

THE WITHDRAWAL OF UNEF AND A NEW NOTION OF CONSENT

I. INTRODUCTION

The theme of the following article is that emerging in international law is a new concept of consent and that this concept is detrimental to the development of a peaceful international system.¹ This new concept may be stated as follows: as to all treaties (notably agreements governing peacekeeping operations) consent must be broad and the interpretation of it must be very restrictive. Given this new notion of consent, procedures and rules must be developed for the effective future use of international peacekeeping forces to settle international crises. More specifically, this article will examine the problem of peacekeeping in light of the 1967 withdrawal of the United Nations Emergency Force (UNEF) from the United Arab Republic. A policy-oriented framework of analysis² will be applied in this limited context,³ emphasizing the need

1. The emphasis of this essay is on the management by states and international organizations of inter-state regional conflict. Professor Linda Miller in a recent essay has emphasized the regulation of intra-state regional conflict by regional organizations. Miller, *Regional Organizations and the Regulation of Internal Conflict*, 119 *WORLD POLITICS* 582 (1967). "The specter of unilateral military responses to internal violence raises the most serious issues for world order." In context of recent developments in the Middle East and Central America it appears that Professor Miller may have overstated the importance of internal conflict, while understating the significance of inter-state conflict. The Syrian based guerrilla operations against Israel, as well as Lebanon and Jordan, and the flareup between El Salvador and Honduras evidence the continuing danger of inter-state regional conflict. See, LUARD, *THE INTERNATIONAL REGULATION OF FRONTIER DISPUTES* (1970) esp. at 221-240.

2. FALK, *International Jurisdiction: Horizontal and Vertical Conceptions of Legal Order*, 32 *TEMPLE LAW QUARTERLY* 295 (1959). "The principal point . . . is

for the maintenance of minimal public order internationally by the management of regional conflict in the expanding⁴ international system.

II. THE TRADITIONAL NOTION OF CONSENT

The World Court in the *S. S. Lotus*⁵, an established source for positivist doctrine, identified consent as the basis of obligation under

to consider the impact of the extra-legal setting of international society upon the tasks of and prospects for international legal order." R. A. FALK, *LEGAL ORDER IN A VIOLENT WORLD* vii (1968).

3. For a statement of a "limited contextual approach," see R. A. FALK, *LEGAL ORDER IN A VIOLENT WORLD* (1968). See also Jacobs, *Varieties of Approaches to Treaty Interpretation—Treaty on the Law of Treaties*, 18 *INTERNATIONAL AND COMPARATIVE LAW QUARTERLY* 318 (1969). For critical reviews of the contextual approach of Myers McDougal see Gottlieb, *The Conceptual World of the Yale School of International Law*, 21 *WORLD POLITICS* 108 (1968); (Review Article), *The Interpretation of Agreements*, 23 *REVUE EGYPTIENNE DE DROIT INTERNATIONAL* 147 (1967) and Weston, *The Interpretation of Agreements*, 119 *UNIVERSITY OF PENNSYLVANIA LAW REVIEW* 647 (1969).

4. An underlying purpose of this essay is to implicitly identify the influence of the new states on the international legal order in fostering the development of a notion of obligation that claims only explicit consent of states to bind states to international obligations. As to the role of the new states in lawmaking in the United Nations, see the recent article by Professor Louis Henkin, *International Organization and the Rule of law*, 23 *INTERNATIONAL ORGANIZATION* 656, 679-81 (1969): "They (international organizations) have sometimes sacrificed legal principle to the ad hoc judgment of majorities . . . I do not foresee dramatic rededication by nations to law observance, and in some areas some international organizations—UN—may encourage violations by those who are confident that majorities will condone or approve them. . . . [T]he UN in particular has sought to create law (without the concurrence of the United States) which the United States rejects. . . . Many nations seem bent on using law to solve 'insoluble' political problems. . . ." The recent statement by Professor Richard A. Falk correctly identifies the issue of obligation and consent, but in the context of this essay misperceives its dimensions: "Traditional notions of obligation in international law have accorded a virtual veto to the sovereign state by making its expression of consent to be bound an indispensable precondition of a legal obligation. . . . It would be useful to gather any evidence of thought and action by the new states in relations to these issues." R. A. FALK, *THE STATUS OF LAW IN INTERNATIONAL SOCIETY* 524 (1970).

