

The Syrian-Israeli boundaries in international law

The significance of the Armistice Demarcation Line of 1949

by Chibli Mallat

Zero-sum equations have been the name of the game in the Middle East since the early Zionist settlements in the late 19th century. The classic Zionist motto, “One dunum here, one dunum there” has come to exemplify this logic for all the parties concerned, and the zero-sum logic continues to regulate the peace process to date: the dunum Israelis gain Arabs lose and vice-versa, down to the ultimate square foot of disputed land. Over a century later, the published Draft Treaty between Syria and Israel (“Establishment of Peace and Security within Recognized Boundaries” —, first disclosed by *Ha’aretz*, 13 January 2000), illustrates throughout the persistence of this logic.

On other occasions, one has voiced regret over the domination of the zero-sum equation, and expressed the need to examine ways to replace the rigidity of its formulas with a more flexible and more enriching rule for all parties. However, “a different type of Arab-Israeli peace”, discussed in our book on the *Middle East into the 21st Century* [London 1996, chapter 3], is not within contemplation in the immediate future, and the present contribution remains constrained by the zero-sum logic. Old-style sovereignty and power symbols firmly continue as the name of the game: for peace to obtain, boundaries need to be defined down to the last centimeter of land.

From the Draft Treaty and subsequent accounts, the gap over time between the two parties has narrowed down considerably. While points of difference remain, including access to water and water allocation, early monitoring systems, depth of demilitarisation, deployment and composition of international troops, and timing of withdrawals and recognition, the most crucial dispute over the final borders is a matter of meters, mostly located on the Eastern Shore of Lake Tiberias, and the concomitant right over the water sources. In Article one of the Draft Treaty, Syria proposes to base the boundary “on the June 4, 1967 line.” The Israelis have remained vague, suggesting that the location of the boundary “takes into account security and other vital interests of the Parties as well as legal considerations on both sides.”

To solve the deadlock, a number of ideas are being floated, such as Patrick Seale’s distinction between sovereignty and use on the North Eastern shore of Tiberias, sovereignty being Syrian and use a joint or an international one. More recently, he suggested a Syrian sovereignty over the shore, against an Israeli sovereignty over the Lake, common touristic parks,... [op-ed in *al-Hayat*, 9 July 2000.] Other proposals take the shape of short or long-leases to Israel, and precedents in international law offer a wide number of possible models under the legal category of servitude and other dismemberment of property schemes. All these proposals have failed to materialise, though international efforts will continue, so worrying remain the prospects of another Arab-Israeli war. This contribution examines the position of the parties with respect to their respective claims under international law, and suggests a closer legal appreciation of the Armistice Agreements of 1949 as a possible inspiration for a compromise.

For several years, the Syrian government has been talking of “a full withdrawal of the Golan”, specified in the now famous formula of the June 4, 1967 line, as the bottom line for any agreement. The principle proposed by the late Syrian president in August 1993 [Patrick Seale, “The Syria-Israel negotiations: Who is telling the truth?”, *Journal of Palestine Studies*, 29:2, 2000, 69.] has strong grounds in international law, and is embedded in Resolution 242 as “the inadmissibility of the acquisition of territory by war”, a resolution upon which the Madrid invitation of 1991 was based.

The bottomline for successive Israeli governments is also entrenched in law. It is based on the 1923 Map set by France and Britain over Syria and Palestine, and known as the Paulet-Newcombe Line. The Israelis have traditionally vindicated Paulet-Newcombe as the “international boundary” between the two former Mandatory Powers on the basis of the sanctity of colonial borders. They also rest their case on the argument that Israel is the Successor State to Palestine.

Map 1- [The Paulet-Newcombe Line](#)

The Syrian and Israeli positions are difficult to reconcile. While both are well-entrenched, each carries its own legal uncertainties.

In law, the problem with the Israeli position is dual. First, the authority of mandatory powers to fix separate sovereignties in areas without boundaries and with open access over centuries, is open to questioning, especially since no consultation of the local populations, or ratification by free legislatures, have ever accompanied such grave acts as the delimitation of frontiers. The question is over the standing of that exchange of letters between Paulet and Newcombe, and how much it is binding in international law.

