

## MIDDLE EAST PEACE: AN EXAMINATION OF LEGAL OBLIGATION

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*Les accords de paix conclus entre Israël et l'Égypte signifient que l'Égypte doit inévitablement aller à l'encontre de ses obligations juridiques envers les membres de la Ligue arabe. La politique étrangère de la Ligue inclut la non-reconnaissance d'Israël et le maintien d'un état de belligérance avec l'État juif. Le boycottage économique toujours plus étendu des États arabes envers Israël requiert des membres de la Ligue l'abstention de tous rapports économiques avec Israël. Les obligations juridiques des membres de la Ligue arabe sont stipulées dans le pacte de la Ligue, le protocole d'Alexandrie, le traité de défense mutuelle et de coopération économique, ainsi que dans les décisions du Conseil de la Ligue.*

*Le traité de paix entre l'Égypte et Israël prévoit qu'il aura force de loi et devra être appliqué en cas de conflit entre les obligations qu'il crée et d'autres obligations liant les hautes parties contractantes. Ainsi, l'Égypte s'est juridiquement liée envers Israël de tourner le dos à ses obligations antérieures envers les États arabes.*

*En raison du traité de paix, la participation de l'Égypte à la Ligue arabe a été suspendue et d'autres sanctions lui ont été appliquées par des membres de la Ligue.*

*Le conflit entre les obligations de l'Égypte envers Israël et envers les États arabes fera l'objet de la présente étude.*

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## INTRODUCTION

The world is watching and waiting for peace in the Middle East. The agreements between Egypt and Israel may hold the key to the progressive realization of peace in this terribly troubled part of the world — a region rich in energy resources, noble history and long-standing enmity.

On September 17, 1978, the Camp David Accords were announced. For two weeks, the leaders of Egypt and Israel had met with President Carter of the United States to hammer out a blueprint for peace in the Middle East. The Accords consist of two agreements — a Framework for Peace in the Middle East, and a Framework for a Peace Treaty between Egypt and Israel. The precise legal nature of these instruments is not clear. Full of high-sounding diplomatic language, there are few concrete provisions and probably none which can be translated directly into *legal* obligations. The import is political, the spirit is peace. The Framework for a Peace Treaty between Egypt and Israel contemplated further negotiation in good faith with a goal of concluding a full peace treaty within three months.

The goal was not attained. However, on March 26, 1979, Prime Minister Begin and President Sadat signed a Peace Treaty on the lawn of the White House. Peace was at hand. The principal provisions of the Treaty call for an end to the state of war between Egypt and Israel and an Israeli withdrawal from the Sinai within 3 years, provide for the establishment of full diplomatic relations within 9 months, establish the right of Israeli ships to use the Suez Canal and provide for negotiations within a month of ratification aimed at “self-rule” for the Palestinians. The Treaty consists of several parts:

- the Preamble and nine articles of the Treaty proper
- a Military Text with an addendum (being the Maps forming part of the agreement) and an appendix (concepts for Israeli withdrawal from the Sinai)
- the Protocol Concerning Relations of the Parties
- Agreed Minutes.

The political and military significance of these agreements has been much discussed.<sup>1</sup> The legal significance is less certain. Here we

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1. Much has already been written on the Accords. A sampling of the recent literature includes: E. MONROE, “Camp David — Prelude to Peace — Efforts Towards a Middle East Settlement and the Problem of Palestine”, (1979) *Round Table* 75; C. HITCHINS, “America’s Cuba — Can Sadat Survive Camp David”, (1979) 228 *Nation* 289; M. HALPERIN, “Back to Camp David”, (1979) 180 *New Republic* 14;

shall examine one aspect of this legal significance, an aspect which may prove critical in the months and years to come — the relationship between these agreements and Egypt's agreements with other Arab States.

### I- ARTICLE 6 (5) OF THE PEACE TREATY

Article 6 (5) of the Peace Treaty provides:

“Subject to Article 103 of the United Nations charter, in the event of a conflict between the obligations of the parties under the present treaty and any of their other obligations, the obligations under this treaty will be binding and implemented”.

In the Agreed Minutes to the Treaty, the Parties have provided:

“It is agreed by the parties that there is no assertion that this treaty prevails over other treaties or agreements or that other treaties or agreements prevail over this treaty. The foregoing is not to be construed as contravening the provisions of Article 6 (5) of the treaty...”

