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לא מסולג
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3 רגל סלולרית - ג'אנג הא 3 21.12.73, נמצא בקר דה אסיה
 יחלאל אום, גבולות, הארץ, חיות-צא משפחה, טיולוג ההסכסוך אביס
 וצוואת המסכך יצא

6823 / 4 / 5

ניר-אל מצפה רמון תשס"א תעשיות ניר קרית גליל
 משרד מכירות: רח' תמנע 3 חולון 58813
 טל. 03-5566282 - 5566295



שם תיק: לשכת המנכ"ל - תכנון ועידת גינה

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ה

מדינת ישראל

משרד החוץ

ירושלים

סודי ביותר

תאריך: 6/12/73

מספר:

אל : המזכ"ל

מאת : היועץ המשפטי

הנדון : מיוטא להסכם שלום - יארינג

מצא-נא בלוטה הסיוטה להסכם שהוכנה בעת המו"מ
עם יארינג.

סיוטה זו לא תואמת, בחלקה, את עמדתנו כיום.
כך למשל, סבורים אנו שלא צריכה להיות התייחסות
בסיוטה - ל-"בעית פלסטין".

ב ב ר כ ה ,

מ. רוזן

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Article 1st

**TREATY OF PEACE, FRIENDSHIP AND CO-OPERATION BETWEEN
THE UNITED ARAB REPUBLIC AND THE STATE OF ISRAEL**

The United Arab Republic and the State of Israel,

1. Resolved to settle in a final and definitive manner the Palestine conflict which has caused such untold suffering since 1948;
2. Desiring to fulfil their obligations under Security Council Resolution 242, and the Charter of the United Nations, and to terminate the state of war, including all acts of belligerency, both active and passive, and to establish a state of just and lasting peace;
3. Resolved to live in friendship, co-operation and good neighbourly relations with each other for the benefit of their respective peoples;
4. Desiring to remove the barriers which deny to both peoples the free exchange of information, ideas, goods and services;
5. Having reached agreement on the solution of all the outstanding questions between them;

Have, therefore, determined to conclude the present Treaty of Peace, Friendship and Co operation, and have accordingly appointed the undersigned Plenipotentiaries who, after presentation of their full powers found in good and due form, have agreed on the following provisions.

ARTICLE 1

[Establishment of Peace]

A just and lasting peace will be established between UAR and Israel from the date on which this treaty enters into effect.

ARTICLE 2

[Liquidation of Conflict and Respect for Statehood]

The Parties declare that, by this Treaty, the Palestine dispute is definitively settled. They agree to respect and acknowledge each other's sovereignty, territorial integrity and political independence, and not to make or support claims against the sovereignty, territorial integrity or political independence of either Party, if such claims are made in future by any group or any State.

ARTICLE 3[Termination of Belligerency]

The Parties agree to terminate all claims and states of belligerency, both active and passive, against each other, and to respect and acknowledge each other's right to live in peace within the boundaries established under this treaty, free from threats or acts of force.

ARTICLE 4

[Prohibition of Acts of War]

No acts of war or of warlike nature will be undertaken by the armed forces of either Party or threatened against the territory, people or armed forces of the other Party.

ARTICLE 4a

[Diplomatic and Consular Relations]

Diplomatic and Consular relations shall be established between the UAR and Israel. For this purpose, it is agreed that the two States shall proceed forthwith to exchange diplomatic representatives ^{of the rank of} Ambassador and that the question of the establishment of consulates in the territories of the UAR and Israel respectively shall be settled through diplomatic channels.

ARTICLE 5

[Alliances]

Neither Party shall enter into or remain in any military pact or alliance directed against the other Party, or whose members maintain a claim or state of belligerency against the other.

Neither Party shall allow armed forces of a third State to be stationed in its territory. Armed forces of such States now stationed in the territory of either Party shall be withdrawn within 14 days of the entry into force of this Treaty.

[if a third State which maintains a
state of belligerency against the other
party]

ARTICLE 6

¹¹⁰²
[Terrorist Groups]

[be responsible for ensuring]

Each Party shall ensure that no warlike act, act of hostility or violence by any organization, group or individual, originates from or is committed in its territory, against the territory, population, citizens or property of the other Party, in any part of the world.

Each Party undertakes to prevent the preparation and organization of such activities in its territory, and will not tolerate the existence on its territory of organizations, groups or individuals whose object is the carrying out of such activities.

ARTICLE 7

[Economic Warfare]

Each Party agrees that it will not engage or support any economic warfare or boycott activity against the other, including such activities as are set out in the Protocol contained in Annex ...

[It shall terminate economic warfare in all its manifestations]

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ARTICLE 8

[Reservations to Multilateral Treaties]

The Parties declare that it is inconsistent with this Treaty to place reservations on the applicability of multilateral treaties to the other Party. They agree to withdraw and annul forthwith reservations made in the past.

ARTICLE 9

[U. N. Charter Principles]

The Parties affirm that in their mutual relations they will be guided by the principles of the United Nations Charter, including the following:

- (1) To settle their international disputes by peaceful means in such manner that international peace and security are not endangered;
- (2) To 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.

The Parties declare that they shall refrain from interfering in the domestic affairs of the other Party for any reason whatsoever.

ARTICLE 10

[Hostile Propaganda]

Each Party shall abstain from political warfare, hostile and irridentist propaganda, and incitement to hatred and violence.

ARTICLE 11

[Participation in International Organizations]

Each Party shall support the participation of the other Party in organizations and activities of Afro-Asian and developing countries, and in regional organizations. They shall support the establishment of a U. N. Economic Commission for the Middle East to which they will belong.

ARTICLE 12

~~[New Boundaries]~~

The Parties agree that the permanent, secure and recognized boundaries between them will be as delimited on the map attached hereto.

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ARTICLE 13

[Respect for Boundaries]

The Parties declare that they shall respect unreservedly the territorial integrity of the other Party within the boundaries agreed upon in this Treaty, and that they have no territorial demands against each other, nor will they have such in future. They regard these boundaries as inviolable.

ARTICLE 14

[Boundary Commission]

The Parties agree to establish a joint Boundary Commission, the functions and composition of which are set out in the Protocol contained in Annex ...

ARTICLE 15

[Deployment of Forces]

Subject to the agreed demilitarization and security arrangements specified in this Treaty, Israel undertakes to evacuate its armed forces from all territory falling on the UAR side of the boundary established by this Treaty, in accordance with the attached timetable.

The implementation of this provision shall begin on the ... day following the exchange of instruments of ratification, and shall proceed thereafter in accordance with the timetable as set out in the Protocol contained in Annex ...

ARTICLE 16

[Demilitarization]

All areas evacuated by Israel armed forces in accordance with Article 15 above will remain demilitarized, and UAR undertakes not to introduce into these areas armed forces over and above those required for local security purposes and not to construct military installations, as set out in the Protocol contained in Annex ...

Supervision of the demilitarized zone will be carried out jointly by the Parties, in accordance with the agreed arrangements set out in the Protocol mentioned in the preceding paragraph.

ARTICLE 17[Arms Limitation]

In order to eliminate the arms race, which is wasteful, and a source of tension, the Parties agree to regulate the size of their armed forces and the type of their armaments and weapons-systems. Such regulations are set out in the Protocol contained in Annex ...

ARTICLE 18

[Refugees]

The Parties reaffirm the obligations they have undertaken in the context of the agreed plan for a just solution of the refugee problem, set out in the Protocol contained in Annex ... It is further agreed that the implementation of other provisions of this Treaty shall not be delayed pending implementation of the said refugee plan.

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ARTICLE 19

[Promotion of Mutual Interests]

The Parties recognize that history and geography have created an objective affinity of interest between their countries, and that their economic and human interests are closely related. The Parties agree to promote this natural association for their mutual benefit.

ARTICLE 20

[Movement between Parties]

There shall be the maximum degree of freedom of movement between the two countries, including mutual access to places of religious and historical significance - subject only to the essential requirements of public order and security.

Innocent movement of persons and goods across the boundaries shall be permitted, as set out in the Protocol contained in Annex ...

ARTICLE 21

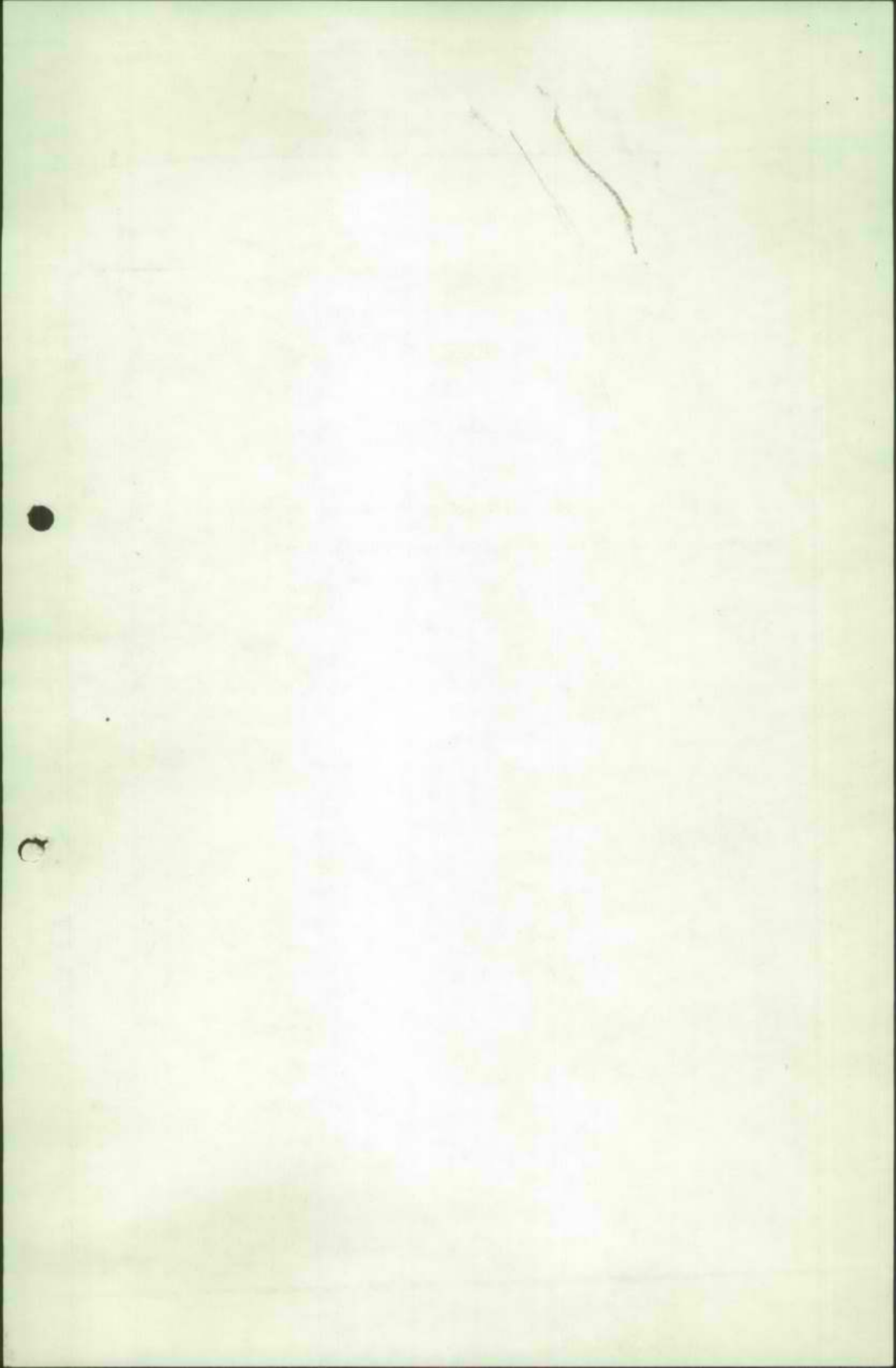
[Economic Cooperation]

The Parties will seek specific agreements for co-operation in such economic spheres in which they may have common interests, such as port facilities, communications, water resources, mineral extraction, tourism, health, meteorology and crime-prevention. They agree to establish and maintain normal trade and commercial relations.

ARTICLE 22

[Financial Claims]

The Parties reciprocally waive any and all financial, economic and property claims arising from any aspect of the Palestine dispute.



ARTICLE 23

[Free Passage]

Each Party shall cease all maritime interference with ships of all flags, including that of the other Party, and shall allow free and unimpeded access to their respective ports. All belligerent rights of search and seizure are irrevocably waived, as between the Parties.

ARTICLE 24

[Navigation in certain international waterways]

The Parties undertake to respect and to uphold freedom of navigation for the ships of all nations, including those of Israel and of the UAR, in the Gulfs of Suez and Aqaba and in the Suez Canal, as set out in the Protocol contained in Annex ...

ARTICLE 25

[Self-Defense]

Both Parties agree that the violation by either of them of any of the Articles enumerated below justifies the exercise by the aggrieved Party of the right of self-defense under Article 51 of the Charter of the United Nations, and the taking of such measures as maybe necessary for the protection of its security: ...

.....

.....

ARTICLE 26

[Dispute Settlement]

The Parties agree to settle amicably and speedily all disputes concerning the interpretation or implementation of this Treaty. Such a dispute which has not been settled through diplomatic channels may be submitted by either Party to whose functions and competence are set out in the Protocol contained in Annex ...

ARTICLE 27

[Security Council Endorsement]

The Parties shall jointly request appropriate endorsement of this Treaty by the Security Council of the United Nations, but the coming into effect of the Treaty shall not be contingent upon such endorsement.

ARTICLE 23

[Annexes and Protocols]

The Annexes and Protocols to this Treaty shall have force and effect
as integral parts of this Treaty.

ARTICLE 29

[Ratification]

The present Treaty shall be ratified. It shall come into force
immediately upon the exchange of instruments of ratification.

ARTICLE 30

[Registration]

This Treaty will be registered with the Secretariat of the United Nations
in accordance with Article 102 of the United Nations Charter.

[Final Clause]

IN WITNESS WHEREOF, the undersigned have signed the present
Treaty.

DONE at, this ... day of ... 19... in the Arabic, English and
Hebrew languages, the English text being authoritative.

ט ו ר ט א ג

הסכם השלום עם מדינות ערב - מסגרתו וצורתו המשפטית

1. הסכם שלום והסכמי ביניים מוקדמים (שביתת נשק)

מסגרתו של כל הסכם שלום אפשרי תהיה שונה, אם לפני חתימתו ייעשו או ייחתמו הסדרי ביניים מוקדמים נוספים, כגון הסכם נוסף לייצוב הפסקת האש או הסכם שביתת נשק אשר יכילו איסורים שונים על הצדדים, כגון, אי-פתיחה באש, איסור פעולות טרור, אי-פגיעה בחופש השייט וייתכן אפילו סיום מצב הלוחמה, ובין שהסדרי ביניים כאמור לא יתקיימו. במקרה אחרון זה יהיה צורך בכך כי איסורים כאמור יהוו חלק מהסכם השלום עצמו.

2. שם המסמך

יש לתת את הדעת לשם שיינתן להסכם שייחתם. הסכם שלום יכול שייקרא בשמות שונים כגון אמנת שלום (Convention), הסכם שלום (agreement, treaty) הצהרה (declaration).

על-פי העקרונות המקובלים של המשפט הבינלאומי שמצאו את ביטויים באמנת וינה על דיני אמנות משנת 1969, הקובע - הוא תוכן ההסכם ולא שמו.

אף-על-פי-כן יש לתת את הדעת לשמו של המסמך שייחתם, וזאת בוכח הצורך לקבוע בהסכם עצמו כי הוא יהיה כפוף לאשרור בהתאם להוראות החוקתיות של המדינות המתקשרות, וייתכן כי חוקתה של מדינה זו או אחרת תקבע כי רק מסמך בשם פלוני יהיה טעון אשרור, ואילו מסמך בשם אלומוני לא יהיה טעון אשרור כאמור.

בהקשר זה יש להטעים כי חוקתה של מצרים (סעיף 151), חוקתה של ירדן (סעיף 33) וחוקתה של סוריה (סעיף 48(7)) קובעות כולן כי הסכמים מסוג זה טעונים אשרור של הגופים המחוקקים של מדינות אלה.

רצוי כי בכותרת ההסכם שייחתם לא תהיה התייחסות להחלטות מועצת הבטחון או להחלטות או"ם אחרות.

3. הקדמה

יש להקפיד על ביסוס ההקדמה להסכם. ההקדמה מהווה חלק של ההסכם וכמו-כן מקור חשוב לפרשנותו של המסמך.

רצוי כי ההקדמה תתייחס לסיום מצב המלחמה בין הצדדים, לכוונתם להחזיר מצב של שלום צודק ובר-קיימא ולקיים ביניהם יחסי שכנות טובה.

התחייבויות כלליות של הצדדים

4.

רצוי כי הסעיף הראשון של ההסכם יכיל התחייבות כללית של הצדדים לכבד את העצמאות, הריבונות, והשלימות הטריטוריאלית, וכן הצהרה אופרטיבית בדבר סיום מצב המלחמה והלוחמה שהיה קיים בין הצדדים ושימת-קץ לכל פעולות איבה בים ביבשה ובאוויר. ניסוח סעיף זה יהיה שונה, בהתאם לאמור לעיל, אם ייעשו הסדרי ביניים אשר יכילו הוראות מסוג זה. סיום מצב הלוחמה יחול גם ביחס לכוחות צבא זרים, לרבות יועצים צבאיים ומומחים צבאיים מכל סוג, השוהים בשטחי המדינות החתומות, למעט כוחות צבאיים השוהים כאמור בהסכמתו של הצד השני (הכוונה היא לכוחות האו"ם).

סעיפים טריטוריאליים

5.

ההסכם יכלול פירוש של הגבולות הסופיים עליהם יוסכם, בצירוף מפות מתאימות.

סעיפים צבאיים

6.

הסעיפים הצבאיים יכילו הוראות מפורטות בדבר סידורי בטחון ופירוז שטחים שיפוזו עפ"י הסעיפים הטריטוריאליים.

הפירוז פירושו הסכם בין שתי מדינות או יותר לא לבצר או להחזיק כוחות צבא בגזרה מסוימת של שטח במטרה למנוע מלחמה על-ידי סילוק אפשרויות לסכסוך עקב תקריות גבול, או השגת בטחון ע"י איסור ריכוזים צבאיים בגבול. הפירוז יכול להעשוה בשלבים תוך תקופות זמן מוגדרות מראש.

הוראות הפירוז יקבעו על-כן, וזאת בקווים כלליים -

- התחייבות לפרק כל מתקן צבאי יבשתי ואווירי, או ימי מכל סוג;
- איסור להחזיק או להקים מתקנים צבאיים יבשתיים או יריים או ימיים, ביצורים וחימושים; או
- לקיים או לרכז דרך קבע או באורח זמני כוחות צבאיים ימיים או אוויריים;
- או לקיים אמונים צבאיים בצורה כלשהי, וכיוצ"ב.

ראה בספח א'.

הפסקת פעולות חבלה וטרור, פירוט פעילות צבאית אסורה וכו'

7.

ההסכם יכיל הוראות מפורטות על-פיהן יתחייבו הצדדים :-

(א) לא ליזום, לא לסייע, לא להשתתף ולא להרשות פעולת מחבלים או כוחות בלתי סדירים כלשהם מתחומם או מתחום מדינה שלישית, ולא להרשות שהייתם של מחבלים בתחומם.

(ב) תיאסר פעילות מלחמתית מכל סוג במישרין או בעקיפין כלפי הצד השני, או כלפי אזרחיו או מוסדותיו, או כלפי מוסדות הקשורים בפעילות כלשהי למען אחד הצדדים לרבות רכושם של אזרחים ומוסדות כאמור. ההסכם יפרט בצורה מדוקדקת כל צורות הפעילות הצבאית האסורה כאמור.

(ג) ההסכם יכול הוראה על-פיה יהיה כל צד אחראי אחריות מוחלטת לשמירת האיסורים האמורים גם על-ידי כל כח צבאי שהוא העשוי להיות בשטחו בשעת חתימת ההסכם או בכל עת לאחר-מכן.

8. חופש מעבר בנתיבי מים

ההסכם יכול הוראה על-פיה יתחייבו הצדדים שלא לבקוט בכל פעולה צבאית או אחרת הפוגע או עלולה לפגוע בחופש המעבר הימי או השייט או בחופש הטייס מעל נתיבי ים מכל סוג, לרבות הים התיכון, תעלת סואץ, ים-סוף, מפרץ סואץ, מפרץ אילת, מיצרי טיראן ויוגל, מצרי באב-אל-מאנדב, וכל תחום ימי אחר. ייאמר כי בהוראה כזו אין כדי לגרוע מהעקרונות המקובלים של המשפט הבינלאומי בענין חופש הימים, לרבות חופש המעבר בתום לב במים טריטוריאליים.

9. סיום הלוחמה הכלכלית

הצדדים יתחייבו לשים קץ ללוחמה הכלכלית על כל צורותיה לרבות ייזום, הסלה של/וסיוע לחרם כלכלי או השתתפות בו, בין במישרין ובין בעקיפין, או באמצעות מדינה שלישית או גוף שלישי כלשהו.

10. אי-השתתפות בבריתות ובארגונים עויינים

הצדדים יתחייבו שלא להצטרף או להשתתף לכל ברית שהיא שנועדה לפגוע בעצמאותו, שלימותו הטריטוריאלית או האינטרסים של הצד השני.

11. איסור תעמולה עויינת

הצדדים יימנעו מכל לוחמה פוליטית לרבות הסתה למעשים אלימים או לתנועות אירודנטיות.

12. חופש מעבר ביבשה

ההסכם יכול הוראות בדבר מתן חופש מעבר, בכפוף להוראות הפנימיות הכלליות בכל מדינה שיופעלו ללא כל הפליה, בדבר חופש המעבר של אנשים וסחורות מהשטח של צד אחד לשטחו של הצד האחר.

13. תעופה אזרחית

הצדדים יתחייבו שלא לפגוע בתעופה האזרחית אל שטחה של המדינה האחרת או משטחה, ולא לבקוט בכל פעולה שהיא הפוגעת או העלולה לפגוע בחופש האוויר, בנתיבי האוויר של הצדדים ובפיתוחם והרחבתם של קשרי התעופה האזרחית של שני הצדדים. כן יקימו הצדדים קשרי תעופה ביניהם.

14. שיחוף פעולה כלכלי

ההסכם יחייב את הצדדים להעניק זה לזה זכות של האומה המועדפת ביותר בכל הנוגע למכסים והטלים, וכן בכל הנוגע לפעילות מסחרית ועסקית אחרת בשטח של המדינה השניה וכן להמנע מכל הפליה שרירותית כלפי סחורות שמוצאן מן הצד השני, או המיועדות למדינה שלישית כלשהי.

הצדדים יתחייבו ליישם את כל הכללים המקובלים עפ"י אמנות התקשורת הבי"ל ולסייע במהלכם התקין של קשרים אלה ביניהם.
לגבי ירדן - יש לבדוק את האפשרות להעניק לירדן אזור חופשי באחד מנמלי הארץ ואם יוחלט על-כך בחיוב, להכין הוראות משפטיות מתאימות.
תשלום פיצויים על רכוש

15.

ניתן לחלק שאלה זו לפי שלושה ראשי פרקים :-

- (א) תשלום פיצויים בגין רכוש יהודי שהופקע או הוחרם;
- (ב) תשלום פיצויים לפליטים ערביים אשר יהפכו לתושבי המדינה עקב שינויים טריטוריאליים שייקבעו בהסכם. פליטים אלה יהנו מפיצויים באותו שיעור שנקבע כבר בהצעת החוק שלנו בענין ערביי מזרח ירושלים;
- (ג) פליטי 1948 או 1967 שישארו מחוץ לשטח המדינה.
כאן ניתן לשקול שתי אפשרויות :-

- (1) תשלום גלובלי למדינות ערב על בסיס הערכה אינדיבידואלית של הרכוש כשהתשלום מועבר לפליט בעל הנכס שעבר לבעלותו.
- (2) תשלום גלובלי לרשות שתוקם ואשר מטרתה תהיה לדאוג לשיקומם הכלכלי הסופי של הפליטים בארצות ערב.

בכל מקרה יש לדאוג לכך כי ההסכם יקבע כי תמורת תשלום הפיצוי יבוא ויתור סופי ומוחלט בגין רכוש הפליטים, הוראות שיפוי מתאימות וכי התשלום בא לחיסול סופי של בעית הפליטים ומעמד הפליטים מפליטים בתור שכאלה. כאן צריך יהיה לבדוק בבוא העת כיצד הוראות מסוג זה ינוסחו מבחינה משפטית נוכח העובדה כי חלק גדול מהפליטים אינם אזרחי מדינות ערב הנוגעות לענין, ומסילא מדינות אלה אינן יכולות להתחייב בשמם. אולי ניתן לספל בענין זה במסגרת הדיון בשאלה הפלשתינאית.

16. מיצוטים ואזרחות

ההסכם יכלול הוראות מפורטות בדבר כיבוד זכויות אדם (על כל השלכותיהם) של מיצוטים לאומיים (על כל השלכותיהם) הנמצאים בשטח של כל צד.
מקובל שהסכם מסוג זה יכיל הוראות בדבר אזרחותם של תושבים קבועים בשטחים שיועברו לצד השני. הכלל הוא שתושבים כאלה הופכים לכאורה לאזרחי המדינה שלשטחה הם עוברים עם זכויות מדיניות ואזרחיות מלאות במדינה אליה מועברים כאמור, ובאותו רגע מאבדים הם את אזרחותם הקודמת. עם זאת ניתנת בדרך כלל אופציה לתושבים כאמור תוך זמן קבוע לוותר על אזרחותם הקודמת ובמקרה כזה עליהם להגר.

17. מקומות קדושים

ההסכם יכלול הוראות בענין המקומות הקדושים.

18. הפעלה של אמנות רב-צדדיות

כל צד יתחייב להפעיל במלואן כלפי הצד השני אמנות רב-צדדיות אליהן הצטרפה, לבטל כל הגבלה או הסתייגות שבקבע על-ידו לגבי כל אמנה, כאמור, ולא להטיל בעתיד שום הגבלה או הסתייגות באמנה רב-צדדית המכוונת לפגוע בצורה כלשהי בהחלת והפעלת האמנה לגבי הצד השני.

19. חובת היישום של ההסכם

כל מדינה תנקוט בכל הצעדים החוקיים הדרושים לפי כללי המשפט הבינלאומי וחוקיה הפנימיים ליישום של ההסכם. במידה וקיימת סתירה בין דין כלשהו במישור הפנימי לבין הסכם זה חיבתן עדיפות להסכם זה על כל סעיפיו.

במידה וקיימת סתירה בין הסכם זה לבין הסכם כלשהו שנחתם לפניו - יהיה הסכם זה עדיף וכל צד מתחייב לנקוט בצעדים הדרושים לביטול התחייבויותיו על-פי הסכם אחר כאמור.

20. ישוב סכסוכים

תוקם ועדה משותפת או ועדות משותפות מורכבות מנציגי הצדדים במספר שווה, שמטרתה או מטרתן ליישב חילוקי דעות העשויים להתעורר, בקשר לביצועו או פירושו של ההסכם. החלטות הועדות יתקבלו פה אחד. (טרם נמצא פתרון משביע רצון בנושא זה לאור היסוסינו להפנות הדבר לבית-הדין הבינלאומי, למוסדות האו"ם האחרים או לבורר פרטי).

21. אשרור

ההסכם יהיה טעון אשרור תוך תקופה קבועה מראש וזאת בהתאם לדיון המקומי של הצדדים. עד לאשרורו של ההסכם - מתחייב כל צד לא לנקוט בשום צעד הנוגד או עשוי להיות נוגד את ההסכם, ולנקוט בכל הצעדים הדרושים לביצוע האשרור. ההסכם יירשם במזכירות האומות המאוחדות.

22. שפות

יהיה צורך לקבוע מה השפה(ות) המחייבת(ות) של ההסכם.

Notes to Part III, Articles 42 to 44—Continued

Germany offered no reply. In an address to the Reichstag on January 30, 1937 the Chancellor of the Reich said that "it was not possible for the German Government, for reasons which the Government of Great Britain will appreciate, to reply to those questions".

Progress with recasting the Locarno group of five states was no more successful. Germany and Italy accepted in July 1936 the idea of a conference but no date for its convening could be arranged with either. Thus Germany remained in the Rhineland area without effective opposition, without making any concessions, and without assuming any new obligations or contributing to European order. The conditions on which articles 42 to 44 of the treaty of peace were based had disappeared.

ARTICLE 42.

Germany is forbidden to maintain or construct any fortifications either on the left bank of the Rhine or on the right bank to the west of a line drawn 50 kilometres to the East of the Rhine.

ARTICLE 43.

In the area defined above the maintenance and the assembly of armed forces, either permanently or temporarily, and military manœuvres of any kind, as well as the upkeep of all permanent works for mobilization, are in the same way forbidden.

Note to III, 43

Pursuant to article 43 of the treaty and article 5 of the agreement with regard to the military occupation of the territories of the Rhine signed at Versailles June 28, 1919, the Inter-Allied Rhineland High Commission issued Ordinance No. 20, Coblenz, April 23, 1920, which made the following reservations with reference to the application of the German decree of October 17, 1919 (*Reichsgesetzblatt*, 1919, No. 204, p. 1801) regarding the competence of the National Treasury Department (Inter-Allied Rhineland High Commission, *Official Gazette*, 1920, parts IV and V, 55):

"1. The Department of the Administration of State Property for the Occupied Rhineland must in no way concern itself with questions regarding the maintenance of the German Army and Navy although these questions be within the competence of the National Treasury Department.

Note to III, 43—Continued

"2. In all the duties which devolve upon it with regard to the Allied Armies, this Administration must conform not only with the Ordinances that may be promulgated by the High Commission but also with all instructions and requisitions that emanate from the Armies of Occupation within the limits of the Agreement annexed to the Treaty of Peace for the performance of its duties."

These provisions were repeated in Ordinance No. 32, Coblenz, July 22, 1920, which canceled Ordinance No. 20 (*ibid.*, parts VIII and IX, 15).

The Conference of Ambassadors on October 6, 1924 decided to inform the German Government that the presence of *Reichswehr* musicians in the neutral zone constituted a violation of article 43.

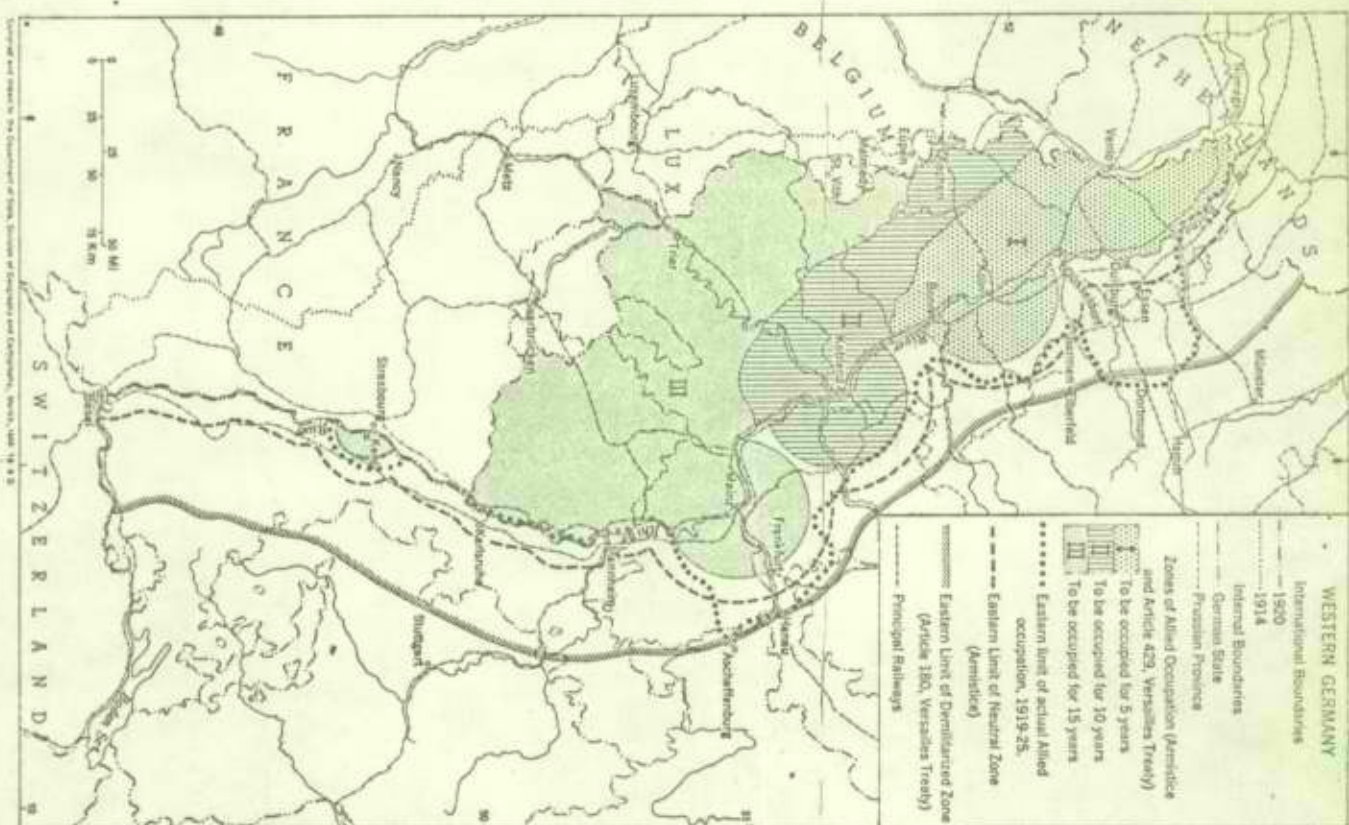
In 1929, the arrangements concerning the left bank of the Rhine were still under the supervision of the Conference of Ambassadors, which had on May 25, 1922 made various representations to the German Government respecting the railroads in that area. Before the war of 1914-18, students of strategy had discussed with interest the German railroad network toward the west, which was generally regarded as uneconomic and intended more for military than transportation purposes. The Inter-Allied Commission on Local Railroads (*chemins de fer de campagne*) considered the matter for several years. At Paris on July 17, August 4, 10, and 13, 1929 (104 League of Nations Treaty Series, p. 95), the German Government and the Conference of Ambassadors executed an exchange of notes with a view to making the German railway system of the left bank of the Rhine conform with the provisions of article 43. The notes specified the reduction of certain lines to a single track, the laying of some lighter rails, and the shortening or removal of 13 ramps.

ARTICLE 44.

In case Germany violates in any manner whatever the provisions of Articles 42 and 43, she shall be regarded as committing a hostile act against the Powers signatory of the present Treaty and as calculated to disturb the peace of the world.

Note to III, 44

No action was taken by any of the interested states to apply article 44 in spite of the resolution of the Council of the League of Nations of March 19, 1936 "that the German Government has committed a breach of Article 43".



enrol in nor to attach to their armies or naval or air forces any German national for the purpose of assisting in the military training of such armies or naval or air forces, or otherwise to employ any such German national as military, naval or aeronautic instructor.

The present provision does not, however, affect the right of France to recruit for the Foreign Legion in accordance with French military laws and regulations.

Note to V, 179

German military officers frequently found employment abroad in military missions. After 1933 officers connected with the active forces were so employed. In 1939 German military missions were in China (Nanking), Argentina, Colombia, and El Salvador and an aviation mission in Argentina. Lieutenant General Alexander Ernst von Falkenhausen, adviser to the Government of China, was the best-known person in such service. .

CHAPTER IV.—FORTIFICATIONS.

ARTICLE 180.

All fortified works, fortresses and field works situated in German territory to the west of a line drawn fifty kilometres to the east of the Rhine shall be disarmed and dismantled.

Within a period of two months from the coming into force of the present Treaty such of the above fortified works, fortresses and field works as are situated in territory not occupied by Allied and Associated troops shall be disarmed, and within a further period of four months they shall be dismantled. Those which are situated in territory occupied by Allied and Associated troops shall be disarmed and dismantled within such periods as may be fixed by the Allied High Command.

The construction of any new fortification, whatever its nature and importance, is forbidden in the zone referred to in the first paragraph above.

The system of fortified works of the southern and eastern frontiers of Germany shall be maintained in its existing state.

Text of May 7:

Within three months of the coming into force of the present Treaty, all fortified works, fortresses and field works situated on German territory to the west of a line drawn fifty kilometres to the east of the Rhine shall be disarmed and dismantled, as provided in Article 42 of Part III (Political Clauses for Europe) of the present Treaty.

TREATY OF PEACE WITH TURKEY (Lausanne, 1923)

19

Article 9.

The various States interested undertake to safeguard the trigonometrical points, signals, posts or frontier marks erected by the Commission.

Article 10.

The pillars will be placed so as to be intervisible. They will be numbered, and their position and their number will be noted on a cartographic document.

Article 11.

The protocols defining the boundary and the maps and documents attached thereto will be made out in triplicate, of which two copies will be forwarded to the Governments of the limitrophe States, and the third to the Government of the French Republic, which will deliver authentic copies to the Powers who sign the present Treaty.

Article 12.

The decision taken on the 13th February, 1914, by the Conference of London, in virtue of Articles 5 of the Treaty of London of the 17th-30th May, 1913, and 15 of the Treaty of Athens of the 1st-14th November, 1913, which decision was communicated to the Greek Government on the 13th February, 1914, regarding the sovereignty of Greece over the islands of the Eastern Mediterranean, other than the islands of Imbros, Tenedos and Rabbit Islands, particularly the islands of Lemnos, Samothrace, Mytilene, Chios, Samos and Nikaria, is confirmed, subject to the provisions of the present Treaty respecting the islands placed under the sovereignty of Italy which form the subject of Article 15.

Except where a provision to the contrary is contained in the present Treaty, the islands situated at less than three miles from the Asiatic coast remain under Turkish sovereignty.

Article 13.

With a view to ensuring the maintenance of peace, the Greek Government undertakes to observe the following restrictions in the islands of Mytilene, Chios, Samos and Nikaria:—

- (1.) No naval base and no fortification will be established in the said islands.
- (2.) Greek military aircraft will be forbidden to fly over the territory of the Anatolian coast. Reciprocally, the Turkish Government will forbid their military aircraft to fly over the said islands.
- (3.) The Greek military forces in the said islands will be limited to the normal contingent called up for military service, which can be trained on the spot, as well as to a force of gendarmerie and police in proportion to the force of gendarmerie and police existing in the whole of the Greek territory.

5. In a coastal area 15 kilometers deep, stretching from the frontier between Italy and Yugoslavia and between Italy and the Free Territory of Trieste to the latitude of 44° 50' N. and in the islands adjacent to this coast, Italy shall not establish any new, nor expand any existing, naval bases or permanent naval installations. This does not prohibit minor alterations to, nor the maintenance in good repair of, existing naval installations and bases provided that their overall capacity will not thereby be increased.

6. In the Apulian Peninsula east of longitude 17° 45' E., Italy shall not construct any new permanent military, naval or military air installations nor expand existing installations. This does not prohibit minor alterations to, nor the maintenance in good repair of, existing installations provided that their overall capacity will not thereby be increased. Accommodation for such security forces as may be required for tasks of an internal character and local defence of frontiers will, however, be permitted.

ARTICLE 49

1. Pantellaria, the Pelagian Islands (Lampedusa, Lampione and Linosa) and Pianosa (in the Adriatic) shall be and shall remain demilitarised.
2. Such demilitarisation shall be completed within one year from the coming into force of the present Treaty.

ARTICLE 50

1. In Sardinia all permanent coast defence artillery emplacements and their armaments and all naval installations which are located within a distance of 30 kilometers from French territorial waters shall be removed to the mainland of Italy or demolished within one year from the coming into force of the present Treaty.

2. In Sicily and Sardinia all permanent installations and equipment for the maintenance and storage of torpedoes, sea mines and bombs shall be demolished or removed to the mainland of Italy within one year from the coming into force of the present Treaty.

3. No improvements to, reconstruction of, or extensions of existing installations or permanent fortifications in Sicily and Sardinia shall be permitted; however, with the exception of the northern Sardinia areas described in paragraph 1 above, normal maintenance of such installations or permanent fortifications and weapons already installed in them may take place.

4. In Sicily and Sardinia Italy shall be prohibited from constructing any naval, military and air force installations or fortifications except for such accommodation for security forces as may be required for tasks of an internal character.

ARTICLE 51

Italy shall not possess, construct or experiment with (i) any atomic weapon, (ii) any self-propelled or guided missiles or apparatus connected with their discharge (other than torpedoes and torpedo-launching gear comprising the normal armament of naval vessels permitted by the present Treaty), (iii) any guns with a range of over 30 kilometers, (iv) sea mines or torpedoes of non-contact types actuated by influence mechanisms, (v) any torpedoes capable of being manned.

ARTICLE 52

The acquisition of war material of German or Japanese origin or design, either from inside or outside Italy, or its manufacture, is prohibited to Italy.

Italy shall not manufacture war material different from that permitted for the forces permitted.

The total number of personnel shall not exceed 200.

In no case shall any Fascist Militia or of the kind of the Italian Air Force or Carabinieri be exonerated by the

SECTION III.

1. The present Italian Army.

2. Additional units for specific purpose of mine clearance end of the mine clearance Central Board for Mine

3. Within two months vessels as are on loan to those Powers, and converted to civilian use.

1. Italy shall effect the specified in Annex XII

(a) The said units shall be the Soviet Union and of France;

(b) Naval vessels required by paragraph (a) above shall be full outfit of armament and all necessary technical

(c) The transfer of the within three months from that, in the case of naval vessels, the time limit for the transfer

(d) Reserve allowance for vessels mentioned above

The balance of reserve to an extent and at date within a maximum of the Treaty.

2. Details relating to the Power Commission to be

United Nations, shall not permit in future the existence and activities of organisations of that nature which have as their aim denial to the people of their democratic rights.

ARTICLE 9

1. Finland shall take all necessary steps to ensure the apprehension and surrender for trial of:

(a) Persons accused of having committed, ordered or abetted war crimes and crimes against peace or humanity;

(b) Nationals of any Allied or Associated Power accused of having violated their national law by treason or collaboration with the enemy during the war.

2. At the request of the United Nations Government concerned, Finland shall likewise make available as witnesses persons within its jurisdiction, whose evidence is required for the trial of the persons referred to in paragraph 1 of this Article.

3. Any disagreement concerning the application of the provisions of paragraphs 1 and 2 of this Article shall be referred by any of the Governments concerned to the Heads of the Diplomatic Missions in Helsinki of the Soviet Union and the United Kingdom, who will reach agreement with regard to the difficulty.

SECTION III

ARTICLE 10

Finland undertakes to recognise the full force of the Treaties of Peace with Italy, Roumania, Bulgaria and Hungary and other agreements or arrangements which have been or will be reached by the Allied and Associated Powers in respect of Austria, Germany and Japan for the restoration of peace.

ARTICLE 11

Finland undertakes to accept any arrangements which have been or may be agreed for the liquidation of the League of Nations and the Permanent Court of International Justice.

ARTICLE 12

1. Each Allied or Associated Power will notify Finland, within a period of six months from the coming into force of the present Treaty, which of its pre-war bilateral treaties with Finland it desires to keep in force or revive. Any provisions not in conformity with the present Treaty shall, however, be deleted from the above-mentioned treaties.

2. All such treaties so notified shall be registered with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations^(*).

3. All such treaties not so notified shall be regarded as abrogated.

PART III. MILITARY, NAVAL AND AIR CLAUSES

ARTICLE 13.

The maintenance of land, sea and air armaments and fortifications shall be closely restricted to meeting tasks of an internal character and local defence of frontiers. In accordance with the foregoing, Finland is authorised to have armed forces consisting of not more than:

(a) A land army, including frontier troops and anti-aircraft artillery, with a total strength of 34,400 personnel;

(b) a navy with tons;

(c) An air force reserves, with a to or acquire any air carrying facilities.

These strengths personnel.

The personnel of respective strength months from the c

Personnel not in receive an arm as defined in Anne

1. As from the invited to join the national Organisation maintain at the minesweeping force as determined by.

2. During this tional naval units over and above t

Within two mor are on loan to the Powers, and all o civilian use.

3. Finland is al for minesweeping months after the co personnel shall be the said A te.

Finland shall no any self-propelled charge (other tha normal armament or torpedoes of nor capable of being m boats, or specialise

Finland shall no for the manufactur tenance of the arm

(*) "Miscellaneous No. 9 (1945)" Cmd. 6666.

(b) a navy with a personnel strength of 4,500 and a total tonnage of 10,000 tons;

(c) An air force, including any naval air arm, of 60 aircraft, including reserves, with a total personnel strength of 3,000. Finland shall not possess or acquire any aircraft designed primarily as bombers with internal bomb-carrying facilities.

These strengths shall in each case include combat, service and overhead personnel.

ARTICLE 14

The personnel of the Finnish Army, Navy and Air Force in excess of the respective strengths permitted under Article 13 shall be disbanded within six months from the coming into force of the present Treaty.

ARTICLE 15

Personnel not included in the Finnish Army, Navy or Air Force shall not receive any form of military training, naval training or military air training as defined in Annex II.

ARTICLE 16

1. As from the coming into force of the present Treaty, Finland will be invited to join the Barents, Baltic and Black Sea Zone Board of the International Organisation for Mine Clearance of European Waters and shall maintain at the disposal of the Central Mine Clearance Board all Finnish minesweeping forces until the end of the post-war mine clearance period, as determined by the Central Board.

2. During this post-war mine clearance period, Finland may retain additional naval units employed only for the specific purpose of mine-sweeping, over and above the tonnage permitted in Article 13.

Within two months of the end of the said period, such of these vessels as are on loan to the Finnish Navy from other Powers shall be returned to those Powers, and all other additional units shall be disarmed and converted to civilian use.

3. Finland is also authorised to employ 1,500 additional officers and men for minesweeping over and above the numbers permitted in Article 13. Two months after the completion of minesweeping by the Finnish Navy, the excess personnel shall be disbanded or absorbed within the numbers permitted in the said Article.

ARTICLE 17

Finland shall not possess, construct or experiment with any atomic weapon, any self-propelled or guided missiles or apparatus connected with their discharge (other than torpedoes and torpedo launching gear comprising the normal armament of naval vessels permitted by the present Treaty), sea mines or torpedoes of non-contact types actuated by influence mechanisms, torpedoes capable of being manned, submarines or other submersible craft, motor torpedo boats, or specialised types of assault craft.

ARTICLE 18

Finland shall not retain, produce or otherwise acquire, or maintain facilities for the manufacture of, war material in excess of that required for the maintenance of the armed forces permitted under Article 13 of the present Treaty.

ARTICLE 19

1. Excess war material of Allied origin shall be placed at the disposal of the Allied Power concerned according to the instructions given by that Power. Excess Finnish war material shall be placed at the disposal of the Governments of the Soviet Union and the United Kingdom. Finland shall renounce all rights to this material.

2. War material of German origin or design in excess of that required for the armed forces permitted under the present Treaty shall be placed at the disposal of the Two Governments. Finland shall not acquire or manufacture any war material of German origin or design, or employ or train any technicians, including military and civil aviation personnel, who are or have been nationals of Germany.

3. Excess war material mentioned in paragraphs 1 and 2 of this Article shall be handed over or destroyed within one year from the coming into force of the present Treaty.

4. A definition and list of war material for the purposes of the present Treaty are contained in Annex III.

ARTICLE 20

Finland shall co-operate fully with the Allied and Associated Powers with a view to ensuring that Germany may not be able to take steps outside German territory towards rearmament.