Second, these arrangements are the more questionable since the configuration of 1923 keeps the waterways fully within the Palestine-Israel ambit, against the normal practice of respecting natural geographical frontiers and the usual *thalweg* median line adopted in watercourses.

Mostly, the 1923 Franco-British agreement introduced what proved, three-quarters of a century later, the sorest point between Syria and Israel, for it specified that “the frontier follows a line on the shore parallel to and at 10 meters from the edge of Lake Tiberias.” By just looking at the 1923 map, one realises how “anti-naturally” the Paulet-Newcombe Line was drawn. The odd configuration expresses the British experience with the Nile River disputes at the turn of the century, and the French negotiators’ disinterest in the well being of its colonies.

But even British insistence had to yield on points which retain their relevance to date, because they were time-honoured basic rights attaching to all the local inhabitants: a closer look at the 1923 text reveals a number of exceptions and discrepancies which the British had to acknowledge, such as the fact that “any existing rights over the use of the waters of the Jordan by the inhabitants of Syria shall be maintained unimpaired;” that the railway station at Semakh (south of Tiberias, west of the 1923 Line) is “for the joint use of the two countries.” In addition, “the Government of Syria shall have the right to erect a new pier at Semakh on Lake Tiberias”, a further indication of clear Syrian rights over Semakh and the Southern shore of Tiberias. As for

water, while keeping police powers with “the Government of Palestine”, it was further specified that “the inhabitants of Syria and the Lebanon shall have the same fishing and navigation rights on Lake Huleh and Tiberias and on the river Jordan between the said Lakes as the inhabitants of Palestine”. [Facsimile text for instance in Isam Khalife, *Lubnan fi muwajahat mufawadat al-taswiya*, Lebanon in the peace negotiations, Beirut 2000, 148-156]

On the Syrian side, the denial of the 1923 Line is also legally problematic. The Syria-Palestine “international boundary” may have been arbitrarily imposed, it still offers a clear map, complete with border points and tangible details of the agreed demarcation. Many countries in the Third World, and indeed in the rest of the planet, have arbitrary boundaries, witness Africa to date, or the number of enclaves on the Swiss-German borders, or indeed Syria’s own borders elsewhere, with Lebanon, Iraq or Turkey.

Thus the general legal framework for the current deadlock between the two countries. The lines of 1923 and of 1967, however, are only part of the story, a matter complicated by the well known fact that there is no authoritative map for the 4 June 1967 line. Here is the most explicit document on the state of things in 1967, published that year by the Israeli government in the wake of the Six-Day War:

Map 2- [Line of June 4, 1967](#), according to Israeli government

Source: Israeli government, *The Six Days’ War*, 1967, p.62

There certainly are Syrian and Israeli military maps which would provide detailed indications of the positions of the countries’ respective armies just before the 1967 War, and some maps may well be in possession of super-powers at the time, the US certainly, possibly even the Soviet Union, or the UN. None of these detailed maps has so far been publicly produced, and it may be that this constructive ambiguity might be useful one day.

III

For our subject, there is an important set of documents which has tended to be passed under silence, for we have, in addition to the Paulet-Newcombe map of 1923, the official map which accompanies the Armistice Agreements between Syria and Israel, signed on 20 July 1949 after protracted negotiations following the 1948 first Arab-Israeli war. In contradistinction with the Israel-Lebanon border, where the 1923 “international boundary” matches the Armistice Agreement Line of 1949, the Syrian-Israeli Armistice Demarcation Line does not correspond, in most places, to the 1923 boundary.

