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Author(s): John McHugo
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RESOLUTION 242: A LEGAL REAPPRAISAL OF THE RIGHT-WING ISRAELI INTERPRETATION OF THE WITHDRAWAL PHRASE WITH REFERENCE TO THE CONFLICT BETWEEN ISRAEL AND THE PALESTINIANS

JOHN MCHUGO*

I. INTRODUCTION: THE 'RIGHT-WING ARGUMENT'

In the Six Day War in June 1967, East Jerusalem, the West Bank and the Gaza Strip came under Israeli military occupation, as well as the Sinai Peninsula and the Golan Heights. On 22 November that year, the UN Security Council unanimously passed Resolution 242, which it was hoped would provide a route to a permanent peace. It seems clear that Resolution 242 now has binding force[1] and that it is accepted by all parties today that Resolution 242 sets out the principles which must be applied in order to reach a settlement. The Resolution is recited in the preambles to the Oslo Accords.[2] This means that, in addition, it is binding on Israel and the PLO by agreement.[3]

Although Resolution 242 may now be accepted as the basis for peace, there remains a major issue of interpretation. The Palestinians maintain that Resolution 242 requires an Israeli withdrawal from all the occupied territories as part of any final settlement. Although areas within those territories might be transferred to Israel as part of that settlement, in the Palestinian view this may only come about through an agreement which has been freely reached by the parties, and under which the likelihood of Israel transferring territory which it occupied in 1948–9 to the Palestinians is just as great. It would appear that Israel disputes this, at least in public. Israeli Government web-sites,[4] articles in the media by writers favourable to right-wing Israeli stances, and letters written to the press frequently assert that a withdrawal from 'some' but not

* The author is a partner in Trowers & Hamlins and a Visiting Fellow at the Scottish Centre for International Law at Edinburgh University. He has written this Article in his personal capacity and the views expressed are his alone

[1] Security Council Resolution 338 'calls upon' the parties to implement Resolution 242 using language generally considered to have a mandatory character. See also VIII below.

[2] See in particular letter from Chairman Arafat to Prime Minister Rabin, 9 Sept 1993; Declaration of Principles on Interim Self-Government Agreements, 9 Sept 1993, Art 1; Preamble to Israeli–Palestinian Interim Agreement on the West Bank and the Gaza Strip of 28 Sept 1995.

[3] For a succinct discussion of this question, see Watson, 'The Oslo Accords: International Law and the Israeli-Palestinian Peace Agreements' (Oxford: Oxford University Press, 2000), at 31–4.

[4] See the website of the Israeli Ministry of Foreign Affairs, where material is deliberately posted with the intention of convincing the reader that Resolution 242 was never intended to lead to a return of 'all' the territories: <http://www.israel.mfa.gov>.

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'all' of the territories was intended by Resolution 242.[5] This implies that Israel has a right to select areas of the territories it will retain, and presupposes that territorial adjustments will be in Israel's favour. For convenience, we will refer to this viewpoint as 'the Right-wing Interpretation' although it would seem to be official Israeli government policy. Supporters of the view include Eugene Rostow, who was US under-secretary of state for political affairs at the time the Resolution was debated. Rostow seems to have become a cheer-leader for the Right-wing interpretation and the colonisation of the occupied territories by Israeli citizens, to boot.[6] An apparently sympathetic British Foreign Secretary has also made a statement on the floor of the House of Commons which has been taken to support the same position.[7] Mr Dore Gold, a former Israeli ambassador to the United Nations and currently a spokesman for the Israeli prime minister, has recently argued that the territories should be referred to as the 'Disputed Territories' rather than the 'Occupied territories'. He has gone so far as to write as follows:

> Under UN Security Council Resolution 242 from November 22, 1967—that has served as the basis of the 1991 Madrid conference and the 1993 Declaration of Principles—Israel is only expected to withdraw 'from territories' to 'secure and recognised boundaries' and not from 'the territories' or 'all the territories' captured in the Six-Day War. This deliberate language resulted from months of painstaking diplomacy. For example, the Soviet Union attempted to introduce the word 'all' before the word 'territories' in the British draft resolution that became Resolution 242. Lord Caradon, the British UN ambassador resisted these efforts. Since the Soviets tried to add the language of full withdrawal but failed, there is no ambiguity about the meaning of the withdrawal clause contained in Resolution 242, which was unanimously adopted by the UN Security Council.[8]

The implication is clear. Israel has a right to acquire parts of the occupied terri-

[5] For just two examples, see letter from Oliver Kamm to the London *The Times*, 28 Oct 2000 and letter from Milton Polton to the *International Herald Tribune* of 7 Dec 2000.

[6] See Rostow's address 'The Intent of UNSC Resolution 242: The View of Non-regional actors' in 'UN Security Council Resolution 242 The Building Block of Peacemaking', at 4-20 and in particular at p17: 'Since UNSC 242 calls on Israel to withdraw only from territories occupied in the course of the Six Day War—that is, not from *all* the territories or even from *the* territories it occupied in the course of the war—and since most of the boundaries in question are no more than armistice lines specifically designated as *not* being political boundaries, it is hard to believe that professional diplomats can seriously claim in 1992 that UNSC 242 requires Israel to return to the 1967 Armistice Lines. This Arab position is particularly bizarre applied to the West Bank and the Gaza Strip where, under the Mandate and Article 80 of the UN Charter, the Jewish people still have an incontestably valid claim to make close settlements on the land.'

[7] Mr Michael Stewart, Secretary of State for Foreign and Commonwealth Affairs, in reply to a question in Parliament, 9 Dec, 1969: 'As I have explained before, there is a reference, in the vital United Nations Security Council Resolution, both to withdrawal from territories and to secure and recognised boundaries. As I have told the House previously, we believe that these two things should be read concurrently and that the omission of the word 'all' before the word 'territories' is deliberate.' Hansard, Fifth Series, Vol 793, p 261.

[8] See Dore Gold, 'From "Occupied Territories" to "Disputed Territories" ', in *Jerusalem Viewpoints*, no 470, 3 *Shvat* 5762/ 16 Jan 2002.

tories. With the Israeli–Palestinian conflict currently at a critical and bloody stage, it is essential that such assertions are examined carefully. It will be the purpose of this Article to do just that. This writer believes that the Right-wing Interpretation is not only untenable as a construction of the wording of the Resolution, but also it is unsustainable as a good faith interpretation for the purposes of international law.

The English text of Resolution 242 is as follows:

> *The Security Council,*
>
> *Expressing* its continuing concern with the grave situation in the Middle East,
>
> *Emphasising* 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,
>
> *Emphasising 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 the right to live in peace within secure and recognised boundaries free from threats or acts of force;
> 2. *Affirms further* the necessity (a) For guaranteeing the 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 demilitarised 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.[9]

Before analysing the text, it will be helpful to attempt to set out the twin arguments that are frequently used to support the Right-wing Interpretation. Both of them are encapsulated in the quotation from Mr Dore Gold above and, as we shall see, each of them is often repeated (frequently unchallenged) by reputable, independent scholars.

The first argument is linguistic. It is that the plain meaning of the wording in paragraph 2(i), 'Withdrawal from territories occupied in the recent conflict'

[9] S/8247.

can or should be construed to mean that Israel is only obliged to withdraw from 'some' of the territories, not 'all' the territories. The other argument is that the intention of the drafters of the Resolution in the Security Council was that Israel might retain some of the territories. The two arguments are also set out in a statement by Gerson in *Israel, the West Bank and International Law*:

> [Resolution 242] unanimously called for withdrawal from 'territories' rather than withdrawal from 'all the territories'. Its choice of words was deliberate and the product of much debate. They signify that withdrawal is required from some but not all the territories.[10]

He also states in a footnote:

> This becomes clear upon an examination of Security Council deliberations prior to reaching consensus on the text of Resolution 242. Several states made repeated attempts to require 'withdrawal from all *the* territories', which they interpreted to mean that only withdrawal from all of the territories would do. The defeat of these efforts makes it, therefore, incorrect to assert that withdrawal from *all* the territories is required.[11]

Gerson would seem to have in mind the oblique words of the Israeli Foreign Minister, Abba Eban, during the Security Council debate:

> For us, the resolution says what it says. It does not say that which it has specifically and consciously avoided saying. . . .
>
> [T]he crucial specifications . . . were discussed at length in consultations and deliberately and not accidentally excluded in order to be non-prejudicial to the negotiating position of all parties. The important words in most languages are short words, and every word, long or short, which is not in the text, is not there because it was deliberately concluded that it should not be there.[12]

This is a reference to the absence of 'all' and 'the' before 'territories'. Mr Eban invited his audience to draw their own conclusions, and gave notice to the world of the freedom of action that his government intended to allow itself.

II. THE PROCESS OF INTERPRETATION

Articles 31 and 32 of the Vienna Convention on the Law of Treaties have been used to interpret Resolution 242 before.[13] A strict construction of Article 32

[10] Gerson, *Israel, the West Bank and International Law* (London, Frank Cass, 1978), 76.

[11] Ibid, 104 n 179.

[12] United Nations Security Council Official Record ('UNSCOR'), 1382nd Meeting, paras 93–4.

