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To Bring to an End the State of War: The Egyptian-Israeli Peace Treaty

John F. Murphy

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TO BRING TO AN END THE STATE OF WAR: THE EGYPTIAN-ISRAELI PEACE TREATY

*Saying Peace, peace; when there is no peace.**

*John F. Murphy***

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I. INTRODUCTION

On March 26, 1979, Egypt and Israel signed an historic peace treaty¹ in Washington, D.C. During the ceremonies accompanying the signing, President Carter hailed the Treaty as "a victory, not

* *Jeremiah*, 6:14 (King James).

** Visiting Professor of Law, Cornell University (fall, 1979). Professor of Law, University of Kansas. B.A., 1959, LL.B. with Specialization in International Affairs, 1962, Cornell University. The author would like to express his appreciation for the able research assistance of Martha L. Schmid, a second-year student at the University of Kansas School of Law.

1. Treaty of Peace, March 26, 1979, Egypt-Israel, *reprinted in* 18 INT'L LEGAL MAT. at 362 (1979) [hereinafter cited as Egyptian-Israeli Peace Treaty].

of a bloody military campaign, but of an inspiring peace campaign."² Similarly, President Anwar el-Sadat of Egypt characterized the treaty as a "turning point of great significance for all peace-loving nations,"³ and Israeli Prime Minister Menachem Begin stated that "[n]ow we make peace the cornerstone of cooperation and friendship."⁴ In Tel-Aviv Israelis celebrated the signing with a fireworks display and band music;⁵ in Cairo, while response to the Treaty was more restrained, Egyptians generally applauded the end to three decades of belligerency with Israel.⁶

In contrast, the reaction in some other parts of the world was violently negative. The new government in Iran denounced the Treaty as "treason against Islam, the Muslim people and the Arab states."⁷ Arab editorials lamented that Sadat's peace initiative had reached "a regrettable conclusion. Egypt has divorced itself from the Arab world."⁸ The Palestine Liberation Organization (PLO) urged Arab action against Egyptian and United States interests, such as the withdrawal of Arab funds from Egyptian and American banks, the restriction of Egyptian and American goods and services in Arab markets and the use of the oil weapon, *i.e.*, raising prices, reducing production and, as a last resort, imposing an embargo.⁹ More radical elements of the PLO reportedly planned terrorist violence in Israel and against Egyptian and American installations throughout the Middle East.¹⁰ Meeting in emergency session in Baghdad, member states of the Arab League and the PLO unanimously expressed their opposition to the Treaty and agreed on a broad range of sanctions against Egypt. These included termination of all aid to Egypt, suspension of its Arab League membership, transfer of Arab League headquarters from Egypt to Tunisia, withdrawal of ambassadors from Cairo, imposition of an economic boycott and termination of diplomatic relations within a month of the meeting.¹¹

2. N.Y. Times, March 27, 1979, at A11, col. 1.

3. *Id.*, at A11, col. 3.

4. *Id.*, at A13, col. 4.

5. *Id.*, at A12, col. 5.

6. *Id.*, at A12, col. 2.

7. Emirate News, March 26, 1979, at 1, col. 3.

8. Arab News, March 27, 1979, at 6, col. 1.

9. N.Y. Times, June 11, 1979, at A3, col. 1.

10. *Id.*, March 27, 1979, at 1, col. 5.

11. *Id.*, April 1, 1979, § 1, at 1, col. 3. Division among the Arab states, however, has hindered the carrying out of these sanctions. The Sudan, Oman,

In the midst of the euphoria and the hysteria, however, more cautious assessments of the Treaty were offered. President Carter himself acknowledged that the Treaty was merely "[a] first step on a long and difficult road."¹² European reaction was notably restrained.¹³ The Foreign Minister of France publicly declined to endorse the Treaty, expressing France's concern that it might prove to be a separate peace which would undermine prospects for an overall solution to the Arab-Israeli conflict.¹⁴

This article will describe and evaluate the Egyptian-Israeli Peace Treaty, and set it in historical and contemporary perspective in order to highlight some of the primary problems facing decision-makers in their deliberations on approaches to resolve the Arab-Israeli conflict in the Middle East. The article will then consider alternative courses of action available to the world community in light of principles of the United Nations Charter and of other sources of public international law and justice, political feasibility and the perceived interests of all parties to the conflict. Lastly, it will suggest new approaches to the problem, with a view to ending the present impasse between Egypt and Israel on the one hand and the rest of the Arab states on the other and furthering the cause of peace and human rights in the Middle East.

II. THE EGYPTIAN-ISRAELI PEACE TREATY: A BRIEF BACKGROUND

Although a knowledge of the historical developments in the Arab-Israeli conflict is indispensable to an understanding of the current context in which the Treaty must be appraised, an excessive focus on historical components of the conflict may hinder analysis. As one perceptive commentator has recently noted, "both nations, Arabs and Israelis, give great reverence to history. But the past is the enemy of the future."¹⁵

With this caveat in mind, this brief historical overview begins with growth in both Arab and Jewish nationalism in the latter part of the nineteenth century.¹⁶ Arab nationalists demanded the

Yemen, and Somalia, for example, have refused to cut diplomatic ties with Cairo. *Id.*, May 1, 1979, § 1, at 3, col. 4.

12. *Id.*, March 27, 1979, at A11, col. 2.

13. *Id.*, March 28, 1979, at A12, col. 1.

14. *Id.*, June 6, 1979, at A19, col. 3.

15. Eban, *Camp David—The Unfinished Business*, 57 FOREIGN AFF. 343, 344 (1978/79).

16. An extensive summary of the history of the Arab-Israeli conflict through July 1967 may be found in L. SOHN, CASES ON UNITED NATIONS LAW 416-74, 527-

creation of independent Arab states free from Turkish and later British and French control, while Jewish nationalists sought a homeland. Both turned their attention to the territory of Palestine. In an effort to accommodate Arab and Jewish national aspirations, Lord Balfour, the British Foreign Secretary, wrote a letter to Lord Rothschild, stating that the British government viewed "with favour the establishment in Palestine of a national home for the Jewish people. . .," while advising that ". . . it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine. . . ."¹⁷ After the British occupied Palestine during 1917-18 an agreement between the Allied Powers incorporating the terms of the Balfour Declaration placed the territory under a British Mandate. This agreement was subsequently confirmed by the Council of the League of Nations on July 24, 1922. At this time there were approximately 486,000 Moslems, 84,000 Jews, and 71,000 Christians living in Palestine.¹⁸

Arab and Jewish interpretations of the Balfour Declaration and of the League Mandate differed dramatically: each relied on the ambiguous terms of these documents in support of its position. The Jews interpreted the Mandate as requiring the establishment of a Jewish state. The Arabs, on the other hand, contended that the Mandate required only the creation of a Jewish National Home within Palestine. This difference in view and resentment against continued Jewish immigration led to Arab riots in Palestine during 1920-21, 1929, 1933 and 1936. In response to these riots the Peel Commission found the Arab and Jewish positions irreconcilable under the terms of the Mandate and recommended the partition of Palestine into separate Arab and Jewish states. The

634 (2d rev. ed. 1967). For a shorter, but precise, summary see J. MOORE, *THE ARAB-ISRAELI CONFLICT* xix-xxxi (1977) [hereinafter cited as MOORE]. This background section of the article draws heavily from Professor Moore's work.

17. Commonly known as the Balfour Declaration, the letter may be conveniently found in MOORE, *supra* note 16, at 884.

18. Report of the United Nations Special Committee on Palestine, 2 U.N. GAOR, Supp. (No. 11) 11, U.N. Doc. A/364 (Sept. 3, 1947). The precise number of Moslems or Arabs in Palestine at the commencement of the Mandate is a matter of dispute. Professor Quincy Wright maintained that the 1922 population of Palestine consisted of "600,000 Moslems, 73,000 Christians and 84,000 Jews." Wright, *The Middle East Crisis*, *THE MIDDLE EAST: PROSPECTS FOR PEACE, BACKGROUND PAPERS AND PROCEEDINGS OF THE THIRTEENTH HAMMARSKJOLD FORUM* 1, 4 (1969). See also M. REISMAN, *THE ART OF THE POSSIBLE* 58-60 (1970) [hereinafter cited as REISMAN].

Peel plan was not adopted because of Arab and Jewish opposition.

A London conference called in 1939 also failed to work out an agreement between the parties. On May 17, 1939, the British Government issued a white paper announcing a more restrictive policy toward Jewish immigration and proposing the creation of an independent Palestine state within ten years. The Jewish community in Palestine vehemently opposed this shift in British policy, and Nazi genocide of European Jews during World War II prompted Jews to immigrate to Palestine in ever greater numbers, especially after the end of the war in 1945. This in turn led to increased conflict between the Arab and Jewish communities and between the Jewish community and the British authorities in Palestine.

In 1947, their patience exhausted, the British turned the issue over to the General Assembly of the United Nations. The Assembly appointed the Special Committee on Palestine to investigate the situation and called upon all governments and peoples to refrain from the use of force pending action by the Assembly on the report of the Special Committee. The majority of the committee recommended that Palestine be partitioned into an Arab state and a Jewish state and that an international trusteeship be created for the City of Jerusalem. It also recommended some degree of economic union and other cooperation between the two states and Jerusalem. On November 29, 1947, the General Assembly approved the Special Committee's plan and declared that the Mandate should terminate no later than August 1, 1948.¹⁹ The Jewish Agency accepted the plan, but the Arab states challenged the authority of the General Assembly to partition Palestine. A draft resolution, which would have referred the issue of the legality of the partition plan to the International Court of Justice for an advisory opinion, was rejected by the General Assembly Ad Hoc Committee on the Palestinian Question.

Upon termination of the Palestine Mandate the Jewish Community immediately proclaimed the State of Israel within the boundaries established by the partition plan. The new state was quickly recognized by a number of states, including the United States and the Soviet Union. Egypt, Syria, Transjordan, Lebanon, and other Arab states, however, intervened militarily. After several bitter engagements, both sides complied with a Security Council command to stop fighting, and a cease-fire began on

19. G.A. Res. 181 (II), 2 U.N. GAOR, 131-32, U.N. Doc. A/519 (1947).

July 18, 1948. Largely through the efforts of Dr. Ralph J. Bunche, armistice agreements between Israel and Egypt, Lebanon, Jordan, and Syria were concluded in 1949. Under the terms of the Armistice Agreements a United Nations Truce Supervision Organization (UNTSO) was established to observe and maintain the armistice arrangements. On May 11, 1949, Israel was admitted to membership in the United Nations.

The 1948 war had two consequences especially relevant to an understanding of the Egyptian-Israeli Peace Treaty. First, at the time of the cease-fire Israel occupied considerably more territory than it had been allotted under the 1947 partition plan. Second, large numbers of refugees were displaced by the conflict. A 1948 resolution of the General Assembly provided that "the refugees wishing to return to their homes and live at peace with their neighbors should be permitted to do so at the earliest practicable date, and . . . compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible" ²⁰ In December 1949 the United Nations Relief and Works Agency (UNRWA) was established to assist in carrying out a relief and works program for the refugees.

Israel and the Arab states differed as to whether the Armistice Agreements of 1949 terminated the state of belligerency between them. On the ground that the state of belligerency continued, Egypt restricted the passage through the Suez Canal of Israeli ships and of cargo bound for Israel. In response, on September 1, 1951, the Security Council called upon Egypt to terminate the restrictions and concluded that, "since the Armistice regime . . . is of a permanent character, neither party can reasonably assert that it is actively a belligerent. . . ." ²¹

Despite these differences of view regarding the interpretation of the Armistice Agreements, no further major hostilities erupted until 1956. In response to Egyptian nationalization of the Suez Canal Company Israel invaded the Sinai and raced to the Canal and to the southern tip of Sinai at Sharm-El-Sheikh. The French and British mounted an airborne attack on the Canal, allegedly to protect the security of the area. The Security Council was unable to pass a resolution calling for an immediate cease-fire because of French and British vetoes. The Council instead voted to summon

20. G.A. Res. 194 (III), U.N. Doc. A/810 at 21, 24 (1948).

21. 6 U.N. SCOR, (558th mtg.) 2-3, U.N. Doc. 5/2322 (1951).

the first Emergency Special Session of the General Assembly under the Uniting for Peace Resolution. The Assembly adopted a series of resolutions calling for a cease-fire, a return to Armistice lines, and the creation of a United Nations Emergency Force in the Middle East (UNEF).

