

January 1975

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M. Cherif Bassiouni

Morton Kaplan

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### Recommended Citation

M. Cherif Bassiouni & Morton Kaplan, A Mideast Proposal, 5 Denv. J. Int'l L. & Pol'y 401 (1975).

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## A Mideast Proposal

### Keywords

Law Reform, Israel, States

# A Mideast Proposal\*

M. CHERIF BASSIOUNI\*\* AND  
MORTON KAPLAN\*\*\*

## I. THE NEED FOR INITIATIVE

Contrary to the opinions of many, a genuine peace in the Middle East between Israel and the Arab states has been possible for over a year. Yet, if this opportunity is missed, as now appears not unlikely, a similar one may not soon recur.

Although the prospects for war vary weekly and even daily, the secular trend toward war keeps rising. A new war would have horrendous consequences both for Israel and the Arab states. The impact of such a war on the economies of the parties concerned and the rest of the world, but particularly the western world, are potentially disastrous. Moreover, the risks of a catastrophic confrontation between the United States and the U.S.S.R. are implicit in the situation. War, therefore, should be in the classical phrase "unthinkable," but such an eventuality is nonetheless possible.

The reason may well be found in the oft-proclaimed fears, suspicions, and misconceptions under which the parties labor. After more than twenty years of hostility, Israel finds it difficult to believe that the Arab states are ready for a peace that recognizes its existence as a Jewish state. Moreover, the internal political situation in Israel makes it difficult for any cabinet to proclaim a policy that would appear "weak" in the face of apparent external menace. On the other hand, the Arab states have their own internal difficulties. Indeed, for these states the issue is not only one of regaining national territory lost in the 1967 war but also the future of Palestine and the Palestinians.

Another element that is making the problem more rather than less difficult lies in the nature of the diplomacy that is being pursued. The first-stage disengagements of 1973 played a useful role in lowering tensions in the area but would have been more effective if it had been directly related to the search for a comprehensive peace. Unfortunately, the difficulty with step-by-step negotiations is that the

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\*\* Professor of Law, De Paul University.

\*\*\* Professor of Political Science, Director of the Faculty Arms Control and Foreign Policy Seminar, University of Chicago.

stages are asymmetric. Israel gives up territory which it sees as useful for defense if the Arabs attack again. In return, it receives paper assurances that the Arab states can negate by a stroke of the pen. Israel, on the other hand, can retake the territory given up only by overt force. For their part, the Arab states are reluctant to provide the commitments that Israel wants, for the recognition of Israel as a state is their trump card for a return to the pre-1967 borders and a solution to the Palestinian question.

Thus, if one of the concerned states sees itself as giving up more of its bargaining advantages than does the other, it fears the future more, and even becomes increasingly reluctant to travel this road any further. On the other hand, the state that has gained asymmetric advantages will have greater difficulty in convincing its own constituents later on that it should make greater concessions that alone will produce further movement to a peace settlement, for it will already have gained much of what it wants at a far lower cost. In any event, it must be understood that although Israel can slice the Sinai and the Golan Heights in parcels to be bartered away, Egypt and Syria cannot parcel "peace" and "recognition." Thus, the parties do not have sufficient equivalent bartering chips to make that type of process work.

With the end of Secretary Kissinger's step-by-step diplomacy between Egypt and Israel, attention now begins to shift to the Geneva conference. When the mandates of the U.N. Peacekeeping Forces expire, Egypt and Syria may be compelled either to take military actions or make military preparations that are likely to lead the Israelis to strike preemptively. Under these conditions anything can intentionally or accidentally trigger war.

Although such a war would probably end quickly as did the others, events may not be controllable this time. A prolonged oil boycott may affect the United States and Western Europe to the point that current ill-advised proposals for military intervention become a political reality that carries with it the prospects of a war involving the major powers.

Obviously, therefore, it is critical to prepare the Geneva negotiations in such a way as to maximize their chances of success. Without such preparations it is likely, given the current arrangements for Geneva, that it will fail in its purpose.

Geneva will likely fail because, unless Israel, the Arab states, and the Palestinians know in advance that they agree on certain basic principles, the "game" at Geneva will involve efforts to place the blame for failure on the other parties while reassuring publics and elites at home and abroad that important perceived interests will be protected. With no assurance of success, the effects of the encounter

will bear upon regime and alliance interests that will assume greater importance than the peace Geneva is supposed to produce.

Therefore, it is essential to understand that Secretary of State Kissinger's failure was not a failure of mediation itself but a failure of mediation in step-by-step negotiations in which each step of the negotiations does not fit into an overall plan or at least an overall perception of the final product, as well as of basic asymmetries among the parties.