5. "The rules of law binding upon States therefore emanate from their own free will, as expressed in conventions or by usages generally accepted as expressing principles of law, and established in order to regulate the relations between these coexisting independent communities or with a view to the achievement of common aims." [1927] P.C.I.J. ser. A, No. 10, at 8. Hudson, 2 *WORLD COURT REPORTS* 23, 35, as quoted by Green, *The Impact of the New States on International Law*, 4 *ISRAEL LAW REVIEW* 27 (1969). Professor Brierly stated the following in 1928: "The doctrine that consent may be a basis of legal obligation is at least as old as the *Digest*, where Hermogenianus is quoted for the proposition that rules which have been approved by long custom and observed for very many years, are observed no less than those which are written . . . and it would be possible to collect an imposing array of authority to a similar effect from subsequent legal literature." J. L. BRIERLY, *THE BASIS OF OBLIGATION IN INTERNATIONAL LAW* 9 (H. L. Lauterpacht and C. H. M. Waldock ed. 1958). For the original French version see, *Le fondement des caractere obligatoire du droit international*, 23 *RECUEIL DES COURS* 467 (1928).

both conventional and customary international law. Under positivist doctrine, the acceptance by new states of existing rules of customary international law was implied regardless of any actual consent. It was presumed that new states implicitly consented to the existing international law when committing their first state acts.⁶ Writing in 1933 Professor Lauterpacht stated,

[A]ny inquiry of a general character in the field of international law finds itself at the very start confronted with the doctrine of sovereignty . . . For the theory of sovereignty of States reveals itself in international law mainly in two ways . . . *The first aspect, according to which the State is not bound by any rule unless it has accepted it expressly or tacitly, has found its theoretical expression in the positivist doctrine.*⁷ (Emphasis added)

This formulation of the traditional notion of consent is similar to the notion stated by the Permanent Court in the *S. S. Lotus*. Professor Lauterpacht discussed this notion of consent in relation to customary international legal rules of treaty interpretation. He discussed these two topics in the context of a comparative analysis of the jurisprudence of the Permanent Court, and the International Court, of Justice. Professor Lauterpacht argued that "one of the main lessons which can be derived from the activity of the Court"⁸ is the evolution of the Court's jurisprudence away from its initial acceptance in the 1920's of the "principle of restrictive interpretation of obligations."⁹ The developments of the 1960's evidence a tendency contrary to that observed in Professor Lauterpacht's writings of 1958. Thus it would seem that the trend away from the principle of restrictive interpretation of obligations in treaty law has been arrested and reversed. State practice, as evidenced by the withdrawal of UNEF, leads to a conclusion contrary to the one arrived at by Professor Lauterpacht's comparative analysis of the Jurisprudence of the Permanent and International Courts. In testing this proposition, we will look to the modern practice concerning treaty interpretation as evidenced in this case by the agreement between the Government of Egypt and the

6. BRIERLY, *supra* note 5 at 12. Professor Brierly discusses HALL, *INTERNATIONAL LAW* 48 (1924).

7. H. LAUTERPACHT, *The Science of International Law and the Limitation of the Place of Law in the Settlement of International Disputes*, in *THE FUNCTION OF LAW IN THE INTERNATIONAL COMMUNITY* 82 (1933). Also at 434, 436. "In this vindication of the dignity of their science international lawyers are confronted with two tasks, whose performance ought not, it is believed, to be delayed much longer. . . . This is the reason why it is a duty incumbent upon the lawyer to adopt a critical attitude . . . in the interest not only of the dignity of the science of international law, but also of an effective peaceful organization of the international community which it is the legitimate business of international lawyers to promote."