Pressure from the United Nations, the Soviet Union, and the United States induced Britain, France, and Israel to accept a cease-fire and, upon the arrival of UNEF forces British and French troops began to withdraw. Israel delayed its withdrawal until it received assurances that the United States viewed the Gulf of Aqaba and the Strait of Tiran as international waterways and that it would be prepared "to join with others to secure general recognition of this right."²² Since Israel refused to permit the stationing of UNEF forces on its territory, they were positioned solely on Egyptian territory.

Although there were a number of Arab fedayeen raids from the territory of neighboring Arab states, as well as Israeli reprisals, these arrangements helped to prevent major hostilities in the area for over ten years. In 1967, however, the conflict escalated in intensity. At Egyptian request, UNEF was withdrawn. Egypt reimposed the blockade against Israeli shipping in the Strait of Tiran and massed forces in the Sinai. It is unclear which side fired the first shot.²³ On June 5, 1967, however, the Israeli air force mounted a massive attack on Egyptian military airfields. Syrian, Jordanian, and other Arab forces soon joined the battle, but within six days Israel had occupied large areas of Arab territory, including the Gaza Strip, the Sinai, the Golan Heights, East Jerusalem, and the West Bank of Jordan. Shortly thereafter a cease-fire went into effect and the General Assembly and the Security Council passed several resolutions concerning humanitarian assistance to civilians²⁴ and prisoners of war.²⁵ They also called upon Israel not to take unilateral measures to change the status of

22. These assurances were contained in a United States *aide-memoire*, a copy of which can be found in MOORE, *supra* note 16, at 1010.

23. For general surveys of the immediate background to the 1967 War, see Yost, *How the Arab-Israeli War Began*, 46 FOREIGN AFF. 304 (1968) and Higgins, *The June War: The United Nations and Legal Background*, 3 J. CONTEMP. HIST. July 1968, at 253. There appears to be little doubt that Israel made the first massive move of military force across international borders. But up to the time of the Israeli strike, Israel had been subjected to an almost continuous stream of border raids from Syria and from Jordan.

24. 22 U.N. SCOR (1361st mtg.) 13906 U.N. Doc. S/Res/237 (1967).

25. *Id.*

Jerusalem.²⁶

After long and difficult negotiations the Security Council unanimously adopted the landmark Resolution 242²⁷ as the framework for settlement of the Arab-Israeli conflict. In order to implement the resolution Secretary-General U Thant appointed Gunnar Jarring, Swedish Ambassador to the Soviet Union, as his Special Representative. Neither Ambassador Jarring's efforts, however, nor talks among the Soviet Union, United States, France, and Great Britain produced an agreement acceptable to both Arabs and Israelis. Syria refused to accept Resolution 242. The Arab states continued to stand on the policy adopted by the Arab League and the Palestine Liberation Organization in the Khar-toum Resolution "no peace with Israel, no recognition of Israel, no negotiations with it, and insistence on the rights of the Palestinian people in their own country."²⁸ The PLO adopted a national charter in 1968 in which it declared the establishment of the State of Israel to be "entirely illegal" and proclaimed as its goal the total liberation of Palestine.²⁹

The cease-fire between Israel and the Arab states steadily deteriorated. In the spring of 1969, President Gamal Abdel Nasser of Egypt, concerned that prolonged Israeli occupation of the territories seized in the Six-Day War would strengthen their claims to permanent sovereignty over the territories, announced that the cease-fire was no longer valid and began a "war of attrition" against Israeli defenses along the Suez Canal.

United States Secretary of State William P. Rogers succeeded in negotiating an "at least" 90-day standstill cease-fire agreement between Israel, Egypt, and Jordan, which went into effect on August 7, 1970. In an effort to undermine the Rogers initiative, the Popular Front for the Liberation of Palestine, a splinter group of the PLO, sponsored a series of hijackings of and attacks on commercial aircraft. These precipitated major clashes between PLO forces in Jordan and the Army of King Hussein. Syria intervened on behalf of the Palestinians, but withdrew when the United States threatened a counter-intervention.

With the death of President Nasser in 1970, Anwar el-Sadat be-

26. 22 U.N. SCOR (1357th mtg.) 13575 U.N. Doc. S/Res/236 (1967).

27. 22 U.N. SCOR (1382d mtg.) 8/9 U.N. Doc. S/Res/242 (1967).

28. The text of the resolution may be found in Y. ALEXANDER & N. KITTRIE, *CRESCENT AND STAR* 427-29 (1973).

29. The text of the PLO Charter may be found in MOORE, *supra* note 16, at 1085.

came President of the United Arab Republic. The standstill cease-fire was extended despite substantial disagreement over the interpretation of Resolution 242, especially whether it required Israeli withdrawal from all the occupied territories or only a negotiated withdrawal to "secured and recognized boundaries." During this period, Egypt indicated for the first time a willingness to enter into a peace agreement with Israel if basic differences could be resolved.

With the failure of the Rogers and Jarring initiatives to lead to a resolution of the Arab-Israeli conflict, Egypt and Syria once again chose the military option. On Yom Kippur 1973 Egyptian and Syrian armies attacked Israeli forces along the Suez Canal and in the Golan Heights allegedly in order "to challenge the *fait accompli* [Israel] had tried to impose with its continued occupation of Arab territory from 1967 to 1973."³⁰ These attacks enjoyed initial success but Israeli counter-attacks advanced Israeli forces to within twenty-two miles of Damascus and succeeded in establishing an Israeli bridgehead west of the Canal behind Egyptian lines, fifty miles from Cairo.

As the military tide began to turn in favor of Israel, the Soviet Union invited the United States to come to Moscow for urgent consultations. In response to these discussions the Security Council adopted Resolution 338,³¹ which made mandatory Security Council Resolution 242.³² The resolution also called for an im-

30. Heikal, *Egyptian Foreign Policy*, 56 FOREIGN AFF. 714, 723 (1978).

31. 28 U.N. SCOR (1747th mtg.) 10 U.N. Doc. S/INF/29 (1974).

32. Resolution 242 was cast in the form of a recommendation to the parties to the conflict to adopt certain principles as the basis for peace in the Middle East. Resolution 338, however, confirmed that the parties should start to implement Resolution 242 immediately after the cease fire in the 1973 war and was a *decision* of the Security Council that negotiations to this end should start immediately. Resolution 338 provides:

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 of 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.

Id.

mediate cease-fire and negotiations between the parties. Subsequent Security Council resolutions urged that the two sides return to the positions they occupied when the cease-fire became effective. In addition, the United States established a new Emergency Force. The Geneva Peace Conference on the Middle East followed Resolution 338's call for negotiations. Two public sessions and one closed session were held, but the talks were discontinued after three fruitless sessions.

Shortly after the cease-fire for the 1973 War went into effect, President Sadat decided, on the basis of a variety of political, economic and social factors, to eschew further resort to force and to pursue a "political settlement option."³³ Aided by Secretary Kissinger's shuttle diplomacy, negotiations led to a limited agreement on disengagement of forces between Egypt and Israel of January 1974³⁴ and to the more comprehensive Sinai Interim Agreement of September 1975.³⁵ In the words of Secretary Kissinger, Egypt and Israel pledged in the Interim Agreement "not just to disentangle their forces in the aftermath of war, but to commit themselves to the peaceful resolution of the differences that have so long made them mortal enemies."³⁶ Part of the agreement called for the United States to station approximately two hundred technicians in the Sinai in order to assist in an early warning system in the Sinai passes in the UN buffer zone. The Interim Agreement was supplemented by a United States pledge to Israel to be an oil supplier of last resort for a five year period.

In 1974, a summit conference of Arab Heads of State held in Rabat proclaimed the Palestine Liberation Organization as the "sole legitimate representative of the Palestinian People,"³⁷ and the United Nations General Assembly granted the PLO perma-

33. The phrase is taken from a paper by Professor M. Cheriff Bassiouni entitled "An Analysis of Egyptian Peace Policy Toward Israel: From Resolution 242 (1967) to the 1979 Peace Treaty," presented to the Chicago Council on Foreign Relations by the author in April 1979. A copy of Professor Bassiouni's remarks, which are expected to be published by the Council, was furnished to this writer by the author.

34. The text of the agreement may be found in 3 MOORE, *supra* note 16, at 1167.

35. *Id.* at 1208.

36. *Early Warning System in Sinai: Hearings Before the Senate Committee on Foreign Relations*, 94th Cong., 1st Sess. 208 (1975) (statement of Sec'y of State Kissinger).

37. N.Y. Times, Oct. 29, 1974, § 1, at 1, col. 8.

ment observor status.³⁸ Israel, however, continued to oppose negotiations with the PLO unless it revised its charter and recognized Israel's right to exist.

During 1976 and 1977 efforts were made to return to a multilateral approach to resolving the Arab-Israeli conflict, through reconvening the Geneva Middle East Peace Conference, where all parties could be represented and all issues discussed. To this end the Soviet Union and the United States issued a communique on the Middle East that included a reference to Palestinian rights that provoked a hostile reaction from Israel and from Jewish organizations in the United States.³⁹ The effort to reconvene the Conference failed because of the inability of the prospective parties to agree on the format.⁴⁰ Shortly after President Sadat's dramatic trip to Jerusalem in November 1977 and his speech before the Knesset of Israel, the two nations resumed the bilateral approach to negotiations. The results of these negotiations were first, the Camp David Agreements and second, the Egyptian-Israeli Peace Treaty.

38. G.A. Res. 3237, Nov. 22, 1974, reprinted in U.N. MONTHLY CHRONICLE, Dec. 1974, at 37.

39. N.Y. Times, Oct. 2, 1977, § 1, at 1, col. 6. In pertinent part, the Declaration provided:

The United States and the Soviet Union believe that, within the framework of the comprehensive settlement of the Middle East problem, all specific questions of the settlement should be resolved, including such key issues as withdrawal of Israeli armed forces from territories occupied in the 1967 conflict; the resolution of the Palestinian question, including insuring the legitimate rights of the Palestinian people; termination of the state of war and establishment of normal peaceful relations on the basis of mutual recognition of the principles of sovereignty, territorial integrity, and political independence.

Id., § 1, at 16, col. 4.

Negative reaction from Israel to the Declaration is reported in *id.*, Oct. 3, 1977, § 1, at 1, col. 6. Similar criticism in the United States is reported in *id.*, § 1, at 6, col. 4. The PLO, on the other hand, reportedly welcomed the Declaration. *Id.*, Oct. 2, 1977, § 1, at 16, col. 6.

40. For the tortuous path of negotiations attempting to reach agreement on reconvening the Geneva Conference, see 24 KESSINGS CONTEMP. ARCHIVES 29149-68 (1978). As late as early December 1977, the Carter Administration was reported to favor reconvening the Geneva Conference but willing to support a separate peace between Egypt and Israel as better than no peace at all. N.Y. Times, Dec. 7, 1977, at 1, col. 4.

III. PRINCIPAL FEATURES OF THE CAMP DAVID AGREEMENTS AND THE EGYPTIAN-ISRAELI PEACE TREATY

A. *The Camp David Agreements*

After eleven days of difficult negotiations, which at times appeared about to end in failure,⁴¹ the Camp David Agreements were signed on September 17, 1978.⁴² The Agreements constituted the basis for the Egyptian-Israeli Peace Treaty. The first Agreement, entitled "A Framework For Peace in the Middle East," contains the "principles and some specifics in the most substantive way which will govern a comprehensive peace settlement."⁴³ In the preamble the parties proclaim that "[p]eace 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."⁴⁴ In the body of the Agreement, the parties express their determination "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 338 in all their parts."⁴⁵

With respect to the West Bank and the Gaza Strip, the provisions of the Agreement are largely hortatory and envisage that agreement on the more difficult issues arising out of the situation will be reached in future negotiations. For example, the Agreement provides that "Egypt, Israel, Jordan and the representatives of the Palestinian people should participate in negotiations on the resolution of the Palestinian problem in all its aspects."⁴⁶ To this end the parties agree to a transitional arrangement for the West Bank and the Gaza Strip not to exceed five years. They also agree to provide full autonomy to the inhabitants of these areas and to Israel's withdrawal of its military government and its civilian administration as soon as a self-governing authority has been freely elected by the inhabitants to replace the existing military government. In implementing these arrangements, the parties agree that

41. N.Y. Times, Aug. 11, 1978, at 11, col. 1.

42. The Camp David Agreements may be found in 17 INT'L LEGAL MAT. 1466 (1978) [hereinafter cited as Camp David Agreement].