[13] Arts 31 and 32 have been used by previous interpreters of the resolution, such as Professor Quincy Wright in 'The Middle East problem', 64 *American Journal of International Law* (1970), at 270 et seq. The text of Arts 31 and 32 is as follows:
Article 31:

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

would limit recourse to the use of supplementary means of interpretation to confirmation of the meaning arrived at by interpretation under Article 31 or as an aid to interpretation in the event that interpretation according to Article 31 '(a) leaves the meaning ambiguous or obscure; or (b) leads to a result which is manifestly absurd or unreasonable'. We do not, however, wish to exclude from consideration the argument based on the intention of the drafters of the Resolution. We will therefore agree with Schwebel that good faith requires that it should be possible to invoke preparatory work 'to correct the ordinary meaning otherwise deduced (if not to inform and influence the interpretation of the treaty from the outset).'[14] Our analysis will therefore attempt to interpret the Resolution in good faith by examining the ordinary meaning of the text and construing it in context and in the light of the object and purpose of the Resolution. Even though we believe we will have established a clear meaning for the text of the Resolution at that point, we will follow this by considering the most relevant material which provides supplementary means of interpretation, namely the record of the debate in the Security Council and the text of the other draft resolutions that were placed before the Council but not put to the vote.

A note of caution must, however, be sounded about the degree of reliance which may be placed on statements and documentation which form part of the less immediate context of the resolution, and the extent to which they may be used as aids to interpretation. The Official Records of the organs of the United Nations and the documentation referred to therein are publicly available, and contain official statements of the positions adopted by the member states. Yet if a researcher attempts to go beyond these courses, problems as to completeness

2. The context for the purpose of the interpretation of a treaty shall comprise in addition to the text, including its preamble and annexes: (a) any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty; (b) any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.
3. There shall be taken into account, together with the context: (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;(b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation; (c) any relevant rules of international law applicable in the relationship between the parties.
4. A special meaning shall be given to a term if it is established that the parties so intended.

Article 32:

> Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of Article 31, or to determine the meaning when the interpretation according to Article 31: (a) leaves the meaning ambiguous or obscure; or (b) leads to a result which is manifestly absurd or unreasonable.

[14] See Schwebel, 'May preparatory work be used to correct rather than to "confirm" the meaning of a treaty provision?', in *Theory of International Law on the threshold of the 21st Century, Essays in Honour of Krzustof Skubiszewski*, ed. J. Makarczyk (Kluwer Law, The Hague, 1996), at 546.

and availability creep in, to say nothing of objectivity. The relevant records of the chancelleries of the fifteen members of the Security Council and the four powers which were invited to attend but not to vote at its sessions are unlikely to be complete or available in their entirety. The files which are available for inspection are unlikely to have been produced specifically with research into the Resolution in mind, and may unintentionally omit important information, or such information may be permanently lost[15]. Statements by actors in the drama which were made after the event (such as those by Goldberg and Rostow referred to above, and those by Abba Eban to which reference is made below) may have been made with a particular and undisclosed purpose in mind, while statements such as that by Michael Stewart in the House of Commons are liable to have been honed and polished in order to support the policies of a particular government of the day. Secondary sources, such as the studies by Lall and Bailey rely (particularly in the case of Bailey) in large part on the memoirs of retired diplomats and interviews and correspondence between the author and individuals who once acted in an official capacity. Such sources should not be disregarded, but note should be taken of the caveat with which they should be used. The Official Records of the Security Council debate should be the evidence of the most immediate context for all pactical purposes. Other sources should be considered as more remote, regard being had in each case to the purpose of each document (or recollection of the writer or speaker), and the extent to which it can be shown to reflect objective facts about the meaning and status of the resolution.

It would appear that remarkably little attention has been paid by international lawyers to the interpretation of UN Security Council resolutions. However, the process of interpretation which we have outlined above is surely a reasonable initial approach to be adopted when attempting to establish the meaning of almost any text. When the process of analysis set out above has been completed, we will consider the work of Michael Wood on the interpretation of Security Council resolutions to see if it affects our conclusions. Wood also takes Articles 31 and 32 of the Vienna Convention as his starting point, and points out that the good faith requirement is buttressed by the obligation on Member States in Article 2(2) of the Charter to fulfil in good faith the obligations assumed by them in accordance with the Charter.[16]

Before concluding, we shall consider an unwelcome consequence for the state of Israel itself which flows from the adoption of the position we have

[15] It will be noted below that we have inspected the file of the British Mission to the UN now catalogued as FO 961/24 and made available under the Thirty Year Rule. This contains much valuable information about the evolution of Lord Caradon's draft. However, the file (and the series in which it is located) stop tantalisingly on the eve of the introduction of the Resolution into the Council. We do not claim that our search into the available British Archives is comprehensive, or that an entirely comprehensive search is possible Much relevant material will have inevitiably been lost.

[16] Michael C Wood, 'The Interpretation of Security Council Resolution 242', *Max Planck Yearbook of United Nations Law* [1998],.89.

called the Right-wing Interpretation, and will suggest that Israel would be well advised to repudiate it.

III. AN ANALYSIS OF THE ORDINARY MEANING OF THE TEXT

The Resolution is cast as one sentence, which emphasises the intention that it is to be construed as a single, integral whole and that no part of the Resolution is to be considered in isolation from the others. Subject to this, it will be seen that it divides into three distinct sections. The first section consists of the three preambular paragraphs that begin with the words 'Expressing' and 'Emphasising'. They set out common ground on which the Resolution is based. They are the most immediate context within which the meaning (and the object and purpose) of the provisions that follow must be determined.

The second section consists of numbered paragraphs 1 and 2, which each begin with the word 'Affirms'. In this analysis we will be particularly concerned with the two limbs of paragraph 1. For brevity, we will refer to paragraph 1 (i) as 'the Withdrawal Phrase' and to paragraph 1 (ii) as 'the Secure and Recognised Boundaries Phrase'.

The third section contains numbered paragraphs 3 and 4 which each begin with the word 'Requests'. Paragraph 3 shows that the purpose of the Resolution is 'to promote agreement and assist efforts to achieve a peaceful and accepted settlement in accordance with the provisions and principles in this Resolution'.

The structure of the Resolution is logical and ought therefore to be reasonably clear and uncontroversial. It is aimed at achieving the purpose set out in paragraph 3. This purpose should be achieved in accordance with the 'provisions and principles' in the Resolution. The Withdrawal Phrase and the Secure and Recognised Boundaries Phrase are specifically described as 'principles', but it can be assumed that the phrase 'provisions and principles' also covers the three subparagraphs in paragraph 2 and those principles contained in the preambular paragraphs.

Let us now consider the meaning of those parts of the wording of the Resolution which need some elaboration and which are most relevant to our analysis. We are concerned first and foremost with the ordinary meaning of the wording, the natural and probable meaning. Let us begin by looking at the second preambular paragraph: 'The Security Council. . . . Emphasising 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.'

It used to be permissible for a state to acquire sovereignty over territory by right of conquest on the termination of a state of war. The right was abolished when the League of Nations was established in the aftermath of the First World War. The abolition of conquest extends to a prohibition of the acquisition of any territory by a state in actions of self-defence.[17] The vexed

[17] See Jennings and Watts, 'Oppenheim's International Law', 9th edn (Harlow, Longman,

question of who attacked whom in the various Arab–Israeli conflicts is therefore irrelevant to the analysis contained in this Article. What should be noted is the strength of the word 'inadmissibility' which was chosen by the drafters of the Resolution. It suggests that the prohibition of the acquisition of territory by war is a foundation on which the Resolution is predicated, and that 'the need to work for a just and lasting peace in which every state can live in security' is to be built upon this foundation.

IV. THE WITHDRAWAL PHRASE

We now come to the Withdrawal Phrase. We have already drawn attention to the way in which Israel appears to wish to read it and to the support which the Right-wing interpretation has received. That interpretation would now seem to be accepted as tenable among much academic opinion. Consider the following statement in Geoffrey Watson's book, *The Oslo Accords*.

> [Resolution 242] points in different directions at once. On the one hand, its preamble speaks of 'the inadmissibility of the acquisition of territory by war', implying that Israel should return all the territories obtained in the 1967 War. On the other hand, the English text of the resolution provides that peace 'should' (not 'must')[18] include withdrawal of Israeli forces 'from territories occupied in the recent conflict', not from 'the territories occupied' in that conflict.[19]

Watson's interpretation presupposes that the Resolution is ambiguous. But are Watson, Gerson and others right in assuming that the wording of the Withdrawal Phrase can be taken to mean what Dore Gold and others assert? This writer disagrees with them, and believes it is high time it was pointed out that this particular emperor has no clothes.

In the first place, the wording of the Withdrawal Phrase refers to a category of territories, namely those territories 'occupied in the recent conflict'. It treats these territories as a unity. If a withdrawal takes place from some, but not all, of these territories, can it be said that the principle contained in the Withdrawal Phrase has been complied with in full? A partial withdrawal would surely only be partial compliance with the principle. The absence of the word 'all' does not imply that 'some' was intended. Consider the following imaginary notice at the entrance to a park:

1992), 699 where Brownlie's *International Law and the Use of Force by States* is quoted with approval on this point. The prohibition extends to any unilateral attempt to acquire sovereignty over territory occupied in a war of self-defence. On this point, see Oppenheim, op cit, at 703–5 and nn 7 and 8. See also Korman, *The Right of Conquest: The Acquisition of Territory by Force in International Law and Practice* (Oxford: Oxford University Press, 1996), 203–14.

[18] A glance at the text of the Resolution as a whole will show that Watson's point about 'should' is a non-point. 'Should' governs the various components of the Secure and Recognised Boundaries Phrase in exactly the same way. Would Watson suggest that 'termination of all states of belligerency' 'should' be (but need not necessarily be) an ingredient of a final settlement?

[19] G Watson, *The Oslo Accords: International Law and the Israeli–Palestinian Peace Agreement'* (Oxford: Oxford University Press, 2000), 31.

'Dogs may swim in ponds in the park'.