ARTICLE 21

Finland shall not acquire or manufacture civil aircraft which are of German or Japanese design or which embody major assemblies of German or Japanese manufacture or design.

ARTICLE 22

Each of the military, naval and air clauses of the present Treaty shall remain in force until modified in whole or in part by agreement between the Allied and Associated Powers and Finland or, after Finland becomes a member of the United Nations, by agreement between the Security Council and Finland.

PART IV. REPARATION AND RESTITUTION

ARTICLE 23

1. Losses caused to the Soviet Union by military operations and by the occupation by Finland of Soviet territory shall be made good by Finland to the Soviet Union, but, taking into consideration that Finland has not only withdrawn from the war against the United Nations, but has also declared war on Germany and assisted with her forces in driving German troops out of Finland, the Parties agree that compensation for the above losses will be made by Finland not in full, but only in part, namely in the amount of \$300,000,000 payable over eight years from September 19, 1944, in commodities (timber products, paper, cellulose, sea-going and river craft, sundry machinery, and other commodities).

2. The basis of calculation for the settlement provided in this Article shall be the United States dollar at its gold parity on the day of the signing of the Armistice Agreement, i.e. \$35 for one ounce of gold.

PART III. MILITARY, NAVAL AND AIR CLAUSES

SECTION I

ARTICLE 9

The maintenance of land, sea and air armaments and fortifications shall be closely restricted to meeting tasks of an internal character and local defence of frontiers. In accordance with the foregoing, Bulgaria is authorised to have armed forces consisting of not more than:

- (a) A land army, including frontier troops, with a total strength of 55,000 personnel;
- (b) Anti-aircraft artillery with a strength of 1,800 personnel;
- (c) A navy with a personnel strength of 3,500 and a total tonnage of 7,250 tons;
- (d) An air force, including any naval air arm, of 90 aircraft, including reserves, of which not more than 70 may be combat types of aircraft, with a total personnel strength of 5,200. Bulgaria shall not possess or acquire any aircraft designed primarily as bombers with internal bomb-carrying facilities.

These strengths shall in each case include combat, service and overhead personnel.

ARTICLE 10

The personnel of the Bulgarian Army, Navy and Air Force in excess of the respective strengths permitted under Article 9 shall be disbanded within six months from the coming into force of the present Treaty.

ARTICLE 11

Personnel not included in the Bulgarian Army, Navy or Air Force shall not receive any form of military training, naval training or military air training as defined in Annex II.

ARTICLE 12

1. The following construction to the north of the Greco-Bulgarian frontier is prohibited: permanent fortifications where weapons capable of firing into Greek territory can be emplaced; permanent military installations capable of being used to conduct or direct fire into Greek territory; and permanent supply and storage facilities emplaced solely for the use of the said fortifications and installations.

2. This prohibition does not include other types of non-permanent fortifications or surface accommodations and installations which are designed to meet only requirements of an internal character and of local defence of the frontiers.

ARTICLE 13

Bulgaria shall not possess, construct or experiment with any atomic weapon, any self-propelled or guided missiles or apparatus connected with their discharge (other than torpedoes and torpedo-launching gear comprising the normal armament of naval vessels permitted by the present Treaty), sea mines or torpedoes of non-contact types actuated by influence mechanisms, torpedoes capable of being manned, submarines or other submersible craft, motor torpedo boats, or specialised types of assault craft.

Agreement has taken nationality, all persons in favour of, or because of their racial origin, persons imposed thereunder, not take any measures or the purposes set forth in

Agreement has taken racist type on Bulgarian as well as other organisations, shall not permit of that nature which atic rights.

the apprehension and or abetted war crimes

used of having violated enemy during the war. ent concerned, Bulgaria within its jurisdiction, ens referred to in para-

the provisions of para- ny of the Governments in Sofia of the Soviet America, who will reach

the Treaties of Peace agreements or arrange- Allied and Associated for the restoration of

which have been or ons and the Permanent

garia, within a period ent Treaty, which of s to keep in force or present Treaty shall,

l with the Secretariat of the Charter of the

as abrogated.

ARTICLE 14

Bulgaria shall not retain, produce or otherwise acquire, or maintain facilities for the manufacture of, war material in excess of that required for the maintenance of the armed forces permitted under Article 9 of the present Treaty.

ARTICLE 15

1. Excess war material of Allied origin shall be placed at the disposal of the Allied or Associated Power concerned according to the instructions given by that Power. Excess Bulgarian war material shall be placed at the disposal of the Governments of the Soviet Union, the United Kingdom and the United States of America, Bulgaria shall renounce all rights to this material.

2. War material of German origin or design in excess of that required for the armed forces permitted under the present Treaty shall be placed at the disposal of the Three Governments. Bulgaria shall not acquire or manufacture any war material of German origin or design, or employ or train any technicians, including military and civil aviation personnel, who are or have been nationals of Germany.

3. Excess war material mentioned in paragraphs 1 and 2 of this Article shall be handed over or destroyed within one year from the coming into force of the present Treaty.

4. A definition and list of war material for the purposes of the present Treaty are contained in Annex III.

ARTICLE 16

Bulgaria shall co-operate fully with the Allied and Associated Powers with a view to ensuring that Germany may not be able to take steps outside German territory towards rearmament.

ARTICLE 17

Bulgaria shall not acquire or manufacture civil aircraft which are of German or Japanese design or which embody major assemblies of German or Japanese manufacture or design.

ARTICLE 18

Each of the military, naval and air clauses of the present Treaty shall remain in force until modified in whole or in part by agreement between the Allied and Associated Powers and Bulgaria or, after Bulgaria becomes a member of the United Nations, by agreement between the Security Council and Bulgaria.

SECTION II

ARTICLE 19

1. Bulgarian prisoners of war shall be repatriated as soon as possible, in accordance with arrangements agreed upon by the individual Powers detaining them and Bulgaria.

2. All costs, including maintenance costs, incurred in moving Bulgarian prisoners of war from their respective assembly points, as chosen by the Government of the Allied or Associated Power concerned, to the point of their entry into Bulgarian territory, shall be borne by the Bulgarian Government.

PART IV. W

1. All armed forces of Bulgaria as soon as the coming into force of

2. All unused Bulgaria of the Allied forces in Armistice Agreement, at the same period of 90 days

3. Bulgaria shall, however, into force of the present such supplies and facilities Allied and Associated Powers shall be paid to the

PART V. R

1. Losses caused to the occupation by Bulgaria by Bulgaria to Yugoslavia Bulgaria has not only but has declared and, that compensation for, but only in part, namely the products of manufacture eight years beginning from the sum to be paid to Greece to Yugoslavia shall amount to

2. The quantities and by agreements to be concluded with the Government of the United Kingdom and the

3. The basis of calculation be the United States of America one ounce of gold

4. The basis of valuation the 1938 international price of fifteen per cent. for the cost of transport to the Bulgarian Government

1. Bulgaria accepts January 5, 1943, (a) and removed from the territory

2. The obligation to present in Bulgaria which Powers from the territory subsequent transactions secured possession.

SECTION II

ARTICLE 7

Roumania undertakes to recognize the full force of the Treaties of Peace with Italy, Bulgaria, Hungary and Finland and other agreements or arrangements which have been or will be reached by the Allied and Associated Powers in respect of Austria, Germany and Japan for the restoration of peace.

ARTICLE 8

The state of war between Roumania and Hungary shall terminate upon the coming into force both of the present Treaty of Peace and the Treaty of Peace between the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, the United States of America, Australia, the Byelorussian Soviet Socialist Republic, Canada, Czechoslovakia, India, New Zealand, the Ukrainian Soviet Socialist Republic, the Union of South Africa, and the People's Federal Republic of Yugoslavia, of the one part, and Hungary of the other part.

ARTICLE 9

Roumania undertakes to accept any arrangements which have been or may be agreed for the liquidation of the League of Nations and the Permanent Court of International Justice.

ARTICLE 10

1. Each Allied or Associated Power will notify Roumania, within a period of six months from the coming into force of the present Treaty, which of its pre-war bilateral treaties with Roumania it desires to keep in force or revive. Any provisions not in conformity with the present Treaty shall, however, be deleted from the above-mentioned treaties.

2. All such treaties so notified shall be registered with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations^(*).

3. All such treaties not so notified shall be regarded as abrogated.

PART III. MILITARY, NAVAL AND AIR CLAUSES

SECTION I

ARTICLE 11

The maintenance of land, sea and air armaments and fortifications shall be closely restricted to meeting tasks of an internal character and local defence of frontiers. In accordance with the foregoing, Roumania is authorised to have armed forces consisting of not more than:

(a) A land army, including frontier troops, with a total strength of 120,000 personnel;

(b) Anti-aircraft artillery with a strength of 5,000 personnel;

(c) A navy with a personnel strength of 5,000 and a total tonnage of 15,000 tons;

(d) An air force, including any naval air arm, of 150 aircraft, including reserves, of which not more than 100 may be combat types of aircraft, with a total personnel strength of 8,000. Roumania shall not possess or acquire any aircraft designed primarily as bombers with internal bomb-carrying facilities.

These strengths shall in each case include combat, service and overhead personnel.

(*) "Miscellaneous No. 9 (1945)" Cmd. 6666.

ARTICLE 12

The personnel of the Roumanian Army, Navy and Air Force in excess of the respective strengths permitted under Article 11 shall be disbanded within six months from the coming into force of the present Treaty.

ARTICLE 13

Personnel not included in the Roumanian Army, Navy or Air Force shall not receive any form of military training, naval training or military air training as defined in Annex II.

ARTICLE 14

Roumania shall not possess, construct or experiment with any atomic weapon, any self-propelled or guided missiles or apparatus connected with their discharge (other than torpedoes and torpedo-launching gear comprising the normal armament of naval vessels permitted by the present Treaty), sea mines or torpedoes of non-contact types actuated by influence mechanisms, torpedoes capable of being manned, submarines or other submersible craft, motor torpedo boats, or specialised types of assault craft.

ARTICLE 15

Roumania shall not retain, produce or otherwise acquire, or maintain facilities for the manufacture of, war material in excess of that required for the maintenance of the armed forces permitted under Article 11 of the present Treaty.

ARTICLE 16

1. Excess war material of Allied origin shall be placed at the disposal of the Allied or Associated Power concerned according to the instructions given by that Power. Excess Roumanian war material shall be placed at the disposal of the Governments of the Soviet Union, the United Kingdom and the United States of America. Roumania shall renounce all rights to this material.

2. War material of German origin or design in excess of that required for the disposal of the Three Governments. Roumania shall not acquire or manufacture any war material of German origin or design, or employ or train any technicians, including military and civil aviation personnel, who are or have been nationals of Germany.

3. Excess war material mentioned in paragraphs 1 and 2 of this Article shall be handed over or destroyed within one year from the coming into force of the present Treaty.

4. A definition and list of war material for the purposes of the present Treaty are contained in Annex III.

ARTICLE 17

Roumania shall co-operate fully with the Allied and Associated Powers with a view to ensuring that Germany may not be able to take steps outside German territory towards rearmament.

ARTICLE 18

Roumania shall not acquire or manufacture civil aircraft which are of German or Japanese design or which embody major assemblies of German or Japanese manufacture or design.

ARTICLE 19

Each of the military, naval and air clauses of the present Treaty shall remain in force until modified in whole or in part by agreement between the Allied and Associated Powers and Roumania or, after Roumania becomes a member of the United Nations, by agreement between the Security Council and Roumania.

SECTION II

ARTICLE 20

1. Roumanian prisoners of war shall be repatriated as soon as possible, in accordance with arrangements agreed upon by the individual Powers detaining them and Roumania.

2. All costs, including maintenance costs, incurred in moving Roumanian prisoners of war from their respective assembly points, as chosen by the Government of the Allied or Associated Power concerned, to the point of their entry into Roumanian territory, shall be borne by the Roumanian Government.

PART IV. WITHDRAWAL OF ALLIED FORCES

ARTICLE 21

1. Upon the coming into force of the present Treaty, all Allied Forces shall, within a period of 90 days, be withdrawn from Roumania, subject to the right of the Soviet Union to keep on Roumanian territory such armed forces as it may need for the maintenance of the lines of communication of the Soviet Army with the Soviet zone of occupation in Austria.

2. All unused Roumanian currency and all Roumanian goods in possession of the Allied forces in Roumania, acquired pursuant to Article 10 of the Armistice Agreement, shall be returned to the Roumanian Government within the same period of 90 days.

3. Roumania shall, however, make available such maintenance and facilities as may specifically be required for the maintenance of the lines of communication with the Soviet zone of occupation in Austria, for which due compensation will be made to the Roumanian Government.

PART V. REPARATION AND RESTITUTION

ARTICLE 22

1. Losses caused to the Soviet Union by military operations and by the occupation by Roumania of Soviet territory shall be made good by Roumania to the Soviet Union, but, taking into consideration that Roumania has not only withdrawn from the war against the United Nations, but has declared and, in fact, waged war against Germany, it is agreed that compensation for the above losses will be made by Roumania not in full but only in part, namely in the amount of \$300,000,000 payable over eight years from September 12, 1944, in commodities (oil products, grain, timber, seagoing and river craft, sundry machinery and other commodities).

2. The basis of calculation for the settlement provided in this Article will be the United States dollar at its gold parity on the day of the signing of the Armistice Agreement, i.e. \$35 for one ounce of gold.

SECTION IX. BILATERAL TREATIES

ARTICLE 44

- 1. Each Allied or Associated Power will notify Italy, within a period of six months from the coming into force of the present Treaty, which of its pre-war bilateral treaties with Italy it desires to keep in force or revive. Any provisions not in conformity with the present Treaty shall, however, be deleted from the above-mentioned treaties.
- 2. All such treaties so notified shall be registered with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations⁽⁷⁾.
- 3. All such treaties not so notified shall be regarded as abrogated.

PART III. WAR CRIMINALS

ARTICLE 45

- 1. Italy shall take all necessary steps to ensure the apprehension and surrender for trial of:
 - (a) Persons accused of having committed, ordered or abetted war crimes and crimes against peace or humanity;
 - (b) Nationals of any Allied or Associated Power accused of having violated their national law by treason or collaboration with the enemy during the war.
- 2. At the request of the United Nations Government concerned, Italy shall likewise make available as witnesses persons within its jurisdiction, whose evidence is required for the trial of the persons referred to in paragraph 1 of this Article.
- 3. Any disagreement concerning the application of the provisions of paragraphs 1 and 2 of this Article shall be referred by any of the Governments concerned to the Ambassadors in Rome of the Soviet Union, of the United Kingdom, of the United States of America, and of France, who will reach agreement with regard to the difficulty.

PART IV. NAVAL, MILITARY AND AIR CLAUSES

SECTION I. DURATION OF APPLICATION

ARTICLE 46

Each of the military, naval and air clauses of the present Treaty shall remain in force until modified in whole or in part by agreement between the Allied and Associated Powers and Italy or, after Italy becomes a member of the United Nations, by agreement between the Security Council and Italy.

SECTION II. GENERAL LIMITATIONS

ARTICLE 47

- 1. (a) The system of permanent Italian fortifications and military installations along the Franco-Italian frontier, and their armaments, shall be destroyed or removed.
- (b) This system is deemed to comprise only artillery and infantry fortifications whether in groups or separated, pillboxes of any type, protected accommodation for personnel, stores and ammunition, observation posts and military fortifications which are designed to meet only requirements of an internal character and of local defence of the frontiers.

⁽⁷⁾ " Miscellaneous No. 9 (1945) " Cmd. 6666.

cableways, whatever may be their importance and actual condition of maintenance or state of construction, which are constructed of metal, masonry or concrete or excavated in the rock.

- 2. The destruction or removal, mentioned in paragraph 1 above, is limited to a distance of 20 kilometers from any point on the frontier as defined by the present Treaty, and shall be completed within one year from the coming into force of the Treaty.
 - 3. Any reconstruction of the above-mentioned fortifications and installations is prohibited.
 - 4. (a) The following construction to the east of the Franco-Italian frontier is prohibited: permanent fortifications where weapons capable of firing into French territory or territorial waters can be employed; permanent military installations capable of being used to conduct or direct fire into French territory or territorial waters; and permanent supply and storage facilities employed solely for the use of the above-mentioned fortifications and installations.
 - (b) This prohibition does not include other types of non-permanent fortifications or surface accommodations and installations which are designed to meet only requirements of an internal character and of local defence of the frontiers.
 - 5. In a coastal area 15 kilometers deep, stretching from the Franco-Italian frontier to the meridian of 9° 30' E., Italy shall not establish any new, nor expand any existing, naval bases or permanent naval installations. This does not prohibit minor alterations to, nor the maintenance in good repair of, existing naval installations provided that their overall capacity will not thereby be increased.
- ARTICLE 48
- 1.-(a) Any permanent Italian fortifications and military installations along the Italo-Yugoslav frontier, and their armaments, shall be destroyed or removed.
 - (b) These fortifications and installations are deemed to comprise only artillery and infantry fortifications whether in groups or separated, pillboxes of any type, protected accommodation for personnel, stores and ammunition, observation posts and military cableways, whatever may be their importance and actual condition of maintenance or state of construction, which are constructed of metal, masonry or concrete or excavated in the rock.
 - 2. The destruction or removal, mentioned in paragraph 1 above, is limited to a distance of 20 kilometers from any point on the frontier, as defined by the present Treaty, and shall be completed within one year from the coming into force of the Treaty.
 - 3. Any reconstruction of the above-mentioned fortifications and installations is prohibited.
 - 4.-(a) The following construction to the west of the Italo-Yugoslav frontier is prohibited: permanent fortifications where weapons capable of firing into Yugoslav territory or territorial waters can be employed; permanent military installations capable of being used to conduct or direct fire into Yugoslav territory or territorial waters; and permanent supply and storage facilities employed solely for the use of the above-mentioned fortifications and installations.
 - (b) This prohibition does not include other types of non-permanent fortifications or surface accommodations and installations which are designed to meet only requirements of an internal character and of local defence of the frontiers.

23/11/73

סודי ביותר

א י ש י

אל : מר ש. דיבון, יועץ מדיני לשה"ח

מאת : היועץ המשפטי

הנדון : הסכם שלום - היבטים משפטיים

מצא-בא בלוטה לפי בקשתך שתי סקירות :

- א. בקורות שיש להכלילן בהסכם שלום.
- ב. ערבויות ביבלאומיות - היבטים משפטיים.

המסמכים דלעיל מהווים אך ורק מיוטא ראשונה
הדורשת ליבון נוסף כמובן.

נ ב ר כ ה ,

מ. רוזן

ס. רוזן

הצחק : [✓]המנכ"ל

מר א. בנצור, מזכיר מדיני לשה"ח

הסכם השלום - היבטים משפטיים

מאמר
22.11.97

ההערות דלקמן הנן הערות ראשוניות לקראת הכנת המו"מ להבנת הסכם שלום עם מצרים.

1. הסכם השלום יכול להיקרא :

אמנת שלום, הסכם שלום, פרוטוקול וכו'.
על-פי העקרונות המקובלים כיום במשפט הבינלאומי ולפי סיכומי המעבר למשפט בינלאומי, הקובע הוא תוכן ההסכם - ולא הגדרתו המשפטית. יחד עם זאת, יהיה צורך להקפיד על כך שייכלל, סעיף אשר יקבע כי הסכם זה טעון אישור על-פי חוקמה של מצרים.

2. סיום מצב לוחמה

יש להדגיש שהסכם שם קץ למצב לוחמה שהיה קיים בין הצדדים, ולכן מעולות האבות ביבשה, בים ובאוויר.
סיום מצב הלוחמה יהיה גם ביחס לכוחות צבא זרים השוכנים במדינות החמומות.

3. הפסקת מעורבות הצבא והאוויר שהות מהבליים בשטח המדינות החמומות

המדינות החמומות תחייבנה שלא להרשות שהותם של מחבלים בהתאמה, כפי שנקראה, סיוע כלשהוא לפעילות חבלנית גם מחוץ לגבולות המדינות.

4. התחייבות להפסקת פעילות צבאית גם מחוץ לגבולות המדינה

הצדדים יתחייבו שכוחות הצבא ביבשה, בים ובאוויר, לא יבצעו, ינסו, יעודדו, יסייעו או ישותפו בכל פעילות מלחמתית או פעילות פוליטית מאיזה סוג שהוא בכל מקום שהוא, יהיה זה בשטחן או בשטח מדינה אחרת, בגד כוחות הצבא של הצד השני או בגד האזרחים או המוסדות של הצד השני, או בגד מוסדות הקשורים בפעילות כלשהי למען אחד הצדדים. (סעיף זה כוונתו להגן על מוסדות ציוניים או כל מוסד יחיד או לאו, הקשור בפעולה למען ישראל).

5. סיום הפעילות הצבאית האסורה

דצוי לפרט בהסכם השלום סוג הפעילות הצבאית האסורה. יהיה צורך להדגיש שפירוש זה איבדו פוגע בכלליותו של האמור בסעיף 2 לעיל :

5.1 סיוע בכל כלי טייס מכל סוג שהוא אל או מעל לשטחים הנמצאים בשליטתם של כוחות הצבא של הצד השני.

5.2 התקפות מזוינות בגד אנשים, אנשי צבא או אזרחים בכל אמצעי שהוא לרבות נשק קל, מרגמות, תותחים, טילים, אמצעות על-ידי מטוס או פגיעה בכל סוג נשק או תוסף בפץ שהוא.

5.3 פעולות טרור או תגמול, פעולות שמסכנות את הרכוש הפרטי או הציבורי.

- 5.4 מתן מקלט בשטחן לאנשים שביצעו פעולות כב"ל.
- 5.5 הצדדים יתחייבו שלא לתת סיוע, יהיה זה כלכלי או צבאי, לצד שלישי במידה והצד השלישי מבצע פעולות איבה, או מכין פעולות איבה נגד אחד הצדדים.
- 5.6 כל הכוחות הזרים יוצאו מתחום המדינה עד תאריך
עד הוצאתם של הכוחות יהיה כל צד אחראי באופן בלעדי על פעילותם של כוחות אלה.

6. חופש מעבר בנתיבי מיסבינלאומיים

הצדדים מתחייבים שלא לבקוט בכל פעולה צבאית שהיא הפוגעת או העלולה לפגוע בחופש המעבר הימי, בנתיבי מים בי"ל כלשהם, לרבות היס-התיכון, תעלת סואץ, ים-סוף, מפרץ סואץ, מפרץ אילת, מיצרי טיראן ויובל, מיצרי - באב-אל-מאנדב, וכל תחום ימי שהוא.
אין בהכללת סעיף זה משום פגיעה או המעטה מהעקרון של חופש הימים המקובל במשפט הבינלאומי.

7. תעופה אזרחית

הצדדים יתחייבו שלא לפגוע בתעופה האזרחית אל שטחה של המדינה האחרת או משטחה, ולא לבקוט בכל פעולה שהיא הפוגעת או העלולה לפגוע בעקרונות חופש האוויר בנתיבי האוויר של המדינות החתומות, כפי שהיו קיימים, ובפיתוחם והרחבתם של קשרי התעופה האזרחית של שתי המדינות.

8. אי-השתתפות בבריתות או באיגודים עוינים

הצדדים יתחייבו שלא להצטרף לכל ברית שהיא שבועדה לפגוע בעצמאותו, שלמותו הטריטוריאלית או האינטרסים של הצד השני, לרבות האינטרסים הכלכליים. הצדדים מתחייבים שלא לבקוט עמדות הסותרות את האינטרסים של הצד השני בגופים בינלאומיים כלשהם, לרבות גופים אזוריים.

9. ביטול כל התחייבות שסותרת הסכם זה

במידה וקיימת סתירה בין הסכם זה לבין הסכם כלשהוא שנחתם לפניו, יהיה הסכם זה עדיף, וכל צד מתחייב לבקוט בצעדים הדרושים לביטול ההתחייבותיו על-פי הסכם אחר כאמור.

10. הקמת יחסים דיפלומטיים

הצדדים מתחייבים להקים יחסים דיפלומטיים תוך (.....) על-ידי מינוי סגירים בשתי הבירות. יחסים אלה יקוימו לפי המינהגים והאמנות הבינלאומיות.

11. חשלוט פיצויים על רכוש

הצדדים ימנו ועדה משותפת אשר תסדיר את התביעות הקשורות בפיצויים שהצדדים זכאים להם עקב הלאמת רכוש, הפקעתו וכו' (הכוונה מבחינתנו - להבטחת קבלת פיצוי על רכוש יהודי במצרים שהוחזק או הופקע. עם תום הסדר עניין זה, ייערך

פרוטוקול בו יוותרו הצדדים על כל תביעות נוספות.

12. הקמת קשרי דואר. טלפון וכו'.

הצדדים מתחייבים ליישם את כל הכללים המקובלים על-פי אמנות הקשורות
הבי"ל ולסייע במהלכם התקין שת קשרים אלה.

13. חובת הישומם של ההסכם

כל מדינה הנקוט בכל הצעדים החוקיים הדרושים לפי כללי המשפט הבי"ל
וחוקיה הפנימיים ליישומם של ההסכם.
במידה וקיימת סתירה בין דין כלשהוא במישור הפנימי והסכם זה - תינתן
עדיפות להסכם על כל סעיפיו (כאמור בסעיף 9 לעיל).
האחריות לביצוע הסכם זה מוטלת על הצדדים. לצורך יעול ביצוע ההסכם
תוקם ועדה משותפת של הצדדים.

14. כללי פרשנות

במידה של אי-תמימות דעים באשר לפירוש שיש לתת לסעיף כלשהוא בהסכם,
מוסכם בין הצדדים שהפירוש יינתן לפי הכללים המקובלים במשפט הבינלאומי
הפומבי, ואם לא יושג הסכם באשר לפירוש - יפנו הצדדים לביה"ד הבינלאומי.

15. תוקף ההסכם

הסכם זה בערך ונחתם בהסכמה מוחלטת של שני הצדדים לגבי כל הסעיפים הכלולים
בו, והצדדים מתחייבים שלא לטעון לאי-נפקותו של הסכם זה מכל סיבה שהיא
לרבות טענת אילוץ, כורח או סיבות בסיבות
ההסכם ישאר בחוקף לתקופה בלתי מוגבלת, אלא אם יוסכם בין הצדדים אחרת.

16. אישרור

הסכם זה טעון אישרור לפי הדינים המקומיים של הצדדים. אישרור זה יינתן
תוך שלושה חודשים מתחילת ההסכם, וההסכם יירשם במזכירות האומות המאוחדות.

ה ע ר ו ת :

1. ישנם עוד סעיפים נוספים הכלולים לעתים בהסכמי שלום, כגון:
פתיחת קונסוליות, מתן זכות עבודה לאזרחי הצדההשני, מתן מעמד של מדינה
מועדפת, ביטול הצורך באשרות וכו'.
ברור שבשלב זה אין טעם להכנס לפרטים אלה.
2. מיותר לציין כמובן שכל החלק המתייחס לגבולות חייב להיות כלול בחלק הראשון
של ההסכם אשר בו יפורטו גם מעמדם של אזורים מפורזים, שטחי הכירה לתקופה
ארוכה אם יהיו כאלה, ופירוט על פי מפות לקווי אורך ורוחב.
3. יש לשקול אם רצוי לכלול סעיף המתייחס לרכוש קהילות יהודיות, וזכויות אזרח
ליהודים החיים במדינה.

1. ההנהייה הבטיחית שצריכה לשמש לבני כניס, היא שהערביות הן בנוסף לבטחון ולא במקומו.

1.1 הסכם בטחון עם ארה"ב מבלי להתייחס לסיכויים של השגת אשרור שבי של הסכם האמריקאי של ארה"ב להסכם מסוג זה. יש לבדוק אם ההסכמים לבטחון הדדי הקיימים, כגון : ברית באט"ו, ייתכן וארה"ב תציע במקום הסכם, מתן הצהרה חד-צדדית. אין בטחון שלהצהרה חד-צדדית מסוג זה יש משמעות מעשית. לאור נסיון העבר (הצהרה משולשת מ- 1950, ההצהרה משנת 1967 באשר לחופש המעבר במיצרי טיראן).

2.

לערבות מסוג זה, במידה והיא ניתנת ע"י ארבעה המעצמות הגדולות בהכרזת במועצת הבטחון, אין לערבות משמעות כלשהיא בגלל קיום הצורך של ההלמה זה אחד באשר להפעלתה.

על-כן אינני ממליץ בשום פנים ואופן להענות להצעה מסוג זה, מה עוד שגם אם היה נכתב ההסכם המפורט ביותר באשר להבאים שבהם יש להפעיל את הערבות מיידית, הרי שהבטחון מלמד שתוקפו של הסכם איבנו עולה על תוקף הצהרה המדובר של חותם המסמך, ובעיקר נכון הדבר כשהמדובר הוא בברית"מ.

אם לא תהיה ברירה והבטיחות הפוליטית תהיינה כאלו שביאלץ לקבל ערבות מסוג זה, מוצע להכין פרוטוקול בו יפורטו הבטיחות בהן תופעל הערבות

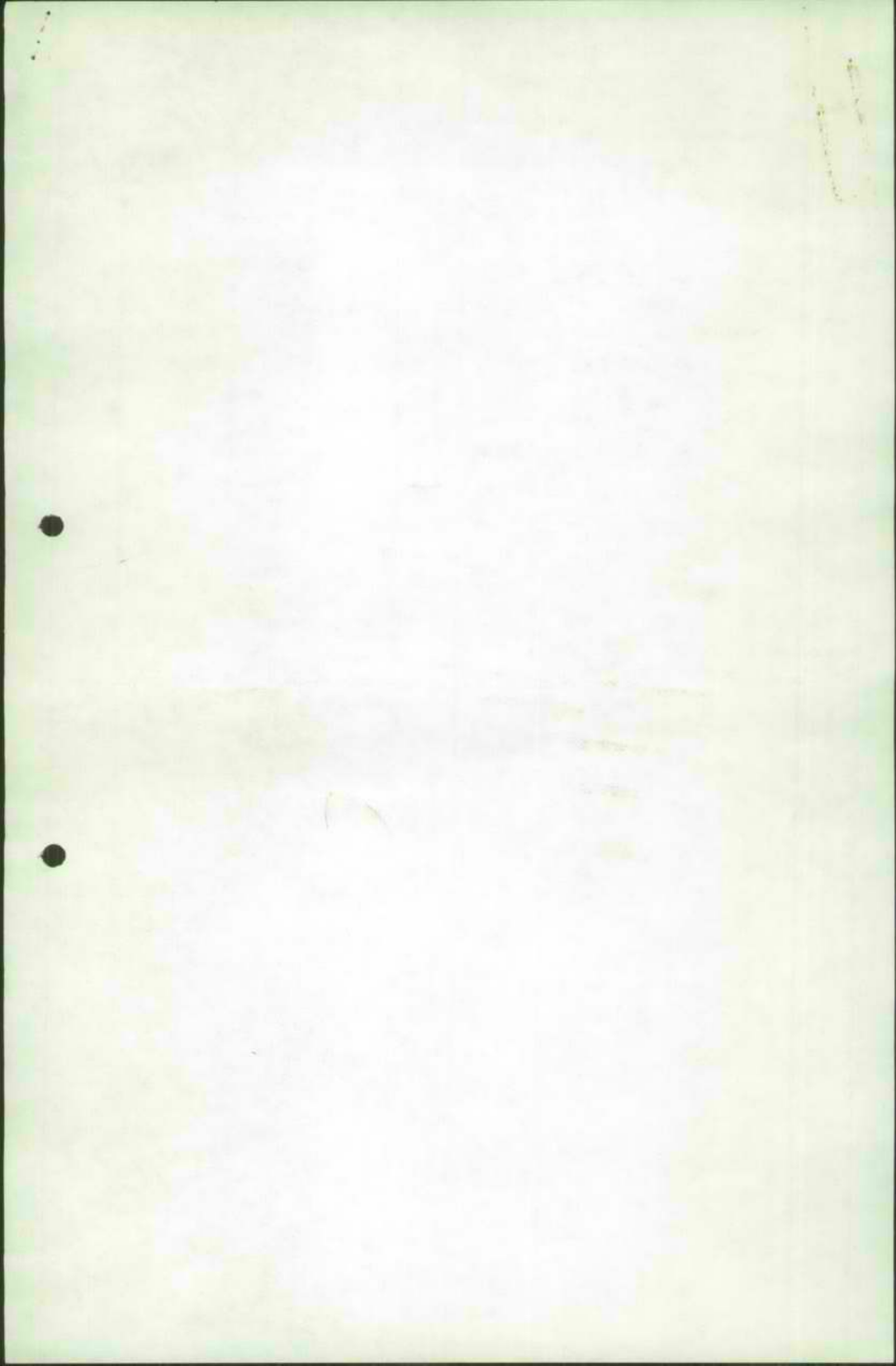
- אפשרות הפעלה על-ידי פניה של כל אחד הצדדים;

- חובה להפעיל את הערבות עם התקבל ידיעה על רכוז כוחות באזור מסויים

- מעל לכוחות מסויים של ציוד וכוחות צבא;

- הפעלת מצור ימי או הכנות לפגיעה בתעופה אזרחית,

- לרבות פעילות מחבלים וכו'.



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לא מי ש. כהנא.

מדינת ישראל

גרמניה לו נמסרה ה- 1969
אמנעו (1.3).

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בברכה

מאת

משרד החוץ

PEACE TREATIES AND SIMILAR ARRANGEMENTS
SINCE THE END OF WORLD WAR II

1. 1 January 1946 - Siam and other States.

An Agreement for the Termination of the State of War was signed at Singapore between the U.K., India and Siam; text in UN. TS. vol. 33, p. 131. On the same day and place "Preliminary Letters of Agreement" were also exchanged by Thai representatives with a representative of the Australian Government. Eleven days later, diplomatic relations between the above were formally resumed. As relations with the U.S. had only been broken off, the U.S. Government now accepted a Siamese declaration that this had been done only under pressure, and relations were resumed on 5 January 1946. Relations with China were also resumed and a Treaty of Friendship was signed on 23 January 1946, (reference *dra. Roosting*, 7693). An arrangement with France was signed on 17 November 1946, in Washington, (*ibid.*), the French Ambassador acting also on behalf of Cambodia and Laos; Siam agreed to arrange for the return of certain territories to Cambodia and Laos; diplomatic relations were to be resumed. (*Ib.*, 8276)

2. 6 March, 1946 - France and Viet-Nam.

On 6 March, 1946 - at Hanoi - a "Preliminary Agreement" was signed between France and Viet-Nam; The final agreement was signed at Paris on 14 September 1946. (IV. Dictionnaire Diplomatique, p. 619)

3. 15 November, 1946 - Netherlands and Indonesia.

At Cheribon - on British mediation, a "Truce Agreement" was initialled between the Netherlands and Indonesian forces; See also paras. 6 and 8 below.

4. 10 February, 1947 - Peace Treaties.

(a) A Treaty of Peace signed at Paris, on 10 February 1947, between the Allied Powers and Bulgaria (Published in UNTS. vol 41. page 21).

(b) A Treaty of Peace, signed at Paris, on 10 February 1947, between the Allied Powers and Hungary (Published in UNTS. vol 41. page 135).

(c) A Treaty of Peace, signed at Paris, on 10 February 1947, between the Allied Powers and Romania (Published in UNTS. vol. 42. page 3).

(d) A Treaty of Peace, signed at Paris, on 10 February 1947, between the Allied Powers and Finland (Published in UNTS. vol. 48. page 203).

(e) A Treaty of Peace, signed at Paris, on 10 February 1947, between the Allied Powers and Italy, (Published in UNTS. vol. 49. page 203).

The above Peace-Treaties were concluded between the Allied and Associated Powers, on the one hand (though in each case in different composition) and separately with Bulgaria, Finland, Hungary, Italy and Romania.

5. 27 August, 1947, France - India.

At Paris - Joint Declaration was signed by France and India regarding agreed measures with respect of the fate of the French possessions in India ; complementary agreements in 1948 and 1954 (reference in Keesing) see below, Comments para. 2).

6. 17 January, 1948 - Netherlands and Indonesia.

On board of the Renville- second "Armistice Agreement" between the Netherlands and Indonesia. (reference in Keesing)

7. 14 December, 1948 - India and Pakistan.

1948, 14 December, at New Delhi - comprehensive agreement between India and Pakistan on the settlement of outstanding questions arising out of the partition of the formerly British possessions, as decided upon by the competent British constitutional authorities by statute, known as the India Independence Act, 1947. This New Delhi agreement of 1948 (for complementary agreements see below, 1959, 1960) put an end to heavy inter-group clashes and fighting.

8. 2 November, 1949 - Netherlands and Indonesia.

On 2 November 1949, a Round Table Conference Agreement was concluded between the Netherlands and Indonesia. After interventions of the Security Council, ^{as} a final agreement leading to the complete and unconditional transfer of

sovereignty to Indonesia (on 27 December 1949); text in UNTS. vol. 69, page 9); the treaty was unilaterally abrogated by Indonesia, after abortive negotiations in January and February 1956, on 9 April of that year.

9. 8 September 1951, Japan - U.S. and other Allied Powers.

A Treaty of Peace (text in UNTS. vol. 136, p. 45) was signed at San Francisco between the Allied Powers (in fact, the Western group of them only) and Japan. The Treaty is completed by a Mutual Security Treaty with the U.S.A., signed on the same day.

10. 26 May 1952, U.K., France, the U.S.A. and the F.R.G.

On 26 May 1952, a Convention was signed on the Settlement of Matters Arising out of the War and the Occupation; its text was amended by Schedule IV to the Protocol on the Termination of the Occupation Régime in the FRG, signed at Paris on 23 October 1954, and published in this form in UNTS. vol. 332, pp. 219 sqs; also Cmd 9304). This Treaty is for all intents and purposes an equivalent of a formal Peace treaty in what concerns matters under the exclusive control of the contracting parties, and limited to the extent of their jurisdiction; formally, the Occupation Statute was superseded by the London and Paris Agreements of 1954. (See Comments, paras. 2 and 3).

11. 27 July 1953 - Korea.

On 27 July, 1953 at Panmunjon - a comprehensive Armistice Agreement for Korea was negotiated and signed directly between the U.N.C.-in-C. and the Commanders-in-Chief of the North Korean and of the Chinese Voluntary Forces; text in U.N. doc. A/2431.

12. 23 June 1954, India and the People's Republic of China.

On 28 June, 1954, at New Delhi - ⁴Joint Statement by Mr. Chou En-lai, on behalf of the People's Republic of China, and Mr. Nehru, on behalf of India, was made public. Agreement was reached on the settlement of a number of

questions (including boundary disputes, and confirmation was given to an agreement on the Tibet boundary disputes, signed at New Delhi on 28 April 1954) on the basis of agreed upon Principles; part of them, the (well known) 'Five Principles' on the substance of peaceful coexistence which were intended to apply not only in their bilateral relations, but also generally. (texts in Keesing, pp. 13588 and 13661)

13. 21 July - Indochina.

21 July, 1954 at Geneva - after direct negotiations, held between 26 April and 21 July, the following main instruments were presented as an agreed upon settlement of the war in Indochina: Cease-fire agreements were signed on Vietnam, a common Eight-Nations Declaration was made by France, Great Britain, the Soviet Union, the People's Republic of China, Vietnam, Cambodia, Laos and the Vietminh Government, agreed upon complementary declarations were made by France, Cambodia and Laos; a unilateral declaration was made by the U.S. and was accepted by the Conference (reference in Keesing pp. 13689 sqq).

14. 5 October 1954 - Trieste (Italy, Yugoslavia, s.o.)

On 5 October 1954, a Memorandum of Understanding, relating to the Free Territory of Trieste was initialled between representatives of Italy, Yugoslavia, the U.K. and the U.S. (Text in UNTS. vol. 235, p. 99). The agreement, reached only after several clashes, protracted debates in the Security Council, and negotiations, was implemented on October 25-29, 1954; references in Keesing pp. 13858 and 13999. In this case, the U.K. and the U.S. intervened both as parties having rights out of the 1947 Peace Treaty and as diplomatic mediators in the said conflict.

15. 13 October 1954 - France and India.

On 13 October 1954, a final and comprehensive Agreement was concluded between France and India, on the transfer of the French possessions in India to the State of India. (Reference "Dictionnaire Diplomatique", vol. iv).

16. 15 May 1955 - Austrian State Treaty.

On 15 May 1955, a State Treaty for the re-establishment of an independent and democratic Austria, was concluded between the U. S., U. K., France, U. S. S. R. and Austria, (text in UNTS. vol. 420. page 345). The State Treaty with Austria is the result of protracted negotiations both between the Occupation Powers themselves and with the Austrian Government.

17. 20 September 1955 - German Democratic Republic - Treaty Status.

a) On 20 September 1955, at Moscow - a treaty was concluded between the U. S. S. R. and the German Democratic Republic concerning the relations between the Countries (text in UNTS. vol. 226. page 201). It will be noted that this arrangement is strictly bilateral, considering that the Soviet Union was alone among the Eastern European countries to be an Occupying Power of part of Germany.

(b) While the GDR is still non-recognized by the greatest number of States, including ^{some} those at war with Germany since 1939, normal peaceful relations have been established with some such States, notwithstanding the fact that a state of war has formally existed between them and has never been terminated on the international level by a formal bilateral or multilateral Peace Treaty; the cases in question are Czechoslovakia (occupied prior to the outbreak of the war), Poland (at war since 3 September 1939), Yugoslavia (6 April 1941), Romania (24 August 1944), Bulgaria (8 September 1944), Hungary (20 January 1945), Egypt (26 February 1945) and Syria (26 February 1945). With some of these countries, GDR diplomatic or consular-commercial relations were established informally; since 1967 bilateral Treaties of Friendship and Mutual Assistance were entered into by the GDR with some ex-enemy States, (Poland - 15 March, Czechoslovakia - 17 March, Hungary - 13 May, Bulgaria - 7 September).

(c) As to Poland, it was announced on 7 June 1950, that an agreement has been reached on the recognition of the Oder-Neisse line as permanent frontier between the two entities; by way of implementation thereof a Frontier Demarcation Agreement was signed at Gdansk, on 6 July 1950.

18. 19 October 1956 - Soviet Union and Japan.

On 19 October 1956, at Moscow - a Joint Declaration between U. S. S. R. and Japan was signed after protracted negotiations (text in UNTS. vol. 263. p. 59; also Keesing, 15195). A compromise was reached which left in abeyance certain Japanese claims for restitution of territories occupied by the Soviet Union, but terminate the State of war and reestablished peaceful relations, provided for the release of prisoners, etc. The Soviet Union renounced war reparations. Japan obtained the restoration of Shikotan Island and the Habomai islands group. On the same day a Protocol was made concerning the Expansion of Trade and the Reciprocal Grant of Most-favoured-nation-Treatment; (text in UNTS. vol 263. The joint Declaration is a treaty which, having called for ratification, came into force on 12 December 1956, when the instruments of ratification had been exchanged in Tokyo.

19. 1958 - France and the U. A. R.

The reestablishment of normal relations between the U. A. R. and France had been brought about in stages :

(a) On 29 April 1958, "Heads of Agreement" were initialled at Rome, by representatives of the two States, after protracted negotiations, assisted by representatives of the International Bank for construction and Development. This Agreement related to the fate of the Suez Canal Company, which had been nationalized by Egypt and affected important French and British interests; after approval, the final text of the "Heads of Agreement" was signed in Geneva on 13 July 1958;

(b) On 22 August 1958, at Zurich: the representatives of the two countries signed an Agreement on matters outstanding since the Suez operation, 1956. In this Agreement, the U. A. R. waived reparation claims, arising out of the crisis of 1956, moreover agreed to pay compensation for nationalized French property, etc; (reference to Keesing, 16856).

20. 10 September 1958 - India and Pakistan.

On 10 September 1958, in New Delhi, an Agreement on Border disputes between India and Pakistan was signed (text in UNTS. Vol. 362. page 3).

21. 11 February 1959, (at Zürich) and 19 February, at London - treaties on Cyprus.

On the said dates, a complex of partly quadripartite, partly more restricted arrangements was agreed upon by the U.K., Greece, Turkey and Cyprus regarding the settlement of the tensions and conflicts between the Contracting Parties inter se and between the Greek and Turkish population groups on the island of Cyprus.

22. 1 March 1959 - U.K. and U.A.R.

On 1 March at Cairo an Anglo-Egyptian Financial Agreement was signed, also through mediation of the leaders of the IERD; it is a parallel to the earlier Franco-Egyptian agreement, supra 19/ (text in Keesing, 16354).

23. 23 October 1959 - India and Pakistan.

On 23 October 1959, in New Delhi an Agreement on East Pakistan border disputes between India and Pakistan. (text in UNTS. vol. 362. page 3); it included also "ground rules" to govern the conduct of army and police forces on both sides, and principles for provisional demarcation (reference in Keesing, 16416 and 17095).

24. 19 September 1960 - India and Pakistan.

On 19 September 1960 was signed in Karachi this "Indus Water Treaty" between the IERD, India and Pakistan. (text in UNTS. vol. 419. page 125).

25. 18 March 1962 - France and Algeria

18 March 1962, at Evian - a cease-fire agreement was signed by the representatives of France and Algeria and an agreement was reached on the

Declaration to be submitted to the approval of the electors at the time of the self-determination vote; provisions for cooperation with France are included, incl. military arrangements and provisions for the settlement of disputes; there are six Declarations more on specific topics. The main reason for the very complex pattern of this arrangement seems to have been the concern, on part of the French Government, to give this matter the appearance of a continuity of legal order, i. e. that for the territory in question - and which was an integral part of France - only one sovereign Power had authority to legislate, the coming into life of the other party being only a consequence thereof. Nevertheless, the making of the arrangement has clearly international character, and agreement is seen to have arisen from direct, involved and protracted negotiations. Keesing, 12801 sqs).

26. 22 June 1965 - Japan : Republic of Korea.

With this treaty, a period of tension came to an end which had set in 55 years earlier, 1910, with the occupation of Korea by Japan. The treaty provides for the reestablishment of peaceful relations, diplomatic commercial, etc. (Reference in Keesing, 20272).

27. 10 January 1966 - India and Pakistan.

On 10 January 1966, at Tashkent and upon Soviet mediation, a meeting was held between Shastri (India) and Ayub Khan, (Pakistan), a joint statement was made as an agreement to restore the status quo ante in Kashmir, i. e. prior to the military operations which had resulted in occupation, the taking of prisoners, etc. The agreement was to withdraw armed forces, repatriate prisoners, restore diplomatic and economic relations, to end hostile propaganda, etc, etc; (Reference in Keesing 21187).

28. 17 February 1966 - U.K. and Venezuela.

On 17 February 1966, an Agreement between the U.K. and Venezuela on Procedure for the Settlement of a Territorial Dispute was signed; Guayana became a party to the treaty on attaining independence on 26 May 1966.

COMMENTS

1. All the treaties listed above are instruments of a diplomatic character, whatever the name given to them (see Para. 2 below), executed and signed by the Contracting Parties in some ceremony where one party was facing the other. Nor is there any agreement which had not been negotiated in the presence of representatives of the parties concerned, notwithstanding more or less important transactional stages in which mediators or go-betweens had intervened in the framework of confidential contacts with one party only. No treaty arrangement had been entered by proxy; in all cases, the contracting parties were represented by plenipotentiaries, although some agreements were conditional upon ratification. Although there are some agreements which have suffered from differences of interpretation, there is none in which one party could be assumed to have endorsed an obligation while leaving the other party to the conflict in the diplomatic situation of having remained legally free to affirm not to have entered an obligation.