43. Remarks made by President Carter at the signing of the Camp David Agreements (Sept. 17, 1978), reprinted in 17 INT'L LEGAL MAT. at 1463 (1978).

44. Camp David Agreement, preamble para., *supra* note 42 at 1467.

45. *Id.* para. 1, *supra* note 42 at 1467.

46. *Id.* § A, para. 1.

“due consideration” should be given “both to the principle of self-government by the inhabitants of these territories and to the legitimate security concerns of the parties involved.”⁴⁷

The procedures or “modalities” for the establishment of the self-governing authority in the West Bank and the Gaza Strip are to be agreed upon by Egypt, Israel and Jordan.⁴⁸ These modalities *may* include Palestinians as members of the delegations of Egypt and Jordan if the parties mutually agree. The Parties will define the powers and responsibilities of the self-governing authority in the West Bank and the Gaza Strip and upon agreement some Israeli armed forces will be withdrawn. The remaining Israeli forces will be redeployed into specified security locations. Other arrangements for “assuring internal and external security and public order” are a “strong local police force,” which may include Jordanian citizens, and joint Israeli and Jordanian patrols and control posts to assure the security of the borders.⁴⁹

The five-year transitional period will begin upon establishment of the self-governing authority in the West Bank and the Gaza Strip.⁵⁰ Negotiations are to take place “to determine the final status of the West Bank and the Gaza Strip and its relationship with its neighbors, and to conclude a peace treaty between Israel and Jordan by the end of the transitional period”⁵¹ within three years after the beginning of the transitional period. The agreement specifies that any solution reached through the negotiations must “recognize the legitimate rights of the Palestinian people and their just requirements.”⁵²

The negotiating parties are to reach agreement on the final status of the West Bank and the Gaza Strip and on other outstanding issues within the five-year transitional period.⁵³ The elected representatives of the West Bank and Gaza Strip will then vote upon the agreement.⁵⁴ During the transitional period, representatives of Egypt, Israel, Jordan, and the self-governing authority will constitute a continuing committee to decide on “modalities of admission of persons displaced from the West Bank and the Gaza

47. *Id.* § A, para. 1(a).

48. *Id.* § A, para. 1(b).

49. *Id.* § A, para. 2.

50. *Id.* § A, para. 1(c).

51. *Id.*

52. *Id.*

53. *Id.* § A, para. 1(c)(1).

54. *Id.* § A, para. 1(c)(2).

Strip in 1967, together with necessary measures to prevent disruption and disorder."⁵⁵ Egypt and Israel will work with each other and with other interested parties toward a "prompt, just and permanent" resolution of the refugee problem.⁵⁶

Regarding Egyptian-Israeli relations, the parties agree to settle any disputes in accordance with the procedures for peaceful settlement set forth in Article 33 of the United Nations Charter.⁵⁷ The parties also agree to attempt to conclude a peace treaty within three months of the signing of the Camp David Agreements.⁵⁸

The Agreement contains a section on "associated principles" that "should apply to peace treaties between Israel and each of its neighbors—Egypt, Jordan, Syria and Lebanon."⁵⁹ These principles include the following: granting full diplomatic recognition; abolishing economic boycotts; guaranteeing each other's citizens due process of law; exploring possibilities for economic development; establishing claims commissions for the mutual settlement of all financial claims; and requesting the United Nations Security Council and its permanent members of the Council in their individual capacities, to underwrite the peace treaties and to ensure respect for their provisions.

In the "Framework for the Conclusion of the Peace Treaty,"⁶⁰ Egypt and Israel agree to negotiate in good faith to conclude a peace treaty within three months of the signing of the Camp David Agreements. The parties agree to a phased withdrawal of Israeli armed forces from the Sinai and to the exercise of full Egyptian sovereignty "up to the internationally recognized border between Egypt and mandated Palestine."⁶¹ They also agree to Egyptian use of airfields evacuated by the Israelis for civilian purposes⁶² and to the right of free passage by Israeli ships through the Gulf of Suez and the Suez Canal. The Strait of Tiran and the Gulf of Aqaba are recognized as international waterways open to all nations.⁶³

55. *Id.* § A, para. 3.

56. *Id.* § A, para. 4.

57. *Id.* § B, para. 1.

58. *Id.* § B, para. 2.

59. *Id.* § C, para. 1.

60. *Reprinted in* 17 INT'L LEGAL MAT. at 1470 (1978) [hereinafter cited as Camp David Framework].

61. *Id.*

62. *Id.*

63. *Id.*

In order to implement the Treaty Framework, there are provisions relating to the stationing of Egyptian and Israeli⁶⁴ forces. The Treaty Framework also provides that United Nations forces will be stationed in the part of the Sinai lying within about twenty kilometers of the Mediterranean Sea and adjacent to the international border, and in the Sharm-el-Sheikh area, to ensure freedom of passage through the Strait of Tiran. These forces are not to be removed, except with the approval of the Security Council, including the unanimous vote of the five permanent members.⁶⁵ Finally, the Treaty Framework provides that, upon an interim withdrawal of all Israeli forces between three months and nine months after the signing of the peace treaty,⁶⁶ normal relations will be established between Egypt and Israel.⁶⁷

Accompanying the Camp David Agreements are letters exchanged among President Carter, Prime Minister Begin and President Sadat. Several of these letters contain statements highly relevant to various issues in the Arab-Israeli conflict. For example, in separate letters to President Carter of September 17, 1978, Prime Minister Begin and President Sadat set forth their respective, diametrically opposed positions on the status of Jerusalem.⁶⁸ In another letter to President Carter, President Sadat states that "[t]o ensure the implementation of the provisions related to the West Bank and Gaza and in order to safeguard the legitimate rights of the Palestine 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."⁶⁹ And in a letter to Prime Minister Begin, President Carter acknowledges the Israeli position that the expressions "Palestinians" or "Palestinian People," as they appear in the Camp David Agreements, refer to "Palestinian Arabs" and that the expression "West Bank" refers to "Judea and Samaria."⁷⁰

In a letter to Israel's Minister of Defense, Ezer Weizman, United States Secretary of Defense Harold Brown acknowledges

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. *Reprinted in 17 INT'L LEGAL MAT. at 1473 (1978).*

69. Letter from Anwar El Sadat to Jimmy Carter (Sept. 17, 1978), *reprinted in 17 INT'L LEGAL MAT. at 1474 (1978).*

70. Letter from Jimmy Carter to Menachem Begin (Sept. 22, 1978), *reprinted in 17 INT'L LEGAL MAT. at 1474 (1978).*

Israel's intention to build two military airbases in the Negev to replace those in the Sinai evacuated by Israeli troops and suggests that the United States and Israel consult "on the scope and costs of the two new airbases as well as on related forms of assistance which the United States might appropriately provide"⁷¹ He further reports President Carter's willingness to seek congressional approval of any assistance agreed on as a result of such consultations.

Following the conclusion of the Camp David Agreements, United States Secretary of State Cyrus Vance went to Jordan and Saudi Arabia to explain the terms of the Agreements, obtain support for them, and induce King Hussein of Jordan to join in the negotiations contemplated by the Agreements on the West Bank and the Gaza Strip.⁷² This mission was unsuccessful. In November 1978 the Arab States, including Jordan and Saudi Arabia, held a summit conference in Baghdad, Iraq, and agreed to a system of sanctions to be imposed against Egypt if it went ahead and concluded a separate peace treaty with Israel.⁷³

Concluding the peace treaty proved to be difficult. Although the parties had expressed their desire to conclude a peace treaty within three months of the signing of the Camp David Agreements, this proved impossible. Negotiations bogged down and appeared on the verge of collapse when President Carter once again interjected himself into the process and made a trip to the Middle East in March 1979.⁷⁴

B. *The Egyptian-Israeli Peace Treaty*

The Egyptian-Israeli Peace Treaty, as one might expect, elaborates upon the principles and specific provisions of the Camp David Treaty Framework Agreement.⁷⁵ In the preamble, the parties declare that they are convinced of the "urgent necessity" of establishing "a just, comprehensive and lasting peace in the Middle East in accordance with Security Council Resolutions 242 and 338" and reaffirm their adherence to the Camp David

71. Letter from Harold Brown to Ezer Weizman (Sept. 28, 1978), reprinted in 17 INT'L LEGAL MAT. at 1474 (1978).

72. N.Y. Times, Sept. 23, 1978, at 32, col. 1.

73. N.Y. Times, Mar. 6, 1979, at 1, col. 6.

74. *Id.*

75. See text accompanying notes 41-45 *supra*.

Treaty Framework Agreement.⁷⁶ Characterizing the Treaty as "an important first step in the search for comprehensive peace in the area and for the attainment of the settlement of the Arab-Israeli conflict in all its aspects,"⁷⁷ they invite the other Arab parties to the dispute to join in the peace process.⁷⁸

Under the operative provisions of the Treaty, peace is established upon the exchanges of instruments of ratification between the parties.⁷⁹ Israeli withdrawal from the Sinai is to take place in phases, with Egypt resuming full sovereignty over the evacuated areas.⁸⁰ Upon completion of an interim withdrawal by Israel,⁸¹ the parties are to establish normal and friendly relations,⁸² including "full recognition, diplomatic, economic and cultural relations, termination of economic boycotts and discriminatory barriers to the free movement of people and goods, and . . . mutual enjoyment by citizens of the due process of law."⁸³

The parties agree to the establishment of limited force zones in Egyptian and Israeli territory,⁸⁴ as well as to the stationing of United Nations forces and observers in specified areas.⁸⁵ They further agree "not to request withdrawal of the United Nations personnel and that these personnel will not be removed unless such removal is approved by the Security Council of the United Nations, with the affirmative vote of the five Permanent Members, unless the parties otherwise agree."⁸⁶ The Treaty requires the creation of a Joint Commission to facilitate implementation of the Treaty.⁸⁷

Like the Camp David Treaty Framework Agreement,⁸⁸ the Treaty provides that Israeli ships, as well as ships going to and

76. Egyptian-Israeli Peace Treaty, Preamble, paras. 1, 2, *supra* note 1 at 362.

77. *Id.*, Preamble, para. 5.

78. *Id.*, Preamble, para. 6.

79. *Id.* art. I, para. 1.

80. *Id.* art. I, para. 2; Protocol Concerning Israeli Withdrawal and Security Arrangements, art. I, *reprinted in* 18 INT'L LEGAL MAT. at 367 (1979) (the Protocol is Annex I to the Peace Treaty) [hereinafter cited as Annex I].

81. Egyptian-Israeli Peace Treaty art. I, para. 2, art. III, para. 3; Annex I, art. 1.

82. Egyptian-Israeli Peace Treaty art. I, para. 3, art. III, para. 3.

83. *Id.* art. III, para. 3.

84. *Id.* art. IV, Annex I, art. II; Annex I app., art. 2.

85. Egyptian-Israeli Peace Treaty art. IV, para. 2; Annex I, art. II.

86. Egyptian-Israeli Peace Treaty art. IV, para. 2.

87. *Id.* art. IV, para. 3; Annex I app., art. 4.

88. Camp David Framework, *supra* note 60, subpara. (d).

coming from Israel, shall enjoy free passage through the Suez Canal.⁸⁹ The parties consider the Strait of Tiran and the Gulf of Aqaba to be international waterways.⁹⁰ The Treaty also provides that the parties shall not enter into any obligation in conflict with the Treaty⁹¹ and that “[s]ubject to Article 103 of the United Nations Charter, in the event of a conflict between the obligations of the Parties under the present Treaty and any of their obligations, the obligations under this Treaty will be binding and implemented.”⁹² The parties agree to resolve any disputes arising out of the application or interpretation of the Treaty by negotiations⁹³ and, if negotiations fail to resolve a dispute, to submit the matter to conciliation or arbitration procedures.⁹⁴ The parties agree further to establish a claims commission for the mutual settlement of all financial claims.⁹⁵

Although the United States was not a party to the Treaty, it prominently participated in the negotiations leading up to its conclusion. Moreover, as an inducement to conclusion of the Treaty, the United States made a number of commitments to both parties in ancillary instruments. For example, in identical letters to Prime Minister Begin and President Sadat,⁹⁶ President Carter pledged that, “subject to United States Constitutional processes,” the United States would consult with the parties and “take such other action as it may deem appropriate and helpful to achieve compliance with the Treaty” in the event of an actual or threatened violation of the Treaty. The President pledged further that the United States would conduct aerial monitoring as requested by the parties, and would exert its “utmost efforts” to induce the United Nations Security Council to authorize the permanent stationing of United Nations forces envisaged by the Treaty; in the event of Security Council failure to authorize the forces, the President would “be prepared to take those steps necessary to ensure the establishment and maintenance of an acceptable alternative multinational force.”⁹⁷

89. Egyptian-Israeli Peace Treaty art. V, para. 1.

90. *Id.* art. V, para. 2.