Does this notice apply to 'all' dogs, or only to 'some' dogs? If the reader of the notice unleashes his dog so that it can have a swim, can the park keeper legitimately point to the notice and tell him that it does indeed apply to 'some' dogs, but not to the dog that the walker has just let off the lead? Let us assume that there are three ponds in the park. Does the notice refer to 'all ponds' which fall into the category of being 'in the park' or only to 'some' of the ponds, and if so which? The answer in each case must surely be 'all'.

If it is objected that there is some element of permissibility inherent in the existence of the word 'may' in the above example, let us consider an alternative example which has mandatory wording:

Dogs must be kept on the lead near ponds in the park.

It does not require more than common sense to realise that, once again, 'all dogs' and 'all ponds' are intended.

Moreover, wording can be found in other phrases in Resolution 242 where 'all' or a similar word is absent but where it is clear in context that 'all' is meant and there are no grounds to assume that only 'some' was intended. Consider paragraph 2 (a) which confirms the necessity of guaranteeing freedom of navigation 'through international waterways in the area', not 'all international waterways in the area'. There are a number of international waterways in the area: the Suez Canal, the Straits of Tiran at the entrance to the Gulf of Aqaba, and the Bab al-mandab at the entrance to the Red Sea. 'Area' is undefined. Does it cover some or all of these waterways? Does it extend further afield to include, say, the Straits of Hormuz, the Bosphorus or even the narrowing of the Mediterranean between Sicily and Tunisia, and the Straits of Gibraltar? If 'all' waterways are not intended to be covered by the phrase a major lack of clarity emerges. This cannot have been the intention. Good faith and the natural and only meaning require that the sense 'all international waterways' be implied.

A similar question arises over 'the right to live in peace within secure and recognised boundaries' in the Secure and Recognised Boundaries Phrase. Does the word 'within' imply that 'all' boundaries must be secure and recognised? Israel now has secure and recognised boundaries with Egypt and Jordan.[20] Yet no one would seriously suggest that this aspect of the Secure and Recognised Boundaries Phrase has been fully complied with and that there is therefore no requirement in Resolution 242 for a secure and recognised boundary to exist between, say, Israel and Syria as part of the final settlement between those two countries.

If 'all' is to be implied in these two examples, surely it should also be implied in the Withdrawal Phrase.

[20] Peace Treaty between Israel and Egypt, 26 Mar 1979; Treaty of Peace between the State of Israel and the Hashemite Kingdom of Jordan, 26 Oct 1994.

There are other objections to the Israeli Interpretation. In the first place, good faith requires that a text be construed in order to give it a clear meaning if this is possible. If the Israeli view that withdrawal applies only to 'some' and not 'all' of the territories were sustainable, it would lead to an unclear text and major uncertainties: which territories must Israel withdraw from, and which territories may it retain? Who should decide which these territories should be? Such uncertainties would be a recipe for conflict, and subsequent history shows that it is indeed arguable that the Right-wing Interpretation has led to conflict and substantial loss of life. Can it seriously be suggested that an unclear text would have been the deliberate intention of the Security Council? The Right-wing Interpretation starts from the premise that the text must be assumed to be ambiguous. This cannot be right if a clear meaning can be extracted from it.

We have also drawn attention to the abolition of the right of conquest in international law. Any suggestion that Israel could retain some of the territories would have been illegal. Can it be seriously suggested that the Security Council would have attempted to overturn this principle? The Right-wing Interpretation would imply that it did.

V. THE SECURE AND RECOGNISED BOUNDARIES PHRASE

We now turn to the Secure and Recognised Boundaries Phrase. This is that 'all claims or states of belligerency' should be terminated, that the sovereignty, territorial integrity, and independence of every state in the area should be respected and acknowledged, and that every state in the area should have 'the right to live in peace within secure and recognised boundaries free from threats or acts of force'. Is there another limb to the argument for the Right-wing interpretation? Can it be said that the boundaries should be adjusted in order to achieve 'secure and recognised borders', and that Israel consequently has a unilateral right to retain some of the territory occupied in 1967 in order to have such boundaries? As shown above, Gerson, for instance, has accepted the Right-wing Interpretation. Nevertheless, he limits it 'to territorial adjustments mandated by "security considerations" '. He suggests that these should be of a minor nature, and hints that this had been Israel's position before the 1967 War.[21]

This view is developed by Sharon Korman who reads the Withdrawal Phrase as not requiring a withdrawal from all the territories and believes the Resolution allows for minor territorial adjustments in favour of Israel for security considerations. She compromises this view, however, since she also maintains that these can only come about through a freely negotiated settlement, reached in terms of the provisions and principles contained in the Resolution. She continues, somewhat hesitantly:

[21] Gerson, op cit, 76.

> Since such a settlement would not be a settlement imposed or dictated under threats or acts of force, it follows that [the Secure and Recognised Boundaries Phrase] is not to deny the inadmissibility of acquiring territory by force, but is rather to assert or suggest the following: (1) that a state which has been a victim of attack may be recognised as having a legitimate claim to border adjustments on the grounds of military security; (2) that the Security Council would, in this case, approve of border modifications to the extent deemed necessary for security; but (3) such changes could not be *enforced* by the state whose claim is admitted, but could only be effected in the context of a freely negotiated settlement, and only to the extent compatible with 'a just and lasting peace'—the essential point being that a peace treaty incorporating frontier changes must have some prospect of *permanence*: that is, it must not impose or dictate territorial arrangements which the party dictated to would seek to reverse as soon as the next opportunity offered.[22]

There are a number of inconsistencies in this proposition, even if one lets pass her statement that Israel was 'a victim of attack' without comment. In the first place, the maintenance of the Israeli occupation is only possible through 'threats or acts of force'. If her words are taken at face value, Korman would seem to imply that the occupation should have ended before negotiations began, and that its very continuation is itself a breach of Resolution 242. It is surely difficult to see how the Right-wing Interpretation is not intended to force the Palestinians (and the Egyptians and Syrians) to negotiate under the duress inherent in the occupation of their land. This threatens the 'prospect of *permanence*' which she envisages in the territorial arrangements she advocates, unless the negotiations lead to a total withdrawal (such as the withdrawal which Israel carried out from Egyptian territory when peace was made). The use of force to maintain an occupation inevitably hinders or destroys the possibility of the necessary basis of equality for negotiations to agree reciprocal territorial swaps. Moreover, we have already noted how the concept of acquisition of territory in a war of self-defence has been rejected by scholars. This is also Korman's view. She continues the passage quoted above by pointing this out:

> Thus Security Council Resolution 242, while it does not deny the validity of territorial changes which it has itself acknowledged on grounds of security, does not support the right of the victim of attack to annex conquered territories or to impose a treaty of cession on the defeated state. As such, it provides strong evidence for the existence of the rule that all acquisitions of territory obtained by force, without qualification as to lawfulness, are inadmissible.[23]

Korman's inconsistency ultimately stems from her subscription to the view that the Withdrawal Phrase does not demand a total withdrawal from the occupied territories.

The main objection to an argument based on the Secure and Recognised

[22] Korman, op cit, 211–12. [23] Ibid, 212.

Boundaries Phrase is that the wording does not state that boundary adjustments will necessarily occur. If peace comes, then the boundaries—wherever they lie—should automatically be 'secure and recognised', as Nabil Elaraby has pointed out.[24] Conversely, no adjustments can ever make a boundary secure in the absence of peace. By definition, such a boundary will not be recognised except as an armistice line. This being the case, unilateral adjustments to change the frontier in Israel's favour cannot be justified on the basis of the Secure and Recognised Boundaries Phrase.

Another problem with the argument is that Resolution 242 states that this principle applies to every state in the area, and not just Israel. It will be noted that the Withdrawal Phrase is the only principle in the Resolution that places an obligation on one party alone or refers directly to the 1967 War. All other principles and provisions are intended to be of general application and to apply to all parties. Just as Israel has a right to live in peace and security within secure and recognised boundaries without threats of force by its neighbours, each of Israel's Arab neighbours has exactly the same right to live in peace and security free of threats of force by Israel or any other state. Common sense demands that this should also apply to any state that comes into being at a later date—such as an independent Palestinian state. Resolution 242 was intended to provide a framework for negotiations. This implies that the parties should be on an equal footing and that each should respect the entitlement of the others under international law. This is difficult so long as Israel remains an occupying power with a record of abusing its position.

Our initial analysis of the text of Resolution 242 suggests that any territorial adjustments must be freely negotiated on a basis of reciprocity by parties treating each other as equals. This interpretation is free from ambiguity and obscurity and has not led to a result that is manifestly absurd or unreasonable. Many of the political statements made within the first few years after Resolution 242 which are today used to support the Right-wing Interpretation may equally well be taken to support the position which we are advocating here. Thus, when Michael Stewart, as British Foreign Secretary, told the House of Commons that the references in Resolution 242 to 'withdrawal from territories' and 'secure and recognised boundaries' should be read concurrently and 'that the omission of the word 'all' before the word 'territories' is deliberate',[25] he was not necessarily supporting the Right-wing Interpretation.

[24] See Nabil Elaraby in *UN Security Council Resolution 242: The Building Block of Peacemaking* (Washington DC: Washington Institute, 1993), at 42: 'With respect to UNSC's reference to "secure and recognised boundaries", I would like to stress that the withdrawal clause is clear. It does not mean "new" secure and recognised borders, but secure and recognised "existing" borders. The second part in the resolution refers to "termination of the state of belligerency", and that is addressed to every single party—both to Israel and the Arab countries. They can all live within secure and recognised boundaries. It has nothing to do with withdrawal; if it did, the resolution would have said so.' He also added, referring to the Withdrawal Phrase: 'The myth created on the flimsy and fallacious argument of the so-called definite article should really be dismissed by now.' Ibid., p.44

[25] Hansard, Fifth Series, vol. 793, 261.