In this world of diplomatic hocus-pocus and linguistic legerdemain, one is left grasping at straws — “now you see it, now you don't” — does the Peace Treaty take precedence over Egypt's obligations to other Arab States (as Article 6(5) seems to provide) or does it not (as the Agreed Minute starts to say)? The Agreed Minutes have the same legal significance as the treaty proper. Both are the written

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M.A. BRUZONSKY and E. ROULEAU, “Options and Risks after Camp David”, (1979) 8 *Journal of Palestine Studies* 41; F.A. SAYEGH, “The Camp David Agreement and The Palestine Problems”, (1979) 8 *Journal of Palestine Studies* 3; E. TORGOVNIK, “Accepting Camp David — The Role of Party Factions in Israeli Policy-Making”, (1979) 11 *Middle East Review* 18; B. AVISHAI, “Israeli Nerves after Camp David”, (1979) 26 *Dissent* 23; “Camp David Accords”, (1979) 76 *Current History* 31; S.J. ROSEN and F. FUKUYAMA, “Egypt and Israel after Camp David”, (1979) 76 *Current History* 1; T.A. COULOMBIS, “Spirit of Camp David”, (1979) 107 *U.S.A. Today* 7; A. PLASCOV, “The Palestine Predicament after Camp David”, (1978) 34 *World Today* 467; A. EBAN, “Camp David — Unfinished Business”, (1978) 57 *Foreign Affairs* 343; R.W. TUCKER, “Behind Camp David”, (1978) 66 *Commentary* 25; S. JIRYIS, “Political Settlement in the Middle East — the Palestinian Dimension”, (1977) 7 *Journal of Palestine Studies* 3; R. PRANGER, “Beyond the Arab-Israeli Settlement — New Directions for United States Policy in the Middle East”, (1978) 32 *Middle East Journal* 100; W.A. DELLALFAR and H. PACK, “Economic Benefits of Peace in the Middle East — Some Cautionary Notes — Some Potential Benefits”, (1979) 11 *Middle East Review* 10; A. BEN ZVI, “Full Circle on the Road to Peace — American Preconceptions of Peace in the Middle East, 1973-1978”, (1979) 11 *Middle East Review* 52; T. DRAPER, “How Not to Make Peace in the Middle East”, (1979) 67 *Commentary* 234.

record of legal obligations assumed by the Parties. A closer look at the two provisions may help us unravel their legal significance.

(i) **“Subject to Article 103 of the United Nations Charter”**

Article 103 of the U.N. Charter provides:

“In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail”.

Egypt and Israel are both Members of the United Nations. They have made clear in Article 6 (5) that they will respect their obligations under the U.N. Charter even where these obligations conflict with the provisions of the Peace Treaty. Indeed, this position is fortified by Article 6 (1) of the Treaty, which provides:

“This Treaty does not affect and shall not be interpreted as affecting in any way the rights and obligations of the parties under the charter of the United Nations”.

For our purposes, the principal Charter obligations which must be respected would be:

- Article 2 (2): the duty to fulfil in good faith the obligations assumed in accordance with the Charter
- Article 2 (3): the duty to settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered
- Article 2 (4): the duty to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any manner inconsistent with the Purposes of the United Nations
- Article 2 (5): the duty to give the United Nations every assistance in any action it takes in accordance with the Charter, and to refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action
- Article 25: the duty to accept and carry out the decisions of the Security Council in accordance with the Charter.

These obligations are “qualified” by Article 51 of the Charter:

“Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council

and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security”.

And Article 52 (1) goes on:

“Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations”.

Thus, the Peace Treaty takes its place squarely within the web of legal obligation provided by the U.N. Charter, with its right of individual and collective self-defence, and allowance for regional arrangements.

**(ii) “in the event of a conflict between the obligations of the parties under the present treaty and any of their other obligations”**

Egypt and Israel clearly contemplate the possibility of a conflict between their obligations under the Peace Treaty and some of their other obligations. These “other obligations” may be obligations between themselves, but the term could refer also to obligations between either one of them and other States. They have already referred to one set of “other obligations” — those which arise under the U.N. Charter — and they have provided for the resolution of any conflict between the Peace Treaty and the Charter. Now they are dealing with other obligations which arise elsewhere than in the U.N. Charter.

This view, that the “other obligations” to which reference is made include obligations between either one of the Parties and other States, is made clearer by Articles 6 (2) and (4) of the Treaty, which provide:

“The parties undertake to fulfil in good faith their obligations under this treaty, without regard to action or inaction of any other party and independently of any instrument external to this treaty”.

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“The parties undertake not to enter into any obligation in conflict with this treaty”.

Thus, in Article 6 (5), Egypt and Israel provide for the possibility of a conflict between the obligations imposed by the Treaty and any other obligations they may have with respect to each other or with respect to third States.

(iii) **“the obligations under this treaty will be binding and implemented”**

The Article draws to a close. The result of a conflict between the Treaty and “any other obligations” is clear — the Treaty will be “binding and implemented”. How can it be binding and implemented if it does not take precedence over other conflicting obligations? The question is rhetorical. The Treaty must inevitably supercede “any other obligations” which either one of the Parties has with respect to other States. Yet the Agreed Minute, in its first sentence, clearly contradicts this position:

“... There is no assertion that this treaty prevails over other treaties or agreements or that other treaties or agreements prevail over this treaty”.

In this statement a matter of fact? If it is, it is perhaps correct. There is no literal statement concerning the Treaty taking precedence over other treaties. The argument is that this is the inevitable legal result of the words used in the Treaty. If, on the other hand, this passage in the Agreed Minute is meant to be a conclusion of law, it cannot be correct. The text of Article 6 (5) does establish that the Treaty will prevail over other treaties. Indeed, the Agreed Minute seems to recognize this when it concludes:

“The foregoing is not to be construed as contravening the provisions of Article 6 (5) of the Treaty...”

