifically states that "a treaty does not create either obligations or rights for a third state without its consent."⁴⁴ Both the Convention and the draft of the International Law Commission acknowledge this as the "general rule."⁴⁵ Thus, a treaty cannot place any obligation on a state that is not a party to it. A treaty will place an obligation on a third party state only if that state actually consents. Article 35 of the Convention explicates: "[A]n obligation arises for a third State from a provision of a treaty if the parties to the treaty intend the provision to be the means of establishing the obligation and the third State expressly accepts that obligation in writing."⁴⁶ Furthermore, although under article 34 even a right cannot be conferred on a third state without its consent, a presumption to that effect may be raised if the state concerned does not disclaim the right and at the same time accepts the terms and conditions imposed by the treaty. Article 36 provides:

43. U.N. Doc. A/CONF. 39/27 (1969) [hereinafter cited as Law of Treaties].

44. *Id.* art. 34.

45. See United Nations Conference on the Law of Treaties, First and Second Sessions, U.N. Doc. A/CONF/Add. 2, arts. 30-34 (1971); Law of Treaties, *supra* note 43, arts. 34-38.

46. Law of Treaties, *supra* note 43, art. 35.

1. A right arises for a third State from a provision of a treaty if the parties to the treaty intend the provision to accord that right either to the third State, or to a group of States to which it belongs, or to all States, and the third State assents thereto. Its assent shall be presumed so long as the contrary is not indicated, unless the treaty otherwise provides.

2. A State exercising a right in accordance with paragraph 1 shall comply with the conditions for its exercise provided for in the treaty or established in conformity with the treaty.⁴⁷

Thus, if these criteria are met, a third state may claim a right under a given treaty. Nevertheless, as in the case of the "obligation," a form of consent first must be located.

Though the Convention and the classical law stress that a state that is not a party to a treaty cannot claim or be placed under a duty without its consent, some authority for a slightly different view is said to exist in the judgment of the Permanent Court of International Justice in the case of *Free Zones of Upper Savoy and the District of Gex*.⁴⁸ In that case the court held that, if it can be shown that the parties actually did intend to confer a right on a third state, there is nothing in international law to frustrate such an intention.⁴⁹

In sum, under these principles the United States could have acquired a right or obligation under the Camp David peace process only if (1) Egypt and Israel wanted to confer a right or place the United States under an obligation and (2) the United States actually consented to that acquisition.

B. Interpretation of Treaties: Historical Approach

Unlike municipal law, international law has no technical rules for interpreting treaties.⁵⁰ Nevertheless, because treaties and

47. *Id.* art. 36.

48. *Free Zones of Upper Savoy & the Dist. of Gex (Fr. v. Switz.)* 1932 P.C.I.J., ser. A/B, No. 46, at 93 (Judgment of June 7).

49. *Id.* at 147-48. Such a view, however, does not represent the weight of authority. Indeed, the dissenting judgments pointed out acute difficulties of such a position. *Id.* at 174, 186, 200.

50. See generally D. GREIG, *INTERNATIONAL LAW* 373 (1970) ("There are no technical rules in international law for the interpretation of treaties."). Some commentators, however, argue in favor of establishing such rules. See Beckett, *Comments on the Report of Sir Hersh Lauterpacht*, 43 *ANNUAIRE DE L'INSTITUT DE DROIT INTERNATIONAL* 435, 435-40 (1950); see also Fitzmaurice, *The Law and Procedure of the International Court of Justice 1951-4: Treaty Interpretation*

questions of interpretation invariably involve lawyers, it is natural that a lawyer's approach would be manifest in the process. Under this approach a textual or literal reading of the instrument usually is taken to represent the true intent of the parties.⁵¹ If this method is less than satisfactory, one may examine context,⁵² the practice of the parties,⁵³ or the preparatory work.⁵⁴ Resort to examination of the *travaux préparatoires* is appropriate only if the intent cannot be ascertained easily from a textual reading of the agreements. As a caveat, it must be emphasized that the Permanent Court cautioned that this method of historical interpretation should be used only if the literal meaning of the instrument is not clear.⁵⁵ Nevertheless, the Permanent Court itself on occa-

and Certain Other Points, 33 BRIT. Y.B. INT'L L. 203 (1957) [hereinafter cited as Fitzmaurice II]; Fitzmaurice, *The Law and Procedure of the International Court of Justice: Treaty Interpretation and Certain Other Treaty Points*, 28 BRIT. Y.B. INT'L L. 1 (1951) [hereinafter cited as Fitzmaurice I].

51. For example, article 31 of the Vienna Convention dealing with matters of interpretation provides:

General Rule of Interpretation

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose.

2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

- (a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;
- (b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

3. There shall be taken into account, together with the context:

- (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;
- (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;
- (c) any relevant rules of international law applicable in the relations between the parties.

4. A special meaning shall be given to a term if it is established that the parties so intended.

Law of Treaties, *supra* note 43, art. 31.

52. Fitzmaurice II, *supra* note 50, at 227-28.

53. Fitzmaurice I, *supra* note 50, at 20-21.

54. See Lauterpacht, *Some Observations on the Preparatory Work in the Interpretation of Treaties*, 48 HARV. L. REV. 549 (1935).