He was speaking only two years after the passing of the Resolution. If negotiations had led to a comprehensive peace within a reasonable time shortly thereafter, it is perfectly possible that agreed and mutually compensating territorial swaps would have occurred at the same time as an Israeli withdrawal. Israel might indeed never have withdrawn from the areas which it gained in such swaps. It is a very different thing to imply, a third of a century later, that words such as those uttered by Michael Stewart were in support of an Israeli 'right' to retain areas it selected on a permanent basis.

We will now turn to the extrinsic evidence: the record of the debate in the Security Council and the other draft resolutions to see if they confirm (or correct) our initial analysis.

VI. SUPPLEMENTARY MEANS OF INTERPRETATION: (1) THE SECURITY COUNCIL DEBATE

A number of draft resolutions were proposed and discussed to a greater or lesser extent, and the draft which was adopted as Resolution 242 was prepared after the Security Council members had had an opportunity to sound out each other's views as well as the views of the states which were party to the dispute. Once the new draft had been presented, no amendments were made to the text and it was debated and accepted unanimously. Two general statements were made about it in the debates in the Council which bear repetition here. The first was by Lord Caradon, the British representative who had initiated the draft and presented it to the Council:

> [T]he draft resolution which we have prepared is not a British text. It is the result of close and prolonged consultation with both sides and with all members of this Council. As I have respectfully said, every member of this Council has made a contribution in the search for common ground on which we can go forward. . . . I would say that the draft resolution is a balanced whole. To add to it or to detract from it would destroy the balance and also destroy the wide measure of agreement we have achieved together. It must be considered as a whole and as it stands. I suggest that we have reached the stage when most, if not all, of us want the resolution, the whole resolution and nothing but the resolution.
>
> . . . I would say that every delegation has a right, of course, and a duty to state its own views. As I said on Monday: 'Every delegation is entitled, indeed is expected, to state the separate and distinct policy of the Government it represents.'
>
> But the draft resolution does not belong to one side or the other or to any one delegation; it belongs to us all. I am sure that it will be recognised by us all that it is only the resolution that will bind us, and we regard its wording as clear. All of us, no doubt, have our own views and interpretations and understandings. I explained my own when I spoke on Monday last. On these matters each delegation rightly speaks only for itself.[26]

[26] UNSCOR, 1382nd Meeting, paras 58–61

The other general statement was by the US representative, Mr Goldberg:

> As Lord Caradon pointed out both on Monday and today, various members of the Council have views of their own for supporting the United Kingdom text. The voting of course takes place not on the individual or discrete views and policies of various members but on the draft resolution.[27]

A number of states did use the debate to state their 'individual or discrete views' as to what the Resolution meant and we will now turn to these. However, the views of Lord Caradon and Mr Goldberg support the approach we have adopted to the analysis of the Resolution: it is the meaning of the text which counts and it should be assumed that the text is clear unless shown otherwise. Furthermore, Lord Caradon's reference to the way in which all delegations had played their part in the production of the text indicates that the 'individual or discrete views' of each of the fifteen members of the Security Council should be considered of more or less equal weight when cited in support of a particular interpretation. His statement should also lead us to anticipate a considerable degree of congruence in the views expressed by the delegates on the interpretation of the Resolution.

What, then, were the 'individual or discrete views' of the various delegations, and do they show that more than one interpretation is possible?

Lord Caradon, for the United Kingdom, had, as he indicated, already expressed his views. In the previous meeting of the Security Council, he had quoted from a speech by George Brown, the British Foreign Secretary, to the General Assembly as a statement of the British Government's policy:

> Britain does not accept war as a means of accepting disputes, nor that a state should be allowed to extend its frontiers as a result of war. This means that Israel must withdraw. But equally, Israel's neighbours must recognise its right to exist, and it must enjoy security within its frontiers. What we must work for in this area is a durable peace, the renunciation of all aggressive designs, and an end to policies which are inconsistent with peace.[28]

Although this does not state in so many words that Israel must withdraw from all the territories, the need for a total withdrawal is surely implicit provided that it is accepted at the same time that Israel has a right to exist and must 'enjoy security within its frontiers'. It will be noted that Lord Caradon did not suggest that those frontiers should necessarily be revised.

Lord Caradon's speech continued with praise for the initiative that Latin American states had taken in the Security Council. He stated 'They have insisted on fairness, on the basic principle of equal obligation.'[29] This is significant, because the Latin American draft resolution for the General Assembly was still before the Security Council and had carried very clear

[27] UNSCOR, 1382nd Meeting, para 64.

[28] UNSCOR, 1381st Meeting, para 20, quoting from the Official Records of the General Assembly, Plenary Meetings, 1567th meeting, para 91.

[29] UNSCOR, 1381st Meeting, para 21.

wording on the question of Israeli withdrawal: 'The General Assembly . . . urgently requests Israel to withdraw all of its forces from all the territories occupied by it as a result of the recent conflict.' Lord Caradon's praise for the Latin American initiative surely implied approval for this desire for a total withdrawal. If he did not intend there to be a total withdrawal, it is hard to see why he spoke these precise words. A total withdrawal is part of the 'equal obligation' which he implied that the Latin American text had achieved for Israel and the Arab states. To say otherwise would be to misread that text.

Lord Caradon also commented specifically on the relationship between the preambular paragraph concerning the inadmissibility of force and the Withdrawal Phrase:

> In our resolution we stated the principle of the 'withdrawal of Israel armed forces from territories occupied in the recent conflict' and in the preamble we emphasised 'the inadmissibility of the acquisition of territory by war'. In our view, the wording of those provisions is clear . . . In the long discussions with the representatives of the Arab countries they have made it clear that they seek no more than justice. The central issue of the recovery and the restoration of their territories is naturally uppermost in their minds. The issue of withdrawal is all important to them, and of course they seek a just settlement to end the long suffering of the refugees.
>
> The Israelis, on the other hand, tell us that withdrawal must never be to insecurity and hostility. The action to be taken must be within the framework of a permanent peace, and withdrawal must be to secure boundaries. There must be an end to the use and threat and fear of violence and hostility.
>
> I have said before that those aims do not conflict; they are equal; they are both essential; they are interdependent. There must be adequate provision in any resolution to meet them both, since to pursue one without the other would be futile.[30]

Lord Caradon's words were obviously chosen with great care. His intention was that the Resolution should achieve a balance. A permanent peace would involve Arab recognition of Israel and Israel's territorial integrity: major concessions by the Arab states. An Israeli withdrawal to secure boundaries was to be balanced by the logical consequence of the inadmissibility of the acquisition of territory by war: Israel could not gain any territory as a result of the recent conflict. These were the principles on which the parties were to negotiate their settlement. In order to negotiate secure boundaries, Israel had to recognise its obligation to withdraw from the occupied territories. There was no implication that this would necessarily require territorial adjustments at all, let alone any which were purely for the benefit of Israel. If he had intended Israel to have the discretion to make such adjustments, he could not have stated that he regarded the wording of the Withdrawal Phrase as clear.

If the British delegate only stated this by implication, the Indian delegate's gloss on the British view adds additional force to the interpretation of that

[30] Ibid 1381st meeting, paras 31–7. Cf. 1379th Meeting, paras 11 and 12.

view which we have just set out. Mr Parthasarathi, the Indian delegate, repeated the statement by George Brown, the British Foreign Secretary, which Lord Caradon had already quoted at the previous meeting and which is contained in the quotation set out above. But he quoted more extensively from George Brown than Lord Caradon, including the following words:

> 'All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State . . .' Here the words 'territorial integrity' have a direct bearing on the question of withdrawal, on which much has been said in previous speeches. I see no two ways about this; and I can state our position very clearly. In my view, it follows from the words in the Charter that war should not lead to territorial aggrandizement.[31]

George Brown's quotation from Article 2(4) of the United Nations Charter and reference to territorial integrity are particularly significant, since at that time Britain recognised Jordanian sovereignty over the West Bank. It implied that Mr Brown believed that Israel should withdraw from the entire West Bank as well as the other occupied territories. Both Mr Parthasarati, Lord Caradon and everyone else present would have read Mr Brown's words on that basis.

Mr Parthasarathi commented:

> My delegation has studied the United Kingdom draft resolution in the light of these two policy statements of the British Foreign Secretary. It is our understanding that the draft resolution, if approved by the Council, will commit it to the principle of total withdrawal of Israel forces from all the territories—I repeat, all, the territories—occupied by Israel as a result of the conflict which began on 5 June 1967 . . .
>
> This being so, Israel cannot use the words 'secure and recognised boundaries' contained in operative paragraph 1 of the United kingdom draft resolution, to retain any territory occupied in the recent conflict. Of course, mutual territorial adjustments are not ruled out, as indeed they are not in the three-Power draft resolution co-sponsored by India.[32]

Lord Caradon welcomed this, in language which makes it hard to believe that he disagreed with the Indian delegate's interpretation of Britain's own interpretation of it:

> We must now all strain every effort for harmony and unity, and it is in this spirit that I warmly welcome the decision that has just been communicated to us by the distinguished Ambassador of India, speaking on behalf of himself and the other co-sponsors of the draft resolution which they presented to us. It marks a turning point; I feel that it opens the way to agreement and to action.[33]

Mr Kante, the representative of Mali, confirmed his agreement with the Indian

[31] UNSCOR, 1382nd Meeting, para 50, quoting from the Official Records of the General Assembly, 1529th Meeting, para 15.

[32] UNSCOR, 1382nd meeting, paras 52–3.