In sum, in the Peace Treaty, Egypt and Israel have agreed that the Treaty prevails over “any of their other obligations” with respect to other States as well as with respect to each other.

Our concern now is what are these other obligations which Egypt has towards other Arab States, and to what extent is there a conflict between these other obligations and the duties under the Treaty with Israel.

## II- EGYPT'S “OTHER OBLIGATIONS”

### 1. The League of Arab States<sup>2</sup>

Egypt was one of the founding members of the League of Arab States, signing the Pact of the League of Arab States on March 22,

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2. The leading reference on the League of Arab States is H.A. HASSOUNA, *The League of Arab States and Regional Disputes — A Study of Middle East Conflicts*, (Leiden: A.W. Sijthoff, 1975). The book contains, in its appendices, all the primary agreements, resolutions and regulations. The Pact of the League of Arab States may be found at (1950), 70 U.N.T.S. 237.

1945. In late May 1979, as a result of its agreement with Israel, Egypt was "suspended" from the League, but not expelled.<sup>3</sup> The nature of the "suspension" is not clear, but it is unlikely that her obligations as a member of the League have been terminated. In Article 18, the Pact provides:

"If a member state contemplates withdrawal from the League, it shall inform the Council of its intention one year before such withdrawal is to go into effect.

The Council of the League may consider any state which fails to fulfil its obligations under this Pact as having become separated from the League, this to go into effect upon a unanimous decision of the states, not counting the state concerned".

The Vienna Convention on the Law of Treaties<sup>4</sup> provides for the consequences of the suspension of a treaty in Article 72:

"1. Unless the treaty otherwise provides or the parties otherwise agree, the suspension of the operation of a treaty under its provisions or in accordance with the present Convention:

- (a) releases the parties between which the operation of the treaty is suspended from the obligation to perform the treaty in their mutual relations during the period of the suspension,
- (b) does not otherwise affect the legal relations between the parties established by the treaty.

2. During the period of the suspension the parties shall refrain from acts tending to obstruct the resumption of the operation of the treaty".

Elias comments on this second clause:<sup>5</sup>

"The parties are enjoined, during the period of suspension of the treaty, to refrain from any act or omission which is likely to make the operation of the treaty impossible after the occasion for the suspension has ceased. This requirement rests squarely on the ground of good faith implicit in the *pacta sunt servanda* principle".

Whether or not the Egyptian "suspension" is a "separation" from the League, as contemplated in Article 18, cannot be determined from the media reports at the time of writing this piece. However, much has been made of the fact that Egypt was "suspended" not "expelled". Thus it seems safe to proceed on the basis that Egypt remains bound by her obligations within the League of Arab States.

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3. *Le Monde*, May 15, 1979.

4. U.N. Doc. A/Conf. 39/27, May 23, 1969.

5. T.O. ELIAS, *The Modern Law of Treaties* (Leiden: A.W. Sijthoff, 1974), at page 206.



The type of "suspension" contemplated in Article 72 of the Vienna Convention would not seem to apply here. The Pact has not been suspended. When the situation clears, we may find that Egypt's "suspension" is akin to the loss of the right to vote in Article 19 of the U.N. Charter. It is the sanction for breach of an obligation. Even if Article 72, or the customary rules from which it evolved, did apply, the second clause would preclude entry by Egypt into the Peace Treaty with Israel, because the Peace Treaty is absolutely inimical to the League of Arab States. Thus, it remains necessary to examine Egypt's obligations within the League of Arab States.

#### A) The Alexandria Protocol

In The Alexandria Protocol, signed by Syria, Trans-Jordan, Iraq, Lebanon and Egypt on October 7, 1944, the Parties agreed:

*"In no case will resort to force to settle a dispute between any two member states of the League be allowed. But every state shall be free to conclude with any other member state of the League, or other powers, special agreements which do not contradict the text or spirit of the present dispositions.*

*In no case will the adoption of a foreign policy which may be prejudicial to the policy of the League or an individual member state be allowed".* (emphasis added)

Furthermore, as part of the Protocol, the Parties agreed to a special resolution concerning Palestine:

*"The Committee is of the opinion that Palestine constitutes an important part of the Arab World and that the rights of the Arabs in Palestine cannot be touched without prejudice to peace and stability in the Arab World.*

The Committee also is of the opinion that the pledges binding the British Government and providing for the cessation of Jewish immigration, the preservation of Arab lands, and the achievement of independence for Palestine are permanent Arab rights whose prompt implementation would constitute a step toward the desired goal and toward the stabilization of peace and security.

The Committee declares its support of the cause of the Arabs of Palestine and its willingness to work for the achievement of their legitimate aim and the safeguarding of their just rights.

The Committee also declares that it is second to none in regretting the woes which have been inflicted upon the Jews of Europe by European dictatorial states. But the question of these Jews should not be confused with Zionism, for there can be no greater injustice and aggression than solving the problem of the Jews of Europe by another injustice, i.e., by inflicting injustice on the Arabs of Palestine of various religions and denominations."