91. *Id.* art. VI, para. 4.

92. *Id.* art. VI, para. 5.

93. *Id.* art. VII, para. 1.

94. *Id.* art. VII, para. 2.

95. *Id.* art. VIII.

96. See The Egyptian-Israeli Peace Treaty, Selected Documents No. 11, April 1979, at 23 (Dep't State Publication).

97. *Id.* This provision was especially important to Israel because of its experi-

The United States also entered into a number of separate agreements with the parties that closely related to the Treaty.⁹⁸ The United States and Israel agreed that the United States would take certain steps if Egypt were to violate the Treaty in a way that threatened Israel's security⁹⁹ and extended for fifteen years the United States role as an oil supplier of last resort.¹⁰⁰ In a letter to Israel's Defense Minister Weizman from Secretary of Defense Brown¹⁰¹ the United States promised to provide extraordinary military assistance for Israel and reaffirmed its pledge to assist Israel's construction of air bases in the Negev to replace those evacuated in the Sinai.¹⁰²

ence in 1967 when, at the request of President Nasser, Secretary-General U Thant withdrew the United Nations Emergency Force from the Sinai and the Gaza Strip, which allowed Egyptian forces to come up to the borders of Israel and to close the Gulf of Aqaba to Israeli shipping. For conflicting views of the legality of President Nasser's and Secretary-General U Thant's actions, compare United Nations Emergency Force Special Report of the Secretary-General, May 18, 1967, U.N. Doc. A/6669 (1967), with Letter of Ernest A. Gross Regarding Withdrawal of U.N.E.F., N.Y. Times, May 26, 1967, at 46, col. 1.

United States efforts to induce the United Nations Security Council to authorize the permanent stationing of United Nations forces envisaged by the Treaty proved abortive, when in June, 1979, the Soviet Union refused to agree to a proposal that the Council extend the mandate of the United Nations Emergency Force in order that it might stay on in the Sinai and supervise the Treaty. In response, the United States initially expressed the view that the stationing of unarmed United Nations truce observers would be a satisfactory substitute for the Emergency Force. Israel, however, objected, on the ground that the truce observers could be withdrawn at any time, and urged the United States to seek a multinational force. In the meantime, Israel and Egypt agreed to use their own forces to set up checkpoints and to monitor compliance with the agreement. On September 19, 1979, the United States, Egypt and Israel announced tentative agreement that the United States would expand its air and ground surveillance of Israel's withdrawal from the Sinai. It was also announced that negotiations toward the establishment of a multinational force would continue. N.Y. Times, Sept. 20, 1979, at 1, col. 6.

98. The texts of these agreements and other relevant materials may be found in a briefing book prepared for the Senate Committee on Foreign Relations and containing material relative to the Camp David Agreements and to the Peace Treaty. See *Middle East Peace Package: Hearings on S. 1007 Before the Senate Committee on Foreign Relations*, 96th Cong., 1st Sess. 71-184 app. (1979) [hereinafter cited as *Hearings on S. 1007*].

99. *Id.* at 134 app.

100. *Id.* at 148 app.

101. *Id.* at 180 app.

102. The United States also entered into an agreement with Israel concerning the funding of airbase construction, *id.* at 152 app.; and an agreement regarding the construction of airbase facilities, *id.* at 155 app. Pursuant to these agree-

With respect to Egypt, the Administration, in a letter to Egyptian Defense Minister Kamal Hassan Ali from the Secretary of Defense Brown,¹⁰³ pledged to seek from Congress authorization to extend \$1.5 billion in Foreign Military Sales credits to Egypt during the next three years. The Administration also requested an additional \$300 million in economic assistance to Egypt in fiscal year 1979.¹⁰⁴

The Treaty itself contains no reference to the West Bank and the Gaza Strip.¹⁰⁵ Instead, by joint letter to President Carter,¹⁰⁶ Prime Minister Begin and President Sadat declared their intention to proceed with implementation of the Middle East Framework Agreement. They agreed to start negotiations

ments, the Administration requested Congress to authorize, as a fiscal year 1979 supplemental request, \$3 billion in additional military aid for Israel. *See* S. 1007, 96th Cong., 1st Sess. §§ 2, 3, *reprinted in id.* at 126-29 app.

103. *Id.* at 182 app.

104. S. 1007 § 4. On July 20, 1979, President Carter signed the Special International Security Act of 1979, Pub. L. No. 96-35, 93 Stat. 89. The legislation authorizes the supplemental appropriation of \$1.47 billion in support of the Peace Treaty: \$1.1 billion is in the form of grants and loans and \$370 million will finance Foreign Military Sales (FMS) totalling \$3.7 billion. However, the legislation also specifies that authorization of FMS financing of defense articles and services does not constitute approval of the selling of any particular weapons to either country; all sales must be in accord with the procedures of Section 36(b) of the Arms Export Control Act, 22 U.S.C. § 2776(b) (1976), requiring 30 days prior notification with the possibility of a congressional veto of proposed sales of major defense equipment for \$7 million or more and of other defense articles and services for \$25 million or more. *Id.* § 4(a). Beginning January 15, 1980, the President is required to submit an annual report to the Speaker of the House and to the Chairman of the Senate Foreign Relations Committee regarding Egypt's and Israel's financial situations as they relate to repayment of the debt. *Id.* § 4(c)(2). Congress requests the President to consult with other countries in order to encourage them to increase their economic assistance to Egypt and Israel and to stimulate investment in these countries, and requires the President to report to Congress within 180 days of the enactment of the legislation on the results of American efforts to this end as well as on the impact of Arab sanctions on Egypt's economy. *Id.* § 7. Finally, the legislation states that authorization contained in the Act to implement specified arrangements in support of the Peace Treaty does not imply approval of any other agreement, understanding or commitment made by the executive branch. *Id.* § 2(c).

105. This is, of course, in accord with the approach followed in concluding the Camp David Agreements. The terms of the Camp David Treaty Framework Agreement contain no reference to the West Bank and the Gaza Strip. *See* notes 60-67 & accompanying text *supra*.

106. Letter from Menachem Begin and Anwar El Sadat to Jimmy Carter (March 26, 1979), *reprinted in* the Egyptian-Israeli Peace Treaty, *supra* note 96, at 21.

within a month after the exchange of instruments of ratification of the Peace Treaty. The Parties also agreed to invite Jordan to join the negotiations. In the event Jordan declines to join the negotiations, they will nonetheless be held by Egypt and Israel.

Egypt and Israel stated that their goal is to complete negotiations on the establishment of the self-governing authority in the West Bank and the Gaza Strip within one year. Elections to the authority will be held as quickly as possible thereafter. The self-governing authority will be established one month after the election, at which time the transitional period of five years will begin. The letter also confirms the parties' understanding that the United States government will participate fully in all stages of negotiations. Upon receipt of the joint letter, President Carter followed the same procedure used at Camp David, adding to the American and Israeli copies the notation: "I have been informed that the expression 'West Bank' is understood by the Government of Israel to mean 'Judea and Samaria.'" ¹⁰⁷

IV. ASSESSMENT OF THE MIDDLE EAST PEACE PACKAGE

In attempting to assess the Egyptian-Israeli Peace Treaty, one must consider the entire "Middle East Peace Package" ¹⁰⁸ of which the Treaty forms a part. One must assess the Camp David Agreements, the Peace Treaty itself, and various documents accompanying and sometimes forming a part of these three international agreements.

A. *The Egyptian-Israeli Peace Treaty*

As noted by President Carter and others, ¹⁰⁹ the most salient aspect of the Treaty is that peace has been formally established between Israel and an Arab state for the first time in the history of the Arab-Israeli conflict. Peace has been established, moreover, between Israel and an Arab nation that led the confrontation states in the five wars ¹¹⁰ between the Arabs and the Israelis.

107. See note 70 & accompanying text *supra*.

108. The phrase was used as an overall descriptive term in the hearings on the Administration's request for supplemental military and economic assistance to Egypt and Israel in support of the Peace Treaty. See *Hearings on S. 1007*, *supra* note 98.

109. See notes 2-5 *supra*.

110. The four major outbreaks of war include the armed conflicts of 1948, 1956, 1967, and 1973. In addition, the so-called "war of attrition" which took a

For the moment at least the prospects of a sixth war erupting are slim, since without the participation of Egypt, the ability of the Arab states to wage war against Israel is "much diminished."¹¹¹

In the long run, the economic benefits of the Peace Treaty to Egypt and Israel could be considerable. Both countries should benefit from decreases in military spending and from increases in military and economic assistance, especially from the United States¹¹² and from the International Bank for Reconstruction and Development. Foreign investment is likely to increase in both countries.¹¹³ Egypt will be self-sufficient in oil with the return of the oil fields in the Sinai. Joint economic projects between the two countries may also promote development.¹¹⁴

On the other hand, the short-term economic impact on the parties to the Peace Treaty is more problematic. Israel faces continued inflation caused in part by expenses incurred in carrying out the terms of the Treaty.¹¹⁵ The economic sanctions imposed against Egypt by the other Arab states may also hurt, especially if they result in a drop in tourism, fifty percent of which comes from the Persian Gulf states.¹¹⁶

substantial toll in lives and property, from 1969 to 1970, should be included within the list.

111. *Hearings on S. 1007, supra* note 98, at 30.

112. *BUSINESS WEEK*, April 2, 1979, at 38.

113. The Paris-based branch of the Rothschild banking family has reportedly sent out feelers to Israeli officials on investments. *BUSINESS WEEK*, May 28, 1979, at 61. For its part, Egypt is granting concessions in the Sinai and hopes to increase its oil production. *BUSINESS WEEK*, April 2, 1979, at 38-40. Xerox Corporation reportedly now has authorization to build an assembly plant in Alexandria, and the Ford Motor Corporation and the Coca-Cola Company are exploring investment opportunities. *BUSINESS WEEK*, May 28, 1979, at 64. On the other hand, foreign investors are reportedly still frustrated with "official lethargy, mind-numbing red tape and other notorious hassles." *N.Y. Times*, July 3, 1979, § 1, at 2, col. 4.

114. *Hearings on S. 1007, supra* note 98, at 57-58 (Suggestion of Senator Sarbanes). For an imaginative proposal for a "Sinai Development Trust," see M. REISMAN, *supra* note 18, at 30-43 (1970).

115. The cost of living in Israel for April, 1979, had jumped more than 8.7%, or more than 100% if projected over the entire fiscal year. *TIME*, May 28, 1979, at 22.

116. *BUSINESS WEEK*, April 2, 1979, at 38. On the other hand, as of August 26, 1979, Egypt was reported to be in the "best shape since '67." *N.Y. Times*, August 27, 1979, at A3, col. 4. Reportedly, the political and economic sanctions imposed against Egypt by other Arab states "have cramped the country but not paralyzed it," have "peaked too soon to be really effective," and are "now floundering." *Id.*

The Peace Treaty specifically refers to Security Council Resolutions 242¹¹⁷ and 338 as the basis for "a just, comprehensive and lasting peace in the Middle East."¹¹⁸ The Peace Treaty tracks the language of the Resolution. Specifically, the Treaty provides for Israeli withdrawal from territory occupied during the 1967 War. Egypt must terminate all claims of belligerency and recognize Israel's sovereignty, territorial integrity and political independence. The Treaty recognizes Israel's right to live in peace behind secure and recognized borders free from threats or acts of force. The Treaty further guarantees the right of passage through international waterways in the area as well as the territorial inviolabil-

117. Because of the importance of Resolution 242 to an assessment of the Peace Treaty, it is reprinted here:

Adopted unanimously at the 1382nd meeting

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 acknowledgment of the sovereignty, territorial integrity and political independence of every State in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force;

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 of 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.

118. Egyptian-Israeli Peace Treaty Preamble, para. 1.

ity and political independence of the parties through security measures including the establishment of demilitarized zones.