[33] Ibid, para 56.

interpretation of the requirement for Israeli withdrawal, using language that was as explicit as Mr Parthasathi's:

> Ma délégation confère donc à sa vote d'aujourd'hui le sens de l'interprétation claire et sans équivoque que le représentant de l'Inde a bien voulu donner des dispositions du texte britannique, à savoir: premièrement que le retrait des troupes de toutes les forces-armées d'Israël de tous les territoires arabes occupés à partir du 6 juin ne saurait être lié a aucune condition quelle qu'elle soit . . .[34]

Likewise, Mr Adebo, the representative of Nigeria, stated:

> We, for our part, feel that the resolution we have adopted does provide for what we believe are the essential factors to the peaceful and just settlement of the Middle East situation. One of these factors, as we have reiterated more than once, is the recognition of the inadmissibility of territorial aggrandizement by military conquest and, as a consequence, the withdrawal of Israel forces from all the territories that they occupied as a result of the recent conflict. But one of the essential factors also is that this withdrawal should take place in a context in which all the countries in the area, including Israel and all the Arab states, can feel and enjoy a sense of security. We therefore subscribe very heartily to what Lord Caradon said when he stated that the resolution must be taken as a whole.[35]

Nor were the three delegates who had submitted the non-aligned three power draft alone in being so explicit that the text of the Resolution required withdrawal from all the territories. Mr Tarabanov, the Bulgarian delegate stated:

> Nous pouvons constater avec satisfaction que, dans la résolution adoptée, l'inadmissibilité de l'acquisition de territoire par la force, proclamée dans le préambule en tant que principe général, est confirmée dans le premier point du dispositif de la résolution d'une façon claire et explicite par la demande de 'retrait des forces armées israeliénnes des territoires occupés lors du récent conflit'. Il s'agit d'une disposition précise, qui exige que les troupes d'Israël se retirent de tous les territoires occupés après le 4 juin 1967. C'est une application concrète du principe de l'inadmissibilité de l'acquisition de territoire par la guerre souligné dans la préambule de la résolution.
>
> Sous cette lumière se place également la question de la reconnaissance 'de l'intégrité territoriale et de l'indépendence politique de chaque Etat de la région et de leur droit de vivre en paix a l'intérieur de frontièrés sûres et reconnues'. C'est justement la paix et la sécurité de tous les Etats qui exigent avant tout l'interdiction de toute acquisition territoriale de la part d'un Etat aux dépens d'un autre par la guerre.
>
> La disposition concernant le retrait des troupes d'Israël de tous les territoires occupés est une condition importante pour mettre en oeuvre les autres principes enonces au paragraphe 1, alinéa ii, et au paragraphe 2 du dispositif de la résolution.[36]

Mr Makonnen, the Ethiopian delegate was explicit on the requirements for whichever draft was to go forward:

[34] Ibid, para 189. [35] Ibid, para 76. [36] Ibid, paras 139–41.

> With regard to the principles that need to be affirmed, we deem it most essential that due emphasis be put on the inadmissibility of acquisition of territory by war and hence on the imperative requirement that all Israel armed forces be withdrawn from the territories occupied as a result of military conflict. . . .[37]

He then stated that he would vote for a proposal that included these elements:

> I can only repeat that in the light of the statements that I have just made, our final position on any proposals will depend on whether or not they go a reasonable way to meet our test of balance and equity and on the extent to which they accommodate the basic elements that we consider to be essential for any Security Council decision at this crucial stage.[38]

Mr Makonnen's vote in favour of the Resolution thus implies that he was satisfied that it required an Israeli withdrawal of all its forces from the territories occupied in the recent conflict.

The French delegate, M. Berard, stated that the wording of the Withdrawal Phrase was clear and meant a withdrawal from the occupied territories, implying that a partial withdrawal would not be adequate. He contrasts this with the existence of other parts of the Resolution that he did not believe carried the same degree of clarity:

> On ne s'étonnera donc pas si j'indique que nous aurions souhaité que ce texte fût plus net sur certains points, y compris le mandat du représentant special.
>
> Mais nous devons admettre qu'en ce qui concerne le point que la délégation française a toujours présenté comme essentiel, celui du retrait des forces d'occupation, la résolution adoptée, si l'on se réfère au texte français qui fait foi au meme titre que le texte anglais, ne laisse place a aucune amphibologie puisqu'il parle de l'évacuation des territoires occupés, ce qui donne une interprétation indiscutable des termes '*occupied territories*'.[39]

If M Berard had intended 'l'évacuation des territoires occupés' to mean only withdrawal from some of the occupied territories, there would have been an ambiguity in what he said and he would have contradicted himself when he stated that the French text was clear on this point. His statement that the wording in the official French text was 'une interprétation indiscutable' of withdrawal from 'occupied territories' [ie 'territories occupied in the recent conflict'] indicates that he also believed the English wording to be clear and to refer to a total withdrawal. This has led Shabtai Rosenne to come close to admitting that both the English and the French texts are incompatible with a partial withdrawal.[40]

[37] Ibid, para 33. [38] Ibid, para 37. [39] Ibid, paras 110–11.

[40] Shabtai Rosenne, in an article which is trumpeted from the Israeli Government's website, draws attention to the French delegate's view that the meanings of the French and English texts were identical on the question of withdrawal. What Rosenne chooses to ignore is the possibility that the phrase 'withdrawal from territories occupied in the recent conflict' might be interpreted in the manner set out by us in this Article. He assumes that the words indicate a requirement for

Mr Kuznetzov, the Soviet delegate, was explicit both on the question of withdrawal and on the relationship between the Withdrawal Phrase and the Preamble:

> [W]e voted for the United Kingdom draft resolution, as interpreted by the representative of India, whose views we share. Thus, in the resolution adopted by the Security Council, the 'withdrawal of Israel armed forces from territories occupied in the recent conflict' becomes the first necessary principle for the establishment of a just and lasting peace in the Middle East. We understand the decision to mean the withdrawal of Israel forces from all, and we repeat, all territories belonging to Arab states and seized by Israel following its attack on those states on 5 June 1967. This is borne out by the preamble to the United kingdom draft resolution that stresses the 'inadmissibility of the acquisition of territory by war'. It follows that the provision contained in that draft relating to the right of all States in the Near East 'to live in peace within secure and recognised boundaries' cannot serve as a pretext for the maintenance of Israel forces on any part of the Arab territories seized by them as a result of war.[41]

On the other hand, Mr Ruda, the Argentinian representative, and possibly Mr De Carvalho Silos, the Brazilian representative, expressed reservations about the clarity of the wording of the Withdrawal Phrase. Although he did not refer to the Withdrawal Phrase explicitly, the Brazilian representative may well have had it in mind when he stated: 'The text does not give full satisfaction to my delegation.'[42] But he nevertheless implied that the general principles of international law prevented Israel acquiring land it had occupied, and that he therefore had no problem voting for the Resolution:

> I should like to restate, on behalf of my delegation, the general principle that no stable international order can be based on the threat or use of force, and that the occupation or acquisition of territories brought about by such means should not be recognised. The validity of this rule cannot be contested and is not being challenged by anyone around this table. Its acceptance does not imply that border-

a partial withdrawal, but makes no attempt to justify this view. The contradiction inherent in his position is plain from the unsatisfactory gymnastics into which he is forced in a vain attempt to give coherence to it. He is led to speculate as to why there is no word equivalent to 'some' in the French text, and comes within a whisker of admitting that both the English and the French texts are incompatible with an interpretation that only a partial withdrawal is intended: '[I]t is said that the indefinite quality of the English and Russian versions [of the Withdrawal Phrase]—which was a matter of political determinism—ought to be met by the introduction of a word such as *'certains'* into the French version (and its equivalent in the Spanish). But in such a context, *'certains'* would need some equivalent in English, for instance some, a word which does not appear in the English text and which, moreover, it is unlikely that a draftsman with any command of the English language from either side of the Atlantic would have willingly or wittingly inserted.' See Shabtai Rosenne, 'On Multi-lingual Interpretation', *Israel Law Review*, vol 6, 1971 at p 361. There are, of course, forms of wording which would have achieved his objective: 'partial withdrawal', 'selected withdrawals' or 'withdrawals appropriate to establish secure and recognised boundaries' would have been possibilities. But the whole point is that they would never have been accepted by the Security Council.

[41] UNSCOR, 1382nd Meeting, paras 118–19. Translated from the Russian.

[42] Ibid, para 128.

> lines cannot be rectified as a result of an agreement freely concluded among the interested states.[43]

Thus, although he may not have been fully satisfied with the wording, he would clearly not accept an interpretation of the Resolution that would have conflicted with the rule that, as he put it, 'is not being challenged by anyone around this table'. Otherwise, he would not have voted for the Resolution. The attention that he drew to the possibility of rectifying boundaries by agreement likewise implies that he excluded the redrawing of boundaries in any unilateral way.

The Argentinian representative stated that 'we cannot, however, help but observe that we would have liked to see some improvements made in the drafting' and made a suggestion to add references in the Preamble to the UN Charter as a whole and in particular Articles 1 and 33 thereof. Then he added:

> With regard to the formula for the withdrawal of troops, which reads: 'withdrawal of Israel armed forces from territories occupied in the recent conflict', this does not, in our view, reflect a fully rounded-off notion; and although my delegation voted for paragraph 1 (i) of the draft, we would have preferred a clearer text, such as that submitted to the General Assembly by the Latin American countries in July, which provided for the withdrawal of Israel armed forces from all the territories occupied as a result of the recent conflict.
>
> We trust that the implementation of the formula adopted will achieve these ends; it is the only solution. We have always contended and still contend that, as the Brazilian representative pointed out, no international order be based on the threat or use of force, and that no recognition should be given to any territorial arrangement which has not been arrived at by peaceful means, nor to the validity of any occupation or acquisition of territories accomplished by force of arms.
>
> The second point is that of the right 'to live in peace within secure and recognised boundaries'. We take this expression as really meaning to live in security within agreed boundaries. . . .[44]

Like his Brazilian colleague, he excluded any unilateral move by Israel to adjust its frontiers at the expense of its neighbours or the annexation of occupied territory.