8. H. LAUTERPACHT, *The Court and State Sovereignty*, in *THE DEVELOPMENT OF INTERNATIONAL LAW BY THE INTERNATIONAL COURT* 300 (1958).

9. Sir Hersch Lauterpacht discussed the *Doctrine of Restrictive Interpretation of Treaties*, *Id.* at 300-309.

Secretary-General of the United Nations, concluded in the late 1950's and manifesting itself in the late 1960's.¹⁰

III. NEW NOTION OF CONSENT IN INTERNATIONAL AGREEMENTS: THE WITHDRAWAL OF UNEF

A. GENERAL

The point examined in this section is not the legality under either international law or United Nations Procedures of the withdrawal of UNEF but the precedent it established.¹¹ It is clear that the precedent established was the unilateral right of the host country to request the withdrawal of United Nations peacekeeping forces, unless explicit consent by the host state to the contrary exists in an international agreement between the United Nations and the host state. Whatever consent is given by the host state is extremely narrowly construed.¹² The following is an analysis of the United Nations' practice in withdrawing UNEF as evidence of developing customary international law of treaty interpretation.¹³

10. The study of treaties between states and international organizations is a viable field of inquiry in determining the context of present rules of treaty interpretation. On November 12, 1969, the U.N. General Assembly unanimously adopted Resolution 2501 (XXIV) which "recommends that the International Law Commission should study, in consultation with the principal international organizations, as it may consider appropriate in accordance with its practice, the question of treaties concluded between States and international organizations or between two or more international organizations." 24 U.N. GAOR Supp. 30, at 97, U.N. Doc. A/7630 (1969).

11. For discussions reaching contrary conclusions as to the correctness of U Thant's actions under United Nations law, see Elaraby, *U.N. Peacekeeping by Consent: A Case Study of the Withdrawal of UNEF*, 1 NEW YORK UNIVERSITY JOURNAL OF INTERNATIONAL LAW AND POLITICS 148 (1968), and Garvey, *United Nations Peacekeeping and Host State Consent*, 64 A.J.I.L. 241 (1970). For a convenient collection of documents on the withdrawal of UNEF and all documents relating to the history of UNEF, see R. HIGGINS, *The United Nations Emergency Force (UNEF), 1956-1967*, UNITED NATIONS PEACEKEEPING, 1946-1967—DOCUMENTS AND COMMENTARY 221 (1969) esp. 348-349. Rosalyn Higgins states, "The question of the consent of Egypt . . . was at issue in respect of the establishment of UNEF . . . and its (the host state's) ability to determine the appropriate moment of withdrawal. . . . The need to test the concept of consent arose in dramatic form in May 1967 when President Nasser asked UNEF to withdraw." *Id.* at 336. Professor Arthur Lall has written a good general account of the role of the United Nations in the Middle East crisis of 1967. Professor Lall discusses the withdrawal of UNEF in the context of the immediate political implications the withdrawal had on the developments in the Middle East Crisis of 1967. A. LALL, *UNEF and Its Withdrawal*, in THE UNITED NATIONS AND THE MIDDLE EAST CRISIS 21 (1967): "The point is that the failure to apply the full range of U.N. procedures curtailed gravely the diplomatic flexibilities upon which the peaceful resolution of dangerous situations must depend."

12. Elaraby, *supra* note 11 at 151. "The presence of foreign troops on the territory of a state without its consent would infringe upon its sovereignty."

13. An underlying assumption of this article relative to its methodology is that state practice in international organizations and practice of international organizations is authoritative evidence in determining the content of the concept of consent in

UNEF was formed under the authority of the General Assembly. Under this General Assembly authorization UNEF was subject to the national sovereignty clause of the U.N. Charter (Article 27). It was an agreement between the Egyptian Government and the Secretary-General that placed the force in Egypt with the consent of the Egyptian Government.¹⁴ The General Assembly merely authorized the Secretary-General to seek the establishment of UNEF,¹⁵ and to administer UNEF.¹⁶

