United Nations Resolutions

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The Legal Effect of UN Resolutions

Since the first resolution adopted by the United Nations in 1947, Israel has consistently sought to live in peace with its Arab neighbors. For more than a half-century, it has not always had willing partners.

> "Tragedy is not what men suffer but what they miss. ... Time and again, [Arab] governments have rejected proposals today – and longed for them tomorrow."
>
> Abba Eban – at the UN, 1968

Four major United Nations resolutions mark key events in the history of the Arab-Israeli conflict. They focus on the recommendation for partitioning of the former British Mandate for Palestine into an Arab and a Jewish state; issues concerning refugees as a result of conflict and war; borders and security; and the need to cease fighting and establish a "just and lasting peace." However, aside from agreements between Israel and Egypt, and between Israel and Jordan, all other Arab nations have refused to abide by the terms of these resolutions. Two additional resolutions were passed by the Security Council against the backdrop of the second *Intifada*, in an attempt to get the peace process back on track by making Palestinian statehood an incentive, but to no avail.

Security Council Rules Matter: The Differences between Chapters VI and VII of the UN Charter

Though sometimes confusing, the rules that form the UN Charter also determines the powers of the UN Security Council. Two chapters are especially relevant if one is to understand the meaning of the Security Council's power and the resolutions it passes.

Security Council Resolutions under Chapter VI:

> Resolutions the Security Council adopts under Chapter VI are intended to be followed and implemented via negotiated settlements between concerned parties. One of the UN resolutions adopted under Chapter VI of the UN Charter is Resolution 242, adopted in 1967 after the Six-Day War. It calls on Israel and its Arab neighbors to accept the resolution through negotiation, arbitration and conciliation. Under Chapter VI of the UN Charter, the recommendations of UN Resolution 242 cannot *be imposed* on the parties concerned, as Arab leaders often argue. In fact, the title of Chapter VI also offers a clue to its nature, for it deals with "Pacific Resolution of Disputes."
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> Security Council Resolutions under Chapter VII:
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> > In contrast, resolutions adopted by the Security Council under Chapter VII invest the Security Council with power to issue stringent resolutions that require nations to comply with the terms set forth in the resolution. This leaves no room to negotiate a settlement with the affected parties. Thus, Chapter VII deals with "Threats to Peace, Breaches of the Peace and Acts

of Aggression." When Iraq invaded Kuwait in 1990, the Security Council adopted resolutions under Chapter VII that only required the aggressor, Iraq, to comply.[1]

UN's General Assembly Resolutions are a declarative statement of sentiment and lacks the legal authority to enact or amend international law that legally bind states

The UN Secretary-General, the General Assembly, and now the international Court of Justice (ICJ) seem ignorant of the General Assembly's powers or perhaps prefers to ignore them. These UN organs even fail to note that "affirmation" means merely a declarative statement of *sentiment*. It is not a directive. It is not law. In any case, this and a host of other anti-Israel resolutions passed annually are not legally binding documents by any measure. One does not even have to be an experienced judge to see this; one need only to read the UN Charter to establish this fact. Article 10 of the UN Charter states:

> "The General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and, except as provided in Article 12, may make *recommendations* to the Members of the United Nations or to the Security Council or to both on any such questions or matters." [italics by author].

Past members of the ICJ have gone on record as underscoring that the UN Charter does not grant the General Assembly (or the International Court of Justice, for that matter) authority to enact or amend international law.