Even if the Brazilian and Argentinian delegates did not agree that the Withdrawal Phrase was clear in itself, what they said implied that they accepted that it was clear in the context of the Resolution taken as a whole against the background of international law.

It can thus be seen that the representatives of ten of the fifteen voting members made a point of stating on the record that they considered that the Resolution provided that Israel had no right to acquire any of the territories occupied in the Six Days War, and that it followed from this that the requirement to withdraw extended to all these territories. They can be divided into

[43] UNSCROR, 1382nd Meeting, para 127.
[44] *Israel Law Review*, vol 6, 1971, paras 161–4. Translated from the Spanish.

those who expressly stated that the Withdrawal Phrase was clear in requiring a total withdrawal: India, Mali, Nigeria, Bulgaria, the USSR, and France, and those who implied it was clear in the context of the Resolution as a whole: Britain, Ethiopia, Argentina, and Brazil. Britain would seem to straddle the two categories since, as we have seen, Caradon stated that the Withdrawal Phrase was clear and implied that it meant a total withdrawal.

None of the representatives of the five remaining members made a statement on the meaning of the Withdrawal Phrase or stated that it supported the Right-wing interpretation.[45] Gerson and others are thus wrong in asserting that the debate in the Security Council reveals that the intention of the drafters of the Resolution did not envisage total withdrawal. In the face of so many broadly congruent statements as to the effect of the Withdrawal Phrase when interpreted in the context of the Resolution as a whole, an inference that silence implied consent on the part of the states which did not take the opportunity to interpret the Withdrawal Phrase is not entirely unreasonable. Mr Goldberg was to write in 1973 that he considered the Resolution to be ambiguous and that it ' "tilts" in favour of adjustments to ensure secure boundaries for Israel without endorsing the complete redrawing of the map of the Middle-East'.[46] Whatever he may have meant by this in 1973, he did not say it at the time from the floor of the Security Council, although he did add towards the end of the debate that he 'had voted for the resolution and not for each and every speech that has been made'.[47]

The following will also be noted from the delegates' words quoted above: the British, Indian, Nigerian, Bulgarian, Ethiopian, Soviet, Brazilian, and Argentinian delegates all made a clear reference to the wording concerning the inadmissibility of the use of force in the preamble and used it to construe the

[45] It might be noted that Mr Borch, the Danish delegate stated that the Resolution 'does take into account all the essential interests of the parties involved' (UNSCOR, 1382nd Meeting, para 178). Mr Ignatieff, the Canadian delegate, stated that the 'resolution just adopted does, in our view, meet the essential positions of both sides, taking into account the various ideas which emerged from consultation among non-permanent members of the Council, as well as with the States in the area.' Ibid, para 132. These statements are surely incompatible with a belief that the Resolution entitles Israel to retain parts of the territories unilaterally. The Japanese delegation prepared its own draft, which never reached the floor of the Council, but which used the words 'withdrawal of Israel's armed force from the territories occupied as a result of the recent conflict and determination of the permanent national borders between Israel and the state concerned'. This is similarly incompatible with such a belief.

[46] See Goldberg, 'United Nations Security Council Resolution 242 and the prospects for peace in the Middle East', Columbia Journal of Transnational Law, Vol. 12, No. 2, 1973, p 191.

[47] 1382nd Meeting, para. 186. We consider below the relevant passage in the draft American resolution and note that this did not propose a licence for Israel to acquire territory taken during the fighting in 1967. Eban writes 'The United States . . . had made clear through President Johnson that changes in the previous lines should not "reflect the weight of military conquests." (It was only later under the Nixon administration that the U.S. became accustomed to recommending the formula "minor changes")'. (Eban, Personal Witness, p 458.) As is the case with the statements of the Canadian, Danish, and Japanese, the absence of specific comment by Goldberg on the text of the Withdrawal Phrase cannot be taken as a tacit disagreement with the broadly congruent views of the delegates who interpreted the wording from the floor of the Council.

Withdrawal Phrase. The French delegate made a similar reference[48] and the Japanese delegate emphasised the principle of the inadmissibility of the acquisition of territory by war although he did not specifically link it to the Withdrawal Phrase.[49]

VII. SUPPLEMENTARY MEANS OF INTERPRETATION (2): THE ABSENCE OF 'ALL' AND ITS IRRELEVANCE

There is one final argument in support of the Right-wing Interpretation. The word 'all' that had been contained in the Latin American[50], Non-Aligned[51] and Soviet[52] drafts before the word 'territories' was absent from the British draft. This was scarcely an accident. Before Lord Caradon introduced the text at the 1379th Meeting of the Security Council, it would have been reasonable to suppose that he would have discussed it with the different delegations in private meetings, and it is quite clear that he actually did this.

Wording frequently evolves as part of the negotiation process, and no argument can be mounted purely on the basis of a change in wording if this would destroy or render unclear the meaning of a text that contains the common intention of the parties and is clear in context. Good faith surely requires this. The advice by the British and American representatives at the Security Council on the need for delegates to vote on the text of the Resolution, not on their individual or discrete views, was thus good advice.

Two writers, Arthur Lall and Sydney Bailey, have made studies of the proceedings at the Security Council during the crisis that led to the Six day War and the diplomatic moves in its aftermath that led to Resolution 242. They both discuss the question of the interpretation of the Withdrawal Phrase.

Lall's discussion of the deliberations in the days immediately before the vote draws attention to the situation arising from the introduction of the Soviet draft on 20 November, four days after Lord Caradon had produced the British text. The Arab states would have preferred the Soviet text, but Lall's view is that 'they did not regard it as significantly different, on the basic issues of principle, from the British proposal'.[53] On the question of the Withdrawal Phrase, Lall contrasts the two as follows: '[The Soviet draft] . . . clearly called for withdrawal of all forces to positions held before June 5, 1967, whereas the British text only implied full-scale withdrawal.' [54] In other words, Lall found the text sufficiently clear even without the word 'all' in the Withdrawal Phrase for the difference in wording not to matter.

Bailey draws attention to the period before the vote when Lord Caradon and his colleagues engaged 'in a forceful campaign in the English language to

[48] Ibid, para 112. [49] Ibid, para 173
[50] S/8235. [51] S/8227. [52] S/8253.
[53] Lall, *The UN and the Middle East Crisis, 1967* (New York and London: Columbia University Press), 1968), 260.
[54] Ibid, 257.

commend the English version of the text and, in order to commend, they also had to expound, interpret, clarify, explain, elucidate'. According to Rafael, the Israeli ambassador to the UN, Caradon tried to have 'the' inserted before 'territories', but was forced to back down under pressure from the USA and Israel. If Israeli sources are to be believed, President Johnson of the USA also rebuffed approaches from the Soviet prime minister to agree to the insertion of the word 'all' before territories, and there can be little doubt that Israel fought hard to exclude the word. On the other hand, in discussions with Arab diplomats, Caradon reassured them that the expression 'territories occupied in the recent conflict' referred to all such territories. Caradon was right in his interpretation of the meaning, and thus the absence of 'all' or 'the' is irrelevant.[55]

A point which writers favourable to the Right-wing Interpretation frequently fail to mention is that the Latin American, Non-Aligned and Soviet drafts all contained wording which corresponded to the recital 'Emphasising the inadmissibility of the acquisition of territory by war . . .'[56] which Lord Caradon inserted in his text, which was based on the American draft.[57] The American draft was the only draft that did not contain an express reference to the principle that the acquisition of territory by war is inadmissible. If writers favourable to the Right-wing Interpretation are to make assumptions as to the meaning of the wording on the basis of the evolution of the text, they ought, in all intellectual honesty, to draw attention to Lord Caradon's insertion of the preamble concerning the inadmissibility of the acquisition of territory by war as at least an equally significant development in its evolution.

Furthermore, and even more importantly, the relevant paragraph in the American draft resolution concerning withdrawal does not aid their argument in any way, even though it does not contain 'all' or 'the' before territories. This paragraph runs as follows:

> The Security Council . . . *Affirms* that the fulfilment of the above Charter principles requires the achievement of a state of just and lasting peace in the Middle East embracing withdrawal of armed forces from occupied territories, termination of claims or states of belligerence, mutual recognition and respect of the right of every state in the area to sovereign existence, territorial integrity political independence, secure and recognised boundaries, and freedom from the threat or use of force.[58]

Withdrawal of armed forces from occupied territories' is one of a list of items

[55] See Bailey, *The Making of Resolution* 242 (Dordrecht/Boston Lancaster: Martinus Nijhoff, 1985), 153–4.

[56] Thus, the Latin American text contained the wording: 'The General Assembly . . . declares that the validity of the occupation or acquisition of territories brought about by such means should not be recognised', The Afro-Asian text contained: 'Occupation or acquisition of territory by military conquest is inadmissible under the Charter of the United Nations.' The Soviet text contained: 'the principle that the seizure of territories as a result of war is inadmissible.'

[57] Telegram No 3078, UK Mission in New York to Foreign Office, 7 Nov 1967. FO 961/24.