55. See, e.g., S.S. Lotus (Fr. v. Turk.), 1927 P.C.I.J., ser. A., No. 9, at 16 (Judgment of Sept. 7).

sion resorts to this technique as an aid in resolving matters before it.⁵⁶

C. Unilateral Declarations of State: Legal Consequences

The third possible norm of law that may apply to the Camp David agreements relates to unilateral declarations on the part of a state. As discussed earlier, the United States appears to make separate commitments in which some unilateral obligations are assumed even though the instruments imply equally that the United States was not a party to the Frameworks or the Peace Treaty. Indeed, it is manifest that the commitments were designed to induce the parties, particularly Israel, not to hesitate when implementing the provisions of the Camp David agreements.

Some authorities have argued that such unilateral declarations of a state give rise to legal consequences.⁵⁷ They maintain that the effect of even an agreement—representing the most solemn form of a legal obligation—depends upon the manifestation of an intent or will to adhere to its provisions. The underlying theme is intent.⁵⁸ According to this view, a state may manifest the willingness to accept an obligation vis-a-vis other countries by its public declarations.⁵⁹ Examples cited from post-World War II precedents include the 1957 Declaration by Egypt on the Suez Canal⁶⁰

56. See Convention of 1919 Concerning Employment of Women During the Night (League of Nations), 1932 P.C.I.J., ser. A/B, No. 50, at 380 (Advisory opinion of Nov. 15). It therefore appears that, although this method may be permissible, it cannot be used generally.

57. *E.g.*, SUY, *LES ACTES JURIDIQUES UNILATERAUX EN DROIT INTERNATIONAL PUBLIC* 22 (1962). The term "unilateral declaration" is used here to describe that category of public statements of a state by which it manifests to accept specific obligations towards a particular state or states in general without a reciprocal undertaking from another state or states. *Id.*

58. See J. VERZIJL, *INTERNATIONAL LAW IN HISTORICAL PERSPECTIVE* vi, 105-11 (1973).

59. See *South West Africa Cases (Ethiopia & Liberia v. S. Afr.)*, 1962 I.C.J. 318, 402-07, 417-18 (Judgment of Dec. 21) (Jessup, J., concurring); see also *Fitzmaurice II*, *supra* note 50, at 229-30 (certainly true when the other country relies on the manifestation).

60. Declaration on the Suez Canal and the arrangements for its operation, Apr. 24, 1957, Egypt, 265 U.N.T.S. 299. This declaration was communicated to the Secretary General of the United Nations. Egypt posited that it was an "international instrument." *Id.* at 306.

and the 1955 Declaration of Austrian Neutrality.⁶¹

Perhaps the most significant recent pronouncement on the subject came in the *Nuclear Tests*⁶² case between Australia and France before the International Court of Justice. The Court held that France was legally bound by the official declarations and public statements that expressed the intent to cease atmospheric nuclear tests.⁶³ According to the court, the *intention* of the maker of the declaration was determinative. The Court concluded that, although the obligation was being assumed unilaterally, it still is legally binding.⁶⁴ Unlike agreements, there is no necessity in such cases to find reciprocity because a *quid pro quo* is not required. This case is strong authority for the proposition that under some circumstances public statements of a state will give rise to binding obligations. Furthermore, these obligations can exist with respect to identified parties or *ergo omnes*. In the *Nuclear Tests* case the statements in question apparently had been issued *ergo omnes* and not to identified parties. It therefore seems that, jurisprudentially, a declaration of unilateral acts by a state to identified parties would be considered on a higher plane and would produce legal consequences for the maker of the declaration.⁶⁵

The quintessence of law regulating unilateral declarations resulting in binding obligations seems to be that: (a) It applies to a unilateral assumption of *obligations*—one cannot arrogate rights without the consent of those affected; and (b) one has to carefully identify that a clear *legal* obligation is being assumed. It cannot lightly be maintained that such an intention generally exists.⁶⁶

61. Bundesverfassungsgesetz vom 26. Oktober 1955 über die Neutralität Österreichs (B.G. Bl. 1955, Nov. 4, 1955, No. 211), reprinted partially in Kunz, *Austria's Permanent Neutrality*, 50 AM. J. INT'L L. 418, 420 (1956).

62. (Austl. v. Fr.), 1974 I.C.J. 252 (Judgment of Dec. 20).

63. *Id.* at 267.

64. *Id.*

65. See Carbone, *Promise in International Law: A Confirmation of Its Binding Force*, 1 ITAL. Y.B. INT'L L. 166, 166-72 (1975); Rubin, *The International Effects of Unilateral Declarations*, 71 AM. J. INT'L L. 1, 1-30 (1977).