2. Not all the arrangements listed above are in their own text termed 'arrangements' or 'peace treaties', as the case may be; some are made in a diplomatic form, such as 'Joint Statements', which might or might not necessitate its registration as a treaty (hence also some difficulties as to the quotation of sources; as a rule, the present analysis is based on texts reprinted in the U. N. Treaty Series or on reports appearing in Keesing's, the Dictionnaire Diplomatique, or the like. All arrangements, whatever their form, have been listed, here, considering, on one hand, that they consolidate a contractual element and, on the other, that the terminological deviations are found to result from considerations which are not essential to the point made here. Thus, in the case of Austria, the Government of that country was interested in (and was helped in) keeping the 'antecedents' of the treaty of 1955 in a twilight - the question, namely, whether Austria had been actively involved in the war on the side of Germany - a point which might have led to the term of "Peace Treaty". The arrangements of former

Agreements between Powers with their former colonies are generally not termed 'Peace Treaties' (paras. 2, 3, 5, 6, 12, 24) the assumption for the terminology eventually used being that the conflict, had not been one between Sovereign States. However, the common feature of all these agreements is that they provide for a transition from hostilities and absence of peace-time public and private relations, to such a pattern of peaceful coexistence.

3. Not are all treaties of that nature comprehensive, so that the choice of a less explicit terminology seems to be reasonably indicated (See above paras. 1, 9, 10, 16, 17, 18). Such lack of comprehensiveness may be twofold: (a) not all States called upon to conclude a certain treaty - namely, all the Allies - were ready to become party to a certain arrangement, and/or (b) not all the usual topics of a peace treaty are being dealt with, and/or (c) the arrangement does not cover the whole territory, as it originally was of the enemy State (the cases of split-up, 'divided' States: Germany, China, Korea, Vietnam. Nevertheless, as far as they go, even the non-comprehensive treaties correspond to the essence of Peace Treaties: they are negotiated in a manner which the contracting parties consider to have been final, they are intended to be a substitute (even if only for the time being) for a Peace Treaty which is seen to be retarded for reasons which the contracting parties feel to have been caused outside their range of influence, the purpose of the treaty is the inter-partes reestablishment of peaceful coexistence and consensual, diplomatic, consular (etc.) intercourse, and the matters left outside this arrangement were considered to be without any influence on the reestablishment of such peaceful relations; the treaty in question was registered with the United Nations. Thus, certain States have remained even outside such non-comprehensive 'Peace Treaties'. This was the case when peaceful relations were reestablished with Japan (above Nos. 9 and 10) and Germany (above Nos. 16 and 17) - events which show that the great split into two world blocs is the main cause responsible for the deviation from classic patterns of Peace Treaties. In these two cases - there are in all cases States which have regulated the bilateral relationship with Japan and Germany in some less explicit manner than a direct treaty on peace-making - they achieved their

purpose by way of some broad military defence arrangement, by way of establishment of diplomatic relations, and the like. In guise of confirmation thereof, internal arrangements on the 'termination of the state of war' may have intervened. However, nothing is here to enable or even to justify the conclusion that in any case of some importance any transition to peace had been made outside the context of an agreed upon *modus procedendi*, i. e. unilaterally and without any understanding, even an informal one, with the other party; the means chosen for this are set out above.

4. Not all territorial conflicts have led to situations regarded by the parties as "War"

There can be found, arrangements which cannot be described as peace treaties, for the settlement of such disputes (one might quote, as an example, that the Peru-Ecuadorian boundary dispute was temporarily settled by virtue of a Protocol of Peace, Friendship and Boundaries, of 29 January 1942, with the accession thereto of certain 'Guarantor States' (the U.S., Brazil, Chile, Argentina) with a Committee of Representatives of the guarantor States having sat in Rio de Janeiro). A more recent example is the "confrontation" between Malaysia and Indonesia, 1966.

5. Nor have armed conflicts of all sorts been settled by explicit arrangements.

Thus, the guerrilla war against Greece, in the immediate post-World War II period, had remained without effect on the development of normal relations with at least two States concerned, Yugoslavia and Bulgaria. But even in these cases, treaty arrangements have later been made regarding questions of substance which had remained in suspense between them; with Yugoslavia (Turkey being the third participant) a (shortlived) Treaty of Alliance, Political Cooperation and Mutual Assistance has been made at Eled, 9 August 1954. With Bulgaria, a series of conventions was entered into in 1965.

6. The above list relates specifically to international acts, not to unilateral measures destined for the domestic regulation of matters connected with war as

an international event (e.g. internal Government 'Declarations' that a certain state of war was terminated; thus the U.S. Congress 'Declaration' of 2 July 1921).

7. The above list covers all recent armed conflicts usually described as war, with two possible exceptions (besides the Near East): the long-standing conflict between Greece and Albania, and the wars between Japan and China. (Neither the Taiwan nor the Peking regime had had any part in the peace arrangements with Japan, above No. 9 and 18, but some working arrangements have intermittently been effective between Tokio and Taiwan, resp. Peking; and yet, with all the tensions which are herein involved, no hostilities are noted.

3 June 1969

J. Lader
J. Lader

*See also Hiroshima Agreement
First Convention, 1913, on aggression
of aggression, not necessarily countries.*

FEDERAL REPUBLIC OF GERMANY-UNION OF SOVIET SOCIALIST REPUBLICS:
NON-AGGRESSION TREATY*

[Done at Moscow, August 12, 1970]

Treaty between the Federal
Republic of Germany and the
Union of Soviet Socialist Re-
publics

The High Contracting Parties

ANXIOUS to contribute to strength-
ening peace and security in Europe
and the world,

CONVINCED that peaceful co-
operation among States on the basis
of the purposes and principles of the
Charter of the United Nations complies
with the ardent desire of nations and
the general interests of international
peace,

APPRECIATING the fact that the
agreed measures previously imple-
mented by them, in particular the con-
clusion of the Agreement of 13 Sep-
tember 1955 on the Establishment of
Diplomatic Relations, have created
favourable conditions for new impor-
tant steps destined to develop further
and to strengthen their mutual rela-
tions,

DESIRING to lend expression in the
form of a treaty, to their determination
to improve and extend co-operation
between them, including economic
relations as well as scientific, tech-
nological and cultural contacts, in the
interest of both States,

HAVE AGREED as follows:

Article 1

The Federal Republic of Germany
and the Union of Soviet Socialist
Republics consider it an important
objective of their policies to maintain
international peace and achieve
détente.

They affirm their endeavour to
further the normalization of the
situation in Europe and the develop-
ment of peaceful relations among all
European States, and in so doing
proceed from the actual situation
existing in this region.

Article 2

The Federal Republic of Germany
and the Union of Soviet Socialist
Republics shall in their mutual re-
lations as well as in matters of en-
suring European and international
security be guided by the purposes
and principles embodied in the Charter
of the United Nations. Accordingly
they shall settle their disputes ex-
clusively by peaceful means and under-
take to refrain from the threat or use
of force, pursuant to Article 2 of the
Charter of the United Nations, in any
matters affecting security in Europe
or international security, as well as in
their mutual relations.

Article 3

In accordance with the foregoing
purposes and principles the Federal
Republic of Germany and the Union
of Soviet Socialist Republics share the
realization that peace can only be
maintained in Europe if nobody dis-
turbs the present frontiers.

- They undertake to respect without
restriction the territorial integrity
of all States in Europe within their
present frontiers;
- they declare that they have no
territorial claims against anybody
nor will assert such claims in the
future;
- they regard today and shall in
future regard the frontiers of all
States in Europe as inviolable such
as they are on the date of signature
of the present Treaty, including the
Oder-Neisse line which forms the
western frontier of the People's
Republic of Poland and the frontier
between the Federal Republic of
Germany and the German Demo-
cratic Republic.

*[Reproduced from the unofficial English translation in The Bulletin of August 13, 1970, issued by the Press and Information Office of the Government of the Federal Republic of Germany.]

Article 4

The present Treaty between the Federal Republic of Germany and the Union of Soviet Socialist Republics shall not affect any bilateral or multilateral treaties or arrangements previously concluded by them.

Article 5

The present Treaty is subject to ratification and shall enter into force on the date of exchange of the instruments of ratification which shall take place in Bonn.

Done at Moscow on 12 August 1970 in two originals, each in the German and Russian languages, both texts being equally authentic.

For the Federal
Republic of Germany

For the Union of
Soviet Socialist Republics

(Unofficial translation from the German text.)

Letter on German Unity To the Soviet Union

In connection with today's signature of the Treaty between the Federal Republic of Germany and the Union of Soviet Socialist Republics the Government of the Federal Republic of Germany has the honour to state that this Treaty does not conflict with the political objective of the Federal Republic of Germany to work for a state of peace in Europe in which the German nation will recover its unity in free self-determination.

(Unofficial translation from the German text.)

Text of Notes sent to the Embassies of France, United Kingdom and United States in Moscow, concerning the rights of the Four Powers with regard to Germany as a whole and Berlin

The Embassy of the Federal Republic of Germany presents its compliments to the Embassy and has the honour, on the instructions of its Government, to transmit the following Note with the request that its contents be communicated to the Government of as expeditiously as possible:

The Government of the Federal Republic of Germany has the honour, in connection with the imminent signing of a Treaty be-

tween the Federal Republic of Germany and the Union of Soviet Socialist Republics, to inform it of the following:

The Federal Minister for Foreign Affairs has, in the context of the negotiations, set forth the Federal Government's position as regards the rights and responsibilities of the Four Powers with regard to Germany as a whole and Berlin.

Since a peace settlement is still outstanding, both sides proceeded on the understanding that the proposed Treaty does not affect the rights and responsibilities of the French Republic, the United Kingdom of Great Britain and Northern Ireland, the Union of Soviet Socialist Republics and the United States of America.

The Federal Minister for Foreign Affairs has in this connection declared to the Soviet Foreign Minister on 6 August 1970:

"The question of the rights of the Four Powers is in no way connected with the Treaty which the Federal Republic of Germany and the Union of Soviet Socialist Republics intend to conclude, and will not be affected by it."

The Foreign Minister of the Union of Soviet Socialist Republics thereupon made the following declaration:

"The question of the rights of the Four Powers was not the subject of negotiations with the Federal Republic of Germany.

"The Soviet Government proceeded on the understanding that this question should not be discussed.

"Nor will the question of the rights of the Four Powers be affected by the Treaty which the U.S.S.R. and the Federal Republic of Germany intend to conclude. This is the position of the Soviet Government regarding this question."

The Embassy of the Federal Republic of Germany avails itself of this opportunity to renew to the Embassy the assurance of its high consideration.

Moscow, 7 August 1970

(Unofficial translation from the German text)

10/10/74

ס. ע. ד. י

אל : סר-החוץ

מאת : היועץ המשפטי

הנדון : הסכם ישראל מצרים - ביטול מצב לוחמה

1.

ביטול הלוחמה בין ישראל למצרים : או במלים אחרות - האם יש בסיס במשפט הבינלאומי לחבוע מהמצרים הכרה בביטול מצב לוחמה תמורת נסיגה חלקית מהשטחים המוחזקים על-ידנו ?

יש לבחון למעשה, שלוש נדירות :

1.1 מהו המעמד המשפטי של הסכם ההפרדה בין ישראל למצרים.

1.2 האם הפסקת האש שמה קץ למצב המלחמה בין ישראל למצרים.

1.3 מה השפעת חתימת הסכם ההפרדה על מעמד ישראל בשטחים המוחזקים.

1.1 הסכם ההפרדה בין ישראל למצרים נחתם במסגרת ההסכם שהושג בין הצדדים (ס' 2 בהסכם מה- 11/11/73). הסכם זה עצמו הופג ע"פ החלטת מועצת הבטחון (S/338 ו-S/339) .

אי-לזאת הסכם ההפרדה עצמו הוא במעמד משפטי של הסכם הפסקת אש : כלומר - הסכם ארעי שנועד להפסיק את פעולות האיבה, מבלי ליצור מצב משפטי של שלום או הפסקת לוחמה, אלא אם בקבע אחרת בהסכמת שני הצדדים.

1.2 האם הפסקת האש שמה קץ למצב המלחמה בין ישראל למצרים ?

1.2.1 מאז חתימת הסכם שביתת-הנשק ב- 1949 טענה ישראל שבניגוד לעקרונות המקובלים במשפט הבינלאומי, הרי שהסכמי שביתת-הנשק שלנו עם מצרים, ירדן, סוריה ולבנון - שמו קץ למצב המלחמה. עמדה זו הסתמכה בין היתר, גם על החלטת מועצת הבטחון מס' S/2322 מיום 1/9/51 שקבעה בסעיף 5 :

"5. "Considering that since the Armistice regime, which has been in existence for nearly two and half years, is of a permanent character, neither party can reasonably assert that it is actively a belligerent or require to exercise the right of visit, search and seizure for any legitimate purpose of self-defence."

(ההדגשה שלי)

במלים אחרות : מועצת הבטחון קבעה שמדינות שהן צד להסכם שביתת-נשק - אינן יותר במצב מלחמה אקטיבית (מבלי לקבוע שהן במצב שלום, קובעת מועצת הבטחון שיש מעמד חדש שהוא מעין status mixtus אשר בו מצב המלחמה הסתיים מבלי שמצב של שלום יבוא במקומו).

1.2.2 מאז 1967 עמדה ישראל הגה, לפי כל הסימנים, שקיים מצב מלחמה בין ישראל למצרים, ועל-כן החזקת השטחים ע"י ישראל הגה במסגרת "belligerent occupation" שהגו מושג מוכר במשפט הבי"ל. כינוש צנאי זה יכול להתבסס רק על קיום מצב מלחמה. (שובה הכינוש המבוצע במסגרת הסכם שלום - שבו בקבע כי צד אחד יחזיק בשטחים ריבוניים של הצד השני כעדרונה לביצוע התחייבויות הסכם שלום).

1.2.3 מאז 1967 היה קיים בין ישראל ומצרים מצב של הפסקת-אש. הפסקת-האש בקבעה עפ"י החלטת מועצת הבטחון מיוני 1967 וההסכם הנוסף שהושג בין ישראל למצרים באוגוסט 1970 בתיווך ארה"ב, לא בא במקום החלטת מועצת הבטחון, אלא על-סמך החלטת מועצת הבטחון שהופרה, ושההסכם מ- 1970 נועד לחזקה.

1.2.4 המצב המשפטי הקיים מאז אוקטובר 1973 בין ישראל למצרים - הוא מצב של הפסקת-אש, וזאת עפ"י החלטות מועצת הבטחון S/338 ו-S/339.

מצב של הפסקת-אש הוא מעבר בין State of war ל- State of peace. מגילת האו"ם אוסרת קיום מצב מלחמה, והמעמד של "הפסקת-אש" משקף מצב de facto העומד בסתירה למגילת האו"ם. משתמשים במונח "הפסקת-אש" בין אם המדובר הוא בהפסקת פעולות איבה במישור הבינלאומי, ובין אם פעולות האיבה הן במסגרת מלחמת אזרחים.

בניגוד לשביתת-הנשק, הכניעה ללא תנאי, ומצנים קלאסיים אחרים המקובלים במשפט הבינלאומי, הרי שהפסקת-האש איננה באה כתוצאה מכך שאחד הצדדים נכנע או הובס - הוא לא מוכיח נצחונו של צד אחר.

הפסקת-האש נועדה למנוע המשך המלחמה, והתפתחותה למצב המסכן את שלום העולם ואת בטחונו.

הפסקת-האש יכולה להיות קיימת בשני שלבים :
שלב ראשון - כשהפסקת-האש קודמת להסכם בין הצדדים.
שלב שני - כשהפסקת-האש הגה תוצאה של הסכם בין הצדדים.

1.2.5 הפסקת-האש שהוחלט עליה במסגרת דיוני מועצת-הבטחון, נועדה במסגרת ס' 40 של מגילת האו"ם :
"to prevent an aggravation of the situation"

וכן הגה :

"without prejudice to the rights, claims, or position of the parties concerned."

1.2.6 הסכם ההפרדה במסגרת הסכם הפסקת-האש שנחתם בין הצדדים ב- 18/1/1974 מהווה אף הוא הסכם, אך הפעם בין הצדדים ולא לפי הוראת מועצת-הבטחון בלבד. הסכם זה (על ההפרדה) יכול היה לכלול תנאים פוליטיים בתנאי ששני הצדדים היו מסכימים לכך. מהרגע שההסכם על ההנתקות נחתם - הפסקת-האש stricto sensu תהיה רק חלק מהסכם רחב יותר ותנאי מוקדם לניצוץ סעיפי הסכם ההפרדה, אך הפסקת-האש לא תהיה יותר תנאי לקיום שיחות על נושאים סובסטיביים. הסכמי פאריס בענין וויאטנם, והסכמי EVIAN (מ-1962) בענין אלג'יריה - מהווים הקדימים בגדול. כל ההסכמים הללו בועדו להביא לידי סיבויים משלבים. והסכם ההפרדה שלנו זהה מבחינה זו עם מעמדם המשפטי של ההסכמים הקודמים הנ"ל.

1.2.7 עם חתימת הסכם הפסקת-אש, או במקרה שלנו - הסכם ההפרדה - מצב המלחמה נשאר בתוקפו. עובדה זו מקבלת אישור מנדיקת :

1.2.7.1 דעת גדולי המשפטנים וחוקרים בינלאומיים.

1.2.7.2 פסיקה של ארצות שונות.

1.2.7.1 דעת גדולי המשפטנים וחוקרים בינלאומיים -

1.2.7.1.1 בספרו - Oppenheim's International Law

הוצאה שביעית כרך 2, ע' 597 נאמר :

... Although cessation of hostilities may in effect mark the cessation of war - as in the case of an armistice or in the form of unconditional surrender - it does not formally bring the State of War to an end.

Paul Mohn (ההדגשה שלי).

1.2.7.1.2 בספרו של: "Problems of Truce Supervision

קובע המחבר בע' 52 :

"The cease-fire is the first step on the road to a final settlement. It constitutes the transition from the fighting to the non-fighting stage. It seems safe to assert that the "cease-fire implies a "freezing" of the prevailing military situation."

1.2.7.1.3 הסכם הפסקת-אש קלאסי ניתן לראות בהסכם

שנחתם בין ישראל למצרים באי רודוס

ב- 24/1/1949 (חודש ימים לפני החתימה

על הסכם שביתת-הנשק)

הסכם זה פורסם בכתבי אמנה 13 (1949) :

Egyptian-Israeli General Cease-Fire Agreement :

We undersigned, do hereby agree that :

1. The general cease-fire agreement between the two parties which became effective on 7 January 1949 at 1200 GMT is hereby formally confirmed as a complete and enduring cease-fire between all elements of our military or para-military forces - land, sea and air - wherever located.
2. No element of the ground or air forces of either party shall advance beyond or pass over the line now held by the foremost elements of its ground forces, and no element of naval or air forces of either party shall enter into or pass over the waters adjacent to the coastline now held by the other party for any purpose whatsoever.
3. In pursuance of the resolution of the Security Council of 29 December 1948, complete supervision of the truce by the United Nations Observers shall be allowed and facilitated.
4. Movements of civilians shall not occur from one side to the other.

רק אחר חתימת הסכם שביתת הנשק קבעה מועצת-
הבטחון שמצב המלחמה האקטיבית בוטל, ואף צד
איננו יכול לסעון לזכויות צד לוחם, אך הסכם
הפסקת-האש בלבד לא שם קץ למצב המלחמה בין
הצדדים.

1.2.7.2 הפסיקה - בחוק המוניציפאלי של ארה"ב היא בדרך כלל שמצב
המלחמה נמשך עד חתימת הסכם שלום או עד להודעה הנשיא על
סיום מצב לוחמה.

בספרו של Oppenheim - ע' 597 אנו מוצאים :
...notwithstanding the cessation of hostilities with
Japan the United States Courts repeatedly held that so
long as no peace treaty had been concluded and so long
as the American forces were in occupation of Japan,
there was a state of war with that country:

Zenzo Arakawa et Al. v. Clark (1947)

... In the same year the courts of the United States
denied for that reason a writ of habeas corpus to
German nationals who were held in custody as dan-
gerous enemy aliens for removal from the United
States :

United States ex rel. Kessler v. Watkins (1947)
163 F. 2d. 140; 68 S. Ct. 220.

1.2.7.2.1 מצב המלחמה בין ארה"ב ליפאן הסתיים עם

הצהרת הנשיא טרומן ב- 23/4/1952 - יום

כניסת חוזה השלום בין שתי המדינות לתוקף.

1.2.7.2.2 נשיא ארה"ב הצהיר חגיגית ב- 21/12/46 ש :

"hostilities (with Germany) have terminated

"but" a state of war still exists.

1.3 מה השפעת חתימת הסכם הפירוק על מעמד ישראל בשטחים המוחזקים ?

1.3.1 הסכם הפסקת-האש הנו הסכם המקפיד את המצב הצבאי. זאת במידה והצדדים

לא קובעים בו גורל שטחים שנכבשו בעת פעולות האיבה. לאור חנייה

ערבית אפשרית שבהסכם הביניים יכלול סעיף בו תתחייב ישראל לגסיגה

כוללת - רצוי לבדוק סוגיה זו.

1.3.2 מעמד השטחים המוחזקים קשור בסוגיה רחבה יותר שהיא בעיה הנסיס

ליחסים בין צדדים לוחמים בעת שהסכם הפסקת-האש נכנס לתוקף.

אופנהיים כותב בקשר לסיום המלחמה על-ידי הפסקת פעולות איבה בלבד

(ללא הסכם).

The question arises whether the status which existed between the parties before the outbreak of war, the status quo ante bellum, should be revived, or the status which exists between the parties at the time when they simply ceased hostility, the status quo post bellum (the uti possidetis), can be upheld.

The majority of writers correctly maintain that the status which exists at the time of cessation of hostilities becomes silently recognized through such cessation and is, therefore, the basis of the future relations of the parties. (Oppenheim-Lauterpacht, 2 Int. Law, p.598-9, London,

Seventh edition, 1952. /אם העקרון הנ"ל חל בתום פעולות איבה ללא הסכם הפסקת-אש, על אחת

כמה וכמה שהוא בתוקף במקרה של משטר מבוסס על הסכם הפסקת-אש -

אשר כתוצאה ממנו הזכויות הסופיות של הצדדים אינן בדיון. זוהי גם

עמדה ה-British Manual :

447. The situation in occupied territory remains the same during an armistice as during hostilities.

(The Law of War on Land (London) p.130).

1.3.3 פרופ' יוליוס סטון (Julius Stone) מגדיר באופן ברור את מעמדם

של השטחים המוחזקים במשטר של הפסקת-אש :

"As to the effect of cease-fire on the belligerent's rights in territory, this same branch of the law provides that where no provision is made by the cease-fire agreement concerning the line of territorial separation between the antagonists after it comes into effect, the maximum possidetis applies. This means that the belligerent who controls a given territory at the moment of cease-fire is entitled to remain there until he is ousted by a renewal of hostilities or until peace is negotiated.

And since the very cease-fire suspends the armed struggle the belligerent's control over such enemy territory at that time will inevitably mature on cease-fire into belligerent occupation, even if it was not so before. (Julius Stone, The Middle-East under Cease-Fire, Sydney 1967, p.10.)

1.3.4 גם אופנהיים מדגיש שהפסקת פעולות איבה - ללא הסכם - יכולה לגרום לכך ששטח שנכבש בעת מלחמה יסופח על-ידי הצד המחזיק

בו :

"This question is of the greatest importance, regarding enemy territory militarily occupied by a belligerent at the time hostilities cease. According to the correct opinion, it can be annexed by the occupier, on the ground that his adversary, through the cessation of hostilities, has abandoned all rights he possessed over it."

(Oppenheim-Lauterpacht, International Law, vol. 2, p. 599. London (1952 - Seventh edition).

2. ס י כ ו ם :

- 2.1 הסכמה מצרית להכללת סעיף מפורש בהסכם ביניים המבטל מצב הלוחמה עם ישראל, כמוה כהכרה בזכותה של ישראל לספח את השטחים המצריים המוחזקים בידה מאז מלחמת ששת-הימים.
- 2.2 בכדי למנוע טעון משפטי ישראלי שבהעדר התייחסות כלשהיא לשטחים המוחזקים, מותרת מצרים על חביעות לשטחים אלה - יש להניח שמצרים תתבע הכללת סעיף מפורש בהסכם הביניים, בו ייאמר שאין בחתימת ההסכם משום ויתור כלשהוא מצידה על זכויות טריטוריאליות על שחיה הנמצאים כיום בשליטתה של ישראל.
- 2.3 מבחינת ישראל עדיף כמובן שייכלל סעיף על ביטול מצב הלוחמה, וכן שלא יהיה איזכור לזכויות מצרים על שטחיה המוחזקים בידינו, אך התקדימים ועמדת המשפטים בנושא זה - אינם לצידנו.
- 2.4 לאור ה"ל - מוצע שבהסכם הביניים נעמוד על הכללת זכויות מוגדרות, ולא על עקרונות.
- 2.5 ביסוח זכויות אלה חייב להיות ברור וחד-משמעי.
- 2.6 מבחינת ישראל - רצוי שהמסמך יחתם במישור האזרחי והצבאי ע"י שני הצדדים (הסכם רודוס בחתם מצד ישראל ע"י ייצוג אזרחי וצבאי, ומצד מצרים הייצוג היה צבאי בלבד).
- 2.7 אין בחוות דעת זו לגרוע מבסיון להשיג ביטול לוחמה - אם מבחינה מדינית ניתן להשיג זאת.

ב ב ר כ ה ,
מ. רוזן
מ. רוזן

10/10/74

שלבים בהפסקת לוחמה

1. אי-בהירות הנושא

המשפט הבינלאומי מכיר במושג "המלחמה" ובמושג "שלום", אולם בין שני מושגים אלו קיימת שורה של מושגי ביניים, כגון - הפסקת לוחמה, הפסקת-אש, הפוגה ושביחת-בשק. מושגים אלו משמשים לעתים בערבוביה לציון שלבים שונים של מעבר בין מלחמה לבין השלום. חוסר הבהירות קיים לא רק בעתויות ובשפת יום-יום, אלא גם בהחלטות מוסדות האו"ם והספרות המקצועית. ההבחנה להלן איפוא, בין השלבים השונים - הינה כללית, וניתן למצוא שפע של דוגמאות של שימוש במונחים אלו בהריגה מהמקובל.

2. המושגים השונים

ה- (1958 p.175 British Manual of Law) מציין שבעה מונחים שונים להפסקת לוחמה שנופלת משלום. truce, local truce, armistice, cessation of hostilities, cessation of arms, suspension of arms, cease-fire.

3. מלחמה war

תוך כדי מלחמה, צדדים רשאים לנקוט בצעדי לחימה מלבד אותם המעשים האסורים לפי כללי המלחמה והמשפט ההומניטרי, אשר ממשיכים לחול אף בעת מלחמה - (אמנות האג, אמנות ג'נבה, כיבוד דיפלומטים וכו').

3.1 בעת מלחמה, הצדדים ללוחמה הינם belligerents וזכאים לבצע אחד נגד השני מעשי לוחמה acts of belligerency.

שוורצנברגר מגדיר זאת :

"Belligerents: entities at war with one another and recognised in this capacity by international law" (Manual of International Law, Schwarzenberger Ved. 1967, p. 627).

4. סיום מלחמה

מלחמה יכולה להסתיים על-ידי :

4.1 הסכם שלום;

4.2 או כביעה;

4.3 או הוצרות יחסי שלום ללא הסכם מיוחד.

(ראה - International Law, Oppenheim-Lauterpacht VII ed, vol11, p.596)

5. עת שלום

בעת שלום חל איסור לבצע מעשי לוחמה כלשהם.

6. קיום מצב ביניים בין מלחמה לשלום ?

ישנם מספר משפטים בי"ל, ביניהם המשפטים מקדוגל, שוורצנבורגר וג'סוף - הגורסים כי קיים תחום בין שלום למלחמה.

6.1 "It is, however, no new thought that this dichotomy (between war and peace) is hardly a faithful reflection of the fluid and complex process of coercion in the contemporary world arena or of the equally complex process of legal authority."

The General Principles of the Law of War - McDougal and Feliciano 67 Yale L.J. 771 775 (quoted Whiteman Digest vol. 10 p.5).

6.2 שוורצנבורגר מוצא שיש אסמכתא למצב זה בפס"ד של בי"ד הבי"ל בענין - Right of Passage over Indian Territory (Merits) (1960) I.C.J. p.42.

"The justification of the action taken by the Indian Government lay in the change of these circumstances. These were hardly peaceful in any other than a purely negative sense and fell only just short of the actual application of force. They amounted to a state of intermediary between peace and war in the relations between two members of the United Nations." The Law of Armed Conflict - Schwarzenberger 1968-p. 54.

6.3 JESSUP - Should International Law recognize an Intermediate Status between Peace and War - 48 A.J.I.L. (p.100-102). - וכן

6.4 משפטים מהגוש הקומוניסטי מתנגדים לעקרון וממשיכים לטעון כי יחסים

בין מדינות חייבים להתבסס או על מלחמה או על שלום

Coexistence and International Law - TUNKIN, Recueil des Cours 95, p. 73.

"We are in full agreement with Professor Lachs who states that "International law does not recognize any intermediate status between war and peace.

7. הגבלת זכויות לוחמים בעת מלחמה

בנוסף על הגבלות על דרכי לחימה הקבועות בהסכמי האג, ג'נבה ודיני המלחמה המקובלים - רשאים צדדים לוחמים להסכים ביניהם להגביל באורח זמני או לצמיתות את פעולת הלוחמה המתבצעת אחד נגד השני. הסכמה כזו יכולה לבוא בהסכם הפסקת אש, הפוגה, או שביחת-נשק.

7.1 local cease-fire

תוך כדי לחימה, קורה שמפקדים מסכימים להפסיק זמנית את האש. הדבר נעשה בדרך כלל על-מנת לטפל בפצועים. להסכם זה אין כל משמעות פוליטית, ומחייב רק את הצדדים באותו מקום או חזית, להמנע מפעולות חקיפה צבאיות.

7.2 cease-fire

הסכם כללי להפסקת אש נחתם על-ידי מפקדים. דוגמא קלאסית הינה הסכם הפסקת-אש ישראל-מצרים שנחתם ביום 24/1/49, חודש לפני חתימת הסכמי שביחת-הנשק ברודוס.

7.2.1 הסכמי הפסקת-אש כוללים בד"כ :

7.2.1.1 הפסקת כל פעולות תקיפה ופעולות הגורמות בזק ישיר לאויב.

7.2.1.2 החלפת שבויים.

7.2.1.3 חובה לא להתקדם מעבר קו הפרדה מוגדר.

7.2.2 הסכמי הפסקת-אש אינם כוללים :

7.2.2.1 קביעת גבולות.

7.2.2.2 הפסקת-אש מחוץ לאזור המוסכם.

7.2.2.3 הפסקת הכנות צבאיות וגיוסים.

7.2.2.4 הרמת מצור (דהיינו - מותר להמשיך במצור ימי או מצור על עיר).

7.2.2.5 הפסקת מצרכים לנצורים (דהיינו - אין חובה כזאת).

7.2.2.6 שינוי מעמד שטחים כבושים.

7.2.3 הצדדים הלוחמים חייבים להמנע רק מאותן פעולות צבאיות אשר לגביהן התחייבו במפורש.

7.2.4 הסכם הפסקת-אש נחתם על-ידי נציגים צבאיים בלבד.

7.3 truce

כאשר הסכם הפסקת-אש כולל תנאים פוליטיים - מקובל לכנות הדבר *truce* אך אין בזה יחיד בנושא.

7.4 armistice שביתה-נשק

השימוש בעבר ב- armistice היה זהה לביטוי cease-fire - אך מאז מלחמת העולם השנייה הולכים וממעטים הסכמי השלום הפורמליים ובוהגים לחתום על הסכמי שביתה-נשק הכוללים תנאים פוליטיים. דוגמא קלאסית היו הסכמי שביתה-הנשק משנת 1949 בין ישראל לשכנותיה הערביות. הסכמים אלו, בדומה להסכמי הפסקת-אש - אינם כוללים הפסקת מצב הלוחמה, אך לפי פירוש מועצת הבטחון להסכם ישראל-מצרים. בהתייחסה לתעלה-סואץ - קבעה מועצת-הבטחון כי יש חובה לחדול משימוש אקטיבי בזכויות לוחמה בתחום הימי.

Considering that since the Armistice regime, which has been in existence for nearly two and a half years, is of a permanent character, neither party can reasonably assert that it is actively a belligerent or requires to exercise the right of visit, search and seizure for any legitimate purpose of self-defence. (S/2322 1, September 1951)

7.5 Cessation of Hostilities

כנאמר לעיל, הסכם להפסקת-אש או שביתה-נשק כולל בחוכו הפסקת מעשי לחימה פעילים - cessation of hostilities - אך לעתים קרובות ההסכמים

כוללים גם סעיפים לגבי הפסקת מעשי לוחמה אחרים -
other belligerent acts.

cessation of acts of belligerency 7.6

אין מניעה לכלול בהסכם מסוג זה רשימה ארוכה ומפורטת של פעולות אסורות
או הוראה האוסרת פעולת לוחמה כלשהיא, דהיינו -
cessation of all acts of belligerency.

ניתן כמו- כן לחתום על הסכם מיוחד בנפרד מהסכם הפסקת אש או שביתת נשק -
גם על הסכם בו יתחייבו הצדדים להפסיק פעולות לוחמה.

עם חתימת הסכם הכולל סעיף האוסר כל פעולת לחימה cessation of all acts
of belligerency - יוצר מצב לפיו הצדדים עדיין לוחמים ועדיין יריבים.
הם מבחינה belligerents at war - אך מבלי שתהיה להם הזכות להפעיל
אמצעי לוחמה כלשהם, דהיינו - המלחמה דה-פאקטו מבלי שהצדדים יכירו אחד בשני
ומבלי שיכירו בגבולות. באם מסיבה כלשהיא יבוא ההסכם לקיצו - יהיה כל צד
זכאי לחזור ולנהל פעולת לחימה.

Cessation of the State of Belligerency 7.7

באם הצדדים יכריזו כי לא רק שלא יבצעו מעשי לוחמה אלא שהם גם מפסיקים
להיות צדדים ללוחמה cease to be belligerents - ישנו ביטול של מצב
המלחמה ביניהם.

מבלי צדדים למלחמה - אין מלחמה. באין belligerents - אין war.

Non-Belligerency 7.8

זהו מונח שאיננו במצא בשימוש באמנות בינלאומיות. הוא ניתן לפירושים
שונים : יש בו שימוש סכני בדיני נאטרליות - כשהינו שלב בין נאטרליות
להפיכה לצד לוחם.

8. ס י כ ו פ :

8.1 צדדים לוחמים רשאים להסכים ביניהם לחדול מלבצע פעולת לוחמה מסויימת
או פעולות מסויימות. אין מניעה מלהתחייב למע מלבצע כל פעולה מלחמתית.
גם במקרה אחרון זה הצדדים בשארים צדדים לוחמים, אולם לוחמתם מתרופנת
כמעט מכל תוכן מעשי.

8.1.1 הסכם מסוג זה יחשב כהסכם בין צדדים לוחמים, דהיינו מסוג

הפסקת-אש או שביתת נשק.

8.2 צדדים לוחמים רשאים להסכים כי הם מפסיקים להיות צדדים לוחמים, דהיינו - מלחמתם באה לקיצה. יש לראות בהסכם מסוג זה הסכם דה-פאקטו לסיום המלחמה.

8.3 הביטוי non-belligerency - אינו מצוי במקורות בהקשר זה, וניתן לפרשו כמתייחס או למצב הפסקת מעשי לוחמה (8.1), או למצב הפסקת לוחמה (8.2) לעיל. על-סמך שימוש טכני בביטוי בדיני הנאוטרליות, יש לראות בו כנראה, סיום לוחמה, דהיינו - המצב המתואר ב- 8.2 לעיל.

מ. רוזן

מ. רוזן

הערוך בנושא של יחסי מלחמה

1. המשפט הבינלאומי - בהלכותיו כפי שהן מבוטאות בחורוניהם של חכמי המשפט, בספרות המקצועית לסוגיה ובאמנות הבינלאומיות - נוהג לחלק את יחסי הגומלין המשפטיים בין המדינות, ל ש ח י אפשרויות פחותות בלעדיות: מצב של ש ל ו ס, מחד גיסא ומצב של מ ל ח מ ה , מאידך גיסא.
 2. תופעות מסוימות ביחסיהן של מדינות, הביאו לכך שמספר מומדים החלו חולקים על החלוקה הבלעדית הזו לשניים וראו מקום להוספת סוג שלישי, ע"י הוספתו להלוקה של מצב המכונה " Status Mixtus ". תיזה זו מעונה הבהרה מסוימת: המשפט הבינלאומי מכיר בזכותן של מדינות לנקוט בנסיבות מסוימות באמצעי כפיה זו נגד - זו, וכאשר אמצעי כפיה אלה מופעלים לא ניתן להסיק מכך בהכרח שנוצר מצב של מלחמה : הכוונה, למשל, לזכות להגנה עצמית או לזכות לעזרה עצמית (נגד עושה עוולה שסירב לפצות את הצד השני על מעשהו). בעת שבאו לסווג מקומם של מעשים מסוג זה - היו סראו אותם, אי-שם בגבול בין דיני המלחמה לבין דיני השלום; יש סווגם כדיני המלחמה מאחר והמדינה הנחקפת זכאית היתה לראותם כנקיטת פעולה מלחמה נגדה. יש כאלה סראו להוסיף סוג שלישי כנ"ל של "מצב מעורב".
- כך אומר ג. שברצנברגר:

"Whether these measures were to be allocated to the laws of peace or war did not depend on any objective test, but on the views taken of these measures by the States directly involved as well as by third parties. If the State against which such measures were applied was prepared to submit to them, compulsory measures short of war remained compatible with a state of peace between the States directly concerned. Even so, third States were free to invoke the law of neutrality in their own relations with the contending parties. If, however, the State against which these measures had been taken chose to treat them as acts of war, it was equally free to take this line. The existence of what, in fact, was an intermediate state between peace and war - a state of relations which partook of the character of peace and war (Status Mixtus) - deprived the states of peace and war of their complementary and objectively verifiable character. The states of peace and war had become essentially subjective phenomena, which were determined primarily by reference to the intentions of the States involved in any armed conflict."

The Law of Armed Conflict, 1968, pp. 39, 40

דעה דומה עולה מדברי מק'דאגל ופליציאנו:

"It is, however, no new thought that this dichotomy (between war and peace) is hardly a faithful reflection of the fluid and complex process of coercion in the contemporary world arena or of the equally complex process of legal authority" (The General Principles of the Law of War, McDougal and Feliciano, 67 Yale L.J., 771, 775 - quoted Whiteman Digest, vol. 10, p. 5).

3. (א)

בהקשר של הנושא שבפנינו צריך, להזכיר כי גם מצב המלחמה בפשטות, אין בסויו דוקא בסכסוך מזוין בין מדינות: יש מקרים בהם קיים מצב מלחמה בין מדינות למרות שאין ואפילו לא היה סכסוך מ ז ו י ן מחסי (כגון) ביחסים בין מדינות מסוימות בדרום אמריקה וגרמניה במלחמת העולם השנייה) או היה סכסוך והוא נפסק מסיבה זו או אחרת. מצב המלחמה נמשך, גם בהיעדר פעולות איבה פעילות, עד שמכונן שלום. מאחר ועסויה לחלוף לפעמים תקופה ארוכה אחרי הפסקת פעולות איבה ממשיכות, מבלי שנחתם הסכם השלום, יכול מצב המלחמה להמשך זמן רב. כדוגמה מזכירים את המלחמה בין פולניה לבין ליטה שנחלקימו ב-1919 (כבוס וילנה ע"י פולניה) ועד לשנת 1937.

לדון אחרת, יש לאבחן בין מצב מלחמה, שאין לו בסויו של לחמה פעילה, אך הוא טריר וקיים מבחינת המספט הבינלאומי, המספט הפנימי של הארצות הנוגעות לענין והיחסים הפורמליים בין המדינות, לבין "מצב הביניים" שתואר בסעיף 2 לעיל ואשר נובע מיחסים שהם בגדר היפוכה של תופעה כמתואר היינו מופעלים אמצעי כפיה עוינים בין מדינות, מ ב ל י שיש לשני וצדדים כוונה לראות בנסיבות שנוצרו מצב של מלחמה.

סיכומו של דבר, מצב מלחמה נמשך כל עוד לא סוים בדרכיה הקבועות לכן, אליהן עוד נחייחס.

אבל גם מצב פורמלי-מספטי של שלום יכול ויהיה מלווה בתופעות של כפיה. כדוגמה למצב זה מביא חברנצברגר אירוע בין הודו לפורטוגל ששאר בסויו בפס"ד של ביה"ד הבינלאומי בהאג:

"The Right of Passage over Indian Territory (Merits) case (1960) between India and Portugal illustrates how, between members of the United Nations, relations may degenerate into a status mixtus. Dadra and Nagar-Aveli, two Portuguese possessions in the Indian peninsula, were enclaves in territory of the Indian Union and accessible from the Portuguese coastal district of Daman only through Indian territory. The

International Court of Justice found that, in principle, Portugal had established her claim to a legal right of passage across Indian territory, at least for private persons, civil officials and goods in general, and to the extent necessary for the exercise of her sovereignty over the enclaves. It qualified this finding, however, by holding that the exercise of this right was subject to regulation and control by India.

Since 1950, India had demanded the transfer to her of the Portuguese possessions in the Indian peninsula, and Portugal treated this request as unacceptable. Then, relations between the two governments rapidly deteriorated until, in 1954, the Portuguese authorities, first, in Dadra and then in Nagar-Aveli, were overthrown. In the view of the matter taken in the majority Judgment, "this created tension in the surrounding Indian territory," and, "thereafter, all passage was suspended by India."

In the Indian view, which was accepted by the Court, the Indian action was justified because of the abnormality of the situation which had arisen in Dadra and the tension created thereby in the surrounding Indian territory. Judges Armand-Ugon and Moreno Quintana even went so far as to describe the situation that had developed between the two countries as a "blockade" and "cold war" between India and Portugal.

"... In this context only one aspect of this case is relevant. It is that, in the Court's opinion, the relations between the two States had taken such a turn for the worse as to justify the indefinite suspension of a right intended to be enjoyed only in normal circumstances. These were hardly peaceful in any other than a purely negative sense and fell only just short of the actual application of force. They amounted to a state of intermediacy between peace and war in the relations between two members of the United Nations." (pp.53,4)

מצב דומה נוצר בין יון לאלבניה אחרי מלחמת העולם השנייה:

"In the Corfu Channel (Merits) case, the World Court assumed that, even under the international quasi-order of the United Nations, "exceptional circumstances" might exist between member States and non-member States. In this case, four factors were held to have contributed to the creation of a status mixtus between Albania and Greece: the absence of "normal" relations between the two countries; the territorial claims made by Greece to a part of Albanian territory bordering on the Corfu Channel; declarations made by the Greek Government that Greece remained technically in a state of war with Albania and, finally, special measures of vigilance taken by Albania on the ground of the danger of Greek incursions. In the Court's view, the impact of status mixtus on the peacetime rules governing international straits led to a considerable relaxation of these rules in favour of coastal States."

4/..

(ב). מכאן לסממן נוסף שיה לחת עליו את הדעה: מצב מלחמה איננו בהכרח חולדה של רצונם המשותף של שני הצדדים המהנגשים זה בזה. לצורך יצירתו או המיכור של מצב של מלחמה מספיקה כוונתו של צד אחד בלבד, אף אם הצד השני נחוש בדעתו שלא לראות בנסיבות הקיימות מלחמה. לחון אחרת, בו בזמן יצירת יחסיה של הלום דורמכתנאי מוקדם, הסכמתם של כל הצדדים ליחסים אלה, הרי לא כן הפוכו של דבר.

לענין זה הנני מפנה לדבריו של פרופסור יוליוס סטון:

"The essentials of war under customary international law are two. International war is a relation of one or more governments to at least one other government, in which at least one of such governments no longer permits its relations with the other or others to be governed by the laws of peace. It is involved in this statement, as has been wittily observed, that while it takes two to make a quarrel, it takes only one government to make a war. The state of peace between governments requires a concurrence of governmental wills; the state of war arises when one of these wills is withdrawn. "A declaration of war" as Lord Stowell once observed by one country only is not... a mere challenge to be accepted or refused at pleasure by the other. It proves the existence of actual hostilities on one side at least, and puts the other party also into a state of war, though he may, perhaps, think proper to act on the defensive only. The nature of the act and intention involved in the relation of war is also difficult of exact statement. Tempting as it may be to do so, "war" cannot be reduced to the concept of violence exerted by one government against another, as by saying that "international war is the state or condition of Governments contending by force". For, despite popular notions to the contrary, international war may exist without violence; and conversely, ~~there may be great intergovernmental violence; and conversely,~~ there may be great intergovernmental violence without a legal state of war. Thus, mere formal declaration of war, without active hostilities (as by China, Cuba and Siam on Germany in 1917, and by most of the South American States in the 1939 war on Germany) nevertheless sets up a legal state of war. A state of war, indeed, existed without military activity on either side for eighteen years between Poland and Lithuania concerning the Polish seizure of Vilna in 1919.

It is submitted therefore that it is not possible to define the intent element of the legal state of war, save in terms of the manifested intent of at least one government no longer to conduct its relations with another or others according to the law of peace. Any narrower formula confronts the inconsistent facts. Such intention may be manifest from a declaration of war, either absolute, or conditional (that is, by way of "ultimatum"). It may also be shown by the nature of hostile measures taken, especially if they are not accompanied by disavowal of the natural inference. On the other hand, mere verbal disavowal of the intent to set up a state of war may not be conclusive if the acts taken can only be explained by assuming such an intent, the disavowal being inspired by collateral motives."

Legal Controls of International Conflicts (1959) pp. 304-306

4. לענין החלוקה לשלש (מצב של מלחמה, מצב של שלום ו"מצב מעורב") צריך להרגיש

כי חלוקה זו אינה מקובלת על משפטני הגוש המזרחי, דבר זה הוא

כמובן בעל חשיבות מיוחדת לגבינו.

כך אומר פרופסור טונקין מבריה"ס:

"We are in full agreement with Professor Lachs who states that "international law does not recognize any intermediate status between war and peace". (Co-existence and International Law - Tunkin, Rucueil des Cours, 95, p. 73).

5. האבחנה המקובלת בין מצב מלחמה לבין מצב שלום - יש לה חוצאות בקביעה כללי

המותר והאסור בין מדינות: אולם יש לזכור, כי דיני המלחמה אינם קובעים קובץ

של כללים המפרטים מה מותר במלחמה אלא היפוכו של דבר:

"International law as applied to warfare is a body of limitations, and is not a body of grants of power".

Danube Shipping Arbitration (1921) 1.R.I.A.A.97

המשמעות המעשית של האסור לעיל היא כי כאשר דנים בטאלה מה הפעולות הסעיף 10

המותרות לצדדים שנמצאים במצב מלחמה הרי אין רשימה ממצה, כי כל מה שלא נאסר

וסוויג בדיני המלחמה, הוא בגדר המותר במצב מלחמה בין מדינות.

6. (א) לענין סיום המלחמה אומר לאומרפאכ:

§ 261. A war may be terminated in three different ways. (1) Belligerents may abstain from further acts of war, and glide into peaceful relations without expressly making peace through a special treaty; (2) they may formally establish the condition of peace through a special treaty of peace; (3) a belligerent may end the war through subjugation of his adversary.