Thus, in 1944, Egypt committed herself to a foreign policy which could not countenance the State of Israel as it developed.

### **B) The Pact of the League of Arab States and Council Decisions**

In the Pact itself, Article 6 provides for the situation of aggression or threat of aggression against a member State. The State which has been attacked or threatened may demand the immediate convocation of the League Council and the Council shall determine, by unanimous decision, the measures necessary to repulse the aggression. If the aggressor is a member State, its vote shall not be counted in determining unanimity. Hence, if Israel attacked or threatened a member of the League, the Council could determine that the members, *including Egypt*, must respond to the aggression. Presumably Egypt's voice need not be heard, either because she has been "suspended", or because she'd be considered an aggressor and therefore have no vote.

The Pact established the League Council, whose task it is "to achieve the realization of the objectives of the League and to supervise the execution of agreements which the member states have concluded" (Article 3). The Council is composed of representatives of the member States, each State having one vote (Article 3). Unanimous decisions of the Council are binding on all members, majority decisions bind only those States voting in favor (Article 7). Pursuant to these provisions, a number of significant decisions have been made concerning Israel.<sup>6</sup>

On March 24, 1947, the Council formally declared that the purpose of all its efforts with regard to the Palestine problem was the eventual achievement of Palestine's independence.<sup>7</sup>

The League rejected the recommendations of the United Nations Committee of Inquiry on Palestine, which recommended the partition. On October 9, 1947, the Council asserted that it rejected any arrangement that did not achieve the independence of Palestine as an Arab State.<sup>8</sup>

On April 1, 1950, the Council formally responded to the establishment of the State of Israel and the results of the following armed conflict.<sup>9</sup> The principle adopted was non-recognition of and

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6. See the whole of Chapter 11, Section 2 in *Hassouna*, at pages 255-360.

7. Resolution 150. See *Hassouna*, at page 255-6.

8. Resolution 181. See *Hassouna*, at page 256.

9. Resolution 250. See *Hassouna*, at page 256.

rejection of peace with Israel. Member States were forbidden to negotiate the conclusion of a unilateral peace or any political, military, or economic agreement with Israel, or to conclude such a peace or agreement. Any State taking such steps would be considered expelled from the League in accordance with Article 18. It is interesting that Egypt has not been expelled.

Further sanctions for friendship with Israel were agreed by the Council on April 13, 1950.<sup>10</sup> These measures included the severance of political and consular relations with the offender; the closing of common borders between it and the other members; the suspension of commercial, economic and financial relations with it; the prohibition of all financial or commercial transactions, whether direct or indirect, between the nationals of the offending State and nationals of other Arab States.

In order to further isolate Israel, the Council passed two resolutions establishing a policy concerning participation of member States in international organizations and conferences attended by Israel.<sup>11</sup> Members would attend world and continent-wide meetings, regardless of the participation of Israel. At regional conferences concerning the Middle East region, members were prohibited to participate if Israel was invited. However, if the regional conference did not concern the Middle East, the Arab States could participate despite Israel's attendance, if their participation was considered beneficial. With respect to membership in international and regional organizations, the rules were as follows:

- a. Membership was permitted in world or continent-wide organizations.
- b. Membership was permitted in regional organizations
  - (i) concerning the Middle East region, already in existence and to which Israel already belonged, or
  - (ii) not concerning the Middle East, where membership of the Arab States was considered beneficial.
- c. Membership was prohibited in newly-formed regional organizations to which Israel would join.

In general, at any conference attended by Israel, Arab delegates are to ignore the Israeli delegation and decline to cooperate with Israelis. If the aim of the conference is to reach an international

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10. Resolution 312. See *Hassouna*, at page 256.

11. Resolution 356, May 19, 1951, and 1942, of March 31, 1964. See *Hassouna*, at pages 257-8.

agreement, the Arab delegates should declare their reservation that their acceptance of the agreement and their government's inclusion in it in no way implies the recognition of Israel, or commits the Arab States to enter into any dealings with her under the agreement.

An example of the effect of these measures can be found in Egypt's reservation to the Single Convention on Narcotic Drugs,<sup>12</sup> ratified by Egypt on July 20, 1966, with the following proviso:

"It is understood that ratification by the United Arab Republic of this Convention does not mean in any way a recognition of Israel by the Government of the United Arab Republic. Furthermore, no treaty relations will arise between the United Arab Republic and Israel".

On September 21, 1966, Israel responded in a note to the Secretary-General of the United Nations:

"The Government of Israel noted the political character of the declaration made by the Government of the United Arab Republic at the time of the transmission of the instrument of ratification. In the view of the Government of Israel, the Convention is not the proper place for making such political pronouncements. The Government of Israel will, in so far as concerns the substance of the matter, adopt towards the Government of the United Arab Republic an attitude of complete reciprocity".

We do not have the space here to set out in detail the terms and background of the League's economic boycott of Israel and the oil embargo against States substantially assisting Israel.<sup>13</sup> In short, the boycott is intended to prohibit the entry of Israeli products and services into Arab States and to prohibit dealings by the Arab States with concerns which have an interest in or deal significantly with Israel.

