

Finally, the Arab nations, by their own conduct, have undermined the claim that the Gulf qualifies as an historic bay. All three Arab nations have claimed a limit of territorial sea. This claim is further evidence that the Arab nations themselves regard the Gulf as part of the high seas, rather than as part of the closed seas subject to their varying claims of territorial waters.⁷³

Thus, the Saudi Arabian position, based on international legal standards, was weak. The Gulf was, under international legal concepts, part of the high seas, open to all nations for free passage in time of peace or war.⁷⁴

3. Claim of a State of Belligerency

One additional problem arose in connection with passage of ships through the Gulf. The Arab nations, as an alternative to the Saudi Arabian *mare clausum* argument, contested Israel's right to navigate through their territorial waters on the grounds that a state of war still existed between Israel and the Arab nations.⁷⁵ When Israel urged the Security Council in 1954 to condemn Egypt's aggression in the Gulf,⁷⁶ the Egyptian government asserted that because of a continuing state of war between Egypt and Israel, Egypt was entitled to take measures to prevent the passage of belligerent ships.⁷⁷ The Egyptian government argued that the Egyptian-Israeli General Armistice Agreement⁷⁸ had not legally ended the state of war between the two nations.⁷⁹ The Arabs renewed this argument during the eleventh session of the General Assembly.⁸⁰

peace treaties with Israel and to recognize it, it cannot be denied that Israel exists as a sovereign State, that it has been recognized by the great majority of States.

LAPIDOTH, *supra* note 2, at 63-64.

73. Gross, *Passage Through the Strait of Tiran and in the Gulf of Aqaba*, 33 LAW & CONTEMP. PROBS. 125, 128 (1968). Israel also claims six miles of territorial sea. Alexander, *Indices of National Interest in the Oceans*, 1 OCEAN DEV. & INT'L L.J. 21, 43 (1973).

74. See text accompanying notes 28-32 *supra*.

75. LAPIDOTH, *supra* note 2, at 61-62; Selak, *supra* note 7, at 667-68.

76. Gross, *supra* note 4, at 564.

77. Letter dated 28 January 1954 from the representative of Israel to the President of the Security Council, 9 U.N. SCOR Supp. (Jan.-Mar. 1954), at 4, U.N. Doc. S/3168 (1954); Gross, *supra* note 4, at 565 n.7.

78. General Armistice Agreement, *supra* note 72. The parties agreed, with a "view to promoting the return of permanent peace in Palestine," to refrain from use of military force in Palestine, to observe the armistice demarcation lines provided for in the Agreement and to withdraw forces from designated areas. *Id.* arts. 1-6.

79. Mr. Azmi, representative of Egypt, quoted United States decisions and two international authorities for the proposition that an armistice agreement does not end a state of war. He stated that "[a]n armistice is a provisional suspension of hostilities formally agreed upon between belligerents. . . . An Armistice, an agreement between belligerents, has never been considered as putting an end to a state of war or as creating a state of peace." 9 U.N. SCOR (661st mtg.) at 9-15, U.N. Doc. S/PV.661 (1954).

80. *Cf.* 11 U.N. GAOR (666th plen. mtg.) at 1278, para. 36; 1280, para. 58, U.N. Doc. A/PV.666 (1957) (The United States delegation stated that once Israel had completed its withdrawal from the Sinai, there would be no basis for Egypt to assert belligerent rights, and the French delegate stated that none of the Gulf states could assert a state of war.).