Professor Judge Schwebel, former President of the International Court of Justice, has stated that:

> "... the General Assembly of the United Nations can only, in principle, issue 'recommendation' which are not of a binding character, according to Article 10 of the Charter of the United Nations."[2]

Schwebel also cites the (1950) opinion of Judge, Sir Hersch Lauterpacht, a former member judge of the International Court of Justice, who declared that:

> "... the General Assembly has no legal power to legislate or bind its members by way of recommendation."[3]

Yet another former ICJ judge, Sir Gerald Fitzmaurice has been just as resolved in rejecting what he labeled the "illusion" that a General Assembly resolution can have "legislative effect."[4]

Academics and renowned international law experts also agree. Professor Julius Stone illuminates this subject by pointing out:

> "In his book The Normative Role of the General Assembly of the United Nations and the Declaration of Principles of Friendly Relations, Professor Gaetano Arangio-Ruiz[5] is led to conclude that the General Assembly lacks legal authority either to enact or to 'declare' or 'determine' or 'interpret' international

law so as legally to bind states by such acts, whether these states be members of the United Nations or not, and whether these states voted for or against or abstained from the relevant vote or did not take part in it."[6]

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- UN Resolution 181 legitimized a Jewish state in 1947. The resolution also proposed an Arab state, but the Arabs refused to accept it and went to war against the newly declared State of Israel.
- In the late 1990s, Arab leaders sought to roll back the clock to 1947 and accept the UN partition plan recommended in Resolution 181. But their acceptance was 50 years too late. Its proposals concerning an Arab Palestinian state had become a moot point – outdated and irrelevant to current realities. For it to be accepted today would have meant the demise of the State of Israel.
- Neither references to the refugee problem nor an Israeli withdrawal constitute UN directives. They are solely recommendations upon which negotiations and reconciliation between the parties should be conducted.
- The refugee problem was never viewed as a stand-alone issue in the 1948-vintage UN Resolution. Moreover, it did not speak of Arabs alone, but of all refugees caused by the conflict. Often forgotten is that the conflict created as many or more Jewish refugees who fled the Arabs lands for their lives; a majority found refuge in Israel.
- The language of UN Resolution 194 clearly expects governments and authorities (not just Israel) to help solve the refugee problem. There were five hostile Arab governments involved in aggression and war that created the refugee problem, and the resolution expects them to be part of the solution.
- Resolution 242 is the cornerstone for "a just and lasting peace." It calls for a negotiated solution between the parties based on "secure and recognized boundaries."
- Resolution 1515, a 'Blueprint for Peace' if implemented will violate the Mandate for Palestine and international law. The Mandate clearly calls to "facilitate ... and shall encourage ... close settlement by Jews on the land, including State lands and waste lands not required for public purposes.

[1] Dore Gold, "Baseless Comparisons: UN Security Council Resolutions on Iraq and Israel," Jerusalem Center for Public Affairs, September 24, 2002, at http://www.jcpa.org/brief/brief2-7.htm.

[2] Professor, Judge Stephen M. Schwebel, What Weight to Conquest? in "Justice in International Law", Cambridge University Press, 1994. Judge Schwebel has served on the International Court since 15 January 1981. He was Vice-President of the Court from 1994 to 1997 and has been President from 1997 to 2000. A former Deputy Legal Adviser of the United States Department of State and Burling Professor of International Law at the School of Advanced International Studies of The Johns Hopkins University (Washington). Judge Schwebel is the author of several books and over 150 articles on problems of international law and organization. He is Honorary President of the American Society of International Law.
Opinions quoted in this critiques are not derived from his position as a judge of the ICJ.

[3] Ibid.

[4] Cited in "Israel and Palestine, Assault on the law of nations," Professor Julius Stone, The Johns Hopkins University Press, 1981. p. 29.

[5] Professor Gaetano Arangio-Ruiz "The United Nations declaration on friendly relations and the system of the sources of international law" Publisher: Alphen aan den Rijn, The Netherlands; Germantown, Md.: Sijthoff & Noordhoff, 1979. ISBN: 902860149X.

[6] Professor Julius Stone (1907-1985), "Israel and Palestine, Assault on the Law of Nations" The Johns Hopkins University Press, 1981, p. 127. The late Professor Julius Stone was recognized as one of the twentieth century's leading authorities on the Law of Nations. His work represents a detailed analysis of the central principles of international law governing the issues raised by the Arab-Israel conflict. He was one of a few scholars to gain outstanding recognition in more than one field. Professor Stone was one of the world's best-known authorities in both Jurisprudence and International Law.

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