The real interests of the parties are not so far apart as they may at first appear. These interests are reinforced by both political and juridical considerations. The Arab states cannot make peace except on the condition of a return to the pre-1967 borders and a Palestinian settlement. The United States and the Soviet Union have a definite interest in reinforcing the political order that arose out of the settlements following World War II. Any violation of the principle of no territorial change by force would threaten this framework of world political order, the juridical system within which it is embodied, and other more specific and practical interests of the major powers (such as the existing boundaries of the East European states).

Israel, the existence of which is a product of the postwar settlements, also has an interest in the principle of no forcible change of territory. If Israel changes the pre-1967 borders by force, the Arabs could legitimate a forcible revision of any peace they sign with Israel. On the other hand, merely to return to the pre-1967 borders is obviously unacceptable to Israel even within the context of a peace treaty. The reasons that led Israel to shift in 1954 from their original second-strike strategy to a first-strike strategy are even stronger after the October 1973 War. Thus great power guarantees would not be considered significant to satisfy the security needs of either Israel or the Arab states. The use of United Nations forces would not be a primarily acceptable guarantee for Israel and would be in some ways objectionable to Egypt and Syria.

For these reasons also, it is essential that the road to Geneva be prepared in light of the interests of the parties and, in particular, of Israel, which must make territorial withdrawals and political concessions to the Palestinians if peace is to be achieved.

The first step, it is believed, is to reach agreement on certain basic principles, and then to allow all parties concerned to negotiate their specific claims within the framework of these principles. It is for these reasons that this proposal is made. Agreement on the basic principles of peace proposed herein might be negotiated among the parties privately prior to Geneva, or through the diplomacy of the United States and perhaps of the Soviet Union as well. It is essential that the parties communicate to each other their positions in such a

manner that discussions over the proposed Protocol on Principles of Peace are fruitful. Moreover, too great an effort to formulate "bargaining chip" positions on the Principles will likely be counterproductive.

The Principles formulated in the next section are designed to satisfy the minimal legitimate demands of the respective parties that are consistent with their reasonable concern for national security. The ensuing Commentary is illustrative of the application of these Principles in the Geneva negotiations.

The authors of this Protocol on Principles of Peace, concerned with the grave situation existing in the Middle East and its potentially disastrous consequences for all peoples in the area and for the world, and desirous of enhancing the opportunities for a just and lasting peace, hereby propose that this document be signed as an internationally binding agreement between Israel, Egypt, Syria, Jordan, and the Palestinian Liberation Organization on behalf of the Palestinian people, and that it be signed simultaneously by the respective parties in their capitals. The adoption of these Principles by the parties should precede their convening for a peace conference in Geneva and should constitute the framework of their negotiations for a just and lasting peace which can only begin to be attained by a permanent peace treaty.

## II. PROTOCOL ON PRINCIPLES OF PEACE

The parties to this Protocol, desirous of insuring a just and lasting peace that is based on principles of international law, and concerned with the protection of the human rights of all peoples and persons in the area, hereby agree to the Principles enunciated herein as constituting the framework of their negotiations and agreements for a permanent peace between them.

1. The right of all peoples to live in peace, security, and dignity within a recognized state of their choice and under a form of government of their choice.

2. The right of the contracting parties to have secure and recognized boundaries not subject to forcible change and, consistent therewith, the recognition of the principle of non-acquisition of territory by use of force.

3. The restoration of the pre-1967 borders shall be effectuated. Concurrently boundary abutting conditions compatible with the reasonable defenses of the parties shall be established but only for as long as such needs realistically continue to exist. (See Article 9)

4. Self-reinforcing security conditions shall be established as a result of agreements stemming from the principles of Article 3 and shall be overseen by a joint commission under United Nations auspices. Such commission shall prepare annual reports on their implementation. On the basis of such experience these security conditions shall be reviewed by the parties periodically but at least every five years with a view that in good faith such conditions be terminated as soon as practicable.

5. The right of self-determination of the Palestinian people is hereby

expressly recognized, and, consistent therewith, the parties shall cooperate in the prompt establishment of a Palestinian state on the "West Bank" and "Gaza strip."

6. The future political relations between the State of Palestine and the State of Israel are a matter of concern for the peoples of these two states, including the possibility of a strictly peaceful evolution and transformation of their political ties or structures subject to the protection and preservation of the human rights of both communities and of their constituents.

7. The right of all the peoples from the region to return to their homes shall be recognized. That includes the return of Palestinians to Israel, and the return of those Jews who had lived in the Arab states to return thereto, subject to reasonable considerations of continued family ties, national security, and the integrity of national identity. To this end joint commissions, including a joint Israeli/Palestinian commission, shall be established to explore means of implementing this principle.

8. Where individuals in states of the region have been displaced from other states in the region and their property seized, confiscated, or sold at inadequate price, each state shall establish a commission to consider applications for adequate, just, and prompt compensation.