[58] S/8229.

governed by the participle 'embracing'. Another item in the same list is 'secure and recognised boundaries'. Both items have identical places in the grammar and syntax of the sentence, and should be treated equally with every other item on the list. As was argued above when discussing the context of the wording of Resolution 242 itself, it cannot be assumed that only 'some' of the boundaries should be secure and recognised. In the American wording, if the boundaries are 'all' to be secure, then by the same token 'withdrawal of armed forces from occupied territories' should apply to 'all' occupied territories; and 'termination of claims or states of belligerence' should be taken to mean 'all' claims or states of belligerence. All three are on exactly the same footing.[59]

The International Court of Justice has held that the modification of a text as a draft evolves does not necessarily imply a change in meaning.[60]

When Abba Eban emphasised that 'the important words in most languages are short words, and every word, long or short, which is not in the text, is not there because it was deliberately concluded that it should not be there', he refrained from mentioning two very significant points. The first is that a text stands or falls on the basis of its own wording, and it is only when its meaning is still unclear that further interpretation is necessary. The second point is that, just like 'all' and 'the', 'some' is a short, single syllable word.

Records released from the archives of the British Mission to the United Nations add a further gloss on the evolution of the wording. Eban may have succeeded in securing the absence of 'all' or 'the' before territories, but in the negotiations over the wording he also suffered two significant defeats. When Caradon started from the bland American text, he knew the Arab states were concerned specifically that it would not require a full Israeli withdrawal. Aware that he would need to reassure them, Caradon added two things to his draft.

The first was the words 'in the recent conflict' after the reference to occupied territories.[61] By this addition, it became clear that a specific category of territories was meant. As pointed out above, the wording of the Withdrawal Phrase implies that these territories are to be treated as a unity, and a partial withdrawal would only be a partial compliance with the principle. Eban sensed this. In a diplomatic note he stated:

[59] This was also the view of Goldberg. When he elaborated the text to the Security Council, he stated that withdrawal was 'on a par with the other essentials listed in the same paragraph.' See UNSCOR, 1377th Meeting, para 63.

[60] See the judgment of the ICJ in the 'Case concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain (*Qatar v Bahrain*)', *Jurisdiction and Admissibility Phase, ICJ Reports* (1995) at para 41 where the Court held that the change of wording between an earlier draft for some minutes ('the Doha Minutes') and the final agreed and signed text did not necessarily imply a change in the meaning of the wording: 'The Court is unable to see why the abandonment of a form of wording corresponding to the interpretation given by Qatar to the Doha Minutes should imply that they must be interpreted in accordance with Bahrain's thesis.'

[61] Telegram No 3078, UK Mission in New York to Foreign Office, 7 November 1967. FO 961/24.

> The words 'in the recent conflict' convert the principle of eliminating occupation into a mathematically precise formula for restoring the June 4 Map.[62]

The other insertion was the preambular 'Emphasising the inadmissibility of the acquisition of territory by war', which we have already discussed. This insertion was made a couple of days later. Eban fought hard to persuade Caradon to delete this phrase as well. He may have enlisted the support of the American, Canadian and Danish delegates in support of both deletions. All three delegates saw Caradon jointly and tried to persuade him to delete both phrases.[63] But Eban was unsuccessful in achieving this goal as well. His attempt to have both phrases deleted shows that he appreciated the significance of the wording, and how it would make the Right-wing Interpretation untenable. The deletion of 'all' (or, rather, the failure to add 'all' to the text) was not quite the triumph for Israeli diplomacy that it is often alleged to be.[64]

VIII. ADDITIONAL POINTS ON INTERPRETATION

We must now consider whether there are any additional rules of interpretation which are relevant to our view of Resolution 242. A Security Council resolution is not a treaty. As Thirlway has pointed out:

> In one sense, a resolution represents, like a treaty, a meeting of wills, a coming-together of the (possibly opposing) aspirations of the States whose representatives have negotiated its drafting. In another sense, it is a unilateral act, an

[62] He added, 'Israel will not reconstruct that map at any time or in any circumstances.' See 'Comment by Foreign Minister of Israel' and Telegram 3164, UK Mission in New York to Foreign Office, 12 Nov 1967. FO 961/24.

[63] See 'Comments on the U.K. draft resolution made by US, Canadian, and Danish representatives on 14 November', FO 961/24.

[64] Eban took a major part in the discussions of the evolving text of Resolution 242 and contributed substantially to its development, most notably with regard to the wording of the Secure and Recognised Boundaries Phrase as well as the 'deletion' of 'all' and 'the'. In his 'Abba Eban: An Autobiography' (London: Weidenfeld & Nicholson, 1977) and 'Personal Witness: Israel through my eyes' (New York: Putnam, 1992), he gives accounts of his recollections of the negotiations in and around the Security Council debates. He makes no mention whatsoever of his unsuccessful attempt to delete 'in the recent conflict'. Whether this was a deliberate decision not to bring it to the reader's attention or through a lapse of memory must be a matter for speculation. He does, however, mention the addition of the preambular reference to 'the principle that there should be no acquisition of territory by war', and suggests in his autobiography that it had to be inserted 'to get a majority' (Autobiography: 451). In 'Personal Witness', he states that the wording was inserted 'in deference to Latin American pressure' and that 'Since Argentina and Brazil were necessary for the vote, they had to be accommodated'. He also adds that Caradon had 'his own reasons' for strengthening the language. The Latin Americans would, of course, have had in mind the principle of colonial *uti possidetis* which was adopted in Latin America on independence in the nineteenth Century and which abolished the doctrine of title by conquest in the region. This may have been mentioned to Eban by Caradon, but Eban does not inform his readers that the abolition of the principle of title by conquest had spread beyond Latin America to the rest of the World. He betrays what seems to be a cynical attitude to this particular part of the wording: 'Since the territories of most states have been decisively influenced by wars, [the inadmissibility of the acquisition of territory by war] seems a somewhat insincere proposition' (Personal Witness, 457).

> assertion of the will of the organ adopting it, or a statement of its collective view of a situation.[65]

Although Michael Wood draws attention to this dictum in his article 'The Interpretation of Security Council Resolutions' which appears to be one of the very few attempts to consider this topic, Thirlway's words do not affect Wood's view (which we share) that the starting point for the process of interpretation should be Articles 31 and 32 of the Vienna Convention. In the tentative conclusions which he draws at the end of his article, Wood first adapts Lord McNair's words on treaties to state that 'the aim of interpretation should be . . . to give effect to the intention of the Council as expressed by the words used by the Council in the light of the surrounding circumstances'. He then states that the interpreter will seek to apply the principles of the Vienna Convention 'even if this is not expressly stated' Yet he concludes with a word of warning:

> But caution is required. SCRs are not treaties: indeed the differences are very great. Nor are SCRs necessarily all of the same nature. SCRs must be interpreted in the context of the United Nations Charter. It becomes highly artificial, and indeed to some extent is simply not possible, to seek to apply all the Vienna Convention rules *mutatis mutandis* to SCRs.
>
> In the case of SCRs, given their essentially political nature and the way they are drafted, the circumstances of the adoption of the resolution and such preparatory work as exists may often be of greater significance than in the case of treaties. The Vienna Convention distinction between the general rule and supplementary means has even less significance than in the case of treaties. In general, less importance should be attached to the minutiae of language. And there is considerable scope for authentic interpretation by the Council itself.[66]

He elaborated on some of these points earlier in his article:

> [g]iven the way SCRs are drafted, and the fact that for the most part they are intended to have political and not legal effect, it would be a mistake to approach the text as if it were drawn up with the care and legal input of a treaty. . . . Inconsistencies in the use of terms and ungrammatical constructions are not uncommon, and it is misleading to pay undue attention to such matters, to analyse them under a microscope as one might English legislation or a treaty. On the other hand one cannot deliberately ignore such matters; they may be deliberate and important. But how does an outsider know? Or even an insider some time later?[67]

He also advised prudence when considering preambles to SCRs:

> The preambles to SCRs may assist in interpretation, by giving guidance to their object and purpose, but they need to be treated with caution since they tend to be

[65] Thirlway, 'The Law and Procedure of the International Court of Justice 1960–89', *BYIL* (1996), pp.29 et seq. Quoted in Wood, op cit, 85–6.

[66] Wood, op. cit., 95.

[67] Ibid, 89.

> used as a dumping ground for proposals that are not acceptable in the operative paragraphs. And there is no conscious effort to ensure that the object and purpose of each operative provision is reflected in the preamble.[68]

Where does all this leave us? What Wood suggests is essentially that every Security Council Resolution should be considered separately in its own context. Resolution 242 was, from the outset, intended to provide a pathway to peace and to lay down principles which would achieve it. The mission of the Secretary-General's representative envisaged in paragraphs 3 and 4 of the Resolution may now be long forgotten but, as we have pointed out above, the object and purpose of the Resolution as set out in these paragraphs are clear. The principles contained in the preamble and the first two paragraphs have remained those which the international community envisages as the requirements for the establishment of comprehensive peace, and Israel and the PLO have agreed to implement them.

Nevertheless, the question must be addressed: is it right to put the wording of Resolution 242 under the microscope in the way that we have done? Was it meant to be no more than a diplomatic and political document, possibly even one intended by Perfidious Albion to be susceptible of different and conflicting interpretations? Security Council resolutions which are intended to be of binding force are generally introduced under Chapter VII of the Charter. Resolution 242 would appear to have been introduced under Chapter VI. As such, it would appear to have constituted a 'recommendation' as to how the parties might settle their disputes by peaceful means, although the view that it was binding from the time of its adoption was taken by the Soviet Union and the Arab countries.[69] The intention was to formalise the principles contained in the Resolution on a higher level than that of a mere diplomatic document, so that they could provide the framework for the settlement of the entire Arab–Israeli dispute. We have seen in what minute detail the members of the Security Council analysed the wording before them. It was they who chose to put the wording under the microscope. They did this advisedly because they realised both the need to reach agreement as a goal in itself, and the need for that agreement to contain a workable set of principles which were compatible with international law. We have already referred to the later crystallisation of Resolution 242 into a text having binding force.[70] It is hard to believe that the delegates who debated the text did not expect this to happen.