66. See North Sea Continental Shelf Cases (W. Ger. v. Den. & Neth.), 1969 I.C.J. 3, 25 (Judgment of Feb. 20). The court stressed that a unilateral assumption of an international obligation was not to be taken "lightly" and intent could only be evident if supported by consistent conduct and the clearest of language in the declaration in question. *Id.*

D. Executive Agreements: Binding Nature Under United States Law

Under United States law, in addition to a treaty, the Government can conclude binding international agreements by executing executive agreements.⁶⁷ Basically, these agreements serve the same purpose as treaties. As discussed below, the United States did enter into transactions of this kind creating binding obligations vis-a-vis both parties to the Camp David agreements, particularly Israel.

V. AN APPLICATION OF THE PRINCIPLES OF LAW TO THE CAMP DAVID AGREEMENTS

A. Application of the Relevant Law

The first question is whether the United States is a party to the two Frameworks or to the Peace Treaty. Though the United States Government was responsible for assembling the parties at Camp David, and though President Carter witnessed the two Frameworks, the United States is not a party to the "Framework for Peace in the Middle East" or to the "Framework for the Conclusion of a Peace Treaty between Egypt and Israel." In both cases it acted as a friend of the two parties that formally signed the agreement. That the Frameworks were signed at the White House and, similarly, that the Peace Treaty was signed some six months later on the White House lawn, does not alter that conclusion. The nature of United States participation, which at best afforded the opportunity for the two parties to reach these agreements, does not make the United States a party to these agreements. The same comment applies to most of what is contained in the letters between the two parties to the agreements and the United States. Some commitments or assurances in the letters may fall in the category of unilateral declarations or simple exec-

67. See DEPARTMENT OF STATE, FOREIGN AFFAIRS MANUAL CIRCULAR NO. 175 (rev. ed. 1966).

'Executive agreement' is a term commonly used to designate international agreements made by the President of the United States without the advice and consent of the Senate given by the two-thirds majority requisite for the conclusion of a treaty under the Constitution. The power of the President to make such agreements with and without the authorization or approval of Congress has been recognized by the Supreme Court

Lissitzyn, *The Legal Status of Executive Agreements on Air Transportation*, 17 J. AIR L. & COM. 436, 438 (1950).

utive agreements made by the United States; they are separately analyzed below. Apart from this matter, it is quite clear under the law of treaties that the United States does not become a party to the agreements or to the related instruments arising out of the Camp David process.

Legally, the association of the United States with the Camp David process must be categorized as providing "good offices." This is the process by which a third state takes the initiative to bring two disputing parties together to solve their differences. Indeed, the United Nations mediator in Palestine in 1948 described the process as: "[A] consequence of a tender of good offices, and of the mediator is to initiate proposals calculated to harmonize conflicting interests and claims."⁶⁸ This is basically a flexible method, and no technical rules of international law apply to this process, which invariably is used differently in diverse situations. The International Convention for the Pacific Settlement of International Disputes (Hague Convention) generally calls for third parties to come forward and use their good offices to help two disputants solve their controversies amicably.⁶⁹ This Article posits that the United States provided good offices to bring about a reconciliation between Egypt and Israel. The process had begun earlier, but in the summer of 1978 it appeared to have stalled. President Carter, with outstanding initiative, created the setting that enabled the two sides to assemble at Camp David and finally agree to the documents that eventually produced the Peace Treaty and other accompanying instruments. This initiative, however, does not make the United States a party to the agreements that operate according to their terms between Egypt and Israel.

B. Historical Approach of Interpretation

Application of the historical approach must begin with an examination of the degree of United States involvement in the period prior to and during the negotiations resulting in the various instruments analyzed in this Article. Under the historical approach, one must look back at least as far as Security Council Resolution 242,⁷⁰ which was confirmed by the Camp David agreements in 1978. This famous Resolution was passed unanimously

68. L. SOHN, *CASES ON UNITED NATIONS LAW* 433 (2d ed. 1968).

69. July 29, 1899, 32 Stat. 1779, I.T.S. 230. The Hague Convention was revised in 1907.

70. 22 U.N. SCOR (1382d mtg.) at 8, U.N. Doc. S/INF. 22/Rev. 2 (1967).

on November 22, 1967, by the Security Council after the 1967 war between Israel and the Arab States.⁷¹ Because the Resolution passed unanimously, it clearly had the affirmative support of the United States. The Resolution essentially called upon Israel to withdraw from territories occupied during the 1967 war.⁷² In addition, this Resolution envisaged a future in which every state in the region lived in peace with secure and recognized boundaries.⁷³

For more than a decade, the prospects of peace in the region remained gloomy; Resolution 242 remained unfulfilled and another war, in 1973, came and went.⁷⁴ At the same time the focus of international efforts, in addition to hoping that Resolution 242 would be implemented, gradually shifted to finding a comprehensive Middle East settlement and, therefore, to addressing the Palestinian question. Even after Camp David,⁷⁵ Egypt and Israel continue to disagree on the nature of this problem. Nevertheless, the Camp David process itself refers to this matter. The need for a solution to the Palestinian question as a precedent to settlement of the Middle East turmoil is further emphasized, at least as far as the United States is concerned, by President Reagan's proposal of September 1, 1982.⁷⁶

71. *Id.*

72. *Id.*

73. Prior to Security Council Resolution 242, the Fifth Emergency Special Session of the General Assembly had been unsuccessful in producing a resolution. See *The Latin American Draft Resolution*, U.N. G.A. (5th Emergency Special Sess.) at 1, U.N. Doc. A/L. 523/Rev. 1 (1967); *Non-Aligned Draft Resolution*, U.N. G.A. (5th Emergency Special Sess.) at 1, U.N. Doc. A/L. 522/Rev. 1 (1967). For an analysis of this Resolution, see Bassiouni, *The Middle East in Transition: From War to War, A Proposed Solution*, 4 INT'L LAW. 379 (1970); Bassiouni & Fisher, *The Arab-Israeli Conflict—Real and Apparent Issues: An Insight into Its Future from the Lessons of the Past*, 44 ST. JOHN'S L. REV. 399 (1970).