So far, little attention has been given to the 1949 Line. The present overview wishes to underline its importance in law. A preliminary caveat, however, is in order. It is to be expected that the 1949 Line will be rejected outright by Israel on the basis that the whole Agreement is the result of Syrian force exercised against the 1923 “international boundary” Line, and that the 1949 Agreement itself specifies that the “arrangements for the Armistice Demarcation Line ... are not to be interpreted as having any relation whatsoever to ultimate territorial arrangements affecting the two Parties.” (Art.v, para.1)

In answer, the Syrian position would note that, also under the terms of the Armistice Agreement, the 1923 Line would not be made to prevail “since no provision of th[e] Agreement shall in any way prejudice the rights, claims and positions of either party hereto in the ultimate peaceful settlement of the Palestine question” (Art. ii, para.2) That, in any case, the 1923 Line had no standing in law as it was superseded by the 1949 Agreement, which “shall remain in force until a peaceful settlement between the Parties is achieved” (Art. viiii, para.2); that no Syrian government, before or after Independence, recognised that line (neither has any Israeli government recognised it formally for that matter: it was evenly officially denounced when the Israeli Parliament annexed the Golan in the Golan Heights Law of December 14, 1981);that, more generally, the Palestine Authority, or a Palestinian state, and not Israel, was the envisaged successor to Mandatory Palestine for which the British acted in 1923; and that if the inadmissibility of violent conquest is to be considered as the ultimate guideline in the conflict, the Israeli exercise of force since the turn of the century should altogether discard the full Zionist enterprise. One can see how easily the territorial conflict could be drawn onto the centenary-old debate of the Arab-Israeli conflict.

Against strong, but somewhat deadlocked arguments, the importance of the 1949 Armistice Agreement should be reexamined.

Map 3- [The Armistice Demarcation Line, 1949](#)

Israeli Ministry of Foreign Affairs, Official Documents

Note: five villages were added to the Map (Kirad al-Baqqara, Kirad al-Ghannama, al-Kursi, al-Nuqaib, Tal Qasr, names

added appear in Arabic, see text for their significance)

First, the 1949 map is detailed enough to leave very few bones of contention over the Demarcation Line itself. Four features should be kept in mind for the argument developed here: 1- the North Eastern Shore of Lake Tiberias was not part of a Demilitarised Zone (DMZ), and was drawn also to reflect a difference, albeit minimal, with the shore (except for very few points where named agglomerations would stand right on the shore, as at al-Kursi); 2- In many parts of the central sector, both shores of the Jordan river lie on the Syrian side east of the Line; 3- There is a section of the Southern DMZ, around Ein Gev, which on the Israeli side of the Line, underlying some parrellism between the two parties, which each including a part of DMZ on its side of the Line; and 4- the Line in the lower section of the Southern DMZ is the same as the South Eastern Shore of Tiberias, and features an agglomeration standing right on the Lake: al-Samra.

Two reasons explain why the 1967 Line would not match the 1949 Demarcation Line. First, the narrowness of the strip in the North Eastern Shore put Syria in control right on the Lake from the beginning.

Second, and this is important in our argument, the armed encroachments of Israel over the Syrian side of the 1949 Line, mostly in the decade following the Armistice, almost completely

destroyed the DMZ concept and led to their de facto annexation by Israel. This is graphically explained by Professor Benny Morris, a noted Israeli historian, in a recent book on Israel's Border Wars: "Given the superiority of the Israel Defence Forces (IDF), Israel eventually 'won the arguments' and incorporated most of the zones into its territory." [Benny Morris, *Israel's Border Wars 1949-1956*, Oxford 1993, 2] The zones Morris refers to are the DMZs which ran down part of the Demarcation Line and which, except for a few hundred metres at the most Northern and Southern tips, were forcefully occupied by Israel in the early years which followed the Armistice Agreement. Against the conventional view suggesting that Israel was left by 1967 in occupation of two-thirds to seventy per cent of the DMZ only, the DMZs seem to have been almost completely overrun by Israel by 1951. [Geography Professor Moshe Brawer, from Tel Aviv University, is reported to have calculated that 48 out of the 66.5 square kilometers of the DMZ were occupied by Israel after 1949. See also Frederic Hof's articles in *Middle East Insight*, "The Line of June 4, 1967", originally published in Sep-Oct.1999, 17-23 and recently developed in a monograph, *Line of Battle, Border of Peace ?*, Washington 2000, see at 21-22. The Arabic translation of the Hebrew book by Moshe Brawer, *Hudud ard isra'il*, 'The frontiers of the land of Israel', published in Amman in 1990, mentions at p.161, 18.5 sq kilometers controlled by Syria, against 44 by Israel (total 62.5 sq km). If the discrepancy is not due to the translator, the 4 sq km difference could be part of the no man's land at various points of the rough, mountainous terrain.]

