Forty Years without Resolve: Tracing the Influence of Security Council Resolution 242 on the Middle East Peace Process

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This essay offers an assessment of the extent to which UNSC Resolution 242's procedural and substantive recommendations have facilitated a negotiated settlement of the Arab-Israeli conflict. The historical record of each of the mechanisms of the Middle East peace process demonstrates that the mediation mechanism established in 242 was too feeble for the task assigned to it. The resolution's ambiguities and omissions further diminished its value as a tool of dispute resolution, creating confusion about what acceptance of 242 signified, encouraging hard bargaining by the parties, and denying leaders the political cover for necessary compromise.

HAS UNITED NATIONS SECURITY COUNCIL RESOLUTION 242 advanced the cause of peacemaking in the Middle East? In a 1970 article in the *American Journal of International Law*, the prominent American political scientist Quincy Wright declared that "the Security Council resolution of November 22, 1967, seems to provide for a satisfactory solution to the Middle East controversy, and it is difficult to see how there can be a satisfactory settlement except on the basis of the principles on which that resolution is based."[1] Two years later, in the pages of the *Journal of Palestine Studies*, Yugoslavian diplomat Ljubomir Radovanovic retorted that the resolution "merits no claim to being the juridical and political basis for the final solution to the Arab-Israeli conflict," adding, "[a]ny intrinsic value this resolution might have had was sacrificed to formal compromise with a view to arriving at a consensus which in fact did not exist."[2] Yet, at a 1992 conference convened by the Washington Institute for Near East Policy on the occasion of the resolution's twenty-fifth anniversary, 242 was hailed as the "building block of peacemaking," one participant describing it as "the only sail remaining on the ship that has been sailing in a sea of fear and uncertainty for more than four decades."[3]

As UN Resolution 242 turns forty, these mixed assessments (and mixed metaphors) warrant reconsideration. Is the resolution "the building block of

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peacemaking," or has it served, instead, to impede progress toward building a durable peace? In an effort to answer this question, I begin by briefly examining the peacemaking roles assumed by the Security Council in the exercise of the mandates assigned to it by the UN Charter. I aim, in particular, to identify the functions that Security Council resolutions may serve in efforts by parties to negotiate an end to their conflict. I then turn to evaluating Resolution 242's contributions to achieving the goal it defines in its first operative paragraph: "the establishment of a just and lasting peace in the Middle East." I conclude by arguing that the resolution's ambiguities and omissions have greatly diminished its effectiveness as a tool of dispute resolution.

THE SECURITY COUNCIL'S ROLE IN INTERNATIONAL DISPUTE RESOLUTION

The United Nations Charter assigns the Security Council "primary responsibility for the maintenance of international peace and security."[4] To fulfill this responsibility, the council is empowered to exercise two kinds of functions: the facilitation, under chapter VI, of the peaceful settlement of any dispute that is "likely to endanger the maintenance of international peace and security"[5]; and the authorization of action, under chapter VII, to restore international peace and security upon a finding of "any threat to the peace, breach of the peace, or act of aggression."[6]

Despite the differences in the nature of these two mandates, in practice it has rarely proved clear when a given crisis has matured from being "likely to endanger" international peace and security to representing a "threat to" or "breach of" the peace. Indeed, Security Council action has sometimes bridged the two mandates.[7]

The charter may thus best be understood as offering the council an array of tools for maintaining international peace and security, the choice among them being calibrated to the nature and severity of the crisis before it, as well as to the degree of political will and consensus its members are able to muster. At one end of the continuum, the council may simply call upon the parties to settle their dispute themselves, through peaceful means of their choosing.[8] At an intermediate point on the continuum, the council may "recommend appropriate procedures or methods of adjustment" such as negotiation, mediation, or judicial settlement.[9] The council may also recommend substantive terms for settling the dispute.[10] The charter provides that the council "take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice."[11] Referral to the ICJ, however, has been rare, and the council has sometimes undertaken to fill the breach by making legal judgments itself. In that capacity, it has directed parties to the principles of international law that should guide resolution of their dispute and has even indicated how those principles should be applied to the issues in contention.[12] Finally, at the far end of the continuum, the council may make decisions that are legally binding on the parties under chapter VII. Although the charter authorizes the council to make decisions only with respect to measures

necessary "to maintain or restore international peace and security,"[13] the council on occasion has interpreted this mandate as granting it authority to impose the terms of a settlement on disputants.[14]