### **C) The Joint Defence and Economic Cooperation Treaty**

Serious problems arise from Egypt's obligations under the Joint Defence and Economic Cooperation Treaty between the States of the Arab League concluded in 1950. The principal provisions of this agreement are:

**Article 2.** The Contracting States consider any (act of) armed aggression made against any one or more of them or their armed forces, to be directed against them all. Therefore, in accordance

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12. 520 U.N.T.S. 151, in force December 13, 1964.

13. *Hassouna* tells us the story at pages 269-278, and provides the Principles of the Arab Boycott of Israel in an appendix, at pages 467-483.

with the right of self-defence, individually and collectively, they undertake to go without delay to the aid of the State or States against which such an act of aggression is made, and immediately to take, individually and collectively, all steps available, including the use of armed force, to repel the aggression and restore security and peace. In conformity with Article 6 of the Arab League Pact and Article 51 of the United Nations Charter, the Arab League Council and the United Nations Security Council shall be notified of such act of aggression and the means and procedure taken to check it.

**Article 3.** At the invitation of any one of the signatories of this Treaty, the Contracting States shall hold consultations whenever there are reasonable grounds for the belief that the territorial integrity, independence, or security of any one of the parties is threatened. In the event of the threat of war or the existence of an international emergency, the Contracting States shall immediately proceed to unify their plans and defensive measures, as the situation may demand.

**Article 4.** The Contracting States, desiring to implement fully the above obligations and effectively carry them out, shall cooperate in consolidating and co-ordinating their armed forces, and shall participate according to their resources and needs in preparing individual and collective means of defence to repulse the said armed aggression.

**Article 6.** A Joint Defence Council under the supervision of the Arab League Council shall be formed to deal with all matters concerning the implementation of the provisions of Articles 2, 3, 4, and 5 of this Treaty. It shall be assisted in the performance of its task by the Permanent Military Commission referred to in Article 5. The Joint Defence Council shall consist of the Foreign Ministers and the Defence Ministers of the Contracting States or their representatives. Decisions taken by a two-thirds majority shall be binding on all the Contracting States.

**Article 10.** The Contracting States undertake to conclude no international agreements which may be contradictory to the provisions of this Treaty, nor to act, in their international relations, in a way which may be contrary to the aims of this Treaty.

Thus, Egypt is bound to consider an Israeli attack against another member of the League as an attack against itself. It must maintain close military contact with the other Arab States, and, according to Article 10, conclude no international agreements contrary to the provisions or aims of the Joint Defence Treaty. Pursuant to Article 12, Egypt could withdraw from the Defence Treaty upon 12 months notice. However, there has been no indication yet that she intends to do so.

#### D) The Legal Validity of Egypt's Obligations

It might be argued that Egypt's legal obligations within the League of Arab States are not legally valid, and therefore Egypt has no responsibility to fulfil them. Much has already been written concerning this, and it is beyond the province of this paper to address the issues at length.<sup>14</sup> It will suffice to summarize the matter and to begin with the conclusion — whether or not Egypt ought to have such obligations (and I am among those who feel that the Arab League's intransigent stand towards Israel is inimical to peace in the Middle East), by and large Egypt's obligations are legally valid.

The Arab States have chosen collectively not to recognize Israel. Whether one adopts the declaratory or constitutive theory of recognition — that is, whether one argues that Israel exists even before recognition, or is of the view that only through recognition can Israel's existence as an international person be established — no rule of international law compels a state to formally recognize another state. Hassouna puts the current Arab position clearly:<sup>15</sup>

“... the general attitude of the Arab states today reflects their determination to withhold recognition of Israel until a comprehensive settlement of the Middle East crisis is achieved. Thus the Arab states have indicated on numerous occasions their readiness to recognize Israel once the latter fulfils her international obligations under Security Council Resolutions 242 of November 22, 1973, and 338 of October 22, 1973. Consequently, recognition will only follow Israel's withdrawal from all Arab territories occupied since 1967 and restoration of the rights of the Palestinian people.”

The legal validity of the perceived state of belligerency between the Arab States and Israel is a more complicated matter. However, we are concerned with Egypt's position in the event of active hostilities between Israel and other Arab States, not merely with the state of belligerency. The Middle East conflict over the last thirty years has always been a very confused thing. The region remains almost continually on the alert, at or near the flashpoint of open hostilities. In these circumstances, when action commences, it is usually difficult to determine who is the aggressor. None of the actors has entirely clean hands.

Turning then to the world of speculation, we could see a situation where Israel is considered an aggressor against one of the Arab States, in a situation permitting the collective right of self-

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14. On this, *Hassouna* has an excellent review of the arguments. See pages 284-360.

15. At page 297.

defence pursuant to Article 51 of the U.N. Charter. In such a case, Egypt has a legally valid obligation to treat the aggression as an attack against itself, pursuant to Article 2 of the Joint Defence Treaty.

Insofar as the economic boycott is concerned, no rule of international law requires a State to deal with an entity it chooses to ignore. There may be aspects of the boycott which do run afoul of international law — those aspects which touch on the relationship between Israel's trading partners and other third parties. However, the central core of the boycott, the refusal of the Arab States themselves to trade with Israel, is perfectly valid, regardless of its political or humanitarian wisdom.

