

ABROGATION OF THE LEBANON-ISRAEL AGREEMENT ON THE WITHDRAWAL OF ISRAELI TROOPS, 17 MAY 1983.

President Gemayel has now "abrogated" the Agreement between the two States which was, in any event, unratified. Essentially the Agreement declared the termination of the state of war between them and Israel undertook to withdraw its armed forces from the Lebanon (Article 1); the withdrawal obligations are described in greater detail in paragraph 6 of the Annex to the Agreement:

6. Withdrawal of Israeli Forces

- a. Within 8 to 12 weeks of the entry into force of the present Agreement, all Israeli forces will have been withdrawn from Lebanon. This is consistent with the objective of Lebanon that all external forces withdraw from Lebanon.
- b. The Israel Defense Forces and the Lebanese Armed Forces will maintain continuous liaison during the withdrawal and will exchange all necessary information through the Security Arrangements Committee. The Israel Defense Forces and the Lebanese Armed Forces will cooperate during the withdrawal in order to facilitate the reassertion of the authority of the Government of Lebanon as the Israeli armed forces withdraw.

Article 3 provided that the parties agree to establish and implement security arrangements, including the creation of a Security Region in the south of the Lebanon where a special regime was to apply as detailed in the Annex.

The Annex made strict provision as to the presence and size of military police and security forces within the Security Region. Except as designated elsewhere in the Annex, no other organised armed forces and elements were to be permitted in the Security Region. Paragraph 4 of the Annex was to permit the Lebanon to request the UN Security Council for one unit of UNIFIL to be stationed in Sidon to assist in asserting governmental authority and protection in the Palestinian refugee camp areas. For a period of twelve months the unit in the Sidon area might send teams to the refugee camps in the vicinity of Sidon and Tyre to surveil and observe, if requested by the Lebanon, following notification to the Security Arrangements Committee. This Committee was to be composed of an equal number of Israeli and Lebanese representatives; further, a representative of the USA might participate in meetings of the Committee at the request of either party. (Paragraph 3).

The provisions of the Annex in relation to the Security Region were undoubtedly directed against the existence of PLO groups as well as other forces perceived to be hostile to Israel. Article 4 of the Agreement made provision against this contingency as regards the whole of the Lebanon, with reciprocal provisions in relation to the territory of Israel:

ARTICLE 4

- 1. The territory of each Party will not be used as a base for hostile or terrorist activity against the other Party, its territory, or its people.**

2. Each Party will prevent the existence or organization of irregular forces, armed bands, organizations, bases, offices or infrastructure, the aims and purposes of which include incursions or any act of terrorism into the territory of the other Party, or any other activity aimed at threatening or endangering the security of the other Party and safety of its people. To this end all agreements and arrangements enabling the presence and functioning on the territory of either Party of elements hostile to the other Party are null and void.

3. Without prejudice to the inherent right of self-defense in accordance with international law, each Party will refrain:
 - a. from organizing, instigating, assisting, or participating in threats or acts of belligerency, subversion, or incitement or any aggression directed against the other Party, its population or property, both within its territory and originating therefrom, or in the territory of the other Party.

 - b. from using the territory of the other Party for conducting a military attack against the territory of a third state.

 - c. from intervening in the internal or external affairs of the other Party.

4. Each Party undertakes to ensure that preventive action and due proceedings will be taken against persons or organizations perpetrating acts in violation of this Article .

The abrogation raises the number of important issues of international law. It is proposed here to briefly canvas these issues in a preliminary manner, without drawing any firm conclusions on these. The following are some of the pertinent issues:-

(1) Whether the Treaty was Void.

Article 52 of the Vienna Convention on the Law of Treaties, 1969, states that a Treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations.

To rely on this provision, which is probably declaratory of customary international law, it would have to be argued that the invasion of the Lebanon by Israel was contrary to international law and not justified, for example, for the purposes of self defence. A state of war may well have existed for some considerable period of time, without any particularly active participation on the part of the Lebanon. Israel would no doubt argue that the invasion should not be seen as an isolated act but that it was an episode in the state of war which already existed, and that it was justified on the basis of self defence to control hostile forces which were either tolerated by, or otherwise not subject to, the authority of the government of the Lebanon.

(2) Whether the Lebanon was under a duty to ratify the Agreement.