§ 262. The regular modes of termination of war are treaties of peace or subjugation; but cases have occurred in which simple cessation of all acts of war on the part of both belligerents has actually and informally brought the war to an end. Thus ended in 1716 the war between Sweden and Poland, in 1720 the war between Spain and France, in 1801 the war between Russia and Persia, in 1867 the war between France and Mexico, and in the same year the war between Spain and Chile.

Termination of war through simple cessation of hostilities is for many reasons inconvenient, and is, therefore, as a rule, avoided. For the same reason, although cessation of hostilities may in effect mark the cessation of war - as in the case of an armistice or in the form of unconditional surrender - it does not formally bring the state of war to an end. For some purposes, especially in connection with the interpretation of private contracts, courts may treat such actual cessation of hostilities as synonymous with the cessation of war. They have done so occasionally in order to avoid results inconsistent with justice and common sense. In general, however, the intention of the belligerents, as evidenced by the attitude of their Governments, must be regarded as decisive."

Oppenheim - Lauterpacht (Vol. 2 . 1969)

(ב) אשר לדרך הראשונה של יצירת יחסי שלום המתוארת לעיל, היינו ההוצאות האיסית - וועצמית, של גלישה ממצב של מלחמה למצב של שלום, הרי צריך להזכיר כאן כי שאלת הפסקת מצב מלחמה בדרך זו כבר נתעוררה בעבר. באזורנו.

(1) בהחלטה מיום 16 נוב' 48 קבעה מועצת הבטחון, כי לשם הקלת המעבר מההפוגה הקיימת לסלום של קבע בארץ ישראל, החול כביהת נשק בכל חלקי ארץ ישראל. כן קבעה המועצה, שעל כל הצדדים להגיע ללא דחוי להסכם בענין הפעלת כביהת הנשק.

(2) ביום 24 פבר' 49 נחתם הסכם כביהת נשק בין ישראל למצרים, בו התחייבו הצדדים, בין היתר, לקיים בהקפדה את ההוראות של מועצת הבטחון האוסרות סיפוח בכח צבאי לשם פתרון שאלת ארץ ישראל, ולהמנע מכל פעולה חוקפנית ע"י הכוחות המזוינים של כל צד, ולהמנע ממעשה מלחמה או פעולה איבה כלשהם נגד כוחותיו הצבאיים או הצבאיים למחצה של הצד שכנגד. זהו נוסח הסעיף הרלבנטי:

Article 1. With a view to promoting the return of permanent peace in Palestine and in recognition of the importance in this regard of mutual assurances concerning the future military operations of the parties, the following principles, which shall be fully observed by both Parties during the Armistice, are hereby affirmed:

1. The injunction of the Security Council against resort to military force in the settlement of the Palestine question shall henceforth be scrupulously respected by both Parties.
2. No aggressive action by the armed forces - land, sea, or air - of either Party shall be undertaken, planned, or threatened against the people or the armed forces of the other; it being understood that the use of the term "planned" in this context has no bearing on normal staff planning as generally practised in military organisations.
3. The right of each Party to its security and freedom from fear of attack by the armed forces of the other shall be fully respected.
4. The establishment of an armistice between the armed forces of the two Parties is accepted as an indispensable step toward the liquidation of armed conflict and the restoration of peace in Palestine.

בסעיף 12 של ההסכם נקבע, בין השאר, כי ההסכם יחאר בהוקמו עד שיוסג הסדר של חלום-בין הצדדים.

(3) מצרים סברה כי אין בהסכם חביחת הנשק כדי לסיים את מצב המלחמה. במסגרת הפעולות שנבעו מהפיסה זו של המצב המשפטי, פורסם במצרים בשנת 1950 צו מלכותי בדבר המרוצדורה לחפוסים באניות ובאווירונים ולהחרמתן יל סחורות אסורות בקשר למלחמה הארצית-ראלית. צו זה פורסם במסגרת איסור המעבר בחעלת סואץ של הסחורות הבאות מישראל או המיובאות ממנה, והיחה בו מטום הפעלת הזכות לבדיקה, לחפוס ולחפיסה (visit, search and capture), שהיא חלק מן החוק הימי החל בזמן מלחמה. ביישובת "הועדה המיוחדת", שהתקיימה ביום 12 יוני 51 הכריז נציג מצרים בקשר לכך, כי "אנו מפעילים זכות מלחמתית, מבחינה משפטית אנו עדיין במצב מלחמה עם ישראל. חביחת נשק אינה שמה קץ למצב מלחמה. אין היא אוסרת על מדינה את הפעלתן של זכויות מלחמתיות מסוימות".

(4) הטענה המצרית הנ"ל חזרה ונשנתה מאז בצורות שונות. כך הכריז, לדוגמא, נציג מצרים ביישובת מועצת הבטחון מ-5 פבר' 54, כי "אין להכחיש, שבחינה משפטית קיים מצב מלחמה בין מצרים וישראל". הצהרות מאוחרות יותר, אין אורך לחזרה. יוער כי מבחינה המינוח, אין נפקא-מינה אם התחמרו במונח מצב מלחמה (state of war) או במונח "מצב לוחמה" (state of belligerency), יכן הני מונחים אלה זהים למעשה.

(5) מועצת הבטחון לא קבלה בייצתו את הגירסה המצרית בדבר קיום מצב מלחמה: בהחלטה מיום 1 ספט' 51, קבעה המועצה, שהואיל ומחשור חביחת הנשק הייה קיים אז קרוב ללנהיים וחצי הוא דבר שבקבוע, ואין שום דבר יכול לסעון באופן סביר, שהוא צד לוחם אקטיבי או שהוא תובע לעצמו את הזכות של בקור, חפוס וחפיסה. להלן הקטע הרלבנטי של החלטה המועצה:

"Considering that since the Armistice regime which has been in existence for nearly two and a half years, is of a permanent character, neither party can reasonably assert that it is actively a belligerent or requires to exercise the right of visit, search and seizure for any legitimate purpose of self-defence." (S/2322 - 1.9.51).

החלטה זו לא מנחה, כידוע, עמדתה המוצהרת והמעמית של מצרים, ולמותר להדגיש למצרים גורסת כיום, כמו בעבר, קיום של מצב מלחמה אשר הסכם הפסקת האש או הסכם הפרדת הכוחות לא החפיע עליו וגם לא יכול היה להחפיע עליו מבחינה משפטית.

הגירסה המביתח נטק אינה מסיימת מצב מלחמה, מעוגנת בדעותיהם של לא מעטים מחכמי המשפט. כך אומר לדוגמה מון גלאן:

"What legal situation prevails during the life of an armistice agreement? The state of war continues, beyond question, and not only between the belligerents themselves, but also "between the belligerents and neutrals on all points beyond the mere cessation of hostilities." Problems commonly arise in connection with the interpretation of an armistice as to what may be permitted and what has been prohibited. Modern practice indicates that during a general armistice the belligerents must only abstain from undertaking those acts which have been expressly prohibited by the armistice agreement."

Law among Nations (1970) pp. 374-5.

ולעומתו פרופ' סטון:

"An armistice agreement may, under the circumstances of its execution by the parties, have the effect of terminating the war even though no treaty of peace is concluded. This is possible in the case of a comprehensive armistice agreement which, although primarily intended to bring about a cessation of hostilities as such, operates in fact in its practical application by the parties to terminate war between them. This, it is submitted, is largely a question of construction of the particular armistice agreement concerned. Israel maintained before the United Nations Security Council, in its dispute with Egypt in 1951 concerning so-called Egyptian "blockade" of the Suez Canal, that the armistice agreement of 1949 with the four Arab States, Egypt, Lebanon, the Hashemite Kingdom of Jordan, and Syria, ending its hostilities with these States, terminated, as they were applied, the status of war between all parties." (pp. 641-2)

Colonel Levie - דעה המבטירה מחלוקת לכאורה זו היא של
A.J.I.L. (1956) pp. 884-5 -ב

"A matter of major legal interest is that of the juridical status which exists during the period while an armistice is in effect. Is it war, or peace, or some third status? While there has, on occasion, been some rather loose language used with regard to this question, it may be stated as a positive rule that an armistice does not terminate the state of war existing between the belligerents, either de jure or de facto, and that the state of war continues to exist and to control the actions of neutrals as well as belligerents.

The rule stated above has received affirmative judicial approval on a number of occasions. Thus, the United States Supreme Court, confronted with the question of whether the 1918 Armistice had brought about a state of peace, ruled that "complete peace, in a legal sense, had not come to pass by the effect of the Armistice and the cessation of hostilities." Similarly, on November 3, 1944, the French Court of Cession stated that "an armistice convention concluded between two belligerents constitutes only a provisional suspension of hostilities, and cannot itself put an end to the state of war."

A few years ago an incident occurred in the Security Council of the United Nations which has been misconstrued as indicating a rule contrary to that discussed immediately above. Subsequent to the execution of the Israeli-Egyptian General Armistice Agreement, Egypt continued to maintain the "blockade" of the Suez Canal insofar as Israel was concerned. Israel complained to the Security Council asserting that the four armistice agreements had, in effect, terminated the state of war between all of the belligerent parties. Egypt, on the other hand, contended that the state of war continued despite the armistice agreements and that the blockade was legal. The Security Council on Sept. 1 1951, passed a resolution calling upon Egypt to lift its blockade. This action of the Security Council has been construed as indicating that a general armistice is a kind of de facto termination of war. It is considered more likely that the Security Council's action was based upon a desire to bring to an end a situation fraught with potential danger to peace than that it was attempting to change a long established rule of international law. By now it has surely become fairly obvious that the Israeli-Arab General Armistice Agreements did not create even a de facto termination of the war between those states.

הדעה המקובלת היא איפוא כי שביתות הנשק לא סיימו מצב המלחמה. בהסכם שביתת נשק, אשר אינו מבטל כאמור את מצב המלחמה, יש כמובן הטיבות רבה ב פ י ר ו
האינטרסים שיחולו בחסות היוזמו בחוק. הוא הענין בכל הסדר ביניים דומה שאין בו
כדי ליצור מצב של שלום. אומר שברצוננו:

One of the most frequent problems to arise with regard to the interpretation of a general armistice has been the determination of those acts which are permitted and those which are prohibited. There have been two very definite schools of thought on this problem. One school, long designated as the one with the weight of authority behind it, takes the position that during a general armistice a belligerent cannot legally do anything which the enemy would have wanted to and could have prevented him from doing but for the armistice. The other school, long designated as the one with the weight of reasoning as well as the weight of practice behind it, takes the position that during a general armistice the belligerents must refrain from doing only those acts which are expressly prohibited by it. This dispute is apparently as old as history, and is now of historical significance only. Modern discussions of the subject point out the problem of enforcement and the invitation to charge and countercharge inherent in what might be termed the classical approach. In recent years the belligerents have been prone to spell out with particularity all specific acts which are to be renounced during a general armistice. Whether or not this is more conducive to an atmosphere which will lead to a restoration of peace is probably debatable, with strong arguments to be made on either side. Nevertheless, the modern rule appears to be that belligerents may be presumed to have the right to do anything which is not specifically forbidden by the terms of the armistice agreement; and, conversely, that the doing of an act not specifically prohibited, even though the other side could have prevented it but for the agreement on the cessation of hostilities, cannot validly be made the basis for a complaint of violation or for the denunciation of the armistice." (pp. 886)

(ג) לאוסטרפרכס המצוטס בעמ' 6 לעיל מציין כי בדרך כלל נמנעים מן ההסתמכות על הטענה כי המלחמה נסתיימה עקב הפסקת הלוחמה בלבד.

הנסיון מלמד, שמצב זה משאיר פתח לחקופות ביניים בעלח מעמד דו-משמעי וזאת גם במקרים בהם היחה ההכרעה הצבאית חד-משמעית וסופית. לדוגמא: בסנה 1946 הצהיר נשיא ארה"ב על סיום פעולות האיבה עם גרמניה, אולם קבע בו-זמנית, כי מצב המלחמה נמשך; רק ב-1951 הצהירו בריטניה וארה"ב על סיום מ צ ב ה ס ל ח מ ה עה גרמניה.

סכמו של דבר, בעת הסתמכות על מצב ענינים כאמור לעיל העובדות בדרך כלל אינן כה חד-משמעיות עד שניתן להסיק מהן מסקנות ברורות ו ב ה י ע ד ר ה ס כ ס כ ו ב ניתן לפרט את המצב על נקלה לכאן או לכאן. זאת ועוד, היעדר הגדרה מדוייקת של חובות והתחייבויות הדדיות היא כר נוח להתפתחות מחלוקות חדשות.

(ד) הדרך הרגילה ביותר של סיום מלחמה היא כמובן עריכת חוזה שלום.

בהקשר זה, יהיה משום ענין להזכיר הערה של פרופ' קלזן המתייחס לכלל החוזה השלום^{הוא} וכולל את ההתחייבות להסנע מפעולות מלחמה נוספות. הוא מציין שלאחר הנערך הסכם, יש לראות כל פעולות מלחמה בין הצדדים כבלתי חוקיות. וכחפרה של חוזה השלום; אולם, מוסיף פרופ' קלזן, אם השמלה של צד לוחם חסין לבצע פעולות לחימה חוץ הפרה הסכם השלום, הרי לא יסתיים מצב המלחמה לכרות קיומו של החוזה. אי לכך, לא חוזה השלום בלבד הוא המסיים את המלחמה, אלא קיום ההתחייבויות אותן נטלו על עצמם הצדדים לחוזה הוא שמביא לסיומה של המלחמה.

(ה) לענין מכתיו ומשמעותו של הסכם שלום אומר פרופ' סטון:

"Where the conditions are otherwise normal, and there is no grave divergence of policy among the victorious belligerent States, the usual method of terminating war between belligerents is by peace treaty. A modern treaty of peace is a complex document, which seeks to deal with every concrete question that can possibly affect the past or future relations of victors and vanquished. The main provisions are usually contained in the so-called "general clauses", which deal with the cessation of hostilities, the resumption of peace, the evacuation of territory under military occupation, the restoration or retention of captured property, the repatriation of prisoners of war, and the revival or

or abrogation of treaties in force before the war. The treaty may be accompanied by other instruments, treaties of reparations, treaties of guarantees and the like, as indemnities for the past and as security for the future (as seen in the Japanese Peace Treaty and associated security treaties signed at San Francisco in September, 1951). In the absence of any express contrary provisions in the treaty itself, certain general rules (or rather presumptions) of international law apply. (1) On all points on which the treaty is silent, the principle *uti possidetis*, referred to above, applies both to movable and immovable property. (2) A peace treaty will be presumed to become operative as from the date of signature. Where the terms of the treaty are doubtful, however, it is in general a question of interpretation of the treaty itself whether its provisions are to come into force upon signature, or only as from ratification by all the parties, or even as from some date earlier than signature. (3) Insofar as the treaty is silent - and that will hardly be the case with the more modern kinds of peace treaties - the rights of the parties will be subject to the *ius postliminii*, that is to say subject to the restoration to the status quo ante on matters, such as the condition of persons, other than such matters or things as remain subject to the *uti possidetis* rule (that is, property captured or acquired). Thus, in general, while property captured or acquired may be retained under the latter rule, prisoners of war are entitled to return to their respective countries, the legal disabilities of former "alien enemies" are removed, and diplomatic relations and the contractual freedom of the citizens of both States affected are re-established under the post-liminius principle."

7. (א) מן הראוי להבהיר כאן מחדש מספר האלות הקצורות במינוח

המקובל. כפי שצויין כבר הרי מצב של war ומצב של
belligerency הם היינו הך; הוא הדין כמובן בענין
היפוכו של דבר - termination of war

ו- termination of belligerency
הם פעולה בעלת משמעות זהה.

נוסח מקובל אחר הוא שימוש בכילה cessation
במקום termination, אם כי המונח האחרון
ברור יותר ובעל משמעות קבועה יותר.

(ב) כאן המקום להצביע על הבדל בין
cessation or termination of state of belligerency (or
state of war)
לבין termination or cessation of acts of belligerency (or acts of war).

כפי שנאמר - הפסקת מצב לוחמה - פירושו שינוי מצב
המלחמה למצב של שלום. ית בכך שינוי של סטטוס. אולם
אם מצהירים על הפסקת פעולות (acts of belligerency)
פירושו הלכאורי של מונח זה הוא כי
מצב המלחמה הבסיסי אמנם נקאר בחוקף, אך הצדדים מוותרים
רק על הזימות בזכות, העומדת להם בזמן מלחמה, לנקוט
בצעדי לוחמה. לחון אחרת - הסכמה להימנע
מפעולות לוחמה, היא הסכמה-ביניים בעל אופי של
דביחת נדק קבועה, אך אינה מסנה את המהות הבסיסית של
היחסים.

נוסח ההסכם קובע מהו היקף ההתחייבות, היינו -
מאלו מעשי לוחמה הצדדים מתחייבים להימנע. אין
כמובן מניעה מהפסיית לכך שהצדדים יתחייבו להימנע מכל
מעשי איבה בעלי אופי כלשהו. עם זאת אריך לאזכר כי
מאחר ומצב המלחמה יוצר מעמד מיוחד ביחסים בין מדינות,
ובין היתר גם מעניק זכויות לצד לוחם שאינם בגדר
פעולות לוחמה, הרי כל עוד אין סיום מצב
הלוחמה, ראוי להאזין לכך, להסרת כל ספק, שהסכם
מעשי, הבא להסנה מן הקיים, ילבש צורה ניסוחית הן
של הצהרה על הימנעות מפעולות לוחמה והן של הצהרה

על וויתור על זכויות לוחמה, כגון:

the parties declare on the termination of
all acts of belligerency and renounce all
rights of belligerency.

8. הביטוי הסכמי non-belligerency איננו קשור בדרך כלל במינוח של המשפט הבינלאומי לפסקת לוחמה בין צדדים במצב מלחמה. ביטוי זה התפתח במלחמה העולם השנייה בעיקר כדי לציין מצב של מדינה נייטרלית או של מדינה בעלת נטיה לאחד מן הצדדים הלוחמים. באמנת ג'נבה החליטות ס-1949 מדובר, לדוגמה, על חבויים ונקלשו בארצו של neutral or non-belligerent powers (סעיף 4(ב)(2)). יותר מדויק לכן לדבר על הספקת מצב לוחמה היינו - termination of state of belligerency.
9. כסיכום קצר של הנחונים שהובאו לעיל ניתן לומר:
- (א) יש המחלקים את המצבים או היחסים האפשריים בין מדינות למצב של שלום ולמצב של מלחמה.
- יש המוסיפים מצב-ביניים הקרוי status mixtus המתויחס, בעיקר, ליחסים בין מדינות שהן מורמלית במצב שלום, אך התגלעו ביניהם סכסוכים בעלי ביטוי אלים, מבלי שאחד מהן החליט להכריז על מלחמה.
- (ב) משפטני הגוש המזרחי מקפידים על חלוקה לחניים בלבד - מצב שלום ומצב מלחמה.
- (ג) המונחים state of war ו-state of belligerency הם זהים במשמעותם.
- (ד) לענין הכרעה בטאלה אם קיים מצב מלחמה או לאו, מספיקה דעתו של אחד הצדדים. אם אחד מן הצדדים גורס כי עדיין קיים מצב של מלחמה, הרי ההכרעה היא על-פיו.
- (ה) הדעה המקובלת כיום היא כי חביתת נטק איננה מסיימת מצב של מלחמה.
- (ו) חביתת נטק וכל הסכמה דומה - יוצרים הפסקה בפעולות האיבה, בהיקף ובמידה שפורטו בהם.
- אם הסכם כאמור מופר על-ידי אחד מן הצדדים, חוזרים הצדדים למצב לוחמה כפוטו.

(ז) יש לאבחן בין הצהרה על הפסקת מצב מלחמה או לוחמה לבין הצהרה על הימנעות מפעולות לוחמה. הצהרה מן הסוג הראשון - מניחה את הסטטוס. הצהרה מן הסוג השני היא בגדר הצהרה של ויתור על זכויות העומדות לצדדים, הממשיכים מבחינה מעשית, להיות ביחסי מלחמה.

(ח) כאור הצדדים מצהירים על ויתור על זכויות לוחמה או הימנעות מפעולות לוחמה, יש חשיבות-משנה לפירוש המעשי של אותם מעשים מהם מתחייבים הצדדים להימנע. לסיון אחרת, בהעדר הצהרה חד-משמעית על מצב מלחמה, הרי פירוש ההתחייבויות מצביע על כך אם מדובר ל מ ע ס ה על הסכם הביתח נסק גוסף ומסוכלל יותר או על ויתור כולל על כל האמצעים וההוצאות של המלחמה, כפי ביטויים במשפט הבינלאומי ובמשפט הפנימי של הארצות הנוגעות לענין.

מאיר שמגר

כ"א חשרי תשל"ה
7.10.74

✓ מ. א. ל. כהנא

20/5/75

אל : מר א. מילוא, לשכת שה"ח

מאתחל: משפחתי המשפטי

הגדון : חנות דעתו של שבחאי רוזן

1. לצערי עלי לחלוק על דעתו של מר שבחאי רוזן.
2. ישראל מעולם לא עמדה על כך כי קיים מצב מלחמה עם מצרים. מרבית בטענה מצריה, ועל סמך טענה זו פעלו המצרים בעת מביעת שייט ישראלי וכד'.
3. מאידך, אין ספק כי אילו מצרים היום היתה מודיעה כי היא לא במצב מלחמה אחבו, ניתן לפרש זאת כהסכמה לגבי גבולות, החזקת שטחים וכד'.
4. זאת בתנאי שלא יוסכם אחרת בין הצדדים.

ב כ ר כ ה ,

מ. רוזן

החומות - 1975 - (החלק) / א. ל. כהנא

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הקדמה למצבים פנימיים או איונה

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Sept 11/10 to 12/10

הוא יסוד מן המהות והוא

~~הנהגת אדם אחד~~

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Nixon and Jewish Political Power:

During the 1968 Presidential campaign, Richard Nixon, in an unpublicized meeting at his former Fifth Avenue apartment with 14 prominent Jews, said he was well aware of a pro-Arab bias in the State Department, which he promised to consider in reaching decisions.

Mr. Nixon also told the group: "I intend to have many Jews in my Administration, not because they are Jews but because they are smart."

Nearly four years later, the President's relationship with the U.S. Jewish community remains a delicate one. The doors of the White House remain open to Jewish groups, but there is no one there to whom their leaders feel they can talk.

Mr. Nixon has a few personal links to the organized Jewish community, such as Jacques Torczyner, 57, former president (1965-70) of the Zionist Organization of America and one of the few men who have led a professional Jewish group and also are strong Republicans.

Despite the Nixon-Torczyner relationship, most Jewish leaders view the White House record toward their political interests as one of indifference.

Influence: A political analyst, speaking privately, said: "The Jewish influence in this country is divided between votes and money. Jewish donations to political causes are out of proportion to their numbers and over-all wealth. This has some influence on all candidates, but Nixon is not nearly as influenced as any Democrat would have to be."

"Jewish political power has been all but ignored by the Nixon circle," said Warren Adler, a Washington-based public relations and advertising man who represents several Jewish groups, including the Jewish War Veterans.

Adler, who worked in the 1968 Nixon campaign and then served until 1970 as a \$25,000-a-year consultant on Jewish affairs to the Republican National Committee, said he was "personally disappointed" by what has happened and added: "There is a trade off. American Jews get nothing. The President takes care of Israel, because it fits in with the grand design of his global strategy."

The Governor of a large state has said that Mr. Nixon once told him: "I owe nothing to the American Jewish community, but I'm not going to let that affect my support of Israel."

There are about 3 million potential Jewish voters. Large blocs of Jewish voters live in New York, Pennsylvania, California and Illinois. According to a post-election analysis by the GOP, the President received about a third of the 350,000 Jewish votes in California (which he won) and about 20 per cent of the vote nationwide in 1968.

Challenge and response: The chief complaints voiced against Mr. Nixon's "Jewish" record are that:

- He has not spoken before any Jewish groups since taking office, although he has addressed, for example, the Catholic Knights of Columbus.

- He has broken the 20th century custom of a "Jewish seat" on the Supreme Court. None of the six persons he nominated to the Court is Jewish.

- He has named relatively few Jews to high positions in his Administration and none to his Cabinet.

A Nixon friend who is Jewish responded to these allegations, but he asked not to be quoted by name.

Regarding Mr. Nixon's decision to decline speaking invitations from Jewish groups, the friend said: "With the Middle East situation as sensitive as it is, that subject is obviously going to come up before a Jewish audience and that's not the kind of thing you can discuss with candor on a public platform."

Regarding Mr. Nixon's decision to drop the "Jewish seat" on the Supreme Court, the friend said: "There are only nine persons on the Supreme Court. Do you have to make sure there is also a Baptist on the Court? I don't know whether there is a Baptist there or not. The point is, they don't make it an issue. Why make it an issue for the Jewish people? Such issues are raised only by 'professional' Jews."

Regarding the naming of Jews to the Administration, the friend said: "I don't think the average Jewish voter cares a hoot whether a Jewish person has been appointed by the President to any particular office."

A better test, the friend said, lies in the President's character. As he put it: "In an off moment, when a person isn't being careful about what he's saying, he might make some crack. I've known him (the President) since 1946 and never once have I heard him make a crack or reference about anybody of the Jewish faith that could be considered out of line in the slightest."

The inner circle: Jews working in the White House include Henry A. Kissinger, assistant to the President for national security affairs, and Leonard Garment, a special consultant to the President (for civil rights and arts and humanities).

Other Jews in high Administration positions include Herbert Stein, the new chairman of the Council of Economic Advisers; Arthur F. Burns, chairman of the Federal Reserve System's board of governors, and Walter H. Annenberg, the U.S. Ambassador to Britain. Murray M. Chotiner, a long-time political adviser to the President, who resigned as his special counsel last March to join the Washington law firm of Reeves and Hamilton, is Jewish.

Garment—Adler, the former GOP Jewish consultant, observed, "When you are Jewish and close to power, you may develop a new point of view."

"No one is now assigned by Nixon as his (staff) conduit to the Jewish community. The President, in all probability, sees Garment as carrying out this role, but Garment does not see himself in this role."

"Garment is a Yeshiva (religious school) graduate, who went to Brooklyn College and on to a Wall Street law firm. He does not want to be tagged as the White House Jew. When problems come up, he tells people, 'You have to let me handle this my way. I know how these people think.'"

Garment said he does not spend a substantial amount of time on "Jewish" problems.

"I've called on him once or twice," a Washington spokesman for a Jewish group recalled. "I don't think he wants to become involved."

Fisher—The President's principal liaison man to the Jewish community is Max M. Fisher, 63, a Detroit millionaire, named by *The Detroit*



ש מ ר

ח' בסיון תשל"ה
18 במאי 1975

אל: שר החוץ.

מאת: שבתאי רוזן

אדוני השר:

מר אבן, בראיונו בעהון "מעריב" מיום 9 במאי 1975, מצטט "תזכירו של משפטן ישראלי" שלדבריו הוא קיבל בשעתו, והוא מונח על שולחנך. אם אותו תזכיר הוא כפי שצוטט, הרי הוא אינו מציג נכון את המצב המשפטי, ולכן אני מצרף תזכיר משפטי המרצה באופן תמציתי אותן נקודות שהוזכרו בצורה לא נכונה ע"י העהון.

אוסף, כי אינני יודע מיהו "משפטן ישראלי" זה, ולא ראיתי את המסמך הנזכר. לצערי, ישנם אנשים החושבים שאני נושא באחריות לתזכיר הנידון, והם תמהים על כך. אבקש גם להביא את זאת לידיעתך. אבקש סליחתך על שהתזכיר כתוב אנגלית. יש בכוונתי להעביר העתק מתזכיר זה למר אבן אלא אם תורה אחרת. לדעתי -- ובלי כל קשר לפולמוס שנחשורר עקב הראיון הנידון, חשוב להעמיד אותו על השגיאות שבתזכיר המשפטי אשר בידיו.

בברכה



CONFIDENTIAL

MEMORANDUM OF LAW

1. In his interview in Maariv, 9 May 1975, Mr Eban is quoted as citing from a memorandum by an unnamed "Mishpetan Israeli" to the effect that according to the precedents and rules, the termination of a state of war (matzav milchama) by Egypt could be interpreted as acquiescence by Egypt in Israel's annexation of all the territories remaining in Israel's control [sc. after a new disengagement agreement]. Mr. Eban, the interview continues, put the question to a number of other unnamed renowned specialists in international law, all of whom confirmed that view. The interview continues:

"The United States refused to terminate the state of war with Western Germany [!] until after relations were established with it. With Japan the United States terminated the state of war seven years after the war [sic]. The legal status of a state of war affords the sole justification for Egypt to continue to claim territories, just as the existence of a state of war affords the sole justification for Israel to occupy territories outside the area of its sovereignty."

The interview goes on to state that the same memorandum was before the present Minister for Foreign Affairs during the recent negotiations with Dr. Kissinger.

2. The undersigned has never seen the memorandum to which Mr. Eban referred. He does not know who wrote it, what were the questions it was designed to answer, who were the outside specialists in international law later consulted, or in what way any question was put to them. Nor is he familiar with the "precedents and rules" alluded to. However, it is his view that the law as stated in that interview is incorrect and inadequate as a basis for policy and tactical decisions in serious diplomatic negotiation.

3. The present memorandum of law will therefore survey in a summary form:

- (a) The relationship of "state of war" to Egypt's right to claim the restoration of Sinai;
- (b) The relationship of "state of war" to Israel's right to remain in temporary occupation of Sinai;
- (c) The relevance of the German and Japanese precedents as explained in that interview;
- (d) Certain general considerations.

(a) "State of War" and Egypt's Claim to Return of Sinai

4. With respect, it cannot seriously be contended that Egypt needs any legal justification to claim the return of its territories (assuming the Sinai to be Egypt's), and least of all does it require the existence of a formal state of war for that purpose. I do not recall that such a point of view has ever been put forward before by or on behalf of the Government of Israel, nor am I aware of any such position having been taken by or on behalf of the Government of Egypt or any pro-Arab spokesman. Indeed, from some points of view the existence of a formal state of war would knock many of the props away from any legal justification Egypt could have for claiming the return of those territories before a final settlement. The reason is that Egypt lost them as a result of military action which took place during the subsistence of that very state of war (assuming a state of war to have existed, but that is another matter).

5. The confusion here probably arises from the accepted and as far as I know unquestioned rule of public international law that war of itself (and conceived both as a de jure and as a de facto condition) does not operate to transfer sovereignty over territory from one belligerent to another, and that for sovereignty over occupied (or other) territory to be transferred even after a war, agreement between the transferor and the transferee is necessary. (In many textbooks this rule is stated as if a formal peace treaty is required for this purpose, but modern practice is shy of classifying treaties, and I do not think that it is necessary to be so precise.) That indeed is the correct meaning of the much abused and much misunderstood Spanish aphorism "La victoria no da derechos". The expression was first used in that very sense by the Foreign Minister of Argentina in his note of 27 December 1869, quoted in full in fn 47 of my article "Directions for a Middle East Settlement — Some Underlying Legal Problems" published in Law and Contemporary Problems, vol. 33 (1968) 44. I received that text at the time from my friend Ambassador Ruda, Permanent Representative of Argentina to the UN (and on the Security Council in 1967), and he confirmed to me this correct interpretation of the phrase as originally used.

6. If any jurist, Egyptian or other, working in good faith had any apprehensions of the nature mentioned in the legal memorandum to which the newspaper referred, they could have been overcome by good craftsmanship, and making use of all existing materials of positive international law. Had the Egyptian delegation not been persuaded, it would have been reasonable to conclude that the element of good faith was absent from their negotiating position.

(b) "State of War" and Israel's Right to Remain in Sinai

7. For Israel to rely on the existence of a state of war as the sole (or possibly any) justification for the initial occupation and for the continuing occupation of Egyptian or other territory is extremely problematical. In fact it just does not make sense. I would be hard put to it to set up a reasonably convincing case along those lines, with any measure of self-assurance that I could persuade friends and colleagues in the various legal circles in which I move. Nor am I aware of any responsible pro-Israeli public statements which base themselves on this kind of contention. But more than that: we do not need this kind of argument. The UN Charter, especially Articles 25 and 51, and various other documents of UN doctrine and jurisprudence, are more than adequate. This would include above all Security Council resolutions 242 (1967) of 22 November 1967 and 338 (1973) of 22 October 1973, and General Assembly resolution 2625 (XXV) of 24 October 1970, adopting the Declaration of Principles of International Law on Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. Security Council resolution 242 is the first Security Council resolution to use the word "peace" (see fn. 41 of my article quoted in paragraph 5 above). It would be tempting also to look at Security Council resolution 95 (1951) of 1 September 1951, but that could lead to other difficulties because of our position vis-à-vis the armistice régime. That notwithstanding, some of its underlying principles and concepts (as well as some of those of the armistice régime) can still no doubt be put to good use. A plethora of good presentations of Israeli (and Arab) positions has recently been published under the sponsorship of the American Society of International Law, edited by Professor John Moore, entitled The Arab-Israel Conflict (Princeton, 1974), and I recommend that more critical use be made of it, especially volume II, both for diplomatic purposes and for more general hasbara work.

8. General Assembly resolution 2625 (XXV) was quoted in the Rabin-Nixon Joint Communiqué of 1974, and has thus acquired respectability for diplomatic purposes. I mention this because when it was being drawn up (1963-1970) both Israel and the US maintained a number of serious reserves at this Declaration.

9. In its context Security Council resolution 242 justifies both the initial and the continuing occupation of Arab territory, until the agreement for which it calls is reached. That is confirmed by resolution 338. In both cases this was quite deliberate, and I utterly fail to understand why we have to throw away all the good arguments which we have, and for which our diplomacy worked, which are solidly anchored in UN doctrine and jurisprudence, and run after quite chimerical theories which cannot be backed up with any sound legal reasoning.

(c) The Relevance of the German and Japanese Precedents

10. Reliance on "precedents" of the termination of the state of war with Western Germany (was the US ever in a state of war with that country?) and Japan may miss the point. In neither case was the UN Charter relevant (cf. Article 107). In both instances there had been a formal declaration of war

and state of war both for internal and for international purposes, and in both cases the point of departure for post-1945 developments was the unconditional surrender. The wars were brought to an end in stages, some of which (e.g. with the Axis satellites) follow the classical precedents such as those of Versailles (1919), but in the case of Germany and in some respects Japan broke new ground.

11. The first stage after the unconditional surrenders of 1945 was the proclamation by President Truman of the termination of hostilities of World War II on 31 December 1946. Whiteman, 10 Digest of International Law:89 (1968). That was an instrument of domestic law, and specifically did not terminate the state of war as an international matter.

12. On 24 October 1951 President Truman issued another proclamation announcing the termination of the state of war with Germany as from 19 October. Whiteman, *ib.*, at 90. That date was fortuitous, and related to the completion of the relevant proceedings in the Congress. Two of the recitals of that proclamation may be recalled:

"Whereas it has been and continues to be the policy of the United States to bring about the conclusion of a treaty of peace with the government of a united and free Germany, but efforts to this end have been frustrated and made impossible for the time being, by the policy of the Soviet Government;

"Whereas the rights, privileges, and status of the United States and the other occupation powers in Germany, and the rights and privileges of the United States and its nationals to which it or they have become entitled as a result of the war, as well as the right to exercise or enforce the same, derive from the conquest of Germany and the assumption of supreme authority by the Allies and are not affected by the termination of the state of war;

The inclusion of such preambular paragraphs should put the reader on his guard against blind following of these precedents in other circumstances. On this phase in general, see Mosler & Döhring, Die Beendigung des Kriegszustands mit Deutschland nach dem Zweiten Weltkrieg (Berlin & Köln, 1963).

13. The termination of that formal state of war was a stage in a process. That process involved the setting up of the two German States and their Governments, their integration into the Western and Socialist worlds, the establishment of formal relations between the Occupying Powers and "their" Germany (and parallel relations on the part of the allies of the occupying powers), the adjustment of relations between the individual countries of the Western and Socialist groups with each part of Germany, the settlement of other outstanding European questions arising out of the war, and so on. This process was largely finished by the middle of 1973, when the two German States reached agreement between themselves, and their simultaneous admission into the UN provided an umbrella for their unspoken territorial settlement. There is no German peace treaty, and probably there never will be one.

14. Israel was drawn into this process with Western Germany, also in stages. Late in 1950 Israel was asked by the three Western Powers to take a similar unilateral step to terminate the state of war. For reasons not here relevant Israel declined to take that step. Israel Government Yearbook, 5712 (1951-2), Hebrew edition, p. 64, English edition, p.92. Later, having reached its own settlement of its claims, it was able to establish normal diplomatic relations with Western Germany without the formality of any formal step to terminate a state of war (which might or might not have existed in the period commencing 3 September 1939).

15. Since what was involved in Germany is a process, great caution is needed against selectively picking out any isolated incident and using it, without regard for its context, as a basis for a theoretical construction of our relations with Egypt. On the other hand, due regard may legitimately be had for the process as a whole. In the summer of 1973 I wrote to the then Minister for Foreign Affairs drawing his attention to the German precedent, and in particular the agreement between the two German States, and suggested that the German precedent in its entirety contained elements upon which we could build. I continue to think that we could draw much benefit from a close study of that precedent, and that it contains legal elements that properly used could assist in overcoming current political and diplomatic difficulties.

16. In the case of Japan, the evolution followed more closely the classical pattern. The 1951 Peace Treaty terminated the formal state of war for those countries which were parties to it, and other arrangements were made for the future of the American presence in the country. The Peace Treaty also formalised territorial dispositions as between its parties. These did not include the USSR. The state of war between the USSR and Japan was terminated by the entry into force of a Joint Declaration of 19 October 1956, while negotiations for a peace treaty were stated to be continuing. Whiteman, ib., at 92.

(d) General Observations

17. I have a strong impression that some of our difficulties can be traced to faulty terminology and mistranslations into Hebrew of complex notions. In many cases, general agreement among the most highly qualified publicists of the various nations (Statute of the International Court, Article 38) on the meaning and content of these notions does not exist. I have in mind such abstractions (in the legal sense) as "belligerency", "state of belligerency", in some respects "state of war", and the like. It will be recalled that Security Council resolution 95 (1951) carefully refrained from employing abstract language and spoke in concrete terms of the exercise of "the right of visit, search and seizure for any legitimate purpose of self-defence". That resolution also laid down that in the circumstances, "neither party can reasonably assert that it is actively a belligerent."

18. I have never been prepared to state categorically that as a matter of law the relations between Israel and the Arab States come within the definition of relations of a state of war. I do not recall that Israel has ever claimed to base its actions against Arab States on such a relationship,

or to be entitled on that basis to exercise belligerent rights against third parties (although admittedly some isolated examples can be found in a contrary sense, e.g. some aspects of the Beirut Airport incident of December 1968). There are several reasons for this, some philosophical and some intensely practical. In the first place, it is extremely difficult to determine what the expression "state of war" really means in a situation such as ours in which none of the formalities such as a declaration of war have been observed -- even if since World War II these formalities may be regarded as largely irrelevant. It is virtually impossible to indicate what are all the implications of legal "state of war" in our context. There is a general questioning in qualified circles, which competent legal advice cannot brush aside, whether the legal condition of "war" is compatible with the legal régime emanating from the UN Charter. But deeper than that, it has to be asked whether any Israel interest is really served by insistence, on its part, that it accepts that its relations with the Arab States are legally those of war, governed by the traditional laws of war? Is there not room for apprehension lest acknowledgement by Israel of the existence of such a state of war would lead to the application of neutrality legislation in different countries? Considering the frequent and widespread attacks on the tax-exempt status of the UJA, for example, or on the flotation of Israel Bonds in foreign countries, I would never discount that risk. And what would its implications be, for instance, on the legal standing of the Arab blockade and boycott, posited as legitimate incidents of economic warfare on Israel? And what of the fact that the Arab States too exhibit ambivalence on this score? De facto war of course there is, and it can be brought to an end in a de facto way. This requires above all concentration on its factual manifestations in all the circumstances, avoiding hasty and perhaps superficial employment of this or that quasi-technical expression of unclear meaning and implication.

Shabtai Rosenne

19 May 1975

Shabtai Rosenne

הסדרים חוזיים - הערות כלליות

1. עלתה השאלה מה משמעותם וערכם היחסי של הסדרים חוזיים לסוגיהם ובמה החלופות השונות נבדלות זו מזו.

אתיחס על כן לחלופות האפשריות העיקריות כאשר אך מובן הוא שבמסגרת זו לא ניתן אלא לציין נקודות איפיון מרכזיות.

2. הערות כלליות:

הסכם בין שני צדדים בא להעלות על הכתב את סיכומיהם והסכמתם ההדדית. הוא בא לשקף קונסנסוס, היינו - הבנה על נקודות מוסכמות. יש ועריכתו במסגרת או במתכונת ידועה מבטאת כשלעצמה את מגמתו העיקרית, כגון כאשר נערך "שטר-מכר" אשר על-פי כותרתו מצביע על כך שהתנאים שיפורטו בו באים לפרט סדריו ותנאיו של מכר, היינו - העברת הבעלות בנכס פלוני מאיש לרעהו; אולם גם כאשר הכותרת או המתכונת הכללית מצביעות על מטרתו ותפקידו של המסמך, יש חשיבות לפרטי תנאיו כי כל הסכם יתפרש עפ"י מילותיו הכתובות.

זאת ועוד, תהיה הכוונה של הצדדים אשר תהיה, הרי חוזה כתוב יתפרש עפ"י מילותיו וכמעט מן הנמנע הוא שפרשנות הרקע תוסיף על הדברים שסוכמו בו. לשון אחרת, יש להשתדל לבטא בהסכם במדויק ובאופן מלא כל הניה אשר רוצים לכלול בו ואין לסמוך על ההנחה, המוטעית כאמור, כאילו ניתן יהיה לאחר מכן להוסיף על האמור בו על-ידי התייחסות לדברים שהם כאילו מובנים מאליהם לאור רקעו הכללי של ההסכם.

סיכומן של הערות כלליות אלה:

יש חשיבות להקפדה על כך שהנוסח יתקף כוונת הצדדים, ושהמתכונת הכללית (הצורה, הכותרת, ההסדרים המהותיים) יהיו תואמים את מטרתו.

3. מן הראוי להציג את ההסכמים לסוגיהם תוך נסיון לארגנם לפי סדר חשיבותם ומשקלם. לשון אחרת, עלינו לבחון באיזו מידה מסוגל נוסח נתון של חוזה להביא לשינוי ביחסים השוררים בין מדינות ובמיוחד - מה הסגולות הדרושות להסכם כדי להטות סטטוס של מלחמה לסטטוס של שלום.

4. הדרך המקובלת להפיכת יחסי מלחמה ליחסים של שלום היא עריכתו של הסכם שלום, היינו - הסכם אשר מעיד על עצמו על-פי כוונתו ושמו, כי הוא חוזה שלום. בכותרת כמובן לא סגי, אלא גם ההוראות המהותיות של החוזה מכילות במקרה כגון זה הודעה מפורשת כי הצדדים למסמך החליטו לסיים את מצב המלחמה ולכרות שלום ביניהם.

יש מקרים בהם מתבטא אומדן המחזאר של הסכם השלום לאו דווקא בסעיף סובסטנטיבי אלא בכותרת ובמבוא בו נאמר כי מאחר והצדדים להסכם החליטו לסיים את מצב המלחמה ביניהם ולהחזיר את השלום ביניהם, הם הסכימו ביניהם על הפעולות, התנאים או כיוצ"ב, כפי שמפורט בהסכם. הסעיפים המהותיים מהיחסים במקרה כגון דא להסדרים הטריטוריאליים, לסעיפים המדיניים וכדומה, והאופי של הסכם שלום נובע כאמור מן הכותרת ומן ההצהרה המשותפת במבוא. זאת כמובן בהנאי שההסדרים המפורטים בחוזה אינם סותרים מגמתו.

5. המינוח "הסכם שלום" או "חוזה שלום" מייצג גישה לדברים כפשוטם, ואיננו מותיר מקום לספיקות בדבר מהות היחסים אשר בכוונת הצדדים ליצור ביניהם.

אנו מודעים לכך כי יצירת יחסי שלום נובעים מן הסיום של מצב לוחמה. לשון אחרת, במשפט הבינלאומי מקובל בדרך כלל לחלק יחסיות של מדינות, אחת לרעותה, ליחסי שלום או יחסי מלחמה, ואם מסתיים קיומו של אחד מן המצבים קט ומחקיים אוטומטית המצב מן הסוג השני. אם מסתיים מצב הלוחמה (מנה שהוא זהה למונח מצב המלחמה), הרי נוצר מצב של שלום.

היום הלוחמה או יצירת מצב של שלום אין גירושם עדיין כי נוצרים בין שתי הארצות יחסי ידידות, קשרים דיפלומטיים או קשרים כלכליים, כי יש ומדינות נמצאות במצב שלום אך אינן מקיימות יחסים דיפלומטיים זו עם זו, ואין ביניהן קשרי מסחר, מדע, תרבות או כיוצ"ב, והן אף אינן נכונות ליצור יחסי מסוג זה. מכל מקום - סיום הלוחמה משמעותו סיום מצב המלחמה ואם מזהירות מדינות בהסכם ביניהן על סיום הלוחמה, הרי הסכימו בכך על יצירת יחסי שלום. כדי להסיר ספק, יש להבהיר כי הסכם בדבר חוס מצב הלוחמה אין פירוטו כי הוסדרו בין המדינות כל הבעיות החלוציות ועומדות ביניהן, ואף הסכם שלום יכול להשאיר בעיות

תלויות ועומדות כפי שכבר הוסכם לעיל. כך ניתן לקבוע בהסכם שלום (ובמובן גם בהסכם בדבר חום הלוחמה) כי הסדרים טריטוריאליים ייערכו בנפרד, אחרי דיון בפורום שיקבע או בדרך אחרת (משאל עם, לדוגמה), וכי אין בהסכם כדי הכרה בגבולות טריטוריאליים.

סיכומה של נקודה זו: אחרי שראינו שהדרך הראשונה והמועדפת היא כריחת "חוזה שלום", הרי נציין עתה כי החלופה השנייה בדירוג היא חוזה בדבר סיום הלוחמה.

6. גם כאשר נכרת הסכם בדבר חום הלוחמה, ראוי לפרט בהסכם את ההסדרים המעשיים אשר הם ביטוי לחום הלוחמה. במלים אחרות, למרות שתום הלוחמה פירושו יצירת מצב של שלום, הרי דווקא אי נקיבת המונח "שלום" יש בו כדי להצדיק הבאת פירוטים המתייחסים בעיקר לאותם תחומים בהם באה הלוחמה לידי ביטוי מעשי. (השימוש בכוח כפשוטו, לוחמה כללית, לוחמה מדינית, תעמולה עוינת וכדומה).

7. אם ההסכם איננו הסכם מפורש של יצירת יחסי שלום ואף איננו הסכם הכולל הצהרה חד משמעית על סיום מצב המלחמה, הרי יש להביא בחשבון כי כל הסכם שייצרך בין הצדדים בנוי שייך על ההנחה הבסיסית שמצב המלחמה ממשיך להתקיים. יוער כאן כי קיומו של מצב מלחמה איננו שולל מבחינה משפטית הבינלאומי את האפשרות של עריכת הסכם בין הצדדים, אולם נוסים תמיד לפרש הסכמים אלה על הרקע הבסיסי של הסטטוס המלחמתי הממשיך להתקיים. אמרנו לעיל כי גם כאשר הצדדים מסכימים ביניהם על סיום מצב הלוחמה, מן הראוי לפרט מה יהיו הביטויים המעשיים של המעבר מן הלוחמה לשלום. דבר זה מקבל חשיבות מכופלת כאשר לא מדובר על הסכם בדבר חום הלוחמה אלא כאשר קיימת כוונה לוותר על מעשים לסוגיהם המותרים בין צדדים שנמצאים במצב מלחמה. ההבדל בין הסכם או הצהרה על הפסקת לוחמה (termination of belligerency) לבין הסכם על גמר פעולות לחמה (termination of acts of belligerency) הוא בכך שההצהרה מן הסוג הראשון משנה את הסטטוס בו בזמן שהצהרה או הסכם מן הסוג השני הם בגדר הצהרה של ויתור על זכויות ועומדות לצדדים הממשיכים מבחינה משפטית להיות ביחסי מלחמה.