A close question is whether Egypt has violated commitments owed to other Arab states by concluding the Peace Treaty. In 1950, the Council of the Arab League unanimously adopted a resolution in response to indications that Jordan was contemplating entering into a separate peace with Israel.¹¹⁹ The resolution reaffirms an earlier decision of the League that Palestine should be an

119. The action of the League Council took place in the context of a decision by Jordan to annex the West Bank. On April 11, 1950, a general election was held to choose a new Jordanian Parliament with equal representation from the east and west banks of the Jordan. This parliament, meeting on April 24, 1950, formally approved the unification of the two banks, and King Abdallah of Jordan signed the Parliament's resolution the same day. However, in March 1950, a representative of the Gaza "All-Palestine" Government, invited for the first time to take part in the deliberations of the Council of the Arab League, challenged the Jordanian Government's annexation of the West Bank. Upon a recommendation of the Political Committee, with Jordan dissenting, on April 13, the League Council adopted the following resolution:

First: To reaffirm the decision taken by the Political Committee on April 12, 1948, with the unanimity of Member States, which provides that the entrance of the Arab armies into Palestine for its rescue should be regarded as a temporary measure without occupation or partition significance, and that following its liberation, Palestine should be handed over to its owners so that they may rule it in the way they wish.

Second: To consider this decision as effective and expressive of the present policy of the Arab States in this respect.

Third: Should any Arab State violate this decision, it shall be considered as having repudiated its obligations as well as the provisions of the Pact in accordance with article 2, paragraph 1, of the Pact, and the Special Annex regarding Palestine.

Fourth: In the event of such violation, the Political Committee shall be convened and take the necessary measures in accordance with the Provisions of the Pact.

H.A. HASSOUNA, *THE LEAGUE OF ARAB STATES AND REGIONAL DISPUTES* 34-35 (1975).

On May 15, unanimously with the exception of Jordan, the Political Committee of the League decided that Jordan's annexation of the West Bank was a violation of the Council's resolution of April 13, 1950 and of the Political Committee's decision of April 12, 1948. *Id.* at 39. Although there was strong support from Egypt, Syria, Lebanon, and Saudi Arabia for expulsion of Jordan from the League for its actions, eventually consensus was reached among all member states, including Jordan, on a draft resolution in which Jordan declared that the annexation of the West Bank was dictated by practical considerations; that Jordan would hold the West Bank in trust until a final settlement of the Palestine question was reached; and that Jordan would accept any final decision on the disposition of the West Bank unanimously supported by the other member states of the League. *Id.* at 39-40.

independent state. It states that "[s]hould any Arab State violate this decision, it shall be considered as having repudiated its obligations as well as the provisions of the Pact" ¹²⁰ In light of the context in which this resolution was adopted it appears to prohibit any Arab state from entering into a separate peace with Israel. ¹²¹ This resolution was binding upon Egypt under the Pact of the Arab League. ¹²²

In response to this argument Egypt concedes that the 1950 resolution is binding on it but points to Israel's commitments under the Treaty to enter into a "just, comprehensive and lasting peace in the Middle East in accordance with Security Council Resolutions 242 and 338." ¹²³ According to Egypt, the Peace Treaty must be viewed as a major step toward a comprehensive resolution of the Arab-Israeli conflict rather than as the kind of "separate peace" prohibited by the 1950 resolution. ¹²⁴

An issue also arises whether the Peace Treaty conflicts with Egypt's obligations under the Arab League's Treaty of Joint Defense and Economic Cooperation. ¹²⁵ The Joint Defense Treaty provides in pertinent part:

The Contracting States consider any act of armed aggression made against any one or more of them or their armed forces, to be directed against them all. Therefore, in accordance with the right of self-defense, individually and collectively, they undertake to go without delay to the aid of the State or States against which such an act of aggression is made. ¹²⁶

120. League Council Resolution, para. 3, April 13, 1950, *reprinted at* note 119 *supra*.

121. The argument in support of such an interpretation of the April 13, 1950 resolution is that the resolution's primary thrust is against any member state of the League taking unilateral action with respect to the West Bank and that, by the resolution, member states of the League were expressing the view that the All-Palestine Government was the only body entitled to speak on behalf of the Palestinians and to represent them in the League. H.A. HASSOUNA, *supra* note 119, at 35. With the decision taken by the League at Rabat in 1974, the Palestine Liberation Organization has now replaced the All-Palestine Government as the sole representative of the Palestinians.

122. Article 7, paragraph 1, of the Pact of the Arab League provides: "Unanimous decisions of the Council shall be binding upon all member states of the League; majority decisions shall be binding only upon those states which have accepted them." Since Egypt voted for the April 13, 1950 resolution, it is bound by it. The text of the Pact of the Arab League is *reprinted in id.* at 406.

123. These Egyptian arguments were reported by Professor Bassiouni in the paper he presented to the Chicago Council on Foreign Relations, *supra* note 33.

124. *Id.*

125. The text of the Treaty may be found in 2 J.C. HUREWITZ, *DIPLOMACY IN THE NEAR AND MIDDLE EAST* 311 (1956).

126. Joint Defense Treaty art. 2.

By its terms the Joint Defense Treaty is not inconsistent with the Peace Treaty. A state does not relinquish its inherent right to individual and collective self-defense against an armed attack or an act of aggression merely by entering into a peace treaty. On the contrary, Israel is obligated by the United Nations Charter to refrain from acts of aggression¹²⁷ and, if it were to violate this obligation, Egypt would be entitled to exercise its inherent right of collective self-defense¹²⁸ and to come to the aid of the victim of Israeli aggression.

The problem, however, lies in determining what actions might constitute aggression by Israel. According to newspaper reports, Prime Minister Mustafa Khalil, in a briefing given in a closed joint session of the Foreign Relations and Arab Affairs Committees of the Egyptian Parliament, said that Egypt would come to

127. The United Nations Charter nowhere contains an explicit prohibition against a member state committing an act of aggression. However, article 2(4) provides: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations." Moreover, under Article 39 of the Charter, the Security Council is enjoined to "determine the existence of any threat to the peace, breach of the peace, or act of aggression" and to "make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security." In 1974, the United Nations General Assembly adopted by resolution a definition of aggression. G.A. Res. 3314 (XXIX), 29 U.N. GAOR, Supp. (No. 31) 142, U.N. Doc. A/9631 (1974). The usefulness of this exercise, however, is questionable. At a maximum the resolution serves as guidance to the Security Council and has no obligatory effect on the Council's deliberations. More important, it has been characterized by a leading scholar as having codified and perhaps extended all of the primary "juridical loopholes and pretexts to unleash aggression" available under preexisting international law, as modified by the U.N. Charter." Stone, *Hopes and Loopholes in the 1974 Definition of Aggression*, 71 AM. J. INT'L L. 224, 244 (1977). For a more positive view of the resolution, see B. FERENCZ, *DEFINING INTERNATIONAL AGGRESSION: THE SEARCH FOR WORLD PEACE* (1975).

128. Article 51 of the United Nations Charter provides:

Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

U.N. CHARTER art. 51.

the assistance of Syria if it decided to retake the Golan Heights by force because of Cairo's obligations under the Arab League's Joint Defense Treaty.¹²⁹ Although Mr. Khalil later stated that he was quoted out of context,¹³⁰ the remark would be consonant with Arab states' perception of the scope of the right to self-defense as applied to Israel's occupation of the Golan Heights, the West Bank and the Gaza Strip. In the Arab view, Israel's occupation of these territories constitutes a continuing "armed attack" or armed aggression and, under article 51 of the United Nations Charter and the principle of self-determination,¹³¹ the Arab states have the right to resort to armed force in order to retake their territories.¹³²

Assuming that the Peace Treaty is inconsistent with one or more obligations Egypt owes to the Arab League, the questions of which set of obligations prevails in case of conflict arises. On its face, article VI, paragraph 5, of the Peace Treaty¹³³ appears to resolve any such conflict in favor of Egypt's obligations to Israel. However, the "Agreed Minutes" introduce a substantial measure of ambiguity by providing that "[i]t is agreed by the parties that there is no assertion that this Treaty prevails over other Treaties or agreements or that other Treaties or agreements prevail over this Treaty. The foregoing is not to be construed as contravening the provisions of Article VI(5) of the Treaty. . . ."¹³⁴

Not surprisingly, armed with this ambiguous language, Egypt and Israel have taken conflicting positions. Egypt has rejected the Israeli interpretation that Article VI gives the Peace Treaty prior-

129. N.Y. Times, April 11, 1979, at 3, col. 1.

130. *Id.*

131. Article 1, paragraph 2, of the United Nations Charter proclaims as one of the purposes of the organization: "To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace." The Charter does not contain a definition of "self-determination," however, and "it is a concept of quintessential ambiguity whose scope is a matter of considerable debate." Murphy, *Self-Determination: United States Perspectives*, in Y. ALEXANDER & R.A. FRIEDLANDER, *SELF-DETERMINATION: NATIONAL, REGIONAL, AND GLOBAL DIMENSIONS* (1979).

132. See, e.g., Bassiouni, *The "Middle East": The Misunderstood Conflict*, 19 KAN. L. REV. 373, 388-93 (1971).

133. "Subject to Article 103 of the United Nations Charter, in the event of a conflict between the obligations of the Parties under the present Treaty and any of their other obligations, the obligations under this Treaty will be binding and implemented." Egyptian-Israeli Peace Treaty art. 6, para. 5.

134. Agreed Minutes to articles I, IV, V, and VI and Annexes I and III of Treaty of Peace, *reprinted in* 18 INT'L LEGAL MATERIALS at 392 (1979).

ity over Egypt's Arab League commitments.¹³⁵ This impasse serves to highlight the importance of a comprehensive settlement of all issues in the Arab-Israeli conflict. In the next subsection of this article we consider the documents that purport to be a significant step in this direction.

B. *The Camp David Middle East Peace Framework Agreement and the Begin/Sadat Letter of March 26, 1979*

As we have seen,¹³⁶ the Peace Treaty itself does not explicitly cover the West Bank and the Gaza Strip. Rather, the parties' obligations with respect to these subjects are set forth in the Camp David Middle East Peace Framework Agreement¹³⁷ and in the Begin/Sadat letter of March 26, 1979, to President Carter.¹³⁸ Because that letter basically reaffirms the commitments of the parties to the Camp David Middle East Peace Framework Agreement,¹³⁹ it is of minor importance.

Commenting on the Camp David Middle East Peace Framework Agreement, Abba Eban, former Foreign Minister of Israel, wrote: "The hard truth is that on the most crucial and complex issue—that of the Palestinians and the West Bank—the Camp David signatories did little more than postpone their confrontation by the kind of semantic dexterity that is quick to wear out."¹⁴⁰ It is difficult to disagree with this judgment. The terms of the Agreement are fraught with ambiguity. What is meant, for example, by such phrases as "full autonomy," "self-governing authority," "the legitimate security concerns of the parties," and "the legitimate rights of the Palestinian people and their just requirements"? All of these terms will have to be defined and re-

135. N.Y. Times, April 11, 1979, at 3, col. 1.

136. See notes 75-105 & accompanying text *supra*.

137. See notes 60-67 & accompanying text, *supra*.

138. Letter from Menachem Begin & Anwar El Sadat to Jimmy Carter (March 26, 1979), *supra* note 106.

139. Procedurally, as stated in the letter, the parties agree that they shall start negotiations on the establishment of the self-governing authority in the West Bank and the Gaza Strip within a month after the exchange of instruments of ratification of the Peace Treaty. They shall invite Jordan to join the negotiations, but the negotiations shall proceed even if Jordan declines to join. The goal is to complete negotiations on the self-governing authority within one year. Elections will be held as soon as possible thereafter; the self-governing authority will be established one month after the election, at which time the transitional period of five years will begin.

140. See Eban, *supra* note 15, at 343.

fined by the parties in future negotiations. Moreover, as Abba Eban has noted,

[t]he most dubious aspect of the Camp David Agreement . . . is the underlying assumption that the major problems remain to be decided only after three or five years. It would be more realistic to assume that the Middle Eastern crisis could arise in full intensity within a few weeks of an Egyptian-Israeli treaty.¹⁴¹

Because of the ambiguous language contained in the Agreement and in the Begin/Sadat letter of March 26, it is difficult to analyze the compatibility of these documents with Security Council Resolutions 242 and 338. The ambiguous language in Resolution 242 itself compounds the problem. In particular, Israel and the Arab states disagree whether Resolution 242 requires an Israeli commitment, in advance of negotiations, to withdraw from the occupied territories. They also disagree whether the Resolution requires withdrawal from *all* the occupied territories or only a negotiated withdrawal to "secure and recognized boundaries."