Article 18 of the Vienna Convention states that a State is obliged to refrain from acts which would defeat the object and purpose of the Treaty when:

- (a) it has signed the Treaty or has exchanged instruments constituting the Treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the Treaty; (Article 10 of the Agreement provided it would enter into force on the exchange of instruments of ratification)
- or

- (b) it has expressed its consent to be bound by the Treaty, pending the entry into force of the Treaty and provided that such entry into force is not unduly delayed

It would seem difficult to allege that the Lebanon has been guilty of a breach of the obligation of good faith to refrain from acts calculated to frustrate the object of the Treaty.

The Lebanese Ambassador to Australia, His Excellency, Mr. Raymond Heneine has advised the 'News' that the reasons for the Lebanese Government's action were:

"1) The intransigence of Israel in failing to uphold its undertaking to withdraw from Lebanese territory.

2) The setting of preconditions by Israel for its withdrawal from Lebanese territory. In a letter to the United States Israel stated that it would not withdraw its forces unless Syrian and Palestinian forces were also withdrawn. Such a stipulation did not exist in the context of the Agreement. In a letter to the United States the Lebanese Foreign Minister stressed Lebanon's right either to suspend or abrogate the Agreement, while at the same time retaining its right to continue its efforts to achieve an Israeli withdrawal by whatever means possible. Later developments in the situation in Lebanon made it necessary to attempt to achieve withdrawal by any available means.

3) According to stipulations in Articles 56 and 57 of the Lebanese Constitution, the Lebanese President was under an obligation either to promulgate the Agreement or send it back to the Lebanese Parliament, within a certain time limit as set out in the Constitution.

4) As the President neither promulgated the Agreement nor sent it back to the Parliament within the specified time limit, the Agreement remained unratified.

For all the abovementioned reasons, the Lebanese Council of Ministers which was convened on the 5th of March, 1984, and presided over by the Lebanese President, decided to cancel the Agreement and to consider it non-binding and non-existent, as well as to cancel all the implications it entailed."

Israel would no doubt deny any intransigence in fulfilling her obligations under the Agreement which she would probably stress was not at that stage ratified. The Lebanon Ambassador raises, in addition, the interesting question of the unpublished letter signed by the US and Israel to the effect that the Israeli withdrawal did not have to begin until Syria and the PLO were also ready to pull out in the same time period as in the Lebanon-Syrian Agreement. Presumably, the Lebanon-Syrian Agreement was to be held "in escrow" by delaying ratification and the exchange of ratification instruments. This was an agreement between the US and Israel which would not in principle be binding on the Lebanon, a third party. Does it survive the abrogation of the Agreement in the context of which it was signed? The political realities of the situation would suggest an affirmative answer. Could it be argued that if Lebanon were aware of its existence, that she had tacitly consented to the concept of simultaneous withdrawal? Even had she so consented, Lebanon might reply that her abrogation of the Agreement extended to the tacit consent to a simultaneous withdrawal.

(3) Whether Israel is under any obligation to remove her forces from the Lebanon.

The answer to this question essentially depends upon the legality of the Israeli invasion. The Agreement, although abrogated, may be taken as evidence that a state of war did in fact exist between the two countries. If that state of war has continued, or alternatively revived by the abrogation, Israel might claim that she has the right to take appropriate measures to ensure her self defence in what was to be termed the Security Region. Of course, during the course of the Israeli invasion, Israel adopted active military measures well beyond the Security Region.

Israel could not claim that her presence in the Lebanon is justified by the granting of consent by that State. Hence her presence is different to, for example, the existence of the United States' base on Cuba.

Lebanon might cite the various United Nations Resolutions adopted by the Security Council particularly those relating to the immediate cessation of all military activities within Lebanon: 518 (1982); calling for strict respect for Lebanon's sovereignty, territorial integrity unity and political independence under the sole and exclusive authority of the Lebanese Government through the Lebanese Army throughout Lebanon: 520 (1982); confirming its demand for a cease-fire and withdrawal of Israeli forces from Lebanon: 517 (1982), and confirming previous resolutions and demands for a cease-fire and cessation of all military activities within Lebanon and across the Lebanese-Israeli border: 516 (1982) (1982 21 LM 1165).

Apart from the strict legal issues involved, it is clear that Israel will reserve her position to take what she deems to be appropriate measures in the Lebanon, particularly in what was the Security Region. Her particular political strength, apart from the Israeli Army, is of course the policy of the United States in the Middle East. Israel of course would seek to link her presence in the Lebanon with that of Syria. The Syrian position, however, would no doubt be that her forces are in the Lebanon by invitation of the Government.

Postscript:

According to the BBC World Service, 12 April, 1984, the action of the Israeli authorities in closing off the Security Region from the rest of Lebanon has sparked fears in both the Lebanon and Israel itself that the Israeli Government may be about to annex this territory

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