The United Nations Emergency Force was not an enforcement action which emanated from the possible coercion measures envisaged under Chapter VII. . . the consent of the states was essential. . . the Force was undoubtedly established as a temporary organ of the General Assembly with a limited mandate Article 22 of the U. N. Charter authorizes the Assembly to "establish such subsidiary organs as it deems necessary for the performance of its functions."¹⁷

The nature of Egypt's consent will be reviewed by examining the Secretary-General's reports to the General Assembly prior to the formation of UNEF; the "Good Faith Aide-Memoire;" the "Personal Aide-Memoire;" the Secretary-General's subsequent report to the General Assembly evaluating UNEF; and relevant United Nations' debates during and after the Suez and Sinai crises.¹⁸

rules of treaty law. "[I]t should not be forgotten that international organizations, like states, make law not only by what they say, but also by what they do. Their practice constitutes today one area where customary law is growing at a pace sufficiently rapid for our times." Fatouros, *Participation of the 'New' States in the International Legal Order of the Future*, in R. A. FALK and C. E. BLACK, *THE FUTURE OF THE INTERNATIONAL LEGAL ORDER — TRENDS AND PATTERNS* 361 (1969). This is demonstrated in Mrs. Higgins' recent study of the development of international law through the political organs of the United Nations. R. HIGGINS, *THE DEVELOPMENT OF INTERNATIONAL LAW THROUGH THE POLITICAL ORGANS OF THE UNITED NATIONS* (1963). The practice of the United Nations is that of the withdrawal of UNEF by the Secretary-General under delegated authority from the General Assembly. This article assumes, also, that the positivist notion of consent can be correctly identified as the 'traditional' concept of consent accepted by states prior to World War II. This article attempts to analyze recent developments in the international system, specifically, the practice of the United Nations and states in the United Nations, in the context of this older notion of consent. Thus, pleading guilty to Mr. Oscar Schachter's admonishment that lawyers, "[C]easelessly endeavor to pour new wine into the old bottles and to market it under the time-honored labels." Schachter, *Towards a Theory of International Obligation*, 8 VIRGINIA JOURNAL OF INTERNATIONAL LAW 300, 303 (1968).

14. *Good Faith Aide-Memoire* 11 U.N. GAOR Annexes, Supp. 16, U.N. Doc. A/3375 (1956).

15. Resolution 998 (ES-I), 11 U.N. GAOR, 2nd Emergency Special Session, Supp. 1, U.N. Doc. A/3354 (1956). Mr. Elaraby states, "The United Nations through the Secretary-General realized the difficulties inherent in establishing, composing, stationing and in the functioning of the Force. And it must be admitted that Mr. Hammarskjöld's patience and understanding were the real assets and greatly contributed to the materialization of the Force." Elaraby, *supra* note 11, at 154.

16. Resolution 10001 (ES-I), *supra* note 15.

17. Elaraby, *supra* note 11 at 150, 151 and 153.

18. This is similar to the approach adopted by Mr. Elaraby. *Id.* at 154.

B. THE GOOD FAITH AIDE-MEMOIRE

An essential element in the provisions of the bilateral agreement (Good Faith Aide-Memoire) related to the interpretation of the purpose of the emergency force. Both the Secretary-General and President Nasser decided, in the text, that the force would remain until the "task" was completed. Each agreed to act with "good faith" towards the other. The "Good Faith Aide-Memoire" stated,

1. The Government of Egypt declares that, when exercising its sovereign rights on any matter concerning the presence and functioning of UNEF, it will be guided, in *good faith*, by its acceptance of *General Assembly Resolution 1000 (ES-I) of 5 November 1956*.
2. The United Nations takes note of this declaration of the Government of Egypt and declares that the activities of UNEF will be guided, in *good faith*, by the task established for the Force in the afore-mentioned resolutions; in particular, the United Nations, understanding this to correspond to the wishes of the Government of Egypt, reaffirms its willingness to maintain UNEF until its *task* is completed.¹⁹ (Emphasis added)

The "task" defined by General Assembly Resolution 1000 (ES-I) of 5 November 1956 was to