The debate over the meaning of Resolution 242 has been explored in other forums¹⁴² and will not be repeated here. It suffices for present purposes to note that, if the Arab position is correct, the Camp David Middle East Peace Framework Agreement violates Resolution 242. Under the terms of the Agreement, Israel is not required to withdraw from the West Bank and the Gaza Strip in advance of negotiations on those territories; nor will it withdraw from all of those territories, as Israeli troops are to be redeployed in specified security zones. Assuming the correctness of the Israeli position, however, implementation of the Agreement could lead to a violation of Resolution 242. If negotiations over the West Bank and the Gaza Strip were to define the term "full autonomy" for the inhabitants of the territories to include only authority over local affairs, this would arguably be a violation of Resolution 242's statement emphasizing "the inadmissibility of the acquisition of territory by war."¹⁴³ At this writing, it appears

141. *Id.*, at 350-51.

142. See, e.g., Rostow, *The Illegality of the Arab Attack on Israel of October 6, 1973*, 69 AM. J. INT'L L. 272, 276-86 (1975) (supporting the Israeli position); Wright, *The Middle Eastern Crisis*, 64 AM. J. INT'L L. 271-77 (1970) (supporting the Arab position).

143. U.N. Res. 242 preamble, para. 2, *supra* note 117. Israel rejects this interpretation of the "inadmissibility of the acquisition of territory by war" clause. In its view, because the "inadmissibility" clause appears in the preamble of Resolution 242, it has no binding legal effect. Even if the provision were binding, the

that Israel continues to regard the West Bank and the Gaza Strip as integral parts of the State of Israel.¹⁴⁴ By contrast, Egypt has maintained its position that "full autonomy" means the creation of an independent Palestinian state in these territories.¹⁴⁵

A primary reason for the unwillingness of Syria and the PLO to accept Resolution 242 as the basis for negotiations on a settlement of the Arab-Israeli conflict is that the Resolution makes no explicit reference to the Palestinians. It only affirms the necessity "[f]or achieving a just settlement of the refugee problem."¹⁴⁶ The Camp David Middle East Peace Framework Agreement declares that any solution "must also recognize the legitimate rights of the Palestinian people and their just requirements."¹⁴⁷ In the Arab view, the words "legitimate rights" are deliberately designed to frustrate Palestinian rights to self-determination.¹⁴⁸ They argue that the words are intended to imply that some Palestinian "rights"—most particularly the right to an independent state of Palestine—are illegitimate and cannot be pursued.¹⁴⁹ The words of Prime Minister Begin himself, however, seem to belie this contention: "We have accepted what is called in English 'legitimate rights' because everyone has his own interpretation."¹⁵⁰ Definition of the phrase "legitimate rights of the Palestinian people and their just requirements" is left to future negotiations, and no definition is precluded.

The Agreement does not cover some of the most difficult issues

argument continues, the "inadmissibility" clause applies only to aggressive wars. Israel is occupying the West Bank and the Gaza Strip as the result of a "defensive" war. Finally, in any event, the "inadmissibility" clause has no relevance to the West Bank and the Gaza Strip, which are integral parts of the land of Israel. See, Jewish Telegraph Agency, Daily News Bulletin, September 21, 1978, at 1-2.

144. See, e.g., N.Y. Times, May 9, 1979, at 11, col. 1. According to a recent Government of Israel publication, "[t]he final status of the West Bank-Gaza could be one of three possibilities: an indefinite period of autonomy; a territorial division between Israel and Jordan; or some kind of shared-sovereignty arrangement between the two countries." MYTHS & FACTS UPDATE 4 (A.M. Tigay ed. 1978).

145. N.Y. Times, May 10, 1979, at 7, col. 1.

146. U.N. Res. 242 § 2(b), *supra* note 117.

147. Camp David Framework, *supra* note 60.

148. See Sayegh, *The Camp David "Framework for Peace" An Agreement on Procedures or a Declaration of Principles?* in CAMP DAVID A NEW BALFOUR DECLARATION at 17 (F. Zeadey ed. 1979).

149. *Id.* at 17.

150. ISRAEL AND PALESTINE, Oct. 1978 at 8.

in the Arab-Israeli conflict. There is no reference in the Agreement to the status of Jerusalem or of the Golan Heights, or to Israeli settlements in the West Bank and in the Gaza Strip. Omission of reference to Israeli settlements is particularly unfortunate, as the establishment of new Israeli settlements following conclusion of the Camp David Agreements has sharply exacerbated tensions between Israel, on the one hand, and Egypt and the United States, on the other.¹⁵¹

151. In April 1979, Israel approved two new West Bank settlements. By way of response, the United States claimed that Prime Minister Begin had given a pledge to President Carter at Camp David not to approve any new settlements—at least until the completion of the negotiations on the establishment of the self-governing authority for the West Bank and the Gaza Strip. Prime Minister Begin, however, argued that he agreed only to a three month “freeze” on such settlements. *N.Y. Times*, April 24, 1979, § 1, at 4, col. 3. At the time of writing, Israel has ended a twelve year ban on Israeli citizens buying land in the occupied territories in an apparent move to strengthen the Israeli presence in the West Bank and the Gaza Strip. *Id.*, Sept. 17, 1979, at 1, col. 6. The reaction of the United States was that Israel’s decision was “contrary to the spirit and the intent of the peace process.” *Id.*, Sept. 19, 1979, at 1, col. 6.

The United States has consistently taken the position that Israeli settlements in the occupied territories violate Article 49 of the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, August 12, 1949, 6 U.S.T. 3516, T.I.A.S. 3365, 75 U.N.T.S. 287. Article 49 provides: “The occupying power shall not deport or transfer parts of its own civilian population into the territory it occupies.” In the United States view, a belligerent occupant is not the sovereign power and does not have the right to treat occupied territory as its own or to make changes in the territory except those necessitated by the immediate needs of the occupation. The United States is further of the opinion that Israel cannot claim the rights of a sovereign power in the territories because the issue of sovereignty over the territories remains to be determined in negotiations between the parties. It also believes that “once settlements are established, they inevitably create psychological and political conditions which will make it more difficult to negotiate the final disposition of areas where they are located.” Statement of Alfred L. Atherton, Assistant Secretary of State for Near Eastern and South Asian Affairs, before the Subcommittee on International Organization and on Europe and the Middle East of the House Committee on International Relations, reprinted in DEP’T OF STATE, DIGEST OF UNITED STATES PRACTICE IN INTERNATIONAL LAW at 923-27 (1977).

Israel’s position is that it cannot be an occupying power, because it has the strongest claim to sovereignty over the territories. In its view, Jordan never acquired, under international law, the rights of a sovereign over the West Bank when it occupied that area as an act of aggression during the 1948-49 conflict. Since the attack by Jordan and by other Arab states violated article 2(4) of the United Nations Charter, they acquired no valid title. Further, the Armistice Agreements between Israel and Egypt, Lebanon, Transjordan, and Syria in 1949 did not change the illegality of the Arab invasions. On the contrary, they provided that, as long as they were in effect, no party by unilateral act could affect

Finally, critics of the Agreement argue that the procedures it establishes ensure that the position of Israel will be the one adopted in any final agreement. They note that representatives of the Palestinians can participate in the negotiations over the West Bank and the Gaza Strip only if they are acceptable to the Israelis. They also contend that Egypt has violated its obligation to the Arab League to recognize the PLO as the "sole legitimate representative of the Palestinian People."¹⁵² In their view, continued Israeli military presence in the occupied territories during the course of the negotiations and diminished motivation for United States involvement in the negotiations will inevitably result in irresistible pressure to accept the Israeli point of view especially because of the five-year time frame envisaged for the negotiations.¹⁵³ As stated by a leading Arab commentator:

Let us assume that the Camp David process has gotten off the ground in Palestine. Egypt will have by then completely disengaged itself from the Arab-Israeli confrontation. The involvement of some other Arab countries in the Palestinian cause will have been weakened. American enthusiasm for involvement will have been reduced in proportion to the diminished explosiveness of the situation; and the thrust of America's "full partnership" in the negotiations will have been blunted. The by-then residual Palestinian problem will have been reduced to the manageable dimensions of a local problem; it will have been deprived of its potency as the core of a grave regional problem with potential world-wide implications. In those altered conditions, is it not more likely that the Zionist leaders of Israel will choose to pursue the course that enables them at last to realize with relative impunity their decades-old dream of controlling the destiny of "Eretz Israel" in its entirety than that they will needlessly choose to relinquish their hold over "Samaria and Judea" and Gaza?¹⁵⁴

the rights of any other party to the agreements. Hence, when Jordan annexed the West Bank in 1950, it had no legal effect on title to the territory. Since there was no ouster of a legitimate sovereign when Israel occupied the West Bank and the Gaza Strip in 1967, the rules regarding belligerent occupation contained in the Fourth Geneva Convention do not apply to Israel's occupation of these territories. On the contrary, the legal standing of Israel is that of a state which is lawfully in control of territory as to which no other state can show a better title. For an elaboration of the Israeli view, see Blum, *The Missing Reversioner: Reflections on the Status of Judea and Samaria*, 3 ISRAEL L.R. 279 (1968). See also, Schwebel, *What Weight to Conquest?* 64 AM.J. INT'L L. 344 (1970).

152. See N.Y. Times, Oct. 29, 1974, § 1, at 1, col. 8.

153. See Sayegh, *supra* note 148, at 21.

154. *Id.*

This is, of course, pure conjecture and is impossible to confirm or deny. The prediction of Abba Eban, however, is the more likely to be fulfilled:

The emphasis and atmosphere of this language [that of the Camp David Middle East Peace Framework Agreement] point clearly to a drastic reduction of Israel's involvement in the life and future of the Arab-populated areas of the West Bank and the Gaza Strip. Mr. Begin is too precise and intelligent a man for us to believe that he does not comprehend how short a step separates this kind of "self-government" from some form of eventual Arab sovereignty. Anyone who rules out the idea of ultimate Arab sovereignty in large areas west of the River ought not to have signed the Camp David accords. Those of us who approve and accept those agreements should understand clearly what it is that we approve and accept.¹⁵⁵ Many of us who thought that there were better solutions than the "self-government" proposal of Camp David are supporting that proposal because of its open character. If it does not satisfy the Palestinian national ambition, it certainly does not preclude any rational option; and it can be left to the momentum of historical development to decode the obscurities of the Camp David accords.¹⁵⁶

If, as suggested by Mr. Eban, the Camp David Middle East Peace Agreement and the Egyptian-Israeli Peace Treaty preclude no rational option to settlement of the crucial issues in the Arab-Israeli conflict, the question arises as to what some of these options might be. It is to this question that we now turn.

V. BEYOND CAMP DAVID AND THE EGYPTIAN-ISRAELI PEACE TREATY

In considering what steps might be taken in order to advance the search for resolution of the Arab-Israeli conflict beyond the Egyptian-Israeli Peace Treaty, it is useful to reflect first on the kind of diplomatic strategy that should be employed. That is, should the step-by-step approach illustrated by the Peace Treaty be continued, or has the time come to reconvene the Geneva Conference?

At first blush the answer seems obvious. Since the step-by-step approach has enjoyed a measure of success, it should be continued. The Geneva method was previously tried and found wanting. Recent attempts to reconvene the Geneva Conference have re-

155. Eban, *supra* note 15, at 352.

156. *Id.* at 353.

sulted in failure and there is no reason to assume that another attempt to do so would be any more successful. Attempts to involve all parties to the dispute in resolving all of the issues in the Arab-Israeli conflict will only "give a veto power to the most intractable issue—and to the most obdurate party."¹⁵⁷

Upon reflection, however, the result is less obvious. In 1975, Professor Stanley Hoffman proposed that "Israel should take the initiative of demanding an overall peace agreement, to be negotiated with its Arab opponents, and with the help of outside powers."¹⁵⁸ In support of this proposal, Professor Hoffman exhaustively examined and refuted the reasons advanced in favor of the step-by-step approach and against the Geneva method. Professor Hoffman raised the question, "even if there is a new agreement with Egypt, what would be the next?"¹⁵⁹ With respect to a possible agreement between Israel and Jordan, the difficult issues of the West Bank and East Jerusalem could not be resolved by Jordan and Israel acting alone. These and other issues could be resolved only in the context of multilateral negotiations:

The settlement itself will not be negotiable by the parties only; other powers will have to play brokers and put pressure on the parties. If there should be a settlement, it will require external enforcement and protection also. However, it *does* make a difference whether the outside world is there to help the parties reach their own agreements and stick to their word, or whether it is there to impose its own views and exert its own tutelage. The latter is a formula for future trouble and instability."¹⁶⁰

There is considerable danger that, if present circumstances continue, the outside world may decide to impose a settlement on Israel. The danger will become particularly acute if Israel continues to refuse to recognize Palestinian self-determination or to refuse to negotiate with representatives of the PLO. As suggested by Professor Hoffman, Israel should "declare its willingness to grant to the Palestinians of the West Bank and the Gaza Strip the right to self-determination. It will have to give up deciding who is the legitimate spokesman of the Palestinians, even if this means foreclosing an increasingly hypothetical 'Jordanian solution.'"¹⁶¹ It would be especially appropriate for Israel, whose people endured

157. *Id.* at 346.