Nothing in the United Nations Charter renders invalid Egypt's obligations within the League of Arab States. In particular, the League is entitled to use measures short of force in an attempt to bring about the fulfilment of Security Council Resolutions 242 and 338. Resolution 242 of November 22, 1967 affirmed:

- “1. ... that the fulfilment of the Charter principles requires the establishment of a just and lasting peace in the Middle East which should include the application of both the following principles:
  - (i) Withdrawal of Israeli armed forces from territories occupied in the recent conflict;
  - (ii) Termination of all claims or states of belligerency and respect for and acknowledgement of the sovereignty, territorial integrity and political independence of every State in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force;
2. ... further the necessity
  - (a) For guaranteeing freedom of navigation through international waterways in the area;
  - (b) For achieving a just settlement of the refugee problem;...”

Resolution 338 of October 21/22, 1973 called on the parties to the hostilities to implement Resolution 242. The Arab States want a withdrawal from the occupied territories, and a just settlement of the refugee problem. They are entitled to take legal steps to reach these objectives.

It is interesting that, since the signing of the Camp David Accords and the Egypt/Israel Peace Treaty, no Israeli, Egyptian or United States official has suggested that Egypt's obligations under the League of Arab States are invalid.

## 2. Bilateral Agreements

It is extremely difficult to collect the bilateral agreements between Egypt and her Arab neighbors. Few are registered with the United Nations, therefore the U.N. Treaty Series does not have a full record of them. A search of treaty series and international publications reveals a number of agreements, though in many cases it is not possible to say whether or not they are still in force. However, we can refer to several arrangements to indicate the nature of Egypt's obligations to other Arab States.

On July 19, 1976, Egypt and the Sudan announced a 25-year Joint Defence Agreement, pursuant to which —

“any armed attack on one country or on its armed forces is considered as an attack on both countries. In this case, the high contracting parties will both at once take all measures and use all means at their disposal, including the armed forces, to confront the aggression and to repel it.”<sup>16</sup>

The Agreement is in line with the Joint Defence and Economic Cooperation Treaty of the League of Arab States. It was concluded after a Libyan-inspired attempted coup and is aimed more at Libya than Israel.<sup>17</sup> However, its text is general and could be applied in the event of an Israeli attack on the Sudan.

Similar agreements have been concluded with Jordan, Iraq,<sup>18</sup> and Syria,<sup>19</sup> though it cannot be confirmed whether or not they are still in force.

On December 21, 1976, Egypt and Syria established a “unified political Command”.<sup>20</sup> They were joined by the Sudan on February

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16. *Arab Report and Record*, July 1976, at page 472.

17. *Keesing's Contemporary Archives*, 1976, at pages 27883 and 28222.

18. United Arab Republic — Jordan Defence Agreement, signed May 30, 1967, appears at (1967), 6 Int'l Legal Materials 516. Iraq joined on June 4, 1967 (*Keesing's Contemporary Archives*, 1967-68, at page 22076). Pursuant to Article 9, the Agreement was valid for five years and was renewable automatically for subsequent periods of five years. A Party could withdraw following a year's notice before the expiration of a five-year period. I have no information concerning the renewal or expiration of this Agreement.

19. Signed November 4, 1966, in force March 9, 1967, reported in *Keesing's Contemporary Archives*, 1965-66, at page 21710C, and 1967-68, at page 21936B. The agreement was to run for an initial period of 5 years, with an option of renewal for further similar periods. I have no information concerning the renewal or expiration of this agreement.

20. *Keesing's Contemporary Archives*, 1977, at page 28392A.



28, 1977. The Command would lay down the necessary bases for strengthening and developing the relations of unity between the Parties in the fields of constitutional affairs, defence and national security, foreign policy and information, financial and economic affairs, and others. While the precise nature of Egypt's obligations under this agreement cannot be determined, it is absolutely clear that the Egypt-Israel Peace Treaty is not a matter which strengthens and develops the relations of unity between Egypt, Syria and the Sudan!

### III- EGYPT'S OBLIGATIONS UNDER THE PEACE TREATY

We turn now to Egypt's obligations under the Peace Treaty which are in conflict with her "other obligations".

Article 1 ends the state of war and establishes peace between the Parties. The League of Arab States remains committed to a state of belligerency with Israel.

By Article 3 (2):

"Each party undertakes to ensure that acts or threats of belligerency, hostility, or violence do not originate from and are not committed from within its territory, or by any forces subject to its control or by any other forces stationed on its territory, against the population, citizens or property of the other party. Each party also undertakes to refrain from organizing, instigating, inciting, assisting or participating in acts or threats of belligerency, hostility, subversion or violence against the other party, anywhere, and undertakes to ensure that perpetrators of such acts are brought to justice".

Thus, Egypt has committed itself not to assist the other Arab States or the Palestinians in the struggle against Israel.