... secure and supervise the cessation of hostilities in accordance with all the terms of *General Assembly Resolution 997 (ES-I) of 2 November 1956*.²⁰ (Emphasis added)

In 1967 during and after the withdrawal of UNEF, U Thant contended that the Aide-Memoire's emphasis on the resolution of 5 November was intended only to limit the "task" of UNEF to supervising "the cessation of hostilities." He de-emphasized the task of supervising the Armistice Agreement (1949) in accordance with the broader resolution of 2 November 1956, as suggested by the Resolution of 5 November 1956. While this is a possible interpretation, it is a very narrow one in view of the two reports relating to the plan for UNEF presented by Dag Hammarskjöld in 1956²¹ and his subsequent report after the stationing of UNEF in 1958.²²

In the First Report Dag Hammarskjöld stated there would be two stages. The first stage related to arranging a cease-fire, while the second stage related to supervising the withdrawal of occupying forces. In his Second Report, Secretary Hammarskjöld not only indicated, but emphasized that UNEF would need to secure compliance with the Armistice Agreement and deal with post-withdrawal issues. These two official

19. *Supra* note 14.

20. *Supra* note 16. The General Assembly Resolution 997 (ES-I) of 2 November 1956 in essence, "urges the parties to the armistice agreements . . . to observe scrupulously the provisions of the armistice agreements."

21. *First Report to the General Assembly on Formation of UNEF*, 11 U.N. GAOR Annexes, Supp. 16, U. N. Doc. A/3289 (1956).

22. 11 U.N. GAOR Annexes, Agenda Item No. 66, U.N. Doc. A/3512 at 149 (1957).

reports evidenced the intention Hammarskjöld hoped to effectuate by the subsequent bilateral agreement with President Nasser and the United Nations.

U Thant construed the Good Faith Aide-Memoire independently, giving very little, if any, weight to the two official reports of the former Secretary-General made prior to the formation of UNEF. U Thant did not interpret the Good Faith Aide-Memoire as encompassing any "task," other than the supervision of the withdrawal. He did not interpret the consent to act in good faith given by President Nasser in 1956 as explicitly or implicitly covering the ten-year old functions being performed by UNEF in 1967 (supervision of the 1949 Armistice Agreement). U Thant rejected Hammarskjöld's statement made in an official report on UNEF in October 1958 when Hammarskjöld stated,

... were either side to act unilaterally in refusing continued presence or deciding on withdrawal, and were the other side to find that such action was contrary to a good faith interpretation of the purpose of the operation, an exchange of views would be called for towards harmonizing the positions.²³

By rejecting the former Secretary-General's view contained in his October 1958 Report, U Thant accepted the Egyptian-favored definition of UNEF's "task" as stated by the Egyptian delegate to the General Assembly in 1956,

In other words, as must be abundantly clear, this Force has gone to Egypt to help Egypt, with Egypt's consent, and no one here or elsewhere can reasonably or fairly say that a fire brigade, after putting out a fire would be entitled or expected to claim the right deciding not to leave the house.²⁴

Dr. Fawzy, the Foreign Minister of Egypt, looked on this force as only being there in regards to the present attack (1956), and not as an occupation force. This interpretation left Egypt with the right to say when the "task" was completed. When formulating UNEF, the General Assembly acknowledged that the consent of the host country was supreme and therefore the "full right to request the withdrawal of the UNEF is certainly a natural corollary *stemming directly from its sovereignty* as a state."²⁵ (Emphasis added)

The harmfulness of the withdrawal, as Nabil Elaraby (the First-Secretary to the UAR Mission to the United Nations) points out, was that Egypt did not want the force completely withdrawn, but only redeployed for political ends. Egypt had a mutual defense pact with Syria. Previously, Syria had accused Egypt of hiding behind the shield of the UNEF. Therefore, Egypt felt that it was a political necessity to withdraw the

23. *UNEF: Summary Study of the Experience derived from the Establishment and Operation of the Force*, Report of the Secretary-General, 13 U.N. GAOR Annexes, Agenda Item No. 65, U.N. Doc. A/3943 at para. 158 (1958).