158. Hoffman, *A New Policy for Israel*, 53 *FOREIGN AFFAIRS* 406, 422-23 (1975).

159. *Id.* at 408.

160. *Id.* at 420-21 (emphasis in original).

161. *Id.* at 426.

enormous suffering through the ages to realize their dream of a Jewish state, to recognize a right on the part of the Palestinian people to self-determination from a moral perspective.

Regarding the question of whether Israel should recognize a Palestinian right to self-determination in the absence of PLO recognition of Israel's right to exist, it is submitted that this issue should not be an obstacle to reconvening the Geneva Conference. As noted by Professor Hoffman:

Such a declaration [Israel's recognition of a Palestinian right to self-determination] would throw the ball back into the Arabs' court. If—as is likely—the Arabs designate the PLO, it will be up to Arafat to face a difficult choice. Either he gives priority to setting up a state on the West Bank; but this will mean negotiation, directly or indirectly, with Israel, which is not likely to withdraw unless it obtains security guarantees. Such a negotiation would amount to *de facto* recognition. Or else Arafat will refuse to accept even this, declining to settle for less than his “dream.” But in that case, it is likely that other Arab states, and his non-Arab supporters, will put strong, tangible pressure on him to get him to stop preventing a settlement that entails a return to the 1967 borders. The Israelis have been demanding *de jure* recognition of Israel by the PLO, as well as by other Arab states. But it would be enough at first to obtain *de facto* recognition from the PLO through the presence of a PLO delegation on the basis of Resolution 242 in Geneva, and its participation in a settlement.¹⁶²

Were the Geneva Conference to be reconvened, the purpose of the conference would be to attempt to resolve the principal remaining issues in the Arab-Israeli conflict: the West Bank and the Gaza Strip; East Jerusalem; Refugees; and the Golan Heights.

A. *The West Bank and the Gaza Strip*

Israeli recognition of a right of the Palestinian people to self-determination would raise questions about how this right might be exercised. This question in turn raises the issue whether a valid exercise of the right to self-determination requires that the people of a territory choose independence or permits other choices. The position of the United States, as well as that of this writer, is that independence is only one of several available options and that, in exercising their right to self-determination, people are entitled to

162. *Id.* See also Hoffman, *The Inevitability of U.S. dealings with the P.L.O.*, N.Y. Times, Sept. 7, 1979, § A at 25.

make the choice in accordance with their freely expressed wishes.¹⁶³ Other options are the continuation of the status quo ante, free association or commonwealth status, or integration into another state.

As applied to the West Bank and the Gaza Strip, this approach to an exercise of the right to self-determination requires a framework in which the people concerned can freely express their wishes. Most such exercises of the right to self-determination following World War II have taken place within the context of the trusteeship system of the United Nations. The trusteeship system may afford the people of the West Bank and the Gaza Strip a method whereby they can exercise their right to self-determination in such a way as to protect the interests of all parties to the Arab-Israeli conflict. One possibility is that the West Bank and the Gaza Strip could be placed under trusteeship with the United Nations acting as the administering authority. In light of its profound distrust of the United Nations,¹⁶⁴ however, there would seem little prospect of Israel agreeing to such an arrangement. As an alternative, Israel might be the administering authority under article 82 of the United Nations Charter.¹⁶⁵ Such an arrangement would offer substantial advantages from the perspective of all parties to the Arab-Israeli conflict.

From the Israeli perspective a strategic-area trusteeship over the West Bank and the Gaza Strip would formally recognize Israel's vital national security interests in these areas. Israel's national security interests in the West Bank and the Gaza Strip are at least as substantial, and arguably considerably more so, than those of the United States in the Trust Territory of the Pacific Islands.¹⁶⁶ Moreover, a strategic-area trusteeship would be an ar-

163. In the United Nations, many member states have expressed a strong preference for independence as the only legitimate outcome of an exercise of self-determination and have brought pressure on the United States to grant independence to such territories as the Virgin Islands, Guam, and American Samoa and to the Commonwealth of Puerto Rico. In response, the United States has argued strenuously that, in each of these cases, the people of the territory have freely chosen an option other than independence as their preferred status. See, e.g., 14 U.N. MONTHLY CHRONICLE 49, Dec. 1977, at 48-49.

164. See, e.g., Dinstein, *The United Nations and the Arab-Israeli Conflict*, in 15 ENCYCLOPEDIA JUDAICA at 1543 (1971).

165. U.N. CHARTER art. 82 provides: "There may be designated, in any trusteeship agreement, a strategic area or areas which may include part or all of the trust territory to which the agreement applies, without prejudice to any special agreement or agreements made under Article 43."

166. The substantiality of United States national security interests in the

rangement that would maximize Israel's ability to ensure an eventual disposition of the territories that would safeguard these security interests. Under article 83 of the United Nations Charter¹⁶⁷ supervisory authority over the trusteeship would lie with the Security Council rather than with the General Assembly. Hence Israel would be protected by the threat of a United States veto from any U.N. actions detrimental to its national security.

Under a strategic-area trusteeship, the choice as to the ultimate status for the West Bank and the Gaza Strip would be that of the inhabitants of the territories. Israel would have to give up any desire it might have to annex these territories, unless the people of the territories should freely consent to such an arrangement.

The initial response of the Arab states and of the Palestinians to a proposal favoring an Israeli trusteeship over the territories would probably be negative. They might argue that Israel is already obligated under international law to withdraw from the West Bank and the Gaza Strip and that the establishment of a strategic-area trusteeship would serve to validate Israel's illegal action. From the Arab perspective, however, such an arrangement would be a substantial improvement upon the current situation. The Camp David Middle East Framework Agreement offers little in the way of a concrete settlement of the dispute over the West Bank and the Gaza Strip.¹⁶⁸ It does not recognize a right to self-determination for the people of these territories. A strategic-area trusteeship, however, would require Israel to carry out the obligations specified in article 76 of the United Nations Charter, especially the obligation

to promote the political, economic social, and educational advancement of the inhabitants of the trust territories, and their progres-

Trust Territory of the Pacific Islands is debatable. See D.F. MCHENRY, *MICRONESIA: TRUST BETRAYED* 2-3 (1975).

167. U.N. CHARTER art. 83 provides:

1. All functions of the United Nations relating to strategic areas, including the approval of the terms of the trusteeship agreements and of their alteration or amendment, shall be exercised by the Security Council.
2. The basic objectives set forth in Article 76 shall be applicable to the people of each strategic area.
3. The Security Council shall, subject to the provisions of the trusteeship agreements and without prejudice to security considerations, avail itself of the assistance of the United Nations under the trusteeship system relating to political, economic, social, and educational matters in the strategic areas.

168. See text accompanying notes 46-56 *supra*.

sive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the people concerned, and as may be provided by the terms of each trusteeship agreement.¹⁶⁹

A general advantage of a strategic-area trusteeship would be that it would allow Israel and the people of the West Bank and the Gaza Strip to develop a cooperative relationship that would diminish Israel's national security fears as well as Palestinian suspicions that Israel intends to maintain permanent sovereignty over them. Such a cooperative relationship might also induce Israel to drop its objections to the creation of an independent state of Palestine. Essentially, Israel's objections to the creation of an independent state of Palestine have been twofold.¹⁷⁰ First, the Israelis believe that such a state would not be economically viable. With respect to this objection, an Israeli strategic-area trusteeship, aided by financial contributions from states participating in the Geneva Conference and perhaps by some form of common market arrangement with Jordan, might be able to bring the West Bank and the Gaza Strip to the point where they would be economically viable territories.¹⁷¹ In any event, a paramount obligation of Israel under a strategic-area trusteeship would be to develop the economies of the occupied territories. Israel would thus be in a position to take steps to obviate its own objection. Second, Israel fears that a Palestinian state would be dominated by radical elements of the PLO and hence a danger to Israeli security. Protection of Israel's national security, however, might be enhanced by the adoption for an independent state of Palestine of a status once proposed for Israel by Dr. Nahum Goldmann, President of the World Jewish Congress. The state would be permanently neutralized along the lines of Switzerland.¹⁷² The specific procedures by which this might be done have been explored elsewhere.¹⁷³ For present purposes, it suffices to highlight some of the

169. U.N. CHARTER art. 76(b). Article 76 is expressly applicable to strategic-area trusteeships. U.N. CHARTER art. 83, para. 2.

170. See, e.g., Letter of Beinesh Epstein to the Editor, 57 FOREIGN AFF. 203 (1978); Allon, *Israel: The Case of Defensible Borders*, 55 FOREIGN AFF. 38 (1976).

171. For an article that evaluates and attempts to meet Israeli objections to the creation of an independent state of Palestine, see Khalidi, *Thinking the Unthinkable: A Sovereign Palestinian State*, 56 FOREIGN AFF. 695 (1978).

172. See Goldmann, *The Future of Israel*, 48 FOREIGN AFF. 443 (1970).

173. See Murphy, *Neutralization of Israel*, 65 AM. J. INT'L L. 167 (1971).

elements of neutralization relevant to the West Bank and the Gaza Strip.

The primary purpose of neutralization in international law has been to avoid or to manage conflict.¹⁷⁴ Historically, parties to neutralization arrangements have created buffer states to stabilize balance of power rivalries or have sought the removal of an area as a focal point of international conflict. Neutralization of the West Bank and the Gaza Strip might serve both purposes. The West Bank and the Gaza Strip are a focal point of international conflict, and these territories currently serve as a buffer against renewed Arab aggression against Israel.

Creation of a neutralized state of Palestine encompassing the West Bank and the Gaza Strip would be brought about by a multilateral treaty between interested states or entities. These would include, at minimum, Israel, Palestine, the Arab States, the United States and the Soviet Union. It would also be desirable to include the United Kingdom, France and the United Nations as parties because of the role they might play in maintaining and guaranteeing the neutralization of Palestine.

As a neutralized state Palestine would be required to abstain from going to war except in self-defense and to avoid actions that might involve it in hostilities. If a war or armed conflict were to break out between other states, Palestine would be required to remain neutral in the strict classical sense. That is, it would have to refrain from joining an international military action, under the aegis of the United Nations or any other international organization. It would also have to bar the passage of a belligerent through or over its territory. Although neutralization does not necessarily mean demilitarization—witness Switzerland—Palestine would have to be demilitarized, except to the extent armed forces were required for the maintenance of local law and order. Israel would regard a Palestinian state with substantial armed forces at its disposal as a severe threat to its security.