It is thus scarcely surprising that, in the particular case of Resolution 242, importance happens to have been attached to 'the minutiae of language' from the outset, as we have seen from the discussion contained in the minutes of the Security Council meetings and the different drafts. Wood's conclusions

[68] Ibid, 86–7.

[69] Bailey and Daws, *The Procedure of the UN Security Council* (Oxford: Oxford University Press?, 1998), 270–1. The authors also draw attention to some interesting shifts in the views of some members of the United Nations as to whether resolutions under Chapter VI are binding.

[70] See nn 1 and 2 above.

confirm us in our view that more importance should, perhaps, be given to the available supplementary means of interpretation than would always be the case with regard to a treaty. We have found that the use of such means of interpretation support us in our view. The fact that so many of the delegates made a point of going on the record in the Security Council debate to indicate that they interpreted the Withdrawal Phrase in the light of the preamble concerning the inadmissibility of the acquisition of territory by war shows that in this particular case the delegates considered the preamble an integral part of the Resolution, and certainly not 'a dumping ground for proposals which are not acceptable in the operative paragraphs'. The record of the debate shows that the delegates acted as if they were construing a legal document in which precise wording was important.

Wood also draws attention to the 'considerable scope for authentic interpretation by the Council itself.[71] In a sense, the Council interpreted Resolution 242 when it passed Resolution 338, using mandatory language which brings it within Article 25 of the Charter. Whether this interpretation was an 'amendment' is not a question which need trouble us today. Moreover, earlier this year the Council adopted the language of 'secure and recognised boundaries' from Resolution 242 in the preamble to Resolution 1397.[72] By doing so, it reiterated the significance which it attached to the Secure and Recognised Boundaries Phrase and stressed its reciprocal nature, as it is applicable both to Israel and the Palestinian state.

IX. THE UNWELCOME CONSEQUENCE OF THE RIGHT-WING INTERPRETATION

What effect does Resolution 242 have on the territories which lay on the Israeli side of the 1949 Cease-fire lines with Egypt and Jordan? Some writers draw attention to the fact that the Withdrawal Phrase did not call for an Israeli withdrawal from territories occupied by Israel in 1948-9, and imply that this omission consolidated Israeli title over all such territory. Thus, Watson[73] states:

> Resolution 242 . . . implicitly superseded the territorial formula in the Partition Resolution, since it called only for an Israeli withdrawal from territories occupied in the 1967 War, not withdrawal to the borders envisaged by the Partition Resolution.

With respect, we would suggest that this interpretation is correct as regards withdrawal of armed forces, but should not be deemed to perfect any Israeli title to territory which was imperfect when Resolution 242 was passed. There is a confusion between the law of title to territory and the law of armed conflict which is a fudge at the heart of the Right-wing Interpretation. It is the 'inad-

[71] Wood, op cit, 95.
[72] The preamble also recites Resolutions 242 and 338.
[73] Watson, op cit, 24.

missibility of the acquisition of territory by war' in the preamble which recites the law on territorial sovereignty and imports it directly into the Resolution, not the Withdrawal Phrase. Resolution 242 does not 'supersede the territorial formula in the Partition Resolution'.

This brings us inevitably to the question of what constitutes the sovereign territory of Israel. Although, as a sovereign state, Israel must certainly possess sovereign territory, there is uncertainty as to its extent. Since the signing of the peace treaties between Israel and Egypt and Israel and Jordan, the borders laid down in those treaties provide the borders between Israel and these two particular neighbours. However, these treaties are without prejudice to the status of the West Bank, East Jerusalem, and the Gaza Strip.[74]

Moreover, doubts have been expressed by scholars over the question of whether the territorial framework envisaged by the Partition Plan ever came into effect in a manner which would *ipso jure* grant Israel sovereignty over the territory allocated to the Jewish State by that plan. Sir Elihu Lauterpacht has argued that the disorder in Palestine at the end of the Mandate which was caused by the British withdrawal, the Arab rejection of the Partition resolution, the creation of Israel and the entry of Arab armies with the intention of crushing Israel 'all led to a situation of such juridical confusion as to exclude any tracing of an orderly devolution of sovereignty'. He continues:

> But if there was, upon the termination of the mandate, a sovereignty vacuum in Palestine, the large question arises of how it could validly be filled. The suggestion that there was a vacuum of sovereignty does not imply that Palestine became at the end of the mandate a *terra nullius*, a land owned by no-one in which anyone was free to stake a claim by simply combining physical presence with an assertion of title. Slight though the legal effect of the Partition Resolution might be, it is difficult to conceive of it as having opened Palestine to the law of the jungle, to be carved up on the basis of first come first served.[75]

We will not attempt on this occasion to analyse the status of those portions of the territory allocated to the Arab State under the UN Partition Plan which had been seized by Israel by the time of the 1949 Armistices or to examine the status of the territory allocated to the Jewish state under that plan. However, as we have seen, the emphasis on the inadmissibility of the acquisition of territory by war in Resolution 242 is of general application and, in sharp contrast to the Withdrawal Phrase, is not limited to territories occupied in 'the recent conflict'. Resolution 242 can thus be interpreted as preventing Israel from consolidating title over all territory taken by force at any time in the absence of a final peace settlement.[76] Certainly there should be no assumption that

[74] See 'Peace Treaty between Israel and Egypt', 26 Mar 1979, Art 2; 'Treaty of Peace between the State of Israel and the Hashemite Kingdom of Jordan', 26 Oct 1994, Art 3.

[75] E Lauterpacht, 'Jerusalem and the Holy Places', Anglo-Israel Pamphlet No19, London 1968, 41–2.

[76] On this point, see Quincy Wright, 'The Middle East Problem', 64 *American Journal of International Law* (1970), at 271: 'The extension of Israel's occupation beyond the original UN

Israel may have a claim to parts of the territories occupied in 1967, although this is implied in the current Israeli predilection for referring to the territories occupied in 1967 as 'disputed'.[77] The Armistice Agreements were without prejudice to territorial sovereignty, and therefore Israel was barred by its own action in signing them from consolidating its title up to the armistice lines so long as those agreements remained in force.[78] It is inconceivable that Israel could have perfected that title in the period of less than six months between the Six Days War and the passing of Resolution 242, a period during which armed conflict continued. However, if any validity is to be attributed to the designation of the territories occupied in 1967 as 'disputed territories', Israel should be aware that the territory on the Israeli side of the 1949 Armistice Lines must *ipso jure* be treated as 'disputed'. Israeli title can only be perfected through the final peace settlement envisaged by Resolution 242 and subsequent resolutions, which alone can establish 'secure and recognised boundaries'. Failing this, Israel will always be exposed to a risk that claims may be brought for the territories which Israel took in 1948–9.

X. CONCLUSION

This analysis has attempted to apply the rules of interpretation contained in Articles 31 and 32 of the Vienna Convention to the text of Resolution 242 in order to establish the meaning of the Withdrawal Phrase. We have seen that a clear meaning is given to the Withdrawal Phrase if it is read as requiring an Israeli withdrawal from all the territories occupied in 1967. Such a reading is not only linguistically possible, but accords with the letter and the spirit of the Resolution when read as a whole.

Through the application of Schwebel's proposition that good faith requires that extrinsic evidence, in this case the records of the Security Council debate and the discarded Latin American, Non-aligned, Soviet and US drafts, should be invoked in order to confirm or correct the meaning which the drafters intended the wording to carry, any possibility of a gap between the wording and the intention disappears. It is impossible to see how an independent scholar can examine the records of the Security Council debate and claim that they support a contention that Israel had the right to retain areas of the territories occupied in 1967 save through a freely negotiated agreement. The possi-

grant as a result of the Arab-Israeli hostilities of 1948–9 and the armistices negotiated in 1949 are justified as temporary measures to end the hostilities. The principle of no acquisition of territory by war should, if strictly applied, require the cease fire lines to be at the frontiers before hostilities began, thus preventing military occupations as well as acquisitions by force, but the overriding responsibility of the United Nations to stop hostilities justified the acceptance of the armistices as temporary cease fire lines to be soon superseded by permanent boundaries established by peaceful means.'

[77] See, eg, Dore Gold, op cit.

[78] See Egypt–Israel Armistice Agreement, 24 Feb 1949, Art.4; General Armistice Agreement between Israel and Jordan, 3 Apr 1949, Art 6.

bility of such agreement is impeded by the maintenance of the occupation for over a third of a century. Indeed, it must be submited that the continuation of the occupation is itself a breach of Resolution 242, since it depends on 'threats or acts of force' and implies a victor's right to extract concessions by duress, in breach of the rule that title to territory may not be acquired by war. The territories occupied in 1967 may only be described as 'disputed' if the territories on the other side of the 1949 Armistice lines are described in the same way.

A very serious question mark is also raised over whether the Right-wing interpretation is sustainable as a good faith interpretation for the purposes of international law. We believe that it is not. Good faith surely requires internal consistency and a lack of contradiction, as well as compliance with the law. The scholars who read Resolution 242 as only requiring a withdrawal from 'some' of the territories fail to surmount these hurdles. They either fail to consider them or view the text as contradictory: but how can the text be contradictory when a clear and internally consistent meaning can be extracted from it?