In choosing among these tools, the council has virtually unfettered discretion. To be sure, *realpolitik* has frequently informed the choice, with council members having often hesitated to make recommendations or decisions they perceived as having adverse effects on their interests or those of their allies or clients. During the cold war in particular, the divergent agendas of the council's permanent members rendered coercive action under chapter VII a rare event.[15] The council has been more willing to use coercion since the cold war's end, authorizing the use of force or sanctions in Iraq (in 1990), Rwanda, Bosnia and Herzegovina, Haiti, Zaire/Democratic Republic of Congo, the Ivory Coast, Liberia, and Afghanistan. (That said, the council's failure to establish a consensus about how to respond to the situations in Kosovo, the Middle East, Sudan, and Iraq—in 2003—makes clear that political divisions within the council did not disappear when the Soviet Union dissolved.) However, in some cases—as in the Middle East, Cyprus, and the Balkans—council members have argued against coercive action on the grounds that the council lacks the capacity to resolve some conflicts by fiat, even if it could muster the will to do so. Resolving these disputes, it has been claimed, must fall to the parties themselves, who are in the best position to strike the right balance between their respective rights and interests and will be the ones to ultimately bear the burden of implementing a settlement.

Even setting aside the potential political motivations for these arguments, I submit that they present a false dichotomy. As noted above, there is an intermediate step between coercive action by the council and unguided negotiation. Even when the council is unable or unwilling to make legally binding decisions under chapter VII of the charter, its articulation of substantive and procedural recommendations may contribute to the resolution of a given dispute in several important ways. First, council recommendations may offer a medium of communication among parties and other interested members of the international community—a commonly understood set of terms that may be invoked to signal intentions. The recommendations may also be incorporated by reference to fill in gaps in an agreement, obviating the need for the parties to bargain over every term. Second, council recommendations may help to frame (and contain) bargaining, promoting both efficiency and fairness. In other words, by articulating what authoritative members of the international community regard as fair, council recommendations may serve to remove extreme or unlawful options from the table—"to serve as a set of bookends within which a constructive solution might lie."[16] Third, recommendations may help to reduce the political costs, domestically and internationally, of reaching a deal. Precisely because the issues involved in international conflicts often turn on emotionally wrought questions of history and identity, compromise may come at a price—lost elections or diplomatic isolation, for instance—that political leaders will be hesitant to pay. Recommendations from an authoritative third party may

permit the parties involved to deflect—or at least to spread—the political cost of negotiating with an enemy or of reaching an unpopular compromise.

In these ways, Security Council recommendations play roles in international dispute resolution that are analogous to those played by the rules of international law.[17] As with legal norms, moreover, their effectiveness turns to a significant extent on their determinacy—that is, the extent to which they "convey a clear message" such that "one can see through the language . . . to its essential meaning."[18] If the meaning of a recommendation is unclear, parties will find it more difficult to use it as political cover, it will be a less efficient means of communication, and it may be susceptible to radically different interpretations, doing little to narrow the scope of bargaining. Accordingly, while ambiguity—which is merely indeterminacy by another name—may facilitate building consensus around a set of recommendations, it may also diminish their effectiveness as tools of conflict resolution. Indeed, as the long history of Security Council Resolution 242 indicates, what may be perceived as a useful device for persuading parties to commence a peace effort can stymie efforts to proceed much further.

RESOLUTION 242 AS A PEACEMAKING TOOL

At the Washington Institute for Near East Policy's 1992 conference on the Resolution, Dennis Ross observed, "It is quite remarkable to think that we are here commemorating the twenty-fifth anniversary of UNSC 242. If nothing else, that certainly highlights that this is a Security Council resolution that has durability."[19] His remarks raise some important questions: Which procedural and substantive features of the resolution have endured over its now–forty-year history? To what extent have these features contributed to Middle East peacemaking? Is the resolution's durability a cause for celebration?

Procedural Features

During the debates surrounding the 1967 war, the Security Council considered a range of responses to the crisis. France argued for "a conference of the four 'great powers' to draw up—and by implication, impose—a settlement."[20] The Soviet Union championed a robust resolution condemning Israel and calling for its withdrawal from the territories, turning unsuccessfully to the General Assembly to secure such a resolution when it became clear that the United States would block Security Council action of that kind.[21] The United States, in contrast, pressed for direct negotiations between the disputants,[22] President Lyndon Johnson declaring shortly after the war that "the parties to the conflict must be the parties to the peace," and adding, "[i]t is hard to see how it is possible for nations to live together in peace if they cannot learn to reason together."[23] On this point, the United States took its cue from Israel, which was unwilling after the war to return to the diplomatic or territorial *status quo ante*; it sought negotiations to replace its armistice agreements with peace agreements and to obtain Arab consent to the acquisition of at least some of

the territory it had conquered. Direct negotiations, however, were publicly rejected by the Arab states; although Egypt and Jordan privately agreed to pursue a political accommodation with Israel, they bowed to pressure at the Arab Summit conference in September 1967 to join in a resolution calling for "no peace with Israel, no recognition of Israel, no negotiations with it, and insistence on the rights of the Palestinian people within their own country."[24]