מכאן שמתחייב הפירוט של הוראותיו של הסכם, בעיקר כאשר אין סיום של המלחמה משמעותו של ההסכם נקבעת כאמור על-פי הוראותיו. בין מדינות הנמצאות במצב מלחמה יכולים להיווצר הסכמים מסוגים שונים, החל מהסכם הפסקת אש מקומי לשם פינוי הרוגים, וכלה

בהסכמ בו מסכימים הצדדים על הימנעות מפעולות לוחמה מוגדרות. אם רובים על כן שהסכם יפורש כהסכם הבא לבטא ויתור הדדי רחב ככל האפשר על פעולות לוחמה, ואיננו רק הסכם שביתה נטק נוסף, הרי יש בסירוס של הפעולות מהן מתחייבים להימנע, חשיבות עוד רבה יותר מאשר בהסכם בדבר תום לוחמה או שלום.

8. כסיכום ביניים ניתן, אישוא, לציין כי אלה הן החלופות העיקריות:
(א) הסכם שלום;

(ב) הסכם בדבר סיום מצב הלוחמה;

(ג) הסכם ובו התחייבות להימנע מפעולות לוחמה מוגדרות איך מסמכותו נקבעת באופן בלעדי על-פי פירוש ההתחייבויות הכלולות בו. מאחר ומצב הלוחמה ממשיך להתקיים, הרי כל דבר שלא הוסכם להימנע ממנו נשאר בגדר המותר.

9. במסגרת חלופה רביעית בדירוגה ניתן להזכיר ההתחייבויות בלתי ישירות. בהקשר זה צריך לזכור כי הסכם מחייב בין הצדדים שערבו אותו וזכרון דברים בין ישראל לארה"ב לא מחייב את מצרים. היינו - גם אם מצרים מתחייבת כלפי ארה"ב לפעולה או לאי-עשייה פלונייה, הרי אין בכך כדי ליצור הסכם מחייב בין ישראל לבין מצרים. משקלה של ההתחייבות כזאת הוא לכן בעיקרה מדינית ולא מספטית, וגם משקלה המדיני מותנה בכך באיזו מידה ניתן לתת פוטנציאל להתחייבויות הכלולות בה. לו הייתי רוצה לסווג ההתחייבויות בלתי ישירות מסוג זה לאור נסיון העבר הייתי מדרגן כך:

(א) מסמך בעל נוסח זהה אשר נשלח על-ידי ארה"ב הן למצרים והן לישראל ונחתם בנפרד בין ארה"ב לבין מצרים ובין ארה"ב לבין ישראל כאשר כל צד מקבל העתק מן המסמך החתום על-ידי הצד השני.

(ב) מסמך מצרי לארה"ב והבאת חוכם לידיעתנו במסמך החתום על-ידי רשות מדינית של ארה"ב.

(ג) הודעה על כוונות, היינו - מסמך של ארה"ב המבהיר ומפרש את הכוונות המצריות על-פי שיחות (להבדיל מהתבססות על נוסח כתוב) בין גורמים מצריים לבין גורמים אמריקאיים. למותר להדגיש כי פרשנות זו משמעותה מועטת ביותר מכיון שחסר בה אפילו הסממן של ההתחייבות מצרית כלפי ארה"ב.

10. לטיכום, להלן סוגי המסמכים לפי סדרם מן הכבד אל הקל ביותר:
(א) הסכם שלום;

(ב) הסכם בדבר סיום הלוחמה;

(ג) הסכם בדבר סיום פעולות לוחמה;

(ד) הסכם שביתה נשק או הסכם הפרדת כוחות;

(ה) מכתבים בעלי נוסח זהה בין ארה"ב, מצרים וישראל;

(ו) מכתב של מצרים לארה"ב ושל ארה"ב לישראל;

(ז) מכתב של ארה"ב המפרט או מפרש כוונות מצריות;

המסמכים מסוג (ה), (ו) ו-(ז) לעיל אינם יוצרים התחייבות בין ישראל למצרים.

מסמכים (א) ו-(ב) מסיימים מצב מלחמה. מסמכים (ג) ו-(ד) משאירים מצב המלחמה בעינו.

11. הערה: באשר לבדיקה של המשמעות של המונחים שלום, מלחמה והפסקת לוחמה, בהקשר שבפנינו, הנני מפנה לחוות-דעתי (הערות משפטיות בנושא של יחסי מלחמה) מיום כ"א בחסרי תשל"ה (7.10.1974).

כ"א באדר תשל"ה
4 במרס 1975

מאיר שמגר

11/8/74

ס ו ר י :

אל : המנכ"ל
המשנה למנכ"ל

מאת : היועץ המשפטי

הנדון : מה ניתן לתבוע ממצרים תמורת נסיגה נוספת

1. במידה ומצרים תסכים להצהיר שתם מצב הלוחמה בינה לבין ישראל - תשתמע מהצהרה זו הכרה מצרית בחוקיות החזקת שטחים מצריים כל שהם בידי ישראל.

2. לאור הנ"ל, מבחינת מצרים תתכן אולי הצהרה כנ"ל רק במידה והיא תהיה מלווה בתוספת ש :

2.1 "סוף מצב הלוחמה בין מצרים וישראל איננו מהווה הכרה מצרית בחוקיות החזקת שטחים מצריים על-ידי ישראל".

2.2 סוף מצב לוחמה הינו בתוקף לתקופה מוגבלת.

2.3 הדעה המקובלת במשפט הבינלאומי היא שניתן להחזיק שטחים "כתוצאה מלוחמה רק בתור " belligerent occupation ". דהיינו - כיבוש של עיתות מלחמה. מצב משפטי זה איננו מקנה ריבונות למדינה המחזיקה בשטח זה.

2.3.1 קיים גם מצב של occupation של עתות שלום - לצורך ערובה לביצוע הסכם. מצב זה היה קיים לגבי שטחים מסויימים במסגרת הסכם השלום מ-1919.

2.3.2 יש לציין מקרה יוצא דופן בנדרון אשר יכול לחזק דרישת ישראל להצהרת על הפסקת לוחמה (והוא החלטת מועצת הבטחון מה- 1/9/1951): בהתייחסה לחופש המעבר בתעלת סואץ קבעה מועצת הבטחון :

Considering that since the Armistice regime, which has been in existence for nearly two and a half years, is of a permanent character, neither party can seasonably assert that it is actively a belligerent or requires to exercise the right of visit, search and seizure for any legitimate purpose of self-defence (S/2322 - 1, September 1951).

2.3.2.1 על ישראל לשקול אם רצוי שהיא תסתמך על תקדים זה - מאחר והמצרים יוכלו לטעון שבמידה וישראל מסכימה היום ששביתת-הנשק מ-1949 בתוקף הרי שהם מוכנים להצהיר על סיום מצב הלוחמה בתנאי שישראל חשוב לגבולות של 1949.

בתמורה לנסיגה בוספת יש לחבוע ממצרים : 3 ✓

3.1 ✓ התחייבות שמצרים לא תנקוט בכל פעולה מלחמתית יזומה על-ידה ולא תסייע לכל מדינה אחרת בניהול פעילות בגד ישראל (בים, ביבשה ובאוויר), לרבות ע"י הסלת הסגר ימי.

3.2 ✓ מצרים לא תיזום ולא תסייע לכל מדינה, ארגון ופרט בביצוע פעולות מעין צבאיות כגון פעולות חבלה בישראל או מחוץ לישראל בגד מוסדות ישראלים או מוסדות יהודיים ולא-יהודיים.

3.3 ✓ מצרים תימנע מניהול ארגון ותכנון כל פעילות חבלנית שנועדה לפגוע באינטרסים של ישראל משטחה היא. - והתחייבות זו חלה לגבי פעילות מצרית גם מחוץ לגבולותיה.

3.4 ✓ מצרים תימנע מפעילות שנועדה לפגוע באינטרסים הכלכליים של ישראל, ותבטל את החרם הכלכלי על כל צורותיו.
היא תבטל השתתפותה בכל ארגון בין-ערבי או אחר - שנועד לפגוע באינטרסים כלכליים של ישראל. X

3.5 ✓ מצרים תימנע מפעילות מדינית עויינת בגד ישראל הכוללת בין היתר : הפעלת לחצים על כל מדינה שהיא לנתק יחסיה עם ישראל או פעילות באירגונים בינלאומיים בגד ישראל.

- 3.6 ✓ מצרים תבטל את כל ההסתייגויות שלה הנוגעות למנוע כיבוד הסכמים ב"ל כלפי ישראל. היא תבטל כמו-כן כל חקיקה מצרית פנימית שנוגדת להפלות לרעה חברות או אנשים זרים המקיימים קשרים עם ישראל.
- 3.7 ✗ מצרים מתחייבת לא לפגוע בחופש המעבר של אזרחים ישראלים הנמצאים בשטח ריבוני מצרי בכלי שיט או כלי טיס.
- 3.8 ✓ מצרים מתחייבת שלא לפגוע וכן למנוע פגיעות בחופש המעבר של אזרחים המגיעים דגל ישראל בתעלת סואץ. עם פתיחת התעלה לשיט, התחייבות זו חלה גם על חופש המעבר של אזרחים ישראלים.
- 3.9 ✓ מצרים מתחייבת שלא לפגוע בחופש המעבר של מטענים הממוענים לישראל או הנמצאים במעבר מישראל - והמועברים בכלי שיט כל-שהם בתעלת סואץ.
- 3.10 ✓ מצרים מתחייבת לאסור ביהול תעמולה עויינת לישראל באמצעי התקשורת הממלכתיים וכן היבה מתחייבת לנקוט בכל הצעדים הדרושים בכדי שכלי התקשורת הלא-ממשלתיים יימנעו מפרסום תעמולה עויינת לישראל ולציבור.
- 3.11 ✓ מצרים מתחייבת שלא לדרוש או לגרום בכל דרך שהיא - להוצאת כוחות האו"ם הנמצאים במזרח-התיכון, אלא תוך הסכם הדדי בינה לבין ישראל.
- 3.12 ✗ מצרים מתחייבת שלא לפגוע בחופש הפעולה של כוחות האו"ם, וכן לכבד את חסינותם של כוחות אלו וחסינות השטח בהם כוחות אלו פועלים.
- 3.13 ✗ מצרים מתחייבת לכבד את גבולותיה הנוכחיים של ישראל, את שלימותה הטריטוריאלית ואת עצמאותה המדינית.
- 3.14 ✗ מצרים מתחייבת שלא לפגוע באופן ישיר או בלתי-ישיר, בכל דרך שהיא, לרבות בדרכים מדיניות, קשרי החוץ של ישראל, לרבות קשרי התעופה, השייכים המסחר והתקשורת.
- 3.15 ✓ מצרים מתחייבת לאפשר השתתפותם של אזרחים ישראלים בכנסים בינלאומיים ו בכנסים איזוריים המאורגנים על-ידי האו"ם, הסוכנויות המיוחדות של האו"ם וכל אירגון בינלאומי שהוא, בין אם מארגון הכנס הוא בינממשלתי או לאו.
- 3.16 מצרים מתחייבת לשתף פעולה עם ישראל בכל פעילות המאורגנת על-ידי מוסדות בינלאומיים איזוריים או כלליים, ואשר נועדו לפתח את האזור ולמנוע מגפות וכדומה.
- 3.17 ✗ מצרים תאפשר לכלי שיט וכלי טיס להגיע לשטחה גם אם פקדו במל או שדה-תעופה ישראלי במהלך נסיעתם.
- 3.18 ✗ חופש המעבר המפורט בהסכם זה חל על כל אדם או חפץ הנמצאים בכלי שיט או כלי טיס (לשקול אם לכלול גם מעבר חופשי למכוניות).
- 3.19 ✓ מצרים מתחייבת לכבד את פירוזם המלא של השטחים המפוזרים על-ידי ישראל. הסדר מיוחד באשר למעמד שטחים אלה ייחתם בנפרד.
- 3.20 ✓ מצרים מתחייבת לכבד את איזורי דילול והגבלת כוחות כפי שייקבע בהסכם.
- 3.21 ✓ מצרים וישראל מבטלות באופן הדדי כל תביעות לפיצויים על בזקי מלחמה, לרבות בזקים או הפסדי רווח שנגרמו כתוצאה מהמלחמות שהתחוללו באיזור מאז 1948.

- 3.22 ✓ מצרים מתחייבת שלא להרשות חניית כוחות צבא סדירים ובלתי-סדירים בשטחה.
- 3.23 ✓ מצרים מתחייבת לבטל חברותה בכל ברית צבאית אשר עלולה לחייבה להפר התחייבויותיה כלפי ישראל במסגרת הסכם זה.
- 3.24 ✓ מצרים מתחייבת שלא להצטרף לכל הסכם, לרבות ברית צבאית והעלול לפגוע בישראל באופן ישיר או בלתי ישיר.
- 3.25 ✓ מצרים מתחייבת להשתתף בועדה (צבאית) מצרית-ישראלית שנועדה להבטיח יישום התחייבויות הצדדים.
- 3.26 ✓ מצרים מתחייבת שלא להפריע למעבר אניות המניפות דגל ישראל במים טריטור-יאליים מצריים.
- 3.27 ✓ מצרים מתחייבת לכבד סעיפי הסכם זה ולהעדיפו על פני כל הסכם אחר במידה וקיימת סתירה בין הוראות הסכם זה וכל הסכם אחר.
- 3.28 ✓ מצרים מתחייבת לנקוט בכל הצעדים החוקתיים והחוקיים הדרושים ליישום הסכם זה בחוק הפנימי שלה.
- 3.29 ✓ מצרים מתחייבת להחיל הסכם זה על כל תאגיד או אדם הנמצאים בשטח הנתון בשליטתה.
- 3.30 ✓ הסכם זה יהיה בתקף כל עוד לא נחתם הסכם חדש במקומו.
- 3.31 ✓ מצרים מתחייבת שלא להעניק מקלט מדיני בשטחה למי שבצע או ביסה לבצע פעולה עוייבת בגד ישראל או מוסדות ישראלים יהודיים או אחרים שמקיימים קשרים עם ישראל - והנמצאים בישראל או מחוצה לה.
- 3.32 מצרים לא תסייע למדינה המנהלת פעולות איבה נגד ישראל.
- 3.33 (סעיף אלטרנטיבי) :
- מצרים מתחייבת שלא תנקוט בכל פעולה צבאית שהיא הפוגעת או העלולה לפגוע בחופש המעבר בימי, או השייט בנתיבי מים בינלאומיים כלשהם, לרבות הים-התיכון, תעלת סואץ, ים-סוף, מפרץ סואץ, מפרץ אילת, מיצרי טיראן ויובל, מיצרי באב-אל-מאנדב וכל תחום ימי שהוא.
- התחייבות זו חלה גם על בתיבי טייס מעל לנתיבי המים. אין בהכללת סעיף זה משום פגיעה או המעטה מהעקרון של חופש הימים המקובל במשפט הבינלאומי.
- 3.34 ✓ במידה וקיימת סתירה בין הסכם זה לדין כלשהוא במישור הפנימי - תינתן עדיפות להסכם זה על כל סעיפיו.
4. הנדלים יסודיים בין ההסכם המוצע והסכם שלום : פרט אם יוסכם אחרת -
- 4.1 ✓ ההסכם הנ"ל נחתם על-ידי מפקדים צבאיים.
- 4.2 ✓ ההסכם איבנו כפוף לאשרור.
- 4.3 X ההסכם איבנו שם קץ למצב לוחמה.
- 4.4 X ההסכם איבנו כולל הכרה בגבולות הקיימים.
- 4.5 X ההסכם איבנו כולל הקמת יחסים דיפלומטיים.

PROPOSAL FOR FUNCTIONAL NEGOTIATION WITH THE
GOVERNMENT OF JORDAN

1. The Government of Israel considers that discussions could profitably be initiated between Israel and Jordan, on a functional level concerning problems common to both countries apart from those connected with the problem of the Palestinians, ⁸⁵ on the status of the West Bank. There is every reason to believe that this approach would commend itself to the Jordanian Government, especially since the Jordanian Prime Minister expressed the following similar views on the 6th February, (at an educational Congress in Akaba).

"Jordan regards itself as a state directly involved in the confrontation, and as having an interest in the process of reaching a settlement, whether or not it takes part in negotiations concerning the West Bank."

2. The Government of Israel suggests that the following topics would form a suitable basis for discussion:

- (a) Water Resources

- (1) Problems of salinity and pollution ;
 - (2) Equitable allocation of water resources between the states ;
 - (3) The establishment of a joint committee to deal with these problems.

- (b) The Resources of the Dead Sea Region

- (1) Joint exploitation of phosphates and other mineral resources ;
 - (2) Common marketing of such resources ;
 - (3) The establishment of a joint trade route for this purpose.

- (c) Boundary Problems

- (1) The exact delimitation of agreed boundaries between Israel and Jordan;
 - (2) Methods for dealing with accidental incursions into each others territory.

(d) Aviation

- (1) Mutual arrangements for overflight with regard to each others aircraft, and the aircraft of third countries ;
- (2) Mutual landing rights ;
- (3) Cooperation for the prevention of air disasters;
- (4) General cooperation between Ben-Gurion and Amman airports in matters of international aviation.

(e) Shipping

- (1) Cooperation in the control of shipping to and from Elat and Akaba including cooperation in the prevention of accidents ;
- (2) Cooperation in the avoidance of pollution on the coastline and territorial waters of Elat and Aqaba.

(f) Free Port Facilities

Exploration of the possibility of Israel granting free port facilities to Jordan on the Mediterranean.

(g) Tourism

- (a) The joint development of tourism, particularly in the areas of the Dead Sea, and Elat-Aqaba;
- (b) Facilitation of tours to the holy places in both countries by Christian pilgrims ;
- (c) Facilitation of the transit ^{of} by tourists between the two countries ;
- (d) Recognition by each country of driving licences issued by the other ;

(h) Weather Forecasting

Development of joint programmes of weather forecasting.

(i) Pest Control

Joint development of pest control for agricultural purposes.

(j) Public Health and Hygiene

Mutual cooperation in these fields, especially with regard to the control of epidemics .

(k) Crime Prevention

- (1) Joint measures to prevent trafficking in drugs;
- (2) Joint measures to prevent smuggling ;
- (3) Development of mutual extradition procedures ;
- (4) General cooperation in crime prevention and detection under the auspices of Interpol.

(l) Commercial Relations

- (1) Freedom of trade between the two countries;
- (2) Freedom of transit for commercial products;
- (3) Joint marketing of agricultural exports;
- (4) Grant of most-favored-nation status ^{in respect of} to agricultural and industrial products;
- (5) Termination of boycott practices.

(m) Legal Relations

- (1) Mutual recognitions of Court judgments;
- (2) Mutual enforcement of judgments;
- (3) The right of advocates of each country to appear before courts and tribunals of the other country.
- (4) Cooperation in service of legal documents;
- (5) Cooperation in the tracing of official records and documents ;
- (6) Withdrawal of reservations to international conventions.

(n) Communications

- (1) Cooperation in postal communications and telecommunications;
- (2) Cooperation with regard to the determination of radio and television frequencies.

(c) Financial Relations

- (1) Negotiation of Clearing Agreements;
- (2) General Cooperation in financial matters between the State Banks of each country.

13.2 75.



לשכת שר הבטחון

16.2.75

יג/17

לגמקן בלבד

-אישי-

לכבוד
מר שמחה דיניץ
שגריר ישראל
ושינגטון

הנדון: פרויקט פתוח יפני - ירדני - ישראלי

בתמיכת ארה"ב.

לפני זמן מה הציע קונצ'רן חברות יפני תכנית פתוח כנ"ל. התכנית הובאה ע"י מר פורסקי FURASAKI אל שהב"ס מר ש. פרט, עמו הנו מקיים מגע אישי מזה שנים רבות. התכנית מתבססת על העובדה שהפיתוח נעשה במפעל האשלג שלנו בסדום ע"י בניית סכר בים המלח, יצר מצב נוח להפקה מוגברת של האשלג גם בצד הירדני. ההצעות כוללות 3 רעיונות: מפעל אשלג משותף בצד הירדני (ע"פ הנתון האישי דלעיל), מסילת כרזל לאורך עמק הגבול בערבה לטווק האשלג של שני המפעלים, וסתקן התפלת מי ים בין אילת לעקבה (רעיון אחרון זה נוסף בעת המו"מ עם פורסקי בישראל וטרם עוכל כהלכה בצד היפני).

הקונצ'רן היפני מבסס את הרעיון של מיסוך זול ע"י גיצול כספים מוקפאים הנמצאים בבנק של יפן ושחרורם דורש אסור אמריקאי. כספים אלה שמציאותם כמעט "טורית" מהוים את הסכומים שנאספו בשעתו ע"י יפן לצרכי החזרת חובות מלוות השיקום שקבלה מארה"ב לאחר מלחמת העולם השנייה. הכסף לא נלקח ע"י ארה"ב והוקפא. בדרך כלל לא נוצל בעבר, והאפשרות לנצלו לא הועלתה וכך כמעט "נשכח". פורסקי סגר שראש הממשלה טנקה שוחה אודות קרן זאת עם מזכיר המדינה בעת בקור האחרון ביפן. הרעיון להשקיע באשלג בירדן ובישראל הועלה עתה ע"י הקונצ'רן בפני השרים הנוגעים בדבר ביפן, והבנק היפני לייצוא וייבוא מוכן לעשות זאת, בתנאי שארה"ב תביע תמיכתה ברעיון מנקודת ראות מדינית וכלכלית (דהיינו תאשר שחרור הסכומים הדרושים מתוך הכספים נמוקפאים).



שהב"ט העלה את הנושא ב- 14.2.75 בשיחה עם מזכיר המדינה, שהביע
נכונות להמוך ברעיון בכללותו. פרטי הצד הכלכלי לא הועלו, ויש מקום
להכנס עתה לפירוט.

אנו מודיעים על ההסכמה העקרונית למורסקי, ויש להניח שכתוצאה מכך
תצאנה משלחות יפניות לירדן לישראל ולארזה"ב על מנת להכנס למו"ט מפורט.

אנא, הזכר הנושא בהודמנות קרובה, כולל ענין הקרן המוקפאת. אנו
נודיעך על כל התפתחות בצד הירדני והיפני.

היפנים מבקשים שנמייחט לענין הקרן כאל נושא חסוי וניטטר מוליפתו.
כן יש לראות בשלב זה את כל העסקה כנושא עדין וחסוי.

ב ב ר כ ה

פרופ' יובל נאמן
יועץ בכיר לשר הבטחון

22-4-75
א. גולן
262

העתיקים: שר הבטחון
מנכ"ל משרד החוץ

Q
2/2/73
December 13, 1973

Dear Madam Prime Minister,

I have read Ambassador Keating's report of his conversation with Foreign Minister Eban regarding Israel's objections to the joint US-USSR letter to the Secretary General which would convene the Geneva Conference of December 18. I am also aware of your oral note to Secretary Kissinger objecting to the letter. I must tell you in all candor I am disturbed over these reports. For weeks we have been in intensive negotiations and we have achieved with great difficulty a draft letter which protects fully all of Israel's vital interests.

Of the three issues which Foreign Minister Eban has raised, we have achieved the deletion of the words "and 339". However, the other two points cannot be accomplished. Your Foreign Minister has said that your Government is opposed to the greatly enhanced role which the letter accords to the UN and the Secretary General. But the letter does not do this. The Secretary General does not have a substantial role. His role is specifically limited and symbolic. Moreover, you must appreciate, Madam Prime Minister, that this Conference is being convened under Resolution 338 and it is unavoidable that in this sense it should be convened under UN auspices.

As to your final suggestion that the sentence providing for discussion of participation of the Palestinians during the first stage of the Conference be deleted, I want to stress that the present formulation does not in any way prejudice the question. This is a major achievement since all other participants wanted the letter to embrace decision in principle in favor of Palestinian representation. Moreover, as you know in accordance with accepted international procedure the participation at an appropriate stage of the Conference of any possible additional state, group or organization will require the agreement of all the initial participants who will have the right to decline to negotiate with any state, group or organization to whose participation they have not agreed. I have approved a formal understanding to this effect.

I conclude with this final thought, Madam Prime Minister. I want to say in all solemnity that if Israel now fails to take a favorable decision to participate in the Conference on the basis of the letter that we worked out, this will not be understood either in the United States or in the world and I will not be able to justify the support which I have consistently rendered in our mutual interests to your Government.

I urge that you transmit promptly your favorable reply.

(-) Richard Nixon

ירושלים, ט' בסיון תשל"ה
19 במאי 1975

א ל :

הצוות מניח כי האופציות הפתוחות בפני ישראל בג' נכה הן :

(א) העלאת תביעה להסכם שלום תוך מו"מ להתווית גבולות כדי לקבוע גבולות בטוחים ומוסכמים כהתאם ל-242. מאחר שתביעה זו היא המבטאת את העדיפות הראשונה שלנו לא יתכן שלא להעלותה בוועידה.

(ב) חידוש המו"מ על הסכם ביניים בסיני.
המו"מ עצמו יוכל להתנהל : (1) בועדה הצבאית הישראלית-מצרית;
ו-2) באמצעות השירותים הטובים של ארה"ב. אין העלאת הצעה זו סותרת את החתירה להסכם שלום שכן היא מבוססת על שיטת ה-"צעד-אחר-צעד" שתכליתה לקדם שלום.

(ג) כנ"ל (ב), תוך הכעת נכונות למו"מ על "פתרון כל הבעיות ולשלום" עם סוריה וירדן.

(ד) העלאת הצעה להסדר כולל שאינו הסכם שלום במובן המלא עם כל המדינות השכנות אך המשתית את היחסים על ביטול כל פעולות הלוחמה ויוצר מצב דה פקטו של ביטול מצב הלוחמה.
הצעה זו תועלה : -

- (1) לאחר שיתברר שאין סכוי להתקדם לפי אופציה א' ו-ב' ;
- (2) לאחר גיוס תמיכת ארה"ב להצעה (מצ"ב תזכיר המפרט הצעה זו).

לקראת ועידת ג'נבה

הצעה להסדר כולל (שאינו הסכם שלום)
עם כל המדינות השכנות

לו ניתן היה להשיג שלום מלא ואמיתי עם מדינות ערב בשלב הנוכחי, היתה, כידוע, ישראל מוכנה להרחיק לכת מאר בנושא השטחים. מאחר שאין להניח ששלום מלא הוא יעד שניתן להשיגו וזאת משום שאין בכוחה של ישראל לשנות את העמדה הערבית השוללת שלום עם ישראל בדורנו - מתבססת ההצעה המובאת כאן על שורה של הנחות, ואלו הן :

- (א) ישראל שוללת נסיגה עד לקווי 1967 תמורת "הסכם שלום" (כהצעת סאדאת בתזכירו ליארינג, פברואר 1971). "הסכם שלום" זה יהיה במקרה הטוב, ובתנאי שחפזת הבעיה הפלסטינית, הסכם בדבר ביטול מצב המלחמה בלבד.
- (ב) על ישראל להכין תכנית שתקיף את כל הגזרות ולא רק גזרת סיני, וזאת על מנת למנוע חבלה מצד מדינה או גורם שאינו בא על סיפוקו.
- (ג) שינויים בגבולות (כולל שינויי רכונות) יתכנו רק על בסיס מוסכם וכחלק מהסדר שלום.
- (ד) על ישראל לבנות את חברתה, משקה ועוצמתה. לשם כך זקוקה היא למצבים של רגיעה וליכולת לנצח במלחמה - אם זו תכפה עליה - בצורה שתגזור על האויב תקופת התאוששות ממושכת ככל האפשר.
- (ה) התכנית הישראלית לא תחבסס על ההנחה שניתן כיום להשיג הסכם שלום פורמלי. ההסכם יושחת על שלום דה פקטו או על בטול מצב המלחמה דה פקטו. (ואריאנט : ישראל תחתור להשגת התחייבות בדבר ביטול מצב המלחמה) ועל קווים בני הגנה. כן תתבע ישראל להשיג שורה של תמורות מדיניות מהערבים ומשך זמן סביר (עשר שנים).

(ו) ישראל תסכים לנהל את המו"מ על בסיס ההכרה (~~בניסוח מסוים~~) ברבונות של מצרים על סיני, של סוריה על רמת הגולן ושל ירדן על הגדמ"ע (ועזה?) גם אם לא תחזיר את כל השטחים בכל הגזרות. הכרה ישראלית זו תוענק בתמורה להכרה ערבית בזכותה של ישראל להשאר ברצועה שמעבר לקווי 1967, בשטחים שהיו ברבונות המדינה הערבית. ~~גורלם הסופי של שטחים (רצועות)~~ אלה שהם חיוניים כיום לבטחון ישראל ~~לא יוכרע בהסדר זה.~~

(ז) אין הכרח שההסדרים עם המדינות הערביות השונות יהיו ~~לפי דגם~~ ^{לפי} אחד.

(ח) ההתקדמות לשלום עם מדינות ערב תיעשה בהדרגה.

ע י ק ר י ה ה צ ע ה

שני הצדדים יסכימו להגיע לשלום על בסיס 242 ו-338. בדרכם אל השלום יעשו שני הצדדים הסדרים משמעותיים שיכללו: נסיגה ישראלית לקו מוסכם (קו בטחון ישראלי), בהתאם ללוח זמנים מוסכם. נסיגה זו תחבצע תוך 2-3 שנים. פרק זמן זה נחוץ לישראל לבניית תשתית אלטרנטיבית להגנה על קו הבטחון החדש (פרוט קווי הבטחון בשלוש הגזרות, ר' להלן). ישראל תשאר בקו החדש פרק זמן ארוך יחסית, שנים (למשל, 7-10 שנים). הווה אומר: סה"כ משך ההסכם, כולל משך הזמן עד להיערכות בקו החדש, יימשך 9-13 שנים. זמן זה יבטיח לישראל הלכה למעשה, סיום לוחמה ומצב כטחוני טוב בהרכה ממצבה הנוכחי ויעניק לה מירב האופציות כדי למנוע בעוד מועד הפרה חד צדדית של ההסדרים. ישראל תזכה כשורה של תמורות מדיניות מהערבים. השטח שיפונה יפורז, הפיקוח על הפירוז יהיה באחריות או"ם או בפיקוח משותף בנוסף לאו"ם, התשתית הצבאית, הנמצאת בשטח אשר יפונה תיהרס ויוטל איסור על הקמת תשתית חדשה. יתכנו דילולים כרצועות שבשליטת שני הצדדים מעבר לשטחי הפירוז.

יצויין כי תקופה מעין זו הנקובה לעיל, אשר בה ישראל תשאר בקו החדש וברצועה שמעבר לקווי 1967 הוזכרה בשיחות עם ד"ר קיסינג'ר.

K. : I would not exclude it if we could, say, get back to the last 20 kms; whatever it is... Then I think we could stage it over a period of time. Not ten years either, in my view.

(Transcript, Feb. 11, 1975,
p. 13, afternoon session)

בשיחותיו עם האמריקנים בהקשר לנסיגה עמוקה
ולפרק הזמן שישראל תהיה זקוקה עד שהיא
תוכל להיערך בקו הבטחון החדש, הזכירה ישראל
תקופה של 2-3 שנים.

עוד בקיץ 1974 מסר לנו קיסינג'ר שפהמי אמר
לו כי תמורת הקו אל עריש - ראס מוחמד תהיה
מצרים מוכנה להסכים לתקופה של שבע שנים.

יש לקוות כי במשך תקופה זו של כ-10 שנים תשופר באופן רדיקלי האווירה ביחסים
בין ישראל למדינות ערב עד שבסוף התקופה ישרור שלום ותהיה נכונות לנהל מו"מ
על שלום אמיתי.

הסכם עם מצרים ומדינות ערביות אחרות, כמתואר לעיל, אמור לפטור את שני הצדדים
מלהתדיין עתה על הגבולות הסופיים (כנאמר בסיף ו' לעיל).

הסדרי הבטחון (רצועות בשליטת צה"ל, פירוזים וכו')

ב-10-15 השנים הבאות נודעת חשיבות לבעיית גבולות הבטחון (העומק האסטרטגי). יש
צורך למצוא סידורים שיעניקו לישראל תחליף נאות למרכיב זה. בהעדרו של תחליף
כזה תהיה ישראל נצבת מול מצוקות צבאיות אם וכאשר תכפינה עליה מלחמות בפרק
זמן זה.

יתכן כי גם לאחר שיעשו סידורים נאותים תיאלץ ישראל לחיות בצל סכנת מלחמה אך
תנאי הפתיחה שלה למקרה של מלחמה לא יהיו גרועים
הפתיחה הנוכחיים.

התחליף האפשרי לשליטה בלעדית בשטחים אסטרטגיים הם סידורים - פרי הסכם עם
הערבים - אשר יבטיחו :

- (1) מניעת הקמת תשתית למתקפה.
- (2) קביעת אזורי בטחון ומאחזים אסטרטגיים.
- (3) הקמת מערך התרעה.
- (4) פירוזים, דילול, מניעת כניסת כוחות זרים ועוד.

(1) מניעת הקמת תשתית למתקפה

קיומה של תשתית צבאית (מתקנים וכוחות) במרחבים מסויימים עלולה לסכן את שלימותה של מדינת ישראל. מבחינה זאת - פירוז סיני, יהודה ושומרון, רמת הגולן ודילול כוחות בגזרות אחרות בהן אין לישראל עומק (גזרת הגלעד, הערבה, ואפילו בחורן ודרום לבנון) הם חשובה נאותה, כתנאי שיקבעו "כללי משחק" למניעת ההפרה. יצויין כלהלן :

- (א) ההפרה תיחשב ל"קזוס בללי" בתודעה העולמית, הערבית והישראלית וינתן לכך ביטוי משפטי.
- (ב) קיום מרחב התרעה גדול יאפשר אז גיוס הצבא בזמן. דבר זה מותנה במערך התרעה של Realtime. בתקופת רגיעה יאפשר מרחב ההתרעה הגדול את החזקת הקווים ע"י כוחות קטנים במינימום של עומס בטחוני (דוגמת המצב ששרר לפני 1967).
- (ג) כוונות ויכולת מצד צה"ל, במקרה של הפרת הסטאטוס קוו, להפוך את תשתים המפורזים לשטחי השמדה של כוחות האויב המתרכזים בהם או תפישת תוואי המפתח בהם בטרם תפושם האויב.
- (ד) מערכת פיקוח אמינה על הפירוז.

(2) אזורי בטחון

נקודת המוצא בקביעת אזורי הבטחון היא כי גם אם לא תפעל כיאות מערכת הסדרי הפירוזים והדילולים (כפי שאירע בעבר) עדיין ניתן יהיה למנוע הוצרות סכון משמעותי לשלימותה של ישראל. דבר זה יושג ע"י קביעת שטחים בטחוניים בשליטת צה"ל (ולא בשליטת גורמים אחרים, או"ם וכו').

בגזרת סיני

ייקבע מרחב קדמי (אזור בטחון ישראלי) אשר תכליתו מניעת התקפת פתע והשחלטות, במהלך אופרטיבי אחד, על שטחים חיוניים בישראל וכן הצבת מסות של ארטילריה היכולות להסב נזקים רציניים למרכזים חיוניים של מדינת ישראל. הכוונה לאזור ברוחב של כ-30 עד 50 ק"מ במקביל לגבול המנדטורי הישן לכל האורך

(בענין שרם א-שייח', ר' להלן).

בסיני תוכל להיות תנועה חופשית של חירות. ישראל לא תחבץ כי מצרים חיטול על עצמה הגבלות על פעולותיה האזרחיות בסיני. לעומת זה, תיהרס התשתית הצבאית הקיימת ותמנע הקמת תשתית אזרחית "דו-תכליתית" העלולה לשמש גם למטרות צבאיות.

ישראל זקוקה למאחז אסטרטגי במרחב שלמה.

מטרת המאחז :

(א) להבטיח כי גם למדינה לא-ערבית תהיה שליטה על רצועת חוף בים סוף. (בכך תמנע הפיכת ים סוף לים ערבי טהור ומפרץ אילת לים ערבי מובהק).

(ב) להיות בסיס קדמי להבטחת השיט הישראלי.

(ג) להיות קרש קפיצה לבטן הרכה של מצרים במקרה של מלחמה.

המאחז יכלול את שרם א-שייח' בהיקף 30-50 ק"מ, ראס נצראני והאיים סנפיר וטיראן וגישה חופשית לאזור זה באמצעות כביש. רוחב המאחז הישראלי בכביש וההרים החולשים עליו יוכל להיות 20-25 ק"מ.

בגזרת ירדן

כל שטח שישראל תפנה יוחזר לשליטה ירדנית אך יפורז. יש למנוע הקמת תשתית צבאית ביו"ש ועל הפירוז להיות מוחלט. הפרוז יובטח ע"י שליטה צבאית על אזור הירדן ומאחזים בגב הו שליטה צבאית זו ניתן להשיג בשתי דרכים אלטרנטיביות :

(א) ישיבה לאורך כל נהר הירדן.

(ב) ע"י ישיבה במאחזים (לאורך שתי רצועות, עין גדי - קליה וטירת צבי - גשר דאמיה).

רוחב הרצועה לפי התוואי הטופוגרפי - מהנהר ועד מורדות ההרים, דהיינו, כ-10 ק"מ. באשר לתיקוני גבול לאורך הקווי הישן (תיקונים לטרונים) הרי חשיבותם אינה מהותית מתוך הנחה כי יחסי השכנות יושתחו על גבולות פתוחים.

ישראל תוכל למצוא דרכים לפצות את ירדן על ידי הסכמה לנוכחות צבאית ירדנית מוגבלת ליד חוף הים (עזה).

בענין ירושלים יוסכם כי בעיה זו לא תפתר בשלב זה אך יעשו כל הסידורים המיוחדים בקשר למקומות הקדושים והעליה לרגל למוסלמים.

באם יוה"ש תוחזר אזי תיקוני הגבול יהיו לא רק תיקונים לטרונים.

ירושלים המורחבת תשאר בתחום מדינת ישראל ותמצא מתכונת מוניציפאלית לגבי המעמד של האוכלוסיה הערבית, ומדינית לגבי המקומות הקדושים למוסלמים.

רמת הגולן

ישראל תוסיף להחזיק :

(א) ברכס של פיק - אל על.

(ב) ברכס החרמון.

(ג) ברצועה במדרגה ההררית הראשונה.

עקרון הפירוז

יחול על כל השטחים שיפוננו ע"י צה"ל.

עקרון הדילול

יחול על שטחים שלא היו בידי צה"ל אך אשר קיומה של תשתית צבאית בהם יכולה לאיים על שלימות ישראל. שטחים כאלה הם: החורן, דרום לבנון, ורצועה לכל אורך הירדן והערבה כ-30 ק"מ מזרחה.

כניסת כוחות זרים

בהסכם יקבע איסור על הכנסת צבאות זרים לתחומי המדינות הגובלות.

הסדרים נוספים

בהסכם יקבעו סעיפים בדבר הגבלת מירוצי החימוש וכו'.

ל ס כ ו ם י צ ו י ן :

(א) המרכיב הכלכלי

המדינה תשתחרר מחלק גדול מהעומס של התקציב השוטף הכרוך בהחזקת כוחות גדולים וכוננות גבוהה ותוכל להפנות משאבים לבנין החברה ולפתוח טכנולוגי, נושאים להם נודעת חיוניות רבה גם מבחינה בטחונית. יוקל עומס המילואים על האזרחים.

(ב) המרכיב האמריקני

הסיוע של ארה"ב לטווח ארוך יובטח ביתר קלות במקרה של הסדר כנ"ל.

(ג) המרכיב הבינלאומי

יש סכוי כי בכל מלחמה בעתיד תזכה ישראל ליותר הבנה בינלאומית הודות לבהירות באשר לצידוק כניסת ישראל למלחמה (בזכות השטחים המפורזים ויתר הסידורים ו"כללי המשחק").

באשר לקושי המדיני הכרוך במתקפת מנע ניתן להקטינו עד למינימום ככל שתיארע הפרה של הסכם פירוז ותיראה ההפרה. אם ההסכם יקבע "כללי התנהגות", הרי הפרתם תשמש "קדוס כללי".

הסדר כולל שיבוצע בשלביםסכום רעיונות רוסטאוהעקרונות

"עסקת החבילה" להסדר ישראלי-ערבי שסוכמה לאחר מלחמת ששת הימים (והפכה להיות החלטה 242 שאושרה מחדש בהחלטה 338) היא הבסיס האיתן היחידי להשגת שלום במזה'ת. עקרונות ההסדר הם:-

- הנסיגה משטחים תתבצע רק תמורת שלום מלא ולא תהיה נסיגה ללא שלום כזה.
 - הגבולות המוכרים והבטוחים שיקבעו לא חייבים להיות זהים לקווי שביתת הנשק מ-1949.
 - המעבר למשטר יחסים של שלום יהיה הדרגתי ויתבצע בשלבים, כאשר כל השלבים וכן היעד הסופי ברורים ומוגדרים מראש.
 - הסכם השלום חייב להיות מושג על ידי מו'מ ישיר בין הצדדים לסכסוך, כשארעה'ב מסייעת במתן שרותיה הטובים.
- (עקרונות אלו פורטו על ידי יוג'ין רוסטאו במאמר שפרסם ב"ניו רפובליק" ב-5.4.75. בעקבות המאמר, התקיימו עם רוסטאו מגעים שונים והתבררו פרטים נוספים המובאים להלן).

דרכי ביצוע

ארה'ב צריכה ליטול את היוזמה בכל ההקדם כדי שיוחל במו'מ בין הצדדים להשגת הסדר כולל. על ארה'ב לתאם מראש עם הצדדים הנוגעים בדבר ולחתור להבטחת תמיכה מירבית לתכניתה מצד בנות בריתה ואם אפשר גם מכריה'מ. מצרים חייבת להיות השותף הראשון והעיקרי להסדר, כי היא מייצגת את האיום הצבאי הממשי על ישראל. לכן צריך סאדאת להיות הראשון שעמו ייקבע הסכם עקרוני להסדר, מעין "הסכם לבצוע החלטות 242 ו-338 בשלבים". כדי שסאדאת לא יואשם על ידי יתר הערכים בעשיית שלום נפרד עם ישראל, ייקבע מראש שהוא יחתום על חוזה השלום רק בשלב האחרון ולאחר שכל יתר השלבים יבוצעו עפ'י ההסכם. פירוט השלבים:

- א. יושג "הסכם להשיג הסכמים", כלומר, שהצדדים יסכימו לנהל סדרות של מו'מ ולכרות הסכם על בעיות ספציפיות בשלבים.

- ב. הנושא הראשון שיידון במו'מ צריך להיות מהות השלום והגדרתו.
- ג. הנושא השני יהיה פירוז וסדורי בטחון. אם יושג הסכם על פירוזו המוחלט של חצי האי סיני, ישפיע הדבר על המו'מ לקביעת הגבולות בשלבים המאוחרים יותר.
- ד. בתמורה לפירוז תהיה נסיגה ישראלית חלקית, במקביל לצעדים מדיניים מצד מצרים. צעדים אלה יכללו עידוד לחדוש היחסים הדיפלומטיים והכלכליים של ישראל עם אותן מדינות שניתקום, וכן הצהרה מצרית של אי לוחמה.
- ד. הנושא השלישי יכול להיות ערובות לשיט בנתיבי ים באזור כולו. ישראל תוכל להודיע על הצטרפותה לאמנת קושטא בנוגע לתעלת סואץ. אפשר לקבוע בשלב זה נסיגה ישראלית נוספת וצעדים מדיניים נוספים בתמורה.
- ה. הנושא הבא יכול להיות בעיית הפליטים (אם כי זה עלול להצריך כנוס ועידה בינלאומית ולא שייך למישור המצרי-ישראלי בלבד).
- ו. לבסוף תידון בעיית הגבולות וכשיושג הסכם לגביה, ייחתם חוזה שלום ויוקמו יחסים דיפלומטיים בין הצדדים.

הגבולות

לא תהיה נסיגה ישראלית לקווי 1949, לא כעקרון ולא כתכנית מעשית. צריכים להיקבע גבולות מוסכמים ובטוחים ופירוש הדבר שיתכנו שינויים בקווים הישנים. יסוד משלים וחיוני בהקשר זה הוא פירוזם של שטחים חשובים שישראל תיסוג מהם. בדרך זו אפשר יהיה לבצע שינויי גבול באזור ירושלים, בגולן, וכן בגדמ'ע. הגדה עצמה תהיה מפורזת. בסיני אפשר לבחון את האפשרות של שינוי גבול לגבי שארם אל שייח' או לחילופין, הסכם החכרה לתקופה ארוכה. בלית ברירה, תיתכן אף החזרת כל חצי האי סיני למצרים, אם שאר המרכיבים בהסכם יהיו חיוביים מאוד מבחינתה של ישראל.

הבעיה הפלסטינית. מבחינה חוקית והיסטורית, ההגדרה "פלסטיין" מקיפה את כל שטח ישראל וירדן. הפלסטינים הפכו ברובם הגדול לאזרחי ישראל וירדן. הפתרון האידיאלי הוא שירדן תנקוט בכמה צעדים, בעידודה של ארה"ב, שידגישו את אופיה הפלסטיני. ירדן תהווה את המסגרת המדינית לפתרון הבעיה הפלסטינית ושטחה יכלול נוסף לגדמ'ז גם את הגדמע ורצועת עזה. תוקם פדרציה, או אחוד כלכלי, או לפחות אחוד מכס בינה לבין ישראל וחיפה תהיה נמל חופשי שימש מוצא לים למסחר הירדני.

סוריה. כל זמן שסוריה מתנגדת להתחייב לקבל עקרון השלום עם ישראל היא לא תוכל להחשב כשותפת לתהליך המו'מ. אולם גם במסגרת של הסדר שלום, יש לישראל הזכות המוסרית, הצדוק הבטחוני והביסוס במשפט הבינלאומי (החלטה 242) להשיג שנויי גבול בגולן.

צורת ההסכם.

חוזה שלום.

מדינת ישראל

2

משרד החוץ
ירושלים

20
24/11

תאריך: 3/11/74

ס ר ד י

מספר:

אל : המבכ"ל

מאת : היועץ המשפטי

הגדון : הצעה להסכם שלום

1. מצ"ב, לפי בקשתך, מיוטא להסכם שלום, ערוך לפי העקרונות שמסרת לי, דהיינו :
1.1 ללא הקדמה.
- 1.2 סדר הסעיפים בקבע לפי בחוזים שכלולים כבר בהסכמי ההפרדה - ואחר-מכן היסודות החדשים.
2. לדעתי חיובי להגיש הצעה מפורטת גם בעקרונותיה וגם בניסוחה.
3. אין להסכים לבייר קצר ובלתי-ברור.
4. בשאיר למצרים את התפקיד של "הבוקשים" כשיסרבו להסכים לחלק מהצעותינו.