74. See S.C. Res. 338, 28 U.N. SCOR (1747th plen. mtg.) at 1, U.N. Doc. S/Res/338 (1973). It is pertinent to notice that while Res. 242 envisaged no particular form of negotiations, the later Res. 338 specifically expected negotiations between the parties "under appropriate auspices," to implement the substantive parts of Res. 242. *Id.*

75. For an Israeli version of this matter, see *Peace in the Middle East: Camp David, the Treaty and Beyond*, 74 PROC. AM. SOC'Y INT'L L. 106, 107 (1980) (remarks of Yehuda Blum). For an Egyptian interpretation, see *id.* at 110 (remarks of Nabil A. Elaraby).

76. See *Transcript of President's Address to Nation on West Bank and Palestinians*, N.Y. Times, Sept. 2, 1982, at A11, col. 1. The legitimate rights of the Palestinians were acknowledged by the 1973 Algiers Arab Summit and 1974

The impasse between Israel and the Arab world was broken in 1977 when President Sadat made his historic visit to Israel. As a consequence, Egypt immediately was ousted from the Arab League and became the sole Arab state negotiating with Israel. Several months elapsed and nothing tangible emerged. President Carter then personally invited both President Sadat and Prime Minister Begin to be guests of the United States Government at Camp David. After intense negotiations spreading over several days, the Camp David accords eventually were formulated and announced on September 17, 1978.

This brief account stresses one major point. Though during the ten years following the 1967 war both Egypt and Israel remained unable to agree to any part of Resolution 242, and even though President Sadat's trip to Israel in 1977 did not result in any immediate, tangible agreement between the two countries, the United States involvement produced consequences of far-reaching significance. The United States unquestionably invested a great deal to ensure an outcome with the potential for ushering in an era of peace. It is equally clear that the resulting peace between the two countries was entirely due to the Camp David agreements.

Nevertheless, even under an application of this historical method of interpretation, the United States cannot be considered a party to the agreements under international law. At this point in the analysis, there is no reasonable basis for concluding that the United States was playing any role greater than that of providing "good offices." This historical method of interpreting a treaty does nothing more than highlight the great input of the United States in the Camp David process. That involvement cannot make the United States a party to these agreements under international law.

Rabat Arab Summit. The Palestinian question is mentioned in several U.N. resolutions. *E.g.*, G.A. Res. 3376, 30 U.N. GAOR Supp. (No. 34) at 3, U.N. Doc. A/10034 (1975); G.A. Res. 3236, 29 U.N. GAOR Supp. (No. 31) at 4, U.N. Doc. A/9631 (1974); G.A. Res. 3089, 28 U.N. GAOR Supp. (No. 30) at 26, U.N. Doc. A/9030 (1973); G.A. Res. 2963, 27 U.N. GAOR Supp. (No. 30) at 27, U.N. Doc. A/8739 (1972); G.A. Res. 2792, 26 U.N. GAOR Supp. (No. 29) at 46, U.N. Doc. A/8429 (1971); G.A. Res. 2672, 25 U.N. GAOR Supp. (No. 21) at 35, U.N. Doc. A/8028 (1970); G.A. Res. 2535, 24 U.N. GAOR Supp. (No. 30) at 25, U.N. Doc. A/7630 (1969); G.A. Res. 2452, 23 U.N. GAOR Supp. (No. 18) at 21, U.N. Doc. A/7218 (1968).

C. Unilaterally Undertaken Obligations of the United States

The important "unilateral declarations" which might conceivably come under this heading have been discussed in section II. As previously stated, unilateral declaration means the assumption of a duty without the corresponding *quid pro quo* coming from the beneficiary of that obligation. In other words, it is fundamentally different from a treaty or agreement in which two parties agree to mutually acceptable rights or duties. Here a state, which is not a party to a treaty, unilaterally assumes a duty towards another by its independent commitment to do so.

It seems that the United States assumed such obligations in several of the instruments described in section II. One appears in the Peace Treaty. Article VII of the Appendix to Annex I of the Peace Treaty dealt with various security arrangements that were outlined with respect to the withdrawal of Israeli forces from the Sinai. Among these security arrangements was a provision giving the United States the role of providing aerial surveillance.⁷⁷ The purpose of this clause was to ensure compliance with the treaty provisions relating to withdrawal. That the United States agreed to perform this service is manifest from the facts of the situation. Though this was clearly a unilateral act voluntarily undertaken to aid the implementation of the treaty between Egypt and Israel, it automatically terminated with the transfer of the Sinai to Egypt. Though jurisprudentially it was the voluntary assumption of a service for the benefit of the parties to the treaty, it may be more appropriately called an aspect of the good offices that the United States provided for bringing about peace. Because this aspect of the good offices, by its own terms,⁷⁸ came to an end with the return of the Egyptian territory, it is unnecessary to examine this matter further.