In our current reconstruction of events, it is suggested that the overpowering force of Israel at the time, and the determined will of the Israeli government to occupy the DMZ militarily, left Syria by 1951 only in control of very few other points near populated areas such as Baniyas in the North and al-Himma in the South. While it is true that Syria remained on the Tiberias North-Eastern Shore down to a point which does not seem to include the village of Nuqeib, but includes the village of al-Kursi, it must be emphasised that the North-Eastern shoreline, including al-Kursi, was never part of the DMZ in the first place.

A closer look at the 1949 Armistice Line is now warranted. The 1949 Map shows the Armistice Line in the central sector to lie West of the Jordan river.

More importantly, the official 1949 Map shows that, in the South Eastern Shore of Tiberias, the Demarcation Line went down all the way to the Lake, as it did in some sectors in the North Eastern Shore.

Maps [4](#), [5](#), [6](#): The central and southern DMZs
Source: UN, Original Armistice Map, Appended to S/1353?Rev.1

Full, exact replica map, on www.mallat.com

As one can see, the Armistice Agreement puts the line further south squarely on the Lake, thereby acknowledging a number of agglomerations, especially al-Samra in our argument, on the Syrian side of the Demarcation Line. Here, unlike the 10-meter strip of the Paulet-Newcombe 1923 Line, the Armistice Demarcation Line on the South-Eastern shore of Lake Tiberias is right on the Lake. This essential feature is confirmed in the text of the Armistice Agreement, with the Demarcation Line specifically said to run "along shoreline of Lake Tiberias" (Annex i, para.22).

What happened in the DMZ, in al-Samra and elsewhere ? As Aryeh Shalev noted in a detailed book on the *Israel-Syria Armistice Regime, 1949-1955* [Tel Aviv 1993, Shalev was personally involved in the Armistice Commission under his former, non Hebraised name, Friedlander], the conflict leading to the ultimate destruction of the DMZ arose “with the decision of the Israeli government on 30 March 1951 to fully implement Israeli sovereignty in the Demilitarized Zone.” This meant an immediate string of attacks, starting in the central and Southern DMZ sector with Israel’s “transferring [Israeli for expelling] of Arab residents of the villages Kirad al-Baqara and Kirad al-Ghanameh”, the occupation of that DMZ zone to the Jordan river, and the occupation of Samra in the Southern DMZ. [incidentally, the occupation of Samra is passed under silence by Shalev in this key paragraph, p.83]

The results of the decision of the Israeli government were immediate. Benny Morris again: “That night [30 March 1951], Israel forcibly transferred the 800 inhabitants of Kirad al-Baqqara and Kirad al-Ghannama, the two Arab villages in the central DMZ, to the village of Sha’b, near Acre. The remaining villagers of al-Samra and al-Nuqaib left the southern DMZ, following Israeli pressures and Syrian calls for them to leave”. *Remaining* villagers ? The 2,000-3,000 Arab civilians in the DMZs had “proved something of a nuisance”. They were expelled, even though, as both Morris and Shalev show, between July 1949 and March 1951, “there was almost no infiltration from Syria”. [Morris, 377, also referring to Shalev]