Whereas the Council of the League of Arab States has enjoined diplomatic or economic relations with Israel, in the Peace Treaty, Egypt has agreed to full diplomatic and economic relations. Article 3 (3) provides:

"The parties agree that the normal relationship established between them will include full recognition, diplomatic economic and cultural relations, termination of economic boycotts and discriminatory barriers to the free movement of people and goods, and will guarantee the mutual enjoyment by citizens of the due process of law".

Article 5 opens the Middle East waterways to Israel:

"1. Ships of Israel, and cargoes destined for or coming from Israel, shall enjoy the right of free passage through the Suez Canal

and its approaches through the Gulf of Suez and the Mediterranean Sea on the basis of the Constantinople Convention of 1888, applying to all nations. Israeli nationals, vessels and cargoes, as well as persons, vessels and cargoes destined for or coming from Israel, shall be accorded non-discriminatory treatment in all matters connected with usage of the canal.

2. The parties consider the Strait of Tiran and the Gulf of Aqaba to be international waterways open to all nations for unimpeded and non-suspendable freedom of navigation and overflight. The parties will respect each other's right to navigation and overflight for access to either country through the Strait of Tiran and the Gulf of Aqaba".

Through the Protocol Concerning Relations of the Parties, Egypt turns its back absolutely on the economic boycott of Israel:

**Article 2. Economic Trade Relations:**

1. The parties agree to remove all discriminatory barriers to normal economic relations and to terminate economic boycotts of each other upon completion of the interim withdrawal.
2. As soon as possible, and not later than six months after the completion of the interim withdrawal, the parties will enter negotiations with a view to concluding an agreement on trade and commerce for the purpose of promoting beneficial economic relations.

**Article 3. Cultural Relations:**

1. The parties agree to establish normal cultural relations following completion of the interim withdrawal.
2. They agree on the desirability of cultural exchanges in all fields, and shall, as soon as possible and not later than six months after completion of the interim withdrawal, enter into negotiations with a view to concluding a cultural agreement for this purpose.

**Article 4. Freedom of Movement:**

1. Upon completion of the interim withdrawal, each party will permit the free movement of the nationals and vehicles of the other into and within its territory according to the general rules applicable to nationals and vehicles of other states. Neither party will impose discriminatory restrictions on the free movement of persons and vehicles from its territory to the territory of the other.
2. Mutual unimpeded access to places of religious and historical significance will be provided on a non-discriminatory basis.

**Article 5. Co-operation for Development and Good Neighborly Relations:**

1. The parties recognize a mutuality of interest in good neighborly relations and agree to consider means to promote such relations.
2. The parties will co-operate in promoting peace, stability and development in their region. Each agrees to consider proposals the other may wish to make to this end.
3. The parties shall seek to foster mutual understanding and tolerance and will, accordingly, abstain from hostile propaganda against each other.

**Article 6. Transportation and Telecommunications:**

1. The parties recognize as applicable to each other the rights privileges and obligations provided for in the aviation agreements to which they are both party, particularly by the Convention on International Civil Aviation, 1944 (The Chicago Convention) and the International Air Services Transit Agreement, 1944.
2. Upon completion of the interim withdrawal any declaration of national emergency by a party under Article 89 of the Chicago Convention will not be applied to the other party on a discriminatory basis.
3. Egypt agrees that the use of airfields left by Israel near El Arish, Rafah, Ras el Nagb and Sharm el Sheikh shall be for civilian purposes only, including possible commercial use by all nations.
4. As soon as possible and not later than six months after the completion of the interim withdrawal the parties shall enter into negotiations for the purpose of concluding a civil aviation agreement.
5. The parties will reopen and maintain roads and railways between their countries and will consider further road and rail links. The parties further agree that a highway will be constructed and maintained between Egypt, Israel and Jordan near Eilat with guaranteed free and peaceful passage of persons, vehicles and goods between Egypt and Jordan, without prejudice to their sovereignty over that part of the highway which falls within their respective territory.
6. Upon completion of the interim withdrawal, normal postal, telephone, Telex, data facsimile, wireless and cable communications and television relay services by cable, radio and satellite shall be established between the two parties in accordance with all relevant international conventions and regulations.
7. Upon completion of the interim withdrawal, each party shall grant normal access to its ports for vessels and cargoes of the

other, as well as vessels and cargoes destined for or coming from the other. Such access shall be granted on the same conditions generally applicable to vessels and cargoes of other nations. Article 5 of the treaty of peace will be implemented upon the exchange of instruments of ratification of the aforementioned treaty.

Thus, there are clear conflicts between Egypt's obligations to Israel and her "other obligations".

#### IV- CONSEQUENCES OF THE CONFLICT IN EGYPT'S OBLIGATIONS

Article 6 (5) of the Peace Treaty between Egypt and Israel provides that the Treaty's terms are binding and will be implemented in spite of a conflict with other obligations. Fulfilment of Article 6 (5) inevitably leaves Egypt in breach of its other obligations to the Arab States. The political, military, and economic consequences of this breach are only now unfolding.