The letter of President Carter of March 26, 1979,⁷⁹ as already explained, refers to two matters relevant to unilateral declarations. First, the latter part of this communication to Egypt (not to Israel) emphasizes that, if the United Nations fails to station

77. Treaty of Peace, *supra* note 27, Annex I, app. 1, art. VII, para. 2, reprinted at 384. The treaty provides: "Both Parties request the United States operated Sinai Field Mission to continue its operations in accordance with previous agreements until completion of the Israeli withdrawal from the area east of the Giddi and Mitla Passes. Thereafter, the Mission will be terminated." *Id.*

78. *Id.*

79. *Id.*, reprinted at 532-33.

peacekeeping forces, then the United States, subject to its constitutional procedures, will attempt to create a multinational force.⁸⁰ This voluntary contribution to the implementation of the treaty was obviously very important because its impact continued beyond the withdrawal stage. Nevertheless, it contained a double qualification: it was not unequivocal; and it was subject to the requirements of the United States Constitution. Second, the United States undertook first to make efforts at progress in the United Nations and, failing that, to obtain a multinational force for peacekeeping duties. With these built-in limitations, it is difficult to construe this gesture as the assumption of an unqualified binding obligation such as one would find in a treaty or bilateral agreement. Indeed, as discussed below, when the United States did assume such a clear obligation, it did so by the traditional method of an agreement. The most that can be said for this gesture of the United States is that, though it did not bind the United States in law, it did signal in the strongest terms the political importance that President Carter placed on the United States commitment to the Camp David process.

A second notable aspect of this letter is its suggestion that the United States volunteered to be consulted by one or both of the parties in the event of a violation or threatened violation of the Peace Treaty.⁸¹ Whether in law this automatically makes the United States an arbitrator or mediator requires examination. First, this letter is addressed only to Egypt. Because the Peace Treaty to which the letter relates is between Egypt and Israel, it is very doubtful whether an argument can be made that the letter has bilateral repercussions. Apart from its role as a political statement that the United States would be ready to offer its good offices, the letter does not create any legal obligation on the part of the United States. If the letter had been addressed to Israel and Egypt, and if both parties had accepted its terms, perhaps an argument could be made that the letter was in the nature of an arbitration *compromis*, but that is not the case. In sum, this is not an instrument that might create a reference to binding arbitration. The same conclusion is reached for a second reason: the Peace Treaty itself does not have such a clause. Two clauses may be examined in this context. First, article VII reads as follows: "Disputes arising out of the application or interpretation of this

80. *Id.*, reprinted at 533.

81. *Id.*, reprinted at 532.

Treaty shall be resolved by negotiations. . . . Any such disputes which cannot be settled by negotiations shall be resolved by conciliation or submitted to arbitration."⁸² Though the parties seem to agree to solve their disputes by the various methods mentioned therein, there is clearly no statement that the United States will be the third party to resolve the dispute if and when it arises. Thus, this letter clearly cannot be read in a way which supersedes this clause to include the United States as a necessary offeror of arbitration or good offices. Conversely, if the parties wanted the United States to serve that function, it would have been mentioned in this clause and not relegated to a letter addressed to only one of the parties and written by the United States. Moreover, clause VI says in part: "The Parties undertake to fulfill in good faith their obligations under this Treaty, without regard to action or inaction of any other party and independently of any instrument external to this Treaty."⁸³ This good faith requirement is also not strong enough to make the United States, because of its involvement in the Peace Treaty, an automatic mediator, as the letter in question might suggest at first glance. In conclusion, the letter cannot be deemed to be a *compromis* for compulsory arbitration proceedings. It is yet another example of political involvement by the United States in the events following the withdrawal of Israel from the Egyptian territory and does not by itself produce any legal consequences.

That the two other states involved in the peace process accepted the letter as a statement of political intent to keep the United States involved in the post-Treaty stage—particularly with regard to the autonomy talks concerning the Palestinians—is evident from the last paragraph of the joint Egyptian-Israeli letter concerning future negotiations dated March 26, 1979. It reads: "This letter also confirms our understanding that the United States Government will participate fully in all stages of negotiations."⁸⁴ It thus appears that the intention was to keep the United States attached and involved in the post-Treaty developments. These are, however, pronouncements of a political nature and do not produce any clear or tangible legal consequences.

82. *Id.* art. VII, reprinted at 366.

83. *Id.* art. VI, para. 2, reprinted at 365.

84. Letter from Israeli Prime Minister Menachem Begin and Egyptian President Anwar Sadat to President Carter (Mar. 26, 1979) (Egyptian-Israeli Letter on Future Negotiations), reprinted in 18 I.L.M. 530, 531 (1979).