24. 11 U.N. GAOR, Agenda Item No. 66 at 348 (1956); as quoted by Elaraby, *supra* note 11 at 160.

25. Elaraby, *supra* note 11 at 149.

UNEF from its common border with Israel and to prove its allegiance to the defense pact. It is uncertain whether Egypt wanted a full withdrawal of the troops. What is regrettable is the haste with which U Thant acted, as he never asked the Egyptian Government to clarify the extent of their request.²⁶

Secretary-General U Thant stated in a special report that he received a message at 12 noon, 18 May 1967, from the United Arab Republic which requested the immediate withdrawal of UNEF from the Israeli frontier.²⁷ The Secretary-General responded by letter that same evening, saying the consent of the United Arab Republic was needed and the force could only remain in Egypt so long as that consent continues; therefore, the request was being complied with.²⁸ "The consent of the host country is a basic principle which has applied to all United Nations peacekeeping operations."²⁹

The Secretary-General argued that the question of withdrawal of UNEF was by no means a new one. The assumption over the years was if the host government ever requested the withdrawal of UNEF, the request would be honored. This assumption was never questioned.³⁰ The Secretary-General stated,

There is no official United Nations document on the basis of which any case could be made that there was any limitation on the authority of the Government of Egypt to rescind that consent at its pleasure.³¹

The "Good Faith Aide-Memoire" agreed to by the Secretary-General and President Nasser prior to the landing of UNEF on 18 November 1956, did not limit Egypt's right to revoke its consent.³²

C. THE PERSONAL AIDE-MEMOIRE

The Secretary-General rejected the effectiveness of the "Personal Aide-Memoire," dated 5 August 1957, made by the former Secretary-General Hammarskjöld as being unofficial and as having

no standing beyond being a purely private memorandum of unknown purpose or value. . . . [T]his paper, therefore, cannot affect in any way the basis for the presence of UNEF on the soil of the United Arab Republic as set out in the official documents, much less supersede those documents.³³

The statements by Secretary-General U Thant constitute, in part, the United Nations practice on the withdrawal of United Nations Peace-

26. *Id.* at 171-172.

27. *The Reports of Secretary-General U Thant on Withdrawing UNEF*, 22 U.N. GAOR Annexes, Supp. 15, U.N. Doc. A/6730/Add. 3 at para. 1 (1967).

28. *Id.* at para. 3.

29. *Id.* at para. 12.

30. *Id.* at para. 34.

31. *Id.* at para. 40.

32. *Id.* at para. 72.

33. *Id.* at para. 73.

keeping Forces since the General Assembly had previously delegated authority to the Office of the Secretary-General to direct UNEF. However, this practice did not go unchallenged. The critics of the Secretary-General's actions have emphasized the Personal Aide-Memoire of the late Secretary-General Dag Hammarskjöld.³⁴

The Personal Aide-Memoire stated the decision on UNEF was under Chapter VI of the U.N. Charter. It was obvious Resolution 998 (ES-I), passed by the General Assembly, did not in any way limit the sovereignty of the host state. Egyptian consent was the condition for the presence and functioning of UNEF on Egyptian territory. Egypt had the right to request its withdrawal. However, it is quite a distinct question whether this right was limited in some way. "The main subjects of controversy center on what limitations the Egyptian Government had agreed to place on the sovereign right to make the Forces withdraw."³⁵

The late Secretary-General argued, by the Egyptian acceptance of the General Assembly resolution of 5 November (creating the force) and by their endorsing that resolution, they had unconditionally consented to the presence of UNEF.

They could thus not ask the UNEF to withdraw before the completion of the tasks without running up against their own acceptance of the resolution on the force and its tasks. . . . In case of different views as to when the crisis does not any longer warrant the presence of the troops, the matter will have to be negotiated with the parties . . . the matter should be brought up for negotiation with the United Nations.³⁶

The late Secretary-General continued to emphasize the unconditional nature of the Egyptian consent when he stated

Egypt gave green lights for the arrival of the troops, thus, in fact accepting my stand. . . . [O]n the basis of my stand as finally tacitly accepted, to force them into an agreement in which they limited their freedom of action as to withdrawal by making a request for withdrawal dependent upon the completeness of the task — a question which, in the United Nations, obviously would have to be submitted to interpretation by the General Assembly.³⁷

The leading critic of the Secretary-General U Thant's actions was the Israeli Foreign Minister.