The other parties to the treaty would be required to recognize the neutralization of Palestine. The agreement would obligate the parties to refrain from taking any action that might violate that neutralization, such as directly or indirectly interfering in the internal affairs of Palestine or using its territory to interfere in the internal affairs of other countries. They also could not introduce

174. See generally C. BLACK, R. FALK, K. KNORR & O. YOUNG, *NEUTRALIZATION AND WORLD POLITICS* (1968); I. WHITEMAN, *DIGEST OF INTERNATIONAL LAW* 342-64 (1963); Kunz, *Austria's Permanent Neutrality*, 50 *AM. J. INT'L L.* 418 (1956).

troops or establish military bases in Palestine, nor attempt in any way to induce Palestine to enter into military alliances. Above all, no state could resort to the use of force or threat of force, or take any other measures which might impair the peace of Palestine.¹⁷⁵

Mere recognition of permanent neutralization does not oblige the recognizing state to defend the neutralized state's neutrality. Only a guarantee of the neutralization of a state creates an obligation to defend it. Such a guarantee would surely be required with respect to Palestine. The parties could give this guarantee severally or collectively.¹⁷⁶ Under a collective guarantee, the guarantors must act as a body, but if the guarantee is given severally, each state would create its own duty. Palestine would probably insist that the guarantee be several or collective and several because of historical experience with unanimity requirements. The establishment of control machinery to ensure the maintenance of the treaty would be indispensable to the success of a neutralization arrangement. Such control machinery has created problems. For example, the three-member Commission for Supervision and Control of Laos, established under the Geneva Agreement of 1954, was assigned the task of enforcing the neutralization of Laos. It proved ineffective in controlling repeated interventions by several guarantor states because of dissension among the members of the Commission and the unanimity requirement on decisions whether a violation of the agreements had occurred. Further, as an instrument of the guarantor states, the Commission was not able to exercise an independent role in determining whether these states were fulfilling their obligations.¹⁷⁷

A commission established to help maintain the neutralization of Palestine would have to have a more impartial composition and more effective powers. To ensure impartiality, the neutralization agreement might establish such a commission under United Nations auspices with members selected from states not parties to the treaty. The commission would have the responsibility of investigating cases which a majority of the commission believed were violations of the treaty. The treaty would require Palestine, Israel and the other parties to the treaty to provide the commis-

175. For a draft model treaty of neutralization, see BLACK, FALK, KNORR & YOUNG, *supra* note 174, at 191-95.

176. L. OPPENHEIM, *INTERNATIONAL LAW* 966-67 (8th ed. 1955).

177. See A. DOMMEN, *CONFLICT IN LAOS: THE POLITICS OF NEUTRALIZATION* 247-50 (1964), for a discussion of the failure of the Commission to control the conflict.

sion with the resources and authority necessary to carry out its duties. In particular, the commission would have to have free access to all parts of the territory of Palestine and adequate transportation and communication facilities.

It is unlikely that the parties would grant the commission the power to decide whether a violation of the treaty had occurred. Rather, the parties would probably limit the functions of the commission to observation, fact finding, and the submission of reports to the parties or United Nations for further action. Some provision would have to be made for decisions concerning the existence of treaty violations. This decision would have to be made by a majority, or perhaps a two-thirds vote not subject to veto. The parties would also have to periodically review the provisions of the treaty and consider revisions in the treaty within a certain period after receipt of a party's request for such a meeting. But no modification or abolition of the status of neutralization should be permitted in the absence of the consent of all parties.

The success of neutralization depends in large part upon a convergence of interests in resolving or avoiding conflict between the guarantor states, and between the guarantor states and neutralized state. In the words of a leading study on neutralization:

[t]he essential preconditions for neutralization are that compromise, or the appearance of compromise, be an acceptable diplomatic outcome to all actors concerned and that there exist a sufficiently converging set of perceived interests—although possibly based on quite distinct motivations—to terminate, avoid, or postpone military forms of competition for control of the neutralized unit.¹⁷⁸

The necessary convergence of interests does not exist among all the actors concerned in the Arab-Israeli conflict. This proposal envisages, however, that the creation of Palestine as a permanently neutralized state would take place only after a period during which the West Bank and the Gaza Strip would be administered as a strategic-area trusteeship by Israel and only if the inhabitants of the territories were to choose independence in the exercise of their right to self-determination. By that time, the attitudes of the parties would have evolved to the point where a neutralization arrangement might be feasible: Israel would have abandoned the position that it will retain permanent sovereignty over the territories, and the Palestine Liberation Organization would have recog-

178. BLACK, FALK, KNORR & YOUNG, *supra* note 174, at 146.

nized Israel's right to exist.

A key element in any neutralization arrangement would be the position of the Soviet Union. If a permanently neutralized state of Palestine were established without the participation, or over the objection, of the Soviet Union, its prospects for success would be greatly reduced. The advantage to the Soviet Union of agreeing to become a party to a treaty of neutralization would be that such a treaty would formally recognize a Soviet right to have a say in the Middle East. Soviet failure to join in such an arrangement would create an enormous risk that its influence in the Middle East would diminish to the vanishing point.¹⁷⁹

B. *East Jerusalem*

As we have seen, neither the Camp David Agreements nor the Egyptian-Israeli Peace Treaty contain any specific reference to East Jerusalem, although President Sadat and Prime Minister Begin each wrote letters to President Carter affirming their countries' position on the issue.¹⁸⁰ Egypt's position¹⁸¹ on East Jerusalem is that it is an integral part of the West Bank and therefore should be under Arab sovereignty. All measures taken by Israel to alter the status of the city are null and void and should be rescinded. There must be free access by all people to the city and the holy places of each faith should be placed under the administration and control of their representatives. A joint municipal council, composed of an equal number of Arab and Israeli members, should be established to supervise the carrying out of essential municipal functions. In contrast, Israel's position is simply that on the basis of Israeli law¹⁸² Jerusalem is "one city indivisible, the Capital of the State of Israel."¹⁸³

The position of the United States has been somewhat ambivalent. It has declared that it views East Jerusalem as occupied territory and thus subject to the provisions of international law governing the rights and obligations of an occupying power.¹⁸⁴ It has

179. Cf. Hoffman, *supra* note 158, at 421.

180. See note 68 *supra*.

181. See Letter from Anwar El-Sadat to Jimmy Carter, *supra* note 68.

182. See Report of the Secretary-General under General Assembly Resolution 2254 (ES-I), Sept. 12, 1967, U.N. Doc. A/6793, at 8.

183. See Letter from Menachem Begin to Jimmy Carter, *supra* note 68.

184. See Statement of U.S. Representative Charles W. Yost before the United Nations Security Council, July 1, 1969, reprinted in 61 DEP'T STATE BULL. 77 (1969).

also said that no unilateral actions by Israel or by any other state can have any effect on the status of Jerusalem.¹⁸⁵ The United States has not been explicit about its views regarding the ultimate status of the city, stating only that this should be decided in negotiations among all concerned parties. The United States has suggested that the integrity of the holy places, as well as access to them, should be internationally guaranteed.¹⁸⁶ In the opinion of some, the failure of the United Nations to induce Israel to halt its annexation of East Jerusalem is due in part to the absence of wholehearted support by the United States.¹⁸⁷

The United States has recognized that the issue of the status of East Jerusalem must be decided as part of an overall settlement of the Arab-Israeli conflict,¹⁸⁸ and it has been suggested that East Jerusalem should be the capital of an independent state of Palestine.¹⁸⁹ A better solution lies in regarding East Jerusalem as part of the *quid pro quo* that would flow to Israel in return for its agreeing to abandon its claims to sovereignty over the West Bank and the Gaza Strip. Israel's statements that the status of Jerusalem is nonnegotiable should be taken as final; on this issue there is virtual unanimity among Israeli public opinion. Contributing to the adamancy of Israel's position is its experience between 1948 and 1967 with Jordanian administration of East Jerusalem. During that period Jordan destroyed many Jewish holy places and barred Jews from worshiping at the Wailing Wall.¹⁹⁰ It might be possible, and perhaps indispensable, to couple recognition of Israel's sovereignty over Jerusalem with international guarantees for the integrity of the holy places and for access to them.¹⁹¹ Under this plan Jordan, or the Arab League, might be allowed to exercise a form of jurisdiction over the Muslim holy places in Jerusalem to mitigate Arab displeasure.

C. Refugees

The Camp David Middle East Peace Framework Agreement

185. *Id.*

186. Statement of Ambassador Arthur J. Goldberg in the fifth emergency special session of the U.N. General Assembly, July 14, 1967, reprinted in 57 DEP'T STATE BULL. at 148, 149 (1967).

187. See Pfaff, *Jerusalem: Keystone of an Arab-Israeli Settlement*, in MOORE, *supra* note 16, at 237, 279.

188. See Statement of U.S. Representative Charles W. Yost, *supra* note 184.

189. See Khalidi, *supra* note 171, at 705-07.

190. M. REISMAN, *supra* note 18, at 71.

191. For a proposal along these lines, see *id.* at 71-79.

provides that Egypt and Israel will work with each other and with other interested parties towards "a prompt, just and permanent implementation of the resolution of the refugee problem."¹⁹² Resolution of the problems of the West Bank and the Gaza Strip and of East Jerusalem would greatly facilitate resolution of the refugee problem. With Israel's withdrawal from the West Bank and the Gaza Strip, it should be possible to repatriate large numbers of the refugees wishing to return to their homes. Moreover, arrangements for economic cooperation established as part of an overall settlement to the Arab-Israeli conflict should allow more substantial repatriation of refugees to the West Bank and the Gaza Strip. These arrangements should also facilitate resettlement of refugees in other Arab states and provide compensation for those refugees choosing not to return. Difficult issues such as the precise number of refugees Israel would be required to absorb, assurances that refugees returning to the West Bank and the Gaza Strip would not constitute a security threat to Israel and the allocation of financial responsibility for the compensation of refugees would remain to be resolved by negotiation, but these should not prove insuperable.¹⁹³

D. *The Golan Heights*

Resolution of this difficult problem should be greatly facilitated by disposition of the key issues of the West Bank and the Gaza Strip and of East Jerusalem. In the context of an overall settlement, Israel and Syria would presumably enter into a peace treaty along the lines of the Egyptian-Israeli Peace Treaty, a step contemplated at the time of the conclusion of the Israeli-Syrian Disengagement Agreement of 1974.¹⁹⁴ Israel would demand assurances that the Golan Heights would never again be used as a base for the shelling of Israeli communities, which would require, at a minimum, demilitarization of the area. Continuation of the United Nations Disengagement Observer Force for a period of time and the use of other security devices might also be desirable and perhaps indispensable.

Israel is especially distrustful of Syria, since it has been the

192. Camp David Framework § A(4).

193. For general discussions of the refugee problem, see Holborn, *The Palestine Arab Refugee Problem*, in MOORE, *supra* note 16, at 152; Tomeh, *Legal Status of Arab Refugees*, in *id.* at 167; REISMAN, *supra* note 18, at 44-60.

194. In paragraph H the Agreement provides that, while it is not a peace agreement, it is "a step towards a just and durable peace on the basis of Security Council resolution 338 . . ." reprinted in MOORE, *supra* note 16, at 1201.

most radical of the frontline Arab states. As a practical matter, however, in the context of an overall settlement with Egypt and Jordan firmly committed to peace, Syria would have little choice but to go along. There have been, moreover, some signs that the current Syrian government may be willing to moderate some of its radical stances of the past.¹⁹⁵

VI. CONCLUSION

As claimed by the leaders of the three countries responsible for its conclusion, the Egyptian-Israeli Peace Treaty is a major step forward in the seemingly endless search for a resolution of the Arab-Israeli conflict. The Treaty will prove of lasting value, however, only if it becomes the basis for an overall settlement and all parties turn their attention to the remaining crucial issues. If constructive steps are not taken on these issues, the continued viability of the Treaty will be in great danger. Failure to negotiate arrangements that will satisfy Palestinian aspirations for self-determination while protecting Israel's national security could lead to intolerable pressures on President Sadat to renounce the Treaty or to his overthrow and replacement by radical elements within Egypt. There is further danger that Israel, in reaction to pressures to accept policies it regards as endangering its national security, might itself renounce the Treaty, or, at the least, refuse to participate in the further talks on autonomy for the West Bank and the Gaza Strip.

This article has set forth some suggestions for possible alternative approaches to the problems of the West Bank, the Gaza Strip, and East Jerusalem. Neither these nor any other approaches will be successful, however, unless there is a change in the current attitude of the principal parties to the Arab-Israeli conflict. Israel will have to reassess its apparent determination to retain permanent sovereignty over the West Bank and the Gaza Strip and its unwillingness to recognize the right of the Palestinian people to self-determination. For their part, the leaders of the

195. Admittedly, Syria has made no public statements indicating a moderating of its traditional hard-line position toward Israel. However, several major concerns may ultimately induce President Hafez al-Assad of Syria to be more amenable to the prospect of a peace settlement with Israel. For example, he faces increased sectarian unrest in Syria itself; a reluctance on the part of the Soviet Union to deliver advanced fighters to Syria; confrontations with Israeli jets over Lebanon; and difficulties with Syria's neighbor Iraq. *N.Y. Times*, July 21, 1979, at 4, col. 3.

Palestinian people and of the Arab states will have to show by their deeds as well as by their words that they are willing to recognize Israel's right to exist. They must also desist from terrorist acts against the people and territory of Israel. Unfortunately, there are currently disturbing signs that the heated rhetoric that has so often presaged outbreaks of war between Israel and the Arab states is increasing exponentially. If it continues and escalates, the Egyptian-Israeli Peace Treaty may ultimately prove to be only one more in a long line of international legal instruments that have raised false hopes for peace among the peoples of the Middle East.