9. The boundary arrangements between Israel, Palestine, and Jordan shall include provisions for the peaceful passage of commerce and for civilian movement through Israel.

10. All parties shall have the right to free and innocent maritime passage in and through the Red Sea and the Suez Canal.

11. Maintenance of the substantial municipal unity of Jerusalem in a manner agreed upon by the parties and subject to the provisions of Article 2. The placement of the holy places in Jerusalem under guardianship acceptable to leaders of the faiths to which they belong and with international guarantees for free access to members of the respective faiths.

12. The parties shall cooperate in the preservation and restoration of the cultural heritage of the region.

13. After the previous principles have been implemented by incorporation in one or more treaties or agreements, good faith efforts shall be made to include, where feasible and consistent with national security and considerations of sovereignty, self-reinforcing procedures for conflict resolution such as, but not restricted to, resort to the International Court of Justice, arbitration, or mediation.

14. The Principles stated above shall be binding on the parties who sign below for six months from the date of signature except that the parties agree that if substantial and good faith efforts are being made to reach agreement, no fewer than two three-month extensions shall be granted.

### III. COMMENTARY ON THE "BASIC PRINCIPLES OF PEACE" AND IMPLEMENTATION PROPOSALS

The authors are aware that the principles stated above, although important as an expression of intentions, may be insufficient to avoid dysfunctional bargaining at Geneva unless there is also prior understanding on some parameters of their implementation. The authors wish to emphasize that these comments are illustrative of some of the ideas that would help implement the Principles stated above and

that would help produce a viable peace treaty. (The numbers hereinafter refer to the Principles.)

1. As members of the United Nations, the parties to this agreement should assert their commitment to implement United Nations obligations concerning the human rights of individuals regardless of race, creed, or color. To that end the parties should consider signing, ratifying, or acceding to treaties for the international protection of human rights and devise means for their effective implementation. Additionally they may consider establishing in the Old City of Jerusalem a Regional Supreme Court of Human Rights. At least until such time as the contracting parties agree to extend its authority, it shall be limited to hearing, investigating, and publishing complaints concerning the infringement of human rights in any of the contracting states.

2. The contracting parties should recognize that they have a duty to refrain from any action that employs force, the threat of force, or harsh economic or political pressures or threats to accomplish their political goals. Israel and the Palestinian state should establish a joint commission with a secretariat that will hold regular meetings to discuss political and economic cooperation. Such meetings will provide a forum for the exchange of views and serve as means for exploring ideas between the parties.

3.&4. Because of vast differences in territory, population, and resources, defensive needs will be considerably different among the participating states. Thus, for instance, if the Sinai is demilitarized, the demilitarization of all of Israel would not be substantially equal. Moreover, even a proportional demilitarization might be inconsistent with Israel's defense needs. Thus, zonal demilitarization in Israel might be restricted to token areas for purposes of formal symmetry in exchange for substantial demilitarization of the Sinai. Such demilitarization includes offensive weaponry and heavy military equipment that may constitute a basis for offensive military action. It does not exclude reasonable police, border, and customs forces or early warning defensive systems and light weaponry. Since Israel and Egypt would bind themselves to such mutual restrictions, these arrangements would be in the category of arms control and limitations agreements such as the SALT agreements between the United States and the U.S.S.R. In that respect this region would lead in the progress toward world peace. All possible means of providing security should be explored at Geneva. These might include great power guarantees, great power forces, or United Nations forces under conditions in which they would be withdrawn only upon the consent of both sides or with adequate notice. The defect in UN forces is that, even if their mandate and the agreements specify that they cannot be withdrawn without the consent of all parties to the peace treaties, the



states providing the forces nonetheless may withdraw them, particularly if a resolution of the General Assembly advocates it. For this reason, UN forces, unless modified in some important ways, are unlikely to be acceptable to all the parties. Some self-reinforcing type of agreement likely will be necessary. One possible type of self-reinforcing agreement might be acceptable to all parties. This type of arrangement has a precedent in the successful Rhodes agreement of 1949, although it will be adapted to the circumstances of the present case with respect to numbers, dispositions, and weaponry. The Sinai would be substantially demilitarized and be reinforced by a "plate glass window." This proposed "plate glass window" would consist of relatively small and lightly armed joint Egyptian/Israeli patrols or inspection teams. Additionally or alternatively the area could be monitored by agreed forms of aerial observation including the use of satellites. The same could be applied to certain parts of Israel to insure symmetry between the conditions of implementation. The Golan Heights would be demilitarized because of its importance to Israeli defense. Demilitarization shall not exclude lightly armed customs and border guards or police to an extent not inconsistent with the objectives of this type of self-reinforcing system. To insure Israel against Syrian military occupation of the Heights, the following arrangements are proposed: Israeli troops (about 500-1,000 in number) would be stationed below the eastern base of the Heights and Israeli troops of an equivalent size would be stationed at the top of the Heights, which would be returned to Syrian civilian control. Roughly 1,000-2,000 equivalently armed Syrian troops would be stationed on the Israeli side of Lake Galilee (without interfering with Syrian and Israeli civilian control). These troops should be armed as lightly as possible, including, if this proves feasible upon examination, restrictions to hand guns and rifles. Arrangements would be made for relief of troops and for civilian police activities. Limits would be placed on Syrian and Israeli mobilization in the border area. Here also aerial observation can be very useful and can work to the mutual satisfaction of the parties. The West Bank area would be demilitarized—a status that does not exclude lightly armed police, customs, and border guards— but its citizens may be trained in military units stationed in Jordanian territory. This agreement could be monitored by small joint Israeli/Palestinian patrols. For purpose of symmetry, token demilitarized areas in Israel could be monitored similarly. Although this Article makes legally possible the mutual renunciation of the security arrangements of Article 3 at the end of five years, it is perhaps too optimistic to believe that adequate confidence among the parties will have occurred that early even if no incidents occur. Even if this should be the case, early reconsideration will increase the probability of future renunciation and the transforma-