Presented with these widely divergent views, the Security Council limited itself to offering recommendations, settling on a dispute resolution mechanism that had been proposed in several drafts: the appointment by the UN Secretary-General of a special representative for the Middle East to serve as mediator. At Israel's urging, however, the mandate of the special representative was carefully circumscribed, as a former State Department official recounts:

> Some of [the draft] resolutions caused [Israeli foreign minister Abba] Eban intense anxiety, for they seemed to confer broad authority upon the special representative. The Israelis feared that an arbitrator was being created, someone empowered to impose his— or the powers'—views of what a settlement should look like. For a solution to this problem, Eban again turned to [the United States' UN ambassador Arthur] Goldberg. He insisted that the special representative's mandate should be strictly limited; it should be only to "promote agreement and assist efforts" to achieve a settlement, nothing more. To his satisfaction, those words were inserted into the resolution.[25]

Thus, the only action on which the council ultimately agreed in Resolution 242 was the designation of a mediator with narrow authority, a position filled by Sweden's ambassador to the Soviet Union, Gunnar V. Jarring.

To what extent did this mechanism help to obviate the threat to international peace and security represented by the continuation of the Arab-Israeli conflict? In two senses, it may be seen as having achieved limited (albeit temporary) success. First, it bears recalling that the 1967 war and its aftermath presented the potential for an unwelcome escalation into a larger East-West conflict. Following the military escalation between Egypt and Israel in the weeks prior to the resolution's adoption in November 1967, the Jarring mission provided at least the appearance of a concerted international effort to walk the parties away from war. Second, from an institutional perspective, the Jarring mission offered an opportunity to maintain the involvement and rebuild the esteem of the United Nations, which had failed to prevent the June war and had been very nearly unable to overcome its paralysis in devising a response to its consequences. Indeed, the council's need "to avoid the danger of once more presenting a spectacle of utter impotence"[26] may help to explain why Resolution 242 ultimately elicited the unanimous support of its members despite the feebleness of the mechanism it prescribed.

As a vehicle for facilitating resolution of the Arab-Israeli conflict, however, the Jarring mission proved to be anything but durable. Because Jarring's

mandate was defined only in relation to states, he had no dealings with the Palestinians,[27] whose plight and aspirations came later to be recognized as a critical dimension of Middle East peace. In addition, mediation quickly proved to be too weak an instrument for the task assigned it. As UN Secretary-General U Thant reported in January 1971, "It had been the hope of Ambassador Jarring, in submitting [questions to the parties,] that the replies might show certain encouraging features which might make it possible to invite the parties for a series of meetings between them and him."[28] Instead, he complained, "the replies were in general a repetition of attitudes already expressed . . . [and] showed continued serious divergencies [sic] between the Arab States and Israel both as regards the interpretation to be given to the Security Council resolution and as to the procedures for putting its provisions into effect."[29] Although Jarring's mediation effort may have served for a time to prevent the war of attrition from escalating further, it also helped to obscure the lack of political progress:

> The Israeli tactic was to keep feeding Jarring proposals and documents to which he was to obtain Arab reactions. The aim was to keep his mission alive and prevent the matter from going back to the UN, where Israel would be blamed for the failure. Eban's colleagues were happy to leave it to him to conduct the elaborate exchange of notes with Jarring as long as he did not make any substantive concessions. Eban understood better than any of them both the limits and the possibilities of Jarring's mission. "Some of my colleagues," noted Eban, "did not understand that even a tactical exercise fills a vacuum. Even diplomatic activity that is not leading anywhere is better than no diplomatic activity at all. Activity itself gives Arab moderates an alibi for avoiding the military option."[30]

This alibi, however, was not long maintained. In a last effort to overcome the diplomatic stalemate, Jarring undertook to assume a more robust role in February 1971, proposing proactively that Israel agree to withdraw from all Egyptian territory and that Egypt commit itself to enter into a peace agreement with Israel. Although Egypt responded affirmatively, Jarring's initiative "made the Israelis furious—he had deviated from the messenger role that they had assigned him—and they let it be known that they would no longer deal with him."[31] The sole procedural mechanism to which the Security Council had agreed in Resolution 242 was unceremoniously terminated a few months later, and the next full-blown Arab-Israeli war followed soon thereafter.

Ironically, the most enduring procedural element of what has come to be known as the Middle East peace process—direct negotiations among the parties to the conflict—received the council's endorsement not in Resolution 242 but in Resolution 338, which was adopted during the 1973 war. Over time, each of the Arab parties to the conflict conceded to the demand first made by Israel and the United States during the protracted debate over Resolution 242 that

they negotiate directly with Israel. What has remained a source of contention, however, is the substantive framework within which the negotiations should take place, as well as the role third parties—the United States, the United Nations, and, more broadly, the "international community"—should assume in resolving questions left unanswered in Resolution 242.