ב ב ר כ ה ,

מ. רוען

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(29.10.74)

Article I

The Parties hereby declare the termination of the state of belligerency between themselves, and accordingly renounce all claims and rights of belligerency and undertake to refrain from the threat or use of force against each other, and to settle all disputes between themselves by negotiation and other peaceful means.

Article II

- (1) Without derogating from the generality of the provisions of Article I, each Party undertakes to refrain from all military or para-military actions on land, sea, or air, against the other Party.
- (2) Each Party hereby undertakes not to enter into or remain a member of any military pact or alliance which is directed against the other Party, or the members of which claim to be in a state of war with the other Party.
- (3) Neither Party shall permit the entry upon its territory of the military forces of any third State, without the express consent of the other Party.
- (4) Each Party hereby undertakes not to incite any State to carry on belligerent acts against the other Party and not to grant aid or assistance of any kind to any State carrying on belligerent acts against the other Party.
- (5) Each Party shall take strict measures to ensure that the provisions of this Article shall be observed by its military or para-military forces, or para-military forces operating from its territory.

Article III

(1) Each Party shall ensure that no act of violence against the other Party shall be committed on or originate from its territory by any organization, group or individual.

(2) Each party undertakes not to grant asylum or protection to any person who has committed an act of violence against the other Party, but to expel, extradite or punish such person, as appropriate.

(3) Each Party undertakes not to give any assistance or support to any individual, group or organization planning or carrying out acts of violence against the other Party, on the territory of any other State.

(4) For the purposes of this Article, acts of violence against a Party shall include acts of violence directed against (1) the territory, nationals, or population of that Party, (2) property belonging to that Party or its nationals or situated on its territory, (3) organizations, groups, or individuals in any way connected with that Party, wheresoever situated, and (4) the property of such organizations, groups or individuals, wheresoever situated.

Article IV

Each Party shall abstain from hostile propaganda or incitement against the other Party, or against organizations, groups or individuals in any way connected with the other Party, and shall take suitable measures against the dissemination of such propaganda or incitement by the media of communication operating within its jurisdiction.

Article V

- (1) The areas specified in the attached Protocol shall be evacuated by the Israel Defence Forces and demilitarized in accordance with the terms of the Protocol.
- (2) The line to which Israel shall withdraw shall not be construed as the final political boundary between the two Parties.
- (3) Egypt undertakes not to introduce armed forces, construct military installations, or perform any other acts in the demilitarized zone, other than those expressly permitted in the Protocol.
- (4) The Parties shall jointly supervise the demilitarised zone, in accordance with the arrangements set out in the Protocol.

Article VI

- (1) Each Party undertakes to respect and uphold the rights of navigation on the high seas and in territorial waters, straits and other waterways, in accordance with the Geneva Conventions of 1958, on the High Seas, and on the Territorial Sea and the Contiguous Zone, (a) of vessels of the other Party, (b) of vessels of third States en route to or from the ports of the other Party, and (c) of vessels of third States en route to its own ports, which have previously passed through the territorial waters or visited the ports of the other Party.
- (2) Without derogating from the provisions of paragraph 1, Egypt -

- (a) recognizes that all vessels and civil aircraft, including vessels flying the flag of Israel and Israel registered civil aircraft, en route to or from Elat through the straits of Tiran and the Gulf of Aqaba, are entitled to the same freedom of transit and overflight as they have on the highseas.
- (b) undertakes to permit the full, free and unimpeded passage through the Suez Canal and the approaches to the Suez Canal of vessels flying the flag of Israel, nationals of or persons resident in Israel, and persons or cargo en route to or from Israel.
- (c) confirms that it regards the Straits of Bab-El-Madeb as an international waterway for ships of all flags, and that it will not interfere with the free passage and rights of navigation of ships flying the flag of Israel, nationals of or persons resident in Israel, and persons or cargo en route to or from Israel.
- (d) confirms that it will require no notification in advance of the names of vessels passing through [REDACTED] the Gulf of Aqaba, the Suez Canal, or the approaches to the Suez Canal, nor any other prior communication concerning such vessels, their passengers or cargo.
- (3) In the event of both Egypt and Israel becoming Parties to any subsequent Convention or Conventions that may be promulgated by the Third United Nations Conference on the Law of the Sea, then, to the extent that the provisions of the Geneva Conventions of 1958, paragraph 1 of this Article shall be construed as though it referred to such ^{subsequent} new Convention or Conventions, and not to the Geneva Conventions of 1958.
- SUCH SUBSEQUENT CONVENTION OR CONVENTIONS ARE INCOMPATIBLE WITH THE PROVISIONS*

Article VII

(1) Each Party hereby grants to the other Party, in respect of (a) the registered civil aircraft of the other Party, (b) civil aircraft registered in any third State and en route to or from the territory of the other Party, and (c) civil aircraft registered in any third State and en route to its own airports, which have previously passed through the airspace or landed at the airports of the other Party, rights of transit and overflight, without any discrimination whatsoever, in accordance with the Chicago Convention and the International Air Services Transit Agreement (1944), as well as with the various regulations and annexes promulgated by the International Civil Aviation Organization subsequent to those agreements, and to regard each other as entitled to all the rights and privileges of States parties to the Chicago Convention.

(2) In particular, but without derogating from the generality of the foregoing, Egypt undertakes -

(a) to grant to Israel registered civil aircraft rights of transit and overflight as aforesaid along the Red Sea airway to East Africa;

(b) not to invoke against Israel any rights based on the alleged existence of a state of war or belligerency, or of a state of national emergency.

(c) to withdraw and annul forthwith the declaration contained in the letter from the Minister for Foreign Affairs, addressed to the Secretary-General of the International Civil Aviation Organization,

and dated 16 October 1949, with regard to certain restrictions on the application to Israel of the Chicago Convention.

(d) to abrogate all administrative measures inconsistent with the present Agreement and this Article.

Article VIII

(1) The Parties shall make arrangements to facilitate the transit of tourists and their vehicles between their territories.

(2) If nationals or persons resident in the territory of either Party, or ships, aircraft or vehicles belonging to either Party or to nationals or persons resident in the territory of either Party, should inadvertently or involuntarily enter the territory of the other Party, the latter Party shall give all necessary assistance to such nationals or residents, and shall return them, and the ships, aircraft or vehicles, together with anything carried by or contained in them, forthwith, to the territory of the former Party.

Article IX

Each Party undertakes to refrain from all forms of economic warfare or boycott activity aimed directly or indirectly against the other Party, to prohibit any such activity from being carried out by its nationals or within its territory, and to oppose any such activity on the part of any third State, or any group or organization of which it is a member.

Article X

The Parties hereby renounce all claims relating to loss or damage suffered as a direct or indirect result of the hostilities that have taken place in the region since 1948.

Article XI

- (1) Each Party shall refrain from acts harmful to the other Party's diplomatic or other relations with third States or with international organizations, or its relations with nationals of third States.
- (2) Each Party shall refrain from acts harmful to relations between nationals of the other Party and third States, or the nationals of third States.

Article XII

- (1) Neither Party shall take any steps to prevent the participation on its territory or on the territory of any other State of nationals of the other Party at conferences, meetings and other events of or organized by the United Nations, the specialized agencies, or any other international organization, whether⁴ intergovernmental or otherwise.
- (2) Neither Party shall take any steps to prevent the employment by international organizations, whether intergovernmental or otherwise, of nationals of the other Party.

Article XIII

Each Party undertakes immediately to annul all reservations and declarations to multilateral Conventions affecting their applicability to the other Party, and to refrain from making such observations or declarations in the future.

Article XIV

The Parties shall cooperate with universal or regional international organizations for the planning and development of the region as a whole, the raising of living standards, the eradication of disease, the furthering of education, and the general advancement of the region.

Article XV

Each Party recognises the sovereignty and independence of the other Party.

Article XVI

The Parties shall set up a joint committee to supervise the execution of the Agreement. The representatives of the Parties appointed to the joint committee shall be permanently stationed at an agreed place and shall hold regular joint meetings for the purpose of investigating any questions arising in connection with the implementation of the provisions of this Agreement. Any incident alleged by either Party to constitute a breach of the Agreement shall be investigated by the committee with a view to taking corrective action.

Article XVII

- (1) The Parties hereby declare that no obligations that have been or will be undertaken by either of them towards any other State, body, group or individual shall in any way affect the binding force of this Agreement.
- (2) In the event of any conflict between the terms of this Agreement and

the terms of any other Agreement entered into by either Party, or the internal law of either Party, the Agreement shall prevail.

- (3) This Agreement shall be subject to ratification and shall come into force on the exchange of the instruments of ratification. It shall remain in force for a period of ten years from the date of its entry into force. In the event of either Party not wishing to renew this Agreement, it shall notify the other Party not later than one year before the expiration of the Agreement and the Parties shall in that case enter into negotiations for the purpose of concluding a new Agreement.
- (4) The evacuation and demilitarization of the areas specified in the Protocol, in accordance with the terms of Article IV, shall not be carried out until the provisions of Article VI(2)(b) relating to passage through the Suez Canal and the approaches to the Suez Canal shall have been fully implemented.
- (5) This Agreement shall in any event not become operative until a period of three-and-a-half years shall have elapsed from the date of its entry into force.
- (6) This Agreement neither supersedes nor in any way derogates from the Agreements reached between the Parties as a result of the negotiations that took place under the auspices of the Geneva Peace Conference from the 18th to the 24th January, 1973.
- (7) The Parties shall continue to pursue negotiations for the establishment of a just and lasting peace under the auspices of the Geneva Peace Conference.

Article XVIII

All references in this Agreement to the territory of a Party shall be understood to refer to the territory held by that Party, and nothing shall be inferred from such references as regards sovereignty over such territory.

Article XIX

This Agreement shall be communicated to the Secretary-General of the United Nations for registration in accordance with the provisions of Article 102 of the Charter of the United Nations.

72.

Protocol A to the Agreement
between Egypt and Israel of ...

- A. This protocol elaborates the details relating to the redeployment of the Israeli forces in accordance with Article of the Agreement.
- B. The redeployment of Israeli forces to Line D shall be completed by (date to be inserted).
- C. During the course of redeployment and with the aim of establishing a buffer zone as envisaged in Article of the Agreement, all military installations or installations capable of being used for military purposes other than civil installations which were in existence before 1967 shall be removed or destroyed. Notwithstanding the aforesaid, the following four roads shall be kept intact:
- (1) Kantara - El Arish
 - (2) Ismailia - Abu Agela
 - (3) Suez - Mitla
 - (4) Suez - Ras Sudar - Abu-Rodeis
- D. Upon the completion of the redeployment of Israeli forces, the Joint Committee set up under the provisions of Protocol B shall carry out a survey of the buffer zone, mark its boundaries by metal posts inserted into concrete bases fixed firmly in the ground and provide for the making of aerial photographs of the buffer zone.

Protocol B to the Agreement
between Egypt and Israel of ...

A. This Protocol elaborates the details relating to the implementation of the Agreement and the supervision thereof and shall constitute an integral part of the Agreement.

B. The Joint Committee

1. In accordance with Article of the Agreement, an Egyptian-Israel Joint Committee shall be established composed of two senior representatives of each Party, one of whom shall be a diplomatic representative and the other a military representative.
2. The level of representation in the Joint Committee, diplomatic and military, shall not be more than one rank below that of the signatories to the Agreement.
3. The Joint Committee shall maintain its Headquarters at and shall hold its meetings at least once in two weeks, or whenever either Party so requests.
4. The first meeting of the Joint Committee shall take place no later than after the signing of this Protocol.
5. The Joint Committee shall appoint military and civil committees for the effective conduct of its work and in particular a military committee for the purpose of surveying and inspecting of the buffer zone in accordance with the provisions in Article D of Protocol A and Articles C and D of this Protocol.
6. Neither Party shall withdraw from the Joint Committee nor from other committees appointed by it without the consent of the other Party.

C. The Buffer Zone and Area of Limited Armaments

1. Upon redeployment of the Israel forces east of Line D as set down in Article of the Agreement and on the map attached to it, the area between Lines A and D shall be established as a buffer zone.
2. The area between Lines D and E, as set down on the map attached to the Agreement shall be established as an area of limited armaments.
3. The provisions of the Egyptian-Israeli Agreement on Disengagement of Forces signed on 1st January 1974 and of all ancillary documents pertaining to the zone of disengagement between Line A and Line B shall apply to the buffer zone between Line A and Line D. The provisions of the said Agreement pertaining to the areas of limited armaments shall apply to the areas west of Line A and east of Line D. Consequently it is reaffirmed:-
 - (1) that within the areas of limited armaments and forces described in the said Agreement there will be:
 - (a) no more than eight reinforced battalions of armed forces and 30 tanks;
 - (b) no artillery except anti-tank guns, anti-tank missiles, mortars and six batteries of howitzers of a caliber up to 122 mm. (M-3 with a range not to exceed 12 kilometers);
 - (c) no weapons capable of interfering with the other Party's flights over its own forces;
 - (d) no permanent fixed installations for missile sites.The entire force of each Party shall not exceed 7,000 men.
 - (2) that to a distance of 30 kilometers west of the Egyptian line and east of the Israeli line, there will be no weapons in areas from which they can reach the other line.
 - (3) that to a distance of 30 kilometers west of the Egyptian line and east of the Israeli line there will be no surface-to-surface missiles.

.../3

4. Subject to the provisions of paragraphs 7 to 9, no person, weapon, vehicle, or aircraft shall be permitted in or over the buffer zone unless authorized by the Joint Committee.
5. No boats or vessels of any kind shall be permitted to approach nearer than kilometers from the coastline of the buffer zone. Special arrangements shall be made by the Joint Committee with regard to fishing rights in waters adjacent to the buffer zone.
6. The Joint Committee shall determine points of access and exit to and from the Egyptian and Israel areas.
7. Egyptian and Israel aircraft shall have the right to fly over the buffer zone by means of light reconnaissance planes for the purpose of aerial inspection. Such aerial inspection shall be coordinated by the Joint Committee as regards routes and times of flight.
8. The Parties agree to the conduct of aerial reconnaissance flights by the United States over the buffer zone every ten days. It is understood that photographs from such flights will be made available to both Parties.
9. Each Party may maintain early warning systems and intelligence installations within the buffer zone at points near the line of the area of limited armaments of the other Party. The Joint Committee shall, within a period of from the signature of this Protocol, determine the number and places of such systems and installations, the means and routes of access to them, the size of forces manning them, and the supply of provisions to such forces. The Joint Committee shall make arrangements to ensure the safety of the forces and the non-introduction of offensive weapons into the installations.

.../4

10. A permanent open two-way telecommunication link shall be established between the members of the Joint Committee.

D. UNEF

1. In accordance with Article of the Agreement, UNEF will be stationed in the buffer zone and will patrol that zone and inspect the area of limited armaments for the purpose of ensuring compliance with the provisions referred to in Article C of this Protocol. The inspection of the areas of limited armaments shall take place at fixed intervals of and upon request of either Party.
2. The Joint Committee shall coordinate its activities with the Commander of UNEF and may enlist the services and assistance of UNEF for the purpose of carrying out its responsibilities as detailed in Article C of this Protocol. For that purpose, each Party shall appoint liaison officers to the UNEF. Such liaison officers may accompany units of UNEF in patrolling the buffer zone.
3. The renewal of the mandate of UNEF shall be decided upon by the UN Security Council within of the signing of this Agreement. Both Parties agree that the mandate of UNEF shall be extended for an unlimited period; it will continue in being until its existence is terminated by a further resolution of the Security Council or by agreement between the two Parties.
4. Both Parties agree to cooperate with the UN Secretary General with a view to ensuring the continued size, stability and smooth functioning of the UN force in accordance with the following provisions:

.../5

- a) The Permanent Members of the Security Council will not be entitled to contribute contingents to UNEF.
- b) A State which does not maintain diplomatic relations with one of the Parties shall not be called upon by the Secretary General of the UN to contribute forces to UNEF without the consent of that Party.
- c) The Parties shall request the Secretary General to maintain the size of UNEF at no less than
- d) The Commander of UNEF will coordinate with the Joint Committee all questions pertaining to the establishment of his headquarters and its location, the deployment of UNEF personnel inside the buffer zone, the establishment of inspection points and towers along the borders of the buffer zone, logistics and routes of access to and from the buffer zone and the areas of limited armaments from both sides and the inspection and supervision duties of UNEF.
- e) The Commander of UNEF will report the results of inspections by UNEF of the areas of limited armaments and of the buffer zone to the Joint Committee.

E. General

If persons, ships, aircraft or vehicles of either Party or connected with either Party should inadvertently enter the territory of the other Party, the latter Party shall immediately inform the Joint Committee of the fact, shall give all necessary assistance to such persons, and shall return them, and the ships, aircraft or vehicles, together with anything carried by or contained in them, forthwith to the territory of the former Party.

מקומות קדושים
גאטא זאלען 135

א. המקומות הקדושים ליהודים בירושלים

הנחות מדיניות: אחדות העיר חופש גישה למקומות הקדושים רבנות מדינית ועירונית יהודית באזור הכוחל וברובע היהודי, אגנה יכולה להיות ע"ש למ"מ. יש להבטיח השליטה המדינית והעירונית בהר היתים לכל חלקיו. קבר שמעון הצדיק וסביבתו, קברות מלכי בית דוד בהר ציון.

המקומות הקדושים ליהודים בית דה ושומרון

התייחסות למעמדם רס במידה שא יהיו נתונים לר בונות ישראל. הנחות מדיניות - יש להבטיח שמירת המקומות הקדושים ליהודים והגישה החופשית של יהודים במחכונת הקבועה בתוך 1967 ולשאוף לקביעת סדרים לחחוקת המקומות ע"י גוף יהודי שיקבל מימון משראל.

הנחות נפרדות לגבי :

1. קבר רחל - הגבול המדיני-עירוני עובר כיום כ-200 מ' מהקבר, הפתרון הפשוט ביותר זה לצרף השטח למדינת ישראל ולעירית ירושלים.
2. בקבר שמואל הנביא - ניחן להניח כי עקב השליטה מן ההר בו נמצא הקבר, על הגישה לירושלים ובשים לב להתפתחות הבניה היהודית בצפון ומערב העיר, יידרש סיפוח השטח.
3. מערת המכפלה - יש להבטיח מעמד לשלטון הישראלי במקרה שהעיר לא תודה בשליטתנו.

ב. המקומות הקדושים למוסלמים והמוסדות המוסלמיים בירושלים

הבעיות : הר הבית - חכמי דת ומדינאים לא יעלו על דעתם להסכים לשלטון שאיגו מוסלמי בהר הבית. המוסדות המוסלמיים - כיום אין להם מעמד חוקי, ישראל אינה מכירה בהם והם נמנעים מלהכיר בשלטוננו ואינם נוהגים לפי חוקי המדינה. כל פתרון שישראל תוכל לקבל חייב לתת תשואה לבעיות קיומם וסמכויותיהם המשפטיות המנהליות של המוסדות האלה, שליטתם על הרכוש ומינוי עשאי תפקידים.

הנחת היסוד של המדיניות הישראלית

ירושלים המאוחדת היא בירת ישראל ואין להסכים לפיתרון הפוגע באחדותה. חשמרנה הוכיות של בני שתי הדתות.

הנחת היסוד הערבית - מדינות ערב תובעות החזרת הריבונות על השטח שהיווה ירושלים המזרחית ערב מלחמת 67 לשליטה ערבית.

אפשרויות פתרון לגבי הר הבית

- א. שמירת המצב הקיים.
- ב. אינטגרציה מלאה (יצירת מימסד ממלכתי מוסלמי אחד למוסלמי ישראל, כולל מוסלמי מזרח י-ם אשר יהיה אחראי לסדרים בהר הבית ויהיה מעוגן בחוק הכנסת).
- ג. חלוקת ירושלים - העברת הריבונות על הר הבית ושכונות מוסלמיות בתוך החומה ומחוצה לה לשלטון מדינה ערבית תוך הפרדה גמורה מישראל.
- ד. סיפוח הר הבית למדינה ערבית (עם פרוזדור בינ'ל) תוך ניתוק מישראל, אך אגב הסכם בינ'ל לחופש גישה.
- ה. העמדת הר הבית מחוץ לריבונות מדינית כלשהיא - שליטה של מוסד מוסלמי מוכר, כפוף לשתי הנחות: 1. נשאר בתחומי עיריית ירושלים 2. מובטחת הגישה.

- ו. הכללת ההר במסגרת עירונית אוטונומית לערביי ירושלים בתוך העיריה המאוחדת.

המוסדות המוסלמיים

ישראל לא התערכה בפעולות המועצה המוסלמית - גוף-גג המטפל בענייני דת והמקומות הקדושים - פרט לשני עניינים; הבטחת גישה חופשית להר הבית וגירוש אלמנטים עוינים מישראל.

האפשרויות לעתיד:

- א. שילוב במימסד המוסלמי בישראל.
 - ב. שמירת המצב הקיים.
 - ג. מתן גושפנקה משפטית למצב הקיים תוך שיתוף האוכלוסיה.
 - ד. בחירות על ידי האוכלוסיה ואישור של ממשלת ישראל.
 - ה. בחירות על ידי האוכלוסיה ואישור ממשלת ישראל וממשלה ערבית.
 - ו. בחירות על ידי האוכלוסיה ואישור של ממשלה ערבית בלבד.
 - ז. מינוי על ידי ממשלת ישראל וממשלה ערבית ללא בחירות.
- ג. המקומות הקדושים לנוצרים והמוסדות הנוצריים בירושלים
- הותיקאן נמנע במתכוון מלהביע דעה מחייבת לגבי הריבונות המדינית שהיה מעדיף לראות, מדגיש ההיבט הרוחני-דתי, נמנע מתמיכה מפורשת בבינאום מדיני ומדבר כיום על ערכויות במשפט הבינ'ל לשמירת אופיה של העיר כשייכת לכל הדתות המונותיאיסטיות עמדת הפטריארכיות היוונית - אורתודוקסית והארמנית אורתודוקסית (מעדיפים שלטון ישראל); הכנסיות המזרחיות אורתודוקסיות (יתמכו בריבונות ערבית, ראשיהן יושבים במדינות ערב); אוונגליסטים (עמדתם דומה לקתולים הכמורה פרו ערבית וחלקם מעדיף שלטון ערבי).

השליטה במקומות המקודשים לנוצרים

אין לראות במדינות ערב, הדובר המוסמך של האינטרסים הנוצריים. הנסיון ההיסטורי מלמד שכל אימת שגדון הסדר מדיני-בינ"ל לגבי א"י, תבעו הכנסיות הנוצריות הגדולות מעמד בדיונים. כמסורת היסטורית פעלו ממשלות צרפת, איטליה, ספרד ובלגיה לקידום האינטרסים הקתולים; רוסיה - יוונית אורת' וארמנית; אנגליה - אוונגלית; אתיופיה - אתיופית. ניכרת גם פעילות ארה"ב וסקנדינביה להגנת אינטרסים לותרניים.

הקתולים מדברים היום לגבי ירושלים על "מעמד מוכר במשפט הבינ"ל", ליוונים אורתודוקסים ולארמנים אין ענין בבינאום. בהכרזות פומביות מצהירים הפטריארכים של עדות אלה כי אינם עוסקים בבעיות פוליטיות ואין זה מענינם איזה שלטון יהיה בירושלים ובלכד שיובטחו זכויותיהם. כשיחות פרטיות מדברים פטריארכים אלה על העדפת שלטון ישראל בירושלים ומוכנים לחתום על אמנות עם ישראל לאלתר.

הנחות טקטיות לגבי עמדת ישראל

- ניהול מו"מ בו-זמני (לאו דווקא בצוותא) עם 3 העדות הגדולות.
- לגבי היוונים אורת' וארמנים הדוברים הם הפטריארכים של ירושלים
- יש לשאוף לכך שהמו"מ ינוהל על ידי ראשי הגופים הדתיים ולא מדינות.
- יש להניח כי הצעות למעמד המקומות הקדושים וראשי העדות לזכויות יתר יביאו לדרישות להטבות למוסלמים אם כי אלה מתנגדים להגדרתם כעדה דתית.

מקומות קדושים ומוסדות נוצריים

- הר הזיתים, הר ציון, הר מוריה, רבעים נוצרים בתוך החומות. האפשרויות:
- א. העמדתם תחת שלטון בינ"ל (נציגי מדינות ייבחרו על ידי מועבי"ט או עצרת).
- ב. העמדתם של המקומות הקדושים שלגביהם הוגדר "סטטוס קוו" * (כנסיית הקבר, דיר אל סולטאן, מקום עליית ישו לשמיים, קבר הבתולה מרים, כנסיית המולד) תחת שלטון בינ"ל.
- ג. ועדה בינ"ל לפיקוח על המקומות הקדושים (מינוי או מועבי"ט או מזכ"ל).
- ד. כינון מועצה נוצרית למקומות הקדושים ולגופים הנוצריים (מועצת ראשי עשר העדות הדתיות שתקבל גושפנקא בחקיקה ישראלית).
- ה. שמירת המצב הקיים.
- ו. חלוקת ירושלים (העברת הריבונות על שכונות במזרח ירושלים לשלטון מדינה ערבית).
- ז. הסדר תחוקתי שיתן תוקף לסטטוס קוו, למעמד ראשי העדות ולזכויות המוסדות הנוצריים.

בעיות נוספות

- ד. הסכסוך הקופטי-אתיופי.
- בעיות שתי הכנסיות הרוסיות.

* לגבי מקומות אלה היה צריך לקבוע "סטטוס קוו" בשל המחלוקות הבין-כנסייתיות. הגדרתו המשפטית של ה"סטטוס קוו" - הזכויות של הכנסיות הנוצריות בחמשת המקומות הקדושים האלה, כפי שנקבעו בפירמאן מ-1852.

ה. נתונים

1. בירושלים יושבים כ-11.000 נוצרים העדה הלטינית כ-4.000, היוונית אורתודוקסים - כ-4.000, ארמנית - 1200, קופטית 500 שאר 4 העדות פתוח מ-500 נפש לעדה.

2. בירושלים כ-65.000 מוסלמים.

3. מעמד העדות במשפט המקומי.

א. השלטון הירדני - לפי חוק 1938 הוכרו בממלכת ירדן ארבע עדות: יוונית אורת', לטינית, יוונית קתו', ארמנית, זאת לעומת תשע העדות שהיו מוכרות בשלטון המנדט.

ב. ישראל - ממישראל לא העלתה נושא ההכרה בראשי העדות כתנאי לפעולתם. עקב החלת המשפט הישראלי על ירושלים המאוחדת בטלה בה החקיקה הירדנית.

הערה - בניר העבודה של הצוות מפורטים היתרונות והחסרונות של האפשרויות השונות לגבי הגורמים המעוניינים במקומות הקדושים. ע'מ לסקור את עיקרי הנייר לא נכללו היתרונות והחסרונות הנ'ל בתמצית זו, אלה מפורטים בתיק שהוכן על ידי הצוות.

הנחות יסוד

.1

הרוב היהודי בירושלים

.א.

משנות השמונים של המאה ה-19 היו היהודים רוב בירושלים ומסוף שנות התשעים - רוב גדול. כיום 25% מתושבי העיר הם לא יהודים כ-70 אלף ערבים מוסלמים וכ-11 אלף ערבים נוצרים ונוצרים שאינם ערבים.

העיר חייבת להיות חטיבה עירונית אחת

.ב.

מעמדה המיוחד בקרב המאמינים בשלוש האמונות ודרישות הקיום (שירותים חיוניים) מחייבים קיום מערכת אחת שתדאג לפיתוח העיר תוך מתן ביטוי מירבי לשאיפותיהם הלאומיות הדתיות והתרבותיות של תושביה.

שמירה על אחדות העיר כבירת ישראל

.ג.

משתי הנחות היסוד דלעיל מתחייבת העמדה הישראלית כי הצעות לגבי הרשות המקומית ידונו אך ורק על הבסיס של ירושלים מאוחדת ובירת ישראל. אין בכך משום נקיטת עמדה לגבי הכללת שכונה כלשהיא, שאינה יהודית, המצויה בשולי העיר, כגבולותיה של ירושלים המאוחדת.

חופש הגישה למקומות הקדושים לבני הדתות.

.ד.

שליטה מוניציפאלית יהודית במקומות הקדושים ליהודים ובשכונות היהודיות במזרח העיר.

.ה.

שליטה מוניציפאלית במקומות המקודשים לנוצרים וברכעים הנוצרים לא תהיה בידי גורם מוניציפאלי ערבי, אפילו במסגרת עיריית גג אחת.

.ו.

אפשרויות פתרון

.2

המצב הקיים - העיר מהווה חטיבה עירונית אחת תוך שנויים

.א.

הנובעים מהאפשרויות הנוגעות למקומות המקודשים ולמוסדות המוסלמיים והנוצריים.

בינאום מזרח ירושלים - שטח רצוף הכולל את מזרח ירושלים (לא

.ב.

יכלל בשטח ישראל או מדינה ערבית) ללא הרובע היהודי והכותל (ואולי הרובע הארמני) יועמד תחת שלטון בינ'ל בהנהלת נציגי מדינות שייבחרו על ידי מועבי'ט.

מעמדם של המוסלמים, העדות והקהילות הנוצריים והמקומות המקודשים לבני דתות אלה וזכויותיהם לגביהם ייקבע על ידי מוסדות או'ם. השירותים החיוניים יינתנו ע"פ הסכם האו'ם לישראל או ירדן.

ג. מזרח ירושלים תחת פקוח ועדה בינ'ל - תוקם ועדה בינלאומית (על ידי: 1. מינוי על ידי מועביט או העצרת; 2. מינוי אישים על ידי מזכ'ל או'ם) מושבה בירושלים. מוסדות האו'ם יקבלו דווח על הנעשה בעיר ומצב המקומות הקדושים.

ד. חלוקת ירושלים - מזרח ירושלים עוברת לריבונות ערבית (אפשרות משנה - למעט הכותל, הרובע היהודי ואולי הארמני) בעלת עיריה נפרדת הכפופה לשלטון ערבי.

ה. חלוקת ירושלים בין שתי מדינות אך קיום עיריה משותפת מזרח ירושלים עוברת לריבונות ערבית (אפשרות משנה כבסעיף ד' או/ו השאר השכונות היהודיות במזרח העיר בריבונות ישראלית), אולם תהיה עיריה משותפת לשני חלקי העיר, בה יכהנו מספר שווה של חברים יהודים וערבים, חלוקת החברים הערבים בין מוסלמים לנוצרים תהיה לפי יחס מספרי קבוע. ראש העיר יהודי ולו שני סגנים, מוסלמי ונוצרי. סמכויות העיריה ייקבעו ויקבלו גושפנקא בחקיקת שתי המדינות ובהסכם בינ'ל.

ו. עיריה או עיריית-משנה במסגרת של עיריית גג או של עיריה אחת יצירת רשות משנה עירונית למזרח ירושלים (לפי שתי חלופות - עם או בלי הרבעים הנוצריים בין החומות), מתן אוטונומיה עירונית (חינוך, תרבות וסעד), מנגנונים עירוניים מאוחדים לנושאים בעלי חשיבות מרכזית (תיכנון, מיסוי וכד'). עיריית המשנה תיבחר בבחירות שייערכו לתושבי מזרח העיר ותבחר גם נציגותה בעיריית הגג או בעיריה הראשית.

ז. עיריית משנה או נפרדת במסגרת עיריית גג בצירוף אישור הבחירה על ידי שתי הממשלות - מכנה כבסעיף ו' בצירוף מתן זכות לשתי הממשלות שלא להסכים לנבחרים מסויימים, וכן הוצאת כתב מינוי חתום על ידי נציגי שתי הממשלות.

ח. אפשרות ז' בצירוף תנאים מיוחדים. 1. אוטונומיה בשאלות רישוי וכד' שאינה פוגעת באחדות העיר ובשליטה הישראלית; 2. תושבי מזרח העיר בעלי נתינות ירדנית יוכלו להצביע לבית הנבחרים הירדני כאשר בחוק הירדני תוכר מזרח העיר כאיזור בחירה;

3. הנתינים הירדניים תושבי מזרח העיר ישלמו מס הכנסה

וכדי לירדן.

מבנים שבידי האו"ם בירושלים

3.

הנחה מדינית א.

יש לשאוף להכרת או"ם בשליטת ישראל במקרקעין, עליהם מצויים - ארמון הנציב, בנין או"ם כמעבר מגדלכאום לשעבר, ובית הספר לשוטרים בשייך ג'ראח.

ב. אפשרויות: 1. שליטה ישראלית גמורה ומוסדות או"ם יחדלו לשבת שם; 2. ניצול השטח להקמת מרכז אזורי לאו"ם - הכוונה לארמון הנציב שבו יוקם מרכז איזורי של סוכנויות או"ם במזה"ת.

הערה - בנייר העבודה של הצוות מפורטים היתרונות והחסרונות על האפשרויות השונות לגבי הגורמים המעוניינים במקומות הקדושים. ע"מ לסקור את עיקרי הנייר לא נכללו היתרונות והחסרונות הנ"ל בתמצית זו, אלא מפורטים בנספח לתיק שהוכן על ידי הצוות.

פיצויים (בעיית הפליטים)

האספקט המדיני של בעיית הפליטים הערביים מארץ-ישראל ימצא את פתרונו במסגרת פתרון הסכסוך הכולל וההסדר הסופי בין ישראל וירדן. ניר זה עוסק בשאלת הפיצויים בגין רכוש שננטש הן על ידי ערביי ארץ-ישראל והן על ידי יהודים מארצות ערב מאז החלטת החלוקה של א"י בנובמבר 1947.

עקרונות

- א. בעיית הפליטים והפצוי בעד רכושם חייבת למצוא את פתרונה הסופי והמוחלט בהסכמי השלום עם המדינות הערביות שבהם יחתמו הצדדים על שטר שחרור הדדי מכל תביעות שהן בנושא הפליטים, זכויותיהם ורכושם.
- ב. המנוף העיקרי לפתרון בעיית הפליטים הערביים יהיה בפתוחה הכלכלי של ירדן. לצורך זה תוקם קרן בינלאומית שתמומן על ידי תרומות ממדינות העולם ובתוכן ישראל.
- ג. בהסדר יקבעו הדרכים לבטולה המודרג של ססו'ת והעברת תפקידיה לממשלות המארחות.
- ד. יקבעו בהסכמים הדרכים למתן פיצויים בעד נכסים ורכוש של ערבים שיצאו מתחומי ישראל מאז הקמתה ושל יהודים שהגרו מארצות ערב.

פצויים לערביי ארץ-ישראל

- מתן הפיצויים לערביי א"י בעד רכושם יתבצע כאחת משתי דרכים:
1. תוקם קרן בינלאומית שישראל תתרום להקמתה סכום פיצויים גלובאלי שייקבע מראש ומדינות אחרות יתרמו סכומים לאותה קרן. הקרן תשמש כתובת לכל הערכים החובעים פיצוי בעד רכוש שננטש והתביעות יתבררו בין הקרן לבין שלטונות ישראל.
 2. תוקם קרן בינלאומית כנ"ל אך היא לא תעסוק בתביעות ופיצויים אישיים, אלא במתן מענקים והלוואות לממשלת ירדן ולתושביה למטרות פתוח המדינה ופיזור תושבי המחנות שבה.

פיצויים ליהודי ערב

במו'מ לשלום יהיה צורך למצוא דרך כדי להתגבר על הבעיה שחלק ניכר מתביעות יהודי ערב בגין רכוש ננטש מכוון כלפי מדינות ערביות שאינן שכנותיה של ישראל ולא ירצו לנהל עמה מו'מ להסדרי פיצויים או להסדר כלשהו. ישראל תוכל להתנות את נכונותה לפתור את בעיית רכושם של

ערביי א'י בהסדרת כעיה זו על ידי מדינות ערב.

ישראל תיצג את יהודי ערב, כולל אלה שלא הגרו לישראל לצורך כריתת הסכמי-פיצויים עם כל אחת ממדינות ערב שיאפשרו ליהודים להגיש תביעות בגין רכוש ונכסים שהשאירו.

מתן הפיצויים ליהודי ערב בעד רכושם יוכל להתבצע באחת הדרכים הבאות:

1. הקרן הבינלאומית שתוקם לצורך מתן פיצויים לערביי א'י תטפל גם בתביעות יהודי ערב. היא תשמש בו-זמנית גם כתוכת לפניות בעלי רכוש ונציגיה, בצירוף נציג ישראלי ונציג המדינה הערבית, יבררו את התביעות ויקבעו את גודל הפיצוי עפ'י קריטריונים שיקבעו מראש.
2. יוקם מוסד בינלאומי נפרד שיסייע לתובעים בגלוי וזהוי רכושם ובהגשת תביעותיהם אל הממשלות הנוגעות בדבר. הסדרת התביעות וגודל הפיצוי יקבע בהסדרים בין ישראל לבין כל אחת ממדינות ערב והתובעים יממשו את זכויותיהם במישרין בערכאות של המדינה שבה הותירו את רכושם.

הערה: נושא יהודי ערב וזכויותיהם הוטל על ועדה בין-משרדית שתגיש את מסקנותיה לראש הממשלה ושרים שיש להם נגיעה לנושא.

CONFIDENTIALAGREEMENT BETWEEN THE USG AND THE GOI

The United States recognizes that the Israel Interim Agreement with Egypt, entailing the withdrawal from highly important strategic and economic assets in Sinai, constitutes an act of great significance on Israel's part in the pursuit of final peace. It elicits full U.S. support which is expressed in this document as follows :

- (1) Recognizing the new aspects of the defense responsibilities of the GOI following the signing of the interim agreement, the USG will continue to make every effort to be fully responsive on an on-going and long-term basis to Israel's military equipment requirements and economic aid needs.
- (2) The USG will guarantee that Israel will be supplied with the full quantities of oil necessary for its economy under all contingencies. Israel on its part, will, to the best of its ability, seek to make its own independent arrangements for the necessary additional oil supplies. Assuming that the supply of oil from Iran and other sources will continue unhampered, the USG will take upon itself to supply the balance of Israel's oil needs. For this purpose the USG and the GOI will work out agreed detailed arrangements. In submitting to Congress the total Israeli economic aid package, the USG will take into account the net additional expenditure required for oil supplies presently estimated at 300 million dollars annually.

- (3) The USG will enter into a joint venture with Israel for the construction of oil storage facilities in Israel permitting a capacity of one-year needs. Part of the facilities could be made available by the GOI to the USG on terms to be mutually agreed upon. The construction and operation of the project will be the subject of early and detailed talks between the two Governments.
- (4) For an X number of years the USG will not expect Israel to undertake any new withdrawal commitments in Sinai.
- (5) The USG interprets the Egyptian commitment in the interim agreement, and as conveyed by President Sadat to the USG, as meaning that for a Y period of time Egypt will not press for any further withdrawals.
- (6) The USG has received assurances from Egypt, which it has conveyed to the GOI, that Egypt does not make ratification, entry into force, or implementation of the interim agreement or any of its parts, conditional on any act or development in the relations between Israel and other Arab states.
- (7) The U.S. will not expect Israel to negotiate an interim agreement with Syria requiring further Israeli withdrawals on the Golan Heights.
- (8) The U.S. informs Israel that it will attempt to persuade Syria to commit itself to an extension of the mandate of UNDOF.
- (9) The USG has received assurances from Egypt which it has conveyed to the GOI stating that Egypt will not initiate any military action against Israel, nor will it participate or assist in any military action between Israel and any other forces.
- (9-
a) In connection with the interim agreement the U.S. considers all Egyptian commitments given in any form whatsoever, via the USG, as binding and irrevocable.

- (10) The USG considers the Egyptian commitments undertaken in the interim agreement, its attachments and the additional assurances, to constitute an understanding that puts, in effect, an end to the state of belligerency between Egypt and Israel. The President of the US will convey in writing this assurance to the GOI.
- (11) The USG will act to initiate a resolution in the Security Council to establish a UN supervisory machinery whose mandate will be without a time limitation. The U.S. will take the necessary measures to ensure that such a resolution will be effectively implemented in all its parts.
- (12) It is the U.S. position that the UN supervisory machinery will not be withdrawn without the consent of both Egypt and Israel.
- (13) The UN supervisory machinery will be reconstituted so that its budget be based on voluntary contributions from member states.
- (14) The USG will vote against any resolution in the Security Council that has a bearing on the interim agreement and that does not have the consent of both parties to the agreement.
- (14-a) The USG has received the assurance of Egypt, which it has conveyed to the GOE, that Egypt will not demand the removal of the UN supervisory machinery without the consent of Israel.
- (15) The USG informs Israel that Egypt has given assurances to the USG that it will ease its boycott practices directed against Israel, its anti-Israeli diplomatic activities and its anti-Israel propaganda to the point that these will lapse. For this purpose Egypt and Israel have exchanged documents.
- (16) Regarding the Red Sea, the USG has received Egyptian assurances that Egypt will not occupy or fortify any strategic locations capable of interfering with the freedom of navigation.

- (17) The U.S. regards the Straits of Bab el-Mandeb as an international waterway and will support and join with others to secure general recognition of the right of free and innocent passage through those Straits. The US will strongly support free passage of Israeli ships and cargoes through the Straits. In the event of interference with such passage, the U.S. will consult with Israel on how best to assure the maintenance and exercise of such rights.
- (18) The USG notes that the GOI and Egypt have announced their agreement to aerial reconnaissance missions to be carried out by the U.S. over the areas covered by the interim agreement at a frequency of about one mission every ten days or two weeks. The USG will make the photographs available to both Israel and Egypt.
- (19) In case of an Egyptian violation of any of the provisions of the interim agreement or of any of its attachments, the USG will take, at the request of the GOI, all necessary steps in relation to Egypt in order to ensure corrective action.
- (20) Should Israel have to take military action as a result of an Egyptian violation of the agreement or any of its attachments, the U.S. will lend Israel diplomatic support.
- (21) Should the need arise for a U.S. air resupply to Israel, the U.S. will, by prior arrangement with European states, use the airfields under U.S. control in Europe for transport purposes to Israel.
- (22) On the military side, the USG will continue to make clear to the Soviets that it will not tolerate their conspiring in a threat to Israel's security and existence.
- (23) The U.S. will use its influence to the best of its ability in European capitals to assist Israel on such matters as :
 - (a) non-recognition and refusal of status of any kind to the PLO;
 - (b) the moderation and balance of European M.E. policies;
 - (c) EEC relations with Israel with a view to achieving associate membership.

- (24) With regard to the Geneva Conference the U.S. will act to ensure that the next session will be confined to deal with the final stages and formalities involved in the signing of the interim agreement. Should, however, this prove impossible the U.S. and Israel will concert action as detailed hereunder.

The Geneva Conference :

- (a) The U.S. as co-chairman of the Geneva Conference, will ensure that the Conference will not be employed as an instrument to thwart U.S.-Israel policy objectives.
- (b) The Geneva Conference will be reconvened at a time agreed upon between the U.S. and Israel.
- (c) The U.S. will prevent PLO representation or participation at the Conference. Similarly, the U.S. will prevent participation of any other additional parties to the Conference.
- (d) The U.S. will act to ensure at the Conference that all the discussions will be on a bi-lateral basis. The U.S. will oppose multilateral negotiations.
- (e) The U.S. will oppose Soviet or Arab demands to set deadlines for Israeli withdrawals not negotiated and agreed with Israel, or any other such ultimative demands.
- (f) Should the Soviet Union introduce a plan for an overall settlement in keeping with the familiar Soviet policy since 1967, the U.S. will oppose it.

- (g) The U.S. will refrain from putting forward proposals in Geneva not agreed upon with Israel.
- (h) In connection with the interim agreement, the U.S. will have obtained Egypt's agreement that, at Geneva, Egypt will adopt attitudes helpful towards the attainment of the objectives of this document concerning the conduct of the Conference. This agreement will be made possible by virtue of the Egyptian realization that its behaviour in Geneva will have a decisive influence on Israel's readiness to withdraw to the new line after the agreed lapse of time and on Israel's preparedness to implement the agreement as a whole.
- (i) The U.S. will act to ensure that the Conference will not undermine the interim agreement that Israel will have concluded with Egypt through the good offices of the U.S.
- (j) The U.S. will oppose any Arab-Soviet initiative to raise in the Security Council issues discussed at Geneva.
- (k) The U.S. and Israel will concert action in Geneva to prevent the use of procedures detrimental to the purposes of this document. If the adoption of permanent rules of procedure is discussed at the Conference the U.S. and Israel will adopt a common position.
- (l) The U.S. undertakes to ensure that the role of the co-sponsors will not go beyond what was agreed prior to the convening of the first session of the Geneva Conference.
- (m) Should the Conference reconvene after the effort to enter into an interim agreement with Egypt will have failed, the U.S. and Israel will concert action to assure that the Conference will be conducted in a manner consonant with the objectives of this document and with the declared purposes of the Conference, namely the advancement of a negotiated peace between Israel and each one of its neighbours.



Resolution 242 (1967)

of 22 November 1967

The Security Council,

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

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

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

1. *Affirms* that the fulfilment of Charter principles requires the establishment of a just and lasting peace in the Middle East which should include the application of both the following principles:

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

2. *Affirms further the necessity*

(a) For guaranteeing freedom of navigation through international waterways in the area;

(b) For achieving a just settlement of the refugee problem;

(c) For guaranteeing the territorial inviolability and political independence of every State in the area, through measures including the establishment of demilitarized zones;

3. *Requests* the Secretary-General to designate a Special Representative to proceed to the Middle East to establish and maintain contacts with the States concerned in order to promote agreement and assist efforts to achieve a peaceful and accepted settlement in accordance with the provisions and principles in this resolution;

4. *Requests* the Secretary-General to report to the Security Council on the progress of the efforts of the Special Representative as soon as possible.

Adopted unanimously at the 1382nd meeting.

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

2. Affirms further the necessity

- (a) For guaranteeing freedom of navigation through international waterways in the area;
- (b) For achieving a just settlement of the refugee problem;
- (c) For guaranteeing the territorial inviolability and political independence of every State in the area, through measures including the establishment of demilitarized zones;

3. Requests the Secretary-General to designate a Special Representative to proceed to the Middle East to establish and maintain contacts with the States concerned in order to promote agreement and assist efforts to achieve a peaceful and accepted settlement in accordance with the provisions and principles in this resolution;

4. Requests the Secretary-General to report to the Security Council on the progress of the efforts of the Special Representative as soon as possible.

UNITED NATIONS
SECURITY
COUNCIL



Distr.
GENERAL

S/RES/338 (1973)
21 October 1973

RESOLUTION 338 (1973)

Adopted by the Security Council at its 1747th meeting,
on 21/22 October 1973

The Security Council

1. Calls upon all parties to the present fighting to cease all firing and terminate all military activity immediately, no later than 12 hours after the moment of the adoption of this decision, in the positions they now occupy;
2. Calls upon the parties concerned to start immediately after the cease-fire the implementation of Security Council resolution 242 (1967) in all 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.

UNITED NATIONS RESOLUTION 338, 22 October 1973

The Security Council

1. Calls upon all parties to the present fighting to cease all firing and terminate all military activity immediately, no later than 12 hours after the moment of the adoption of this decision, in the positions they now occupy;
2. Calls upon the parties concerned to start immediately after the cease-fire the implementation of Security Council Resolution 242 (1967) in all 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.

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UNITED NATIONS RESOLUTION 339, 23 October 1973

The Security Council:

Referring to its resolution 338 (1973) of 22 October 1973,

1. Confirms its decision on an immediate cessation of all kinds of firing and of all military action, and urges that the forces be returned to the positions they occupied at the moment the cease-fire became effective.
2. Requests the Secretary General to take measures for immediate dispatch of United Nations observers to supervise the observance of the cease-fire between the forces of Israel and the Arab Republic of Egypt, using for this purpose the personnel of the United Nations now in the Middle East and first of all the personnel now in Cairo.