tion of formal peace into good relations. Article 3 does not rule out minor territorial adjustments freely agreed to by the parties.

5. Developments to date make clear that only the Palestinian Liberation Organization is competent to negotiate and to sign a peace settlement. However, recognition of the P.L.O. as the bargaining agent for the Palestinians at Geneva should not preclude the right of the Palestinians to choose their government in free and democratic elections. Furthermore, the other Arab states will provide sufficient developmental assistance to the Palestinian state to sustain its economic viability.

6.&7. Jointly, these two Articles mandate recognition of the sovereign independence of Israel and the Palestinian state; rule out external interference to change this state of affairs; but do not infringe on the right of the two states to explore, to the extent they so desire, peacefully and without resort to coercive or threatening measures, other possible future arrangements such as a federated state, a binational state, or a new amalgamated state as a successor to the existing states.

8. Possible models for the compensation provision may be found in the German war claims settlement, the World Bank model plan for the nationalization of foreign assets, and the U.S. Foreign Claims Settlement Commission.

9. For the Palestinian state this means reasonable and tax-free transit of goods and police personnel from the west bank area to Gaza and to a tax-free port in Israel on the Mediterranean.

10.&11. In many ways the Jerusalem issue is the most difficult one for a peace treaty to solve. And yet, if the parties can agree on the other terms, good faith should produce a solution here also. There is little doubt that Jerusalem can hardly be severed municipally even though certain parts could be detached from it without affecting that concept. However, to include the Old City of Jerusalem within Israel would violate Article 2. Thus, a single city administration might be combined with some (obviously not complete) decentralization of police and courts in the Old City. National offices of a Palestinian state might be placed there along with a small military guard. Its national tax laws might be applied to inhabitants of the Old City (although a commission would be needed to deal with anomalies in economic legislation). Moreover, no customs or passport controls should exist to impede travel within the City. Other alternatives might be considered such as turning over the Mount of Olives with the area up to the eastern walls of the Old City to the Palestinian state. The walled city could be placed under control of a commission of the major religions, although both Israel and the Palestinian state could pass national laws recognizing this status while claiming con-

current sovereignty over it but subject to certain municipal restrictions. The remainder of the City would be under Israeli control, although its inhabitants would have a choice of Israeli or Palestinian nationality.

13. It is obviously to the interests of all parties to provide for self-reinforcing methods of conflict resolution where disputes exist over interpretations of the Principles that do not involve vital questions of sovereign national security. However, this problem is both so complex and subtle that to consider it before the other means of implementing the Principles have been agreed upon would be counterproductive. The following examples are intended as possible illustrations of the complexity of the problem. Consider the possibility of Israeli restrictions on traffic to permit repairs or imposition of tariffs to compensate for the costs of providing transit or port facilities to the Palestinian state. In the first case, a quick arbitral method would guarantee the Palestinians against arbitrary Israeli restrictions that might damage important Palestinian economic interests. In the latter case, quickness would not be important. Funds could be placed in escrow and the matter decided by more formal procedures. On the other hand, consider a dispute over a characterization of the kinds of weapons deployed in the demilitarized zone. A "cooling off" period during which mediation occurs might be feasible, but such a matter may be close enough to sovereign considerations of national security that arbitration or adjudication, although not mediation, is likely to be ruled out. Some decisions concerning repatriation will come in this latter category. Some aspects of compensation may be subject to outside adjudication or arbitration. But at some point, the potential awards may threaten the economic viability or national security of a state. In these latter instances, only mediation may be possible. And, in some cases, even mediation during a "cooling off" period may be inconsistent with considerations of sovereign national security as, for instance, those acts of remilitarization for which the "plate glass window" principle was designed.