Substantive Features

The basic substantive compromise recommended by the council—land for peace—is defined in the first operative paragraph of Resolution 242. Affirming that "the fulfillment of Charter principles requires the establishment of a just and lasting peace in the Middle East," the council stated that such a peace "should include the application" of two principles: "[w]ithdrawal of Israel armed forces from territories occupied in the recent conflict"; and "[t]ermination of all claims or states of belligerency and respect for and acknowledgement of the sovereignty, territorial integrity and political independence of every State in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force." In addition, the council affirmed "the necessity" of achieving several additional goals: "guaranteeing freedom of navigation through international waterways in the area"; "achieving a just settlement of the refugee problem"; and "guaranteeing the territorial inviolability and political independence of every State in the area, through measures including the establishment of demilitarized zones." By choosing not to frame the resolution as a "decision" or to invoke chapter VII explicitly, however, the council signaled that it was acting under its chapter VI mandate to offer recommendations for dispute resolution.

With forty years of hindsight, have these recommendations proved effective in facilitating the resolution of the issues in dispute? The record is mixed. As discussed below, the recommendations that have proved most effective are those the council chose to articulate in clear terms and in a manner that connected them explicitly to norms of international law. In contrast, the issues that the council addressed ambiguously, or failed to address at all, have proved resistant to resolution through negotiations, prompting the parties to turn to third parties—the United States, in particular—for assistance in settling their interpretive differences and filling in the gaps in 242. As a result, the success of peace efforts has turned to an inordinate extent on the willingness of successive American administrations to assume that role and to exercise it responsibly.

Points of Clarity

Although Resolution 242's numerous ambiguities are perhaps its most notorious feature, the council did make two of its substantive recommendations clear, effectively removing them from the bargaining table. First, as Steven Ratner observes, the council's call for guaranteed freedom of navigation through the region's international waterways invoked "a principle of customary international law to signal to the Arab states that any peace treaty with Israel would have to include passage through the Straits of Tiran."[32] Although the question

of Israel's right of passage through the Straits and the Gulf of Aqaba had been a repeated point of conflict before the 1967 war, recognition of this right was incorporated into the Camp David Accords without controversy, as were provisions for the stationing of multinational forces to guarantee free passage through the Straits.[33]

Second, and more significantly, by calling for "respect for and acknowledgement of the sovereignty, territorial integrity and political independence of every State in the area and their right to live in peace," the council made clear that even if peace were not accompanied by a full normalization of relations, it necessarily would involve acknowledgement of Israel's existence as a state and respect for the rights attendant to that status. Again, the council chose to cloak this recommendation in terms of an international norm of general application, rather than to refer to the particular issue in contention (i.e., recognition of Israel).[34] Even so, the resolution's sweeping language ("*every* State") left little room for interpretive differences. Although that clarity prompted some of the parties initially to reject the resolution, none has disputed that acceptance of 242 represents a willingness to accept Israel's existence (though they have made that acceptance contingent on Israel's agreement to full withdrawal or other terms). Perhaps for that reason, acceptance of the resolution has frequently been imposed as a precondition for participation in the Middle East peace process. For example, the United States declined to establish contacts with the PLO unless and until it endorsed Resolution 242 in language that made clear it accepted Israeli statehood in particular. In that respect, the resolution's clarity on this point significantly narrowed the scope of subsequent negotiations: In a single stroke, the council had removed the option of an Israeli withdrawal from occupied territory without the *quid pro quo* of political recognition, and, by extension, the option of establishing a single state in mandate Palestine. Bearing in mind that on the eve of the resolution's adoption the Arab states continued to advocate "liberating Palestine," the elimination of these options from the agenda of all subsequent rounds of Arab-Israeli negotiations is a testament to the council's influence when it chooses to speak clearly—and when its members stand by their resolutions' words.[35]

Points of Ambiguity and Omission

Resolution 242's other recommendations were expressed more obliquely. Four elements of the resolution have elicited conflicting interpretations. First, disputes have arisen regarding the *scope of Israeli withdrawal* called for by the council: Did the omission of the definite article before "territories occupied in the recent conflict" and the reference to "secure and recognized boundaries" authorize Israel to withdraw from less than all of the territory it had occupied during the 1967 war, or did the affirmation in the resolution's preamble of the "inadmissibility of the acquisition of territory by war," a rule of international law, make clear that full withdrawal was required? Second, the parties have differed about the *kind of peace* required by the resolution: Would peace include merely the termination of belligerency, or would it constitute full relations? Third,

the council's failure to define a *sequence for implementation* of the parties' respective commitments has prompted each to demand that the other side proceed first. Fourth, the call for a "*just settlement of the refugee problem*" has raised questions about what is "just" in the circumstances—realization of the refugees' right of return, or merely compensation?[36] In addition to these ambiguities, the council failed entirely to address one critical issue: It makes no reference to the Palestinian people's right to self-determination, focusing instead on the rights of the states in the area.