UNITED NATIONS
SECURITY
COUNCIL



Distr.
GENERAL

S/RES/339 (1973)
23 October 1973

RESOLUTION 339 (1973)

Adopted by the Security Council at its 1748th meeting,
on 23 October 1973

The Security Council,

Referring to its resolution 338 (1973) of 22 October 1973,

1. Confirms its decision on an immediate cessation of all kinds of firing and of all military action, and urges that the forces of the two sides be returned to the positions they occupied at the moment the cease-fire became effective;
2. Requests the Secretary-General to take measures for immediate dispatch of United Nations observers to supervise the observance of the cease-fire between the forces of Israel and the Arab Republic of Egypt, using for this purpose the personnel of the United Nations now in the Middle East and first of all the personnel now in Cairo.

UNITED NATIONS RESOLUTION 340, 25 October 1973

The Security Council,

Recalling its resolutions 338 (1973) of 22 October 1973 and 339 (1973) of 23 October 1973,

Noting with regret the reported repeated violations of the cease-fire in non-compliance with resolutions 338 (1973) and 339 (1973),

Noting with concern from the Secretary General's report that the United Nations military observers have not yet been enabled to place themselves on both sides of the cease-fire line,

1. Demands that immediate and complete cease-fire be observed and that the parties return to the positions occupied by them at 16:50 hours GMT on 22 October 1973;
2. Requests the Secretary General, as an immediate step, to increase the number of United Nations military observers on both sides;
3. Decides to set up immediately under its authority a United Nations Emergency Force to be composed of personnel drawn from states members of the United Nations except the permanent members of the Security Council, and requests the Secretary General to report within 24 hours on the steps taken to this effect;
4. Requests the Secretary General to report to the Council on an urgent and continuing basis on the state of implementation of this resolution as well as resolutions 338 (1973) and 339 (1973);
5. Requests all Member States to extend their full co-operation to the United Nations in the implementation of this resolution as well as resolutions 338 (1973) and 339(1973).

UNITED NATIONS
SECURITY
COUNCIL



Distr.
GENERAL

S/RES/340 (1973)
25 October 1973

RESOLUTION 340 (1973)

Adopted by the Security Council at its 1750th meeting,
on 25 October 1973

The Security Council,

Recalling its resolutions 338 (1973) of 22 October and 339 (1973) of 23 October 1973,

Noting with regret the reported repeated violations of the cease-fire in non-compliance with resolutions 338 (1973) and 339 (1973),

Noting with concern from the Secretary-General's report that the United Nations military observers have not yet been enabled to place themselves on both sides of the cease-fire line,

1. Demands that immediate and complete cease-fire be observed and that the parties return to the positions occupied by them at 1650 hours GMT on 22 October 1973;

2. Requests the Secretary-General, as an immediate step, to increase the number of United Nations military observers on both sides;

3. Decides to set up immediately under its authority a United Nations Emergency Force to be composed of personnel drawn from States Members of the United Nations except the permanent members of the Security Council, and requests the Secretary-General to report within 24 hours on the steps taken to this effect;

4. Requests the Secretary-General to report to the Council on an urgent and continuing basis on the state of implementation of the present resolution, as well as resolutions 338 (1973) and 339 (1973);

5. Requests all Member States to extend their full co-operation to the United Nations in the implementation of the present resolution, as well as resolutions 338 (1973) and 339 (1973).

UNITED NATIONS
SECURITY
COUNCIL



Distr.
GENERAL

S/RES/341 (1973)
27 October 1973

RESOLUTION 341 (1973)

Adopted by the Security Council at its 1752nd meeting,
on 27 October 1973

The Security Council

1. Approves the report of the Secretary-General on the implementation of Security Council resolution 340 (1973) contained in document S/11052/Rev.1 dated 27 October 1973;
2. Decides that the force shall be established in accordance with the above-mentioned report for an initial period of six months, and that it shall continue in operation thereafter, if required, provided the Security Council so decides.

SECURITY COUNCIL RESOLUTION 344

Adopted by the Security Council on 15 December 1973

The Security Council

Considering that it decided by its Resolution 338 (1973) of 21/22 October 1973 that talks among the parties to the Middle East conflict for the implementation of Resolution 242 (1967) of 22 November 1967 should be held under "appropriate auspices",

Noting that a Peace Conference on the Middle East situation is to begin shortly at Geneva under the auspices of the United Nations,

1. Expresses the hope that the Conference will make speedy progress towards the establishment of a just and durable peace in the Middle East.
2. Expresses its confidence that the Secretary General will play a full and effective role at the Peace Conference, in accordance with the relevant Resolutions of the Security Council and that he will preside over its proceedings, if the parties so desire.
3. Requests the Secretary General to keep it suitably informed of the developments in negotiations at the Peace Conference in order to enable the Council to review the problems on a continuing basis.
4. Requests the Secretary General to provide all necessary assistance and facilities for the work of the Conference.

UNITED NATIONS
SECURITY
COUNCIL



Distr.
GENERAL

S/11091
9 November 1973

ORIGINAL: ENGLISH

LETTER DATED 9 NOVEMBER 1973 FROM THE PERMANENT REPRESENTATIVE
OF THE UNITED STATES OF AMERICA TO THE UNITED NATIONS ADDRESSED
TO THE SECRETARY-GENERAL

I have the honour to transmit the following message to you from the Secretary of State of the United States of America:

"Dear Mr. Secretary-General:

"I have the honor to inform you that the Governments of Egypt and Israel are prepared to accept the following agreement which implements paragraph 1 of the United Nations Security Council resolution 338 (1973) and paragraph 1 of United Nations Security Council resolution 339 (1973).

"The text of this agreement is as follows:

"A. Egypt and Israel agree to observe scrupulously the cease-fire called for by the United Nations Security Council.

"B. Both sides agree that discussions between them will begin immediately to settle the question of the return to the October 22 positions in the framework of agreement on the disengagement and separation of forces under the auspices of the United Nations.

"C. The town of Suez will receive daily supplies of food, water and medicine. All wounded civilians in the town of Suez will be evacuated.

"D. There shall be no impediment to the movement of non-military supplies to the East Bank.

"E. The Israeli checkpoints on the Cairo-Suez Road will be replaced by United Nations checkpoints. At the Suez end of the road, Israeli officers can participate with the United Nations to supervise the non-military nature of the cargo at the bank of the Canal.

"F. As soon as the United Nations checkpoints are established on the Cairo-Suez Road, there will be an exchange of all prisoners of war, including wounded.

S/11091
English
Page 2

"It has also been agreed by the two parties that they will hold a meeting under the auspices of the United Nations Commander at the usual place (kilometre 109 on the Suez-Cairo Road) to sign this agreement and to provide for its implementation. I would be most grateful if you would take the appropriate steps to insure that a meeting is held on Saturday, 10 November 1973, or at such other time as may be mutually convenient, of representatives of the parties to take the appropriate steps.

"We intend to make public this letter at noon, New York time, 7 p.m. Cairo and Tel Aviv time, on Friday, 9 November 1973.

"Best regards,

"Henry A. Kissinger"

(Signed) John SCALI

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18.12.73-2



THE REPRESENTATIVE
OF THE
UNITED STATES OF AMERICA
TO THE
UNITED NATIONS

December 18, 1973

Dear Mr. Secretary General:

I have the honor to transmit to you the following letter from Secretary Kissinger.

"Dear Mr. Secretary General:

"On October 22, 1973, the Security Council adopted Resolution 338, jointly sponsored by the Soviet Union and the United States which calls for negotiations to start between the parties concerned under appropriate auspices, aimed at establishing a just and durable peace in the Middle East. The Soviet Union and the United States have now been informed by the parties concerned of their readiness to participate in the Peace Conference which will begin in Geneva on December 21. The conference should be convened under the auspices of the United Nations.

"The parties have agreed that the conference should be under the co-chairmanship of the Soviet Union and the United States. The parties have also agreed that the question of other participants from the Middle East area will be discussed during the first stage of the conference.

"It is our hope that you will find it possible to participate in the opening phase of the conference at which it is expected that the governments concerned

H.E. Mr. Kurt Waldheim,
Secretary General of
the United Nations,
New York, N. Y.

will be represented by their respective foreign ministers and later by their specially appointed representatives with ambassadorial rank. We also hope that you can make available a representative who would keep you fully informed as the conference proceeds. Finally, we would also appreciate it if the United Nations could make appropriate arrangements for the necessary conference facilities.

"If as we hope you find it possible to participate, as co-chairmen the Soviet Union and the United States would appreciate it if you would agree to serve as convener of the conference and preside in the opening phase.

"We request that you circulate this letter to members of the Security Council for their information. We believe it would be appropriate for the President of the Security Council to consult informally with the membership with a view to securing a favorable consensus of the Council."

Yours very sincerely,

W. Tapley Bennett, Jr.

W. Tapley Bennett, Jr.
Acting

DEPUTY MINISTER FOR FOREIGN AFFAIRS
PERMANENT REPRESENTATIVE OF THE
UNION OF SOVIET SOCIALIST REPUBLICS
TO THE UNITED NATIONS
136 East 67th Street
New York, N. Y. 10021

"18" декабря 1973 года

22 октября 1973 года Совет Безопасности принял резолюцию 338, совместно предложенную Советским Союзом и Соединенными Штатами, которая призывает к началу переговоров между заинтересованными сторонами под соответствующей эгидой, направленных на установление справедливого и прочного мира на Ближнем Востоке. Советский Союз и Соединенные Штаты были информированы теперь заинтересованными сторонами об их готовности принять участие в мирной конференции, которая начнется в Женеве 21 декабря с.г. Конференция будет созвана под эгидой ООН.

Стороны согласились, что конференция должна проходить под сопредседательством Советского Союза и Соединенных Штатов. Стороны согласились также, что вопрос о других участниках от района Ближнего Востока будет обсужден во время первой стадии конференции.

Мы надеемся, что Вы сочтете возможным принять участие в открытии конференции, на котором, как ожидается, заинтересованные правительства будут представлены своими соответствующими министрами иностранных дел, а в дальнейшем своими специально назначенными представителями в ранге посла.

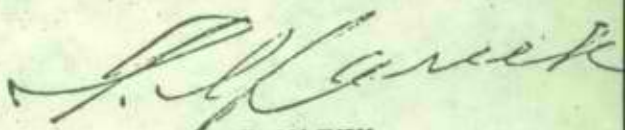
Мы также надеемся, что Вы выделите представителя, который будет держать Вас полностью информированным о ходе работы конференции. И последнее, мы были бы благодарны, если бы Организация Объединенных Наций могла бы обеспечить необходимые условия для работы конференции.

г. Нью-Йорк, Н.И.

Если, как мы надеемся, Вы сочтете возможным принять участие, то Советский Союз и Соединенные Штаты как сопредседатели были бы благодарны, если бы Вы согласились быть организатором конференции и председательствовать на ее открытии.

Мы просим Вас разослать это письмо членам Совета Безопасности для их сведения. Мы полагаем, что для Председателя Совета Безопасности было бы уместным провести неофициальные консультации с членами Совета, имея в виду получение благоприятного консенсуса в Совете.

С уважением



Я. МАЛИК

Постоянный Представитель
СССР при ООН

20.12.73

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is intended to express how Israel and the United States will approach their respective roles at the Geneva Conference.

1. The Governments of Israel and the United States agree that the Geneva Conference is aimed at the attainment of a just and durable peace between the parties, that this peace will be a contractual peace between Israel and its Arab neighbors, and that its objective is full reconciliation between the two sides.

2. In the spirit of the special relationship that exists between our two countries, the United States will consult fully with Israel on a step-by-step basis with respect to any ideas it may wish to explore with the Soviets or with the Arabs concerning the settlement.

3. The U.S. will make a major effort with the Syrians and Soviets to achieve a prompt and satisfactory solution to the Israeli-Syrian POW problem. It will press Syria to submit promptly a list of POW's, to permit the International Committee of the Red Cross to visit them and report that they are being treated in conformity with the Geneva Convention and will agree to an immediate exchange of wounded POW's. If Syria has not taken the above action, Israel will participate in the opening phase of the conference

SECRET

but not undertake any substantive discussion with Syria at that phase, and the U.S. will show full understanding for Israel's attitude.

4. Israel reiterates its decision to observe scrupulously the ceasefire on land, air and sea on a reciprocal basis. The United States will exercise its good offices in order to assure that the other side will abide by its undertaking to observe scrupulously the ceasefire. If the U.S. has reason to believe that there has been any change in the Egyptian position the U.S. will seek a reconfirmation that the Egyptian commitment to observe the ceasefire remains in force.

5. All the existing arrangements with regard to the non-military supply to the Third Army as well as the City of Suez will be maintained unless superseded by other arrangements mutually agreed.

6. The United States will do its utmost to insure that the existing arrangement regarding the uninterrupted passage of ships through Bab-El-Mandeb, to and from Israel, will remain in force, and that Egypt will not apply any blockade measures.

7. It is understood that, in accordance with accepted international procedure, the participation at a subsequent phase of the conference of any possible additional state, group or organization will require the agreement of all the initial participants.

SECRET

8. The negotiations in the Conference will be conducted between the parties concerned as specified in Resolution 338. Israel and the United States agree that it is their view that the Secretary General should participate in the opening sessions in a non-substantive capacity and that he can appoint a representative who would remain throughout the Conference after he has left. His principal duty would be to keep the Secretary General informed and to help assure that the technical and conference arrangements being provided by the U.N. are in order.

9. Since the negotiations between the parties are under U.S.-USSR auspices, it is expected that the two major powers will maintain close contact with each other and the negotiating parties. At the same time, it is the view of both Israel and the United States that the prime focus should be negotiations between the parties concerned. The U.S. will work in concert with Israel to maximize opportunities for negotiations between the parties without the presence of either of the major powers.

10. In view of the fact that the Soviet Union does not maintain diplomatic relations with Israel, the Government of Israel seriously questions the propriety and the feasibility of the Soviet Union acting as one of the two powers under whose auspices the Conference is being held. The United States notes Israel's reservations regarding the role of the Soviet

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Union at the Conference. The United States will make every effort in its consultations with the Soviet Union to encourage it to play a constructive role at the Conference.

11. The Peace Conference will not discuss or take any action on any substantive issue prior to the elections in Israel, other than the question of the disengagement and separation of forces. The Peace Conference will reconvene only after the new Cabinet is formed.*

12. The United States will do its utmost to prevent any attempt to convene the U.N. Security Council or any other U.N. body for the purpose of discussing or taking action on any of the outstanding issues which were discussed at Kilometer 101 or which will be discussed at the Peace Conference.

13. Israel and the United States agree that nothing in this Memorandum alters the text of the joint U.S.-USSR letter which will be despatched to the U.N. Secretary General upon receipt of the approval of the parties concerned.

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*(provided it is understood that the U.S. does not feel resumption of Conference could be delayed beyond mid-January).

20 December 1973

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בלתי מסווג

משרד החוץ

מחלקת הקשר

מברק נכנס

מס' 290

בשליח: 222200 דצמ 73

אל: המשרד

מאת: ג'נבה

ב ה י ל

המשרד, ביו יורק ושינגטון (הרעבר)

STATEMENT BY THE SECRETARY GENERAL OF THE UNITED NATIONS SUMMING UP THE CONCLUSIONS OF THE PEACE CONFERENCE ON THE MIDDLE EAST ABOUT THE FUTURE WORK OF THE CONFERENCE.

AFTER BOTH FORMAL AND INFORMAL DELIBERATIONS THE CONFERENCE REACHED A CONSENSUS TO CONTINUE ITS WORK THROUGH THE SETTING UP OF A MILITARY WORKING GROUP, AS WELL AS OTHER WORKING GROUPS WHICH THE CONFERENCE MAY WISH TO ESTABLISH AT SOME FUTURE DATE. THE MILITARY WORKING GROUP WILL START DISCUSSING FORTHWITH THE QUESTION OF DISENGAGEMENT OF FORCES. THE WORKING GROUPS WILL REPORT THEIR FINDINGS AND RECOMMENDATIONS TO THE CONFERENCE, WHICH IS CONTINUING ON AT LEAST THE AMBASSADORIAL LEVEL. THE CONFERENCE AT THE FOREIGN MINISTERS LEVEL WILL RECONVENE IN GENEVA AS NEEDED IN THE LIGHT OF DEVELOPMENTS.

AD KAN ----

שהח ריהם, מנכל אלון ויין מ/מנכל סמנכל מאים א ב ספא סעם הסברה מוחים אלגים

חקר רם אמן חיעוד אילס,

מב/הב

771.00

נשלח: 28.12.73

אל: המשרד

מאת: ביו-ירוק

מ יר י

MAOUM B

S/ 11169
24 DECEMBER 1973

REPORT OF THE SECRETARY-GENERAL SUBMITTED IN PURSUANCE
OF SECURITY COUNCIL RESOLUTION 344 (1973)

THE FOLLOWING INFORMATION IS COMMUNICATED IN ACCORDANCE WITH PARAGRAPH 3 OF SECURITY COUNCIL RESOLUTION 344 (1973) OF 15 DECEMBER 1973. THE PEACE CONFERENCE ON THE MIDDLE EAST WAS CONVENED BY THE SECRETARY-GENERAL ON 21 DECEMBER 1973, 8 IN GENEVA. THE FOLLOWING GOVERNMENTS WERE REPRESENTED: EGYPT, ISRAEL, JORDAN, THE UNION OF SOVIET SOCIALIST REPUBLICS AND THE UNITED STATES OF AMERICA. THE SECRETARY-GENERAL AS CHAIRMAN OPENED THE CONFERENCE AT 11 A.M. ON THE SAME DAY AND MADE A STATEMENT WHICH IS ATTACHED. THE CONFERENCE IN TWO PUBLIC SESSIONS.

ON 21 DECEMBER, HEARD STATEMENTS FROM THE REPRESENTATIVES OF THE USSR, THE UNITED STATES, EGYPT, JORDAN AND ISRAEL. AFTER INFORMAL CONSULTATIONS AMONG THE DELEGATIONS AND WITH THE SECRETARY-GENERAL, AL. THE CONFERENCE MET AGAIN IN CLOSED SESSION AT 11 - A.M. ON 22 DECEMBER. AT THE CLOSE OF THAT SESSION THE SECRETARY-GENERAL SUMMED UP THE CONCLUSIONS OF THE CONFERENCE ABOUT ITS FUTURE WORK AS FOLLOWS:

AFTER BOTH FORMAL AND INFORMAL DELIBERATIONS THE CONFERENCE REACHED A CONSENSUS TO CONTINUE ITS WORK THROUGH THE SETTING UP OF A MILITARY WORKING GROUP AS WELL AS OTHER WORKING GROUPS WHICH THE CONFERENCE MAY WISH TO ESTABLISH. THE MILITARY WORKING GROUP WILL START DISCUSSING FORTHWITH THE QUESTION OF DISENGAGEMENT OF FORCES. THE WORKING GROUPS WILL REPORT THEIR FINDINGS AND RECOMMENDATIONS TO THE CONFERENCE WHICH IS CONTINUING ON AN AMBASSADORIAL LEVEL. THE CONFERENCE AT THE FOREIGN MINISTERS LEVEL WILL RECONVENE IN GENEVA AS NEEDED IN THE LIGHT OF DEVELOP-

VELOPMENTS.

TEXT OF A STATEMENT BY THE SECRETARY-GENERAL AT THE OPENING IN GENEVA OF THE PEACE CONFERENCE ON THE MIDDLE EAST.
AD KAN NAOM

שהם רחוק מבטל הליך דיון מ/מבטל סמבטל מרדז ארז מנפא איר ג מנה הסברה מזהים אלדום

ארז מרדז אילסר דרדז מל

מב / מ



PEACE CONFERENCE
ON THE MIDDLE EAST

PCME/PV.1
21 December 1973
ENGLISH

5-3	at	22/12	22/12	22/12	22/12
11-5	at	"	"	13/12	"
15-11	at	"	"	25/12	"
20-15	at	"	"	22/12	"
21-20	at	"	"	22/12	"

Verbatim Record
of the
Opening Meeting

Presided over by the Secretary-General of the United Nations, Kurt Waldheim

The SECRETARY-GENERAL of the UNITED NATIONS: It is a great honour for me to open this historic Conference and to welcome the representatives of the participating Governments. It is also a source of gratification to me that this unique event is taking place under the auspices of the United Nations. The Palais des Nations has housed many historic meetings, but none have been of more potential importance, both to the Governments concerned and to the international community as a whole, than this Conference on peace in the Middle East.

I am certain that I am speaking on behalf of all the participants in the Conference when I also take this opportunity to thank sincerely the Federal and Cantonal authorities of Switzerland for their valuable assistance. We are indeed most grateful for their unfailing and generous co-operation in making the necessary arrangements possible.

There is no need to remind the distinguished representatives of the Governments here assembled of the concern of the international community for the success of our deliberations. This concern was emphasized most recently by the Security Council when it expressed the hope that the Conference would make speedy progress towards the establishment of a just and durable peace in the Middle East. The United Nations has been seized of the various aspects of the Middle East conflict for more than a quarter of a century and has devoted an immense amount of time and effort both to keeping the peace and to the search for a just and lasting settlement.

On 11 October of this year, five days after bitter fighting had broken out once again in the Middle East, I appealed to the Governments concerned to look urgently to the possibility of turning the tragic conflict into a starting point for a new effort at a real settlement. Similar appeals were made by numerous Governments. Now, two months later, this new effort is taking shape here in Geneva. None of us, I know, underestimates the difficulties of the task ahead, but the very fact of this Conference, and the willingness of the Governments concerned to respond to this new effort to find a just and lasting settlement, is a source of encouragement and hope for all mankind.

The basis for this meeting was laid down in Security Council resolution 338 of 22 October 1973. That resolution called upon the parties for an immediate cessation of all firing and a termination of all military activity. It called upon the parties to start immediately the implementation of Security Council resolution 242 in all its parts, and it decided that negotiations should begin at once between the parties concerned under appropriate auspices aimed at establishing a just and durable peace in the Middle East.

In subsequent resolutions on 23 and 25 October, the Council confirmed its decisions on an immediate cessation of all kinds of firing and of all military action, called for United Nations observation of the cease-fire and decided to set up a United Nations Emergency Force. The United Nations Military Observers and the Force were immediately put into the field, and they continue to exert their best efforts to keep the peace.

On 11 November the representatives of Egypt and Israel, under the auspices of the Commander of UNEF, met at Kilometre Marker 101 on the Cairo-Suez road and signed the six-point agreement which had been communicated to the Secretary-General on 1 November by the Secretary of State of the United States. In subsequent meetings the

modalities for the implementation of five of the six points were agreed upon by the parties and were put into effect with the assistance of UNEF and the International Committee for the Red Cross. It is gratifying that in this way the humanitarian aspects of the six-point agreement have been largely fulfilled.

I am aware of the outstanding humanitarian problems relating to the Middle East question as a whole. The Commander of UNEF, in close co-operation with the International Committee of the Red Cross, is making persistent efforts to find solutions to some of these problems, and I myself have taken initiatives in an effort to resolve others. It is my earnest hope that through such efforts and through the proceedings of this Conference rapid progress may be made in this regard.

On the implementation of one point of the agreement, namely the question of the return to the October 22 position in the framework of agreement on the disengagement and separation of forces under the auspices of the United Nations, the parties have not so far reached accord, although detailed exploratory discussions have been held. I hope that through its deliberations this Conference may make progress on this important matter, as well as embarking on the next step envisaged in resolution 338, namely the negotiations aimed at establishing a just and durable peace in the Middle East.

The presence of the Secretary-General of the United Nations here today reflects the deep concern of the international community in the Middle East question. It also symbolizes the willingness of the Organization to be of assistance whenever the parties require it. I want to assure all of the parties here present that in that spirit I and my staff, both at United Nations Headquarters and in the Middle East, stand ready to be of assistance in any way that may seem useful to them. We have, I believe, amply demonstrated this readiness to act promptly in the critical events of recent months.

Before concluding, may I express appreciation to all the Governments which, by their spirit of co-operation and their desire to make progress on this most complex and crucial question, have made possible the convening of this Conference today. The Conference has a unique opportunity to come to grips with a most difficult, dangerous and complex international problem. If this opportunity is not seized, the world will inevitably be confronted once again with a dangerous and highly explosive situation in the Middle East. Unless progress can be made, the cease-fire and the United Nations peace-keeping arrangements already in operation in the area will remain fragile, and there will be an ever-present danger that fighting will break out again.

This Conference presents a historic challenge to its participants not only because the eyes of the world are upon it, but because the situation in the Middle East, with all its manifold implications, urgently demands the statesmanship, courage, patience and vision of each and all of the participants. I know that these qualities are not lacking in this room. I am sure that all the participants share a sense of urgency and will not fail to seize the opportunity to build a lasting structure of peace in the area. It is an opportunity which may not recur for a very long time. I wish this Conference all success in its noble task.

The SECRETARY-GENERAL of the UNITED NATIONS: I call upon the representative of the USSR, Foreign Minister Gromyko.

Mr. GROMYKO (Union of Soviet Socialist Republics) (interpretation from Russian): Mr. Secretary-General, distinguished colleagues. It is with a deep feeling of satisfaction that the Soviet Union welcomes the convening of this conference. A first, but important, step has been taken on the road to the political solution of one of the most acute international problems. For a quarter of a century now it has been a constant source of tension, not only in the Middle East but also far beyond its boundaries.

From time to time, and we are all witnesses to that, the tension in this area turns into open armed conflict. Every time that happens, the fate of the whole world is in jeopardy. That was so six years ago, as it was quite recently in October this year, when the military activities, although they did not last long, were marked by extreme violence.

There can hardly be any doubt that further sanguinary military clashes in the Middle East will take place in the future as well unless we eradicate the main tensions prevailing there. Anyone must inevitably come to that conclusion who has even a slight knowledge of the actual situation and approaches the question objectively.

The intolerable situation in the Middle East created because of the policy of Israel cannot continue. We should like to hope that the participants in the Conference will recognize this, that they came here with the firm intention of laying the foundation for a just settlement.

There is no alternative to such a settlement which would be acceptable to the peoples of the area, to the peoples of the world as a whole. This is irrefutably demonstrated by the whole course of events, including those which have happened recently. It is now quite clear to all that the Arab States will never reconcile themselves to the loss of the territories which were taken away from them in 1967. The Soviet Union has full understanding of their position, and supports it. The Arab countries have the support of the overwhelming majority of the States of the world in their righteous struggle. They have on their side the strengthening solidarity of the Arab world.

It is hopeless to think that the occupied territories can be kept by force. The need for another, a realistic approach to the problems of war and peace in the Middle East, of which the Soviet Union has always spoken, cannot be deferred.

The overwhelming majority of the States of the world have very definitely shown, in one form or another, that they will not tolerate the perpetuation of a source of tension in the Middle East. Not to take this into account would be to go against the expressed will of the peoples.

Also conducive to a lasting settlement of the situation in the Middle East are the positive movements towards détente in the world as a whole that have been achieved in recent years. In many parts of the world a number of important international problems have been solved, including some which had seemed unapproachable. It is sufficient to recall the termination of the war in Viet-Nam, the settlement of acute and important post-war problems in Europe, and the important turn towards normalization and the improvement of relations among States with different social structures on the basis of peaceful co-existence through the conclusion of international treaties and agreements.

A real indicator of the positive changes that have taken place in the Middle East, too, was the initiative taken by the Soviet Union and the United States, which found its expression in the well-known decisions of the United Nations Security Council. In the light of all this, the continuing Middle East conflict, even though the military activities have stopped; seems an inadmissible anomaly.

We do not wish to say again whose responsibility it is. We know whose it is and we believe we are not the only ones who do. Now that the question of a

settlement is no longer deadlocked, something else is more important: to determine what must be done in order to establish such a peace in the Middle East as would be lasting and just to all States and peoples in the area.

In the first place, it is the Soviet Union's firm conviction that a fundamental principle of international life must be unswervingly applied - the principle of the inadmissibility of the acquisition of territory by means of war.

That is the key to the whole problem. If the participants in the conference really wish to rid the Middle East area of the threat of new conflicts, it is necessary to remove the initial cause of the crisis - the occupation of Arab territories which has been continuing now for more than six years. These territories must be returned in full to their lawful owners. It is our conviction that, so long as Israeli forces are in these territories, there will be no peace in the Middle East.

Any document adopted by this conference must contain precise and clear obligations concerning the withdrawal of Israeli forces from the territories occupied in 1967.

Without the achievement of an agreement by the parties on this question of principle, we do not see how it would be possible to ensure a settlement which would satisfy the interests of the Arab States and Israel, and the interests of international security. On the other hand, if agreement was reached on this basis, the solution of many other aspects of the settlement would undoubtedly be greatly simplified.

At the same time it is necessary to ensure respect for and recognition of the sovereignty, territorial integrity and political independence of all the States of the Middle East, and of their right to live in peace. This also refers to Israel. Our position is clear and consistent from start to finish - peace and security for all the peoples of the area. This implies, of course, that justice will be ensured as regards the Arab people of Palestine. Their legitimate rights must be protected. It goes without saying that the Palestinian problem cannot be considered and decided without the participation of representatives of the Arab people of Palestine.

The contention that Israel is being deprived of the right to existence is of course advanced as one of the main arguments, if not the main argument, in favour of the occupation of other peoples' territory. It is an argument which does not stand up to criticism. Israel was recognized to possess that right by the very fact of the creation of that State by decision of the United Nations. Possession of that right was confirmed by the establishment in due course of diplomatic relations with Israel by many States, including the Soviet Union. The Arab neighbours of Israel have expressed their willingness to negotiate a settlement on the basis of the well-known resolutions of the Security Council, in which the principle is clearly expressed that all States involved in the conflict have the right to existence.

That right cannot be unilateral, however. It is inconceivable without respect for the sovereign rights of other States and countries. One cannot use one's right to existence to the detriment of the interests of others. Only obligations of a reciprocal kind, based on equality of rights, and a readiness to observe them rigorously, can ensure the normal development of inter-State relations in the Middle East.

This is fully applicable to the principle of the integrity of frontiers. Just as in other parts of the world, reliable frontiers are, above all, peaceful frontiers which provide an assurance that they will not be violated. It is naive to believe that secure frontiers can be ensured by the seizure of alien territories. The only frontiers that are truly secure are legal frontiers that are recognized by those on both sides of them. In the specific circumstances of the Middle East, these are the demarcation lines that existed on 4 June 1967.

This is the Soviet Union's position on the most fundamental aspect of a settlement in the Middle East. It is fully in accordance with the letter and spirit of the decisions adopted by the United Nations since 1967. This applies, above all, to the well-known Security Council resolution 242 of 22 November 1967.

The Soviet Union, which firmly pursues a policy of securing a radical improvement of the situation in the Middle East, has not deviated from this position nor does it intend to do so.

We are convinced that the 1967 Security Council resolution we have mentioned continues to retain its full significance as a realistic and sound approach to the problems existing in the Middle East and to the settlement of those problems.

And we are not alone in this conviction. It is shared by virtually all States Members of the United Nations, which have frequently expressed a desire for the appropriate action both within the United Nations and outside it.

It is, of course, one thing to recognize resolutions in the world, but another to carry them out in deeds. If this had been done, the problem of a Middle East settlement would long since have been removed from the agenda. However, even as I speak, the smell of gunpowder and burning still hangs over Sinai and the Golan Heights and the pain of bloody wounds still wrings the hearts of thousands of Arabs as well as of Israelis.

The practical task of this Conference is to work out a concrete, realistic programme for implementing the above-mentioned Security Council resolution in all its parts. Such action is also required by the decisions which were taken by the Security Council during the recent military operations and in which a cease fire in the Middle East was linked with the start of immediate negotiations with a view to a sound solution of the Middle East problem.

As we see it, the agreements on such a settlement that are reached between the parties concerned will be embodied in the appropriate documents at the Conference. It is important that these should be substantial documents and should be binding on all the parties that subscribe to them. In other words, they must have the force of law.

In this way a firm foundation would be laid for peaceful co-existence and good-neighbourly relations between all States and peoples of the Middle East.

Obligations assumed by the parties under international law would be the best guarantee of their mutual security, which can be ensured only through trust and co-operation between States, through strict fulfilment of the treaties and agreements they have concluded, and not through seizure of the territories of others.

If it proves necessary to lend additional weight to such agreements, the Soviet Union, taking into account the wishes of the interested parties, is ready, together with appropriate other Powers, to assume the responsibilities involved. The Security Council of the United Nations can also make an important contribution in this connexion. What is vital is that the political settlement in the Middle East should be a truly solid one.

Other measures to achieve the same effect are also possible. I have in mind, in particular, the question of establishing demilitarized zones in certain sectors on a basis of reciprocity and the temporary deployment of international personnel in particular areas. All these matters would, of course, have to be the subject of separate negotiations and, what is most important, would have to be settled on terms which are mutually acceptable to the parties concerned.

It seems to me that, given agreement on the main problem to which we have referred, such matters would not constitute an obstacle to a general settlement.

Despite all its difficulties, the Middle East problem can be solved. We have said this before, and we reaffirm it now in this Conference. But we have also warned about something else: the conflagration of war in the Middle East could flare up at any moment. A dangerous situation continues to exist in the area. Further delays in achieving a peaceful settlement are fraught with great danger. We hope that all those present in this room are bearing this fully in mind.

The participants in this Conference bear a heavy responsibility. Their joint efforts can and must bring a dependable peace to the peoples of the Middle East. The Soviet Union has set itself, as one of the principal tasks, the task of helping to eliminate the hotbed of tension in the Middle East. We have supported and continue to support the Arab peoples in their efforts to establish a lasting and just peace in the Middle East area. At this Conference, too, we will do everything we can to help reach the necessary agreements so that such a peace will become a reality.

The Soviet Union is not hostile to the State of Israel as such. The policy of annexation and the flouting of the norms of international law and of United Nations resolutions - these are what have given rise to the general condemnation of Israel, by us among others. Israel has even come to this Conference without having implemented resolutions 330 and 339 of the Security Council. The situation can change when Israel confirms its readiness to arrive at an honourable and mutually acceptable settlement by deeds. The important and immediate task now is to decide the question of an effective withdrawal of troops.

The establishment of a genuine peace is in accordance with the fundamental interests of all the States of the Middle East. Enjoying the advantages of a peaceful life, their peoples could switch their efforts from hostility, which squanders human and material energies on both sides, to solving the problems of social and economic progress.

This would benefit other States and peoples which, because of certain circumstances, are experiencing the negative consequences of the Middle East conflict. These consequences are now being felt and quite perceptibly - both by countries in the immediate vicinity of the Middle East and by those which are situated many thousands of kilometres away from the area. International economic co-operation, trade and navigation - to mention only this aspect - would all be in a much better state.

One can only imagine the extent to which the entire international atmosphere would become more healthy and progress would be made towards the relaxation of tension as a result of the elimination of the Middle East conflict. This would have a most beneficial effect on the situation throughout the whole Mediterranean basin, in Europe, Asia and indeed throughout the whole world.

The peoples of the Middle East and indeed of the whole world expect practical measures aimed at ensuring a stable peaceful settlement in this area. The Soviet Union will do everything in its power to ensure that the work of the Conference proceeds in this direction and that it is businesslike and constructive.

The SECRETARY-GENERAL of the UNITED NATIONS: I thank the distinguished Foreign Minister of the Soviet Union. I now give the floor to the distinguished representative of the United States of America, Secretary of State, Mr. Kissinger.

Mr. KISSINGER (United States of America): Mr. Secretary General, distinguished Foreign Ministers, delegates.

Mr. Secretary-General, as one of the Co-Chairmen of this Conference, let me express my gratitude to the United Nations and to you personally for providing such excellent facilities for the Conference, for convening it, and for doing us all the honour of presiding at this historic moment.

We are convened here at a moment of historic opportunity for the cause of peace in the Middle East, and for the cause of peace in the world. For the first time in a generation the peoples of the Middle East are sitting together to turn their talents to the challenge of a lasting peace.

All of us must have the wisdom to grasp this moment - to break the shackles of the past, and to create at last a new hope for the future.

Two months ago what we now refer to as the fourth Arab-Israeli war was coming to an end. Today, there is the respite of an imperfect cease fire, but the shadow of war still hangs over the Middle East. Either we begin today the process of correcting the conditions which produced that conflict, or we doom untold tens of thousands to travail, sorrow and further inconclusive bloodshed.

When the history of our era is written, it will speak not of a series of Arab-Israeli wars, but of one war broken by periods of uneasy armistices and temporary cease fires. That war has already lasted twenty-five years. Whether future histories will call this the era of the twenty-five year Arab-Israeli war, or the thirty year war, or the fifty year war, rests in large measure in our hands. And above all, it rests in the hands of the Israeli and Arab Governments, not only those whose distinguished representatives are seated around this table, but also those who are absent and who we all hope will join us soon.

We are challenged by emotions so deeply felt - by causes so passionately believed and pursued - that the tragic march from cataclysm to cataclysm, each more costly and indecisive than the last, sometimes seems pre-ordained. Yet our presence here today - in itself a momentous accomplishment - is a symbol of rejection of this fatalistic view. Respect for the forces of history does not mean blind submission to those forces.

There is an Arab saying, Eli Fat Mat, which means that the past is dead. Let us resolve here today that we will overcome the legacy of hatred and suffering. Let us overcome old myths with new hope. Let us make the Middle East worthy of the messages of hope and reconciliation that have been carried forward from its stark soil by three great religions.

Today there is hope for the future, for the conflict is no longer looked upon entirely in terms of irreconcilable absolutes. The passionate ideologies of the past have, in part at least, been replaced by a recognition that all the peoples concerned have earned, by their sacrifice, a long period of peace.

From two recent trips through the Middle East I have the impression that people on both sides have had enough of bloodshed. No further proof of heroism is necessary; no military point remains to be made. The Middle East - so often the source of mankind's inspiration - is challenged to another act of hope and reconciliation - significant not only for its own peoples but for all mankind.

What does each side seek? Both answer with a single word: peace. But peace has of course a concrete meaning for each. One side seeks the recovery of sovereignty and the redress of grievances suffered by a displaced people. The other seeks security and recognition of its legitimacy as a nation. The common goal of peace must be broad enough to embrace all these aspirations.

For the United States, our objective is such a peace.

We cannot promise success, but we can promise dedication. We cannot guarantee a smooth journey towards our goal, but we can assure you of an unswerving quest for justice.

The United States will make a determined and unflagging effort.

President Nixon has sent me here because for five years he has endeavoured to build a new structure of international peace in which ties with old friends are strengthened, and new and constructive relationships replace distrust and confrontation with adversaries.

But world peace remains tenuous and incomplete so long as the Middle East is in perpetual crisis. Its turmoil is a threat to the hopes of all of us in this room.

It is time to end this turmoil.

The question is not whether there must be peace. The question is how do we achieve it. What can we do here to launch new beginnings?

First, this Conference must speak with a clear and unequivocal voice: the cease fire called for by the Security Council must be scrupulously adhered to by all concerned. Prior to last October the United States did all it could to prevent a new outbreak of fighting. But we failed because frustration could no longer be contained.

After the fighting began we, in concert with the Soviet Union, helped bring an end to the hostilities by sponsoring a number of resolutions in the Security Council. The six-point agreement of 11 November consolidated the cease fire. It helped create the minimal conditions necessary for carrying forward our efforts here. All these resolutions and agreements must be strictly implemented.

But regardless of these steps, we recognize that the cease fire remains fragile and tentative. The United States is concerned over the evidence of increased military preparedness. A renewal of hostilities would be both foolhardy and dangerous. We urge all concerned to refrain from the use of force, and to give our efforts here the chance they deserve.

Second, we must understand what can realistically be accomplished at any given moment.

The separation of military forces is certainly the most immediate problem. Disengagement of military forces would help to reduce the danger of a new military outbreak; it would begin the process of building confidence between the two sides.

Based on intensive consultations with the leaders of the Middle East, including many in this room today, I believe that the first work of this Conference should be to achieve early agreement on the separation of military forces, and I believe too that such an agreement is possible.

Serious discussions have already taken place between the military representatives of Egypt and Israel at Kilometer 101. It is important to build promptly on the progress achieved there. And on the Jordanian and Syrian fronts a comparable base for the lessening of tensions and the negotiation of further steps towards peace must be found. Progress towards peace should include all parties concerned.

Third, the disengagement of forces is an essential first step - a consolidation of the cease fire and a bridge to the "peaceful and accepted settlement" called for in Security Council resolution 242. Our final objective is the implementation in all of its parts of this resolution. This goal has the full support of the United States.

Peace must bring a new relationship among the nations of the Middle East - a relationship that will not only put an end to the state of war which has persisted for the last quarter of a century, but will also permit the peoples of the Middle East to live together in harmony and safety. It must replace the reality of mistrust with a new reality of promise and hope. It must include concrete measures that make war less likely.

A peace agreement must include these elements among others: withdrawals, recognized frontiers, security arrangements such as demilitarized zones, guarantees, a settlement of the legitimate interests of the Palestinians and a recognition that Jerusalem contains places considered holy by three great religions.

Peace will require that we relate the imperative of withdrawals to the necessities of security, the requirement of guarantees to the sovereignty of the parties, the hopes of the displaced to the realities now existing.

Fourth, we believe there must be realistic negotiations between the parties. Resolution 338 provides just such a process. It is on the parties that the primary responsibility rests. The United States intends to help facilitate these talks in every feasible way, to encourage moderation and the spirit of accommodation. We are prepared to make concrete suggestions to either side if this will help promote practical progress. But we must always remember that while a Middle East settlement is in the interest of us all, it is the people of the area that must live with the results. It must in the final analysis, be acceptable to them.

Peace, in short, cannot last unless it rests on the consent of the parties concerned. The wisest of realists are those who understand the power of a moral consensus. There is a measure of safety in power to prevent aggression, but there is greater security still in arrangements considered so just that no one wishes to overthrow them.

As we open this Conference we take a momentous step. We are challenging a history of missed opportunities, of mutual fear and bottomless distrust. Our backdrop is a war that has brought anguish and pain, a war that has been costly to both sides, that has brought neither victory nor defeat, that reflected the failure of all our past efforts at peaceful solutions.

Mr. Secretary-General, fellow delegates, President Nixon has sent me here with the purpose of affirming America's commitment to a just and lasting peace.

We do not embark on this task with false expectations. We do not pretend that there are easy answers. A problem that has defied solution for a generation does not yield to simple remedies.

In all efforts for peace the overriding problem is to relate the sense of individual justice to the common good. The great tragedies of history occur not when right confronts wrong, but when two rights face each other.

The problems of the Middle East today have such a character. There is justice on all sides, but there is a greater justice still in finding a truth which merges all aspirations in the realization of a common humanity. It was a Jewish sage, who speaking for all mankind, expressed this problem well: "If I am not for myself, who is for me, but if I am for myself alone, who am I?"

Fellow delegates, in the months ahead we will examine many problems. We will discuss many expedients. We will know success - and I dare say we shall experience deadlock and perhaps occasionally despair.

But let us always keep in mind our final goal:

We can exhaust ourselves in manoeuvres or we can remember that this is the first real chance for peace the Middle East has had in three decades.

We can concentrate on our resentments or we can be motivated by the consciousness that this opportunity, once past, will not return.

We can emphasize the very real causes of distrust, or we can remember that if we succeed our children will thank us for what they have been spared.

We can make propaganda or we can try to make progress.

The American attitude is clear. We know we are starting on a journey whose outcome is uncertain and whose progress will be painful. We are conscious that we need wisdom and patience and good will. But we know, too, that the agony of three decades must be overcome and that somehow we have to muster the insight and courage to put an end to the conflict between peoples who have so often ennobled mankind.

So we in the American delegation are here to spare no effort in the quest of a lasting peace in the Middle East, a task which is as worthy as it may be agonizing. If I may quote the words of a poet: "Pain that cannot forget falls drop by drop upon the heart until in our despair there comes wisdom through the awful grace of God."

The SECRETARY-GENERAL OF THE UNITED NATIONS: I thank the distinguished Secretary of State of the United States.

I have been informed that the distinguished representative of Egypt wishes to speak now. If so, I give the floor to the distinguished Foreign Minister of Egypt, Mr. Ismail Fahmy.

Mr. FAHMY (Egypt): Mr. Secretary-General, we are meeting today under the auspices of the United Nations and we are indeed pleased to meet under the chairmanship of the Secretary-General of the United Nations. Your presence symbolizes the interest of the Organization in the question of the Middle East, which has been the concern of the United Nations since its inception. We would wish to thank you and all your colleagues, and we are sure that the United Nations will follow with keen interest our deliberations. I would appreciate it, if and when our work departs - and heaven forbid that it should - from the principles enshrined in the Charter, if you and the United Nations would fulfil your duty and put us back on the path prescribed by the Charter.

Gentlemen, throughout history countries and nations have shown a stubborn resistance when faced with wrongs perpetrated against them. Legitimate grievances never fail to generate increasing resolve to do away with injustice. We in Egypt have had to face along the centuries many kinds of wrongs inflicted upon us. Each time we have resisted and suppressed them and have emerged in the end triumphant. No sacrifices were too great and no sufferings unbearable when nations pursuing such a noble cause worked with determination for justice and genuine peace. Such are the teachings of history. This we must remember when all of us look ahead and delve into the future.

When applying these lessons to the Middle East, one hardly needs to point out the tragic events that have taken place since the Palestinians were denied their national rights over their country and driven by force from their own land, a land to which they and we eternally belong. This area has since then continuously suffered from the militaristic and expansionist policy of Israel and from its unrelenting efforts to conquer and annex ever more territory, thus seriously endangering the independence, and infringing upon the territorial integrity, of the countries in the area.

The conflict in the Middle East is not and never has been a struggle that arose because its peoples hold different beliefs. For centuries these peoples, irrespective of their creed or religion, lived peacefully side by side. They could have continued living in peace, enjoying the immense opportunities which God and nature have bestowed on this good earth, had it not been for the wedge that was driven by force and in the alleged name of religion into their midst for the sake of domination, exploitation and racist practices. I do not wish, however, to dwell on this well-known matter, but merely want to say that only when warlike acts and aggression cease to be the maxim of Israel, which is trying to convince the world that its very existence can be built on military rashness and supremacy, only then can a just peace at last be envisaged for the region.

As a result of the events which took place on the 6 October, the Israelis must, we hope, have decided to relinquish this maxim and to change their course towards real peace, durable peace and just peace. So far as Egypt is concerned, my presence here symbolizes our deep desire to restore to our ravaged and embattled region a durable and just peace. This Conference is an historic event on which all the

hopes of the world are focused. It would be a real tragedy if the wisdom of those most directly concerned - or even of those only indirectly linked with the future of the Middle East - should fail to seize this unique opportunity to come to grips with the basic issues involved and find genuine solutions which could form the foundation of a lasting peace leading to an era of enlightened accomplishment rather than tragic disillusion.

This Conference is, as I have said, both historic and unique in the sense that it represents the culmination of the manifold efforts and endeavours which all nations and statesmen of the world have exerted with the aim of bringing to an end a struggle which has lasted only too long. As for the Arab countries, they have come to this Conference ready and prepared to lay the cornerstone of the edifice of peace in the Middle East.