The third instrument to be discussed is the letter written by Egypt to protect the memorandum of agreement between the United States and Israel dated March 26, 1979.⁸⁵ The Egyptian letter dated a day earlier opposes the draft of this agreement.⁸⁶ The two Egyptian letters concerning this matter were discussed earlier. The interesting point in the first letter is the description of the United States by the Egyptian Prime Minister as a full partner and not as an arbiter.⁸⁷ Though the United States is clearly not a party to the Treaty, one must conclude that, on a political plane, the Egyptians wanted to ensure that United States involvement continued beyond the Treaty.

In the same context, clause 2 of the Memorandum of Agreement between the United States and Israel⁸⁸ (which is bilateral and binding) that produced this Egyptian letter contains the statement that the United States will, in an appropriate manner, mediate if a violation of the Peace Treaty is proved to the satisfaction of the United States. Because this is a bilateral understanding between two of the three necessary parties to any future controversy of this kind, the comments already made with respect to President Carter's letter to Egypt dated March 26, 1979, apply here. This is not the equivalent of an arbitration *compromis*. Any agreement between the United States and Israel cannot be incorporated into the Treaty and deemed to create compulsory arbitration proceedings. Indeed, as already noted, Egypt expressly denied any intent to create such a role for the United States under the Peace Treaty. Hence, it must be concluded that the United States does not acquire any legal obligations which necessarily involve it as an arbitrator for future disputes. Any involvement will continue to be on the political plane.

One last instrument requires attention: the Memorandum between the United States and Israel relating to the supply of oil. As discussed earlier, the Memorandum is a binding, bilateral agreement. It is one of the few instruments that unambiguously gives rise to obligations for the United States within the ambit of the Camp David agreements. Similarly, the Memorandum of

85. Letter from Egyptian Prime Minister for Foreign Affairs Mostafa Khalil to Secretary of State Cyrus Vance (Mar. 26, 1979), *reprinted in id.* at 540.

86. Letter from Egyptian Prime Minister for Foreign Affairs Mostafa Khalil to Secretary of State Cyrus Vance (Mar. 25, 1979), *reprinted in id.* at 536.

87. *Id.*

88. *Id.* at 537.

Agreement between the United States and Israel dated March 26, 1979, is an agreement between the United States and Israel and operative in accordance with its terms. Because both of these instruments are essentially bilateral, they do not pose any peculiar problems. They affect the United States as any other treaty or agreement would.

D. Congressional Action in Pursuance of the Camp David Agreements

Though it is submitted that the United States is not a party to most of the Camp David instruments, whether construed liberally or literally, and it did not become in law an arbitrator or mediator, the United States did undertake some commitments of a financial nature. Such commitments, contained in a few letters of bilateral agreements, were eventually placed before the Congress for necessary approval. Principally, four major commitments made by the United States were separately placed before the Congress for its consideration and appropriate action.⁸⁹ Three of these commitments were to Israel, and one was to Egypt.

The first United States commitment related to United States funding and construction of air and military bases for Israel following withdrawal from the Sinai.⁹⁰ The second related to an extension of the 1975 agreement between the United States and Israel for providing oil to that country for a five year period at market prices. That period was later extended to fifteen years.⁹¹ The third United States commitment related to Egypt. In a letter from Defense Secretary Harold Brown, the United States agreed to the sale of military services and equipment over a three year period. These sales, valued at \$1.5 billion, were to be financed by

89. See *Middle East Peace Package: Hearings on S. 1007 Before the Senate Comm. on Foreign Relations, 96th Cong., 1st Sess. (1979)* [hereinafter cited as *Hearings on Peace Package*]. The Peace Package bill was introduced "to authorize supplemental international security assistance for the fiscal year 1979 in support of the peace treaty between Egypt and Israel and related agreements, and for other purposes." *Id.* at 2. The letters and memoranda of agreements necessitating this legislation are cited in an appendix in the form of tables. *Id.* at 71.

90. *Id.* at 152 (agreement to grant \$800 million for two airbases); *id.* at 180 (three year commitment of aid totaling \$3 billion: the \$800 million grant and the rest in loans).

91. *Id.* at 17, 54 (statements by Secretary of State Cyrus Vance).

Foreign Military Security credits.⁹² The fourth United States commitment related to a memorandum between the United States and Israel and a letter containing assurances executed by President Carter, President Sadat, and Prime Minister Begin. These assurances concerned the stationing of United Nations personnel in the zone where the respective forces of parties to the Peace Treaty were limited.⁹³

The object of placing these important United States commitments before Congress was to obtain the necessary legislation to fulfill substantial financial obligations. Broadly speaking, these commitments or assurances envisaged an acceleration of aid to Egypt, in addition to the wider obligations assumed vis-à-vis Israel.⁹⁴ The aid package to Israel was in addition to the approximately \$1.8 billion given annually to that country.⁹⁵

The extent of some of these financial obligations can be seen by looking at some of the features of the International Security Assistance Act of 1979.⁹⁶ It is clear that, although the United States is not technically a party to the main Camp David agreements, nevertheless, through separate letters of assurance or agreements it assumed huge financial commitments toward the parties. These commitments did not really form part of the two Frameworks or the Peace Treaty, but were executed and agreed to in related instruments.