How did the parties undertake to resolve the questions that the council left unanswered? Over time, they all accepted Resolution 242 as the framework for a peace settlement. But because the resolution's ambiguities created uncertainty about what acceptance actually signified, several of them initially adopted the tactic of demanding the other side's agreement to its understanding of the resolution as a precondition for negotiations. In the first months of the Jarring mission, Egypt and Jordan insisted not only on Israel's prior commitment to full withdrawal, but on the actual implementation of that withdrawal before the question of a peace settlement would be considered, attempting in that way to resolve two of the resolution's ambiguities at once. Similarly, Syria consistently declined to pursue negotiations with Israel in earnest unless it first received an Israeli commitment to full withdrawal from the Golan Heights. Israel had less to gain from setting preconditions, both because the status quo gave it a strong bargaining position and because Resolution 242 already ensured that its recognition as a state would be an outcome of a peace settlement. Nevertheless, it too employed this tactic: In the run-up to a peace conference held in Geneva in 1977, the Begin government attempted to foreclose any discussion of withdrawal from the West Bank, a position that the Carter administration characterized as an unacceptable precondition.[37]

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Ultimately, each of the parties yielded to American pressure to enter negotiations without preconditions other than acceptance of 242. In advance of negotiations, however, each party staked out maximalist positions through both word and deed. On the Egyptian-Israeli track, six weeks after Anwar Sadat's historic speech at the Knesset in 1977, Israel began building four new settlements in the Sinai Peninsula, as well as a new settlement on the outskirts of Jerusalem (Ma'ale Adumim, now the largest settlement in the West Bank); and, on the first day of the Camp David summit, Begin advised Carter that he would insist on keeping Israeli settlements in the Sinai, a position he maintained until the tenth day of the thirteen-day summit. Similarly, in Sadat's first meeting with Carter in 1977, he stated that full relations with Israel—particularly tourism, trade, and the exchange of ambassadors—would be impossible, clinging to this position through day eight of the summit. The two sides also argued bitterly about the sequencing of their respective commitments well beyond the conclusion of the Camp David accords, their dispute threatening to derail agreement on a peace treaty entirely.

Similar tactics were employed on the Syrian-Israeli track. Asad in 1977 expressed unwillingness to entertain normal relations with Israel, hinting at flexibility only in late 1999, when he believed that his territorial concerns would be met. And after Israel concluded its peace treaty with Egypt, the Begin government annexed the Golan Heights, in part in order to signal "that Israel's withdrawal from Sinai should not be seen by her neighbors as a precedent for other fronts."[38]

On the Palestinian-Israeli track, as well, the parties staked out radically divergent positions regarding 242 in the first rounds of permanent status negotiations. At a ceremony marking the formal opening of talks in September 1999, Israel's foreign minister announced that Israel's position would be guided by four basic principles, one of which was "we will not return to the 1967 lines." Two months later, just as negotiations were beginning, Ehud Barak declared that Resolution 242 was inapplicable to the West Bank, prompting months of wrangling at the negotiation table and in the media about the resolution's implications. On the issue of refugees, moreover, Israel refused categorically to discuss the Palestinian right of return and argued that its responsibility to compensate refugees for property losses was offset by the claims of Jewish refugees from Arab countries. The Palestinians, for their part, initially declined to enter discussions about the scope of Israeli withdrawal from occupied territory— only the manner in which it would be carried out. And in their opening presentation on refugees, they demanded Israel's recognition of its "moral and legal responsibility for the forced displacement and dispossession of the Palestinian people," the recognition of the right of "every refugee to freely return to his or her home," and agreement to a timeframe for "a speedy return of the refugees."

Hard bargaining, however, presented particular challenges for the Palestinians. Lacking a state, they were in the weakest position of all the parties, and they had surrendered one of their few bargaining chips as the price of commencing the Oslo process, recognizing Israel in 1993 without obtaining reciprocal recognition of their own right to self-determination. In an effort to compensate, the Palestinians invoked international law both at the negotiating table and in public diplomacy: They made the case that the UN Charter prohibited the acquisition of territory by force and that the Fourth Geneva Convention barred the establishment of settlements in occupied territory; they argued that refugee return was a customary norm of international law, citing UN General Assembly Resolution 194 and more recent state practice as evidence; and they pointed to broad recognition of their right to self-determination within the international community. These norms, the Palestinians claimed, resolved 242's ambiguities and filled its gaps. Israel's response to these arguments, however, was unequivocal: Israel had agreed to negotiate only on the basis of Resolutions 242 and 338—not other norms of international law; and those norms, in any event, were of disputable applicability and relevance. If the Palestinians wanted to prevail in these arguments, they would have to turn to third parties for support.