It's often said that United Nations procedures are painfully slow. This one, in our view, was disastrously swift. . . . What is the use of a fire brigade which vanishes from the scene as soon as the first smoke and flame appear?³⁸

In response to the prior statement by Abba Eban, Secretary-General Thant stated,

34. *Aide-Memoire by Secretary-General Dag Hammarskjöld on Conditions Governing Withdrawal of UNEF*, 6 INTERNATIONAL LEGAL MATERIAL 583 (1967).

35. Kamenshine, *Peacekeeping and Peacemaking: The U.N. in the Middle East*, THE VANDERBILT INTERNATIONAL 16, 22 (1968).

36. *Aide-Memoire by Secretary-General*. . . , *supra* note 34 at 595.

37. *Id.* at 600.

38. *Statement by Mr. Abba Eban, the Israeli Foreign Minister to the General Assembly*, 22 U.N. GAOR, 5th Emergency Special Session, U.N. Doc. A/PV 1526 at 38 (1967).

I have never had reason to comment upon a statement made to this Assembly by a representative of any Government. But I feel it necessary to reply very briefly to certain statements made by the Foreign Minister of Israel in his address to the General Assembly. . . . I have noted Mr. Eban's picturesque simile of the "fire brigade which vanishes from the scene as soon as the first smoke and flames appear" . . . I am sure that Mr. Eban did not mean what he seemed to imply, namely that the United Nations Emergency Force was on Egyptian territory to stay as long as the United Nations saw fit. . . .³⁹

This was precisely the Israeli view, Mr. Eban stated:

This is not an unusual view. It is not an Israeli view alone. It expresses a very broad international and public consensus. . . . [A] weakness in the United Nations peacekeeping texture must rank amongst the factors which are universally admitted to have led to the situation we are now discussing. . . . By learning from the past we may help save the future. . . . [I]t seems to me that agreements for peacekeeping are likely to be more effective if they rely on bilateral enforcement agreements rather than on arrangements such as emergency forces which are at the mercy of the host country and which can, therefore, apparently be dismissed without notice.⁴⁰

D. THE PRECEDENT ESTABLISHED

Secretary-General Thant agreed in his final report on UNEF that the right of a host state to request unilaterally the withdrawal of peacekeeping forces was a basic defect in the peacekeeping machinery.⁴¹

The experience with the withdrawal of UNEF most certainly points up the desirability of having all conditions relating to the presence and the withdrawal of a peacekeeping operation clearly defined in advance of its entry into the territory of a host country . . . [often] time cannot be taken to negotiate agreements on detailed conditions in advance of the entry.⁴²

In a summary study of UNEF in 1958, the late Secretary-General Hammarskjöld made certain observations on the general problem of United Nations operations of this character.⁴³ The withdrawal formula employed in the 1956 situation was a bilateral declaration calling for a good-faith interpretation. It meant a mutual recognition of the fact that the operation was based on collaboration between the host government and the United Nations, and should be carried on in forms natural to such collaboration. He thought it was unlikely that any government would be willing to go beyond the declaration of the Government of Egypt with regard to UNEF. He considered this as a viable basis for future arrangements of a similar kind.⁴⁴

Unfortunately, the late Secretary-General's formulation of the with-

39. *Statement by Secretary-General U Thant, supra* note 38, A/PV 1527 at 5 (1967).

40. *Statement by Mr. Eban to the General Assembly, supra* note 38, A/PV 1528 at 28 (1967).

41. *Final Report by Secretary-General U Thant on UNEF*, 22 U.N. GAOR Annexes, U.N. Doc. A/6672 (1967).