We have already mentioned that Egypt's membership in the League of Arab States has been "suspended". At the Baghdad Meeting on March 31, 1979, 18 Arab States and representatives of the Palestine Liberation Organization met to decide upon common action in face of the Peace Treaty.<sup>21</sup> The hard-liners — Iraq, Syria, Libya, Algeria and South Yemen — called for measures against the United States and a total break with Egypt. The moderates led by Saudi Arabia, argued for a less volatile response. In the end, the group reached a compromise involving the recall of all Arab ambassadors from Egypt and a recommendation that all relations with Egypt be severed, each State to decide for itself its own action.

The precise legal nature of Egypt's breach is more subtle than its political significance. It is arguable that Egypt's change of direction serves a "higher obligation" enshrined in the U.N. Charter — the establishment of peace. Indeed, I would go further — the purpose of International Law, the *raison d'être* which lies at its very core, is the maintenance of peace and security. Thus, the U.N. Charter is merely one means of achieving the whole purpose of International Law.

We may recall the words of the Charter. In the Preamble, the peoples of the United Nations express their determination:

"to save succeeding generations from the scourge of war... and to practise tolerance and live together in peace with one another as good neighbors".

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21. *Le Monde*, April 3, 1979.

The Principles, on which the United Nations is based are set out in Article 2. They include “the sovereign equality of all its Members”, the obligation to settle international disputes by peaceful means, and the duty to refrain in international relations from the threat or use of force against the territorial integrity or political independence of any State.

The Peace Treaty with Israel is intended to lead to this peace and security.

Egypt has yet another arrow in its quiver. As paradoxical as it may seem, the Egypt-Israel Peace Treaty and the Camp David Accords serve the purposes of the League of Arab States — the withdrawal of Israel from territories occupied in the 1967 war, and the establishment of a homeland for the Palestinians.

Both the Accords and the Treaty make numerous references to Security Council Resolutions 242 and 338. The Framework for the Conclusion of a Peace Treaty between Egypt and Israel says:

“All of the principles of United Nations resolution 242 will apply in the resolution of the dispute between Israel and Egypt”.

The preamble of the Framework for Peace in the Middle East reads:

“The agreed basis for a peaceful settlement of the conflict between Israel and its neighbors is United Nations Security Council resolution 242 *in all its parts*”. (Emphasis added)

The Peace Treaty itself begins with the words:

“Convinced of the urgent necessity of the establishment of a just, comprehensive and lasting peace in the Middle East in accordance with Security Council resolutions 242 and 338...”

Thus, the Parties have placed themselves squarely within a legal context which forms the basis of settlement for the Arab States as well. It must be recognized, however, that Security Council Resolution 242 is capable of several interpretations and there is a dispute between Israel and the Arab States concerning the meaning of the Resolution. With respect to the withdrawal from occupied territories, the Arab States argue this involves *all* such territories. For the Israelis, the word “some” replaces “all”. Insofar as the Palestinians are concerned, for the Arab States “self-determination” involves a sovereign State. For Israel, this term may well involve a lesser freedom. It is arguable then that the references to the two resolutions in the Accords and the Treaty do not in fact serve the Arab cause, because the references do not connote the same meaning as is understood by the Arab States.

Nonetheless, Egypt and Israel have agreed to measures which will involve a withdrawal from occupied territory and will lead to "self-determination" for the Palestinians.

Pursuant to Article 1 (2) of the Peace Treaty:

"Israel will withdraw all its armed forces and civilians from the Sinai behind the international boundary between Egypt and mandated Palestine,... and Egypt will resume the exercise of its full sovereignty over the Sinai".

The Framework of Peace in the Middle East contemplates negotiations leading to "a resolution of the Palestinian problem *in all its aspects*" (Emphasis added). A three-stage process is set-out for the negotiations. The Peace Treaty then echoes these provisions:

"For the purpose of achieving a comprehensive peace settlement in accordance with the... frameworks, Egypt and Israel will proceed with the implementation of those provisions relating to the West Bank and the Gaza Strip. They have agreed to start negotiations within a month after the exchange of the instruments of ratification of the peace treaty. In accordance with the Framework for Peace in the Middle East, the Hashemite Kingdom is invited to join the negotiations. The delegations of Egypt and Jordan may include Palestinians from the West Bank and Gaza Strip or other Palestinians as mutually agreed".

Thus, *prima facie*, Egypt is in breach of its obligations to the Arab States and they may use all legal means to achieve redress. However, it may be argued that the Peace Treaty serves a "higher obligation" — the search for international peace and security — and therefore Egypt's breach is excusable. As well, though the argument is tenuous, it may be said that the Peace Treaty serves the purposes of the League of Arab States because the Treaty involves a withdrawal from territories occupied in 1967 and a step in the solution to the Palestinian problem.

### CONCLUSION

The point of this paper has been that Egypt's obligations towards Israel under the Peace Treaty signed in late-March 1979, and ratified shortly thereafter, are in clear conflict with her obligations towards other Arab States. Article 6 (5) of the Treaty provides for the implementation of the Treaty even if there is such a conflict. Thus, Egypt must inevitably breach her obligations towards other Arab States. The latter have already commenced sanctions against Egypt for this break with the members of the League of Arab States. The world waits to see which set of obligations will command Egyptian adherence in the months and years to come.