Indeed, what is perhaps most ironic about the Security Council's decision not to intervene with forcefulness and clarity to address the issues dividing

Israelis and Arabs in 1967 is that it did nothing to facilitate resolution of those issues by the parties themselves. On all three tracks, and with respect to all of the issues discussed above, the parties proved utterly incapable of reaching agreement without third-party assistance. Instead, the ambiguities in Resolution 242 served simply to shift this role away from the council and toward individual states. In the years immediately after the resolution's adoption, the United States and the Soviet Union competed to assume it. Following the Soviets' presentation of a plan for a phased Israeli withdrawal in 1968, for instance, U.S. Secretary of State Dean Rusk presented his own plan for a settlement, which included complete Israeli withdrawal from Sinai. Rusk also privately conveyed to Abba Eban his view that changes to Israel's other prewar borders should not be substantial,[39] a position publicly endorsed by his successor, William Rogers, the following year—again in an effort to counter Soviet influence in the Arab world.[40] Henry Kissinger (first as national security advisor, then as secretary of state) resisted efforts to pressure Israel to withdraw, and the Soviet role began to decline as Sadat set his sights on a strategic relationship with the United States. However, the Carter administration resumed efforts to press the parties forward by clearly articulating the United States's understanding of Resolution 242. In a series of public statements and private interventions, Carter and Secretary of State Cyrus Vance stated that the resolution required the establishment of full relations and robust security arrangements in exchange for full withdrawal; they also took a step further than their predecessors by calling for means "to permit self-determination by the Palestinians in deciding on their future status."

Despite Carter's success in producing Egyptian-Israeli peace, his approach was emphatically disavowed by subsequent administrations. During preparations for the Madrid Conference in 1991, the United States declined to "remove the ambiguity in UNSC 242." According to Dennis Ross,

> We said that removing the ambiguity would mean prejudging the negotiations, and that is not what our role is about. Instead, Secretary Baker went out several times in several places in the Middle East, and he said there are different interpretations to UNSC [Res.] 242. The parties are going to bring those different interpretations to the table. They are going to go ahead, and they are going to remove the ambiguity. . . . And that is really the essence, over time, of what this process that we put together is all about. It is not for the United States to provide that; in the end, the parties are going to do that.[41]

Citing the same rationale, the United States opposed resolutions in the UN General Assembly that undertook to articulate more detailed principles to guide negotiations.[42] After negotiations commenced, moreover, the Clinton administration rebuffed Palestinian requests for clarification of the United States's position on the implications of Resolution 242 and norms of international law.

In the end, however, Ross's optimism about the parties' capacity to resolve 242's ambiguities through negotiations was misplaced. Although the parties' differences narrowed over time, the primary point of contention on both the Palestinian-Israeli and the Syrian-Israeli tracks at the time negotiations were suspended remained the scope of Israel's withdrawal from occupied territory—Resolution 242's most famous ambiguity.

AN ASSESSMENT

It is, of course, unknowable how the parties to the Arab-Israeli conflict would have reacted had the Security Council chosen to offer clearer guidance than it did in Resolution 242. In the acrimonious political climate surrounding the council's deliberations in 1967, it is possible that more of the parties would have rejected the resolution outright, as Syria initially did and as Menachem Begin, then a member of Israel's cabinet, urged his government to do. Conversely, it is possible that over time the parties would have acquiesced to terms they found objectionable, as both Asad and Begin (upon assuming Israel's premiership in 1977) eventually did with respect to Resolution 242. But even if the resolution's ambiguities did make the commencement of negotiations among parties with such divergent aspirations possible, they eroded its value as a tool for dispute resolution once talks began, diminishing its capacity to serve each of the functions outlined in the first section of this essay.

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First, the resolution's lack of clarity made it an ineffective device for signaling intentions. The parties, aware of their conflicting interpretations, lacked certainty about what others' acceptance of the resolution signified. This uncertainty deepened their reluctance to begin negotiations in earnest because they lacked confidence that their core concerns would be addressed in a peace settlement—the concern apparently motivating Syria's demand for prior assurances of Israel's intention to withdraw from the Golan.

In addition, the resolution's ambiguity made it virtually useless as a gap-filler. For example, in the last days of the first Camp David summit, the Egyptians sought to insert Resolution 242's clause affirming the inadmissibility of the acquisition of territory by war into the Camp David Accords' framework for the disposition of the West Bank and Gaza Strip. When the Israelis refused, "[t]he not-very-elegant solution was to append the full text of Resolution 242 to the . . . Accords, but not to single out that phrase in the text."[43] As a consequence, the accords proved to be as prone to conflicting interpretations as the resolution they incorporated by reference.