This Conference is unique in nature because, if Israel does not comprehend the deeper significance of our work here, the chances of repeating such an historic gathering will be very remote indeed. The net result will then be, no doubt, the recourse to other means in order to liberate our lands and to restore the legitimate rights of the Palestinians who have lived under appalling conditions for more than a quarter of a century. This Conference is, furthermore, unique and, if I may say so, unparalleled, since for the first time in history a conference dealing with the Middle East has amongst its participants the Soviet Union and the United States, that is, the two global Powers which shoulder responsibilities unprecedented in history for the maintenance of international peace and security. I take their participation as being a good omen, and the fact that they are represented here by their Foreign Ministers is added evidence of their wish to guarantee that a peaceful and just settlement will prevail in the Middle East.

For Egypt and, I am sure, for the world as a whole, this is an historic event of a highly political significance. Consequently, I hope we all agree that a durable and just peace cannot emerge in our region unless it conforms with certain basic norms and principles constituting what I should like to call "the essentials for peace in our area". In this connexion I am sure that all of us here, including the super-Powers, fully realize that a just and durable peace in the Middle East cannot be built on the basis of the following:

- (i) expansion by force by one country against another;
- (ii) the acquisition of foreign territories by force;
- (iii) the threatening of international and recognized boundaries under any pretext or argument;

- (iv) the infringement of the sovereignty of States and the violation of their territorial integrity;
- (v) the denial of the inalienable rights of the Palestinians to self-determination and to live in peace.

As for us, Mr. Secretary-General, we are sincerely and hopefully looking forward to achieving a durable and just peace. To our minds, nothing less should emerge from this historic gathering; otherwise we would produce a most unusual document which public opinion in our countries and in the world at large would never accept, but rather oppose and reject. Such a peace would be as vulnerable and fragile as the present cease fire and as shaky and dangerous as were the conditions which, for the last 25 years or so, have persisted in the Middle East as a result of the failure to implement the many relevant resolutions adopted by the different organs of the United Nations.

Mr. Chairman, my presence here is a true and faithful continuation and implementation of the policies and the strategy laid down by President Sadat. In fact, as you may recall, he proposed on 14 February 1971 a programme for achieving peace based on the full implementation of Security Council resolution 242 (1967). Again, on 16 October of this year, he proposed that a peace conference be convened at the United Nations: such a conference was to lay down the modalities and establish the guarantees for building peace in the area based on respect for the legitimate rights of the peoples living therein.

Egypt's determination to work for peace equals its resolve to see that, in one way or another, its land; the Arab lands and those of our neighbours are liberated, and that the Palestinians enjoy their legitimate right to live in peace and dignity. This, in fact, represents what Egypt has been endeavouring to achieve since 5 June 1967, and up to 6 October 1973. Indeed, Egypt worked unremittingly for peace. These efforts were recognized and welcomed by all the countries of the world, whether in Africa, Asia or Europe, by the Soviet Union and even by the United States. My President, and with him the Egyptian people, are on record as declaring that they have done their best to attain a durable and just peace by peaceful means. Alas, all these efforts were met by a persistent cry and determination to retain Arab territories unlawfully and by the use of force. Then the hour of 6 October 1973 struck, as a result of which we hope that the Israeli Government has now realized that Israeli security does not lie in retaining geographical trophies or in achieving military supremacy, but that it would best be safeguarded if it undertakes to live in

peace with its neighbours. We hope, furthermore, that Israel now also understands that Egypt and, for that matter, all the Arab countries cannot be conquered by force or allow their lands to remain occupied. Nor will the Arab world accept the continued inhumane treatment of the Palestinians or agree that Jerusalem, the city of peace, should remain under the banner of the conqueror. Territories are the heritage most jealously guarded and defended by a people. They are handed from generation to generation. They are part of its history and prompt a profound sense of pride and thus of nationhood. Loss of territory deeply affects them and provokes a strong resolve to regain by all possible means what is theirs by right. Peoples do not bargain or barter over their territories, and the Arab nation is no exception. To expect the Arabs to give up part of their lands is tragically to misread their determination to the contrary. To insist that this be done would wreck all hopes for this Peace Conference to achieve what it has set out to do.

For all of us, coming to this Conference is a major step on the road to peace. We realize that this Conference would never have materialized if it were not for the multiple efforts of all countries of the world and their resolve to see to it that peace is at last restored to the region. Egypt is attending this Conference with the full determination to do its best in a businesslike manner to achieve a just and lasting peace. In doing so, however, we will never overlook the following basic essentials for peace in our area:

- (1) the total withdrawal of Israeli forces from the Arab territories occupied since 5 June 1967;
- (2) the liberation of the Arab city of Jerusalem and non-acceptance of any situation which may be injurious to the complete Arab sovereignty over the holy city;
- (3) the exercise by the Palestinians of the right to self-determination and to live in peace and dignity;
- (4) the right of every State in the area to enjoy territorial inviolability and political independence;
- (5) that there be international guarantees by the major Powers or the United Nations or both, as an added safeguard to international peace and security in the area.

These essentials for peace are in conformity with and fully reflect the decisions taken at the recent Arab summit in Algiers. Egypt, for its part, is fully prepared to honour all its other obligations emanating from Security Council resolution 242(1967) both in letter and in spirit.

Mr. Secretary-General, I hope that I have made clear the basic philosophy of my Government, and that I have conveyed to you and the members around this table the extent to which we in Egypt are prepared to co-operate in establishing a just and durable peace. We realize that this cannot be achieved through Egypt's will and determination alone. Peace needs an equally profound desire and determination by all those concerned with this conflict, and in particular the United States and the Soviet Union, to take upon themselves a unique responsibility unprecedented in history. Durable and just peace in the Middle East must be maintained without ambiguities, in conformity with international law and basic principles enshrined in the Charter of the United Nations, and reflected in the resolutions and decisions of the world organization, which are in fact the true expression of the opinion and the hopes of the peoples of the world. Egypt has come to this conference to sustain the rights of the Arab nations and to obtain by peaceful means the restitution of all Arab territories occupied since June 1967 and the restoration of the inalienable rights of the Palestinians. Thank you.

The SECRETARY-GENERAL of the UNITED NATIONS: I thank the distinguished Foreign Minister of Egypt. The last speaker on my list for our meeting today is the distinguished representative of Jordan. I give the floor to the Prime Minister and Foreign Minister of Jordan, Mr. Zeid El-Rifai.

Mr. Zeid EL-RIFAI (Jordan): Mr. Secretary-General, as we come to this Peace Conference, it might be in order to recall the words of Rabindranath Tagore: "Give me the supreme faith of love, this is my prayer, the faith of the life in death, of the victory in defeat, of the power hidden in the frailness of beauty".

Indeed, Mr. Chairman, it is this victory of right over wrong, of justice over injustice, and of peace over war which the delegation of the Hashemite Kingdom of Jordan is coming to seek at this Conference.

It has been a long time, too long, since we started our search for peace in the Palestine area. The Middle East crisis of today, which earlier was known as the question of Palestine, is a tragedy the like of which humanity has never witnessed on such a large scale.

From the days of the First World War, when the Jews in Palestine were no more than 56,000 people who owned no more than 2 per cent of the total area of Palestine, to the days when they increased immensely and rapidly through emigration from various other lands, and expanded in Arab Palestine through invasion and occupation, the struggle between the Israeli invader and the Arab indigenous people has weighed heavily on the human conscience.

The tide, however never stopped at any limit. The resolution on the Partition of Palestine adopted by the United Nations in 1947, was overshadowed by the delineation of the Armistice lines in 1949 as a result of Israel's military gains. Thus, while the Jewish State, in the partition of 1947, was given 56 per cent of the total area of Palestine, it was able to occupy 77.4 per cent of this total area and in its ambitious expansionist policy, Israel followed its own time-table for the acquisition of Arab territory. In 1967, twenty years after its establishment, Israel swept over all of Palestine plus large areas of three neighbouring Arab States. Today its armed forces stand on the banks of the Jordan river, on the plains of Damascus, and west of the Suez. By force of arms, Israel reached that extent.

Is it the sword that shall win? Is it the force of arms as Israel's leaders put it, that shall determine the issue? Can Israel establish its future in the Arab ocean through continued adventures?

Throughout the twenty-five years of its life, Israel has failed to win the slightest degree of love or acceptance by its Arab neighbours. It has always been looked upon as an authority of terror and aggression, the conduct of which is always characterized by defiance and arrogance. The seeds of oppression which it planted in the Arab soil grew with hatred. It is not, the intention of my delegation to speak at this opening stage of the Conference on other aspects and episodes involved in the Israeli expansionist policy in its various phases. It will take a long time to speak of the expulsion of the native Arab population, of the eradication of their roots, of the suppression of those who were left behind, of the repressive measures taken against them, of the large scale deportation of Arab inhabitants, of the confiscation and expropriation of land and property, of the desecration of holy places and venerated shrines, and of the change of historical and cultural heritage. It is not time to speak of the damage, destruction and murder that was committed against the Arab people and homeland at the hands of Israel. But it is time, no doubt, to ask - at the outset of this Conference - how long will this Israeli armed aggression and occupation be allowed to continue and to remain?

Should the Arabs always have to wage war in order to restore right and justice? Should we always suffer in order to live in peace? Those piles of resolutions which were adopted at the United Nations by its various organs stand witness to the failure of the international community to heed the call of justice. The fact, the naked fact, remains that Israel's armed occupation of Arab territory constitutes an act of continued and escalating aggression which the world has watched in silence.

It is from this position, the position of recourse, as a last resort, to rebellion against tyranny, that the Arabs had to take up arms. The fighting which broke out in our area at the Egyptian and Syrian fronts on 6 October last was a gallant effort by the Arab forces, dedicated to making peace a reality. The economic measures taken by other Arab countries were another resolute expression of the demand for compliance by Israel with the conditions of peace.

The sacred heritage which has come down to our people through history and the well-established civilization which we safeguard motivate us continuously to avoid exposing this legacy to danger and destruction. Israel does not seem to share this concern with us. Could it be because it does not belong to our environment? Could it be because it is a stranger in our homeland?

The measures Israel took, despite the universal will of mankind, to alter the status of the Holy City of Jerusalem and to change life and tradition in it are a grave violation which neither history nor the future would forgive or tolerate.

How could Israel be introduced into the Arab region and live in permanent peace with the Arab surroundings as long as it insists on being foreign and hostile?

The peace, Mr. Chairman, which we would conclude with Israel is one that would restore to the Arab people their occupied land; one that would return to the legitimate inhabitants their inalienable rights; and one that would ensure security against Israeli attacks for its Arab neighbours.

Mr. Chairman, we meet today, as directly concerned parties, under appropriate auspices, with the aim of establishing a just and durable peace through the implementation of Security Council resolution 242 of 22 November 1967 in all its parts.

In fact, the Government of the Hashemite Kingdom of Jordan has never failed on any single occasion to call for the implementation of resolution 242 as a way to achieve peace. This has been our steady position since the adoption of this resolution. Whether at the General Assembly of the United Nations, or the Security Council, or whether with the Special Representative of the Secretary-General, Jordan has maintained this stand.

We sincerely believe that the delay in the implementation of this resolution, which primarily requires withdrawal of Israeli armed forces from all Arab territories occupied in 1967 and back to the lines from which they advanced, caused, indeed, a delay in starting the process of establishing peace.

Resolution 242 (1967), the implementation of which has become the fundamental demand of the whole community of nations and all individual States and regional organizations, emphasized clearly at the start of its preamble and in the first operative part, the inadmissibility of the acquisition of territory by war and the demand for Israel's withdrawal from the territories it occupied as a result of the 1967 military operations.

Neither in international law nor in sound logic can a state of occupation by armed attack be acceptable or permissible. Nor could such a State be allowed to continue simply because the occupying authority insists on imposing its own will. Six and a half years have passed at the expense of peace and tranquillity in the Middle East. There was no reason for failure to achieve peace during that period except the refusal of Israel to comply with the pronouncements of the United Nations, with the rule of law, and with the prerequisites of peace.

We ought to declare unequivocally that time will continue to lapse vainly unless Israel commits itself to complete withdrawal from all the Arab territories it has occupied since 5 June 1967. And this includes Syrian occupied territory, since the absence of Syria from this Conference should not in any way prejudice its right to full withdrawal of Israeli forces from all its occupied territory, and since the position of my Government is that the principle of withdrawal is indivisible.

This, Mr. Chairman, is the only way to proceed if we, at this Conference, are to reach a peaceful settlement.

My Government believes that there are major issues in the construction of peace which should be decided upon in this Conference. These issues are as follows:

First, Israel's complete withdrawal from all Arab territories which it has occupied since 5 June 1967. A programme of implementation and a time-table for this withdrawal should be drawn up and agreed upon.

Second, international boundaries of the States of the area must be recognized and respected, as well as the territorial integrity, sovereignty and independence of these States.

Third, wherever there are no international boundaries between an Arab State and Israel, such boundaries are to be established by agreement and on the basis of the inadmissibility of the acquisition of territory by force.

Fourth, the right of every State in the area to live in peace within secure and recognized boundaries, free from threats or acts of force, must be pledged and guaranteed.

Fifth, the legitimate rights of the Arab people of Palestine must be fulfilled in accordance with the resolutions of the United Nations, and the Palestinian refugees must exercise their right of repatriation and/or compensation in accordance with law and justice.

Sixth, Arab Jerusalem is an inseparable part of Arab occupied territory. Therefore, Israel is to relinquish its authority over it. Arab sovereignty must be restored in the Arab sector of the city. The Holy Places of all the three divine religions must be preserved, protected and respected, and free access for all the followers of these three religions must be secured and maintained.

Mr. Chairman, when Israel was established by the United Nations in 1947 and was admitted to the membership of the United Nations in 1948, it made a declaration that it unreservedly accepts the obligations of the United Nations Charter and undertakes to honour them from the day it becomes a Member of the United Nations".

With such an undertaking, Mr. Chairman, Israel failed to honour its first obligation of membership under the Charter of the United Nations, which stipulates that All Members shall refrain in their international relations from the threat of use of force against the territorial integrity or political independence of any State".

For the last six and a half years, Israel has been violating the sovereignty, independence and territorial integrity of three Arab States, namely Egypt, Jordan and Syria, and has, for the last twenty-five years, been violating the legitimate rights of the Arab people of Palestine.

Today, we come, as directly involved parties and most concerned with the problem, to try to arrive at a settlement through peace.

My Government's attitude towards the deliberations and conclusions of this Conference is that an over-all settlement of the problem before us and the major issues related to it is a collective responsibility of all the parties directly concerned. Questions of withdrawal, boundaries, Palestinian rights, refugees, obligations of peace and the status of Jerusalem are all of common concern and a collective responsibility. My delegation, therefore, is not prepared to conclude any partial settlement on matters that we feel are of a joint interest with our Arab brothers at this Conference.

Sir, faithful to our obligations towards the United Nations, and noting that the only recognized documents before us today are Security Council Resolutions 242 of 22 November 1967 and 338 of 22 October 1973, my Government is pleased to have the Secretary-General of the United Nations, Dr. Waldheim, preside over the opening meeting of this Conference.

May I also be allowed, Mr. Chairman, to acknowledge on this occasion, with sincere appreciation and high admiration, the effective and noble role which both the United States of America and the Soviet Union have played to bring this Conference into being. Needless to say we are also grateful to have had the chance to convene our Peace Conference in Switzerland, the land of peace, beauty and human dignity.

And as we meet today, we know that the eyes of the world are turning towards us. Here on the European continent the voice of right is echoing stronger and stronger. On the free soil of Africa our African brothers are boldly knocking at the gates of peace. Great Asia is backing our efforts with all its weight and dignity. Every patriot, every refugee, and every free man is wishing us success in our work. Let us, therefore, give, in the present test, the lofty principles of mankind the seriousness, sincerity and devotion they deserve. Let us give to the Middle East, the torch of civilization and the cradle of prophets, the peace which it has missed for many decades.

Thank you, Mr. Chairman.

The SECRETARY-GENERAL of the UNITED NATIONS: I thank the distinguished Prime Minister and Foreign Minister of Jordan. May I ask whether any other delegation wishes to take the floor in our meeting today? The distinguished representative of Israel.

Mr. EYAN (Israel): If there is a chance of addressing the Conference this afternoon I would like to study the addresses that have been made and to speak at the next session. If it could be this afternoon I would prefer it, but I leave that, Sir, to the Chair.

The SECRETARY-GENERAL of the UNITED NATIONS: Is there any objection to having a meeting this afternoon? Originally I had intended to hold the next meeting tomorrow morning at 10.30 and to leave the afternoon free for private consultations, but of course I am in the hands of the Conference, of the distinguished members of this Conference, and therefore I wish to consult you as to whether you prefer a meeting tomorrow morning or this afternoon. May I ask the distinguished representative of Israel whether he would agree to speak tomorrow morning?

Mr. EYAN (Israel): If there is no reason for not having a meeting this afternoon, Mr. Chairman, I would like to address the Conference this afternoon. But I would at any rate like to address it at the next meeting.

The SECRETARY-GENERAL of the UNITED NATIONS: Do the delegates agree to hold a meeting this afternoon? I see no objection. I assume therefore that you agree to hold our next meeting this afternoon at, may I suggest, 3.30? I take it then that we agree to hold the next meeting this afternoon at 3.30. It is so decided. The meeting is adjourned.

The meeting rose at 12.40 p.m.



PEACE CONFERENCE
ON THE MIDDLE EAST

PCME/PV.2*
21 December 1973
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VERBATIM RECORD OF THE SECOND MEETING
held at the Palais des Nations, Geneva,
on Friday, 21 December 1973, at 3.30 p.m.

Presided over by Mr. Kurt Waldheim, Secretary-General of the United Nations

* Re-issued for technical reasons.

The SECRETARY-GENERAL of the UNITED NATIONS: I call the meeting to order and I give the floor to the distinguished representative of Israel, Foreign Minister Abba Eban.

Mr. EBAN (Israel): Mr. Secretary-General, distinguished Prime Minister, Foreign Ministers, gentlemen. There has never been an Arab-Israel peace conference before. Instead there have been many wars, for which the price has been paid in thousands of lives and in a region's long agony. Today at last a new opportunity is born. No wonder that this Conference opens under the burden of an immense expectation. Millions of people across the world are hoping that we shall somehow succeed in breaking the cycle of violence, in giving a new purpose and direction to Middle Eastern history, and in bringing to a halt the spreading contagion of force.

We have no way of knowing whether this opportunity will be fulfilled or wasted. The answer lies in the intentions of many Governments and peoples in the Middle East - and beyond. Israel for its part is resolved to seize the chance.

Now the agreed purpose of this Conference is to negotiate peace between States whose relations until now have been scarred by a fierce enmity which has exploded again and again into war. The assault launched against us by Egyptian and Syrian armies on 6 October was only the most recent link in a chain of violence extending with tragic results across the entire life of Israel as a modern State. To achieve its aim, therefore, this Conference must reverse the whole tide of recent history. It is not going to be an easy task, nor at best can its fulfilment be rapid. We shall have to reconcile a sense of urgency with a capacity for patience. And yet, when all the calculations of prudence and caution and realism are duly made, our heart and imagination inspire a positive hope. We cannot ignore experience, but neither are we committed to its endless reiteration. So Israel comes to Geneva in the conviction that there is room for innovation, initiative and choice.

We must be well aware of the particular complexity of our task. There is nothing in any degree similar to the Arab-Israel conflict. The crisis of the Middle East has many consequences, but only one cause. Israel's right to peace, security, sovereignty, commerce, international friendship, economic development, maritime freedom, indeed its very right to live, has been forcibly denied and constantly attacked. All the other elements of the conflict are consequences of this single cause. In no other dispute has there ever been such a total denial, not only of the sovereign rights of a State but even of its legitimate personality. And the emotional assault on Israel has gone much beyond the political context. It sweeps all human solidarities aside. It is nourished by a copious literature with official endorsement that gives support to Nazi anti-Jewish myths. It nourishes a conspiratorial theory of Jewish history. It explodes into the mutilation of Israeli soldiers in the field, the murder and torture of Israeli prisoners, and it has culminated most recently in Syria's sadistic refusal to carry out the Geneva Convention relative to the treatment of prisoners of war. Out of this kind of ferocious hatred springs the kind of assault on humane values that was enacted in Munich last year, in Rome airport five days ago and with weary regularity in other places between, before and since. When sportsmen in the shelter of the Olympic flag are bound hand and foot and calmly shot in the head, one by one, when passengers in a civil aircraft are methodically blown up and burned to fragments, do we not come face to face with the mentality and ideology which produced the gas chambers and the gallows of Auschwitz?

It is from this tradition that we must seek to break away. The prospects for this Conference to succeed depend in the last analysis on whether the Arab nations and Israel want to reach an objective understanding of each other. Now, we have no trouble or reluctance in understanding what Arab nationalism is all about. It is the moving story of a people's liberation from external servitudes. It is an effort to build a bridge between past glories and future hopes. The success of the Arab nationalist enterprise is reflected in the existence of 19 States, occupying 12 million square kilometres, in which 100 million Arabs live under their sovereign flags, in command of vast resources. The world, including Israel, has come to terms with Arab nationalism. The unsolved question is whether Arab nationalism will frankly come to terms with the modest rights of another Middle Eastern nation to live securely in its original, and only, home.

For this to happen it will, I suggest, be necessary for political and intellectual leaders in the Arab world to reject the fallacy that Israel is alien to the Middle East. Israel is not alien to the Middle East; it is an organic part of its texture and memory. Take Israel and all that has flowed from Israel out of Middle Eastern history and you evacuate that history of its central experiences. Israel's historic, religious, national roots in the Land of Israel are a primary element of mankind's cultural history. Nothing - not even dispersion, exile, martyrdom, long separation - has ever disrupted this connexion. Modern Israel is the resumption of a primary current in the flow of universal history. We ask our neighbours to believe that it is an authentic reality from which most of the other elements in Middle Eastern history take their birth. Israel is no more or less than the Jewish people's resolve to be itself and to live, renewed, within its own frame of values, and thus to contribute its particular shape of mind to the universal human legacy.

That is what Israel is all about, and all this is much too deep and old and strong to be swept away. I ask Arab leaders and thinkers, when they reflect on Israel, to ponder a French historian's definition of nationhood: "A nation is a soul, a spiritual principle. To share a common glory in the past, a common will in the present; to have done great things together; to want to do them again - these are the essential conditions of being a nation."

When to all this memory you add the special tragedy of Jewish homelessness, you will understand why Israel faces the other Middle Eastern nations in the perfect consciousness of its own legitimacy. It will neither disappear nor apologize for itself, nor compromise its sovereign destiny nor surrender its name and image, nor be swallowed up in something else. Within the framework of its own legitimate existence it seeks reconciliation and peace.

It seems to me that the effort to resist the existential truth about Israel as inseparable from Middle Eastern destiny lies at the root of every other discord. We ought to remember that the war against Israel is a little older than the State of Israel itself. If we want to know the authentic answer to the question "How did it all begin?", we could go to the library downstairs and look up the documents and find the

report of the United Nations Palestine Commission of 10 April 1943. I quote:

"Arab opposition to the Plan of the [General] Assembly has taken the form of organized efforts by strong Arab elements, both inside and outside of Palestine, to prevent its implementation and to thwart its objective; by threats and acts of violence... powerful Arab interests, both inside and outside Palestine, are defying the resolution of the General Assembly and are engaged in a deliberate effort to alter by force the settlement envisaged therein."

That is the report.

How little has changed since then. Can we not describe today's condition in these sentences without changing many words? The pendulum of military advantage swings this way and that. The tide of political struggle ebbs and flows. One thing alone has been constant - the volcanic atmosphere in which the Middle East lives, with only a few years between each eruption and each succeeding lull. And so in the twenty-sixth year, as in the first, we woke up one morning to find the Arab forces moving against us from south and north. Nobody believes that, if those massive armoured thrusts had gone forward as their commanders wished, they would have come to a voluntary halt at any particular line. The distinguished Egyptian writer Muhammad Hasanein Heikal put it very clearly in Al-Ahram of 19 October:

"If the Arabs succeeded by force of arms in liberating the lands conquered in June 1967, what is to prevent them in the next stage from liberating the whole of Palestine itself by force of arms?"

What indeed? And so in October 1973, as in May 1948, the issue for Israel became no less than the survival of life and home, of national future, of personal destiny, of all that had been built and cherished and defended, in common action, for 25 years.

And yet, with all the similarity between 1948 and 1973, there has been one ominous transformation. All of us around these tables must be aware of it. Small Middle Eastern countries can now use arms in such quantities and of such destructive force as would have been available only to the greatest military Powers one generation ago. And therefore the Golan and Sinai are strewn with young bodies of Israelis and Arabs, and the burnt-out hulks of armoured vehicles and trucks. Two thousand tanks were destroyed in the one, single month of October. For the price of them the countries of the Middle East could have had 20,000 tractors to bring fertility to their lands.

It may be that one thing has changed for the better, namely that a mutual understanding of the sterility of war and the sterility of political deadlock has become sufficiently alive to bring all of us here to Geneva - Israel, Egypt and Jordan. We come with a mandate from our Governments to seek peace. We also have a common mandate from bereaved mothers and widows and orphans to bring 25 years of insanity to an end. The pathos of it all is that this Peace Conference could have been convened six years ago, after the 1967 war, or indeed at any time since the 1948 war ended with the 1949 armistice agreements. A peace negotiation is what Israel has been proposing all the time. We could have had this moment, without all those graves, without all that blood.

The question now is whether we can break out of past deadlocks into a new vision and a new hope. Well, a common interest in bringing the war to an end has already brought Egypt and Israel together in three agreements. We have accepted a cease-fire in pursuance of Security Council resolution 338 of 22 October. On 11 November, we signed a six-point agreement for stabilizing the cease-fire. The Egyptian and Israeli senior officers who concluded that agreement met face to face and pursued their discourse in a civilized atmosphere at Kilometre 101 until 10 December. Now Egypt and Israel, together with Jordan, have agreed on the procedure and terms of reference for a peace conference.

These three decisions are the bridges across which we wish to make a transition from belligerency to peace. It is especially vital that the cease-fire continue to be observed by land and air and sea.

I propose that Egypt and Israel pledge themselves at this Conference to observe the cease-fire on the basis of reciprocity. I give that pledge on Israel's behalf. Surely the maintenance of the cease-fire is an indispensable condition before any useful negotiation.

Beyond these transitional steps we should have a clear conception of our objective. Israel's aim at this Conference is a peace treaty defining the terms of our co-existence in future years. Since the purpose of this Conference is peace, we must have an understanding of what that term involves. Peace is not a mere cease-fire or armistice. Its meaning is not exhausted by the absence of war. It commits us also to positive obligations which neighbouring States owe to each other by virtue of their proximity and of their common membership in the international community. Above all, a durable peace must create a new human reality. It does not rest on the cold formalism of documents alone. Nations at peace are not separated from each other by hermetically sealed boundaries guarded by international police forces. Indeed the emphasis on the interposition of police units in so much of the public debate on the Middle East is a confession that the peace that is envisaged is not authentic or stable or real. The ultimate guarantee of a peace agreement lies in the creation of common regional interests, in such degree of intensity, in such multiplicity of interaction, in such entanglement of reciprocal advantage, in such mutual human accessibility, as to put the possibility of future war beyond any rational contingency.

Let us all atone for 25 years of separation by working towards a co-operative relationship similar to that which European States created after centuries of conflict and war. It may take time to achieve that full objective. But does not every serious architect design a vision of the finished structure before anybody begins to face the prosaic difficulties of construction? At any rate, our vision must be one of sovereign States, the Arab States and Israel, each pursuing its national life within its own particularity while co-operating with its neighbours in a broader regional devotion.

The peace treaties that we want to negotiate and conclude should provide for the permanent elimination of all forms of hostility, boycott and blockade. The peace settlement must be the product of mutual agreement and not of external pressure, or of intimidation of one party by the other. It is only by freely

accepting national and international responsibility for the peace that the signatory Governments can ensure its stability. Our peace agreements should of course provide for the renunciation of the use of force in our relations with each other. They should contain specific and unequivocal recognition of each other's political independence, integrity and sovereignty. They should prohibit any hostile action, including terrorist action, conducted from the territory of one of the signatories against the territory and population of the other. They should formally proclaim the permanent end of the conflict and the renunciation of all claims or acts arising from belligerency. They should ensure that all international conventions which each of the signatories has signed should be applicable to the other signatory without any of the reservations entered by Arab Governments in the past into such international obligations. Nations at peace with each other do not seek to impede the movement of each other's ships or aircraft, or forbid them the normal civilities of air transit and maritime passage. Governments establishing peaceful relations after long years of conflict invariably define their intentions with respect to formal relations with each other in the economic, commercial, cultural and political domains. With the establishment of peace it would become normal for Israel and the Arab States to take their places jointly in regional development organizations.

There is also need for attitudinal change. Bertrand Russell wrote that "all wars originate in classrooms". Long years of conflict have given successive generations of our people a distorted vision of each other. The transition to peace should have its effects in educational systems, expelling all the images and stereotypes which nations at war invoke both as causes and consequences of their hostility. A peace settlement should unlock the arteries of our region's communications.

Now, these aims may seem very remote and visionary today, but they do not go beyond what Governments have usually accomplished in their transition from hostility to peace. In fact I have never come across any peace agreement which does not include everything that I have listed here. The three Governments represented at this Conference all accepted these aims when they endorsed Security Council resolution 242 (1967), of which the main provisions are the establishment of a just and lasting peace; the mutual acknowledgement by all States in the area of each other's sovereignty, integrity, independence and right to security. Another provision of that resolution is the elimination of all forms of belligerency, and agreement on secure and recognized boundaries to which forces would be withdrawn in the context of a peace settlement. Israel adheres to what it said on this subject in its communication to you, Mr. Secretary-General, in August 1970.

We shall seek to know from the Arab participants in this Conference whether they share our understanding of the obligations, rights and prohibitions involved in a peace agreement. If we can reach a harmonious understanding on this point, we shall still face many complexities but there will be a stronger probability than otherwise of agreement and compromise.

Of course, the peace treaty to be negotiated with each neighbouring State should contain an agreement on boundaries. The decisive test for Israel will be the defensibility of its new boundaries against the contingency of attacks and blockades, such as those threatened and carried out in 1967 and 1973. The experience of October 1973 confirmed our view that the permanent boundaries must be negotiated with the utmost precision and care. If those armoured thrusts had begun from El Arish or northern Gaza, or from the Golan Heights itself, then the first assault might well have been the last. Peace-makers do not reconstruct vulnerable, inflammatory situations. They try to correct them. Therefore there cannot be a return to the former armistice lines of 1949-1967, that proved to be inherently fragile and that served as a temptation to an aggressive design of encirclement and blockade from which Israel broke out in 1967 after weeks of solitude and peril.

But we are ready for a territorial compromise which would serve the legitimate interests of all signatory States. In this matter as in others there must be a basic readiness on all sides to make such concessions as do not threaten vital security interests. Israel does not seek acceptance of any of its positions as a prior condition of negotiation, just as we should not be asked to seek acceptance of any prior conditions as a condition of negotiation. Having heard Arab positions and stated our own, we should at an appropriate stage seek to bring our policies into compromise. Security arrangements and demilitarized areas can supplement the negotiated boundary agreement without, of course, replacing it.

But for Israel the overriding theme in the peace discussion is that of security. It is true that we have again come out successfully from a military assault, this time with every conceivable advantage on the other side - advantage in numbers, in quantity of weapons, in initiative and total surprise. But despite this success the mood in Israel is sombre, for we come up again and again against the predicament of human vulnerability. The losses sustained in 1973 compound the sacrifices of 1948, 1956 and 1967 and all the attritions and infiltrations in between. And Israelis always contemplate these losses against the cruel background of the European holocaust which took millions of our kinsmen away to their deaths. Now there is no other national experience even remotely similar to this. Too much of Jewish history is occupied by the simple ambition of being Jewish and yet staying alive, and usually this reconciliation has not been achieved. The only people to suffer such massive annihilation of its human resources and the only sovereign State to live for 25 years without a single month of peace - how does anyone expect such a people and such a State not to claim respect for a particularly intense concern for individual and collective survival?

The attainment of peace will make it possible to resolve the problem of refugees by co-operative regional action with international aid. We find it astonishing that States whose revenues from oil exports surpass \$15,000 million a year were not able to solve this problem in a spirit of kinship and human solidarity. In the very years when the Arab refugee problem was created by the assault on Israel in 1947 and 1948, 700,000 Jewish refugees from Arab and Moslem lands and from the debris of Hitler's Europe were received by Israel and integrated in full citizenship and economic dignity. There have been other such solutions in Europe,

on the Indian sub-continent, in Africa. The Arab refugee problem is not basically intractable; it has been perpetuated by a conscious decision to perpetuate it. But surely a peace settlement will remove any political incentive which has prevented a solution in the past. At the appropriate stage Israel will define its contribution to an international and regional effort for refugee resettlement. We shall propose compensation for abandoned lands in the context of a general discussion on property abandoned by those who have left countries in the Middle East to seek a new life.

I presume - I believe - that our negotiation with Jordan will define the agreed boundaries and other conditions of co-existence between two States occupying the original area of the Palestine Mandate - Israel and the neighbouring Arab State. The specific identity of the Palestinian and Jordanian Arabs will be able to find expression in the neighbouring State - I hope, in peaceful co-operation with Israel.

We declare our opposition to any explosive fragmentation of the area between three States in the region between the desert and the sea, where there are after all two nations, two languages, two cultures, and not three.

Today the bridges and the borders are open, and Arabs to the west and east of the Jordan - indeed, from all over the Arab world - move freely in and out of Israel, back and forth, into every part of the region. In a peace settlement with agreed boundaries we should strive to preserve and develop these conditions of human contact and accessibility. Separate political sovereignties need not rule out a large measure of economic and social co-operation. We aspire to a community of sovereign States in the Middle East, with open frontiers and regional institutions for co-operation.

We are deeply aware that Israel's capital, Jerusalem, now united forever, is the cradle of two other religious traditions and the home of their Holy Places. Israel does not wish to exercise exclusive jurisdiction or unilateral responsibility in the Holy Places of Christendom and Islam - Holy Places should be under the administration of those who hold them sacred. We would be willing to discuss ways of giving expression to this principle as well as of working out agreements on free access and pilgrimage.

Israel would support a proposal to discuss a disengagement agreement with Egypt as first priority, when the Conference meets after the inaugural phase. On other possible agenda items we shall give our views at a later stage. Today I shall only refer to some urgent issues of which the solution is compelling, both on human grounds and in the interests of the Conference itself.

The absence of Syria from the opening session is regrettable, but frankness and indignation compel me to state that Syria, in our judgment, has not yet qualified for participation in a peace conference because it continues to inflict a perverse injury on prisoners of war and their agonized and distraught families, in contravention of

the Geneva Convention. This violation of human decencies continues unchecked. Syria is not to be trusted in the honourable treatment of prisoners of war and there are precedents much too harrowing for me to narrate. But we know that helpless prisoners of war are shackled and then murdered in cold blood. We have reported 42 such cases to the International Committee of the Red Cross. We know that prisoners are tortured and maimed, beaten and dishonoured. By withholding lists and refusing Red Cross visits, the Syrian Government creates wide circles of anguish and uncertainty amongst hundreds of families and thousands of citizens. Lists of Syrian prisoners have been presented by Israel to Red Cross Committees, and Red Cross visits do proceed regularly. The obligations of States under the Third Geneva Convention are unconditional and may not be made dependant on any other claim or request. Nevertheless Israel has agreed, simultaneously with prisoner release, to the return of thousands of Syrian civilians to the territory east of Golan captured in the October war and even to the handing over to the United Nations Emergency Force of two positions occupied between 20 and 22 October.

We would also emphasize the urgency for Egyptian action in reply to our queries on additional missing prisoners and on the repatriation of the bodies of soldiers fallen in action. In general, whenever we talk of this issue of prisoners, surely the time has come to banish the savageness which has marked the treatment of Israelis in Arab hands and to adapt the life of our region to the principles of international civility.

We want to substitute the idea of international civility for the present atmosphere of Middle Eastern life today. Too much of international life is left under the hijacker's philosophy. The slogan of the hijacker is "Do what I tell you, or else". This is said by terrorists to pilots of aircraft, by some oil-producing States to European and other Governments, by some Arab Governments to States whose relations with Israel they wish to weaken, by boycott committees to commercial companies. Now this slogan "Do what I tell you or else" is not the best prescription for Middle Eastern stability. It gets some immediate results but it is bound in the last resort to encounter resistance. What we seek is a transformation of all the concepts and attitudes which govern international relations in our region.

For many years the Middle Eastern conflict has been a constant theme of public debate. The eyes of the world are upon this meeting, but I do hope that in the next stages of its work the Conference will develop compact, reticent procedures to discuss each component of the dispute. We do not rule out agreed stages of progress towards the final settlement, but the Conference should not be satisfied as an ultimate result with anything less than a permanent, overall peace.

The distinction between a public debate in the General Assembly and a peace conference is crucial. In the case of a public debate there is an attempt to solve problems by adjudication; in a peace conference, by agreement. We hope for restraint by Governments outside the area who may think that they know the exact point of balance at which the interests of the parties should be reconciled. Our free

agreement is essential because in the last resort nobody outside Israel is called upon - or is ever likely - to risk any life or blood for Israel's survival. Whenever there is that kind of sacrifice, we shall have to face it alone. We ask therefore for respect for our solitude of responsibility, that is to say, for our judgment on what the basic minimal conditions for Israel's security and survival are. We intend to preserve that domain of ultimate decision with traditional tenacity. This issue is especially sensitive. We have accepted the joint initiative of both co-chairmen as a reflection of the real balance of forces at work. We understood from Foreign Minister Cromyko's speech that in his view Israel's legitimacy and right to security are not under any doubt. As we read the Algiers Declaration, however, that declaration puts both of those things in doubt. The word "peace" does not exist in that declaration at all, nor does the word "Israel", and there is an ominous reference to "the enemy". That is why the Algiers Declaration is really not the sort of declaration that can guide a peace conference.

But, while we have accepted the joint initiative of both co-chairmen, we cannot ignore that one of them identifies itself exclusively with our adversaries and has felt no balancing necessity to concern itself with Israel's welfare or destiny. This has been the case in the arms race as well. There is therefore no symmetry here, even if the imbalance is less marked than in the broader multilateral arena. The true remedy then is to allow maximum opportunity for the parties themselves to achieve dialogue and to come to agreed solutions.

In conclusion, Mr. Secretary-General, while the components of the problem are complex, everything comes back in simple terms to the intentions that we bring with us to this table. Israel, Egypt, Jordan, Syria, Lebanon - and in the final resort all of these should be participants - are relatively new as sovereign States, but Arabs and Jews are very old as peoples. Both of us have always had the gift of memory, neither of us has ever been very good at forgetting. In this generation we have been made more aware of our divisions than of our common humanity but there are some ideas and recollections that are common to us both. There is one cave at Machpelah in which our common ancestors, the Patriarchs and the Matriarchs, are laid to rest.

Our common ancestor, Abraham, shocked all his contemporaries by breaking the idols and suggesting something new. That is what we now have to do: to smash the idolatries of war and hate and suspicion, to break the adoration that men give to their traditional attitudes and above all to their traditional slogans, to strike out towards a horizon, uncertain, but better than the terrible certainties that face us if we stay behind.

Our Holy Book puts it simply (spoken in Hebrew and English): "Nation shall not lift up sword against nation, neither shall they learn war any more." But it is put with equal simplicity in your Holy Book (spoken in Arabic): "If they incline to peace, then turn towards it and put your trust in God".

The SECRETARY-GENERAL of the UNITED NATIONS: I thank the distinguished Foreign Minister of Israel. I have been informed that the distinguished Foreign Minister of Egypt wants to speak. I give him the floor.

Mr. FARHY (Egypt): Mr. Secretary-General, with your permission and the permission of the distinguished Foreign Ministers, I would like to say a few words in connexion with the statement which we have just heard from the Foreign Minister of Israel.

This morning I tried with all the responsibility at my command to state the Egyptian position based on facts and nothing but facts. I have myself, as you have all witnessed, avoided referring to anything else but facts. Why did I do so? Because I thought, and I hope that this will remain true, that we are starting or embarking on a very solemn occasion at this historic moment in this Conference. Secondly, I was not in need of resorting to the procedure which the Foreign Minister of Israel chose because I do not have any problem of speaking here for home consumption and I do not have any election campaign which is going to take place in a few days in my country. This is my first remark.

My second remark is that it is really a pity that Mr. Eban refers to the archives of the United Nations while he knows better than anybody else that the archives of the United Nations are full of resolutions adopted by the Security Council of the United Nations and the General Assembly, more than 100 times condemning Israel for its behaviour against the world community, for its behaviour against the Arab countries, and for its behaviour against the Palestinians. Israel for that reason has now found herself alone, completely isolated. There is no other country or State Member of the United Nations which finds itself in the situation in which Israel finds itself now. Why is this? Because of the misbehaviour of the Arab countries? Because all the Member States of the United Nations do not know the truth, but only Israel knows the truth, only Israel gives advice and only Israel knows the facts? They know the facts, yes; but they know only the facts which they wanted to believe themselves; nobody else believes them. So much for the archives, for the isolation of Israel, and for the behaviour of Israel.

Then he tried again to belittle the intelligence of us here whilst talking to the gallery for home consumption and trying to distort facts again, as we are accustomed to hear. He thought fit even to refer to the Palestinians, to some incidents of desperate people, a desperate nation. Mr. Eban and his colleagues invaded their country by force in 1947 and this is why they are behaving in that way, and they are entitled to do that. But it is not for a Government which believes that it is a responsible Government to take certain actions - I am going to refer to only a few of them. First of all Deir Yassin in 1948; then Qibiya 1953, Nahalin 1954, the Lavon affair 1954, Khan Yunis and Gaza in 1955, Kafr Kassem 1956, Samou 1966, Karame 1968, the airport of Beirut 1968, Southern Lebanon 1969, mass murder on instructions of the Government of Israel, I repeat, the mass murder of some of the leaders of the Palestinians; and the invasion of Beirut, 1973; and the bombing of the tents of the Palestinians in Syria and Lebanon.

These are acts of Governments - responsible people, if they are responsible at all - but he thinks that we don't know. We know, but he thinks that the other people do not know. Everybody around this table, everybody outside this table knows the facts, and I hope that for the future if he would like to work in a serious way he would not use this rostrum for propaganda. He spoke about Syria because Syria is absent. I am ready to keep you here for three hours and tell you how the Israelis act and react, what kind of atrocities they do, what their armies are doing either on the cease-fire or around the cease-fire or during the battle itself. Even Mr. Eban cannot deny that his planes dropped booby-traps on villages in my country - to kill what? Farmers and children.

And now he speaks about security. What kind of security? Security through agreement. What does he mean? He means annexed territories. He means by "agreement" that the Arab countries must agree to what? To give him Arab land for the sake of his security. And he forgot - I don't it, that he forgot - that in 1947 it was the Zionists who invaded Palestine; 1956 he remembers, and I think he participated in that collusion against my country. In 1967 they invaded my country and all the Arab countries. And he speaks about 1973, the sixth of October. He admitted in his statement that now - and this is the lesson he should learn - that now, after 1973, he knows very well that not only the Israelis can use weapons, modern and sophisticated weapons. He is trying here to present himself as the lamb of the whole world - the most peaceful legend in history.

He referred to the Algiers decision of the Arab Summit, and he is very angry that we did not mention the name of Israel. We will mention the name of Israel when Israel behaves, when Israel would like to live in peace in this country, not to annex territory under any pretext whatsoever, not to try to confuse and mislead people under this fallacy of so-called security. Security of whom, Mr. Eban? You threaten the security of all the Arab countries as long as you are using these militaristic maxims of yours. But in his speech today, while he was pleading for peace, he never uttered once the words "withdrawal from Arab territories" - not a single time - and this is how he would like to plead for peace here.

The SECRETARY-GENERAL of the UNITED NATIONS: I thank the distinguished representative of Egypt. Does any other delegation wish to speak? Apparently this is not the case. May I then propose that we adjourn this meeting and that we hold a closed meeting tomorrow morning at 11 o'clock? The purpose of that meeting would be to discuss the organization of the future work of this Conference.

I call on the distinguished Foreign Minister of the Soviet Union.

Mr. GROMYKO (Union of Soviet Socialist Republics) (interpretation from Russian): Tomorrow we shall have to discuss the question you have raised, but if anybody has any considerations to put forward on the substance of the problem, then of course he will be free to express those considerations as well at tomorrow's meeting. I take it that this stands to reason.

The SECRETARY-GENERAL of the UNITED NATIONS: I think that there is certainly no objection to this interpretation; I think the Conference agrees that, if any delegation wants to discuss substance, it is accepted. Are there any other comments? If not, I adjourn this meeting until tomorrow at 11 a.m.

The meeting rose at 4.45 p.m.

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22.11.74

נספח א

החלטת העצרת בנושא פלסטין

A/L. 741 - 21 November 1974

The General Assembly,

Having considered the question of Palestine,

Having heard the statement of the Palestine Liberation Organization, the representative of the people of Palestine, (A/PV. 2282),

Having also heard other statements made during the debate,

Deeply concerned that no just solution to the problem of Palestine has yet been achieved and,

Recognizing that the problem of Palestine continues to endanger international peace and security,

Recognizing that the Palestinian people is entitled to self-determination in accordance with the Charter of the UN,

Expressing its grave concern that the Palestinian people has been prevented from enjoying its inalienable rights, and in particular its right to self-determination,

Guided by the purposes and principles of the Charter,

Recalling its relevant resolutions which affirm the right of the Palestinian people to self-determination,

1. Reaffirms the inalienable rights of the Palestinian people in Palestine, including:

- a) The right to self-determination without external interference,
- b) The right to national independence and sovereignty,

2. Reaffirms also the inalienable right of the Palestinians to return to their homes and property from which they have been displaced and uprooted, and calls for their return,

3. Emphasizes that full respect for and the realization of these inalienable rights of the Palestinian people are indispensable for the solution of the question of Palestine,

4. Recognizes that the Palestinian people is a principal party in the establishment of a just and durable peace in the Middle East,

5. Further recognizes the right of the Palestinian people to regain its rights by all means in accordance with the purposes and principles of the Charter of the UN,

6. Appeals to all States and international organizations to extend their support to the Palestinian people in its struggle to restore its rights, in accordance with the Charter,

7. Requests the Secretary-General to establish contacts with the Palestine Liberation Organization on all matters concerning the question of Palestine,

8. Requests the Secretary-General report to the General Assembly at its Thirtieth Session on the implementation of the present resolution,

9. Decides to include the item entitled "Question of Palestine" in the provisional agenda of its Thirtieth Session.

3237

22.11.74

החלטת העצרת על מעמד אש"פ (21.11)

A/L.742 - 21 November 1974

The General Assembly,

Having considered the question of Palestine,

Taking into consideration the universality of the UN, prescribed in the Charter,

Recalling its Resolution 3102 (XXVIII) of 12 December 1973,

Taking into account Economic and Social Council Resolutions 1835 (LVI) of 17 May 1974 and 1840 (LVI) of 20 May 1974,

Noting that the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, the World Population Conference and the World Food Conference have in effect invited the Palestine Liberation Organization to participate in their respective deliberations,

Noting also that the Third UN Conference on the Law of the Sea has invited the Palestine Liberation Organization to participate in its deliberations as an observer;

1. Invites the Palestine Liberation Organization to participate in the sessions and the work of the General Assembly in the capacity of observer;
2. Invites the Palestine Liberation Organization to participate in the sessions and the work of all international conferences convened under the auspices of the General Assembly in the capacity of observer;
3. Considers that the Palestine Liberation Organization is entitled to participate as an observer in the sessions and the work of all international conferences convened under the auspices of other organs of the UN;
4. Requests the Secretary-General to take the necessary steps for the implementation of the present resolution.