43. *Report of the Secretary-General Dag Hammarskjöld*, 13 U.N. GAOR Annexes, Agenda, Item No. 65, U.N. Doc. A/3943 (1958).

44. "[A] series of basic rules has been developed in practice. Some of these rules would appear to merit general application." *Id.* at 29.

drawal formula did not prove workable. Secretary-General U Thant correctly identified, as did Mr. Eban, the necessity for formulating a withdrawal formula which would help maintain peace in the international system and which would be agreeable to the host state.

Sovereign equality was the basis of the United Nations practice as to the withdrawal of UNEF. It is this same concern with absolute sovereign equality that underlies the well-debated prohibition against coerced treaties contained in Article 52 of the recently completed Vienna Convention on the Law of Treaties of May, 1969.⁴⁵ It is this concern with sovereign equality, which only a few years after the withdrawal of UNEF was crystallized and embodied in a multilateral treaty signed by over thirty states.⁴⁶

IV. IMPLICATIONS AND SUMMARY

The United Nations practice makes it clear that a state's consent must be given prior to the stationing of troops, and it may be withdrawn unilaterally by the subjective determination of the host state. The new notion of consent is based on the extension of the juridical concept of sovereign equality, thus, consent must be explicitly given in the international agreement for the imposition of an international military force. The consent is to be construed very narrowly, and unless stipulated to the contrary, it may be withdrawn. The new concept of consent as evidenced by the withdrawal of UNEF reduces the effectiveness of any peacekeeping force since it has placed the force at the mercy of the host country, which can demand withdrawal at any time.

The new notion of consent in treaty relations puts into question the validity and viability of 'United Nations' action formerly considered valid under Chapter VI of the U.N. Charter. U Thant's acceptance of the Egyptian's view of consent and rule of narrow construction has severely limited the viability of treaties in settling inter-state regional conflict.

While the purpose of international law is to limit recourse to war, once such recourse is had, the international system ought to have procedures available to manage conflict. Treaties governing peacekeeping forces (especially treaties between international organizations and states—host states and states contributing forces—on the imposition of peacekeeping forces) ought to be available to the international system that

45. Art. 52, *Vienna Convention on the Law of Treaties*, A/CONF 39/27 at 25 (1969).

46. Art. 52, *Vienna Convention on the Law of Treaties*, *supra* note 45, for commentary see Sinclair *Vienna Conference on the Law of Treaties*, 19 INTERNATIONAL AND COMPARATIVE L.J. 47 (1970).

can be used to limit the conflict in both the short-run and the long-run.

Having noted the dangerous implications of this new concept of consent, a suggestion can be made to alter this new idea in such a way that it can be practically applied to maintaining regional and international peace. One idea, which has been implicit in the literature, is to attach a standard clause to any agreement to deploy U.N. troops that would remedy the considerable weaknesses that were shown in the 1967 incident.⁴⁷ This provision would set up UNEF's right to choose personnel and to remain until discharged by the General Assembly or Security Council. The imposition of international peacekeeping forces may come about as the result of long negotiations, as well as emergency situations. In either case, the prior formulation of this condition precedent would avoid subsequent misunderstanding. The above clause would eliminate the predicament occurring when the ultimate authority governing the action of the UNEF troops rests with their individual governments instead of the U.N.

In summary then, this new concept of consent may not be compatible with the peaceful management of regional disputes since it disregards the entire context of the situation. As previously mentioned, this new concept is much narrower than past ideas and may greatly endanger world peace. This idea appears to be sacrificing the stability of the international system by placing too much value on the extension of the legal fiction of sovereign equality of states. It disregards other vital variables which concern world peace, for example, the settlement of regional disputes.

New rules and procedures ought to be formulated to take these variables into account and the need for the suggestions which were put forth or for similar suggestions are apparent. Further study in this area is necessary. It is necessary to formulate a more complete method of countering the trend of state practice that gives support to the 'principle of restrictive interpretation of obligations in treaty law,' thus attempting to preserve for the international system the possibility of evolving a peaceful world public order.

47. Elaraby, *supra* note 11 at 177.