Second, as a result of the resolution's ambiguities and omissions, it did little to narrow the scope of negotiations. Lacking a coherent framework, the parties frequently resorted to hard bargaining, taking extreme positions until well into their negotiations. This kind of bargaining not only diminished goodwill, it also

cost the parties precious time. To be sure, third parties could compensate for this indeterminacy by pressuring parties not to take unreasonable or unlawful positions—and, on occasions, the United States and Soviet Union did just that. But these efforts were necessarily ad hoc and vulnerable to abrupt reversal when domestic circumstances changed.

Third, the resolution's ambiguities made compromise more politically costly for the leaders from whom it was sought. Because 242 was susceptible to conflicting interpretations, it did little to prepare domestic constituencies for the compromises that peace (and, arguably, international law) would require. This situation was exacerbated by the tendency of all of the governments involved to take tough positions in public in an attempt to improve their bargaining positions and curry favor domestically. When the time for compromise arrived, the same politicians found themselves "captives of their slogans."[44] For example, during the negotiations between Syria and Israel at Shepherdstown, West Virginia, in December 1999, Ehud Barak reversed his decision to implement Yitzhak Rabin's previous commitment to withdraw entirely from the Golan Heights in exchange for security guarantees and normal relations, citing a poll in which only thirteen percent of Israelis supported total withdrawal.[45] In view of the Israeli government's attempt to annex the Golan, these attitudes were hardly surprising. Because Israel had long insisted that Resolution 242 permitted territorial acquisition, and because the Reagan, Bush, and Clinton administrations had done little to discourage that interpretation, Barak could not point to the resolution and tell his public, "the Security Council made me do it." Responsibility for Israel's purported concession would be his alone—and proved, in his calculation, to be more than he could bear.

CONCLUSION

In one sense, at least, Resolution 242 has been indisputably durable: The Security Council continues to refer to it as a basis for the achievement of a "comprehensive, just, and lasting peace in the Middle East."[46] But while the loose consensus embodied in the resolution may have helped to prevent an East-West confrontation in the Middle East, and, eventually, to coax the parties to the negotiating table, it proved to be an unsteady framework for actually resolving the issues in dispute. The resolution's effectiveness at removing from consideration any settlement that did not involve recognition of Israel's existence as a state provides some indication of what the council can achieve when it speaks with clarity. However, the ambiguity with which it addressed the other major issues in dispute—and its complete inattention to the Palestinians' right of self-determination—has rendered negotiation of these issues more unpredictable, protracted, and contentious than they needed to be. Although the Carter administration demonstrated that responsible third parties could compensate for the resolution's shortcomings, its successors chose not to follow its example, with consequences made all the more tragic by the fact that they were avoidable.

NOTES

1. Quincy Wright, "The Middle East Problem," *American Journal of International Law* 64, no. 2 (1970), pp. 270–81.

2. Ljubomir Radovanovic, "Reflections on the November 22, 1967 Security Council Resolution," *Journal of Palestine Studies* 1, no. 2 (Winter, 1972), pp. 61–69.

3. Adnan Abu Odeh, "The Origins and Relevance of UNSC Resolution 242," in *UN Security Council Resolution 242: The Building Block of Peacemaking* (Washington, DC: Washington Institute for Near East Policy, 1993), pp. 45–57.

4. UN Charter, Article 24(1).

5. UN Charter, Article 33(1).

6. UN Charter, Chapter 7.

7. For example, the council has authorized UN peacekeeping operations, which lack explicit textual authority in chapter VI, without invoking chapter VII. See Steven R. Ratner, "The Security Council and International Law," in *The UN Security Council: From the Cold War to the 20th Century*, ed. David M. Malone (Boulder: Lynne Rienner Publishers, 2004), pp. 591–605, pp. 596–97.

8. UN Charter, Article 34.

9. UN Charter, Article 36. For example, in Resolution 93 (1951) the council invited Israel and Syria to bring questions regarding the implementation of their armistice agreement before a mixed armistice commission established after the 1948 war. In other situations, the council has authorized the establishment of mediation or fact-finding missions, as it did in Resolution 39 (1948), which created a commission of three UN members to investigate and help "smooth away" differences between India and Pakistan.

10. UN Charter, Article 37(2).

11. UN Charter, Article 36(3).

12. For example, in Resolution 95 (1951) the council interpreted Israeli-Arab armistice agreements and customary international law to prohibit Egyptian interference with passage of ships bearing goods bound for Israel through the Suez Canal.

13. UN Charter, Article 39.

14. In Resolution 687 (1991), for example, the council defined the boundary between Iraq and Kuwait.

15. By the end of the 1980s, the only genuinely coercive measures ordered by the council and binding on all UN members were the arms embargo against South Africa's apartheid regime and the economic sanctions against Rhodesia. Although not coercive, per se, the council (during the Soviet Union's self-imposed absence) also "invited" member states to help South Korea defend itself from attack by North Korea.