During these two years, and despite the absolute calm prevailing on the Line, “Israel [had begun] subtly and not so subtly, by systematic petty persecution, to pressure them to move to Syria, succeeding to some extent in the southern DMZ (As Samra, Tel al Qasser)” [Morris, 378]. This happened gradually between 1949 and 1951, until the decree of 30 March sealed Israeli policy with the highest governmental imprimatur. The 30 March decision of the Israeli government was immediately implemented in the central and southern DMZs, with the final expulsion of the inhabitants completed by 5 April 1951, when the region was decreed “clear of Arabs” in the official Protocol of the Cabinet Meeting on that day [Morris, 379], and the villages razed to the ground. Ethnic cleansing ? Not our words, but those of the Israeli Chief of Staff, Yigael Yaden, who “noted that the villages were razed ‘to ensure that this Demilitarized Zone is cleansed of Arabs next to the Border’ ” [quoted by Shalev, 77].

Why is Samra, amongst other such destroyed villages in the DMZs, important in law ?

There are two major arguments which international law derives from the “transfer” of the inhabitants of these villages (and other agglomerations like al-Nuqaib, Kirad al-Baqqara and Kirad al-Ghannama). The transfer was clearly forced, as the archival research of Israeli historians attests to consistently, and as persistent requests from the Mixed Armistice Commission at the time. Some members of the Commission were appalled at the way civilians were being forced out of their livelihoods, and Security Council Resolution 93, of 18 May 1951 held that no action “involving the transfer of persons across international frontiers, armistice lines or within the demilitarized zone should be undertaken”. More specifically, the Security Council held that “Arab civilians who have been removed from the demilitarized zone by the Government of Israel should be permitted to return forthwith to their home.” [For further references, a useful historical study was recently published by Muhammad Muslih, *The Golan: The Road to Occupation*, Washington 1999.]

There is more from the legal point of view. Regardless of why the villages were abandoned, their inhabitants have an established, basic right to return to their homes, as a matter of principle and under the very status of the Armistice Agreement. The text specifically protects the Demilitarized Zone against “any advances by the armed forces, military or para-military, of either Party into any part” of the zones, and considers any such advance as “a flagrant violation of this Agreement,” while encouraging “the gradual restoration of normal civilian life” and “the return of civilians and villages and settlements in the Demilitarized Zone” (Art.v, paras. 5b, 2 and 5e), a principle repeated in numerous Security Council resolutions subsequent to the “cleansing” of the civilian population.

In other words, the inadmissibility of the acquisition of territory by war as a fundamental principal of international law well antedates Resolutions 242 and 338 in the Middle East. Not only is the principle clearly enunciated in the Armistice Text, but one can also find trace of it in another founding text, that of Security Council Resolution of 16 November 1948, which is mentioned both in the Preamble and in Article II of the Armistice Agreement. Security Council Resolution 62 of 16 November 1948 had requested “the immediate establishment of the armistice, including: (a) The delineation of permanent armistice demarcation lines beyond which the armed forces of the respective parties shall not move.” The Armistice Agreement emphatically incorporated the principle of inadmissibility of acquisition of territory by force: “With a specific view to the implementation of the Security Resolution of 16 November 1948”, it adds, “the following principles and purposes are affirmed: 1. The principle that *no* (*aucun* in the French text) *military or political advantage should be gained under the truce* ordered by the Security Council is recognized.” (Art ii, para.1 of the Armistice Agreement)

The text repeats the principle in some ten places. It would be fastidious to recount them all, but here is a sample: “The injunction of the Security Council against resort to military force in the settlement of the Palestine question shall henceforth be scrupulously respected by both Parties” (Art. i, para.1) “No aggressive action by the armed forces — land, sea or air — of either Party shall be undertaken, planned, or threatened against the people or the armed forces of the other.” (Art.i, para. 2). “The right of each Party to its security and freedom from fear of attack by the armed forces of the other shall be fully respected.” (Art.i, para. 3) More specifically, “no element of the land, sea or air, military or para-military, forces of either Party... *shall advance beyond or pass over for any purpose whatsoever the Armistice Demarcation Line* set forth in [this] Agreement.” (Art.iii, para.2)

“The line described in article V of this Agreement shall be designated as the Armistice Demarcation Line and is delineated in pursuance of the purpose and intent of the resolution of the Security Council of 16 November 1948...The basic purpose of the Armistice Demarcation Line is to delineate the line *beyond which the armed forces of the respective Parties shall not move.*” (Art.iv, paras 1 and 2) “The armed forces of the two Parties shall *nowhere* advance beyond the Armistice Demarcation Line.” (Art.v, para.4)

IV

It might therefore be useful to revive the Armistice Agreement and its Demarcation Line on a number of grounds.