92. *Id.* at 182.

93. For details of these assurances, see *Egypt-Israel-United States: Letters and Memoranda Concerning the Treaty of Peace*, 18 I.L.M. 530, 533 (1979) (letter from President Carter to President Sadat); *id.* at 539 (memo of agreement between the United States and Israel).

94. This aid was in addition to that provided by the International Security Assistance Act of 1978, Pub. L. No. 95-384, 92 Stat. 730 (codified in scattered sections of 22 U.S.C.) (Supp. IV 1980); see also Foreign Assistance and Related Programs Appropriations Acts, 1979, Pub. L. No. 95-481, 92 Stat. 1591, 22 U.S.C. §§ 262(c), 262(d), 262(h), 2169 (Supp. IV 1980).

95. During fiscal years 1977 and 1978, this figure included \$2.111 billion in grants and \$1.52 billion in loans. *Hearings on Peace Package*, *supra* note 89, at 183-84.

96. Pub. L. 96-92, 93 Stat. 701 (codified in scattered sections 22 U.S.C.) (Supp. IV 1980). Under this Act, Israel received \$800 million for reconstructing bases, \$2.2 billion as compensation for vacating and moving operations after leaving the Sinai, and Egypt was to be given \$1.5 billion in military assistance and \$300 million in economic aid. S. REP. No. 113, 96th Cong., 1st Sess. 1 (1979).

VI. CONCLUSION

A. The United States, the Frameworks, and the Peace Treaty

Section V of this Article concluded that, apart from some obligations that the United States voluntarily undertook in the Camp David process, the United States is not a party under international law to the two Frameworks or to the Peace Treaty between Egypt and Israel. These obligations were, in essence, substantial financial incentives that the United States voluntarily offered to encourage the establishment of peace between the other two nations. Because the discharge of these obligations involved the expenditure of large amounts of funds in the foreign affairs field, in keeping with United States constitutional requirements and existing laws they were placed before Congress for appropriate legislative action. Recourse to Congress was necessary and had been mentioned in a letter of March 26, 1979, that was issued in conjunction with the Peace Treaty. In that letter President Carter said that "subject to United States constitutional process," the United States would be prepared to take steps toward the creation of a multinational peacekeeping force. Apart from the obligations that already have been analyzed, the United States has no duty or right under international law in the Camp David process vis-à-vis the two other states involved, or *ergo omnes*.

The following conclusions can be drawn from the various instruments. First, the United States is not a party to the two Frameworks or to the Treaty. Second, the United States provided its good offices to the two parties to the Camp David agreements. Third, though not a party, the United States offered various assurances to both Egypt and Israel to aid the implementation of the Peace Treaty and to be helpful thereafter in the post-Treaty matters (e.g., autonomy talks for the West Bank and Gaza). Some of these assurances are in letters, and others are in Memoranda of Agreement. Fourth, the several bilateral undertakings of the kind described above show that the United States has assumed obligations involving military and other types of assistance. Most of these obligations benefit Israel; a few benefit Egypt.

B. The Nature of United States Undertakings

None of the above matters have the binding effect that agreements with the status of a defense or security treaty would have for the United States. All undertakings are found in the letters or Memoranda of Agreement. Conversely, they are not part of the

Treaty or the two Frameworks. Thus, they do not formally commit the United States to any action in the events connected with the Treaty. Furthermore, most of these assurances or bilateral undertakings are expressly made subject to the United States constitutional processes. In terms of United States law, the form and content of the commitments is in the nature of traditionally concluded "executive agreements." Because many of these commitments were then incorporated in foreign assistance legislation, they also attained the status of statutory obligations.

C. The Future United States Role in the Middle East Peace Process

Although no duty or right accrues to the United States under the main Camp David instruments (except for obligations of a financial nature discussed above), there remains the question of what role the United States should play in the future of the Middle East peace process. This is essentially a political question, not a legal one. In response to the crisis that began with the Israeli invasion of Lebanon in June 1982, the United States indicated concern for its vital long-term interests in that region by initiating "shuttle diplomacy" involving Ambassador Habib. As earlier observed, some of the important matters have been focused upon in President Reagan's proposals enunciated on September 1, 1982.

At the moment it appears to be certain that one phase of the Camp David process—that of realizing peace between Egypt and Israel—has reached its culmination with the signing of the Peace Treaty on March 26, 1979, and with the exchange of instruments of ratification on April 25, 1979. By the spring of 1982, return of the last portion of Egyptian territory finalized implementation of some of the major steps envisaged by the Peace Treaty. Indeed, achievement of this goal seems to be the major political and legal accomplishment of the Camp David process.