16. Ratner, "Security Council and International Law," p. 601.

17. For further discussion of the roles played by international law in these contexts, see Omar M. Dajani, "Shadow or Shade: The Roles of Law in Palestinian-Israeli Peace Talks," *Yale Journal of International Law,* no. 32(2007), pp. 61–124.

18. Thomas Franck, *Fairness in International Law and Institutions* (New York: Oxford University Press, 1995), p. 30.

19. Dennis Ross, "UNSC 242 and Arab-Israeli Peacemaking," in *UN Security Council Resolution 242: The Building Block of Peacemaking* (Washington, DC: Washington Institute for Near East Policy, 1993), pp. 58–68.

20. David A. Korn, *Stalemate: The War of Attrition and Great Power Diplomacy in the Middle East, 1967–1970* (Boulder, CO: Westview Press, 1992), p. 26.

21. Korn, *Stalemate,* p. 54.

22. Korn, *Stalemate,* pp. 26–27.

23. Korn, *Stalemate,* p. 26.

24. "Resolutions of the Arab Summit Conference (Khartoum Resolutions), September 1, 1967," in M. Cherif Bassiouni, ed., *Documents on the Arab-Israeli Conflict: The Palestinians and the Israeli-Palestinian Peace Process* (Ardsley, NJ: Transnational Publishers, 2005), vol. 1, p. 590. Shortly after Resolution 242 was passed, Jordan and the United Arab Republic expressed willingness to consider negotiations with Israel, but only after Israeli forces had been withdrawn to the lines of 5 June 1967.

25. Korn, *Stalemate,* pp. 38–39.

26. Radovanovic, "Reflections on the November 22, 1967 Security Council Resolution," pp. 62–63.

27. See Avi Shlaim, *The Iron Wall: Israel and the Arab World* (New York: Norton and Co., 2001), p. 261.

28. "Report by United Nations Secretary-General U Thant on the Activities

of the Special Representative to the Middle East, Gunnar V. Jarring, January 4, 1971," in M. Cherif Bassiouni, ed., *Documents on the Arab-Israeli Conflict*, vol. 1, p. 590.

29.   "Report by United Nations Secretary-General U Thant on the Activities of the Special Representative to the Middle East, Gunnar V. Jarring, January 4, 1971," in M. Cherif Bassiouni, ed., *Documents on the Arab-Israeli Conflict*, vol. 1, p. 590.

30.   Shlaim, *The Iron Wall,* p. 261.

31.   Korn, *Stalemate,* p. 273.

32.   Ratner, "Security Council and International Law," p. 600.

33.   Indeed, the issue is not even mentioned in William Quandt's magisterial account of the negotiations that produced that agreement. In contrast, the council's somewhat more ambiguous call for "the establishment of demilitarized zones" to guarantee the parties' territorial inviolability and political independence was the subject of prolonged negotiation, Egypt at first insisting on the creation of such zones on both sides of its border with Israel.

34.   The language clearly is drawn from Article 2 of the UN Charter, which obliges states to settle their disputes by peaceful means and prohibits "the threat or use of force against the territorial integrity or political independence of any state."

35.   The Government of Israel recognized this fact early on: One of the commitments it obtained as an inducement for entering into the 1974 Sinai agreement with Egypt was a promise by the United States to "reject any attempt to base future peace negotiations on any resolution other than 242." Shlomo Ben-Ami, *Wounds of War, Scars of Peace: The Israeli-Arab Tragedy* (New York: Oxford University Press USA, 2006), p. 153.

36.   See John Quigley's article in this *JPS* issue for a discussion of the refugee issue and the term "just settlement."

37.   William Quandt, *Camp David: Peacemaking and Politics* (Washington, DC: Brookings Institution Press, 1986), p. 73.

38.   Ben-Ami, *Wounds of War, Scars of Peace,* p. 178.

39.   Korn, *Stalemate,* p. 72.

40.   Korn, *Stalemate,* p. 160.

41.   Ross, "UNSC 242 and Arab-Israeli Peacemaking," p. 60.

42.   Examples of these resolutions include UN General Assembly (UNGA) Res. 44/42, UN Doc. A/RES/44/42 (6 Dec. 1989); UNGA Res. 45/68, UN Doc. A/RES/45/68 (6 Dec. 1990); UNGA Res. 52/52, UN Doc. A/RES/52/52 (9 Dec. 1997).

43.   William Quandt, *American Diplomacy and the Arab-Israeli Conflict since 1967* (Washington, DC: Brookings Institution Press, 2001), p. 100.

44.   I take this phrase from a conversation with Hanan Ashrawi on 8 August 2003.

45.   Charles Enderlin, *Shattered Dreams: The Failure of the Peace Process in the Middle East, 1995–2002* (New York: Other Press, 2002), p. 127.

46.   See, e.g., Security Council Res. 1773 (2007).