From a diplomatic point of view, the 1949 Demarcation Line introduces the prospects of a compromise allowing the respective leaderships to claim before their domestic audiences (and perhaps also convince themselves), that they have reached the deal most in conformity with international law, a deal signed into a detailed Convention agreed then by both governments. The revival of the 1949 Armistice Agreement allows a third way which could satisfy both parties, even if, as in all compromises, it might leave them slightly frustrated.

For Syria, it is clear that the 1949 Line would be superior to the 1923 arrangement, and may have firmer legal grounds in law, in addition to being generally more precise and more advantageous than the June 4, 1967 Line. For the Israeli government, beyond a first rejection, one could hope that a compromise away from the strictures of the 1923 Line would be easier to justify to the Israeli public, in view especially of the violence exercised against the DMZ, of the legal violations of the clear provisions protecting the 1949 Line in the Armistice Agreement, and of the human rights exactions against the civilian populations on the Syrian side of the Line, now in the public record of the most serious Israeli historiography. More convincingly, international law support for Syrian access to the Lake alongside its Southern Shore, by virtue of the 1949 Armistice, would open new vistas on the June 4, 1967 option.

From a legal perspective, the very same principle which undergirds the Syrian position on the June 4 line has a strong pedigree in international law and in the Arab-Israeli conflict in particular. By looking at the texts culminating in the Armistice Agreement, it is clear that their pivotal principle is the inadmissibility of the acquisition of territory by force, including the DMZs established by Dr Ralph Bunche, the UN architect of the Armistice Agreement. In law, therefore, the revival of the 1949 Map rests on the principled refusal to accept force as the arbitrator of history, and on the vindication of the superiority of international law principles which apply regardless of the apportionment of the blame. But even if blame were to be apportioned, and that apportionment relevant in law, the systematic and premeditated violation of the DMZ by the Israeli government, notably in its decision of 30 March 1951, does not leave much doubt on who was responsible for the collapse of the peaceful arrangements accepted by the two Parties under UN aegis.

Procedurally, opening up the chance to a compromise can take the shape of a clause in the final Treaty fixing the 1923 and 1949 Lines as the respective Israeli and Syrian understanding of the minimal-maximal withdrawal limits in the Golan, “with control of, and sovereignty over, any disputed territory inbetween to be solved by arbitration”; that is if the parties have not solved the issue meanwhile by a compromise which could be made to look like the elusive, and yet to be publicly defined, June 1967 Line.

It might be dangerous to leave the matter to arbitration. To avoid a repeat of the DMZ-fate, the arbitral process should be tightened, in addition to its introduction in the text of the Treaty

without prejudice to withdrawals and Confidence-building measures agreed by the rest of the Treaty provisions. Specifically, arbitrating the twenty or so most contentious square kilometres standing before the advent of peace, would not prevent the rest of the Treaty arrangements, including withdrawals and diplomatic recognition, from being implemented. The expectedly protracted nature of the arbitration process could serve several other purposes, including the search by both parties for arrangements beyond the century-long zero-sum equation. One could even hope that the revival of the 1949 Line and principles established in the Armistice Agreement — both with regard to the protection of civilians and the rejection of acquisition of territory by war — would render arbitration easier, possibly even moot if a compromise is meanwhile reached, and herald the end of the zero-sum logic in the Middle East. After all, the Mixed Armistice Commission created in 1949, full with UN chairmanship and observers on the ready, was never disbanded. Both for the stability of the fragile truce in South Lebanon and for Arab-Israeli peace, a Blue Line on the Syro-Israeli front is more urgent than ever.

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