Return of the last part of the Sinai, however, still leaves three difficult questions unresolved in the context of the larger peace that the Camp David process called for: (i) the question of Palestinian "autonomy" for the inhabitants of the West Bank and Gaza; (ii) the status of Jerusalem; and (iii) the matter of "settlements" on the Israeli-occupied territories still await a solution.⁹⁷

97. See *Egypt-Israel-United States: Camp David Agreements*, 17 I.L.M.

At the writing of this Article, it is difficult to conceive that Israel and Egypt will be able to resolve these matters by themselves. The Camp David agreements do not specifically resolve these questions and certainly do not make an Egyptian-Israeli peace contingent upon any wider, regional peace, although that may in fact happen. Even the autonomy matter, which is addressed by the Agreements, seems to have gone nowhere.⁹⁸ There is also a growing feeling that, with the return of the Sinai, the Agreements have either accomplished their realistic goals or essentially are finished in the sense of having failed to achieve the wider peace that clearly was a purpose of the Agreements.⁹⁹ Nevertheless, the United States, because of its global power and the financial obligations allocated to the implementation of the agreements, cannot accept failure of the accords. President Reagan's proposals of September 1, 1982, probably were issued for this reason. The object of those proposals clearly was to renew with vigor the good offices process initiated at Camp David. The United States is aware that, unless the underlying questions posed above are resolved, a solely Egyptian-Israeli peace will fail to remove tensions from that troubled region.

The cost of war, both from the viewpoint of finances and politics, is extraordinary for the United States. Information provided by Secretary Vance to the Senate Foreign Relations Committee in

1463, 1466 (1978) (text of frameworks). While the concept of returning Israeli occupied territory is clearly the underlying theme of the peace process, Jerusalem is not mentioned by name in either of the two frameworks, or in the Treaty of Peace. President Sadat, in his letter of September 17, 1978, to President Carter, asserts that Arab Jerusalem is part of the West Bank, *id.* at 1473, and Prime Minister Begin, in his letter of March 17, 1978, to President Carter, stresses that "Jerusalem is one city, indivisible, the Capital of the State of Israel." *Id.*

98. See *West Bank Folly*, N.Y. Times, Nov. 16, 1979, at A30, col. 1, for the following comment on the "autonomy" issue:

Israel is turning the offer of "autonomy" to Palestinian arabs into a sham. Under the cover of a developing peace with Egypt, Prime Minister Begin and his Cabinet seem to be doing their utmost to frustrate the other half of the Camp David Accords. They are provoking even moderate West Bank leaders into hostility and binding them to the Palestine Liberation Organization. How the Israelis expect to negotiate with people they seem determined to humiliate is almost beyond understanding.

99. See, e.g., *Sceptical Start*, ECONOMIST, Mar. 17, 1979, at 62. See generally Murphy, *To Bring to an End the State of War: The Egyptian-Israeli Peace Treaty*, 12 VAND. J. TRANSNAT'L L. 897 (1979).

1979 (when the Egyptian-Israeli Peace Treaty was signed) estimated that the cost to the United States—quite apart from the losses to the combatants—of the four Arab-Israeli wars between 1948 and 1973 was \$55 billion to \$70 billion.¹⁰⁰ These cost estimates suggest the reason why President Carter agreed to the future commitment of large amounts of money as a consequence of the Camp David Accords.¹⁰¹

It is thus clear that, despite the absence of any clear obligations on the part of the United States embodied in the Camp David agreements, political policy and economic constraints demand that the United States attempt to bring the prospect for a comprehensive peace in that troubled area closer to reality. If the peace is realized—and it is a very problematical “if”—then and only then will it be possible to improve the economies of these war-ravaged countries. The United States must play an important role in this recovery.¹⁰² For these matters to reach a reasonably

100. 125 CONG. REC. S5175-76 (daily ed. May 2, 1979) (study by Secretary of State Cyrus Vance).

101. For an overview of these obligations, see *Hearings on Peace Package*, *supra* note 89, at 71 (memorandum to the Senate Foreign Relations Committee). The memorandum provides:

As a result of the Treaty, the Administration has committed itself to seeking Congressional approval for an additional \$4.8 billion in foreign assistance, of which Israel would receive \$3 billion and Egypt \$1.8 billion.

The legislation, which was formally submitted to Congress on April 6, would authorize appropriations of \$1.47 billion to finance the \$4.8 billion in programs . . . The Administration is requesting that the total package be approved as a fiscal year 1979 supplemental authorization.

The legislation would authorize the following for Israel:

A grant of \$800 million in defense articles and services for the relocation of two airbases from the Sinai to the Negev.

Appropriations of \$220 million to guarantee \$2.2 billion in foreign military sales credits to Israel to finance procurement through fiscal year 1982 of defense articles and defense services.

The legislation would authorize the following for Egypt:

Appropriations of \$150 million to guarantee \$1.5 billion in foreign military credit sales to finance procurement through fiscal year 1982 of defense articles and services.

Appropriations of \$300 million in economic assistance, of which approximately \$200 million would be in the form of grants and \$100 million in loans.

Id.

102. President Sadat envisaged, analogizing from the Marshall Plan, a “Carter Plan” for bringing in United States and European investment of approximately \$15 billion for Egypt alone. *Bombs and Ugly Rhetoric*, TIME, Apr. 2,

satisfactory conclusion, the United States must continue to be closely involved in the events now taking place in the Middle East.